



Linda S. Adams
Secretary for
Environmental Protection

California Regional Water Quality Control Board San Diego Region

Over 50 Years Serving San Diego, Orange, and Riverside Counties
Recipient of the 2004 Environmental Award for Outstanding Achievement from USEPA



Arnold Schwarzenegger
Governor

9174 Sky Park Court, Suite 100, San Diego, California 92123-4353
(858) 467-2952 • Fax (858) 571-6972
<http://www.waterboards.ca.gov/sandiego>

July 30, 2008

Mr. Bill Olien
Murrieta Valley Unified School District
41870 McAlby Court
Murrieta, CA 92562

CERTIFIED MAIL
7008 0150 0003 7457 7677

In reply refer to:
NWP:R920080087:mmills

CIWQS Place ID: 651492

RE: NOTICE OF VIOLATION NO. R9-2008-0087

Subject Site: Monroe Avenue Extension

Dear Mr. Olien,

Enclosed is **Notice of Violation (NOV) No. R9-2008-0087** for the subject site in the City of Murrieta, Riverside County, CA. The Monroe Avenue Extension project was issued Clean Water Act Section 401 Certification No. 06C-114 (Certification) on February 26, 2007. Violations specified in the NOV were identified during a site inspection on July 2, 2008 and during review of the California Regional Water Quality Control Board, San Diego Region file for the project. Failure to comply with the directives/conditions of the certification are serious and subject you to potential liability that accrues for each day of violation. Therefore, I urge you to take immediate steps to achieve compliance.

Questions pertaining to the enclosed Notice of Violation should be directed to Mariah Mills at 858-627-3977 or mmills@waterboards.ca.gov.


David Barker
Supervising Engineer

Attachments: Notice of Violation R9-2008-0087

cc by e-mail:

Laurie Monarres, U.S. Army Corps of Engineers, Laurie.A.Monarres@usace.army.mil
Sherri Conley, Vandermost Consulting Services, Inc., sconley@vandermostconsulting.com
Jeff Brandt, California Department of Fish and Game, JBrandt@dfg.ca.gov

CIWQS NOV - 349254, Place No. - 651492, Violations - 775141, 775415, 775416, 775417, 775418, 775420, 401 Certification - 315550

California Environmental Protection Agency



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July 30, 2008

IN THE MATTER OF:)

Mr. Bill Olien)
Murrieta Valley Unified School District)
41870 McAlby Court)
Murrieta, CA 92562)

NOTICE OF VIOLATION
NO. R9-2008-0087

CIWQS Place No. 651492

In reply refer to:
NWU:R920080087:mmills

Clean Water Act Section 401 Water Quality Certification No. 06C-114

Subject Sites: Monroe Avenue Extension

YOU ARE HEREBY NOTIFIED THAT:

You are in violation of the Clean Water Act Section 401 Water Quality Certification No. 06C-114 (Certification) for the Monroe Avenue Extension project (Project). Such violations subject you to possible enforcement action by the California Regional Water Quality Control Board, San Diego Region (Regional Board), including administrative enforcement orders requiring you to cease and desist from violations, or to clean up waste and abate existing or threatened conditions of pollution or nuisance; administrative civil liability in amounts of up to \$10,000 per day per violation; referral to the State Attorney General for injunctive relief; and, referral to the District Attorney for criminal prosecution.

The violations described below were identified from a site inspection on July 2, 2008 and during review of the Regional Board file for the project. The Regional Board notified Vandermost Consulting Services, Inc. (VCS), Murrieta Valley Unified School District's (MVUSD) representative during the 401 Certification process, of these concerns via email on July 3, 2008. VCS replied in a letter dated July 15, 2008. After review of the letter, the Regional Board finds that MVUSD is in violation of several conditions of the Certification.

Summary of Violations:

I. FAILURE TO POST PROTECTIVE SIGNAGE AROUND THE MITIGATION AREA

➤ Pursuant to Certification Condition A.1:

- a) Murrieta Valley Unified School District shall, at all times, fully comply with the engineering plans, specifications and technical reports

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submitted to the California Regional Water Quality Control Board, San Diego Region (Regional Board), with this application for 401 Water Quality Certification and all subsequent submittals required as part of this certification. The conditions within this certification shall supersede conflicting provisions within such plans submitted prior to the certification action. See Attachments 3, 4 and 5 for regional, site and mitigation area maps, respectively.

Observation: The *Murrieta Valley Unified School District: Monroe Avenue Extension Final Habitat Mitigation and Monitoring Plan* by Vandermost Consulting Services dated May 16, 2007, submitted in support of the Certification, states that "MVUSD will be responsible for ensuring appropriate fencing, signage and/or thorny vegetation is installed around the perimeter of the mitigation area to prevent unauthorized entry of residents and the public" (see pages 4 and 16). During the site inspection on July 2, 2008, it was observed that no fencing or signage had been installed around the mitigation area.

II. FAILURE TO PROVIDE NOTIFICATION OF MITIGATION INSTALLATION AND COMPLETION OF MITIGATION INSTALLATION

➤ **Pursuant to Certification Condition B.2:**

- Murrieta Valley Unified School District shall notify the Regional Board in writing at least 10 days prior to actual start dates for grading, mitigation installation, and completion of mitigation installation.

Observation: Work in the mitigation area was initiated in February 2008 and mitigation was installed on April 28, 2008. The Regional Board did not receive the required 10-day notification for these events, however, VCS provided this information in the letter dated July 15, 2008.

III. FAILURE TO SUBMIT A WATER QUALITY MANAGEMENT PLAN FOR THE HIGH SCHOOL NO. 3

➤ **Pursuant to Certification Condition B.6:**

- Prior to construction of the future High School No. 3, Murrieta Valley Unified School District shall submit a Water Quality Management plan to the Regional Board for review.

Observation: Regional Board staff has observed that construction is underway on the MVUSD's High School No. 3. The Regional Board has not received a water quality management plan for the High School No. 3 project. The *Project Specific – Final Water Quality Management Plan for Monroe Avenue Extension*, prepared by EPIC Engineers, dated April 2007, received by the Regional Board on May 9, 2007, does not address water quality management for the High School No. 3 and does not fulfill Condition B.6.

IV. FAILURE TO REMOVE ALL NON-NATIVE VEGETATION FROM THE MITIGATION AREA

➤ **Pursuant to Certification Condition D.1:**

- Mitigation for the permanent loss of 0.03 acres (170 linear feet), will be achieved at a 10:1 ratio, by the enhancement of 0.32 acre (1400 linear feet) of a primarily unvegetated and disturbed drainage within an adjacent residential development as described in the *Conceptual Mitigation Plan for the Monroe Avenue Extension*, submitted to the Regional Board on January 24, 2007. All non-native vegetation will be removed and the drainage will be planted with native riparian vegetation such as willow, mulefat and cottonwood, creating a riparian corridor that will be similar to the impacted area. The location of the mitigation area is shown in Attachment 5.

Observation: Mitigation was installed on April 28, 2008. During the site visit on July 2, 2008, non-native vegetation was observed within the mitigation area. For example, several large patches of iceplant were observed within the mitigation area. Based on the size of the iceplant patches, it is assumed that these plants were present before mitigation was implemented, and therefore should have been removed during mitigation installation.

V. FAILURE TO DESIGN AND CONSTRUCT THE MITIGATION AREA ACCORDING TO CERTIFICATION REQUIREMENTS

➤ **Pursuant to Certification Condition D.7:**

- The mitigation site shall be designed and constructed to meet the following conditions:
 - a) Most of the channel through the mitigation site is characterized by equilibrium conditions, with no evidence of severe aggradation or degradation;
 - b) As viewed along cross-sections, the channel and buffer have a variety of slopes, or elevations, that are characterized by different moisture gradients. Each sub-slope contains physical patch types or features that contribute to irregularity in height, edges, or surface and to complex topography overall; and
 - c) The mitigation site has a well-developed plant community characterized by a high degree of horizontal and vertical interspersions among plant zones and layers.

Observation: The mitigation area was inspected on July 2, 2008. It was observed that the mitigation area consisted of a uniform, flat channel, with few physical patch types. It did not appear that the mitigation site had been designed and constructed to include a variety of slopes and elevations as required by Condition D.7.

VI. FAILURE TO SUBMIT A FINAL CONSERVATION EASEMENT

➤ **Pursuant to Certification Condition D.8:**

- Within 90 days of the issuance of this certification, Murrieta Valley Unified School District shall provide the Regional Board a draft preservation mechanism (e.g. deed restriction, conservation easement, etc.) that will protect all mitigation areas and their buffers in perpetuity. Within one year of the issuance of this certification, Murrieta Valley Unified School District shall submit proof of a completed preservation mechanism that will protect all mitigation areas and their buffers in perpetuity. The conservation easement, deed restriction, or other legal limitation on the mitigation property shall be adequate to demonstrate that the site will be maintained without future development or encroachment on the site which could otherwise reduce the functions and values of the site for the variety of beneficial uses of waters of the U.S. that it supports. The legal limitation shall prohibit, without exception, all residential, commercial, industrial, institutional, and transportation development, and any other infrastructure development that would not maintain or enhance the wetland and streambed functions and values of the site. The preservation mechanism shall clearly prohibit activities that would result in soil disturbance or vegetation removal, other than the removal of non-native vegetation. Other infrastructure development to be prohibited includes, but is not limited to, additional utility lines, paved maintenance roads, and areas of maintained landscaping for recreation.

Observation: A draft conservation easement was submitted via email by the City of Murrieta on June 5, 2007. This draft was accepted by the Regional Board via email on June 5, 2007 as fulfilling the portion of Condition D.8 regarding submittal of a draft preservation mechanism. The Regional Board has not received a final conservation easement. The final conservation easement was due on February 26, 2008.

VII. FAILURE TO SUBMIT AS-BUILT PLANS OF THE MITIGATION AREA

➤ **Pursuant to Certification Condition D.9:**

- Murrieta Valley Unified School District shall submit a report (including topography maps and planting locations) to the Regional Board within 90 days of completion of mitigation site preparation and planting, describing as-built status of the mitigation project. If the site grading and planting are not completed within six weeks of each other, separate reports will be submitted describing those specific as-built conditions.

Observation: Mitigation was installed on April 28, 2008. Per Condition D.9, as-built plans must be submitted by July 27, 2008. In the July 15, 2008 letter, VCS stated that as-built plans would not be submitted.

Questions pertaining to the issuance of this Notice of Violation should be directed to Mariah Mills at 858-627-3977 or mmills@waterboards.ca.gov. Written correspondence pertaining to this Notice of Violation should be directed to the following address:

John H. Robertus, Executive Officer
Attn: Mariah Mills
California Regional Water Quality Control Board, San Diego Region
9174 Sky Park Court, Suite 100, San Diego, CA 92123-4340

Brian D. Kelley
for David Barker
Supervising Engineer