



EDMUND G. BROWN JR.  
GOVERNOR



MATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

## California Regional Water Quality Control Board, San Diego Region

July 31, 2014

**Certified Mail – Return Receipt Requested**  
Article Number: 7010 1060 0000 4953 0310

Emad Bolus  
SA REFKA LLC  
7029 Martano Place  
Alta Loma, CA 91707-9211

In reply refer to / attn.:  
727644:cmeans

### **Subject: Notice of Violation No. R9-2014-0078**

Mr. Bolus and SA REFKA LLC:

Enclosed is Notice of Violation (NOV) No. R9-2014-0078 issued to the SA REFKA LLC for violations of State Water Resources Control Board Order No. 2009-0009-DWQ, *National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities* and California Water Code (CWC) Section 13376. Furthermore, you are also in violation of 401 Water Quality Certification 08C-073, issued by the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board). As described in the NOV, the violations subject you to further enforcement pursuant to the CWC. The San Diego Water Board reserves the right to take any enforcement action authorized by law.

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.

In the subject line of any response, please include the information located in the heading of this letter: "in reply refer to." For questions pertaining to the subject matter, please contact Christopher Means at (619) 521-3968 or [cmeans@waterboards.ca.gov](mailto:cmeans@waterboards.ca.gov).

Respectfully,

Chiara Clemente  
Senior Environmental Scientist  
Regional Water Quality Control Board

HENRY ABERBINAL, CHAIR | DAVID GIBSON, EXECUTIVE OFFICER

2375 Northside Drive, Suite 100, San Diego, CA 92108 | (619) 516-1990 | [www.waterboards.ca.gov/sandiego](http://www.waterboards.ca.gov/sandiego)





CMC:cjm

Enclosures:

Notice of Violation R9-2014-0078

cc (email only):

Bill Woosley  
City of Murrieta  
[wwoolsey@murrieta.org](mailto:wwoolsey@murrieta.org)

Peggy Bartels  
U.S. Army Corps of Engineers  
[Peggy.i.Bartels@usace.army.mil](mailto:Peggy.i.Bartels@usace.army.mil)

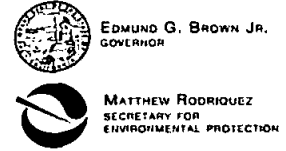
Kelly Dorsey  
Senior Engineering Geologist  
Wetland and Riparian Protection Unit  
San Diego Water Board  
[Kdorsey@waterboards.ca.gov](mailto:Kdorsey@waterboards.ca.gov)

Kim Freeburn  
California Department of Fish and Wildlife  
South Coast Region  
Habitat Conservation Planning - South  
[Kim.Freeburn@wildlife.ca.gov](mailto:Kim.Freeburn@wildlife.ca.gov)

U.S. EPA, OWOW, Region 9  
[R9-WTR8-Mailbox@epa.gov](mailto:R9-WTR8-Mailbox@epa.gov)

State Water Resources Control Board, Division of Water Quality  
401 Water Quality Certification and Wetlands Unit  
[Stateboard401@waterboards.ca.gov](mailto:Stateboard401@waterboards.ca.gov)

Tech Staff Info & Use	
Reg. Measure ID	353460
Place ID	727644
Party (GT/CIWQS) ID	488125
File No.	08C-073
WDID	9 33C368776



**California Regional Water Quality Control Board, San Diego Region**

July 31, 2014

**NOTICE OF VIOLATION  
No. R9-2014-0078**

Mr. Emad Bolus  
SA REFKA LLC  
7029 Martano Place  
Alta Loma, CA 91707-9211

Glenwood Palmilla Commercial  
Development Project

**Violations of Order No. 2009-0009-DWQ,  
Statewide Construction General Storm  
Water Permit and California Water Code  
Section 13376**

SA REFKA LLC is in violation of State Water Resources Control Board Order No. 2009-0009-DWQ, *National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities*.

SA REFKA LLC is in violation of California Water Code (CWC) Section 13376 for failure to file a complete application for an individual Clean Water Act (CWA) Section 401 Water Quality Certification. Furthermore, SA REFKA LLC is in violation for failure to notify the San Diego Water Board of the change in ownership of the property and for failure to take responsibility for compliance with the conditions of Water Quality Certification 08C-073.

Such violations subject SA REFKA LLC to possible enforcement action by the San Diego Regional Water Quality Control Board (San Diego Water Board), including administrative enforcement orders requiring you to cease and desist from violations, or to clean up waste and abate existing or threatened conditions of pollution or nuisance; administrative civil liability in amounts of up to \$10,000 per day per violation; referral to the State Attorney General for injunctive relief; and, referral to the District Attorney for criminal prosecution.

## **A. Violations of Order No. 2009-0009-DWQ**

The Glenwood Palmilla Commercial Development Project (Project) is the remaining 5 acre portion of a previous development project acquired by SA REFKA LLC after the previous owner (Glenwood Development Company) went bankrupt. The Project is located on the westerly corner of Nutmeg Street and Jackson Avenue in the City of Murrieta, California. The Project presides in the jurisdictional boundaries of the San Diego Water Board in the Santa Margarita Watershed Area (HU 902). The Project is within the tributary area of Murrieta Creek (Hydrologic Sub-Area 902.32). On January 17, 2014 SA REFKA LLC submitted a Notice of Intent (NOI) for coverage under the Statewide General Construction Storm Water Permit Order No. 2009-0009-DWQ.

### **1. Failure to Comply with Discharge Prohibitions**

- a. Pursuant to Provision III.A of Order No. 2009-0009-DWQ:** Dischargers shall not violate any discharge prohibitions contained in applicable Basin Plans or statewide water quality control plans. The Basin Plan for the San Diego Region contains Discharge Prohibition No. 3 which states:

“The discharge of pollutants or dredged or fill material to waters of the United States except as authorized by an NPDES permit or a dredged or fill material permit (subject to the exemption described in Water Code section 13376) is prohibited.”
- b. Pursuant to Provision III.B of 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.
- c. Observation:** On July 3, 2014 San Diego Water Board staff Christopher Means observed the discharge of sediment from stockpile removal activities into the ephemeral drainage mitigation area. Sediment and large rocks were apparent in the mitigation area and had damaged native vegetation planted in the mitigation area. A check dam comprised of gravel bags has been placed within the mitigation stream channel, constituting an unauthorized discharge of fill to the waters of the US/State (see Attachment A, photos 1-5).

### **2. Failure to Implement Erosion Control BMPs:**

- a. Pursuant to Provision D.2. of Attachment C to 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:** Several inspections by City of Murrieta Storm Water Staff (3/13/14, 5/6/14, and 6/3/14), and San Diego Water Board staff (9/24/13, 10/24/13, and 7/3/14) found erosion control BMPs to be in violation of municipal storm water regulations and Order No. 2009-0009-DWQ. On July 3, 2014 San Diego Water Board Staff noted that erosion control BMPs were still missing. The upper proposed residential pad was at this time inactive and devoid of any erosion control BMPs (see photo 6). A large soil stockpile was present on the upper pad without any BMPs to prevent erosion of the stockpile during a rain event (see photo 7). Rill erosion was observed on the upper northwestern corner of the pad (see photo 8).

The lower pad had adequate perimeter sediment controls, but lacked any erosion control BMPs (see photo 9). The slope adjacent to the mitigation area in the northern corner of the lower pad was devoid of vegetation and was causing sediment to be discharged into the mitigation channel.

## **B. Violations of CWA Section 401 Water Quality Certification 08C-073 Conditions**

On March 12, 2009, the San Diego Water Board issued Water Quality Certification No. 08C-073 (Certification) for the Project. The Certification describes the Project as the development of a 13.2 acre parcel with 8.2 acres of a commercial retail center and 5.0 acres residential center in the City of Murrieta, CA. Mitigation for prior permanent discharges to the un-named onsite jurisdictional drainage required the restoration of no less than 1,045 linear feet of waters of the United States and/or State pursuant to Resolution No .R9-2007-0010 and Cleanup and Abatement Order No. R9-2005-0259.

Section 301 of the Storm Water Pollution Prevention Plan (SWPPP) submitted by SA REFKA LLC to the SMARTS storm water database as part of the NOI package, stated;

“The owners will also comply with the existing 401 permit issued by RWQCB9.”

Inclusion of the 401 Water Quality Certification No. 08C-073 in the NOI Package, and the above statement contained in the SWPPP acknowledged awareness on the part of SA REFKA LLC as to the requirements of the 401 certification.

### **1. Failure to Transfer Responsibility for 401 Water Quality Certification 08C-073**

#### **a. Condition A.6 of the Certification states:**

“This Certification is not transferable to any person except after notice to the Executive Officer of the Regional Board. Palmilla, LP must also notify the Regional Board of any change in ownership of the project area. Notification must include, but not be limited to, a statement that the property owner has provided the purchaser or transferee with a copy of the Section 401 Water Quality Certification and that the purchaser or transferee understands the Certification requirements and must implement them. If the property is sold,

the seller and purchaser must sign and date the notification. If the Certification is transferred, the Certification holder and transferee must sign and date the notification. The notification for transfer of mitigation responsibility shall include a signed statement from the new party demonstrating acceptance and understanding of the responsibility to meet the mitigation conditions and applicable requirements of the Certification. Notification must be provided within 10 days of the sale and/or transfer of the property.”

- b. **Observation:** A review of San Diego Water Board files show that although SA REFKA LLC was aware of 401 water quality certification 08C-073 issued for the site, a transfer of responsibilities pursuant to Condition A.6 was never received.

## 2. Failure to revegetate rough graded areas

### a. Condition B.9 of the Certification states:

“All areas that will be left in a rough graded state including, but not limited to, the future residential portion of the site must be revegetated with native species no later than one week after completion of grading. The revegetation palette must not contain any plants listed on the California Invasive Plant Council Invasive Plant Inventory, which can be found online at <http://www.calipc.org/ip/inventory/weedlist.php>.

- b. **Observation:** On July 3, 2014 both the upper and lower pads appeared inactive and were devoid of vegetation (see photos 6 and 9).

## 3. Failure to provide completed mitigation site final preservation mechanism

### a. Condition D.5 of the Certification states:

“Within **90 days** of the issuance of this Certification, Palmilla, LP must provide the Regional Board a draft preservation mechanism (e.g. deed restriction, conservation easement, etc.) that will protect all mitigation areas and their buffers in perpetuity. Within **one year** of the issuance of this Certification, Palmilla, LP must submit proof of a completed preservation mechanism that will protect all mitigation areas and their buffers in perpetuity. The conservation easement, deed restriction, or other legal limitation on the mitigation property must be adequate to demonstrate that the site will be maintained without future development or encroachment on the site which could otherwise reduce the functions and values of the site for the variety of beneficial uses of waters of the U.S. that it supports. The legal limitation must prohibit, without exception, all residential, commercial, industrial, institutional, and transportation development, and any other infrastructure development that would not maintain or enhance the wetland and streambed functions and values of the site. The preservation mechanism must clearly prohibit



activities that would result in soil disturbance or vegetation removal, other than the removal of non-native vegetation. Other infrastructure development to be prohibited includes, but is not limited to, additional utility lines, maintenance roads, and areas of maintained landscaping for recreation.”

- b. **Observation:** A review of San Diego Water Board files shows that on June 11, 2009 the previous owner Glenwood Development Company submitted a draft preservation mechanism, but to date no final preservation mechanism has been recorded to protect the mitigation area in perpetuity.

#### 4. Failure to submit Annual Mitigation Monitoring Reports

##### a. Condition D.13 of the Certification states in part:

“Mitigation monitoring reports must be submitted annually until mitigation has been deemed successful with concurrence by the Regional Board. Annual monitoring reports must be submitted prior to January 1 of each year.”

- b. **Observation:** A review of San Diego Water Board files shows no record of mitigation monitoring reports being submitted in accordance with 401 certification conditions. Site conditions on 07/03/14 would seem to indicate that after initial planting of the mitigation site, the maintenance and monitoring of the site were abandoned. It is unknown where the site is in attainment of success criteria contained in the mitigation and monitoring plan developed by the previous owner.

#### 5. Failure to provide proper landscaping on slopes adjacent to mitigation site

##### a. Condition D.15 of the Certification states:

“Landscaping on the slopes above the mitigation site shall consist of native plants including oak (*Querus*), shrub and grass species to provide a buffer between the developed portion of the site and the mitigation area.”

- b. **Observation:** Due to stockpile removal activities the slope adjacent to the northern portion of the mitigation area is devoid of any vegetation (see photo 2).

### C. Recommendations

1. SA REFKA LLC should immediately implement adequate erosion control BMPs on site in accordance with the SWPPP developed for the site, and coordinate with City of Murrieta Staff to address other violations noted in their previous inspection reports. All inactive pads should be revegetated or have other temporary erosion control such as bonded fiber matrix, or soil bonding glue implemented.

2. SA REFKA LLC should immediately contact San Diego Water Board 401 Staff and request to amend the 401 certification to reflect the current ownership of the site. Plans to comply with the certification conditions should be discussed as an element of SA REFKA LLC's amendment request. The contact information for the supervisor of the Wetland and Riparian Protection Unit is:

Ms. Kelly Dorsey, P.G.  
Senior Engineering Geologist  
Phone: (619) 521-3357  
Email: [Kdorsey@waterboards.ca.gov](mailto:Kdorsey@waterboards.ca.gov)

3. SA REFKA LLC should hire a qualified environmental consultant to review the state of the mitigation area and its compliance with the mitigation plan developed for the project (Mitigation and Monitoring Plan prepared by TeraCor Resource Management, May 3, 2006, amended by Vandermost Consulting September 25, 2008). This evaluation should determine the steps necessary to bring the mitigation up to the final success criteria outlined in the plan, and to provide for proper maintenance of the site and monitoring reports as required by the 401 certification conditions.

#### D. Summary of Potential Enforcement Options

Failure to address these violations may subject SA REFKA LLC 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
Cleanup and Abatement Order	Section 13304 (Amendment of existing CAO No. R9-2005-0259)
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/or referral to the municipal or District Attorney for criminal prosecution.



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Chiara Clemente  
Senior Environmental Scientist  
San Diego Water Board

CMC:cjm

Enclosure: Attachment A Inspection Photos

Tech Staff Info & Use	
Reg. Measure ID	353460
Place ID	727644
Party (GT/CIWQS) ID	488125
File No.	08C-073
WDID	9 33C368776

## Attachment A



**Photo 1:** San Diego Water Board inspection on 10/24/13 noted a large stockpile in the northern corner of the lower portion of the site, adjacent to the mitigation area. Erosion control was in place. The City of Murrieta requested that the stockpile be removed.



**Photo 2:** San Diego Water Board inspection on 07/03/14. Stockpile has been removed, lower building pad and slope adjacent to northern corner of mitigation area is devoid of vegetation and slope poses a threatened discharge of sediment to the mitigation area.



### Attachment A



**Photo 3:** Stockpile removal and grading activities have resulted in sediment discharge into mitigation area and impacts to native vegetation (mulefat plantings are knocked over by sediment in this photo). These discharges of sediment are in violation of discharge prohibitions in the Basin Plan For the San Diego Region, Order 2009-0009-DWQ and 401 cert 08C-073. Photo taken 07/03/14.



**Photo 4:** Photo taken 07/03/14 shows additional sediment discharge to mitigation area, including gravel from prior gravel bag sediment controls that were in place.



### Attachment A



**Photo 5:** A gravel bag check dam of indeterminate purpose has been placed within the mitigation channel and constitutes an unauthorized discharge of fill into waters of the State.



**Photo 6:** Upper proposed residential pad is inactive, and devoid of erosion control BMPs in violation of Order 2009-0009-DWQ and 401 certification conditions.



## Attachment A



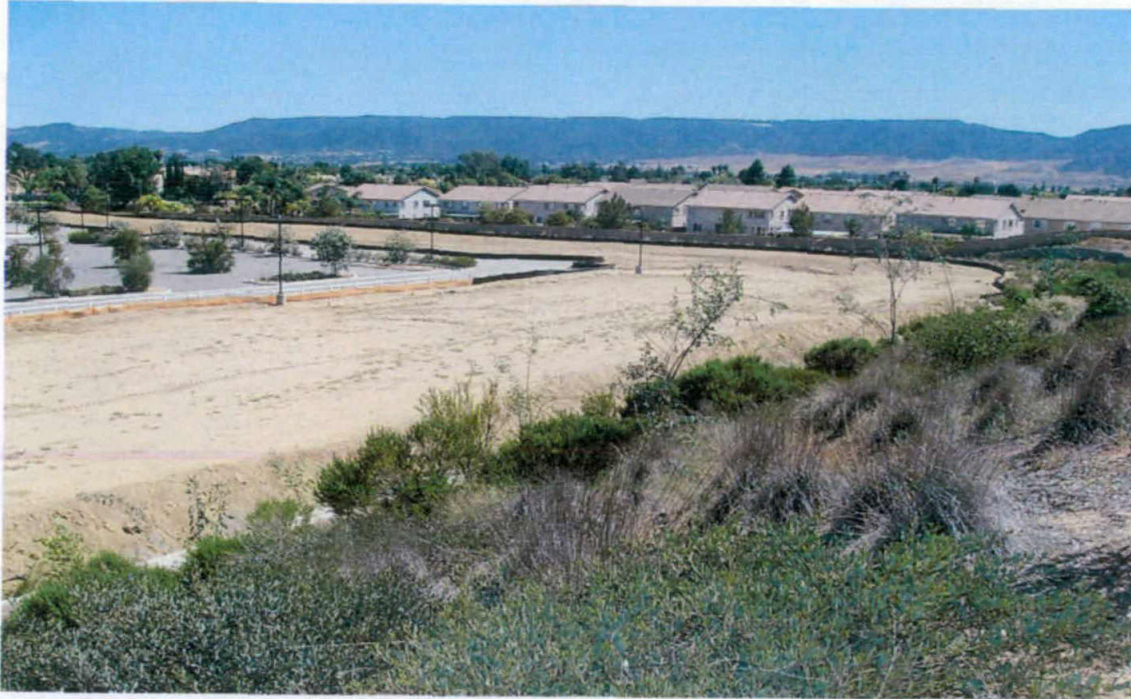
**Photo 7:** Large stockpile of soil is unstabilized on upper proposed residential pad. Stockpile is lacking any sediment or erosion control BMPs. Photo taken 07/03/14



**Photo 8:** Rill erosion was noted on upper pad near the bend in the mitigation channel. Photo taken 07/03/14



## Attachment A



**Photo 9:** Lower commercial pad had adequate perimeter control BMPs (silt fencing) but lacks appropriate erosion control BMPs. At a minimum the slopes adjacent to the mitigation area must be stabilized to prevent discharge of sediment to the mitigation area, and should be revegetated with native vegetation in compliance with 401 cert. conditions



**Photo 10:** The southwest portion of the mitigation area is in better condition than the northern segment. Both banks of the channel are vegetated, but it is still in need of maintenance and invasive species removal in accordance with 401 certification requirements. (photo taken 07/03/14)



### Attachment A



**Photo 11:** The southwestern portion of the mitigation area still has temporary irrigation in place, but it was not apparent that it had been used for quite some time, as piping and sprinkler heads were damaged. Irrigation and channel maintenance should resume until final success criteria in 401 mitigation plan is achieved. (photo taken 07/03/14)