

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

In the matter of:

**San Altos-Lemon Grove, LLC
Valencia Hills Construction Site
San Diego County**

**COMPLAINT NO. R9-2015-0110
FOR
ADMINISTRATIVE CIVIL LIABILITY**

**Noncompliance with
Order No. 2009-0009-DWQ,
Water Code § 13376,
Water Quality Control Plan for the
San Diego Basin, and
Clean Water Act § 301**

PIN: SM-828060

October 19, 2015

SAN ALTOS-LEMON GROVE, LLC IS HEREBY GIVEN NOTICE THAT:

1. San Altos-Lemon Grove, LLC (Discharger) has violated provisions of law for which the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) may impose civil liability pursuant to Water Code section 13385.
2. This Administrative Civil Liability Complaint is issued under authority of Water Code section 13323.
3. The Discharger is constructing Valencia Hills, a single family detached home community of 78 homes on 18.26 acres (Site). The Site is located at 1350 San Altos Place, in the southwest corner of the City of Lemon Grove, County of San Diego, California.
4. The Discharger is the property owner. Ben C. Anderson is the contact and the "Legally Responsible Person" (LRP) for the Discharger.
5. On March 6, 2014, Ben C. Anderson, on behalf of the Discharger filed a Notice of Intent (NOI) to comply with California State Water Resources Control Board (State Water Board) Order No. 2009-0009-DWQ, as amended by Order Nos. 2010-0014-DWQ and 2012-0006-DWQ, *National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities* (Construction Storm Water Permit).

6. The Discharger stated in the NOI that construction activities would begin at the Site on March 1, 2014, and end on December 31, 2015. Additionally, the Discharger stated in the NOI that the Site is a Risk Level 2 construction site; thus acknowledging that the Discharger must implement the requirements in Attachment D to the Construction Storm Water Permit to achieve Best Available Technology Economically Achievable (BAT) and Best Conventional Pollutant Control Technology (BCT). On March 12, 2014, the State Water Board processed the NOI and assigned Waste Discharge Identification (WDID) No. 9 37C369143 to the Site.
7. Construction Storm Water Permit section V.A.2. requires the implementation of best management practices (BMPs), using best available technology economically achievable (BAT) and best conventional pollutant control technology (BCT) to reduce pollution from storm water runoff from construction sites.
8. On December 12, 2014, the City of Lemon Grove (City) requested the San Diego Water Board's assistance in obtaining regulatory compliance at the Site after documenting the Discharger's second sediment discharge. By this time, the City had inspected the Site at least seven times; resulting in two administrative citations, three stop work notices, and one correct work notice. San Diego Water Board staff inspected the Site on December 15, 2014. Based upon the results of the inspection and previous inspections by the City, the San Diego Water Board issued Notice of Violation No. R9-2014-0153 on December 19, 2014, to the Discharger.
9. The City provided its Site inspection reports and enforcement documents to the San Diego Water Board for the following days: August 14, 2014; December 2, 2014; December 4, 2014; December 8, 2014; December 9, 2014; December 11, 2014; December 12, 2014; December 15, 2014; December 16, 2014; December 17, 2014; December 23, 2014; December 24, 2014; December 29, 2014; December 31, 2014; January 6, 2015; January 14, 2015; January 19, 2015; March 1, 2015; March 5, 2015; March 18, 2015; March 24, 2015; April 1, 2015; September 15, 2015; and October 5, 2015.
10. The City issued administrative citations to the Discharger on the following dates: December 11, 2014; December 15, 2014; December 16, 2014; March 19, 2015 (2 citations); March 24, 2015; April 1, 2015; September 22, 2015; and October 5, 2015.
11. The San Diego Water Board inspected the Site on the following days: December 15, 2014; May 8, 2015; May 13, 2015; and May 15, 2015.

12. The Site lies within the Chollas Hydrologic Subarea (HSA) (908.22) of the Pueblo San Diego Hydrologic Unit. Storm water discharges from the Site flow directly into Encanto Channel and thence Chollas Creek.
13. The Water Quality Control Plan for the San Diego Basin (Basin Plan) designates the following beneficial uses for Chollas Creek and its tributaries:
 1. Contact Water Recreation (REC-1);
 2. Non-contact Water Recreation (REC-2);
 3. Warm Freshwater Habitat (WARM); and
 4. Wildlife Habitat (WILD).
14. Chollas Creek is designated as impaired for diazinon, dissolved metals (copper, lead, and zinc), indicator bacteria, nutrients (phosphorus and nitrogen), and trash pursuant to Clean Water Act section 303(d).

ALLEGED VIOLATIONS

15. **Violation No. 1:** The Discharger violated Water Code section 13376; Construction Storm Water Permit Discharge Prohibitions III.A. and III.B., section V.A.2. and Attachment D section A.1.b; Basin Plan Waste Discharge Prohibition No. 8; and the Federal Water Pollution Control Act (Clean Water Act) (33 U.S.C. § 1251 et seq.) section 301 (33 U.S.C. § 1311) by discharging sediment laden storm water from the Site into Encanto Channel and thence Chollas Creek on the following six days: December 4, 2014; December 12, 2014; December 17, 2014; December 31, 2014; May 8, 2015, and September 15, 2015.
16. **Violation No. 2:** The Discharger violated Construction Storm Water Permit Attachment D, section B.1.b. by failing to implement material stockpile BMPs at the Site on the following 10 days: December 2 through 8, 2014; December 15, 2014; May 13, 2015; and September 15, 2015.
17. **Violation No. 3:** The Discharger violated Construction Storm Water Permit Attachment D, section B.3.a. by failing to implement vehicle fluid leak BMPs at the Site on the following two days: December 15, 2014; and May 13, 2015.
18. **Violation No. 4:** The Discharger violated Construction Storm Water Permit Attachment D, section D.2. by failing to implement erosion control BMPs in inactive areas at the Site on the following 22 days: December 1 through 9, 2014; December 15 through 16, 2014; January 6, 2015; January 14, 2015; May 8 through 15, 2015; and September 15, 2015.

19. **Violation No. 5:** The Discharger violated Construction Storm Water Permit Attachment D, section E.1. by failing to implement perimeter sediment control BMPs at the Site on the following 14 days: December 4 through 8, 2014; December 15 through 16, 2014; May 8 through 13, 2015; and September 15, 2015.
20. **Violation No. 6:** The Discharger violated Construction Storm Water Permit Attachment D, section E.3. by failing to implement erosion control BMPs in active areas at the Site on the following 22 days: December 1 through 8, 2014; December 15 – 16, 2014; January 6, 2015; March 23 through 24, 2015; May 8 through 15, 2015; and September 15, 2015.
21. **Violation No. 7:** The Discharger violated Construction Storm Water Permit Risk Attachment D, section E.4. by failing to apply linear sediment controls at the Site on the following nine days: December 15 through 16, 2014; May 8 through 13, 2015; and September 15, 2015.
22. **Violation No. 8:** The Discharger violated Construction Storm Water Permit Attachment D, section F. by failing to effectively manage run-on and runoff at the Site on the following seven days: December 15, 2014; and May 8 through 13, 2015.
23. **Violation No. 9:** The Discharger violated Construction Storm Water Permit Attachment D, section E.7. by failing to remove sediment or other construction materials from roads at the Site on the following 10 days: December 2 through 9, 2014; December 16, 2014; and September 15, 2015.
24. **Violation No. 10:** The Discharger violated Construction Storm Water Permit Attachment D, section E.6. by failing to protect storm drain inlets at the Site on the following three days: December 8, 2014; May 13, 2015; and September 15, 2015.
25. **Violation No. 11:** The Discharger violated Construction Storm Water Permit Attachment D, section B.2.f. by failing to contain and securely protect stockpiles waste material from wind and rain at the Site on the following nine days: January 6 through 14, 2015.
26. **Violation No. 12:** The Discharger violated Construction Storm Water Permit Attachment D, section B.1.c. by failing to properly store chemicals at the Site on the following seven days: March 18 through 24, 2015.

27. **Violation No. 13:** The Discharger violated Construction Storm Water Permit Attachment D, section B.2.i. by failing to prevent the discharge of concrete waste to the ground at the Site on the following 15 days: March 18 through April 1, 2015.
28. The details of these violations are set forth in full in the accompanying Technical Analysis, which is incorporated herein by this reference as if set forth in full.

MAXIMUM LIABILITY

29. Pursuant to Water Code section 13385(a), a person who violates either Water Code section 13376, a waste discharge requirement, a basin plan prohibition, or a requirement of section 301 of the federal Clean Water Act is subject to administrative civil liability pursuant to Water Code section 13385(c)

...in an amount not to exceed the sum of both of the following:

(1) Ten thousand dollars (\$10,000) for each day in which the violation occurs.

(2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

30. Due to the difficulty in accurately determining the volume of sediment laden storm water discharged during the discharge events, civil liability was only calculated on a per day basis for the discharge violations. Therefore, the maximum liability that the San Diego Water Board may assess for the alleged violations listed above is \$1,360,000 pursuant to Water Code section 13385(c).

MINIMUM LIABILITY

31. Water Code section 13385(e) requires that when pursuing civil liability under section 13385, "[a]t a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation." The State Water Board Enforcement Policy (Enforcement Policy) further instructs the Regional Water Boards to assess liability against a violator at least ten percent higher than the economic benefit realized from the violation, such that liabilities are not construed as the cost of doing business and provide a meaningful deterrent to future violators.

32. As detailed in the attached Technical Analysis, and based on a calculated economic benefit of \$29,923, the minimum liability amount the San Diego Water Board may assess the Discharger is \$32,915.

PROPOSED LIABILITY

33. Pursuant to Water Code section 13385(e), in determining the amount of any civil liability, the San Diego Water Board shall consider the nature, circumstances, extent, and gravity of the violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge; and with respect to the Discharger, the ability to pay, the effect on the Discharger's ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violations, and other matters as justice may require.
34. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing a civil liability as outlined in Water Code section 13385(e). The required factors have been considered for the violations alleged herein using the methodology in the Enforcement Policy, as explained in detail in the Technical Analysis and summarized in Technical Analysis Exhibit No. 27, Penalty Methodology Summary.
35. Based on consideration of the above facts, the applicable law, and after applying the penalty calculation methodology in section VI of the Enforcement Policy, the Prosecution Team recommends that the San Diego Water Board impose civil liability against the Discharger in the amount of \$848,374 for the violations alleged herein and set forth in full in the accompanying Technical Analysis. The assessed amount includes \$15,763 for 212.5 hours of San Diego Water Board staff time to investigate and prepare the enforcement documents. Should this matter proceed to hearing, the San Diego Water Board may choose to increase the recommended liability to recover additional necessary staff costs accrued after this Complaint is issued and through the hearing.



JAMES G. SMITH
Assistant Executive Officer

Signed pursuant to the authority delegated by the Executive Officer to the Assistant Executive Officer.

Attachment: Technical Analysis

SMARTS:

Place ID: SM-828060

Violation IDs: 855345, 855346, 857231, 857232, 857243, and 857267

WDID No: 9 37C369143

Enforcement ID: 420236

