CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

TECHNICAL ANALYSIS

Proposed Administrative Civil Liability
Contained in Complaint No. R9-2007-0093
North County Transit District
Sprinter Rail Project
San Diego County

Noncompliance with
Order No. 99-08-DWQ
National Pollutant Discharge Elimination System (NPDES)
General Permit for
Storm Water Discharges Associated With
Construction Activity

August 31, 2007

By
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1. INTRODUCTION

This technical analysis provides a summary of factual and analytical evidence supporting administrative assessment of civil liability in the amount of $160,000 against North County Transit District (NCTD) pursuant to California Water Code (CWC) section 13385 for violations of CWC 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)* as alleged in Complaint No. R9-2007-0093.

2. BACKGROUND

On August 7, 2003, NCTD filed a Notice of Intent (NOI) to comply with the terms of the General Permit to Discharge Stormwater Associated with Construction Activity (WQ Order No. 99-08-DWQ). The project was issued WDID # 9 37C322900. As an independent transit district, NCTD is not subject to local municipalities' jurisdiction (i.e. Cities of Oceanside, Vista and San Marcos) and therefore, is not subject to local storm water program oversight, including regular inspections by the municipality.

The project is a 22 mile linear rail corridor from the Coast Highway in the City of Oceanside to the City of Escondido's Transit Center. See Figure 1: Map of the Sprinter Rail project. The project's total disturbed acreage is approximately 280 acres.

Figure 1: Map of the Sprinter Rail project.

The project consists of the replacement of existing rail lines, construction of new double track rail lines in several areas, construction of a new rail

line on the San Marcos loop, and the construction of several new rail stations. The project crosses several hydrologic areas within the Carlsbad watershed, and storm water runoff from the project discharges into several creeks, including Loma Alta Creek, Buena Vista Creek, Buena Creek, San Marcos Creek, and Escondido Creek. Downstream receiving waters include Buena Vista Lagoon, Agua Hedionda Lagoon, Lake San Marcos, and San Dieguito Lagoon. Agua Hedionda Lagoon and Buena Vista Lagoon are on the Clean Water Act Section 303(d) list of water quality limited segments due to sediment impairment.

Following receipt of complaints from the public, Mr. Ben Neill, Water Resource Control Engineer of the Central Watershed Unit, inspected the project on February 20 and March 21, 2007. He observed and documented the allegations listed below, including sediment discharges and a failure to implement and maintain adequate BMPs. As a result of the February 20, 2007 inspection, the NCTD was issued Notice of Violation No. R9-2007-0050 and a request for a technical report, pursuant to California Water Code (CWC) section 13267 on March 19, 2007. On April 6, 2007, NCTD submitted a complete and timely technical report describing corrections made at the project to comply with the General Permit.

Mr. Neill inspected the project again on March 21, 2007. As a result, NCTD was issued Notice of Violation No. R9-2007-0063 and another request for technical report pursuant to CWC section 13267 on April 3, 2007 due to sediment discharges and a failure to implement and maintain adequate BMPs. On April 24, 2007 NCTD submitted the required technical report including the project's Storm Water Pollution Prevention Plan (SWPPP)[1] and also describing corrections made at the project to comply with the General Permit.

On the days of the alleged violations, the National Weather Service's Vista station reported 0.37 inches of rain on February 19, 2007 and 0.13 inches of rain on March 21, 2007. These rainfall amounts were not extraordinary for the 2006-2007 rainy season (October 1 through April 30). For example, on at least four days during the 2006-07 rainy season, rainfall measured greater than 0.37 inches with a high of 1.64 inches falling on January 31, 2007.

[1] A SWPPP "specifies Best Management Practices (BMPs) that will prevent all construction pollutants from contacting storm water and with the intent of keeping all products of erosion from moving off site into receiving waters." (Construction Storm Water Permit, Fact Sheet, page 1) See also page 6 of the Fact Sheet for greater SWPPP details.

3. ALLEGATIONS

The following alleged violations against NCTD are the basis for assessing administrative civil liability pursuant to CWC section 13385.

3.1 NCTD Failed to Implement Best Management Practices in Violation of the General Permit § C.2, A.1.c

Special Provision C.2 of the General Permit states:

> "All dischargers shall develop and implement a SWPPP in accordance with Section A: Storm Water Pollution Prevention Plan. The discharger shall implement controls to reduce pollutants in storm water discharges from their construction sites to the BAT/BCT performance standard."

Section A.1.c. of the General Permit states:

> "The SWPPP shall be developed and amended or revised, when necessary, to meet the following objectives: … c. Identify, construct, implement, in accordance with a time schedule, and maintain Best Management Practices (BMPs) to reduce or eliminate pollutants in storm water discharges and authorized nonstorm water discharges from the construction site during construction,"

NCTD failed to implement Best Management Practices (BMPs) in accordance with its SWPPP in violation of the General Permit section C.2. These violations were observed during Regional Board inspections of the site on two days; February 20, 2007; and March 21, 2007.

3.1.1 Nature, Extent, Circumstances, and Gravity of Violations

The General Permit requires the development of a SWPPP. The goal of this plan is to prevent storm water pollution and to reduce the pollution to the Best Available Technology Economically Achievable and Best Conventional Pollutant Control Technology (BAT/BCT)[2] performance standard. The goal is accomplished by implementing effective BMPs. On a project of this size, the implementation of BMPs is critical in preventing pollution.

On February 20, 2007, Ben Neill, a Regional Board Water Resource Control Engineer, inspected the project site within the cities of Vista and San Marcos and observed and documented the discharge of sediment and sediment-laden water to the local municipalities storm drain conveyance system. In addition, NCTD failed to implement and maintain

[2] BAT/BCT as defined in sections 301 and 402 of the federal Clean Water Act.

adequate BMPs as noted in Attachment No. 1, Facility Inspection Report dated February 20, 2007.

On March 21, 2007, Mr. Neill again inspected the project site within the city of Oceanside and observed and documented the discharge of sediment to Loma Alta Creek. In addition, NCTD failed to implement and maintain adequate BMPs as noted in Attachment No. 2, Facility Inspection Report dated March 21, 2007.

Failure to implement and maintain adequate BMPs is a serious violation because it resulted in the discharge of sediment and sediment-laden water to the storm drain system and to Loma Alta Creek. When properly installed and maintained, BMPs achieve a construction project's goal of preventing pollution of receiving waters. Evidence of inadequate BMPs resulting in sediment discharges from the project included documentation of failing inlet protections, a lack of inlet protections, and a lack of perimeter controls.

3.1.2 Culpability

The NCTD is a public board created to plan, construct and operate public transit systems in northern San Diego County. As such, they have constructed numerous projects and should have the experience and expertise necessary to comply with the storm water requirements. A project of this size and complexity needs special diligence and attention because of the large area of disturbed soil, the multiple storm water discharge points, and the constrained nature of a linear project. With an estimated budget of $440 million, the Sprinter Rail construction project should have adequate resources to properly comply with the General Permit.

According to documents submitted by NCTD, District staff were responsible for, and knowledgeable of, the construction storm water requirements. The project's contractor personnel were trained in General Permit compliance in regards to the installation, inspection, maintenance and repair of BMPs. The contractor notified the subcontractors of their requirements to comply with the General Permit regulations, as noted in Attachment No. 7 "Subcontractor Notification Letter and notification Log". In accordance with the General Permit requirements, NCTD has developed a site specific SWPPP. The Cities of Oceanside, Vista and San Marcos have notified NCTD and their contractor verbally regarding a lack of BMPs at the project site. The Regional Board also conducted compliance assistance inspections that gave NCTD a better understanding of the Regional Boards' expectations to comply with the General Permit. The storm events on February 19, and March 21, 2007,

were not of an extraordinary rainfall amount and intensity. Properly implemented BMPs would have prevented the discharges of sediment.

3.1.3 Susceptibility to Cleanup and Abatement

This factor does not apply to this violation.

3.1.4 Degree of Toxicity of the Discharge

This factor does not apply to this violation.

3.1.5 Ability to Pay and Continue in Business

At this time, the Regional Board has no information that NCTD is unable to settle the proposed administrative civil liability (ACL) or how settlement of the proposed ACL would affect the ability of NCTD to continue operations. The Sprinter Rail project has an estimated budget of $440 million. The proposed liability of $160,000 is approximately 0.04% of the project's estimated budget.

3.1.6 Voluntary Cleanup Efforts Undertaken

The Regional Board observed and documented sediment discharges and a failure to implement and maintain adequate BMPs at the Sprinter Rail project on February 20, 2007 and March 21, 2007. In required technical reports submitted on April 6 and April 24, 2007, NCTD described how the aforementioned violations were corrected by implementing more BMPs and increasing maintenance activities. Additional BMPs such as gravel bags and silt fencing were implemented around storm drain inlets. Concrete slurry spills were cleaned up. Additional gravel was placed at construction exits to prevent sediment tracking. Trash was removed or placed in appropriate containers. Construction stockpiles were covered with plastic when not in use.

3.1.7 Prior History of Violation

The Regional Board issued two subsequent Notices of Violations to the NCTD on March 19 (NOV No. R9-2007- 0050) and April 3, 2007 (NOV No. R9-2007-0063). These NOVs were for the violations alleged in complaint No. R9-2007-0093. The Sprinter project has been the subject of many public complaints regarding their compliance with the General Permit. In addition, the Cities of Oceanside, Vista and San Marcos have repeatedly notified NCTD and their contractor regarding storm water violations.

3.1.8 Economic Benefit Resulting from the Violation

NCTD was required to be in compliance with the General Permit at the time construction activity begin (i.e., develop and implement its SWPPP). The Regional Board has estimated that adequate sediment and erosion control BMPs cost roughly $2,000 per acre per year. At 280 acres, the

cost associated with the implementation of adequate BMPs is estimated to be $560,000 for one year.

3.1.9 Other Matters as Justice May Require

The Regional Board has incurred specific expenses relating to the investigation for the violations alleged in this report as well as the preparation of enforcement documents associated with this enforcement action. To date, the Regional Board's total expenditures are $16,446.75.

3.2 Failure to Conduct Adequate Project Inspections in Violation of General Permit Special Provision C.2 and C.4 § A.11 and § B.3

NCTD failed to conduct adequate pre- and post-rain fall inspections of the construction site in violation of General Permit Special Provision C.2 and C4, section A.11 and B.3 on at least four days:

1. February 19, 2007;
2. February 20, 2007;
3. March 20, 2007; and
4. March 21, 2007.

Copies of NCTD's inspection reports are included as Attachment Nos. 3 and 4.

3.2.1 Nature, Extent, Circumstances and Gravity of Violations

The General Permit Section A.11 requires:

> Inspections will be performed before and after storm events and once each 24-hour period during extended storm events to identify BMP effectiveness and implement repairs or design changes as soon as feasible depending upon field conditions. Equipment, materials, and workers must be available for rapid response to failures and emergencies.

General Permit Section B.3 requires:

> Qualified personnel shall conduct inspections of the construction site prior to anticipated storm events, during extended storm events, and after actual storm events to identify areas contributing to a discharge of storm water associated with construction activity….Pre-storm inspections are to ensure that BMPs are properly installed and maintained; post-storm inspections are to assure that the BMPs have functioned adequately.

Thorough and accurate project inspections are critical to the foundation of an adequate program to identify and correct BMPs. Inspections identify ineffective and unmaintained BMPs for repair or replacement thus preventing subsequent discharges. The importance of project inspections has been identified by the USEPA in their 1999 Storm Water Management Fact Sheet - Visual Inspection: "The USEPA has recognized visual inspection as a baseline BMP for over 10 years." And "Visual inspections are an effective way to identify a variety of problems. Correcting these problems can improve the water quality of the receiving water." BMPs associated with construction activities are highly susceptible to damage due to the intensity of activities commonly associated with construction. Consequently, inspections are crucial to the effective operation of stormwater BMPs. NCTD's failure to adequately inspect the project prevented them from identifying and maintaining deficient BMPS which led to environmental impacts. For these reasons, the inadequate inspections have resulted in serious violations.

On at least four occasions before and after storm events on February 19 and 20, March 20 and 21, 2007, inspection reports failed to identify inadequate BMPs and maintenance needed in contrast to those identified by the Regional Board in their inspection reports of the same days. In addition, the inspection report from February 19, the day of the rain event totaling 0.37 inches, reports that no crews were onsite and repairs were to be made on February 20, 2007, the day following the rain event. Without erosion control crews being on site prior to the rainstorm, corrections cannot be made to BMPs on the project that could have prevented discharges of sediment or other storm water pollution.

<u>February 19 and 20, 2007 inspection reports:</u>
For February 19, 2007, the project's inspection report type is "prior to forecast rain." In the notes section is the following: "No crews onsite. Repairs to be made on 2-20-07." The February 20, 2007, project inspection report is of the type "After a rain event." The inspection reports do not adequately reflect site conditions as observed by the Regional Board inspector on February 20, 2007. The following are some examples of contradictions between the NCTD self inspection reports and site conditions observed by the Regional Board (Attachment Nos. 3 & 4, Storm Water Quality Construction Site Inspection Checklist dated February 19, and February 20 2007).

On the question "Does the applied temporary erosion control provide 100% coverage for the affected areas?" the NCTD inspection reports are

marked “Yes.” The Regional Board inspection observed large areas of disturbed soil including steep slopes without erosion controls.

For the question “Are storm drain inlets internal to the project properly protected?” the NCTD inspection reports are marked “Yes.” The Regional Board inspection observed several storm drain inlets with inadequate protections and some storm drain inlets with no protection.

On the NCTD inspection report, the questions “Is the entrance stabilized to prevent tracking?” and “Are all paved areas free of visible sediment tracking or other particulate matter?” are both answered with “Yes.” The Regional Board inspection documents inadequate entrance stabilization and sediment tracking onto paved surfaces.

The NCTD inspection reports answer the question “Are temporary concrete washout facilities designated and being used?” with a “Yes.” The Regional Board inspection observed that the concrete washout facilities were not being used and large concrete washout spills were on the ground.

The question “Is litter from work areas collected and placed in watertight dumpsters?” on the NCTD inspection reports was answered “Yes.” The Regional Board inspection observed construction wastes stored in the open on the ground exposed to storm water runoff.

<u>March 20 and 21, 2007 inspection reports:</u>
The March 20 and 21, 2007 inspection reports were of types “Prior to forecast rain” and “After a rain event” respectively. The inspection reports do not adequately reflect site conditions as observed by the Regional Board inspector on March 21, 2007. The following are some examples of contradictions between the NCTD self inspection reports and site conditions observed by the Regional Board (Attachment Nos. 5 & 6, Storm Water Quality Construction Site Inspection Checklist dated March 20, and 21, 2007).

Both NCTD inspection reports answer the question “Are storm drain inlet protection devices in working order and being properly maintained?” with a “Yes.” The Regional Board inspection observed storm drain inlets with inadequate protections that were not being properly maintained.

On the NCTD inspection report, the questions “Is the entrance stabilized to prevent tracking?” are both answered with “Yes.” The Regional Board inspection documents inadequate entrance stabilization and sediment tracking onto paved surfaces.

For the questions "Are material storage areas and washout areas protected from run-on and runoff, and located at least 15 m (meters) from concentrated flows and downstream drainage facilities?" and "Is litter from work areas collected and placed in watertight dumpsters?" both answered "Yes" on the NCTD reports. In the March 21, 2007, inspection report, the Regional Board inspector observed a soil stockpile stored without protection from run-on and runoff. In addition, a construction waste stock pile was not placed in a watertight dumpster. Construction waste and soil not properly protected can mix with storm water runoff and discharge pollutants off site into waters of the State.

3.2.2 Culpability

In addition to the reasons stated above in section 3.1.2, culpability for failure to implement BMPs, NCTD's contractor used the inspection checklist from the California Stormwater Quality Handbook. This checklist was developed by storm water professionals from around the state. When used properly, the inspection checklist identifies BMPs that need to be implemented and maintained to protect water quality. Therefore, NCTD's inspector either ignored items on the inspection checklist or was not properly trained in using the checklist to identify storm water problems.

3.2.3 Susceptibility to Cleanup and Abatement

This factor does not apply to this violation.

3.2.4 Degree of Toxicity of the Discharge

This factor does not apply to this violation.

3.2.5 Ability to Pay and Continue in Business

See section 3.1.5 above.

3.2.6 Voluntary Cleanup Efforts Undertaken

This factor does not apply to this violation.

3.2.7 Prior History of Violation

See section 3.1.7 above.

3.2.8 Economic Benefit Resulting from the Violation

See section 3.1.8 above.

3.2.9 Other Matters as Justice May Require

See section 3.1.9 above.

3.3 NCTD Discharged Sediment to a Storm Drain System and "Waters of the United States" in Violation of CWC §13376 and the General Permit Discharge Prohibition A.2.

The General Permit's Discharge Prohibition A.2 states:

> "Discharges of material other than storm water which are not otherwise authorized by an NPDES permit to a separate storm sewer system (MS4) or waters of the nation are prohibited, except as allowed in Special Provisions for Construction Activity, C.3."

NCTD discharged sediment to a Municipal Separate Storm Sewer System (MS4) connected to navigable waters of the United States without submitting a report of waste discharge in violation of CWC section 13376 and in violation of Order No. 99-08-DWQ section A.2.

On February 20, 2007:

1. MS4 inlet east of Escondido Avenue in the City of Vista which discharges into Buena Vista Creek and downstream into Buena Vista lagoon.

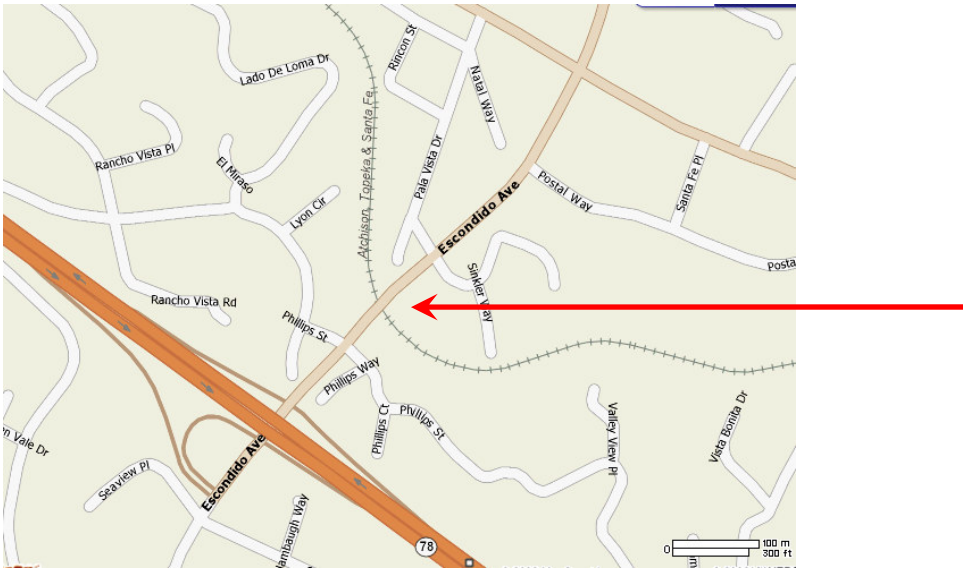

Figure 2: Approximate location of the inlet for discharge #1.

2. MS4 inlet at the Mar Vista Drive storage yard in the City of Vista which discharges into Buena Vista Creek and downstream into Buena Vista lagoon.

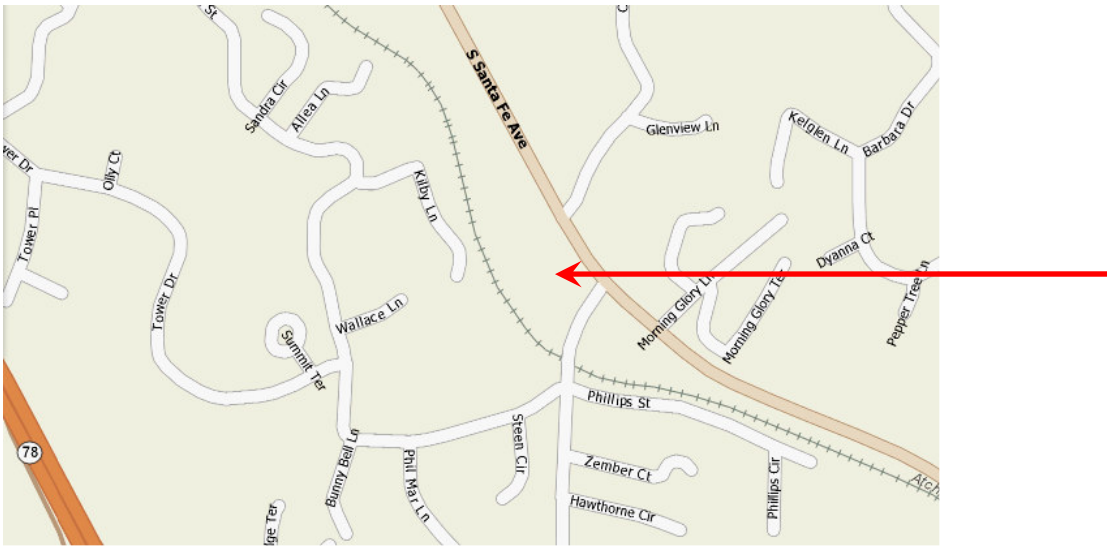

Figure 3: Approximate location of the inlet for discharge #2.

3. MS4 inlet at the Armorlite Drive storage yard in the City of San Marcos which discharges into San Marcos Creek and downstream into Lake San Marcos.

Figure 4: Approximate location of the inlet for discharge #3.

4. MS4 inlet, south of Barham Lane, west of Wilkinson Drive, within the City of San Marcos which discharges into San Marcos Creek and downstream into Lake San Marcos.

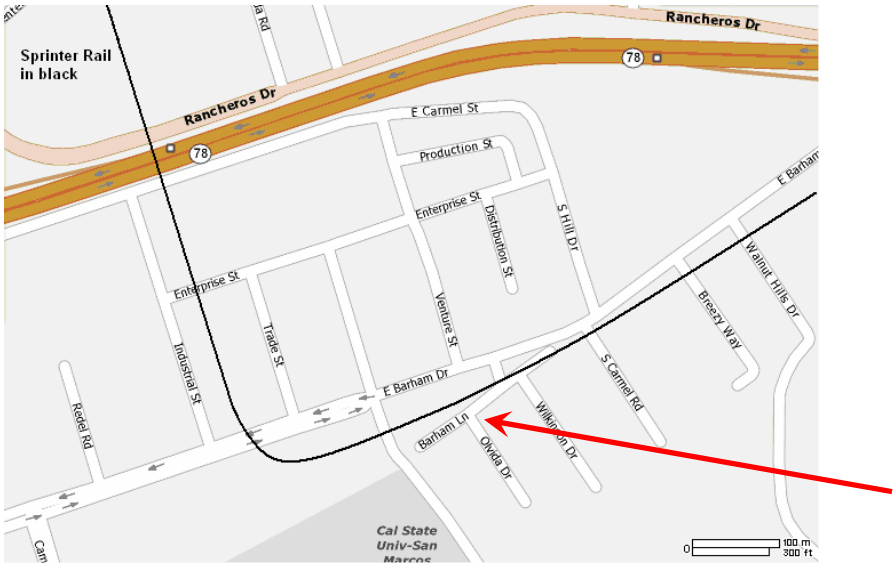

Figure 5: Approximate location of the inlet for discharge #4.

5. MS4 inlet, south of Barham Lane, east of Wilkinson Drive, within the City of San Marcos which discharges into San Marcos Creek and downstream into Lake San Marcos.

Figure 6: Approximate location of the inlet for discharge #5

6. MS4 inlet, north of Barham Lane, south of the tracks, within the City of San Marcos which discharges into San Marcos Creek and downstream into Lake San Marcos.

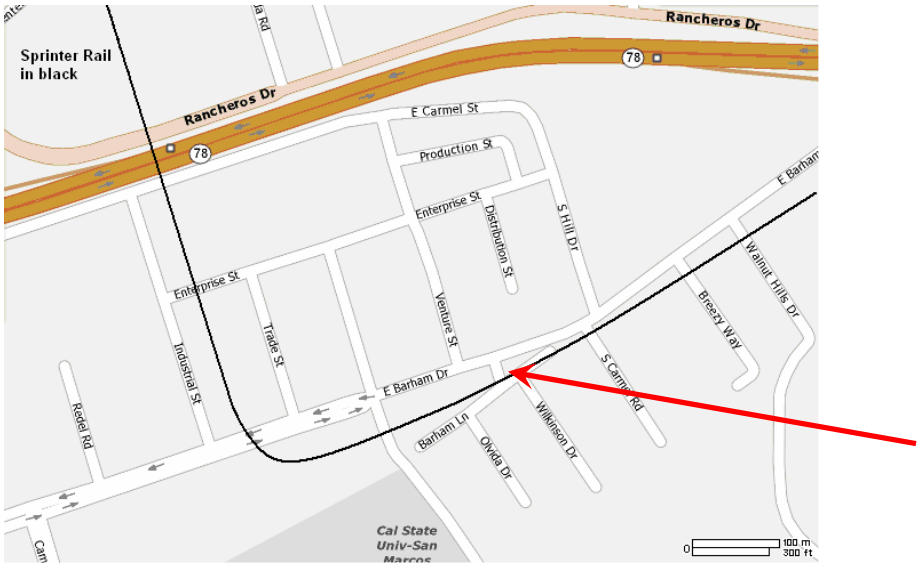

Figure 7: Approximate location of the inlet for discharge #6.

7. MS4 inlet, west of Shelley Drive, south of tracks, within the City of San Marcos which discharges into San Marcos Creek and downstream into Lake San Marcos.

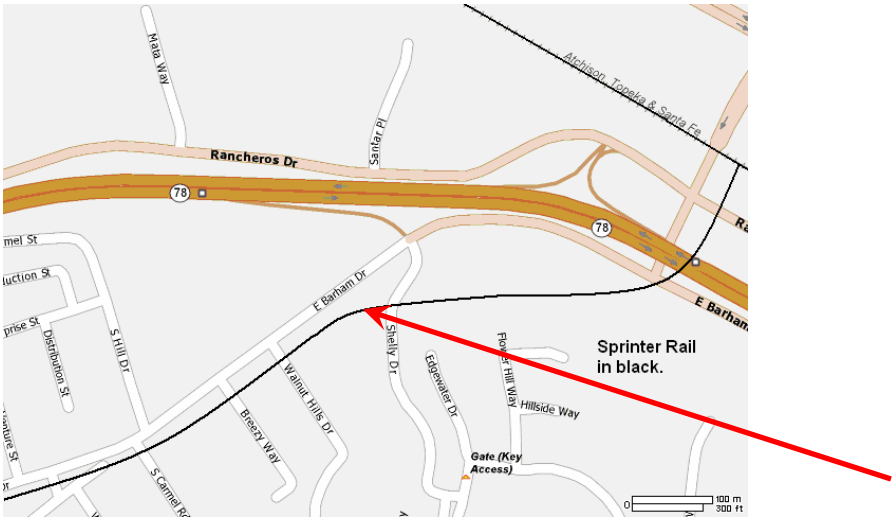

Figure 8: Approximate location of the inlet for discharge #7.

8. MS4 inlet, east of Shelley Drive, north of tracks, within the City of San Marcos which discharges into San Marcos Creek and downstream into Lake San Marcos.

Figure 9: Approximate location of the inlet for discharge #8.

9. MS4 inlet, east of Shelley Drive, south of tracks, within the City of San Marcos which discharges into San Marcos Creek and downstream into Lake San Marcos.

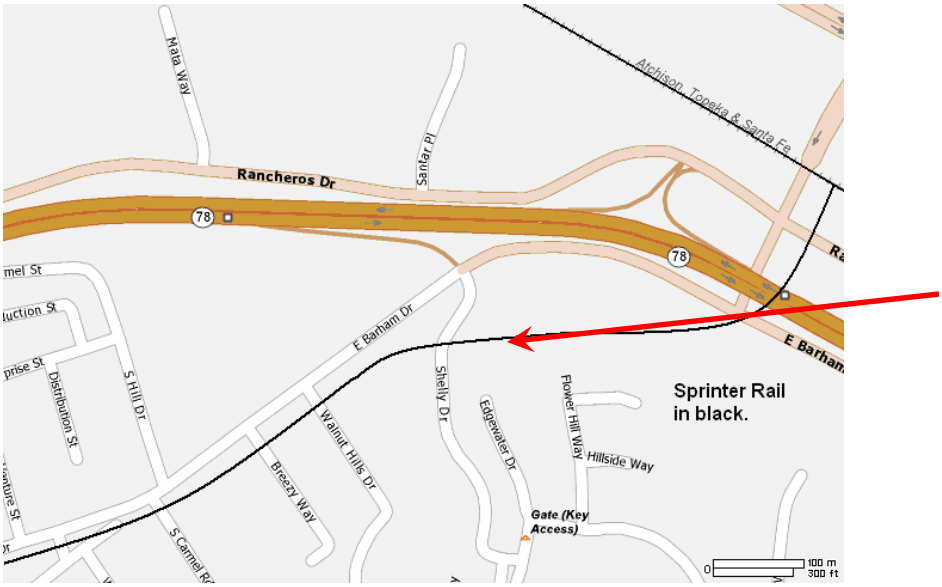

Figure 10: Approximate location of the inlet for discharge #9

On March 21, 2007:

10. Loma Alta Creek, near the El Camino Real Bridge in the City of Oceanside.

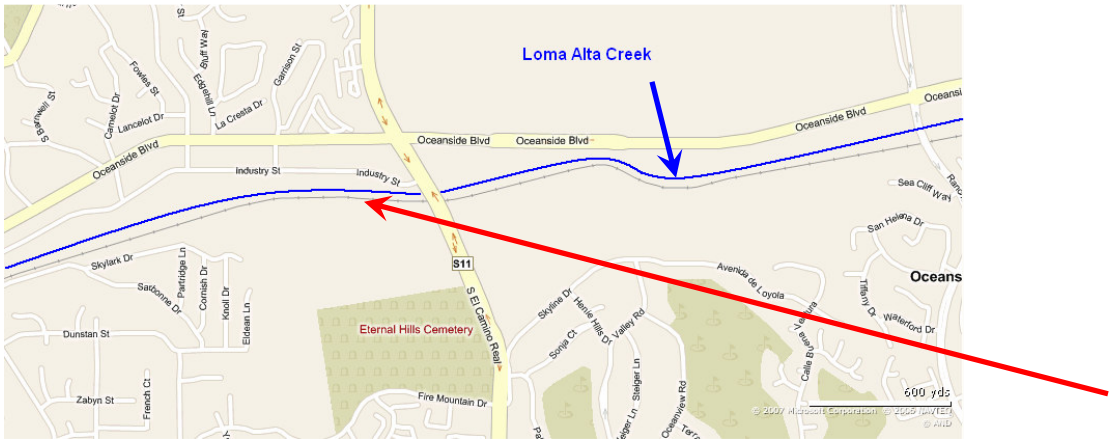

Figure 11: Approximate location of discharge #10 into Loma Alta Creek.

3.3.1 Nature, Extent, Circumstances, and Gravity of Violations

Discharges of turbid water and sediment to the storm drain system and Loma Alta Creek, were observed, documented and photo-documented by Regional Board staff during the February 20, and March 21, 2007 inspections. These ten discharges are violations of Discharge Prohibition A.2 of the General Permit.

The NCTD Sprinter Rail project lies within the Carlsbad Hydrologic Unit, and the Loma Alta Hydrologic Area (904.10), Vista Hydrologic Subarea (904.22), Buena Hydrologic Subarea (904.32), Richland Hydrologic Subarea (904.52), and Escondido Hydrologic Subarea (904.62). Sediment and sediment-laden water discharges were observed in the Loma Alta Hydrologic Area, Vista Hydrologic Subarea, and Richland Hydrologic Subarea.

The Beneficial Uses for the Loma Alta Hydrologic Area (904.1) are:

a. Contact Water Recreation (REC1) – Potential
b. Non-Contact Water Recreation (REC2)
c. Warm Freshwater Habitat (WARM)
d. Wildlife Habitat (WILD)

The Beneficial Uses for the Vista Hydrologic Subarea (904.22) are:

a. Agricultural Supply (AGR)
b. Industrial Process Supply (IND)

c. Contact Water Recreation (REC1)
d. Non-Contact Water Recreation (REC2)
e. Warm Freshwater Habitat (WARM)
f. Wildlife Habitat (WILD)

The Beneficial Uses for the Richland Hydrologic Subarea (904.52) are:

a. Agricultural Supply (AGR)
b. Contact Water Recreation (REC1)
c. Non-Contact Water Recreation (REC2)
d. Warm Freshwater Habitat (WARM)
e. Wildlife Habitat (WILD)

Figure 12: Route of the Sprinter Rail project in relation to the receiving waterbodies within the Carlsbad Watershed.

Sediment and sediment-laden water discharged from the NCTD Sprinter Rail project directly into Loma Alta Creek and indirectly into San Marcos Creek via the City of San Marcos's storm drain system. Sediment and sediment-laden water discharged indirectly into Buena Vista Creek via the City of Vista's storm drain system. Buena Vista Creek is a tributary to Buena Vista Lagoon; a 303(d) listed water body impaired by sedimentation/siltation. Continued NCTD sediment discharges in violation of state law and permits will exacerbate the impairment of Buena Vista Lagoon.

Discharges of suspended sediment to receiving waters constitute direct impacts on the environment. Suspended sediment in surface waters can cause harm to aquatic organisms by abrasion of surface membranes, interference with respiration, and sensory perception in aquatic fauna. Suspended sediment can reduce photosynthesis in and survival of aquatic flora by limiting the transmittance of light. 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.

3.3.2 Culpability
Please see section 3.1.2 and section 3.2.2 for culpability.

3.3.3 Susceptibility to Cleanup and Abatement
Discharges of sediment and suspended sediments from rain fall events would be difficult to remove due to their disperse nature. Cleanups would cause widespread disturbance of native flora and fauna. Water quality benefits of a cleanup would need to be weighed against potential impacts resulting from cleanup action.

3.3.4 Degree of Toxicity of the Discharge
This factor does not apply to this violation.

3.3.5 Ability to Pay and Continue in Business
See section 3.1.5 above.

3.3.6 Voluntary Cleanup Efforts Undertaken
As verbally reported to Regional Board staff, NCTD has voluntarily cleaned up other sections of receiving waters from accumulated sediment and anthropogenic trash not necessarily from their construction of the Sprinter Rail project, most notably being NCTD's cleaning of the Loma Alta Creek channel in the City of Oceanside. This action was taken voluntarily and not as a requirement of any permit or maintenance of the rail line.

3.3.7 Prior History of Violation
See section 3.1.7 above.

3.3.8 Economic Benefit Resulting from the Violation
See section 3.1.8 above.

3.3.9 Other Matters as Justice May Require
See section 3.1.9 above.

4. DETERMINATION OF ADMINISTRATIVE CIVIL LIABILITY

Pursuant to CWC section 13385 (a),

> Any person who violates any of the following shall be liable civilly in accordance with this section:
> 1. Section 13375 or 13376.
> 2. Any waste discharge requirements or dredged and fill material permit.

Furthermore, CWC section 13385 (c) provides that

> Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following:
> (1) Ten thousand dollars ($10,000) for each day in which the violation occurs.

California Water Code section 13385 (e) requires the Regional Board to consider several factors when determining the amount of civil liability to impose. These factors include: "…the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of the violation, and other matters that justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation."

Based on consideration of the factors listed in section 3, civil liability should be imposed on NCTD in the amount of $160,000 for all violations, as follows:

4.1 The discharger failed to implement adequate BMPs on at least two days which the Regional Board staff observed. The maximum liability for failure to implement and maintain effective BMPs is $10,000 per day. Civil liability should be imposed at a rate of $10,000 per day for a total of $20,000.

4.2 The discharger failed to perform adequate inspections in violation of Sections C.2 and C.4 of Order No. 99-08-DWQ in a total of four inspection reports. The maximum liability for violating the inspection requirements is $10,000 per violation per day. Civil liability should be imposed at a rate of $10,000 per violation for a total of $40,000.

4.3 The discharge of sediment and sediment-laden water into the MS4 and waters of the United States occurred on ten instances. Pursuant to Water Code Section 13385, the maximum liability is $10,000 per violation per day plus up to $10 per gallon discharged. Civil liability for the ten documented discharges should be imposed at $10,000 per violation for a total of $100,000.

5. Conclusion

Based on the aforementioned technical analysis, it is appropriate to issue Complaint No. R9-2007-0093 for the amount of $160,000 due to sediment and sediment-laden water discharges to waters of the US and the MS4, failure to implement or maintain BMPs, and failure to adequately inspect their construction site.