RECEIVED BY: Sergio Vergara Davis
DATE: 11-08-2019 9:34 KM

AHENSIAN PRUTEKSION LINA'LA GUÂHAN
LOURDES A. LEON GUERRERO, GOVERNOR OF GUAM • JOSHUA F. TENORIO, LIEUTENANT GOVERNOR OF GUAM
WALTER S. LEON GUERRERO, ADMINISTRATOR

Mr. Sergio Davis, General Superintendent
Contrack Watts, Inc.
674 Harmon Loop Road, Suite 212
Dededo, GU 96929
Tel. No. 486-8196

NOV 08 2019

Subject: Notice of Violation and Compliance Order

The stated purpose of the Guam Soil Erosion and Sediment Control Regulations (GSESCR), 22 GAR Chapter 10, as implemented by Public Law 25-152, is "to control accelerated soil erosion, thereby preventing the pollution of Guam's waters from fertilizers, pesticides, sediments and other polluting substances carried by sediment, and to protect property and to promote the public health, safety and welfare by regulating grading, clearing, grubbing and stockpiling, and by setting minimum standards for erosion and sedimentation control for the island of Guam." As described herein, the Guam Environmental Protection Agency (GEPA) finds that Contrack Watts, Inc. ("Respondent") has violated the GSESCR and is ordered to undertake remedial action(s).

BACKGROUND

Respondent is actively engaged in earth moving activities as part of a construction project located alongside Marine Corps Drive, between Polaris Point and Naval Base Guam. On Saturday, November 2, 2019, GEPA received two complaints concerning Respondent's project, specifically that the erosion and sediment control (E&SC) best management practices (BMPs), in this case silt fence, had not been installed properly. GEPA inspectors visited the site on November 4, 2019, and observed that none of the silt fence along Marine Corps Drive had been installed properly, for a total installed length of approximately 1 mile. During the inspection, Respondent's representative, Mr. Sergio Davis, stated that the silt fence could not be properly installed because of MEC (munitions & explosives clearance) policies enforced by the project owner, U.S. Naval Facilities (NAVFAC).

GEPA had previously inspected Respondent's project at an earlier stage on July 15, 2019, when work was underway along Polaris Point road, and notified Respondent of similar violations. At that time, no E&SC BMPs had been installed and Respondent also stated at the time that NAVFAC MEC policies prevented the installation of silt fence. GEPA contacted NAVFAC at that time, and was told that Respondent was not prohibited from installing E&SC BMPs, and by the next day, July 17, E&SC BMPs were installed by Respondent around the areas under construction at that time.

NOTICE OF VIOLATION

Based on the facts described above and the attached site inspection report, GEPA finds that Respondent violated the following provisions of the Guam Soil Erosion and Sediment Control Regulations, 22 GAR Chapter 10, as implemented by Public Law 25-152:

1. 22 GAR §10105(A)(1) Erosion and Sediment Control Plans and Measures: General policies for Erosion and Sediment Control. *All earth-moving operations on Guam shall be conducted in a manner that prevents accelerated land erosion, transportation of sediment to and along highways, or siltation of rivers, estuaries and marine waters.*

   Respondent failed to conduct the earth moving activities undertaken as part of the work along approximately 1 mile of Marine Corps Drive, in a manner that prevents accelerated land erosion and siltation of marine waters. Specifically, the silt fence was not installed in accordance with standard practice for E&SC BMPs, in terms of burial of fabric. This failure to properly install silt fencing rendered it ineffective and incapable or preventing the transportation of sediment from the construction site to the nearby wetland, river, and marine waters.

COMPLIANCE ORDER:

Based on the foregoing Violations and pursuant to the authority granted to GEPA by 10 GCA Chapter 47 and Public Law 25-152, Respondent is HEREBY ORDERED to undertake the following remedial actions:

1. **Immediately upon receipt of this order**: Cease all earth moving and construction work pursuant to 22 GAR §10110(C) ("Stop Work Order") and do not resume until GEPA has approved the re-installation of silt fence under Order Item 2 below.

2. **Within three (3) days of receipt of this order:** Reinstall all silt fence in accordance with standard silt fence installation requirements, as detailed on the approved E&SC Plan and SWPPP. You must request inspection from the GEPA Water Pollution Control Program and receive written GEPA approval of your silt fence reinstallation to demonstrate compliance with this item.

This order does not prevent GEPA from taking additional actions including the issuance of penalties under 22 GAR §10114(A)(a) or (b). Please also note that if you fail to take the remedial

actions listed above within the required timeframe(s), additional violations, remedial actions, and penalties may be assessed by Guam EPA.

PROPOSED PENALTY ORDER:

Based on the foregoing Violations and pursuant to the authority granted to GEPA by 10 GCA Chapter 47 and Public Law 25-152, GEPA hereby notifies Respondent of the Administrator's proposal to issue a penalty order pursuant to 22 GAR §10114(b), which authorizes a civil penalty no more than Ten Thousand Dollars ($10,000) per day per violation, up to a maximum civil penalty of One Hundred Twenty-five Thousand Dollars ($125,000).

GEPA is proposing a total civil penalty amount of Ten Thousand Dollars ($10,000) per violation, per day. This penalty is proposed based on the following factors considered by GEPA: 1) Respondent's previous history of similar violations; 2) Respondent's implicit acknowledgement that they were aware the installation of silt fence was improper; 3) Respondent's failure to take action to correct the situation even though Respondent had knowledge of methods based on previous violation; and 4) the potential for significant direct impact to adjacent water resources. In addition, and pursuant to 22 GAR §10114(b)(3), GEPA also acknowledges the economic benefit or savings to Respondent by failing to perform the work necessary to properly install the silt fence.

The total penalty amount will depend on the time frame in which Respondent fully complies with this Order. **The total proposed penalty amount will therefore be provided to Respondent following completion of the Order Items listed under this Compliance Order..**

You may file within thirty days of the date of your receipt of this Notice of Violation/Order of Compliance/Proposed Penalty Order, a Notice of Intent to Appeal also known as a Notice of Defense with the Guam EPA's Board of Directors. A copy of the Notice of Intent to Appeal/Notice of Defense is attached for your convenience.

Unless a written request for a hearing signed by or on behalf of the person, agency or business entity named above in this Notice of Violation/Order of Compliance/Proposed Penalty Order is hand delivered or mailed to GEPA within thirty days after the Notice of Violation/Order of Compliance/Proposed Penalty Order was personally served on you or mailed to you, GEPA may proceed upon the Notice of Violation/Order of Compliance/Proposed Penalty Order without a hearing. A request for hearing may be made by delivering the enclosed form entitled "Notice of Intent to Appeal also known as A Notice

of Defense", or by delivering a notice of defense as provided in 5 GCA §9205, to the following address:

Guam Environmental Protection Agency Board of Directors
C/o Administrator Guam Environmental Protection Agency
Building 17-3304 Mariner Avenue
Tiyan Barrigada, Guam 96913

If you file a Notice of Intent to Appeal/Notice of Defense, the GEPA's Board of Directors shall hold a public hearing, at which time you may appear and present evidence in person or through counsel in support of this petition.

Failure to file a Notice of Intent to Appeal within the period specified above will constitute a waiver of your right to a hearing. If you waive your rights to a hearing the Notice of Violation/Order of Compliance/Proposed Penalty Order will become final, and GEPA may proceed upon the Order without a hearing and without further notice to you.

Should you have questions or need additional information please contact Water Pollution Control Program or Water Division Chief Engineer, CDR Brian Bearden, P.E., BCEE at Tel# 3004779 and 3004786 respectively.

Dated this 08 day of May, 2019.

WALTER S. LEON GUERRERO
Administrator

Guam Environmental Protection Agency
P.O. Box 22439, GMF,
Barrigada, Guam 96921

NOTICE OF INTENT TO APPEAL
(AKA NOTICE OF DEFENSE)

I, _____, have received your Notice of Violation, Order of Compliance and/or Administrative Penalty Order dated _____, charging me for violations and/or imposing penalties and/or other orders, and I wish to:

(Please check appropriate sections)

☐ **A. Request for a hearing and**

☐ 1. Object to the accusation on the ground that it does not state acts or omissions upon which the Agency can proceed.

☐ 2. Object to the form of the accusation on the ground that it is so indefinite or ambiguous that I cannot identify the infraction or prepare my defense.

☐ 3. Wish to prepare new matter in my defense.

☐ 4. Admit to the accusation in part.

☐ **B. Admit to the accusation in whole.**

☐ **C. Verified Petition: <u>Under penalty of perjury I hereby declare</u> that the following constitutes my legal and factual basis for this appeal:**

_____

_____

_____

[please continue on blank sheet of paper if more space is needed and attach to this paper]

My mailing address is: _____

_____

_____

_____

SIGNATURE

_____

DATE

GUAM EPA CASE NO.: _____

WATER POLLUTION CONTROL PROGRAM
WATER DIVISION
GUAM ENVIRONMENTAL PROTECTION AGENCY

INSPECTION REPORT
CONTRACK WATTS / POLARIS POINT PROJECT
EROSION SEDIMENT CONTROL

Complaint No.: WPC2019-0407
Date of Inspection: November 4, 2019
Time of Inspection: 10:38AM

Inspected by GEPA Staff(s): Ron Charfauros and Helen Gumataotao-WPC Inspectors

Complainant: Francis Mendiola, WRMP Inspector
300-4777

BACKGROUND:

On July 15, 2019 at 9:30 AM inspection of Contrack WATTS Polaris Point Project and their Erosion Sediment Control (BMPs) was conducted by GEPA/WPC Inspectors, Ron Charfauros and Helen Gumataotao. Upon our inspection we noticed that there were no Erosion Sediment Control (BMPs) in place at this project site. Headed down to their Field Office in Agat and spoke with Jian Johnson, Project Manager and informed her their ESC must be in place at their Polaris Project site to prevent any of the runoff going into the nearby wetland area and that rainy season is upon us.

Contrack WATTS: Sergio Davis, General Superintendent
Cell: 486-8196
674 Harmon Loop Road, Suite 212
Dededo, Guam 96929

INSPECTION FINDINGS:

On November 04, 2019, at 10:38AM, GEPA Staff(s): Ron Charfauros and Helen Gumataotao responded to a complaint down at the Contrack WATTS Polaris Point Project regarding their Erosion Sediment Control (BMPs). Upon our inspection we noticed that all their silt fence along this project were improperly installed and no BMPs where installed where the excavated dirt was located at. Headed over to their Field Office in Agat and spoke with Mr. Sergio Davis, General Superintendent of this project and informed him of their ESC. We also inform Mr. Davis this was not our first time here for the exact same problem.

As per Mr. Davis, MEC has to mark off the areas where the can dig and the area were the filter fabric is too located at was not marked and only the areas where MEC has marked off is okay to touch which they did. Mr. Davis also informed us they are going to start working on returning the excavated material back into the existing trench area that same day and they will be adding sand to hold the filter fabric in place instead of burying them and once the work has been done he will inform GEPA.

NOTE: On November 05, 2019 at 8:43AM, Mr. Sergio Davis of Contrack WATTS calls inspector Ron Charfauros to inform of the work they had done as per our conversation on Mon. Nov. 4, 2019 at their Field Office. On our way down to another complaint in Agat, we notice they had returned the soil back and added sand to hold down the filter fabric. They are still excavating further down the road as we drove by.

RECOMMENDATIONS:

Given the length of this project follow up inspections of this project is necessary until they have completed this project. This to insure their Erosion Sediment Control (BMPs) are properly installed and maintained at all times.

Report Prepared by:

Helen R. Gumataotao
Inspector-WPC

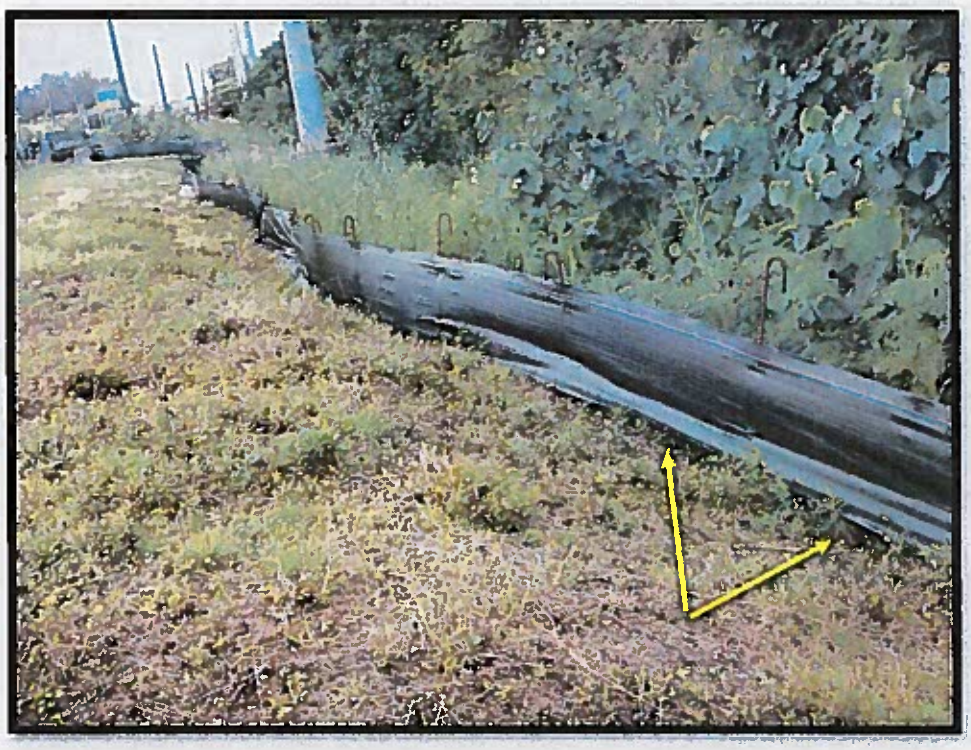
AHENSIAN PRUTEKSION LINA'LA GUÅHAN
LOURDES A. LEON GUERRERO, GOVERNOR OF GUAM • JOSHUA F. TENORIO, LIEUTENANT GOVERNOR OF GUAM
WALTER S. LEON GUERRERO, ADMINISTRATOR

CONTRACK WATTS
674 HARMON LOOP ROAD, SUITE 212 DEDEDO, GUAM 96929
POLARIS POINT PROJECT
EROSION SEDIMENT CONTROL (BMPs)
P.O.C.: SERGIO DAVIS, GENERAL SUPERINTENDENT Cell: 486-8196
NOVEMBER 04, 2019 TIME: 10:38 AM

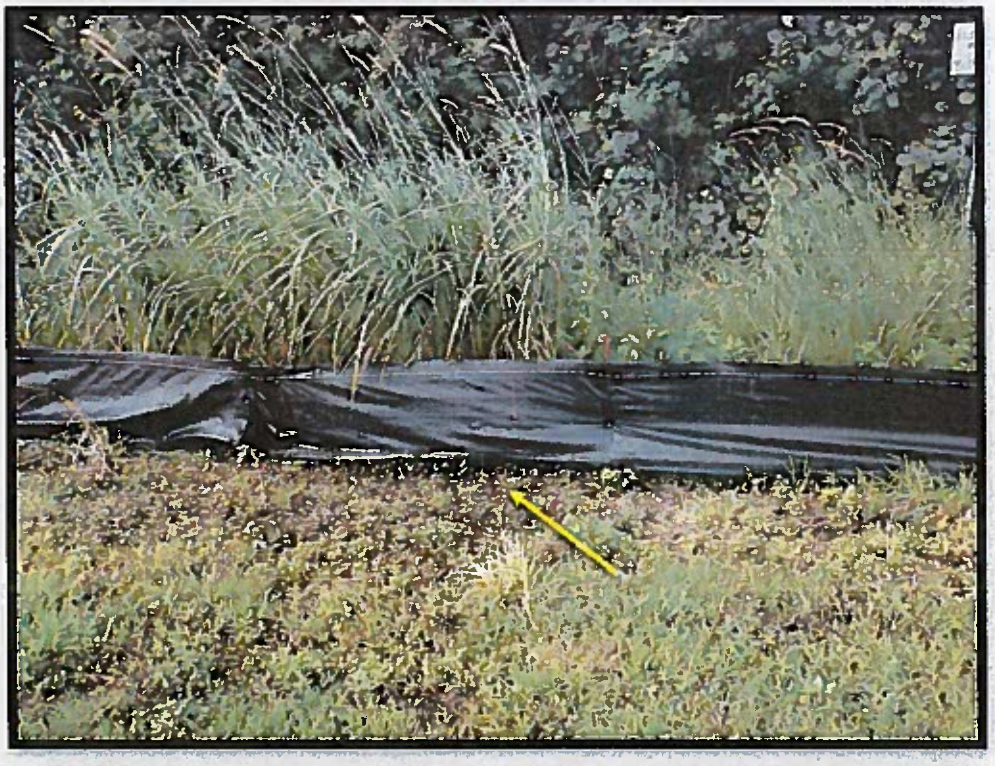
Silt fence along Polaris Point installed improperly. 11/4/2019

WATTS Polaris Point Project Silt fence improperly installed. 11/4/2019

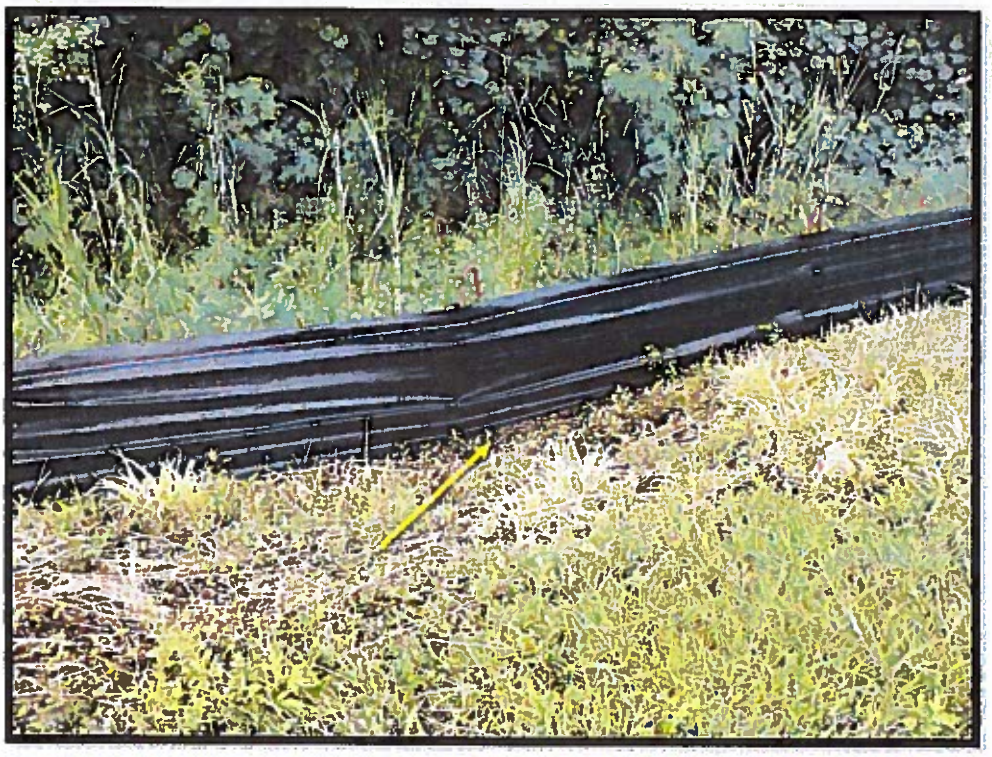
WATTS Polaris Point Project Erosion Sediment Control (BMPs) installed improperly. 11/4/2019



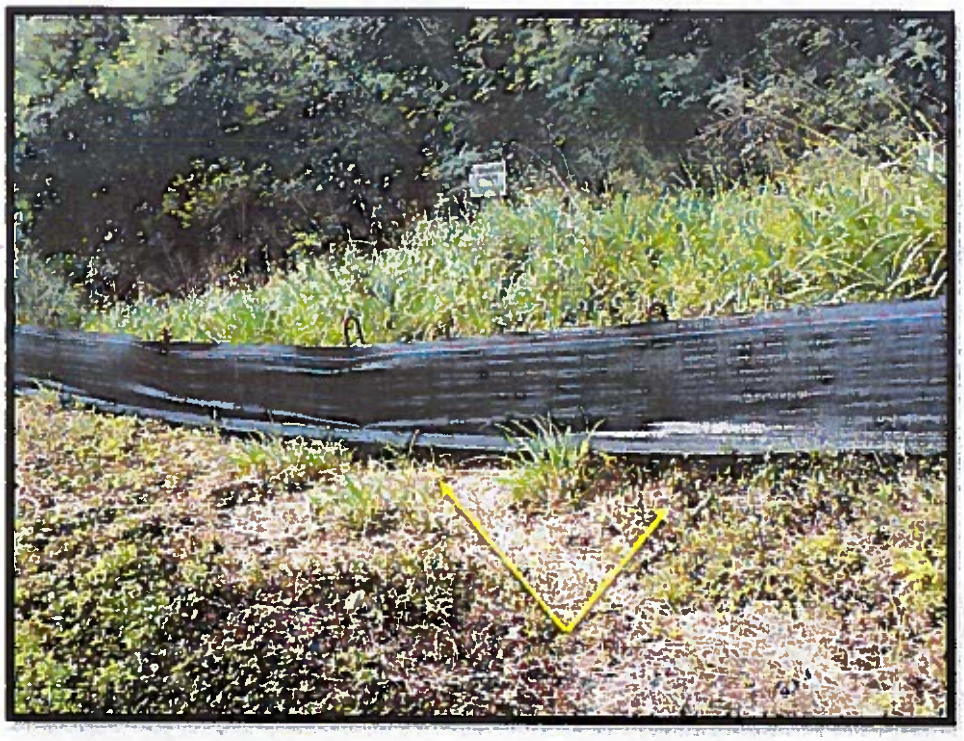
Erosion Sediment Control (BMPs) with gaps. WATTS Polaris Point Project. 11/4/2019



WATTS Polaris Point Project Erosion Sediment Control Barriers installed improperly. 11/4/2019



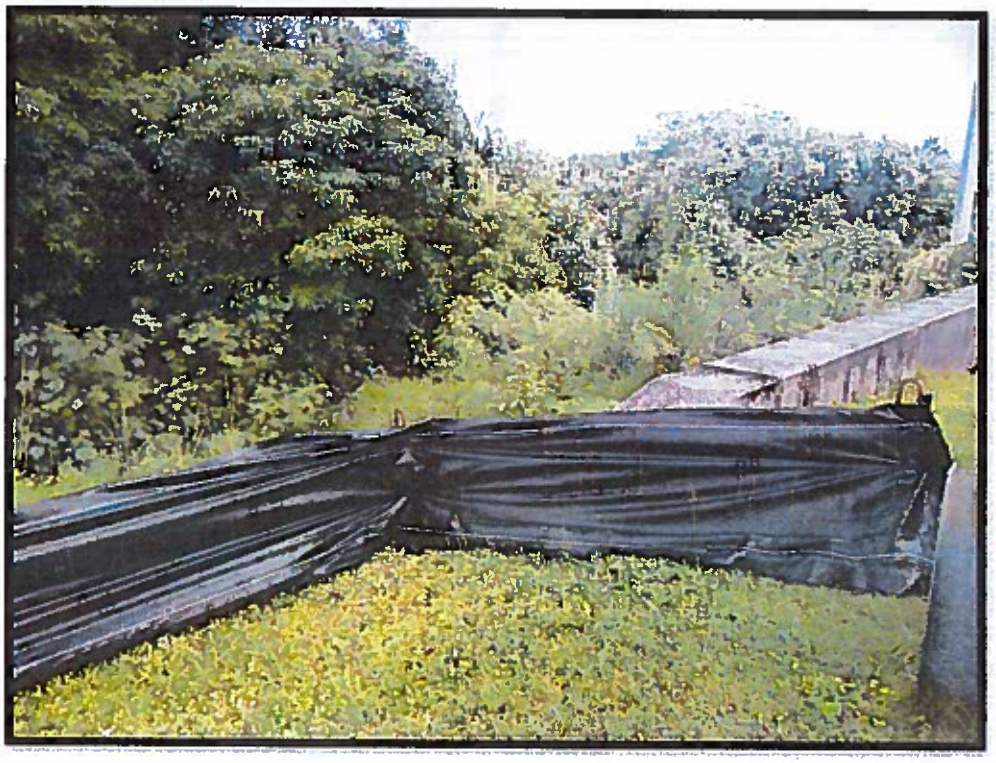
Gaps can be seen here along this silt fence for the WATTS Polaris Point Project. 11/4/2019



More gaps along this area as well along the Polaris Point Project. 11/4/2019

The whole stretch of WATTS Polaris Point Project their BMPs are improperly installed. 11/4/2019

Beginning of the bridge heading towards Naval Sta. where the silt fence breaks. 11/4/2019



The other side of the bridge where the silt fence continues on down towards Naval Sta. 11/4/2019

WATTS Polaris Point Project photo taken 11/4/2019. As of today 11/5/2019 all the dirt seen here has since been but back into the trench that was dug up earlier.