



California Regional Water Quality Control Board, San Diego Region

December 15, 2014

Via email only

Jaime Ralph
WM Builders
9948 Hibert Street, Suite 210
San Diego, California 92131
jaimeralph@WMBuilders.com

In reply refer to / attn:
SM-828551:wchiu

Subject: Notice of Violation No. R9-2014-0148, La Jolla Del Rey Phase 1 Construction Project, Order No. 2009-0009-DWQ, NPDES Permit No. CAS000002, Construction General Permit

Mr. Ralph:

Enclosed is Notice of Violation (NOV) No. R9-2014-0148 issued to WM Builders 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 December 22, 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-828551:wchiu.**

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. R9-2014-0148

cc (via email only): Ed Underwood, WM Builders (EdUnderwood@WMBuilders.com)
Ted Pigott, WM Builders (TedPigott@WMBuilders.com)
Shaun Schmidt, WM Builders (ShaunSchmidt@WMBuilders.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-828551
WDID	937C369565
Inspection ID	2024140
Violation ID	8855301, 855302, 855303, 855304
Enforcement ID	417112



EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

California Regional Water Quality Control Board, San Diego Region

December 15, 2014

**NOTICE OF VIOLATION
No. R9-2014-0148**

Jaime Ralph
WM Builders
9948 Hibert Street, Suite 210
San Diego, CA 92131

WM Builders

La Jolla Del Rey Phase 1 Construction Project
PIN No. SM-828551:wchiu

Violations of

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

WM BUILDERS 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.

WM BUILDERS 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 4, 2014, the San Diego Water Board inspected the La Jolla Del Rey Phase 1 construction site (WDID 937C369565). WM Builders is the

Legally Responsible Person (LRP) enrolled under the Construction General Permit (CGP) for the site. On December 4, 2014, the San Diego Water Board inspector observed evidence of sediment discharged from the site due to inadequate and ineffective implementation of best management practices (BMPs), constituting an unauthorized discharge of sediment from the site. See attached December 4, 2014 Facility Inspection Report Photos 8, 10, and 11.

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 4, 2014 inspection, the San Diego Water Board inspector observed the lack of effective erosion controls, perimeter sediment controls, and run-on and runoff controls required by the CGP, which directly lead to erosion and sedimentation that ultimately resulted in the discharge of sediment from the site observed on December 4, 2014. The discharge was a result of the implementation of controls, structures, and BMPs that do not achieve BCT. See attached December 4, 2014 Facility Inspection Report Photos 1, 3 through 6, 8 and 9.

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

- a. **Pursuant to Provision IX and Section B.1.b of Attachment C of State Water Board Order No. 2009-0009-DWQ:** Risk Level 1 dischargers are ensure containment of sanitation facilities (e.g. portable toilets) to prevent discharges of pollutants to storm water drainage systems and receiving waters.
- b. **Observation:** During the December 4, 2014 inspection, the San Diego Water Board inspector observed a portable toilet located next to site boundary with evidence of runoff flowing through location and offsite into the storm water drainage system. See attached December 4, 2014 Facility Inspection Report Photo 1.

- 4. Failure to Implement Good Site Management “Housekeeping” BMPs for Vehicle Storage and Maintenance:**
 - a. Pursuant to Provision IX and Section B.3.a of Attachment C of State Water Board Order No. 2009-0009-DWQ:** Risk Level 1 dischargers are required to prevent oil, grease, or fuel to leak in to the ground, storm drains or surface waters.
 - b. Pursuant to Provision IX and Section B.3.b of Attachment C of State Water Board Order No. 2009-0009-DWQ:** Risk Level 1 dischargers are required to place all equipment or vehicles, which are to be fueled, maintained and stored in a designated area fitted with appropriate BMPs.
 - c. Observation:** During the December 4, 2014 inspection, the San Diego Water Board inspector equipment and vehicles stored without appropriate BMPs to prevent oil, grease or fuel to leak in to the ground, storm drains or surface waters. See attached December 4, 2014 Facility Inspection Report Photo 2.

- 5. 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 4, 2014 inspection, the San Diego Water Board inspector was informed that the site had been inactive for several months. The entire site lacked effective soil cover or other BMPs that could prevent erosion. Evidence of erosion and sediment transport due to lack or erosion control measures were observed throughout the site during the inspection. See attached December 4, 2014 Facility Inspection Report Photos 3 through 7.

- 6. 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 4, 2014 inspection, the San Diego Water Board inspector observed several areas of the site where perimeter controls were not established or maintained to sufficiently control erosion and sediment discharges from the site. See attached December 4, 2014 Facility Inspection Report Photos 8 and 9.

7. Failure to Implement Adequate Run-on and Runoff Controls:

- a. **Pursuant to Provision IX and Section F.1 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 4, 2014 inspection, the San Diego Water Board inspector observed no runoff controls within the site, and at least one area of the site where perimeter controls were not established or maintained to prevent runoff from the site, resulting in sediment being allowed to be discharged in runoff from the site. See attached December 4, 2014 Facility Inspection Report Photo 8.

8. Failure to Implement, Inspect, Maintain and Repair BMPs in the SWPPP:

- a. **Pursuant to Provision XIV.B of State Water Board Order No. 2009-0009-DWQ:** To demonstrate compliance with requirements of the CGP, the Qualified SWPPP Developer (QSD) shall include information in the SWPPP that supports the conclusions, selections, use, and maintenance of BMPs.
- b. **Pursuant to Provision IX and Section G.1 of Attachment D of State Water Board Order No. 2009-0009-DWQ:** Risk Level 1 dischargers shall ensure that all inspection, maintenance, repair and sampling activities at the project location shall be performed or supervised by a QSP representing the discharger. The QSP may delegate any or all of these activities to an employee trained to do the task(s) appropriately, but shall ensure adequate deployment.
- c. **Pursuant to Provision IX and Section G.2 of Attachment D of State Water Board Order No. 2009-0009-DWQ:** Risk Level 1 dischargers shall perform weekly inspections and observations, and at least once each 24-hour period during extended storm events, to identify and record BMPs that need maintenance to operate effectively, that have failed, or that could fail to operate as intended. Inspectors shall be the QSP or by trained by the QSP.
- d. **Pursuant to Provision IX and Section G.3 of Attachment D of State Water Board Order No. 2009-0009-DWQ:** Upon identifying failures or other shortcomings, as directed by the QSP, Risk Level 1 dischargers shall begin implementing repairs or design changes to BMPs within 72 hours of identification and complete the changes as soon as possible.
- e. **Observation:** During the December 4, 2014 inspection, the San Diego Water Board inspector observed a lack of implementation, and failures or other shortcomings in the implementation of good site management “housekeeping,” erosion controls, sediment controls, and run-on and runoff controls. For the most part, the lack of implementation, and failures or other shortcomings in the implementation of the

BMPs in the SWPPP were not identified as requiring implementation, maintenance or repair by the QSP or person trained by the QSP in the weekly inspection reports reviewed. See attached December 4, 2014 Facility Inspection Report Finding 2.

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 4, 2014

Tech Staff Info & Use	
Place ID	SM-828551
WDID	937C369565
Inspection ID	2024140
Violation ID	8855301, 855302, 855303, 855304
Enforcement ID	417112

Facility: La Jolla del Rey Phase 1
Inspection Date: 12/4/2014

I. COMPLIANCE HISTORY / PURPOSE OF INSPECTION

On morning of December 4, 2014, a member of the San Diego Water Board staff did a drive-by inspection of the site and noticed potential evidence of sediment discharges from the site. The drive-by inspection was during a storm event that began on December 3, 2014 and ended in the area by the morning on December 4, 2014.

Wayne Chiu and Chiara Clemente of the San Diego Water Board performed an inspection of the La Jolla Village Phase 1 construction site for compliance with the requirements of the Statewide Construction General Storm Water Permit, Order No. 2009-0009-DWQ (CGP). According to the Storm Water Multiple Application & Report Tracking System (SMARTS), the site is as a Risk Level 1 construction site, approximately 2.1 acres in size, and lists Jaime Ralph, Project Manager for WM Builders under Owner Info. The Storm Water Pollution Prevention Plan (SWPPP) in SMARTS, however, shows a Mr. Shaun Schmidt as the Legally Responsible Person who is supposed to sign and certify the SWPPP. There was no precipitation during the inspection.

The San Diego Water Board inspectors met with Mr. Ed Underwood, the superintendent for the site. Mr. Underwood informed the San Diego Water Board inspectors that he is the Qualified SWPPP Practitioner (QSP) performing the weekly inspections. According to Mr. Underwood, the site has been inactive to several months. Mr. Underwood escorted the San Diego Water Board inspectors during the inspection.

II. FINDINGS

1. There was no SWPPP available on the site for review. The SWPPP available on SMARTS had the following deficiencies:
 - a) The name of the LRP on the certification page is Shaun Schmidt, which is not the LRP listed in SMARTS.
 - b) The SWPPP does not appear to include all the information to support the conclusions, selections, use, and maintenance of BMPs. In particular, the erosion control BMPs included in the SWPPP did not appear to include enough information to determine when, where, or what types of erosion control BMPs would be implemented.
2. Weekly inspection reports were available for the last several weeks, but none of them indicated that the erosion controls were inadequate or required implementation. Weekly inspection reports were signed and certified by Mr. Underwood. The weekly inspection reports certify that Mr. Underwood has the following qualifications: QSD, QSP, CPESC, CESSWI, erosion control subcontractor. Mr. Underwood's QSP/QSD certification number could not be found on the CASQA QSD and QSP Lookup website (<http://www.owp.csus.edu/qsd-lookup.php>). There does not appear to be a certified QSP performing or overseeing weekly inspections of the site.

Facility: La Jolla del Rey Phase 1
Inspection Date: 12/4/2014

3. Available training records indicate that training was given to contractors or subcontractors about erosion control, but no signatures of trainees were included in the records.
4. Sanitation facilities placed in runoff flow lines and in front of a discharge point from the site with inadequate protection or containment to prevent runoff from transporting pollutants from sanitation facilities offsite (See Photo 1). All construction sites are required to ensure containment of sanitation facilities to prevent discharges of pollutants to the storm water drainage system or receiving water.
5. Equipment and vehicles observed without appropriate BMPs (e.g. drip pans) to prevent oil, grease, or fuel to leak in to the ground, storm drains, or surface waters (See Photo 2). All construction sites are required to prevent oil, grease or fuel to leak in to the ground, storm drains, or surface waters, and to place all equipment and vehicles, which are to be fueled, maintained and stored in a designated area fitted with appropriate BMPs.
6. The entire site was observed to be inactive, or could be scheduled to be inactive, without effective soil cover to control potential erosion (See Photos 3 through 7). 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.
7. Lack of effective perimeter sediment controls observed in several locations of the site which resulted in unauthorized sediment discharges from the site (See Photos 8 through 11). 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.
8. Lack of effective runoff controls observed within and around the site which contributed to sediment discharges from the site (See Photos 3 through 11). All construction sites are required to effectively manage run-on, all runoff within the site and all runoff that discharges off the site.

III. COMMENTS AND RECOMMENDATIONS

Comments

1. There is evidence that good site management "housekeeping" BMPs were not being adequately implemented (See Findings 4 and 5).

Facility: La Jolla del Rey Phase 1
 Inspection Date: 12/4/2014

2. There is evidence that erosion controls were not adequately implemented for several inactive areas contributing to discharges of sediment from the site (See Finding 6).
3. There is evidence that perimeter sediment controls, as well as run-on and runoff controls, were not adequately implemented which contributed to discharges of sediment from the site (See Findings 7 and 8).
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 water from the site observed or documented on December 4, 2014 (See Findings 4 through 8).
5. There is evidence that weekly inspections were not adequately identifying and recording BMPs that need implementation or maintenance to operate effectively, that have failed, or that could fail to operate as intended (See Findings 2 and 5 through 7).

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.

IV. SIGNATURE SECTION

Wayne Chiu		12/4/2014
STAFF INSPECTOR	SIGNATURE	INSPECTION DATE
Eric Becker		12/12/14
REVIEWED BY SUPERVISOR	SIGNATURE	DATE

SMARTS:

Tech Staff Info & Use	
WDID	937C369565
Place ID	SM-828551
Inspection ID	2024140
Violation ID	855301, 855302, 855303, 855304

Facility: La Jolla del Rey Phase 1
Inspection Date: 12/4/2014



Photo 1

Photo 1 shows sanitation facilities (i.e. portable toilet) located next to site boundary with evidence of runoff flowing through location, and lack of perimeter sediment controls. Evidence of erosion and sediment transport through location and discharge of sediment and storm water from area without perimeter controls.



Photo 2

Photo 2 shows equipment and vehicles stored on site lacking appropriate BMPs to prevent oil, grease, or fuel to leak in to the ground, storm drains, or surface waters.

Facility: La Jolla del Rey Phase 1
Inspection Date: 12/4/2014



Photo 3



Photo 4



Photo 5



Photo 6

Photos 3 through 7 show lack of erosion controls for areas that are considered inactive, which is the entire site. Photo 3 shows the site looking toward the northeast corner. Photo 4 shows the site looking toward the northwest corner. Photo 5 shows the site looking toward the southeast corner. Photo 6 shows the site looking toward the southwest corner. Photo 7 is looking northwest toward the southeast corner of the site showing the slopes that lack any erosion controls.



Photo 7

Facility: La Jolla del Rey Phase 1
Inspection Date: 12/4/2014



Photo 8



Photo 9

Photos 8 and 9 show two locations along the boundary of the site where there is an obvious lack of perimeter sediment and run-on/runoff controls. Photo 8 also shows evidence of sediment discharged from the site due to lack of erosion and perimeter sediment controls.



Photo 10



Photo 11

Photos 10 and 11 show evidence of sediment discharges from the site due to lack of erosion and perimeter sediment controls. Photo 10 is looking south along the eastern boundary of the site. Photo 11 is looking west along the southern boundary of the site.