

California Regional Water Quality Control Board, San Diego Region

December 23, 2014

Via email only

Keneth Keefe
KNR Mission Gorge LLC
7700 Irvine Center Drive
Irvine, California 92618
kkeefe949@gmail.com

In reply refer to / attn:
SM-826367:wchiu

Subject: Notice of Violation No. R9-2014-0154, Mission Gorge Apartments Construction Project, Order No. 2009-0009-DWQ, NPDES Permit No. CAS000002, Construction General Permit

Mr. Keefe:

Enclosed is Notice of Violation (NOV) No. R9-2014-0154 issued to KNR Mission Gorge LLC for violations of Order No. 2009-0009-DWQ, issued by the California State Water Resources Control Board and overseen by the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board). As described in the NOV, the violations are subject to further enforcement pursuant to the California Water Code. The San Diego Water Board reserves the right to take any enforcement action authorized by law.

Please provide a written response **by January 9, 2014** that confirms the violations have been corrected, identify a date by which the violations were corrected, and description of the actions taken to ensure future violations of Order No. 2009-0009-DWQ will not occur.

In making the determination of whether and how to proceed with further enforcement action, the San Diego Water Board will consider the severity and effect of the violation, the level of cooperation, the time it takes to correct the identified violations, and the sufficiency of the corrections.

Please send any written correspondence in response to this letter to SanDiego@waterboards.ca.gov. These electronic documents must be submitted as a single file, in Portable Document Format (PDF) format, and converted to text searchable format using Optical Character Recognition (OCR). All electronic documents must also include scanned copies of all signature pages; electronic signatures will not be accepted. Electronic documents submitted to the San Diego Water Board must include the following identification numbers in the header or subject line: **PIN: SM-826367:wchiu**.

HENRY ABARBANEL, CHAIR | DAVID GIBSON, EXECUTIVE OFFICER

2375 Northside Drive, Suite 100, San Diego, CA 92108-2700 | (619) 516-1990 | www.waterboards.ca.gov/sandiego



For questions pertaining to the subject matter, please contact Wayne Chiu at (619) 521-3354 or wchiu@waterboards.ca.gov.

Respectfully,



Eric S. Becker, P.E.
Senior Water Resource Control Engineer
Storm Water Management Unit

ESB:wc

Enclosure: Notice of Violation No. R9-2014-0154

cc (via email only): Scott Jones, Cobalt Construction (scott.jones@cobaltcc.com)
Donald Sturgeon, Whitson CM (dsturgeon@whitsoncm.com)
Julie Ballesteros, City of San Diego (BallesterosJ@sandiego.gov)

Tech Staff Info & Use	
Order No.	2009-0009-DWQ
NPDES No.	CAS000002
Place ID	SM-826367
WDID	937C368091
Inspection ID	2024193
Violation ID	855355, 855356
Enforcement ID	417210



EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

California Regional Water Quality Control Board, San Diego Region

December 23, 2014

NOTICE OF VIOLATION
No. R9-2014-0154

Kenneth Keefe
KNR Mission Gorge LLC
7700 Irvine Center Drive
Irvine, California 92618

KNR Mission Gorge LLC

Mission Gorge Apartments Construction Project
PIN No. SM-826367:wchiu

Violations of

**Order No. 2009-0009-DWQ,
Construction General Permit**

KNR MISSION GORGE LLC is hereby notified that the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) reserves the right to take any enforcement action authorized by law for the violations described herein.

KNR MISSION GORGE LLC is in violation of State Water Resources Control Board (State Water Board) Order No. 2009-0009-DWQ, NPDES No. CAS000002, *National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities* (Construction General Permit).

A. Summary of Violations

Construction General Permit Violations

1. Failure to Comply with Discharge Prohibitions for Construction Activities:

- a. Pursuant to Provision III.B of State Water Board Order No. 2009-0009-DWQ:**
All discharges are prohibited except for the storm water and non-storm water discharges specifically authorized by this General Permit or another NPDES permit.
- b. Observation:** On December 12, 2014, the San Diego Water Board inspected the Mission Gorge Apartments construction site (WDID 937C368091). KNR Mission

Gorge LLC is the Legally Responsible Person (LRP) enrolled under the Construction General Permit (CGP) for the site. On December 12, 2014, the San Diego Water Board inspector observed discharges of sediment-laden storm water runoff from the site due to inadequate and ineffective implementation of BMPs, constituting an unauthorized discharge from the site. See attached December 12, 2014 Facility Inspection Report Photos 1 through 15.

2. Failure to Comply with Effluent Limitations for Construction Activities:

- a. Pursuant to Provision V.A.2 of State Water Board Order No. 2009-0009-DWQ:** Dischargers shall minimize or prevent pollutants in storm water discharges and authorized non-storm water discharges through the use of controls, structures, and management practices that achieve Best Available Technology Economically Achievable (BAT) for toxic and non-conventional pollutants and Best Conventional Pollutant Control Technology (BCT) for conventional pollutants.
- b. Pursuant to Provision IX and Section A.1.b of Attachment C of State Water Board Order No. 2009-0009-DWQ:** Dischargers shall minimize or prevent pollutants in storm water and authorized non-storm water discharges through the use of controls, structures, and management practices that achieve BAT for toxic and non-conventional pollutants and BCT for conventional pollutants.
- c. Observation:** During the December 12, 2014 inspection, the San Diego Water Board inspector observed the lack of effective erosion controls, runoff controls within the site, and perimeter sediment controls required by the CGP, which directly lead to erosion and sedimentation that ultimately resulted in the discharge of sediment and sediment-laden storm water runoff from the site observed on December 12, 2014. The discharge was a result of the implementation of controls, structures, and BMPs that do not achieve BCT. See attached December 12, 2014 Facility Inspection Report Photos 1 through 15.

3. Failure to Implement Good Site Management “Housekeeping” Best Management Practices (BMPs) for Construction Materials and Waste Management:

- a. Pursuant to Provision IX and Section B.1.a of Attachment C of State Water Board Order No. 2009-0009-DWQ:** Risk Level 1 dischargers are required to cover and berm loose stockpiled construction materials that are not actively being used (i.e. soil, spoils, aggregate, fly-ash, stucco, hydrated lime, etc.).
- b. Pursuant to Provision IX and Section B.2.f of Attachment C of State Water Board Order No. 2009-0009-DWQ:** Risk Level 1 dischargers are required to contain and securely protect stockpiled waste material from wind and rain at all times unless actively being used.
- c. Observation:** During the December 12, 2014 inspection, the San Diego Water Board inspector observed soil stockpiles without adequate cover, berm, containment

or protection, resulting in erosion and sediment transport. See attached December 12, 2014 Facility Inspection Report Photos 3 and 4.

4. Failure to Implement Adequate Erosion Controls for Inactive Areas:

- a. Pursuant to Provision IX and Section D.2 of Attachment C of State Water Board Order No. 2009-0009-DWQ:** Risk Level 1 dischargers shall provide effective soil cover for inactive areas and all finished slopes, open space, utility backfill, and completed lots.
- b. Observation:** During the December 12, 2014 inspection, the San Diego Water Board inspector observed several completed areas and slopes on the site that appeared to be inactive, or could be scheduled to be inactive, without effective soil cover or other BMPs that could prevent erosion. Evidence of erosion and sediment transport due to lack or erosion control measures for inactive areas were observed throughout the site during the inspection. See attached December 12, 2014 Facility Inspection Report Photos 5 through 10.

5. Failure to Implement Adequate Perimeter Sediment Controls:

- a. Pursuant to Provision IX and Section E.1 of Attachment C of State Water Board Order No. 2009-0009-DWQ:** Risk Level 1 dischargers shall establish and maintain effective perimeter controls and stabilize all construction entrances and exits to sufficiently control erosion and sediment discharges from the site.
- b. Observation:** During the December 12, 2014 inspection, the San Diego Water Board inspector observed perimeter controls that were not adequately established or maintained to sufficiently control erosion and sediment discharges from the site. See attached December 12, 2014 Facility Inspection Report Photos 14 and 15.

6. Failure to Implement Adequate Runoff Controls within the Site:

- a. Pursuant to Provision IX and Section F of Attachment C of State Water Board Order No. 2009-0009-DWQ:** Risk Level 1 shall effectively manage all run-on, all runoff within the site and all runoff that discharges from the site. Run-on from off site shall be directed away from all disturbed areas or shall collectively be in compliance with the effluent limitations in the CGP.
- b. Observation:** During the December 12, 2014 inspection, the San Diego Water Board inspector observed a lack of effective runoff controls within the site resulting in sediment being transported and discharged in runoff from the site. See attached December 12, 2014 Facility Inspection Report Photos 5 through 15.

B. Summary of Potential Enforcement Options

These violations may subject you to additional enforcement by the San Diego Water Board or State Water Resources Control Board, including a potential civil liability assessment of \$10,000 per day of violation (Water Code section 13385) and/or any of the following enforcement actions:

Other Potential Enforcement Options	Applicable Water Code Section
Technical or Investigative Order	Sections 13267 or 13383
Cleanup and Abatement Order	Section 13304
Cease and Desist Order	Sections 13301-13303
Time Schedule Order	Sections 13300, 13308

In addition, the San Diego Water Board may consider revising or rescinding applicable waste discharge requirements, if any, referring the matter to other resource agencies, referring the matter to the State Attorney General for injunctive relief, and referral to the municipal or District Attorney for criminal prosecution.

In the subject line of any response, please include the information located in the heading of this letter: "in reply refer to." Questions pertaining to this Notice of Violation should be directed to Wayne Chiu at (619) 521-3354 or wchiu@waterboards.ca.gov.



Eric S. Becker, P.E.
Senior Water Resource Control Engineer
Storm Water Management

ESB:wc

Attachments: Facility Inspection Report dated December 15, 2014

Tech Staff Info & Use	
Place ID	SM-826367
WDID	937C368091
Inspection ID	2024193
Violation ID	855355, 855356
Enforcement ID	417210

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD - SAN DIEGO REGION
WATERSHED PROTECTION PROGRAM**

FACILITY INSPECTION REPORT

FACILITY: Mission Gorge Apartments
WDID/FILE NO.: 937C369143

INSPECTION DATE/TIME: 12/12/2014; 9:00 am

REPRESENTATIVE(S) PRESENT DURING INSPECTION:

NAME: Wayne Chiu

AFFILIATION: San Diego Water Board

NAME: Scott Jones

AFFILIATION: Cobalt Construction

KNR Mission Gorge LLC
NAME OF OWNER, AGENCY OR PARTY RESPONSIBLE FOR DISCHARGE

KNR Mission Gorge LLC
FACILITY OR DEVELOPER NAME (if different from owner)

7700 Irvine Center Drive, Suite 800
Irvine, CA 92618
OWNER MAILING ADDRESS

6850 Mission Gorge Road
San Diego, CA 92120
FACILITY ADDRESS

Kenneth Keefe, 703-864-0471
OWNER CONTACT NAME AND PHONE #

Same
FACILITY OR DEVELOPER CONTACT NAME AND PHONE #

APPLICABLE WATER QUALITY LICENSING REQUIREMENTS:

- | | |
|---|---|
| <input type="checkbox"/> MS4 URBAN RUNOFF REQUIREMENTS | <input type="checkbox"/> GENERAL OR INDIVIDUAL WASTE DISCHARGE REQUIREMENTS OR NPDES |
| <input checked="" type="checkbox"/> CONSTRUCTION GENERAL PERMIT | <input type="checkbox"/> GENERAL OR INDIVIDUAL WAIVER OF WASTE DISCHARGE REQUIREMENTS |
| <input type="checkbox"/> CALTRANS GENERAL PERMIT | <input type="checkbox"/> SECTION 401 WATER QUALITY CERTIFICATION |
| <input type="checkbox"/> INDUSTRIAL GENERAL PERMIT | <input type="checkbox"/> CWC SECTION 13264 |

INSPECTION TYPE (Check One):

- "A" TYPE COMPLIANCE--COMPREHENSIVE INSPECTION IN WHICH SAMPLES ARE TAKEN. (EPA TYPE S)
- "B" TYPE COMPLIANCE--A ROUTINE NONSAMPLING INSPECTION. (EPA TYPE C)
- NONCOMPLIANCE FOLLOW-UP--INSPECTION MADE TO VERIFY CORRECTION OF A PREVIOUSLY IDENTIFIED VIOLATION.
- ENFORCEMENT FOLLOW-UP--INSPECTION MADE TO VERIFY THAT CONDITIONS OF AN ENFORCEMENT ACTION ARE BEING MET.
- COMPLAINT--INSPECTION MADE IN RESPONSE TO A COMPLAINT.
- PRE-REQUIREMENT--INSPECTION MADE TO GATHER INFO. RELATIVE TO PREPARING, MODIFYING, OR RESCINDING REQUIREMENTS.
- NO EXPOSURE CERTIFICATION (NEC) - VERIFICATION THAT THERE IS NO EXPOSURE OF INDUSTRIAL ACTIVITIES TO STORM WATER.
- NOTICE OF TERMINATION REQUEST FOR INDUSTRIAL FACILITIES OR CONSTRUCTION SITES - VERIFICATION THAT THE FACILITY OR CONSTRUCTION SITE IS NOT SUBJECT TO PERMIT REQUIREMENTS.
- COMPLIANCE ASSISTANCE INSPECTION - OUTREACH INSPECTION DUE TO DISCHARGER'S REQUEST FOR COMPLIANCE ASSISTANCE.

INSPECTION FINDINGS:

Y WERE VIOLATIONS NOTED DURING THIS INSPECTION? (YES/NO/PENDING SAMPLE RESULTS)

Facility: Mission Gorge Apartments
Inspection Date: 12/12/2014

I. COMPLIANCE HISTORY / PURPOSE OF INSPECTION

On February 27, 2014, Whitney Ghoram of the San Diego Water Board inspected the Mission Gorge Apartment construction site for compliance with the requirements of the Statewide Construction General Storm Water Permit, Order No. 2009-0009-DWQ (CGP). The San Diego Water Board issued the site a staff enforcement letter via email noting that the site lacked adequate erosion controls, especially on slopes throughout the site.

During a December 12, 2014 storm event, Ms. Ghoram observed a discharge of sediment-laden storm water from the site to the City of San Diego municipal separate storm sewer system (MS4) on Mission Gorge Road (See Photos 1 and 2). Wayne Chiu of the San Diego Water Board performed a follow up inspection of the Mission Gorge Apartments construction site for compliance with the requirements CGP to determine whether the discharge of sediment-laden storm water from the site was an authorized.. According to the Storm Water Multiple Application & Report Tracking System (SMARTS), the site is a Risk Level 1 construction site, disturbing over 10 acres, and owned being developed by KNR Mission Gorge LLC.

The San Diego Water Board inspector met with and accompanied by Mr. Scott Jones of Cobalt Construction, the project manager, during the inspection. The San Diego Water Board inspector did not review the SWPPP or other records during the inspection. The findings in this inspection report are based only on whether the requirements of the CGP were adequately implemented to determine if the discharges of sediment-laden storm water from the site were authorized.

II. FINDINGS

1. Several stockpiles observed without adequate cover and containment (See Photos 3 and 4). Evidence of erosion and sediment transport from the stockpile observed during the inspection. All construction sites are required to contain and securely protect stockpiled waste material from wind and rain at all times unless actively being used.
2. Several areas were observed to be inactive, or could be scheduled to be inactive, without effective soil cover to control potential erosion. Several inactive slopes (See Photos 5 through 10) lacked any effective soil cover for erosion control. The lack of erosion controls in these areas contributed to unauthorized sediment discharges from the site (See Photos 11 through 15). All construction sites are required to provide effective soil cover for inactive areas (i.e. areas that have been disturbed and not scheduled to be re-disturbed for at least 14 days) and all finished slopes, open space, utility backfill, and completed lots.
3. Lack of effective runoff controls observed within and around the site which contributed to discharges of sediment-laden storm water runoff from the site (See Photos 5 through 10). The lack of runoff controls within the site contributed to unauthorized sediment discharges from the site (See Photos 11 through 15). All

Facility: Mission Gorge Apartments
Inspection Date: 12/12/2014

construction sites are required to effectively manage run-on, all runoff within the site and all runoff that discharges off the site.

4. Lack of effective perimeter sediment controls observed which resulted in unauthorized sediment discharges from the site (See Photos 14 and 15). All construction sites are required to establish and maintain effective perimeter controls and stabilize all construction entrances and exits to sufficiently control erosion and sediment discharges from the site.

III. COMMENTS AND RECOMMENDATIONS

Comments

1. There is evidence that the site failed to implement good site management "housekeeping" BMPs for soil stockpiles before the storm event (See Finding 1).
2. There is evidence that the site failed to implement adequate erosion controls for several inactive areas and slopes before the storm event contributing to discharges of sediment-laden storm water runoff from the site (See Finding 3).
3. There is evidence that the site failed to implement adequate perimeter sediment controls, as well as runoff controls within the site, which contributed to discharges of sediment-laden storm water runoff from the site (See Findings 6 and 7).
4. There was evidence observed during the inspection that the site has not implemented BMPs to meet BCT Technology Based Effluent Limitations (TBELs) under Section V.A.2 of the CGP, as required for all construction sites, which resulted in the unauthorized discharges of sediment and sediment-laden storm water runoff from the site observed on December 12, 2014 (See Findings 1 through 4).
5. There is evidence that either the QSP was not adequately identifying and recommending implementation of good site management "housekeeping," erosion control, sediment control, and run-on/runoff control BMPs, or the owner/developer was not directing the implementation of the BMPs as recommended by the QSP.

Recommendations

1. Issue a Notice of Violation for discharges of sediment from the site and failure to implement Risk Level 1 requirements of CGP.
2. Refer the site to the Compliance Assurance Unit to determine whether or not issuing formal enforcement action may be appropriate.

Facility: Mission Gorge Apartments
 Inspection Date: 12/12/2014

IV. SIGNATURE SECTION

Wayne Chiu	<i>Eric Becker for</i>	12/12/2014
STAFF INSPECTOR	SIGNATURE	INSPECTION DATE
Eric Becker	<i>Eric Becker</i>	12/22/14
REVIEWED BY SUPERVISOR	SIGNATURE	DATE

SMARTS:

Tech Staff Info & Use	
WDID	937C368091
Place ID	SM-826367
Inspection ID	2024193
Violation ID	855355, 855356

Facility: Mission Gorge Apartments
 Inspection Date: 12/12/2014



Photo 1



Photo 2

Photos 1 and 2 show discharges of sediment-laden storm water runoff from the site to the City of San Diego MS4 drainage system on Mission Gorge Road.



Photo 3



Photo 4

Photos 3 and 4 show soil stockpiles without adequate cover and containment during December 11 and 12, 2014 storm event. Evidence of erosion and sediment transport along that base of the stockpile.

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Inspection Date: 12/12/2014



Photo 5



Photo 6



Photo 7



Photo 8



Photo 9



Photo 10

Photos 5 through 10 show several slopes and areas that have been inactive for at least 14 days lacking erosion control measures to prevent erosion. Photos also show lack of runoff controls within the site to limit the transport of sediment through the site.

Facility: Mission Gorge Apartments
Inspection Date: 12/12/2014



Photo 11



Photo 12



Photo 13



Photo 14

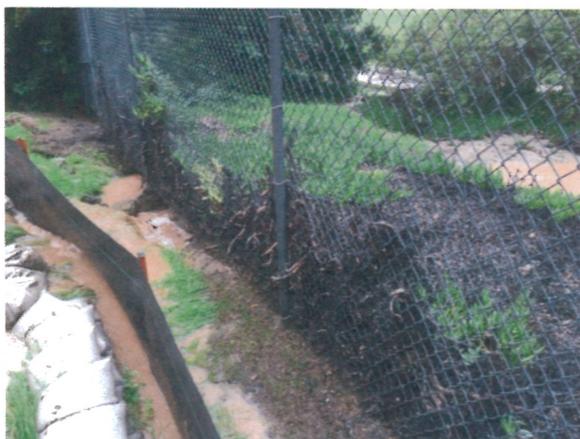


Photo 15

Photos 11 through 15 show pathway to unauthorized discharges of sediment and sediment-laden storm water runoff from the site to the San Diego River. Photo 11 shows area where runoff in Photos 5 through 8 collect. Photo 12 shows where runoff from Photo 11 flow down slope. Photo 13 shows where flow from Photo 12 emerges. Photo 14 shows where flow from Photo 13 and Photos 9 and 10 converge and discharge from location in perimeter controls (i.e. gravel bags) that appears to have been moved to allow flow off site. Photo 15 shows sediment-laden storm water runoff flowing off site to the San Diego River due to inadequate implementation of erosion controls, runoff controls within the site, and perimeter sediment controls.