

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

**TENTATIVE
CLEANUP AND ABATEMENT ORDER NO. R9-2008-0152**

FOR

**Dr. William & Lori Moritz
14272 Jerome Drive
Poway, CA**

The California Regional Water Quality Control Board, San Diego Region (hereinafter Regional Board), finds that:

1. Dr. William & Lori Moritz are the owners and residents of a single family residential home, with associated out-buildings located at 14272 Jerome Drive, in Poway, California (APN # 321-040-49). The property occupies an area of approximately 2.45 acres.
2. On or before February 7, 2008, Dr. Bill Moritz (hereinafter Dr. Moritz) discharged waste (from unknown locations) at 14272 Jerome Drive, Poway, CA (hereinafter referred to as Site) which consists of sand, silt, clay, or other earthen materials into an unnamed, ephemeral stream that is tributary to Poway Creek in violation of the California Water Code. Additionally, Dr. Moritz installed approximately 340 feet of 24-inch high-density polyethylene (HDPE) pipe and associated structures to convey upstream drainage across his property. Attachment No. 1 includes a June 9, 2008 Regional Board Facility Inspection Report and photographs taken from various sources documenting site conditions and the discharge event, including described observation of the subject site.
3. The ephemeral stream course may be determined to be jurisdictional waters of the United States. The United States Army Corps of Engineers is the lead Federal agency with jurisdiction to issue Clean Water Act Section 404 permits to allow short term and long term impacts to waters of the United States.
4. The ephemeral stream watercourse is by definition a water of the State as defined by Section 13050(e) of the California Water Code (CWC).

5. The discharge of waste and sediment at and from the Site causes and threatens to cause a condition of pollution by directly affecting waters used for beneficial uses. Discharges of sediment and other inert material alter the hydrologic and sediment transport regimes of the stream channel by affecting the flow of water and establishment of vegetation. Such changes may lead to adverse conditions such as flooding, increases in suspended sediment and turbidity, accelerated erosion of the adjacent channel bed or banks, and localized accumulation of deleterious materials. Additionally, such discharges directly threaten habitat for aquatic species dependent upon native sediment and vegetation characteristics.
6. The unauthorized discharge of waste by Dr. Moritz is in violation of CWC Sections 13260(a) and 13264(a) which require that any person discharging waste or proposing to discharge waste within any region, other than to a community sewer system, which could affect the quality of the waters of the State, shall file a report of waste discharge (ROWD). The discharge of dredged or fill material may constitute a discharge of waste that could affect the quality of waters of the State.
7. Any person that violates CWC Sections 13260(a) and/or 13264(a) is guilty of a misdemeanor and may subject Dr. Moritz to civil liability in accordance with CWC Sections 13261¹ and 13265².
8. The unauthorized discharge of waste by Dr. Moritz is in violation of the following waste discharge prohibitions contained in the Water Quality Control Plan for the San Diego Basin (Basin Plan):

“1. The discharge of waste to waters of the state in a manner causing, or threatening to cause a condition of pollution, contamination or nuisance as defined in CWC Section 13050, is prohibited;”

“3. The discharge of pollutants or dredged or fill material to waters of the United States except as authorized by an NPDES permit or a dredged or fill material permit (subject to the exemption described in California Water Code Section 13376) is prohibited;” and

“14. The discharge of sand, silt, clay, or other earthen materials from any activity, including land grading and construction, in quantities which cause deleterious bottom deposits, turbidity or discoloration in waters of the state or which unreasonably affect, or threaten to affect, beneficial uses of such waters is prohibited.”

¹ WC section 13261 (a) states that: Any person failing to furnish a report under 13260 when so requested by a regional board is guilty of a misdemeanor and may be liable civilly...

² WC section 13265 (a) states that: Any person discharging waste in violation of WC 13264, after such violations has been called to his attention in writing by the regional board, is guilty of a misdemeanor and may be liable civilly... Each day of such discharge shall constitute a separate offense.

9. The Basin Plan designates beneficial uses of inland surface waters in the discharge area (hydrologic sub area 906.20) as including Agricultural Supply (AGR), Contact Water Recreation (REC 1), Non-contact Water Recreation (REC 2), Warm Freshwater Habitat (WARM), Cold Freshwater Habitat (COLD), and Wildlife Habitat (WILD).
10. The Regional Board's Assistant Executive Officer issued CAO No. R9-2008-0074 on July 9, 2008. The CAO was issued in response to a complaint from the City of Poway and a Regional Board inspection on June 9, 2008. The CAO required Dr. Moritz to immediately stabilize the site with erosion and sediment controls, remove the unauthorized fill and drainage pipe, and restore the stream to pre-project conditions.
11. On August 7, 2008 Dr. Moritz filed a petition with the State Water Resources Control Board (State Board) to review the issuance of CAO R9-2008-0074, and to stay enforcement of the order. On October 13, 2008, the State Board concluded that the petition failed to raise substantial issues for their review and dismissed the petition and denied the request for a stay on enforcement of the CAO.
12. In accordance with Directives 1 and 3 of the original CAO, Dr. Moritz began implementing interim sediment controls to stabilize the site and developed a stream restoration plan. The Stream Restoration Plan was submitted to the Regional Board on September 24, 2008, and contained a proposed timeline to comply with all directives of the CAO.
 - a. In response to the submittal of the Stream Restoration Plan and the proposed timeline for compliance with the directives of the original CAO, on October 1, 2008 the Regional Board issued Addendum No. 1 to CAO R9-2008-0074. The Addendum revised the compliance dates to coincide with the proposed timeline of the Stream Restoration Plan.
 - b. Implementation of the Stream Restoration Plan required that Dr. Moritz apply to the City of Poway for a grading permit to remove all material discharged into waters of the State, and apply to the California Department of Fish & Game (CDF&G) for a Section 1602 Streambed Alteration Agreement (SAA). To date, Dr. Moritz has not applied for a grading permit and his application for a SAA is pending.
13. To allow Dr. Moritz the opportunity to receive an evidentiary hearing on the issue before the Regional Board, on October 30, 2008, the Regional Board Assistant Executive Officer rescinded CAO R9-2008-0074.

14. Cleanup and abatement of the Site is necessary to ensure that discharges from the unauthorized discharge of waste cease to cause and/or threaten to cause conditions of pollution and to restore beneficial uses of water. Because cleanup and abatement activity will occur within the stream, best management practices (erosion and sediment controls) are necessary to prevent and reduce erosion from the Site and exacerbate the conditions that threaten beneficial uses of the water.
15. Pursuant to CWC Section 13304, the Regional Board is entitled to, and may seek reimbursement for, all reasonable costs it actually incurs to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action, required by this Order.
16. Issuance of this Order is an enforcement action taken by a regulatory agency and is exempt from the provisions of the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et seq.) pursuant to section 15321(a)(2), Chapter 3, Title 14 of the California Code of Regulations. This action is also exempt from the provisions of CEQA in accordance with section 15061(b)(3) of Chapter 3, Title 14 of the California Code of Regulations because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

IT IS HEREBY ORDERED that, pursuant to Section 13304 of Division 7 of the California Water Code, Dr. Moritz shall:

1. Immediately, under the guidance of a qualified civil engineer or environmental consultant, 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 18, 2008 *Amended Stream Restoration Plan for Moritz Property* (prepared by Geosyntec Consultants).
3. By **April 24, 2009** cleanup and abate existing and threatened pollution associated with the unauthorized discharge of waste on your property by:
 - a. Removing the waste including sand, silt, clay, rock or other earthen materials previously discharged to waters of the State;
 - b. Restoring the elevations of the stream channel bottom and banks and floodplain to pre-discharge conditions;
 - c. Realigning the stream channel to its pre-discharge location;
 - d. Revegetating the restored stream with native vegetation along the banks in a manner to mimic the diversity and distribution of streams in the vicinity of the affected area;
 - e. Removing the 24-inch HDPE drainage pipe and other associated structures; and
 - f. Removing the waste including sand, silt, clay, rock or other materials stored on land where it threatens to discharge to waters of the State.

4. All waste materials including sand, silt, clay, rock or other earthen materials that are removed from the Site (14272 Jerome Drive) shall be disposed of properly at facilities permitted to accept such waste in accordance with all relevant federal, state, and local laws, regulations, orders, resolutions, and ordinances.
5. By **May 29, 2009**, submit a Cleanup and Abatement Report that clearly documents that the required on-site cleanup and abatement actions have been taken and that the stream has been returned to pre-project conditions. The report shall include an estimation of the volume and aerial extent of the discharge and photographs of the remedial activities and completed cleanup conditions.

Reporting Requirements

1. **Signatory Requirements.** All reports required under this Cleanup and Abatement Order shall be signed and certified by the Discharger(s) or by a duly authorized representative of the Discharger(s) and submitted to the Regional Board. *Duly Authorized Representative.* A person is a duly authorized representative only if: 1) The authorization is made in writing by the Discharger; and 2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.).
2. **Certification.** Include the following signed certification with all reports submitted pursuant to this Order:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

3. **Electronic and Paper Media Reporting Requirements.** The Discharger shall submit both electronic and paper copies of all work plans, technical reports, and monitoring reports required under this Cleanup and Abatement Order. Electronic submission shall be in PDF format, and include the signed transmittal letter and professional certification.
4. **Report Submittals.** All monitoring and technical reports required under this Cleanup and Abatement Order shall be submitted to:

Assistant Executive Officer
California Regional Water Quality Control Board
San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4340
Attn: Central Watershed Unit

NOTIFICATIONS

1. **Enforcement Actions.** The Regional Board reserves its right to take any enforcement action authorized by law.
2. **Applicability.** Requirements established pursuant to Water Code Sections 13304 and 13267(b) are enforceable when signed by the Executive Officer of the Regional Board.

In accordance with Water Code section 13267(b) these findings provide the Dr. Bill Moritz with a written explanation with regard to the need for remedial action and reports and identify the evidence that supports the requirement to implement cleanup and abatement activities and submit the reports.

3. **Potential Liability.** Pursuant to California Water Code section 13350, any person who intentionally or negligently violates a cleanup and abatement order may be liable civilly in an amount which shall not exceed five thousand dollars (\$5,000), but shall not be less than five hundred dollars (\$500), for each day in which the cleanup and abatement order is violated.

Pursuant to California Water Code section 13268, any person failing or refusing to furnish technical or monitoring program reports as required by Section 13267, or falsifying any information provided therein, is guilty of a misdemeanor, and may be liable civilly in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.

4. **Cost Reimbursement.** The Discharger shall reimburse the State of California for all reasonable costs actually incurred by the Regional Board to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action, required by this Cleanup and Abatement Order, according to billing statements prepared from time to time by the State Water Resources Control Board.

5. **Waste Management.** The Discharger shall properly manage, store, treat, and dispose of contaminated soils and ground water in accordance with applicable federal, state, and local laws and regulations. The storage, handling, treatment, or disposal of soil containing waste constituents and polluted groundwater shall not create conditions of pollution, contamination or nuisance as defined in California Water Code section 13050(m). The Discharger shall, obtain, or apply for coverage under waste discharge requirements or a conditional waiver of waste discharge requirements for any discharge of the waste to (a) land for treatment, storage, or disposal or (b) waters of the state.

6. **Duty to Use Qualified Professionals.** The Discharger(s) shall provide documentation that plans and reports required under this Cleanup and Abatement Order are prepared under the direction of appropriately qualified professionals. California Business and Professions Code Sections 6735, 7835 and 7835.1 require that engineering and geologic evaluations and judgments be performed by or under the direction of registered professionals. The Discharger(s) shall include a statement of qualifications and registration numbers, if applicable, of the responsible lead professionals in all plans and reports required under this Cleanup and Abatement Order. The lead professional shall sign and affix their registration stamp, as applicable, to the report, plan, or document.

I, John H. Robertus, Executive Officer, do hereby certify the foregoing is a full, true and correct copy of a Cleanup and Abatement Order issued by the California Regional Water Quality Control Board, San Diego Region, on February 11, 2009.

JOHN H. ROBERTUS
Executive Officer

Date