



## San Diego Regional Water Quality Control Board

December 4, 2015

Catherine Hagan  
Senior Staff Counsel  
Office of Chief Counsel  
State Water Resources Control Board  
2375 Northside Drive, Suite 100  
San Diego, California 92108-0002  
[chagan@waterboards.ca.gov](mailto:chagan@waterboards.ca.gov)

**In reply refer to: SM-828060:FMelbourn**

### **Evidence and Policy Statements, ACL Complaint No. R9-2015-0110**

In accordance with the Hearing Procedure for Administrative Civil Liability (ACL) Complaint No. R9-2015-0110, issued to San Altos-Lemon Grove, LLC, the Prosecution Team submits the following information:

1. ACL Complaint No. R9-2015-0110, its technical analysis, and all attachments (ACL Complaint package) thereto;<sup>1</sup>
2. United States Postal Service Domestic Return Receipt No. 7011 0470 0002 8952 5263 proving service via certified mail of the ACL Complaint package to Ben C. Anderson, Legally Responsible Person for San Altos-Lemon Grove, LLC, attached and marked as Exhibit No. 30;
3. California Stormwater Quality Association (CASQA) Construction Storm Water Best Management Practice (BMP) EC-1 Scheduling, attached and marked as Exhibit No. 31; and
4. State Water Resources Control Board (State Board), Order No. 2009-0009-DWQ, National Pollutant Discharge Elimination System, General Permit No. CAS000002, Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction and Land Disturbance Activities, as amended. The document is incorporated by reference and can be downloaded from the State Board's website at [http://www.swrcb.ca.gov/water\\_issues/programs/stormwater/constpermits.shtml](http://www.swrcb.ca.gov/water_issues/programs/stormwater/constpermits.shtml).

### **Legal and Technical Arguments or Analysis**

This information was provided with the ACL Complaint package.

<sup>1</sup> The ACL Complaint package was provided to the Advisory Team and San Altos-Lemon Grove, LLC on October 19, 2015.

**Catherine Hagan**  
**Office of Chief Counsel**  
**State Water Resources Control Board**  
**ACL Complaint No. R9-2015-0110**

**Witnesses**

The following people may be used as Prosecution Team witnesses:

<b>Name</b>	<b>Subject</b>	<b>Estimated Testimony Time</b>	<b>Qualifications</b>
Wayne Chiu, San Diego Water Board	Technical and Administrative analysis of San Diego Water Board's regulatory oversight of the site including inspections (12/15/2014, 05/13/2015) and issuance of Notice of Violation No. R9-2014-0153.	5 minutes	Water Resource Control Engineer, Storm Water Management Unit, P.E., <sup>2</sup> M.S. <sup>3</sup>
Chiara Clemente, San Diego Water Board	Administrative analysis of San Diego Water Board's regulatory oversight of the site.	None. Available upon request during ACL Hearing.	Senior Environmental Scientist, Supervisor of the Compliance Assurance Unit.
Jeremy Haas, San Diego Water Board	Administrative analysis of San Diego Water Board's regulatory oversight of the site.	None. Available upon request during ACL Hearing.	Environmental Program Manager and Chief of the Healthy Waters Branch.
Frank Melbourn, San Diego Water Board	Technical and Administrative analysis of San Diego Water Board's regulatory oversight of the site including inspections (05/08/2015 & 05/13/2015, 05/15/2015).	15 minutes	Water Resource Control Engineer, Compliance Assurance Unit, P.E.
Madalene Ransom, State Board	Economic Benefit analysis.	None. Available upon request during ACL Hearing.	Economist
James Smith, San Diego Water Board	Administrative analysis of San Diego Water Board's regulatory oversight of the site.	None. Available upon request during ACL Hearing.	Assistant Executive Officer, Head of the Prosecution Team.

<sup>2</sup> Professional Engineer (P.E.).

<sup>3</sup> Master of Science (M.S.) degree.

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Leon Firsh, City of La Mesa	City of Lemon Grove's enforcement response to non-compliance at the site; including citations (12/11/2014 & 12/15/2014).	None. Available upon request during ACL Hearing.	City of Lemon Grove's Public Works Director and City Engineer until March 24, 2015. P.E.
Gary Harper, City of Lemon Grove	Inspected site and issued Stop Work/Notice of Violations (12/02/2014 & 12/04/2014); Inspections (12/08/2014 & 03/24/2015); Correct Work Notice (12/09/2014); Citations (09/15/2015 & 10/05/2015).	None. Available upon request during ACL Hearing.	Engineering Inspector.
John Draminski, D-Max Engineering, Inc.	Inspected site and wrote report related to site inspection (03/01/2015).	None. Available upon request during ACL Hearing.	Staff Engineer, E.I.T. <sup>4</sup>
Tad Nakatani, D-Max Engineering, Inc.	Inspected site and wrote reports related to site inspections (12/09/2014, 12/11/2014, 12/12/2014, 12/16/2014, 12/17/2014, 12/31/2014, 01/06/2015, 01/14/2015, 03/18/2015, & 09/15/2015).	None. Available upon request during ACL Hearing.	Storm Water Inspector, M.S., CPSWQ, <sup>5</sup> QSD <sup>6</sup> /P <sup>7</sup>
Brian Nemerow, D-Max Engineering, Inc.	Inspected site and wrote report related to site inspection (12/17/2014).	None. Available upon request during ACL Hearing.	Staff Scientist
John Quenzer, D-Max Engineering, Inc.	Inspected site and wrote report related to site inspections (12/12/2014, & 12/31/2014).	None. Available upon request during ACL Hearing.	Senior Project Scientist, M.S., CPSWQ, QSD/P

<sup>4</sup> Engineer In Training (E.I.T.).

<sup>5</sup> Certified Professional in Storm Water Quality (CPSWQ).

<sup>6</sup> Qualified SWPPP (Storm Water Pollution Prevention Plan) Developer (QSD).

<sup>7</sup> Qualified SWPPP Practitioner (QSP).

December 4, 2015

Catherine Hagan  
Office of Chief Counsel  
State Water Resources Control Board  
ACL Complaint No. R9-2015-0110

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In the subject line of any response, please include the requested "**In reply refer to:**" information located in the heading of this letter. For questions pertaining to the subject matter, please contact me at (619) 521-3372 or [fmelbourn@waterboards.ca.gov](mailto:fmelbourn@waterboards.ca.gov).

Respectfully,



FRANK MELBOURN  
Water Resource Control Engineer

Enclosures:

1. Exhibit No. 30: United States Postal Service Domestic Return Receipt No. 7011  
0470 0002 8952 5263
2. Exhibit No. 31: CASQA Construction Storm Water BMP EC-1 Scheduling

cc with attachments:

Ben C. Anderson, San Altos-Lemon Grove, LLC, [kimberlyv@bcadevelopment.com](mailto:kimberlyv@bcadevelopment.com)  
Wayne Chiu, San Diego Water Board, [wchiu@waterboards.ca.gov](mailto:wchiu@waterboards.ca.gov)  
Chiara Clemente, San Diego Water Board, [cclemente@waterboards.ca.gov](mailto:cclemente@waterboards.ca.gov)  
Laura Drabandt, State Water Resources Control Board, [ldrabandt@waterboards.ca.gov](mailto:ldrabandt@waterboards.ca.gov)  
Jeremy Haas, San Diego Water Board, [jhaas@waterboards.ca.gov](mailto:jhaas@waterboards.ca.gov)  
Deborah Jayne, San Diego Water Board, [djayne@waterboards.ca.gov](mailto:djayne@waterboards.ca.gov)  
S. Wayne Rosenbaum, Opper & Varco, LLP, [swr@envirolawyer.com](mailto:swr@envirolawyer.com)  
James Smith, San Diego Water Board, [jsmith@waterboards.ca.gov](mailto:jsmith@waterboards.ca.gov)  
Malik Tamimi, City of Lemon Grove, [mtamimi@lemongrove.ca.gov](mailto:mtamimi@lemongrove.ca.gov)  
Laurie Walsh, San Diego Water Board, [lwalsh@waterboards.ca.gov](mailto:lwalsh@waterboards.ca.gov)

SMARTS:

Place ID: SM-828060  
WDID No: 9 37C369143  
Enforcement ID: 420236

Exhibit No. 30

March 9, 2016

SAN DIEGO  
UNITED STATES POSTAL SERVICE

23 OCT '15

PM 11L

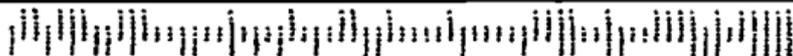
Supporting Document

Item 12  
First-Class Mail  
Postage & Fees Paid  
USPS  
Permit No. G-10

- Sender: Please print your name, address, and ZIP+4 in this box •

SM-828060; FMELBOURN  
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN DIEGO REGION  
SUITE 100  
2375 NORTHSIDE DR.  
SAN DIEGO CA 92108-2700

QH # 2040019



March 9, 2016

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

BEN C. ANDERSON  
 SAN ANTONIO LEMON GROVE, LLC  
 SUITE 225  
 5780 FLEET ST  
 CARLSBAD, CA 92008

U.S. MAIL  
 WATER BOARD  
 CONTROL  
 OCT 25 PM  
 2015

**COMPLETE THIS SECTION ON DELIVERY**

Supporting Document No. 05

A. Signature

*Carolee Washburn*

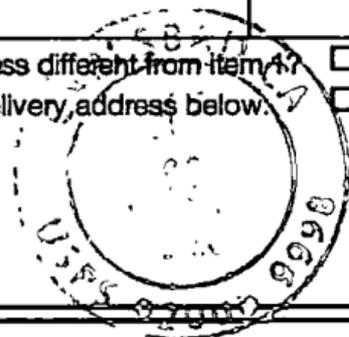
- Agent
- Addressee

B. Received by (Printed Name)

C. Date of Delivery

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- Yes
- No



3. Service Type

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- C.O.D.

4. Restricted Delivery? (Extra Fee)

- Yes

2. Article Number

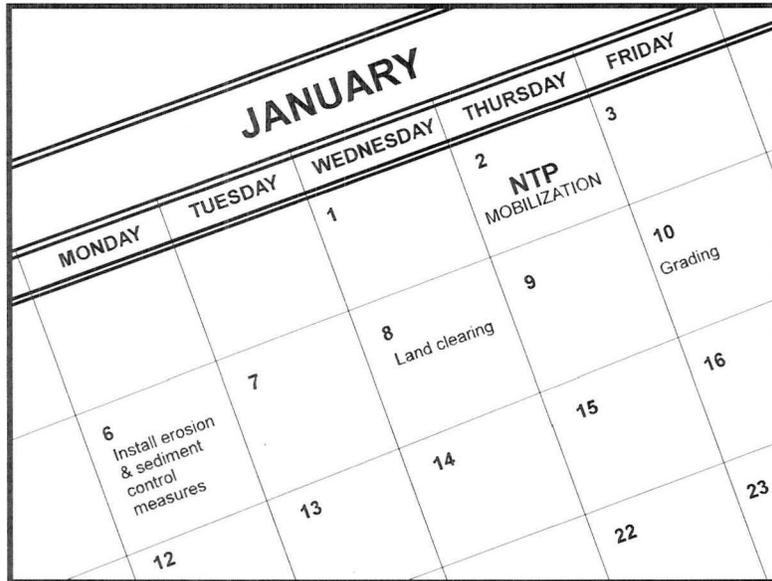
(Transfer from service label)

7011 0470 0002 8952 5263

**Exhibit No. 31**

# Scheduling

# EC-1



### Categories

<b>EC</b>	Erosion Control	<input checked="" type="checkbox"/>
<b>SE</b>	Sediment Control	<input checked="" type="checkbox"/>
<b>TC</b>	Tracking Control	<input checked="" type="checkbox"/>
<b>WE</b>	Wind Erosion Control	<input checked="" type="checkbox"/>
<b>NS</b>	Non-Stormwater Management Control	
<b>WM</b>	Waste Management and Materials Pollution Control	

### Legend:

- Primary Objective
- Secondary Objective

### Targeted Constituents

Sediment	<input checked="" type="checkbox"/>
Nutrients	
Trash	
Metals	
Bacteria	
Oil and Grease	
Organics	

### Potential Alternatives

None

### Description and Purpose

Scheduling is the development of a written plan that includes sequencing of construction activities and the implementation of BMPs such as erosion control and sediment control while taking local climate (rainfall, wind, etc.) into consideration. The purpose is to reduce the amount and duration of soil exposed to erosion by wind, rain, runoff, and vehicle tracking, and to perform the construction activities and control practices in accordance with the planned schedule.

### Suitable Applications

Proper sequencing of construction activities to reduce erosion potential should be incorporated into the schedule of every construction project especially during rainy season. Use of other, more costly yet less effective, erosion and sediment control BMPs may often be reduced through proper construction sequencing.

### Limitations

- Environmental constraints such as nesting season prohibitions reduce the full capabilities of this BMP.

### Implementation

- Avoid rainy periods. Schedule major grading operations during dry months when practical. Allow enough time before rainfall begins to stabilize the soil with vegetation or physical means or to install sediment trapping devices.
- Plan the project and develop a schedule showing each phase



# Scheduling

## EC-1

of construction. Clearly show how the rainy season relates to soil disturbing and re-stabilization activities. Incorporate the construction schedule into the SWPPP.

- Include on the schedule, details on the rainy season implementation and deployment of:
  - Erosion control BMPs
  - Sediment control BMPs
  - Tracking control BMPs
  - Wind erosion control BMPs
  - Non-stormwater BMPs
  - Waste management and materials pollution control BMPs
- Include dates for activities that may require non-stormwater discharges such as dewatering, sawcutting, grinding, drilling, boring, crushing, blasting, painting, hydro-demolition, mortar mixing, pavement cleaning, etc.
- Work out the sequencing and timetable for the start and completion of each item such as site clearing and grubbing, grading, excavation, paving, foundation pouring utilities installation, etc., to minimize the active construction area during the rainy season.
  - Sequence trenching activities so that most open portions are closed before new trenching begins.
  - Incorporate staged seeding and re-vegetation of graded slopes as work progresses.
  - Schedule establishment of permanent vegetation during appropriate planting time for specified vegetation.
- Non-active areas should be stabilized as soon as practical after the cessation of soil disturbing activities or one day prior to the onset of precipitation.
- Monitor the weather forecast for rainfall.
- When rainfall is predicted, adjust the construction schedule to allow the implementation of soil stabilization and sediment treatment controls on all disturbed areas prior to the onset of rain.
- Be prepared year round to deploy erosion control and sediment control BMPs. Erosion may be caused during dry seasons by un-seasonal rainfall, wind, and vehicle tracking. Keep the site stabilized year round, and retain and maintain rainy season sediment trapping devices in operational condition.
- Apply permanent erosion control to areas deemed substantially complete during the project's defined seeding window.

### Costs

Construction scheduling to reduce erosion may increase other construction costs due to reduced economies of scale in performing site grading. The cost effectiveness of scheduling techniques should be compared with the other less effective erosion and sedimentation controls to achieve a cost effective balance.

# Scheduling

**EC-1**

## Inspection and Maintenance

- Verify that work is progressing in accordance with the schedule. If progress deviates, take corrective actions.
- Amend the schedule when changes are warranted.
- Amend the schedule prior to the rainy season to show updated information on the deployment and implementation of construction site BMPs.

## References

Stormwater Quality Handbooks Construction Site Best Management Practices (BMPs) Manual, State of California Department of Transportation (Caltrans), November 2000.

Stormwater Management for Construction Activities Developing Pollution Prevention Plans and Best Management Practices (EPA 832-R-92-005), U.S. Environmental Protection Agency, Office of Water, September 1992.