



GAVIN NEWSOM  
GOVERNOR



JARED BLUMENFELD  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

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## Santa Ana Regional Water Quality Control Board

March 8, 2022

Jim Guthrie  
AFG Development LLC  
PO Box 52049  
Riverside, California 92517  
(Via USPS Mail)  
Jim Guthrie  
jim@guthriecompanies.com  
(Via Email)

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**  
7021 0350 0000 8132 5713

Agent for Service of Process for AFG Development LLC  
Jim D Guthrie  
1451 Research Park Drive, Suite 200  
Riverside, CA 92507  
(Via Certified Mail)

**SETTLEMENT OFFER NO. R8-2022-0032: OFFER TO PARTICIPATE IN EXPEDITED PAYMENT PROGRAM RELATING TO VIOLATIONS OF THE GENERAL PERMIT FOR STORM WATER DISCHARGES ASSOCIATED WITH CONSTRUCTION AND LAND DISTURBANCE ACTIVITIES, ORDER NO. 2009-0009-DWQ AS AMENDED BY ORDER NO. 2010-0014-DWQ AS AMENDED BY ORDER NO. 2012-0006-DWQ, NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM NPDES NO. CAS000002, FOR AFG DEVELOPMENT LLC, EAST OF NORTH ORANGE AND NORTH OF HIGHWAY 60, RIVERSIDE-OFFSITE, WDID NO. 8 33C393223**

Dear Mr. Guthrie:

This letter is to notify AFG Development LLC (hereinafter "Discharger" or "you") of alleged violations of the California Water Code (Water Code) identified in the State Water Resources Control Board's water quality data system, and to allow the Discharger to participate in the Santa Ana Regional Water Quality Control Board's (Santa Ana Water Board) Expedited Payment Program for Reporting Violations to address mandatory minimum penalties that must be assessed pursuant to Water Code section 13399.31.

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KRISTINE MURRAY, CHAIR | JAYNE JOY, EXECUTIVE OFFICER

## **NOTICE OF VIOLATION:**

Based on information in the Storm Water Multiple Application & Report Tracking System (SMARTS), the Santa Ana Water Board alleges that the Discharger is in violation of the General Permit associated with Construction and Land Disturbance Activities, Order No. 2009-0009-DWQ as Amended by Order No. 2010-0014-DWQ as Amended by Order No. 2012-0006-DWQ (Construction General Permit), for failure to submit the 2020-2021 Annual Report for the construction site/project located at East of North Orange and North of Highway 60 in the City of Riverside. The Annual Report was due to the Santa Ana Water Board by September 1, 2021, as required by Section XVI.A of the Construction General Permit. Notices of Non-Compliance (NNCs) were issued on November 23, 2021 and January 13, 2022, requesting that the construction site's late Annual Report be submitted by January 24, 2022. The 2020-2021 Annual Report has still not been submitted. The Discharger will have the opportunity to address the alleged violations as discussed below.

## **STATUTORY LIABILITY:**

Pursuant to Water Code section 13399.33(c)-(d), the Discharger is subject to a minimum penalty of not less than one thousand dollars (\$1,000) plus staff costs for failing to submit the required Annual Report within sixty (60) days after the first NNC was sent in accordance with Water Code section 13399.31. The Discharger is also subject to discretionary administrative civil liabilities of up to ten thousand dollars (\$10,000) for each day in which the violation occurs. These minimum and discretionary administrative civil liabilities may be assessed by the Santa Ana Water Board beginning with the date that the violations first occurred. The formal enforcement action that the Santa Ana Water Board uses to assess such liability is an administrative civil liability complaint, although the Santa Ana Water Board may instead refer such matters to the Office of the Attorney General for prosecution. If referred to the Attorney General for prosecution, the Superior Court may assess up to twenty-five thousand dollars (\$25,000) per violation.

## **DISCHARGER'S OPTIONS TO RESPONSE TO OFFER:**

You have two options to respond as outlined below.

1. **Accept the Expedited Payment Program offer** by complying with the Order and agreeing to pay a settlement of **one thousand, nine hundred, sixty-eight dollars (\$1,968)**. The minimum administrative civil liability pursuant to California Water Code section 13399.33(c) is \$1,000 per year of noncompliance or fraction thereof. Staff costs in this matter are \$968. This is a Conditional Offer subject to certain terms and conditions set forth below. If you choose this option, **you must sign and submit the enclosed Acceptance and Waiver form by April 7, 2022**. The form provides submittal instructions. Final closure on this action is only possible after ultimate submission of the settlement amount.

Please submit an original (blue ink) signed Acceptance and Wavier form to:

In response to the Conditional Offer and payment in settlement of this enforcement action, the Santa Ana Water Board will forego issuance of a formal administrative complaint, will not refer the violation to the Attorney General, and will waive its right to seek additional discretionary civil liabilities for the violations identified in the NNCs.

2. **Contest the non-filing violation** by submitting, in writing, the basis of your challenge with supporting evidence. For example, you may have evidence that you previously submitted your Annual Report, or you were not in business during the reporting period. If you choose this option, you must **submit your written documentation by April 7, 2022**. We will review your submission, and if we agree with you, we will notify you in writing that you are no longer considered in violation of the permit and that our enforcement action has been terminated. All responses should be directed to Keith Elliott.

If you do not respond in a manner described in the above options, the Santa Ana Water Board will prepare an administrative civil liability complaint for the violations cited in the NNCs. The liability amount sought in the administrative civil liability complaint and/or imposed by the Santa Ana Water Board may be higher than the liability amount set forth in this Conditional Offer. Moreover, additional staff costs associated with formal enforcement may be considered in the recommended liability amount in an administrative civil liability complaint.

#### **CONDITIONS FOR SANTA ANA WATER BOARD ACCEPTANCE OF RESOLUTION:**

If you accept the Expedited Payment Program offer, the settlement will be published in the following manner:

Federal regulations require the Santa Ana Water Board to publish notice of, and to provide at least thirty (30) days for public comment on, any settlement of an enforcement action addressing NPDES permit violations (40 C.F.R. section 123.27(d)(2)(iii)). Upon receipt of the Discharger's Acceptance and Waiver and other requested technical reports on or before **April 7, 2022**, Santa Ana Water Board staff will publish a notice of the proposed resolution of the alleged violations.

If no comments are received within the notice period, the Santa Ana Water Board Executive Officer will execute the Acceptance and Waiver as a stipulated order assessing the uncontested penalty amount pursuant to Water Code section 13399.33. You will then be notified that payment is due within 30 days. Failure to pay the penalty within that time frame may result in further liability, referral of the matter to the Attorney General, and/or may void the offer to participate in this Expedited Payment Program.

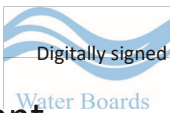
If, however, significant comments are received in opposition to the settlement, this offer may be withdrawn. In that case, the Discharger's waiver pursuant to the Acceptance and Waiver will also be treated as withdrawn, and the violations will be addressed through a formal enforcement action.

This Expedited Payment Program offer does not address or resolve liability for any violation that is not specifically identified in the attached NNCs. The Santa Ana Water Board reserves the right to pursue formal enforcement of any violations not specifically cited in the attached NNCs.

Should you have any questions about this Expedited Payment Program, please contact Keith Elliott via email at [keith.elliott@waterboards.ca.gov](mailto:keith.elliott@waterboards.ca.gov) regarding this matter.

Sincerely,

Ann E.



Sturdivant

Date: 2022.03.08 10:41:04 -08'00'

Ann Sturdivant, PG, CEG, CHG  
Assistant Executive Officer

Enclosures:

Notice of Non-Compliance, dated November 23, 2021

Notice of Non-Compliance, dated January 13, 2022

Acceptance of Conditional Resolution and Waiver of Right to Hearing; (proposed)  
Order

cc: LRP Jim Guthrie, [jim@guthriecompanies.com](mailto:jim@guthriecompanies.com)  
Michael Roberts, Riverside NPDES Coordinator [mdroberts@riversideca.gov](mailto:mdroberts@riversideca.gov)

# **First Notice of Noncompliance**



GAVIN NEWSOM  
GOVERNOR



JARED BLUMENFELD  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

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## Santa Ana Regional Water Quality Control Board

November 23, 2021

Jim Guthrie  
AFG Development LLC  
PO Box 52049  
Riverside, California 92517

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

**Notice of Noncompliance: Failure to Comply with the General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order No. 2009-0009-DWQ, NPDES NO. CAS000002 (General Permit), WDID No. 8 33C393223**

Dear Jim:

Regional Board records indicate that AFG Development LLC is operating a construction site identified as The Exchange Offsite Improvements, located at Main Street Off Ramp WB SR60, in the City of Riverside. This site is identified in our records by WDID: 8 33C393223. Section XVI.A of the Construction General Permit requires that an Annual Report be submitted by September 1<sup>st</sup> of each year via the online SMARTS database.

Over 90% of regulated facilities comply with this requirement. Our records show that your annual report for the July 1, 2020, to June 30, 2021 reporting period is one of the few that have not been submitted. We request that you submit a complete 2020-2021 Annual Report via the online SMARTS database no later than **December 27, 2021**.

**The online SMARTS database is available at: <https://smarts.waterboards.ca.gov>**

The following links are to assist you with the online SMARTS database system:

Main page for the SMARTS guides:

[https://www.waterboards.ca.gov/water\\_issues/programs/stormwater/smarts/construction/const\\_help\\_guides.html](https://www.waterboards.ca.gov/water_issues/programs/stormwater/smarts/construction/const_help_guides.html)

How to submit an Annual Report guide:

[https://www.waterboards.ca.gov/water\\_issues/programs/stormwater/smarts/construction/docs/cgp\\_ar\\_helpguide.pdf](https://www.waterboards.ca.gov/water_issues/programs/stormwater/smarts/construction/docs/cgp_ar_helpguide.pdf)

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LANA ONG PETERSON, CHAIR | JAYNE JOY, EXECUTIVE OFFICER

3737 Main St., Suite 500, Riverside, CA 92501 | [www.waterboards.ca.gov/santaana](http://www.waterboards.ca.gov/santaana)

You must also provide a statement along with the Annual Report as an Attachment. The statement must explain why the Annual Report was not submitted by the September 1st deadline and the measures you have taken to ensure timely submittals in the future.

Failure to submit the 2020-2021 Annual Report via the online SMARTS database may result in an enforcement action, including civil monetary penalties of up to \$10,000 for each day of violation. Please note that Section 13399.33 of the California Water Code stipulates a minimum penalty of \$1,000 to those permittees that do not submit their annual reports after notification.

Should you need assistance in completing the Annual Report or have any questions relating to SMARTS, please contact the SMARTS Helpdesk at [stormwater@waterboards.ca.gov](mailto:stormwater@waterboards.ca.gov); or Keith Elliott at [keith.elliott@waterboards.ca.gov](mailto:keith.elliott@waterboards.ca.gov) or 951-782-4925.

Sincerely,



Adam Fischer, Chief  
Inland Stormwater Unit

7016 2070 0000 6806 0339

U.S. Postal Service™	
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Domestic Mail Only	
For delivery information, visit our website at <a href="http://www.usps.com">www.usps.com</a> ®.	
<b>OFFICIAL USE</b>	
Certified Mail Fee	\$ _____
Extra Services & Fees (check box, add fee as appropriate)	
<input type="checkbox"/> Return Receipt (hardcopy)	\$ _____
<input type="checkbox"/> Return Receipt (electronic)	\$ _____
<input type="checkbox"/> Certified Mail Restricted Delivery	\$ _____
<input type="checkbox"/> Adult Signature Required	\$ _____
<input type="checkbox"/> Adult Signature Restricted Delivery	\$ _____
Postage	\$ _____
Total	\$ _____
Sent to: Jim Guthrie	
AFG Development LLC	
PO Box 52049	
Riverside, California 92517	
WDID No: 8 33C393223	
City: _____	
PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions	

Postmark Here

# USPS Tracking®

## Track Another Package

Remove

**Tracking Number:** 70162070000068060339

Your item was picked up at the post office at 12:49 pm on November 27, 2021 in RIVERSIDE, CA 92507.

### USPS Tracking Plus™ Available

Delivered, Individual Picked Up at Post Office  
November 27, 2021 at 12:49 pm  
RIVERSIDE, CA 92507

### Get Updates

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### Text & Email Updates

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### Tracking History

November 27, 2021 2:49 pm  
Delivered, Individual Picked Up at Post Office RIVERSIDE, CA 92507  
Your item was picked up at the post office at 12:49 pm on November 27, 2021 in RIVERSIDE, CA 92507.

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November 26 2021 0 50 am Available for Pickup RIVERSIDE, CA 92507

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<https://tools.usps.com/go/TrackConfirmAction?tRef=fullpage&tLc=2&text28777=&tLabels=70162070000068060339%2C1/2>



1/11/22, 5:25 PM  
November 26 2021

USPS.com® - USPS Tracking® Results  
53 am Arrived at Post Office RIVERSIDE, CA 92507

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November 25, 2021  
In Transit to Next Facility

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12 59 pm Arrived at USPS Regional Facility  
MORENO VALLEY CA DISTRIBUTION CENTER

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November 23, 2021, 10:50 pm Departed USPS Regional Facility  
SAN BERNARDINO CA DISTRIBUTION CENTER

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November 23, 2021, 3pm Arrived at USPS Regional Facility  
SAN BERNARDINO CA DISTRIBUTION CENTER

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**USPS Tracking Plus™**

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**Product Information**

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**See Less**

Can't find what you're looking for?  
Go to our FAQs section to find answers to your tracking questions.

**FAQs**

# **Second Notice of Noncompliance**



GAVIN NEWSOM  
GOVERNOR



JARED BLUMENFELD  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

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## Santa Ana Regional Water Quality Control Board

January 13, 2022

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Jim Guthrie  
AFG Development LLC  
PO Box 52049  
Riverside, California 92517

**FINAL NOTICE OF NON-COMPLIANCE - GENERAL PERMIT FOR STORM WATER DISCHARGES ASSOCIATED WITH CONSTRUCTION AND LAND DISTURBANCE ACTIVITIES, ORDER NO. 2009-0009-DWQ, NPDES NO. CAS000002 WDID NO. 8 33C393223**

Dear Jim:

Regional Board records indicate that AFG Development LLC is operating a construction site identified as The Exchange Offsite Improvements, located at Main Street Off Ramp Westbound SR60 in the City of Riverside. This site is regulated under the Construction General Permit and is identified by WDID 8 33C393223- Application ID:533291. Section XVI.A. of the General Permit requires that an Annual Report be submitted by September 1st each year via the online SMARTS database.

The first Notice of Non-compliance (NNC) was sent to you on November 23, 2021. In the November 23, 2021 NNC, we requested that you submit the 2020-21 Annual Report via the online SMARTS database no later than December 27, 2021.

Our records show that AFG Development LLC's annual report for the July 1, 2020 to June 30, 2021 reporting period was not submitted by September 1, 2021. AFG Development LLC is consequently in violation of Section XVI.A. of the General Permit for failure to submit a complete 2020-2021 Annual Report. AFG Development LLC has also not submitted the late annual report by December 27, 2021 as requested in the November 23, 2021 NNC.

**The online SMARTS database is available at:**

<https://smarts.waterboards.ca.gov>

The following link may assist you with submitting the Annual Report and if applicable, a Notice of Termination:

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KRISTINE MURRAY, ACTING CHAIR | JAYNE JOY, EXECUTIVE OFFICER

[https://www.waterboards.ca.gov/water\\_issues/programs/stormwater/smarts/construction/const\\_help\\_guides.shtml](https://www.waterboards.ca.gov/water_issues/programs/stormwater/smarts/construction/const_help_guides.shtml)

Please submit the annual report via SMARTS by January 24, 2022. You must also provide a statement explaining why the annual report was not submitted by the September 1 deadline, propose the measures you will take to ensure timely submittals in the future, and upload the statement as part of SMARTS annual report Attachments.

**This is your second and final notice.** Failure to submit the 2020-2021 Annual Report via the online SMARTS database by **January 24, 2022**, may result in an enforcement action, including civil monetary penalties of up to \$10,000 for each day of violation. Please note that Section 13399.33 of the California Water Code stipulates a minimum penalty of \$1,000 to those permittees that do not submit their annual reports after notification.

Should you need assistance in completing the Annual Report or have any questions relating to SMARTS, please contact the SMARTS Helpdesk at [stormwater@waterboards.ca.gov](mailto:stormwater@waterboards.ca.gov). You may also contact Keith Elliott at 951-782-4925 or [keith.elliott@waterboards.ca.gov](mailto:keith.elliott@waterboards.ca.gov).

Sincerely,



Adam Fischer, Chief  
Inland Storm Water Unit

7019 1120 0002 2919 1340

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<b>OFFICIAL USE</b>	
Certified Mail Fee \$ _____	Postmark Here
Extra Services & Fees (check box, add fee as appropriate)	
<input type="checkbox"/> Return Receipt (hardcopy) \$ _____	
<input type="checkbox"/> Return Receipt (electronic) \$ _____	
<input type="checkbox"/> Certified Mail Restricted Delivery \$ _____	
<input type="checkbox"/> Adult Signature Required \$ _____	
<input type="checkbox"/> Adult Signature Restricted Delivery \$ _____	
Postage \$ _____	
To Jim Guthrie s. AFG Development LLC PO Box 52049 Riverside, California 92517 City 8 33C393223 2020-21 AR 2 <sup>nd</sup> NNC	
PS See Reverse for Instructions	



## Track Another Package

**Tracking Number:** 70191120000229191340

Your item was picked up at the post office at 1:00 pm on January 20, 2022 in RIVERSIDE, CA 92507.

### USPS Tracking Plus® Available

Delivered, Individual Picked Up at Post Office  
January 20, 2022 at 1:00 pm  
RIVERSIDE, CA 92507

### Get Updates

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### Text & Email Updates

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### Tracking History

January 20, 2022, 1:00 pm  
Delivered, Individual Picked Up at Post Office RIVERSIDE, CA 92507  
Your item was picked up at the post office at 1:00 pm on January 20, 2022 in RIVERSIDE, CA 92507.

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Reminder to Schedule Redelivery of your item

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January 14, 2022 8:14 am Available for Pickup RIVERSIDE, CA 92517

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3/7/22, 6:41 AM USPS.com® - USPS Tracking® Results  
January 14, 2022 7:59 am Out for Delivery RIVERSIDE, CA 92507

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8 am Arrived at Post Office RIVERSIDE, CA 92507

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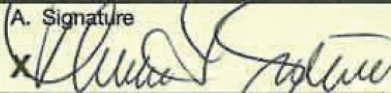
January 13, 2022, 7:46 pm Arrived at USPS Regional Facility  
SAN BERNARDINO CA DISTRIBUTION CENTER

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**SENDER: COMPLETE THIS SECTION**

**COMPLETE THIS SECTION ON DELIVERY**

- Complete items 1, 2, and 3.
- 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.

A. Signature   Agent  
 Addressee

B. Received by (Printed Name) **DEBBI H GUTHRIE** C. Date of Delivery **1-20-22**

D. Is delivery address different from Item 1?  Yes  
 If YES, enter delivery address below:  No

1. Article Addressed to:  
 Jim Guthrie  
 AFG Development LLC  
 PO Box 52049  
 Riverside, California 92517

8 33C393223 2020-21 AR 2<sup>nd</sup> NNC



9590 9402 5053 9092 5640 75

2. Article Number (Transfer from service label)

7019 1120 0002 2919 1340

3. Service Type
- Adult Signature
  - Adult Signature Restricted Delivery
  - Certified Mail®
  - Certified Mail Restricted Delivery
  - Collect on Delivery
  - Collect on Delivery Restricted Delivery
  - Insured Mail
  - Insured Mail Restricted Delivery (over \$500)
  - Priority Mail Express®
  - Registered Mail™
  - Registered Mail Restricted Delivery
  - Return Receipt for Merchandise
  - Signature Confirmation™
  - Signature Confirmation Restricted Delivery

# Waiver