

### ERRATA SHEET

I declare under penalty of perjury that I have read the foregoing \_\_\_\_\_ pages of my testimony, taken on \_\_\_\_\_ (date) at \_\_\_\_\_ (city), \_\_\_\_\_ (state), and that the same is a true record of the testimony given by me at the time and place herein above set forth, with the following exceptions:

<u>Page</u>	<u>Line</u>	<u>Should read:</u>	<u>Reason for Change:**</u> (See below before completion)
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Date: \_\_\_\_\_

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Signature of Witness

\_\_\_\_\_  
Name Typed or Printed

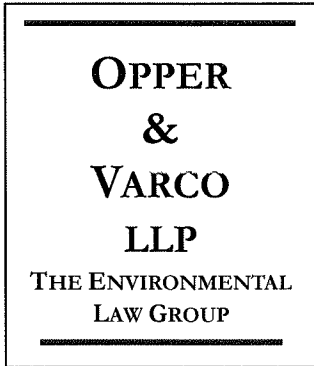
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Job No. \_\_\_\_\_

Rev. 3/15/14

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January 7, 2016



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**Re: ACL Complaint No. R9-2015-0110 re San Altos – Lemon Grove, LLC  
Deposition Transcript for Brian Nemerow**

*Of Counsel*

RICHARD G. OPPER  
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Dear Mr. Nemerow:

Enclosed with this letter is the original deposition transcript for your deposition taken on December 29, 2015. Can you please: a) review the transcript; b) make corrections (to the extent that you have any) on the correction page); c) sign the verification / correction page; and d) return the original transcript and signed verification / correction page to our office using the enclosed stamped envelope.

Given that we must provide all evidence in response to the above-reference ACL Complaint issued by the Regional Water Quality Control Board, San Diego Region, by February 3, we ask that you please review, make changes, sign, and return the transcript by January 20, 2016.

Thank you for your assistance.

Sincerely,

OPPER & VARCO LLP

Linda C. Beresford

Encl: Deposition Transcript Brian Nemerow

ORIGINAL



CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN DIEGO REGION

IN THE MATTER OF: )  
 )  
Administrative Civil Liability )  
Complaint No. R9-2015-0110 )  
Against San Altos-Lemon Grove, LLC )  
\_\_\_\_\_ )

DEPOSITION OF BRIAN ALAN NEMEROW, witness  
herein, noticed by Opper & Varco, taken at  
225 Broadway, Suite 1900, San Diego,  
California, on Tuesday, December 29, 2015, at  
3:37 p.m., before Marc Volz, CSR 2863, RPR, CRR

Hutchings Number 599122



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1 APPEARANCES OF COUNSEL:

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4 Control Board:

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23 Also Present: Frank Melbourn

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I N D E X

WITNESS: BRIAN ALAN NEMEROW

EXAMINATION BY:	PAGE
Ms. Beresford	4

E X H I B I T S

SAN ALTOS - DESCRIPTION LEMON GROVE, LLC	IDENTIFIED	MARKED
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EXHIBIT 1	San Altos-Lemon Grove, LLC's Notice of Deposition of Brian Nemerow and Request for Production of Documents	5	23
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EXHIBIT 2	Resume	7	23
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EXHIBIT 3	D-Max Engineering, Inc. Memo to Tamimi from Nemerow, December 17, 2014	13	23
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EXHIBIT 4	D-Max Engineering, Inc. Memo to Tamimi, Harper, O'Neal from Nemerow, May 15, 2015	18	23
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1 BRIAN ALAN NEMEROW,  
2 witness herein, having been sworn, testifies as follows:

3 -EXAMINATION-

4 BY MS. BERESFORD:

5 Q. Good afternoon, Mr. Nemerow.

6 A. Good afternoon.

7 Q. How are you?

8 A. I'm doing well, thanks. How are you?

9 Q. Good. My name is Linda Beresford. I'm one of  
10 the attorneys for San Altos-Lemon Grove, LLC in the  
11 matter of the Administrative Civil Liability Complaint  
12 No. R9-2015-0110 issued by the Regional Water Quality  
13 Control Board, San Diego Region. Can you please state  
14 your name and spell it for the record.

15 A. Sure. Brian Nemerow, B-r-i-a-n N-e-m-e-r-o-w.

16 Q. Have you had your deposition taken before?

17 A. No.

18 Q. I have a few ground rules that I'm going to go  
19 over with you to hopefully try to make it go a little  
20 bit easier.

21 A. Okay.

22 Q. So you are here today appearing under oath. We  
23 have a court reporter taking down everything that we  
24 say. So if possible, please answer each question  
25 verbally with a yes, no, sentence, as opposed to nodding

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1 your head or shrugging your shoulders, uh-hmm, those  
2 type of things.

3 A. Okay.

4 Q. Second, in order to have an accurate transcript  
5 it's best if we try to have just one person speak at a  
6 time. So I would ask, please wait for me to finish my  
7 question before you answer and I will also do my best to  
8 wait for you to finish before I start speaking.

9 A. Okay.

10 Q. Thanks. Please feel free to take a break at  
11 any time. I'm hopeful today won't be very long, that we  
12 won't need to take any break. But if you do just say,  
13 "Can we please take a break right now."

14 A. Sure.

15 Q. My only request is that if I've asked you a  
16 question to please answer the question before we break.

17 A. Okay.

18 Q. And then last, I do have to ask if you are on  
19 any medication or if there's any reason why you can't  
20 give your best testimony today.

21 A. No.

22 Q. Okay, great.

23 MS. BERESFORD: If you would please mark that as  
24 Exhibit 1 and let Mr. Nemerow review it.

25 THE WITNESS: This is the same thing I got a copy

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1 of already I think.

2 MS. BERESFORD:

3 Q. My first question will be if you've seen that  
4 document before, so take your time to review it.

5 A. Yes, I have seen this document before.

6 Q. Can you please state for the record what it is.

7 A. It's basically a notice to appear for  
8 deposition. And the exhibit, Exhibit A is stating that  
9 I was an employee of D-Max Engineering for stormwater  
10 inspection purposes in the city of Lemon Grove,  
11 contracted by the city of Lemon Grove and that I may  
12 have access to records related to the inspection of  
13 San Altos-Lemon Grove, LLC, Valencia Hills construction  
14 site.

15 Q. I think that document asks you to bring records  
16 that you had in your possession.

17 A. Right. So I didn't have any records in my  
18 possession except for my qualifications, like my resume.  
19 I brought a copy of my diploma, college diploma. I  
20 didn't know what you guys needed me to bring.

21 Q. That's impressive. I'm not going to ask you to  
22 make that an exhibit to the deposition.

23 A. Okay, great. That's good.

24 Q. But you did not have any documents in your  
25 possession that were responsive to those requests.



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1 A. No.

2 Q. So did you do anything else to prepare for  
3 today's deposition?

4 A. No.

5 Q. Okay. That's fine. I would like to talk about  
6 your education and background.

7 A. Sure.

8 Q. I'll hand you this document.

9 A. Great, yeah.

10 Q. Can you please state what that is?

11 A. Yeah. This is my resume, my professional  
12 resume.

13 Q. Do you know how it came to our office?

14 A. Yes. I emailed it because my printer broke  
15 down at home so I had to email for them to print out a  
16 copy to bring today.

17 MS. BERESFORD: Let's go ahead and make that  
18 Exhibit 2.

19 Q. We can hopefully use this to go through your  
20 background somewhat quickly.

21 A. Okay.

22 Q. So I see that you graduated from UC Santa Cruz.

23 A. That's correct.

24 Q. With a Bachelor of Science in earth sciences.

25 A. That's correct.

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1 Q. In 2010.

2 A. Yes.

3 Q. After you graduated from -- let's go back. Do  
4 you have any advanced degrees?

5 A. No.

6 Q. After you graduated from UC Santa Cruz was your  
7 first job with D-Max Engineering?

8 A. No.

9 Q. What was your first job?

10 A. My first job was working at a coffee shop.

11 Q. How long did you do that?

12 A. I think two and a half years. So -- yeah.

13 Q. And then when did you start with D-Max?

14 A. I started with D-Max July 1st of 2010.

15 Q. I'm sorry. I just want to be clear.

16 A. I know that sounds unclear. So I completed and  
17 walked -- I completed most of my course work and walked  
18 with my graduating class in 2008 and then finished up my  
19 degree in San Diego. So I was attending courses while  
20 working at that coffee shop.

21 Q. Okay.

22 A. And then I got my diploma in 2010.

23 Q. That was in San Diego where you were taking  
24 classes?

25 A. Correct.

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1 Q. Where did you take those classes?

2 A. MiraCosta Community College.

3 Q. So you started with D-Max in approximately  
4 July 1, 2010.

5 A. That's correct.

6 Q. What was your title at that time?

7 A. Staff scientist.

8 Q. How long were you a staff scientist with D-Max?

9 A. Staff scientist Level 1 for approximately three  
10 years and then staff scientist Level 2 for approximately  
11 two years.

12 Q. What did you do as a staff scientist Level 1?

13 A. Staff scientist Level 1, I mostly performed  
14 industrial and commercial stormwater inspections,  
15 compliance inspections. I also performed numerous  
16 different types of stormwater inspection, including  
17 treatment control best management practice; treatment  
18 control BMP inspections; some construction inspections;  
19 municipal facility inspections; fats, oils and grease  
20 inspections. And then I also started becoming task lead  
21 on certain projects. And I ended up performing a lot of  
22 outfall, MS4 outfall inspections for various cities  
23 throughout the county of San Diego.

24 Q. We were talking as a staff scientist Level 1.

25 A. Correct.

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1 Q. Did your duties change a lot when you became a  
2 staff scientist Level 2?

3 A. They didn't change a lot. I still did  
4 inspections, but I also started to write more reports  
5 and started to be involved more with special monitoring  
6 projects, stormwater monitoring projects and GIS. I  
7 became more involved with using the Geographic  
8 Information Systems: GIS. And coordinating more one on  
9 one with city staff.

10 Q. Was your last title at D-Max staff scientist  
11 Level 2?

12 A. That's correct.

13 Q. I understand you're no longer with D-Max?

14 A. That's correct.

15 Q. Where are you employed currently?

16 A. The city of Vista.

17 Q. What is your job title there?

18 A. Environmental specialist 2.

19 Q. What do you do for them?

20 A. I mostly work on monitoring projects, MS4  
21 outfall monitoring, education and outreach, all related  
22 to stormwater. That's mostly what I do there.

23 Q. Let's talk about your stormwater training.

24 A. Okay.

25 Q. What type of training have you done for

1 **stormwater compliance?**

2 A. Sure. A lot of training was on the job.  
3 When we first -- when I was first hired at D-Max  
4 Engineering, basically I was assigned to another senior  
5 inspector who would take me out on inspections, just to  
6 observe mostly. And also I received some, like an  
7 employee handbook and some written documents to go over  
8 when I was hired. And the same goes for all the  
9 different types of inspections that I ended up doing:  
10 Outfall monitoring, fats, oils and grease inspections.  
11 Pretty much always paired up with a senior inspector  
12 just to observe for a certain amount of time.

13 **Q. Was there one primary person that you were**  
14 **paired up with?**

15 A. Yes.

16 **Q. Who was that?**

17 A. Kline Swonger for the industrial, commercial  
18 inspections.

19 **Q. How do you spell his name?**

20 A. Her name is K-l-i-n-e S-w-o-n-g-e-r. And then  
21 also Anika Kubishka. I don't know how to spell her last  
22 name.

23 **Q. That's okay.**

24 A. She was the main inspector for like fats, oils  
25 and grease inspections and also some industrial and

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1 commercial inspections. And then for the M S4 outfall  
2 monitoring it was Manouchehr Dadkhah.

3 M-a-n-o-u-c-h-e-h-r D-a-d-k-h-a-h, I think.

4 Q. Okay. Do you have any specific certifications  
5 for stormwater investigation?

6 A. No, I do not.

7 Q. Are you a qualified stormwater professional?

8 A. I qualified to sit for the exam but I've not  
9 taken the test. I plan on sitting for the exam later  
10 this year -- or later in 2016.

11 Q. When did you do the course work for that?

12 A. There's no course work. It's based on your  
13 experience and then submitting an application and having  
14 references.

15 Q. Are you a qualified SWPPP developer?

16 A. No.

17 Q. Are you a trainer of record?

18 A. No.

19 Q. We are here today to talk about the Valencia  
20 construction site on San Altos in Lemon Grove. Are you  
21 familiar with that site?

22 A. Yes.

23 Q. So if I say "the site" I will be referring to  
24 that location.

25 A. Yes.

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1 Q. When did you first hear about that site?

2 A. I don't remember.

3 MS. BERESFORD: Let's go ahead and mark this as  
4 Exhibit 2, please.

5 MS. BERESFORD: I'm sorry, that's Exhibit 3.

6 THE WITNESS: Okay.

7 MS. BERESFORD:

8 Q. Does this document look familiar?

9 A. Yes.

10 Q. Can you please state what it is.

11 A. It was an inspection report based on a site  
12 inspection that I conducted on the morning of December  
13 17, 2014.

14 Q. Do you know if that was the first time that you  
15 had visited the site?

16 A. Yes, it was the first time.

17 Q. You state in your memo in the second sentence  
18 that "rain had ended a few hours prior to the site  
19 visit, and no runoff was observed flowing out from the  
20 construction site at the Akins or San Altos  
21 entrance/exit locations at the time of the site visit."  
22 Do you see that sentence?

23 A. Yes.

24 Q. Is that correct? Is that the best of your  
25 recollection?

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1 A. That's correct.

2 Q. The next -- or the first sentence of the second  
3 sentence says, "Evidence of sediment discharge was  
4 observed at the Akins entrance/exit location and along  
5 the curb farther downstream." Do you see that sentence?

6 A. Yes.

7 Q. I particularly want to look at photo 3.

8 A. Okay.

9 Q. There is a car in photo 3, do you see that?

10 A. I see that.

11 Q. Is that the same car that's in photo 4?

12 A. I'm not sure.

13 Q. If you look at photo 4, there's some areas that  
14 appear to be dirt alongside the car and the mailbox. Do  
15 you see that?

16 A. I see in photo 4 where the car is, it is kind  
17 of back a little far in the photo and the mailbox. It's  
18 kind of hard to make out what's actually over there.

19 Q. Do you recall if that area was open dirt?

20 A. Open dirt in the street?

21 Q. No. The area by the -- above the curb by the  
22 mailbox.

23 A. Oh, I see where you're saying. I believe it  
24 was not landscaped. Or not vegetated.

25 Q. Going back up to photo 3, do you know if some



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1 of the sediment along that curb, could that have been  
2 contributed by those adjacent properties?

3 A. I'm not sure.

4 Q. The second sentence in the second paragraph  
5 says, "A crew from Downstream Services was power washing  
6 the curb along Akins to remove accumulated sediment.  
7 This indicates that there likely had been a noticeable  
8 sediment discharge earlier in the day." Did you ask the  
9 crew if there had been a big sediment discharge earlier  
10 in the day?

11 A. I don't remember. But I remember talking to  
12 the crew of Downstream Services.

13 Q. Why do you think that there was a noticeable  
14 sediment discharge earlier in the day?

15 A. It was my understanding through talking with  
16 the crewmember that they were out there due to --  
17 someone from the construction site had contracted them  
18 to come out to power wash the street, and based on my  
19 other observations it seemed like it was likely there  
20 was sediment discharge onto the street from the  
21 construction site.

22 Q. Did you see the sediment discharge on the  
23 street?

24 A. I saw sediment on the street but I didn't see  
25 active discharge from the construction site.

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1 Q. Could it be that they had just received a lot  
2 of inspections and just wanted to do an extra good job  
3 to clean it up?

4 A. I don't know.

5 MR. BOYERS: Objection. Speculation.

6 Now you can answer.

7 THE WITNESS: I don't know.

8 MS. BERESFORD:

9 Q. The last sentence of your memo says, "A sample  
10 of the power washing discharge water was collected and  
11 turbidity was measured at 52"; is that correct?

12 A. That's correct.

13 Q. Is that before the end of the construction site  
14 or where exactly is that?

15 A. I believe that was at a downstream inlet, a  
16 storm drain inlet that was outside the property, outside  
17 of the construction site property.

18 Q. Maybe you can look at page 4. I don't know if  
19 that will help refresh your recollection. Do you know  
20 if the power washing, were they completing that before  
21 the inlet?

22 A. Upstream of the inlet, that's correct.

23 Q. Do you know, did you calibrate your instrument  
24 before you took that sample?

25 A. I believe so.

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1 Q. Do you know if you had a calibration log?

2 A. I don't remember.

3 Q. Do you remember if you put it in a binder back  
4 at D-Max?

5 A. I don't remember.

6 Q. Do you know which EPA method you used when you  
7 analyzed the sample?

8 A. I don't know the EPA method off the top of my  
9 head.

10 Q. Do you know if that's documented anywhere?

11 A. It most likely is.

12 Q. Where would that be?

13 A. D-Max probably would have that included with  
14 the instrument, the field instrument.

15 Q. What do you mean?

16 A. That was used to measure the sediment.

17 Q. Are you saying they have a document with the  
18 instrument that says the EPA method that you're supposed  
19 to use?

20 A. I would assume that there is some sort of --  
21 like with the actual piece of equipment, with the field  
22 meter, I would assume there is some specification that  
23 describes the method that's used for analyzing  
24 stormwater. But I'm not sure what the exact method is,  
25 what it would be called.

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1 Q. Do you remember some sort of document that was  
2 with the machine?

3 A. No, not at the time.

4 Q. I think if you look at the first page of your  
5 memo there's some highlighting on there.

6 A. Uh-huh.

7 Q. Did you do that highlighting?

8 A. I did not.

9 Q. After you finished this memo did you talk to  
10 anybody at the city of Lemon Grove about it?

11 A. I did not.

12 Q. Have you ever spoken to anybody from the  
13 Regional Water Quality Control Board about your memo?

14 A. No, I have not.

15 Q. Did you exchange email with anybody from the  
16 Water Board about this memo?

17 A. No, I did not.

18 MS. BERESFORD: Mark that as Exhibit 4.

19 Q. So Exhibit 3 is a memo from December 17.  
20 Exhibit 4 is a memo from May 15. Do you know if you  
21 visited the site any time between those two dates?

22 A. I did not.

23 Q. Have you seen Exhibit 4 before?

24 A. I have.

25 Q. Can you tell me what it is?

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1 A. It appears to be another inspection report  
2 based off the second inspection I did at the Valencia  
3 construction site.

4 Q. You took two turbidity samples on that day; is  
5 that correct?

6 A. That looks correct.

7 Q. Do you recall if you calibrated the machine on  
8 that day?

9 A. I don't recall.

10 Q. Do you recall the EPA method you used to --

11 A. I don't know.

12 Q. Looking at photo 1 -- I actually want to go  
13 back to Exhibit 3. If we can look at photo 4 on  
14 Exhibit 3 and look at photo 1 on Exhibit 4.

15 A. Okay.

16 Q. Is that the same fence?

17 A. Yes.

18 Q. I think you testified previously that the area  
19 across the street was not vegetated; is that correct?

20 A. That's correct.

21 Q. Looks like the hill alongside downgrading of  
22 the fence is not vegetated, is that correct, other than  
23 some weeds?

24 A. On the other side across -- not on the street,  
25 so the creek side, I guess.

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1 Q. The side where the red curb is.

2 A. I'm not sure.

3 Q. Looking at photo 1 then, and what we see in the  
4 surrounding area, is it possible that some of the  
5 sediment in your sampling point could have come from  
6 locations other than the Valencia Hills construction  
7 site?

8 MR. BOYERS: Objection. Speculation.

9 THE WITNESS: I'm sorry. I'm unclear on the  
10 question. The sample from photo 1?

11 MS. BERESFORD:

12 Q. Yes.

13 A. This sample from photo 1, there's no other  
14 source of flow that I could have been sampling other  
15 than runoff from the construction site.

16 Q. Is there not water that flows across the  
17 street?

18 A. Not in that location, I don't believe so.

19 Q. And then the water that flows from photo 1,  
20 does that go into the Akins\_Inlet at photo 2?

21 A. That is correct.

22 Q. Your sample there was 95; is that correct?

23 A. That is correct.

24 Q. Did you visit the site any time after your May  
25 15 inspection?

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1 A. I'm taking a second to read through this to  
2 remember. I may have.

3 Q. You don't recall specifically?

4 A. I don't recall. I seem to remember another  
5 time I was there, either the same time or another time  
6 where there wasn't any discharge from the site.

7 Q. Do you know if you were there with someone else  
8 at that time?

9 A. No. Just me.

10 Q. Do you know if you wrote a memo about it?

11 A. I don't recall.

12 Q. Have you ever discussed the site with Mr. Wayne  
13 Chiu of the Regional Board?

14 A. No.

15 Q. Have you ever exchanged any email with him  
16 about it?

17 A. No.

18 Q. Have you ever discussed the site with  
19 Mr. Melbourn --

20 A. No.

21 Q. -- of the Regional Board?

22 A. No.

23 Q. Have you exchanged any email with him about it?

24 A. No.

25 Q. Have you ever discussed this site with anybody

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1 else at the Regional Board?

2 A. No.

3 Q. Have you ever been involved with a site,  
4 another site that was the subject of an administrative  
5 civil liability complaint for stormwater compliance  
6 issues?

7 A. Construction site?

8 Q. Yes.

9 A. I don't believe so.

10 Q. Are you aware that the Water Board is seeking  
11 penalties of over \$800,000 for this site?

12 A. Yes, I'm aware.

13 Q. Are you aware of any other Water Board  
14 enforcement action for a construction site that has  
15 sought a similar amount of penalties?

16 A. I am aware, although I'm not sure on the  
17 specifics. And I'm not sure -- it's kind of...

18 Q. What are you thinking about?

19 A. There was a construction site, I think in the  
20 city of Encinitas. And I believe that was a relatively  
21 large fine that was assessed, although I'm not sure on  
22 the specifics of that.

23 Q. Any others that you are aware of?

24 A. No.

25 MS. BERESFORD: I think I'm mostly done. We're



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1 going to break for a minute to review and make sure I  
2 don't have anything else. David here may have some  
3 questions for you.

4 MR. BOYERS: Maybe.

5 MS. BERESFORD: We will convene and get a final  
6 answer from him after the break.

7 (Recess.)

8 MS. BERESFORD:

9 Q. We'll go back on the record. I don't have any  
10 questions at this time. Do you?

11 MR. BOYERS: No, I don't.

12 MS. BERESFORD: Okay. Well, then, we will conclude  
13 today with your stipulations that Opper & Varco will  
14 retain custody of the original transcript. When we  
15 receive that we will send it to Mr. Nemerow for review.  
16 We'll discuss off the record how best to accomplish  
17 that. To the extent he has any changes we will share  
18 that with the Regional Board. If for some reason the  
19 original transcript is lost the Regional Board agrees  
20 that we can use a copy in lieu of the original.

21 MR. BOYERS: Yes, that's fine.

22 MR. ROSENBAUM: The Regional Board would like to...

23 MR. BOYERS: Have a copy. Get a copy. Order a  
24 copy. Pay for one.

25 (The proceedings concluded at 4:20 p.m.)

BRIAN ALAN NEMEROW - 12/29/2015

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1 I declare under penalty of perjury under the laws  
2 of the State of California that the foregoing is true  
3 and correct.

4  
5 Executed at Encinitas, California,  
6 on 1/19/2016.

7  
8 

9 BRIAN ALAN NEMEROW

1 STATE OF CALIFORNIA ) ss  
2

3 I, Marc Volz, CSR 2863, do hereby declare:  
4

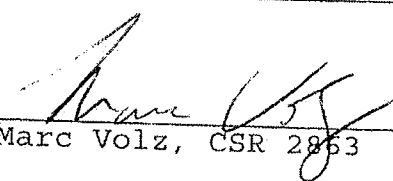
5 That, prior to being examined, the witness named in  
6 the foregoing deposition was by me duly sworn pursuant  
7 to Section 2093(b) and 2094 of the Code of Civil  
8 Procedure;  
9

10 That said deposition was taken down by me in  
11 shorthand at the time and place therein named and  
12 thereafter reduced to text under my direction.  
13

14 I further declare that I have no interest in the  
15 event of the action.  
16

17 I declare under penalty of perjury under the laws  
18 of the State of California that the foregoing is true  
19 and correct.  
20

21 WITNESS my hand this 5th day of  
22 January, 2016.

23  
24   
25 \_\_\_\_\_  
Marc Volz, CSR 2863



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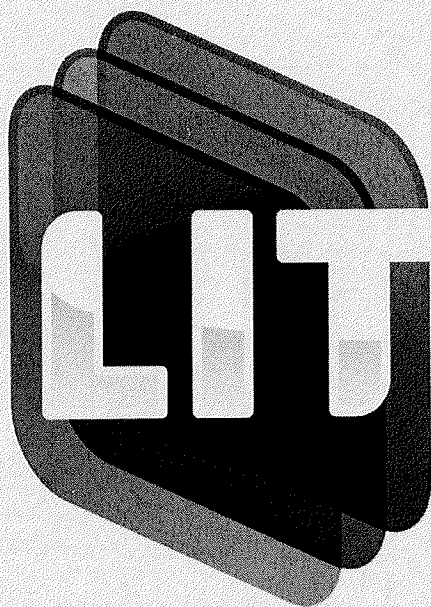


<b>questions</b> 23:3 23:10 <b>quickly</b> 7:20	5:15 <b>requests</b> 6:25 <b>Resources</b> 2:6 <b>responsive</b> 6:25 <b>resume</b> 3:12 6:18 7:11,12 <b>retain</b> 23:14 <b>review</b> 5:24 6:4 23:1,15 <b>right</b> 5:13 6:17 <b>Rosenbaum</b> 2:17,24 23:22 <b>RPR</b> 1:17 25:3 25:23 <b>rules</b> 4:18 <b>runoff</b> 13:19 20:15 <b>R9-2015-0110</b> 1:8 4:12	<b>second</b> 5:4 13:17 14:2 15:4,4 19:2 21:1 <b>Section</b> 25:7 <b>sediment</b> 14:3 15:1,6,8,9,14 15:20,22,24 17:16 20:5 <b>see</b> 7:22 13:22 14:5,9,10,15 14:16,23 15:22 15:24 20:3 <b>seeking</b> 22:10 <b>seen</b> 6:3,5 18:23 <b>send</b> 23:15 <b>senior</b> 11:4,11 <b>sentence</b> 4:25 13:17,22 14:2 14:3,5 15:4 16:9 <b>Services</b> 15:5,12 <b>share</b> 23:17 <b>shop</b> 8:10,20 <b>shorthand</b> 25:10 <b>shoulders</b> 5:1 <b>shrugging</b> 5:1 <b>side</b> 19:24,25 20:1 <b>similar</b> 22:15 <b>sit</b> 12:8 <b>site</b> 6:14 12:20 12:21,23 13:1 13:11,15,18,20 13:21 15:17,21 15:25 16:13,17 18:21 19:3 20:7,15,24 21:6,12,18,25 22:3,4,7,11,14 22:19 <b>sitting</b> 12:9 <b>somewhat</b> 7:20 <b>sorry</b> 8:15 13:5 20:9	<b>sort</b> 17:20 18:1 <b>sought</b> 22:15 <b>sounds</b> 8:16 <b>source</b> 20:14 <b>speak</b> 5:5 <b>speaking</b> 5:8 <b>special</b> 10:5 <b>specialist</b> 10:18 <b>specific</b> 12:4 <b>specifically</b> 21:3 <b>specification</b> 17:22 <b>specifics</b> 22:17 22:22 <b>Speculation</b> 16:5 20:8 <b>spell</b> 4:14 11:19 11:21 <b>spoken</b> 18:12 <b>ss</b> 25:1 <b>staff</b> 9:7,8,9,10 9:12,13,24 10:2,9,10 <b>start</b> 5:8 8:13 <b>started</b> 8:14 9:3 9:20 10:4,5 <b>state</b> 2:6 4:13 6:6 7:10 13:10 13:17 24:2 25:1,15 <b>stating</b> 6:8 <b>stipulations</b> 23:13 <b>storm</b> 16:16 <b>stormwater</b> 6:9 9:14,16 10:6 10:22,23 11:1 12:5,7 17:24 22:5 <b>street</b> 2:9 14:20 15:18,20,23,24 19:19,24 20:17 <b>subject</b> 22:4 <b>submitting</b> 12:13	<b>Suite</b> 1:15 2:18 <b>supposed</b> 17:18 <b>sure</b> 4:15 5:14 7:7 11:2 14:12 15:3 17:24 20:2 22:16,17 22:21 23:1 <b>surrounding</b> 20:4 <b>Swonger</b> 11:17 <b>sworn</b> 4:2 25:6 <b>SWPPP</b> 12:15 <b>Systems</b> 10:8 <b>S-w-o-n-g-e-r</b> 11:20 <b>S4</b> 12:1
<hr/> <b>R</b> <hr/> <b>rain</b> 13:18 <b>read</b> 21:1 <b>reason</b> 5:19 23:18 <b>recall</b> 14:19 19:7,9,10 21:3 21:4,11 <b>receive</b> 23:15 <b>received</b> 11:6 16:1 <b>Recess</b> 23:7 <b>recollection</b> 13:25 16:19 <b>record</b> 4:14 6:6 12:17 23:9,16 <b>records</b> 6:12,15 6:17 <b>red</b> 20:1 <b>reduced</b> 25:11 <b>references</b> 12:14 <b>referring</b> 12:23 <b>refresh</b> 16:19 <b>Region</b> 1:3 4:13 <b>Regional</b> 1:2 2:3 4:12 18:13 21:13,21 22:1 23:18,19,22 <b>related</b> 6:12 10:21 <b>relatively</b> 22:20 <b>remember</b> 13:2 15:11,11 17:2 17:3,5 18:1 21:2,4 <b>remove</b> 15:6 <b>report</b> 13:11 19:1 <b>reporter</b> 4:23 <b>reports</b> 10:4 <b>request</b> 3:11	<hr/> <b>S</b> <hr/> <b>S</b> 2:17 3:7 <b>Sacramento</b> 2:10 <b>sample</b> 16:9,24 17:7 20:10,13 20:22 <b>samples</b> 19:4 <b>sampling</b> 20:5 20:14 <b>San</b> 1:3,9,15 2:14,19 3:8,9 4:10,13 6:13 8:19,23 9:23 12:20 13:20 <b>Santa</b> 7:22 8:6 <b>saw</b> 15:24 <b>saying</b> 14:23 17:17 <b>says</b> 14:3 15:5 16:9 17:18 <b>Science</b> 7:24 <b>sciences</b> 7:24 <b>scientist</b> 9:7,8,9 9:10,12,13,24 10:2,10	<hr/> <b>T</b> <hr/> <b>T</b> 3:7 <b>take</b> 5:10,12,13 6:4 9:1 11:5 <b>taken</b> 1:14 4:16 12:9 25:9 <b>talk</b> 7:5 10:23 12:19 18:9 <b>talking</b> 9:24 15:11,15 <b>Tamimi</b> 3:14,16 <b>task</b> 9:20 <b>tell</b> 18:25 <b>test</b> 12:9 <b>testified</b> 19:18 <b>testifies</b> 4:2 <b>testimony</b> 5:20 <b>text</b> 25:11 <b>thanks</b> 4:8 5:10 <b>thing</b> 5:25 <b>things</b> 5:2 <b>think</b> 6:1,15 8:12 12:3 15:13 18:4 19:18 22:19,25 <b>thinking</b> 22:18 <b>three</b> 9:9 <b>time</b> 5:6,11 6:4 9:6 11:12		

13:14,16,21 18:3,21 20:24 21:5,5,5,8 23:10 25:10 <b>title</b> 9:6 10:10 10:17 <b>today</b> 4:22 5:11 5:20 7:16 12:19 23:13 <b>today's</b> 7:3 <b>top</b> 17:8 <b>trainer</b> 12:17 <b>training</b> 10:23 10:25 11:2 <b>transcript</b> 5:4 23:14,19 <b>treatment</b> 9:17 9:17 <b>true</b> 24:2 25:15 <b>try</b> 4:19 5:5 <b>Tuesday</b> 1:16 <b>turbidity</b> 16:11 19:4 <b>two</b> 8:12 9:11 18:21 19:4 <b>type</b> 5:2 10:25 <b>types</b> 9:16 11:9	<b>Varco</b> 1:14 2:15 23:13 <b>various</b> 9:22 <b>vegetated</b> 14:24 19:19,22 <b>verbally</b> 4:25 <b>visit</b> 13:19,21 20:24 <b>visited</b> 13:15 18:21 <b>Vista</b> 10:16 <b>Volz</b> 1:17 25:3 25:23	<hr/> <b>Y</b> <hr/> <b>yeah</b> 7:9,11 8:12 <b>year</b> 12:10 <b>years</b> 8:12 9:10 9:11 <hr/> <b>\$</b> <hr/> <b>\$800,000</b> 22:11 <hr/> <b>1</b> <hr/> <b>1</b> 3:9 5:24 9:4,9 9:12,13,24 19:12,14 20:3 20:10,13,19 <b>1st</b> 8:14 <b>1001</b> 2:9 <b>13</b> 3:13 <b>15</b> 3:17 18:20 20:25 <b>17</b> 3:14 13:13 18:19 <b>18</b> 3:15 <b>1900</b> 1:15 2:18 <hr/> <b>2</b> <hr/> <b>2</b> 3:12 7:18 9:10 10:2,11,18 13:4 20:20 <b>2008</b> 8:18 <b>2010</b> 8:1,14,22 9:4 <b>2014</b> 3:14 13:13 <b>2015</b> 1:16 3:17 <b>2016</b> 12:10 <b>2093(b)</b> 25:7 <b>2094</b> 25:7 <b>22nd</b> 2:9 <b>225</b> 1:15 2:18 <b>23</b> 3:9,12,13,15 <b>2863</b> 1:17 25:3 25:23 <b>29</b> 1:16 <hr/> <b>3</b> <hr/> <b>3</b> 3:13 13:5 14:7 14:9,25 18:19	19:13,14 <b>3:37</b> 1:17 <hr/> <b>4</b> <hr/> <b>4</b> 3:5,15 14:11 14:13,16 16:18 18:18,20,23 19:13,14 <b>4:20</b> 23:25 <hr/> <b>5</b> <hr/> <b>5</b> 3:9 <b>52</b> 16:11 <b>599122</b> 1:22 <hr/> <b>6</b> <hr/> <b>619.231.5858</b> 2:20 <hr/> <b>7</b> <hr/> <b>7</b> 3:12 <hr/> <b>9</b> <hr/> <b>916.341-5276</b> 2:11 <b>92101</b> 2:19 <b>95</b> 20:22 <b>95814</b> 2:10
<hr/> <b>U</b> <hr/> <b>UC</b> 7:22 8:6 <b>uh-hmm</b> 5:1 <b>Uh-huh</b> 18:6 <b>unclear</b> 8:16 20:9 <b>understand</b> 10:13 <b>understanding</b> 15:15 <b>Upstream</b> 16:22 <b>use</b> 7:19 17:19 23:20 <hr/> <b>V</b> <hr/> <b>Valencia</b> 6:13 12:19 19:2 20:6	<hr/> <b>W</b> <hr/> <b>wait</b> 5:6,8 <b>walked</b> 8:17,17 <b>want</b> 8:15 14:7 19:12 <b>wanted</b> 16:2 <b>wash</b> 15:18 <b>washing</b> 15:5 16:10,20 <b>wasn't</b> 21:6 <b>water</b> 1:2 2:3,6 4:12 16:10 18:13,16 20:16 20:19 22:10,13 <b>Wayne</b> 2:17 21:12 <b>weeds</b> 19:23 <b>We'll</b> 23:9,16 <b>We're</b> 22:25 <b>witness</b> 1:13 3:3 4:2 5:25 13:6 16:7 20:9 25:5 25:19 <b>work</b> 8:17 10:20 12:11,12 <b>working</b> 8:10,20 <b>write</b> 10:4 <b>written</b> 11:7 <b>wrote</b> 21:10 <hr/> <b>X</b> <hr/> <b>X</b> 3:1,7		

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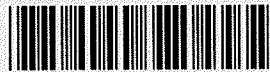
# Nemerow, Brian Alan



Litigation  
SERVICES

ob: 599122

Exhibit: 00001



REPORTER M. Vols

WITNESS B. Nemerow

DATE 12-29-15

1 **OPPER & VARCO, LLP**  
S. WAYNE ROSENBAUM (Bar No. 182456)  
LINDA C. BERESFORD (Bar No. 199145)  
2 225 BROADWAY, SUITE 1900  
SAN DIEGO, CALIFORNIA 92101  
3 TELEPHONE: 619.231.5858  
FACSIMILE: 619.231.5853

4 ATTORNEYS FOR SAN ALTOS – LEMON GROVE, LLC

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

10  
11 IN THE MATTER OF: ) **SAN ALTOS – LEMON GROVE, LLC'S**  
12 ADMINISTRATIVE CIVIL LIABILITY COMPLAINT ) **NOTICE OF DEPOSITION OF BRIAN**  
No. R9-2015-0110 ) **NEMEROW AND REQUEST FOR**  
13 AGAINST SAN ALTOS – LEMON GROVE, LLC ) **PRODUCTION OF DOCUMENTS**  
14 ) Date: December 29, 2015  
15 ) Time: 3:30 p.m.  
16 ) Place: Law Offices of Opper & Varco LLP  
225 Broadway, Suite 1900  
San Diego, CA 92101

17 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

18 PLEASE TAKE NOTICE that on December 29, 2015 at 3:30 p.m., San Altos – Lemon  
19 Grove, LLC will take the deposition of Brian Nemerow in accordance with the enclosed  
20 subpoena. This deposition will take place at the law firm of Opper & Varco, LLP, located at 225  
21 Broadway, Suite 1900, San Diego, CA 92101, before a certified reporter or person authorized to  
22 administer oaths who is present at the specified time and place. Said deposition will continue  
23 from day to day, Saturdays, Sundays and holidays excepted, until completed.


24 YOU ARE FURTHER NOTIFIED that the deposition may also be recorded by videotape  
25 as authorized by the Code of civil Procedure section 2025.340 and Plaintiff reserves the right to  
26 use any videotaped portion of the deposition testimony at a hearing in this matter. The  
27 deposition may also be recorded through such means as to provide the instant display of the  
28 testimony as also authorized by Code of Civil Procedure section 2025.340.

1           YOU ARE FURTHER NOTIFIED that San Altos-Lemon Grove, LLC requests that  
2 Brian Nemerow produce the documents identified in Attachment A to this Notice of Deposition  
3 and Request for Production of Documents.

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Dated: December 10, 2015

OPPER & VARCO LLP

  
\_\_\_\_\_  
Linda C. Beresford  
Attorney for San Altos – Lemon Grove, LLC

# EXHIBIT A

1 S. WAYNE ROSENBAUM (SBN 182456)  
2 OPPER & VARCO, LLP  
3 225 Broadway, Suite 1900  
4 San Diego, California 92101  
5 Telephone: 619.231.5858  
6 Facsimile: 619.231.5853  
7 Email: swr@envirolawyer.com

8 Attorney for San Altos – Lemon Grove, LLC

9 BEFORE THE CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

10 SAN DIEGO REGION

11 IN THE MATTER OF;

12 **Administrative Civil Liability Complaint**  
13 **No. R9-2015-0110 Against San Altos – Lemon Grove,**  
14 **LLC**

AFFIDAVIT IN SUPPORT OF SUBPOENA FOR  
DOCUMENTS AND THINGS FROM BRIAN  
NEMEROW

15 1. I, S. Wayne Rosenbaum, declare that I am counsel for San Altos – Lemon Grove, LLC (“San  
16 Altos”), a Designated Party in the above-entitled matter.

17 2. On December 4, 2015, the Advisory Team for the California Regional Water Quality Control  
18 Board, San Diego Region (“Advisory Team”) issued the Final Hearing Procedures for ACLC R9-2015-0110. (“Final  
19 Hearing Procedures”), which included a list of deadlines (the “Schedule”) prior to the currently scheduled hearing  
20 date of February 10, 2016.

21 3. The Schedule requires San Altos submit “All evidence (other than witness testimony to be  
22 presented orally at the hearing) that the Designated Party would like the San Diego Water Board to consider” by  
23 January 4, 2016.

24 4. Good cause exists for the production of the document described below because such evidence is  
25 probative of the veracity of the alleged violations of the Complaint.

26 5. As an Employee of D-Max Engineering, Inc. providing on-call Storm Water inspection services  
27 for the City of Lemon Grove, Brian Nemerow has, or should have, the documents described below in his possession  
28 or control.

6. The exact documents to be produced include:

AFFIDAVIT IN SUPPORT OF SUBPOENA FOR DOCUMENTS AND THINGS FROM BRIAN NEMEROW



1           a.       All records and documents, including, but not limited to, inspection reports, notices of  
2 violation, administrative citations, stop work notices, correct work notices, field notes, photographs, audio  
3 or video recordings, phone logs, and internal communications, including emails, related to inspections that  
4 occurred at the San Altos – Lemon Grove, LLC Valencia Hills Construction Site on the following dates:

5                   December 1, 2014

6                   December 2, 2014

7                   December 3, 2014

8                   December 4, 2014

9                   December 5, 2014

10                  December 6, 2014

11                  December 7, 2014

12                  December 8, 2014

13                  December 9, 2014

14                  December 11, 2014

15                  December 12, 2014

16                  December 15, 2014

17                  December 16, 2014

18                  December 17, 2014

19                  December 31, 2014

20                  January 6, 2015

21                  January 7, 2015

22                  January 8, 2015

23                  January 9, 2015

24                  January 10, 2015

25                  January 11, 2015

26                  January 12, 2015

1 January 13, 2015  
2 March 1, 2015  
3 March 18, 2015  
4 March 19, 2015  
5 March 20, 2015  
6 March 21, 2015  
7 March 22, 2015  
8 March 23, 2015  
9 March 24, 2015  
10 March 25, 2015  
11 March 26, 2015  
12 March 27, 2015  
13 March 28, 2015  
14 March 29, 2015  
15 March 30, 2015  
16 March 31, 2015  
17 April 1, 2015  
18 May 8, 2015  
19 May 9, 2015  
20 May 10, 2015  
21 May 11, 2015  
22 May 12, 2015  
23 May 13, 2015  
24 May 14, 2015  
25 May 15, 2015  
26 September 15, 2015

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October 5, 2015

b. Any additional records and documents, including, but not limited to, inspection reports, notices of violation, administrative citations, stop work notices, correct work notices, field notes, photographs, audio or video recordings, phone logs, and internal communications, including emails, related to inspections that occurred at the San Altos -- Lemon Grove, LLC Valencia Hills Construction Site, regardless of whether or not the inspection led to the issuance of a formal report, notice, or citation from Mr. Nemerow and/or the City of Lemon Grove to San Altos -- Lemon Grove, LLC from March 6, 2014 to October 19, 2015.

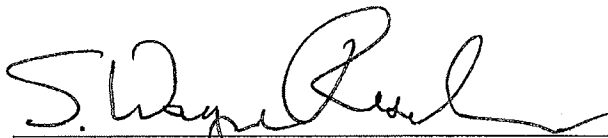
c. Any documents, contracts, work orders, requests for services, communications or records thereof including but not limited to emails, or invoices related to inspections, testing, report writing, or materials related to services rendered by D-Max Engineering, Inc. on behalf of the City of Lemon Grove that involved or affected the San Altos -- Lemon Grove, LLC Valencia Hills Project Site during the period of March 6, 2014 through October 19, 2015.

d. A copy of Mr. Nemerow' curriculum vitae listing his education, qualifications, and experience.

7. Emails, writings, or photographs should be provided in both printed and digital formats. Audio or video recordings may be provided in conventional formats accessible on personal computers without the assistance of specialized software.

I declare under penalty of perjury that the foregoing is true and correct.

Dated this 10th of December, 2015.

  
\_\_\_\_\_  
S. Wayne Rosenbaum  
Attorney for San Altos -- Lemon Grove, LLC

**BEFORE THE SAN DIEGO REGIONAL WATER QUALITY CONTROL BOARD  
SUBPOENA FOR ADJUDICATIVE ACTION**

<b>ATTORNEY OR PARTY WITHOUT ATTORNEY REQUESTING SUBPOENA (name, address, and telephone no.):</b> S. Wayne Rosenbaum, Esq. Opper & Varco LLP 225 Broadway, Suite 1900, San Diego, CA 92101 Phone: (619) 231-5858 Fax: (619) 231-5853 E-Mail: swr@envirolawyer.com <b>REPRESENTING:</b> San Altos - Lemon Grove, LLC	<b>FOR REGIONAL WATER BOARD USE ONLY</b>
<b>TITLE OF THE PROCEEDING:</b> Administrative Civil Liability Complaint No. R9-2015-0110	
<input checked="" type="checkbox"/> SUBPOENA <input type="checkbox"/> RE HEARING <input checked="" type="checkbox"/> SUBPOENA DUCES TECUM <input checked="" type="checkbox"/> RE DEPOSITION	

THE PEOPLE OF THE STATE OF CALIFORNIA, TO (name): Brian Nemerow

1. YOU ARE ORDERED TO APPEAR AS A WITNESS in this proceeding as follows unless you make special agreement with the person named in item 3:

a. Date: December 29, 2015	Time: 3:30 PM PST
b. Address: 225 Broadway, Suite 1900, San Diego, CA 92101	

2. AND YOU ARE:

- a.  Ordered to appear in person. (Wat. Code, § 1080; Gov. Code, § 11450.10; Cal. Code Regs., tit. 23, § 649.6.)
- b.  Not required to appear in person if you produce the records described in the accompanying affidavit in compliance with Evidence Code sections 1560 and 1561. (Wat. Code, § 1080; Gov. Code, § 11450.10(b); Cal. Code Regs., tit. 23, § 649.6.)
- c.  Ordered to appear in person and to produce the records described in the accompanying affidavit. The personal attendance of the custodian or other qualified witness and the production of the original records is required by this subpoena. The procedure authorized by subdivision (b) of section 1560, and sections 1561 and 1562, of the Evidence Code will not be deemed sufficient compliance with this subpoena. (Wat. Code, § 1080; Gov. Code, § 11450.10; Cal. Code Regs., tit. 23, § 649.6.)

3. IF YOU HAVE ANY QUESTIONS ABOUT WITNESS FEES OR THE TIME OR DATE FOR YOU TO APPEAR, OR IF YOU WANT TO BE CERTAIN THAT YOUR PRESENCE IS REQUIRED, CONTACT THE FOLLOWING PERSON BEFORE THE DATE ON WHICH YOU ARE TO APPEAR:

a. Name: S. Wayne Rosenbaum	b. Telephone number: (619) 231-5858
-----------------------------	-------------------------------------

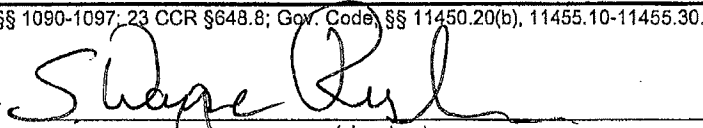
(Gov. Code, § 11450.20(a); Code Civ. Proc., § 1985.2.)

- 4. **WITNESS FEES:** You are entitled to witness fees and mileage actually traveled, both ways, as provided by law. Request them from the person who serves this subpoena or from the person named in item 3. (Wat. Code, §§ 1081, 1083, 1084; Gov. Code, §§ 11450.40, 68070 et seq.; Code Civ. Proc., §§ 1986.5, 2065.)
- 5. If you object to the terms of this subpoena, you may file a motion for a protective order including a motion to quash. Motions must be made within a reasonable period after receipt of the subpoena, and shall be made with written notice to all parties, with proof of service upon all parties attached. In response to your motion, the hearing officer may make an order quashing the subpoena entirely, modifying it, or directing compliance with it, or may make any order needed to protect the parties or witnesses from unreasonable or oppressive demands, including unreasonable violations of the right to privacy. (Gov. Code, § 11450.30.) (Send motions to: San Diego Regional Water Quality Control Board, 2375 Northside Drive, Suite 100, San Diego, CA 92108, Attn: David Gibson, with copies to all parties and to Catherine George Hagan, State Water Resources Control Board, Office of Chief Counsel, c/o San Diego Water Board, 2375 Northside Drive, Suite 100, San Diego, CA 92108.)

**DISOBEDIENCE OF THIS SUBPOENA MAY CAUSE YOU TO BE LIABLE FOR CONTEMPT AND OTHER PENALTIES PROVIDED BY LAW**

(Wat. Code, §§ 1090-1097; 23 CCR §648.8; Gov. Code, §§ 11450.20(b), 11455.10-11455.30.)

Dated: December 10, 2015



(signature)

Name: S. Wayne Rosenbaum

Title: Partner - Opper & Varco LLP  
Attorney for San Altos - Lemon Grove, LLC

**PROOF OF SERVICE OF SUBPOENA**

(Gov. Code, § 11440.20; Code Civ. Proc., §§ 1987, 1987.5, 1988, 1989, 2015.3, 2015.5.)

1. I served this  subpoena  subpoena duces tecum and supporting affidavit by:

personally delivering a copy to the person served as follows:

a. Person served (name):	b. Date of delivery:
c. Address where served:	d. Time of delivery:
e. Witness fees and mileage both ways (check one): (1) <input type="checkbox"/> were paid. Amount: \$ _____ (2) <input checked="" type="checkbox"/> were not paid. (3) <input type="checkbox"/> were tendered to the witness's public entity employer as required by Government Code § 68097.2. The amount tendered was \$ _____	f. Fees for service.  Amount: \$ _____

- delivering true copies thereof by certified mail, return receipt requested, to the address as shown below.
- delivering true copies thereof enclosed in a sealed envelope to a messenger for immediate personal delivery to the address as shown below.
- delivering true copies thereof enclosed in a sealed envelope to a mail delivery service for overnight delivery to the address as shown below. [Specify name of mail service and tracking no.: \_\_\_\_\_.]
- Other method allowed by Gov. Code §11440.20. Specify: \_\_\_\_\_

Address where served: \_\_\_\_\_

2. I certify that I received this  subpoena  subpoena duces tecum for service on \_\_\_\_\_ Date \_\_\_\_\_

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on:  
 Date \_\_\_\_\_ at (place) \_\_\_\_\_, California Signature \_\_\_\_\_

(For California sheriff, marshal, or constable use only)  
 I certify that the foregoing is true and correct and that this certificate is executed on:  
 Date \_\_\_\_\_ at (place) \_\_\_\_\_, California Signature \_\_\_\_\_

**NOTE: THE ATTORNEY OR PARTY WITHOUT AN ATTORNEY REQUESTING THIS SUBPOENA MUST PROVIDE A COPY OF THE SUBPOENA TO EVERY PARTY IN THE HEARING, AND FILE A COPY WITH THE REGIONAL WATER QUALITY CONTROL BOARD. THE COPY PROVIDED TO THE REGIONAL WATER QUALITY CONTROL BOARD MUST BE ACCOMPANIED BY A CERTIFICATE OF SERVICE LISTING THE NAMES AND ADDRESSES OF PARTIES WHO WERE PROVIDED COPIES IN ACCORDANCE WITH GOVERNMENT CODE § 11440.20. (Gov. Code, § 11440.20; Cal. Code Regs., tit. 23, § 648.4(c).) (Send to: San Diego Regional Water Quality Control Board, 2375 Northside Drive, Suite 100, San Diego, CA 92108: Attn David Gibson, with copies to all parties and to Catherine George Hagan, State Water Resources Control Board, Office of Chief Counsel, c/o San Diego Water Board, 2375 Northside Dr., Suite 100, San Diego, CA 92108.)**

1 S. WAYNE ROSENBAUM (SBN 182456)  
2 OPPER & VARCO, LLP  
225 Broadway, Suite 1900  
3 San Diego, California 92101  
Telephone: 619.231.5858  
4 Facsimile: 619.231.5853  
Email: swr@envirolawyer.com

5 Attorney for San Altos – Lemon Grove, LLC

6 BEFORE THE CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

7 SAN DIEGO REGION

8 IN THE MATTER OF;

9 **Administrative Civil Liability Complaint**  
10 **No. R9-2015-0110 Against San Altos – Lemon Grove, LLC**

AFFIDAVIT IN SUPPORT OF SUBPOENA FOR  
DOCUMENTS AND THINGS FROM BRIAN  
NEMEROW

11 1. I, S. Wayne Rosenbaum, declare that I am counsel for San Altos – Lemon Grove, LLC (“San  
12 Altos”), a Designated Party in the above-entitled matter.

13 2. On December 4, 2015, the Advisory Team for the California Regional Water Quality Control  
14 Board, San Diego Region (“Advisory Team”) issued the Final Hearing Procedures for ACLC R9-2015-0110. (“Final  
15 Hearing Procedures”), which included a list of deadlines (the “Schedule”) prior to the currently scheduled hearing  
16 date of February 10, 2016.

17 3. The Schedule requires San Altos submit “All evidence (other than witness testimony to be  
18 presented orally at the hearing) that the Designated Party would like the San Diego Water Board to consider” by  
19 January 4, 2016.

20 4. Good cause exists for the production of the document described below because such evidence is  
21 probative of the veracity of the alleged violations of the Complaint.

22 5. As an Employee of D-Max Engineering, Inc. providing on-call Storm Water inspection services  
23 for the City of Lemon Grove, Brian Nemerow has, or should have, the documents described below in his possession  
24 or control.

25 6. The exact documents to be produced include:  
26  
27

28 AFFIDAVIT IN SUPPORT OF SUBPOENA FOR DOCUMENTS AND THINGS FROM BRIAN NEMEROW

1           a.       All records and documents, including, but not limited to, inspection reports, notices of  
2 violation, administrative citations, stop work notices, correct work notices, field notes, photographs, audio  
3 or video recordings, phone logs, and internal communications, including emails, related to inspections that  
4 occurred at the San Altos – Lemon Grove, LLC Valencia Hills Construction Site on the following dates:

5                   December 1, 2014

6                   December 2, 2014

7                   December 3, 2014

8                   December 4, 2014

9                   December 5, 2014

10                  December 6, 2014

11                  December 7, 2014

12                  December 8, 2014

13                  December 9, 2014

14                  December 11, 2014

15                  December 12, 2014

16                  December 15, 2014

17                  December 16, 2014

18                  December 17, 2014

19                  December 31, 2014

20                  January 6, 2015

21                  January 7, 2015

22                  January 8, 2015

23                  January 9, 2015

24                  January 10, 2015

25                  January 11, 2015

26                  January 12, 2015

1 January 13, 2015  
2 March 1, 2015  
3 March 18, 2015  
4 March 19, 2015  
5 March 20, 2015  
6 March 21, 2015  
7 March 22, 2015  
8 March 23, 2015  
9 March 24, 2015  
10 March 25, 2015  
11 March 26, 2015  
12 March 27, 2015  
13 March 28, 2015  
14 March 29, 2015  
15 March 30, 2015  
16 March 31, 2015  
17 April 1, 2015  
18 May 8, 2015  
19 May 9, 2015  
20 May 10, 2015  
21 May 11, 2015  
22 May 12, 2015  
23 May 13, 2015  
24 May 14, 2015  
25 May 15, 2015  
26 September 15, 2015

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AFFIDAVIT IN SUPPORT OF SUBPOENA FOR DOCUMENTS AND THINGS FROM BRIAN NEMEROW



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October 5, 2015

b. Any additional records and documents, including, but not limited to, inspection reports, notices of violation, administrative citations, stop work notices, correct work notices, field notes, photographs, audio or video recordings, phone logs, and internal communications, including emails, related to inspections that occurred at the San Altos -- Lemon Grove, LLC Valencia Hills Construction Site, regardless of whether or not the inspection led to the issuance of a formal report, notice, or citation from Mr. Nemerow and/or the City of Lemon Grove to San Altos -- Lemon Grove, LLC from March 6, 2014 to October 19, 2015.

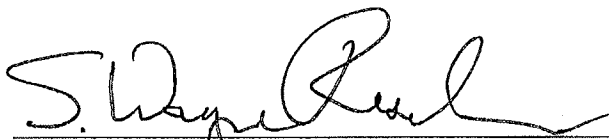
c. Any documents, contracts, work orders, requests for services, communications or records thereof including but not limited to emails, or invoices related to inspections, testing, report writing, or materials related to services rendered by D-Max Engineering, Inc. on behalf of the City of Lemon Grove that involved or affected the San Altos -- Lemon Grove, LLC Valencia Hills Project Site during the period of March 6, 2014 through October 19, 2015.

d. A copy of Mr. Nemerow' curriculum vitae listing his education, qualifications, and experience.

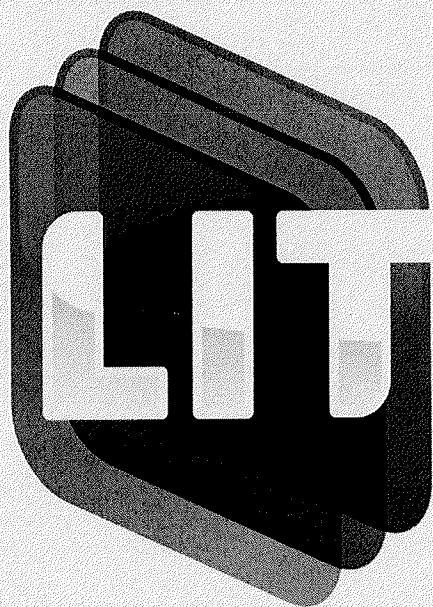
7. Emails, writings, or photographs should be provided in both printed and digital formats. Audio or video recordings may be provided in conventional formats accessible on personal computers without the assistance of specialized software.

I declare under penalty of perjury that the foregoing is true and correct.

Dated this 10th of December, 2015.

  
\_\_\_\_\_  
S. Wayne Rosenbaum  
Attorney for San Altos -- Lemon Grove, LLC

# Nemerow, Brian Alan



Litigation  
SERVICES

Job: 599122

Exhibit: 00002



## Brian Nemerow

1149 North Vulcan Ave #6  
Encinitas, CA 92024  
(760) 846-5135  
brian.nemerow@gmail.com

### PROFILE

My experience working with D-Max Engineering has given me the base knowledge and skills needed to provide exceptional work that satisfies NPDES permit requirements, all while applying critical thinking to solve tough problems that may arise in the process. My main goals are to be a valuable asset to the City of Vista's Water Quality Protection Program, educate the public on important pollution-related issues and to explore creative ways to solve environmental challenges.

### EXPERIENCE

#### **D-Max Engineering, Inc; San Diego, CA — July, 2010-Present**

I have performed a variety of field tasks along with project management and coordination roles while working at D-Max Engineering. Some of the most notable projects are described below:

- City of La Mesa Prop 84 Grant Project, 2015. I reviewed project information and wrote the Quality Assurance Project Plan, Monitoring Plan and Project Assessment and Evaluation Plan in accordance with Surface Water Ambient Monitoring Program (SWAMP) requirements. I worked with laboratory staff to ensure specific testing for unique chemical constituents would be completed using EPA standard methods and proper reporting limits.
- City of Menifee MS4 Mapping, 2014-2015. I obtained construction drawings from City of Menifee and County of Riverside sources for references used to map the City's entire MS4 structures using GIS, in accordance with Region 8 Municipal Permit requirements. I used this map to develop the City's major outfall inventory and conduct field visits to all major outfalls within the City's jurisdiction.
- City of Vista Transitional Dry Weather Monitoring, 2013-2014. I planned and conducted field visits to major outfalls within the City jurisdiction in accordance with Municipal Permit requirements, used GIS to help develop the major outfall inventory, conducted upstream source investigations with City and public school staff, and wrote the final dry weather monitoring report summary.
- City of Vista's 2013-2014 Industrial/Commercial and FOG inspection program. I helped manage the program to ensure inspections were completed within the time constraints of the permit requirements, performed field inspection tasks, ensured oversight of D-Max inspectors and helped revise the inventory. I also worked with City staff to develop a new property-based inspection procedure in accordance with the 2013 Municipal Permit.

EXHIBIT 2  
REPORTER M. Votz  
WITNESS B. Nemerow  
DATE 12-29-15

**EDUCATION**

University of California Santa Cruz, Santa Cruz, CA — B.S. Earth Sciences with concentration in Ocean Sciences, 2010.

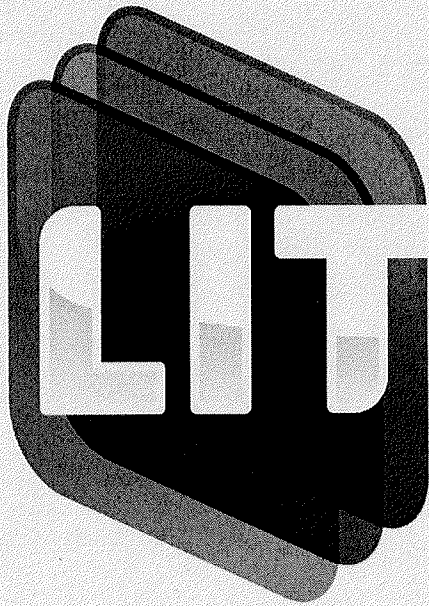
**SKILLS**

I am proficient in using Global Information System (GIS) to create maps and conduct research pertaining to stormwater-related programs. I also have excellent communication skills, which I utilize while educating the public during inspections and discussing report findings with municipalities or RWQCB staff.

**PROFESSIONAL QUALIFICATIONS**

I have qualified to sit for the Certified Professional in Storm Water Quality (CPSWQ) exam, and plan to obtain the certification within the next two months.

# Nemerow, Brian Alan



Litigation  
SERVICES

Case No: 599122

Exhibit: 00003



Exhibit No. 10

**D-MAX Engineering, Inc.**  
Consultants in Water & Environmental Sciences



**Memo**

EXHIBIT 3  
REPORTER M. Volz  
WITNESS B. Nemerow  
DATE 12-29-15

Date: December 17, 2014

To: Malik Tamimi

Cc: Tad Nakatani; John Quenzer

From: Brian Nemerow

Subject: December 17, 2014 Field Visit at Valencia Construction Site

BN

Per the City's request, D-MAX visited the Valencia construction site on the morning of December 17, 2014, following a storm earlier in the morning. Rain had ended a few hours prior to the site visit, and no runoff was observed flowing out from the construction site at the Akins or San Altos entrance/exit locations at the time of the site visit.

**Evidence of sediment discharge** was observed at the Akins entrance/exit location (Photos 1 and 2) and along the curb farther downstream (Photo 3). A crew from Downstream Services was power washing the curb along Akins to remove accumulated sediment (Photos 4, 5, and 6). This indicates that there likely had been a noticeable sediment discharge earlier in the day. Based on talking with the crew, our understanding is that they were working on behalf of the Valencia project, and they also planned to use a vactor truck to remove accumulated sediment from the downstream storm drain on Akins. The crew was taking measures to prevent discharge of water from power washing, including using a vactor truck to reclaim the water, but a small amount of water was observed discharging to the inlet along Akins. The water was seeping through gravel bags around the inlet and discharge to the storm drain. A sample of the power washing discharge water was collected, and turbidity was measured at 52 NTU.



Figure 1. Observation Locations

Field Visit at Valencia Construction Site  
December 17, 2014  
Page 2 of 4

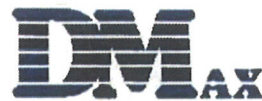


Photo 1. Evidence of sediment discharge at Akins entrance/exit



Photo 2. Evidence of sediment discharge at Akins entrance/exit

Field Visit at Valencia Construction Site  
December 17, 2014  
Page 3 of 4



Photo 3. Sediment accumulation along Akins curb gutter, downstream of Akins entrance/exit



Photo 4. Power washing activity performed by Downstream Services



Field Visit at Valencia Construction Site  
December 17, 2014  
Page 4 of 4

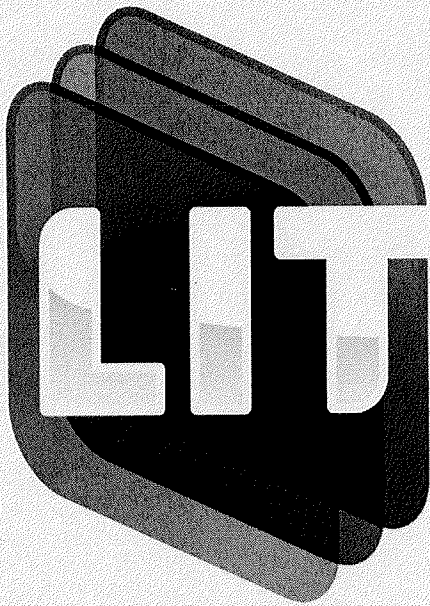


Photo 5. Power washing activity performed by Downstream Services



Photo 6. Power washing activity performed by Downstream Services

# Nemerow, Brian Alan



Litigation  
SERVICES

Job: 599122

Exhibit: 00004





**D-MAX Engineering, Inc.**  
Consultants in Water & Environmental Sciences

**Memo**

EXHIBIT 4  
REPORTER M. Volz  
WITNESS B. Nemerow  
DATE 12-29-15

**Date:** May 15, 2015

**To:** Malik Tamimi, Gary Harper, Tamara O'Neal

**Cc:** Tad Nakatani, John Quenzer

**From:** Brian Nemerow

**Subject:** May 15, 2015 Sampling at Valencia Construction Site

Per the City's request, D-MAX collected samples of runoff from the Valencia construction site. Runoff was observed discharging from the construction site only at the Akins Avenue entrance/exit sampling location (site Valencia\_Akins, Figure 1 and Photo 1). Because gravel bag check dams were positioned along Akins Avenue from the site discharge point down to the nearest storm drain inlet, a sample was also taken downstream of the last set of gravel bags, just before the water entered the inlet (site Akins\_Inlet, Figure 1 and Photo 2).

Each sample was collected and analyzed for turbidity and pH using a calibrated field meter. The Valencia\_Akins site had a turbidity value that exceeded the numeric action level of 250 NTU. Unprotected loose sediment observed along the site perimeter near the Akins entrance likely contributed to the high turbidity levels. Photo 3a shows the project area near the Akins inlet during the rain event on 5/15/2015. Photo 3b is a close-up photo of the same area two days earlier. It appears that the loose sediment observed on 5/13/2015 was not sufficiently cleaned up or protected prior to the rain event.

The sample collected at the Akins\_Inlet site downstream of the Akins entrance had a turbidity value below the numeric action level. This decrease in turbidity between the Valencia\_Akins and Akins\_Inlet locations may be due to a combination of sediment settling out at the gravel bag check dams and the runoff from Akins Avenue comingling with the site runoff. Results are summarized in the table below, and photos of the samples in clear containers are presented as photos 4 and 5.

Following sampling, the construction site foreman was informed of the high turbidity measurement, and he stated he was working toward remediating the issue.

**Table 1. Sampling Results**

Site	Sample Date	Sample Time	Turbidity (NTU)	pH
Valencia_Akins	5/15/2015	07:20	308	8.35
Akins_Inlet	5/15/2015	07:40	95	8.23



Figure 1. Sampling Locations



Photo 1. Site Valencia\_Akins

Sampling at Valencia Construction Site  
May 15, 2015  
Page 3 of 5



Photo 2. Site Akins\_Inlet



Photo 3a. Project area at the Akins Ave entrance/exit during rain event

Sampling at Valencia Construction Site  
May 15, 2015  
Page 4 of 5



Photo 3b. Project area at the Akins Ave entrance/exit on 5/13/2015. (Same telephone pole as seen in photo 3a)



Photo 4. Sample from Site Valencia\_Akins

Sampling at Valencia Construction Site  
May 15, 2015  
Page 5 of 5



Photo 5. Sample from Site Akins\_Inlet