

Frank Melbourn - Agenda

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Date: 1/23/2006 8:44 PM
Subject: Agenda
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Agenda # 7 Administrative Civil Liability
City of Carlsbad
Municipal Golf Course

Regional Water Quality Control Board
Region 9

Thank you very much for recognizing that this issue requires full public discussion. It was a shock to many of us in North County to learn after the fact that this violation had occurred, and that the city of Carlsbad had waived a public hearing.

We very much appreciate your staff diligence in discovering this violation, and in taking prompt action to prevent further damage to the Agua Hedionda watershed.

The violation was serious. The penalty needs to be proportionate so that this city, and other cities will never again allow this to happen.

Please consider the following factors when you decide what penalty to impose:

- this violation is unprecedented since the new storm water protection guidelines were adopted in 2001

At our request your staff reviewed citation files and reported there was not one other case in the last five years where a public agency was cited for a public construction project- **not one**. Of course we should all expect there wouldn't be any. A citation of a city for a public project means the city is acting as if they don't have to comply with the law that applies to every other project within their boundaries. How can there be any credibility in the system if the city doesn't set a high standard for compliance? How can you, or the public, have any faith in the system if the inspectors are the ones violating the law?

- this is not one violation- it is numerous violations

The city was cited for failure to file the required Notice of Intent. But to us what is really of greater concern is that they failed to prepare an adequate SWPPP, failed to comply with their own, unapproved SWPPP, and of greatest concern- even after notice of the violation and the first rain event of the year, a follow-up inspection found that while there had been progress, the complete system of BMP's still was not fully installed.

Field inspector notes show silt fences not properly installed, detention basins on the plan were not constructed- and the list goes on and on. This was a complete breakdown of the system that is supposed to assure all of us that this project would be done in accordance with the law.

- part of the project is in the Coastal Zone

California law recognizes the special sensitivity of the natural resources in the Coastal Zone. The city was required to modify their Local Coastal Plan and revisions were made to the draft Habitat Management Plan specifically to address concerns with this project- to assure that these coastal resources would be protected. The elected officials and staff of the city have complained at numerous public forums about how this project was delayed because of all of the requirements imposed on them to protect these resources. This project should have received the highest level of care, yet it did not even receive the minimum.

- the project is only a few feet from the impaired Agua Hedionda Lagoon

The city's own water quality testing shows increased levels of sediment pollution in the lagoon since monitoring started in 1999. This is the only coastal lagoon entirely within the city of Carlsbad, and here a city project adds to the cumulative impacts on this lagoon.

- Flagrant inconsistency with WURMP annual report

The RWQCB informed the north county Copermittees on October 8, 2004 and August 5, 2005 that you wanted more emphasis on action items that really improved water quality. In response to that Carlsbad (and only Carlsbad) added an action item: "weekly inspections of all large construction projects." This project is an example of how well they are inspecting large construction projects. Is the WURMP report just a paper exercise- or should weekly inspections really result in better project compliance- and less damage from these large construction projects?

- this is a rich city building an obscenely expensive public golf course

Carlsbad is one of the wealthiest cities in California. At last years' budget hearings they still reported annual income in excess of expenditures, and a reserve account of about \$ 90 million dollars. The construction budget for the golf course is over \$ 43m- but the total project costs are actually millions more- and the most recent financial plan for the project projected an annual operating deficit of about \$ 400,000. A fine of \$ 23,900 is not even a slap on the wrist.

- the city reaction to the fine was not in the best interests of the community

Upon learning of these violations the city response was minimal. The local action was to process this as a consent item with no discussion and to waive a public hearing in a further effort to minimize any public attention. In effect they chose to sweep it under the carpet. Furthermore, there is no indication of a comprehensive review of the procedures and safeguards that should have prevented this from happening. But of

greatest concern is that under the provisions of the Supplemental Environmental Project the fines collected could be used for a watershed improvement project in this area- and the need here is very great. The city did not solicit a SEP, which could provide a local benefit to the watershed to offset the damage they have caused.

We recommend that the maximum allowed fine of \$ 590,000 be imposed unless the city agrees to the following actions:

1. A written report from the city identifying all of the failures in the system that resulted in this series of violations and what corrective actions will be taken to assure this does not happen again.
2. Retraining of city inspection staff on correct BMP installation and key items to inspect on their field inspection of construction sites.
3. Monthly construction compliance inspection by the RWQCB of this project site during construction, and for installation of the permanent BMP's. These inspections will be used as a means to continue the training of staff on how to implement an effective compliance program. The cost of such monitoring to be included in the fine.
4. Approval of one or more SEP's in an amount of at least \$ 200,000 for projects benefitting water quality in the Agua Hedionda watershed. We are aware of three such proposals currently being prepared.

Thank you very much for holding a hearing on this violation. We urge you to use this violation to send a strong message- that the laws to protect water quality apply to everyone.

Diane Nygaard
On Behalf of Preserve Calavera