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4 ATTORNEYS FOR SAN ALTOS – LEMON GROVE, LLC

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

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11 IN THE MATTER OF:) **DECLARATION OF BEN ANDERSON**
12 ADMINISTRATIVE CIVIL LIABILITY COMPLAINT) **IN SUPPORT OF SAN ALTOS –**
13 No. R9-2015-0110) **LEMON GROVE, LLC’S LEGAL AND**
AGAINST SAN ALTOS – LEMON GROVE, LLC) **TECHNICAL ARGUMENTS AND**
14) **ANALYSIS IN OPPOSITION TO**
15) **ADMINISTRATIVE CIVIL LIABILITY**
16) **COMPLAINT NO. R9-2015-0110**
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18 I, Ben Anderson, hereby declare as follows:

19 1. I was a consultant and project manager for San Altos Valencia Hills Project
20 (“Project”). I have a thorough understanding of the Project and know the following of my own
21 personal knowledge. If called as a witness, I could and would competently testify to the matters
22 discussed herein.

23 2. On or about May 12, 2015, I asked to meet with Mr. Chiu so we could discuss
24 whether the RWQCB had any remaining concerns about the Site and to be sure that we could
25 resolve any outstanding issues. Mr. Chiu originally said that he would meet with me. However,
26 he then cancelled that meeting and would not meet with me to discuss the RWQCB’s concerns.
27 A true and correct copy of the email exchange that I had with Mr. Chiu asking for the meeting,
28 and then his cancelling the meeting, is attached to this declaration as “Exhibit A.”

EXHIBIT A

Production8

From: Chiu, Wayne@Waterboards
Sent: Tuesday, May 12, 2015 9:46 AM
To: Ben Anderson (bencanderson@bcadevelopment.com)
Cc: Melbourn, Frank@Waterboards; Clemente, Chiara@Waterboards; Becker, Eric@Waterboards; 'BENANDERSO@aol.com'
Subject: RE: Administrative Civil Liability Complaint for Valencia (WDID 937C369143; SM-828060)

Hi Ben,

A San Diego Water Board inspector went by the site on Friday last week and observed evidence of additional sediment discharges from the site due to inadequate implementation of erosion and sediment control BMPs required for a Risk Level 2 construction site. I'll send you a copy of the inspection report when it is completed.

In light of this new information and evidence of noncompliance, we need to re-evaluate how the San Diego Water Board should proceed with the ACL Complaint. So, at this time I have to withdraw my offer to meet with you to discuss your case. I will contact you when we are ready to discuss the potential next steps for the ACL Complaint for this site.

Thanks,
Wayne Chiu, PE
Water Resource Control Engineer
Storm Water Management Unit
California Regional Water Quality Control Board
San Diego Region
2375 Northside Drive, Suite 100
San Diego, CA 92108
Direct Line: (619) 521-3354
Main Line: (619) 516-1990

From: BENANDERSO@aol.com [mailto:BENANDERSO@aol.com]
Sent: Tuesday, May 12, 2015 7:27 AM
To: Chiu, Wayne@Waterboards
Subject: Administrative Civil Liability Complaint for Valencia (WDID 937C3691...

Hi Wayne-

Hope you got my voice mails on Friday and Monday. I will talk to the rest of the team but let's set June 3rd @ 10:00 AM as the tentative time to meet.

Call me when you get a chance @ 949-233-6700. Thanks.

Ben-

From: bencanderson@bcadevelopment.com
To: benanderson@aol.com
Sent: 5/8/2015 11:21:58 A.M. Pacific Daylight Time
Subj: FW: Administrative Civil Liability Complaint for Valencia (WDID 937C369143; SM-828060)

EXHIBIT 8
REPORTER D. Lytle
WITNESS W. Chiu
DATE 5-14-16

From: Chiu, Wayne@Waterboards [<mailto:Wayne.Chiu@waterboards.ca.gov>]
Sent: Friday, May 08, 2015 9:01 AM
To: Ben Anderson (bencanderson@bcadevelopment.com)
Cc: Becker, Eric@Waterboards; Melbourn, Frank@Waterboards; Clemente, Chiara@Waterboards; Ellison, Kailyn@Waterboards
Subject: Administrative Civil Liability Complaint for Valencia (WDID 937C369143; SM-828060)

Ben,

The San Diego Water Board is prepared to issue an Administrative Civil Liability (ACL) Complaint (i.e. monetary penalties) for violations at the Valencia housing development construction site in Lemon Grove. I think it would make sense for us to meet and discuss this matter prior to issuing the ACL Complaint. An hour should be sufficient. I am available to meet at my office on the following dates and times:

May 28 at 1:30 p.m.

June 1 at 10 a.m. or 1:30 p.m.

June 3 at 10 a.m. or 1:30 p.m.

Please let me know which date and time works best for you.

Thanks,

Wayne Chiu, PE
Water Resource Control Engineer
Storm Water Management Unit
California Regional Water Quality Control Board
San Diego Region
2375 Northside Drive, Suite 100

San Diego, CA 92108

Direct Line: (619) 521-3354

Main Line: (619) 516-1990

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EXHIBIT B

January 1, 2015

Mr. Wayne Chiu

California Regional Water Quality Control Board, San Diego Region

Storm Water Management Unit

2375 Northside Drive

San Diego, CA 92108

SanDiego@waterboards.ca.gov

Subject: PIN: SM-828060:wchiu

Mr. Chiu:

This letter will serve as San Altos-Lemon Grove, LLC's ("LLC") response to the Notice of Violation No. R9-2014-0153 issued by the San Diego Water Board on December 19, 2014. The LLC takes its responsibilities under Order No. 2009-0009-DWR seriously and has made a determined effort to correct any deficiencies at the construction site and employ the most effective Best Management Practices available. We have employed three different contractors with over 1,400 man hours including Saturdays and Sundays, associated BMP equipment and material and management for the project. To date the costs exceed \$ 60,000 in an effort to remedy deficiencies on the site since the rain events in early December. While we understand that money spent is not a measure of effective compliance it is meant to demonstrate that the effort has been sincere and not cosmetic. We will address each of the violations noted and pictures are attached to this document illustrating our response to each of the violations listed. Additionally, QSP Weekly, Pre-Storm Event, During Storm Event, and Post-Storm Event reports from December 18, 2014 through December 31, 2014 are attached.

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.

Observation: On December 4, 2014, the San Diego Water Board inspected the Valencia construction site (WDID 937C369143). San Altos Lemon Grove LLC is the Legally Responsible Person (LRP) enrolled under the Construction General Permit (CGP) for the site. On December 4 and 11, 2014, the City of Lemon Grove documented unauthorized discharges of sediment and sediment-laden storm water from the site due to inadequate implementation of best management practices (BMPs). On December 15, 2014, the San Diego Water Board inspector observed evidence of sediment discharged from the site due to inadequate and ineffective implementation of BMPs, constituting an unauthorized discharge of sediment from the site. See attached December 15, 2014 Facility Inspection Report Photos 9 through 12 and Attachments.

Response: We repaired and supplemented the perimeter silt fence and gravel bags on the southern and eastern perimeters. Additionally, we have

implemented additional gravel bags crossing graded streets at the project entries providing additional containment. Lastly, we have stockpiled straw wadde and gravel bags at the entries for pre rain staging.

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 15, 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 15, 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 through 14.

Response: See response to No. 1. Erosion control measures have been enhanced by additional berming and gravel bagging in all streets prior to rain events. Run-on and runoff controls are addressed with the response to violation No. 9.

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

- a. Pursuant to Provision X and Section B.1.a of Attachment D of State Water Board Order No. 2009-0009-DWQ:** Risk Level 2 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 X and Section B.2.f of Attachment D of State Water Board Order No. 2009-0009-DWQ:** Risk Level 2 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 15, 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 15, 2014 Facility Inspection Report Photo 1.

Response: All existing covered stockpiles were enhanced with the straw waddle and gravel bags at the perimeter of the stockpiles.

4. Failure to Implement Good Site Management "Housekeeping" BMPs for Vehicle Storage and Maintenance:

- a. **Pursuant to Provision X and Section B.3.a of Attachment D of State Water Board Order No. 2009-0009-DWQ:** Risk Level 2 dischargers are required to prevent oil, grease, or fuel to leak in to the ground, storm drains or surface waters.
- b. **Pursuant to Provision X and Section B.3.b of Attachment D of State Water Board Order No. 2009-0009-DWQ:** Risk Level 2 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 15, 2014 inspection, the San Diego Water Board inspector observed several construction 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 Photos 2 and 3.

Response: Owner met with all contractors immediately after December 15, 2014 on site meeting. Contractors were notified that under no circumstances that equipment may be parked drain pans. Contractors are now required to park in identified specific areas provided by project management. Project management providing daily inspection regarding drain pans.

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

- a. **Pursuant to Provision X and Section D.2 of Attachment D of State Water Board Order No. 2009-0009-DWQ:** Risk Level 2 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 15, 2014 inspection, the San Diego Water Board inspector observed several completed building pads 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 15, 2014 Facility Inspection Report Photos 4 through 7.

Response: Rills have been repaired in active and in active areas. Straw waddle has been installed in areas where required or necessary. Active and inactive areas were hydro seeded where necessary. Silt fencing and gravel bagging of inactive areas or completed lots has been implemented and will be ongoing when areas become inactive.

6. Failure to Implement Adequate Perimeter Sediment Controls:

a. **Pursuant to Provision X and Section E.1 of Attachment D of State Water Board Order No. 2009-0009-DWQ:** Risk Level 2 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 15, 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 15, 2014 Facility Inspection Report Photos 9 through 14.

Response: See responses to No. 1 and No. 9.

7. Failure to Implement Adequate Erosion Controls for Active Areas:

a. **Pursuant to Provision X and Section E.3 of Attachment D of State Water Board Order No. 2009-0009-DWQ:** Risk Level 2 dischargers shall implement appropriate erosion control BMPs (runoff control and soil stabilization) in conjunction with sediment control BMPs for areas under active construction.

b. **Observation:** During the December 15, 2014 inspection, the San Diego Water Board inspector observed several active areas of the site that did not have appropriate erosion control BMPs in place or ready to be deployed. See attached December 15, 2014 Facility Inspection Report Finding 4 and Photo 8.

Response: See response to No. 5. Additionally, deployment of straw waddle and gravel bags has been placed in strategic areas in the project ready for deployment prior to rain events.

8. Failure to Implement Adequate Linear Sediment Controls for Exposed Slopes:

a. **Pursuant to Provision X and Section E.4 of Attachment D of State Water Board Order No. 2009-0009-DWQ:** Risk Level 2 dischargers shall apply linear sediment controls along the toe of the slope, face of the slope, and at the grade breaks of exposed slopes to comply with sheet flow lengths in accordance with Table 1.

b. **Observation:** During the December 15, 2014 inspection, the San Diego Water Board inspector observed several slopes throughout the site without linear sediment controls along the toe and grade breaks of exposed slopes. See attached December 15, 2014 Facility Inspection Report Photos 4 through 7.

Response: See response to No. 5. Additional silt fencing, straw waddle, and gravel bags are being implemented as active areas become inactive.

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

a. **Pursuant to Provision X and Section F of Attachment D of State Water Board Order No. 2009-0009-DWQ:** Risk Level 2 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 15, 2014 inspection, the San Diego Water Board inspector observed a lack of effective runoff controls within the site, and at several areas around the site where perimeter controls were not established or maintained to prevent run-on to and runoff from the site, resulting in sediment being allowed to be discharged in runoff from the site. See attached December 15, 2014 Facility Inspection Report Photos 8 through 14.

Response: See response No. 1. Specifically, improved run-on and runoff controls were installed San Altos entry, Akins entry, and 69th Street & Broadway locations.

If you have any question regarding our response please contact me.

Sincerely;



Ben C. Anderson

for San Altos Lemon Grove, LLC

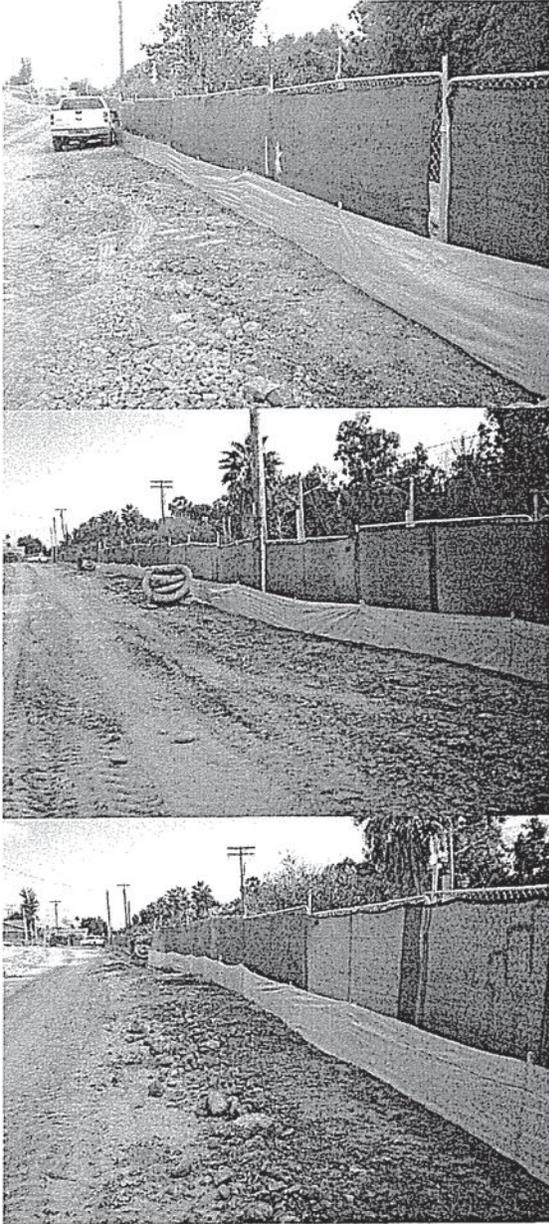


1: Failure to Comply with Discharge Prohibitions for Construction Activities

2: Failure to Comply with Effluent Limitations for Construction Activities

6: Failure to Implement Adequate Perimeter Sediment Controls

These photos show the implementation of perimeter sediment controls and run-on/runoff controls to prevent discharges of sediment from the site.





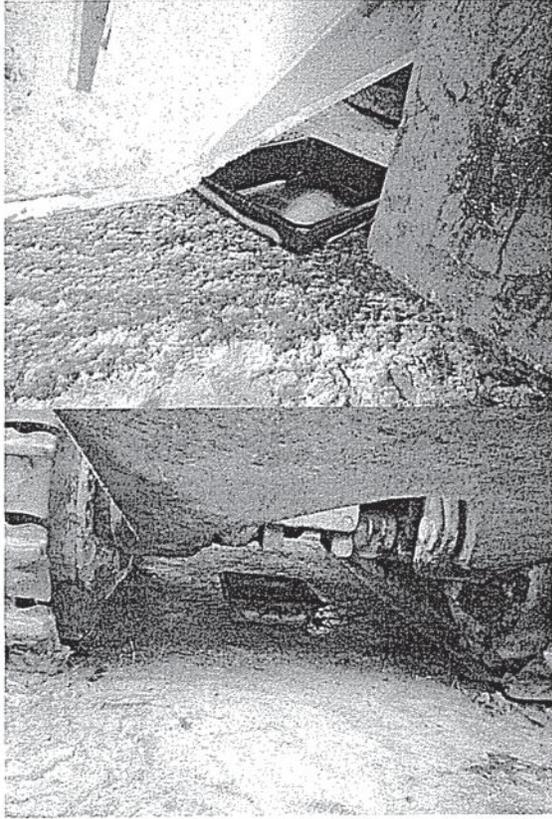
3: Soil Stockpiles

These photos show material stockpiles with cover, berm, or containment to prevent erosion and sediment transport



4: BMP's for Vehicle Storage and Maintenance

Photos with vehicles stored with appropriate BMP's



5: Erosion Control for Inactive Areas

Photos of completed pads or slopes with effective soil cover or other BMP's to prevent erosion



7: Failure to Implement Adequate Controls for Active Areas

Photos of active areas with appropriate erosion control BMP's in place or ready to be deployed



