



California Regional Water Quality Control Board, San Diego Region

May 29, 2015

NOTICE OF VIOLATION
No. R9-2015-0093

Robert Shorb
Pacific Gateway Ltd
6903 Rockledge Drive
Bethesda, MD 20817

Pacific Gateway Ltd
San Diego Marriott Marquis & Marina
Construction Project
PIN No. SM-831060:wchiu

Violations of
Order No. 2009-0009-DWQ,
Construction General Permit

PACIFIC GATEWAY LTD is hereby notified that the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) reserves the right to take any enforcement action authorized by law for the violations described herein.

PACIFIC GATEWAY LTD is in violation of State Water Resources Control Board (State Water Board) Order No. 2009-0009-DWQ, NPDES No. CAS000002, National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (Construction General Permit).

A. Summary of Violations

Construction General Permit Violations

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.

- b. Observation:** According to the Storm Water Multiple Application & Report Tracking System (SMARTS) database Pacific Gateway Ltd is the Legally Responsible Person (LRP) enrolled under the Construction General Permit (CGP) for the San Diego Marriott Marquis & Marina construction site (Site) [WDID 9 37C370699]. On May 7, 2015, the San Diego Unified Port District (Port) notified the San Diego Water Board by telephone of a water main break at the Site resulting in a discharge of sediment laden non-storm water to San Diego Bay and the City of San Diego's municipal separate storm sewer system (MS4). According to a representative of the LRP, of up to 476,491 gallons were discharged from the Site. Discharges of sediment-laden non-storm water resulting from water main breaks are not authorized by the CGP or another NPDES permit. See attached May 15, 2015 Facility Inspection Report Compliance History.

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 May 15, 2015 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 contributed to the sediment transported in non-storm water discharged from the Site, observed on May 7, 2015. The discharge of sediment was a result of the implementation of controls, structures, and BMPs that do not achieve BCT. See attached May 15, 2015 Facility Inspection Report.

3. Failure to Have an Adequately Designed Storm Water Pollution Prevention Plan (SWPPP):

- a. Pursuant to Provision XIV.A.1 of State Water Board Order No. 2009-0009-DWQ:** Risk Level 1 dischargers are required to ensure the SWPPP has been designed to address all pollutants and their sources, including sources of sediment associated with construction, construction site erosion and all other activities associated with construction activity are controlled.

- b. Pursuant to Provision XIV.A.3 of State Water Board Order No. 2009-0009-DWQ:** Risk Level 1 dischargers are required to ensure the SWPPP has been designed to include site BMPs that are effective and result in the reduction or elimination of pollutants in storm water discharges and authorized non-storm water discharges from construction activities to the BAT/BCT standard.
 - c. Pursuant to Provision XIV.B of State Water Board Order No. 2009-0009-DWQ:** Risk Level 1 dischargers are required to demonstrate compliance with the CGP by including information in the SWPPP that supports the conclusions, selections, use, and maintenance of BMPs.
 - d. Pursuant to Provision IX and Section D.2 of Attachment C of State Water Board 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.
 - e. Observation:** During the May 15, 2015 inspection, the San Diego Water Board reviewed the SWPPP available on the Site. The SWPPP did not include any erosion control BMPs that could be implemented to provide effective soil cover for inactive areas and all finished slopes, open space, utility backfill, and completed lots. The SWPPP did not include any information that supports a conclusion that erosion control BMPs are not necessary to meet the BAT/BCT standard for erosion controls as establish by the CGP for a Risk Level 1 construction site. See attached May 15, 2015 Facility Inspection Report Finding 1.
- 4. Failure to Have a Qualified SWPPP Practitioner (QSP) Implement the BMPs and Weekly Inspections Required by the CGP:**
- a. Pursuant to Provision VII.B.3 of State Water Board Order No. 2009-0009-DWQ:** Risk Level 1 dischargers are required to ensure all BMPs required by the CGP are implemented by a QSP.
 - b. Pursuant to Provision IX and Section G.1 of Attachment C of State Water Board Order No. 2009-0009-DWQ:** Risk Level 1 dischargers shall ensure that all inspection, maintenance and repair and sampling activities at the project location shall be performed or supervised by a QSP representing the Discharger. The QSP may delegate any or all of these activities to an employee trained to do the task(s) appropriately, but shall ensure adequate deployment.
 - c. Pursuant to Provision IX and Section G.2 of Attachment C of State Water Board Order No. 2009-0009-DWQ:** Risk Level 1 dischargers shall perform weekly inspection and observations, and at least once each 24-hour period during extended storm events, to identify and record BMPs that need maintenance to operate effectively, that have failed, or that could fail to operate as intended. Inspectors shall be the QSP or by trained by the QSP.

d. Observation: During the May 15, 2015 inspection, the San Diego Water Board inspector inquired about the identity of the QSP responsible for overseeing the implementation of BMPs and weekly inspections. The superintendent for the Site was overseeing the implementation of BMPs and weekly inspection, but is not a QSP. According to the superintendent, there is no QSP supervising the implementation of BMPs and weekly inspections. See attached May 15, 2015 Facility Inspection Report Finding 2.

5. Failure to Implement Good Site Management “Housekeeping” Best Management Practices (BMPs) for Construction Materials and Waste Management:

a. Pursuant to Provision IX and Section B.1.a of Attachment C of State Water Board Order No. 2009-0009-DWQ: Risk Level 1 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 IX and Section B.2.f of Attachment C of State Water Board Order No. 2009-0009-DWQ: Risk Level 1 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 May 15, 2015 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 May 15, 2015 Facility Inspection Report Photos 1 and 2.

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

a. Pursuant to Provision IX and Section D.2 of Attachment C of State Water Board 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: During the May 15, 2015 inspection, the San Diego Water Board inspector observed several areas of 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 were observed throughout the site during the inspection. See attached May 15, 2015 Facility Inspection Report Photos 3 through 5.

7. Failure to Implement Adequate Perimeter Sediment Controls:

a. Pursuant to Provision IX and Section E.1 of Attachment C of State Water Board Order No. 2009-0009-DWQ: Risk Level 1 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 May 15, 2015 inspection, the San Diego Water Board inspector observed an area of the Site where perimeter controls were not established or maintained to sufficiently control erosion and sediment discharges from the site. See attached May 15, 2015 Facility Inspection Report Photo 6.

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

- a. **Pursuant to Provision IX and Section F.1 of Attachment C of State Water Board Order No. 2009-0009-DWQ:** Risk Level 1 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 May 15, 2015 inspection, the San Diego Water Board inspector observed inadequate runoff controls within the Site, and at least one area where perimeter controls were not established or maintained to prevent runoff from the Site. See attached May 15, 2015 Facility Inspection Report Photos 6 and 7.

9. Failure to Implement, Inspect, Maintain and Repair BMPs in the SWPPP:

- a. **Pursuant to Provision XIV.B of State Water Board Order No. 2009-0009-DWQ:** To demonstrate compliance with requirements of the CGP, the Qualified SWPPP Developer (QSD) shall include information in the SWPPP that supports the conclusions, selections, use, and maintenance of BMPs.
- b. **Pursuant to Provision IX and Section G.1 of Attachment D of State Water Board Order No. 2009-0009-DWQ:** Risk Level 1 dischargers shall ensure that all inspection, maintenance, repair and sampling activities at the project location shall be performed or supervised by a QSP representing the discharger. The QSP may delegate any or all of these activities to an employee trained to do the task(s) appropriately, but shall ensure adequate deployment.
- c. **Pursuant to Provision IX and Section G.2 of Attachment D of State Water Board Order No. 2009-0009-DWQ:** Risk Level 1 dischargers shall perform weekly inspections and observations, and at least once each 24-hour period during extended storm events, to identify and record BMPs that need maintenance to operate effectively, that have failed, or that could fail to operate as intended. Inspectors shall be the QSP or by trained by the QSP.
- d. **Pursuant to Provision IX and Section G.3 of Attachment D of State Water Board Order No. 2009-0009-DWQ:** Upon identifying failures or other shortcomings, as directed by the QSP, Risk Level 1 dischargers shall begin implementing repairs or design changes to BMPs within 72 hours of identification and complete the changes as soon as possible.

- e. Observation:** During the May 15, 2015 inspection, the San Diego Water Board inspector observed a lack of implementation, and failures or other shortcomings in the implementation of good site management “housekeeping,” erosion controls, sediment controls, and run-on and runoff controls. The inadequate implementation, and failures or other shortcomings in the implementation of the BMPs required by the CGP and the SWPPP were not identified as requiring implementation, maintenance or repair in the weekly inspection reports reviewed. See attached May 15, 2015 Facility Inspection Report Finding 1c.

B. Summary of Potential Enforcement Options

These violations may subject you 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 or 13383
Cleanup and Abatement Order	Section 13304
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 referral to the municipal or District Attorney for criminal prosecution.

In the subject line of any response, please include the information located in the heading of this letter: “in reply refer to.” Questions pertaining to this Notice of Violation should be directed to Wayne Chiu at (619) 521-3354 or wchiu@waterboards.ca.gov.



Eric S. Becker, P.E.
Senior Water Resource Control Engineer
Storm Water Management

ESB:wc

Attachments: Facility Inspection Report dated May 15, 2015

Tech Staff Info & Use	
WDID	937C370699
Place ID	SM-831060
Inspection ID	2025741
Violation ID	857252,857253,857254
Enforcement ID	419521

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD - SAN DIEGO REGION
WATERSHED PROTECTION PROGRAM**

FACILITY INSPECTION REPORT

FACILITY: San Diego Marriott Marquis
WDID/FILE NO.: 937C370699

INSPECTION DATE/TIME: 5/15/2015; 11:00 am

REPRESENTATIVE(S) PRESENT DURING INSPECTION:

NAME: Wayne Chiu

AFFILIATION: San Diego Water Board

NAME: Dan DeCurtins

AFFILIATION: San Diego Unified Port District

NAME: Miguel Parames

AFFILIATION: Geosyntec

NAME: Dan Heacock

AFFILIATION: Clark Construction Group

Pacific Gateway Ltd
NAME OF OWNER, AGENCY OR PARTY RESPONSIBLE FOR DISCHARGE

FACILITY OR DEVELOPER NAME (if different from owner)

6903 Rockledge Drive, suite 1500
Methesda, MD 20817
OWNER MAILING ADDRESS

333 W Harbor Drive
San Diego, CA 92101
FACILITY ADDRESS

Robert Shorb, 240-744-5312
OWNER CONTACT NAME AND PHONE #

Mark Millich, 619-866-4477
FACILITY OR DEVELOPER CONTACT NAME AND PHONE #

APPLICABLE WATER QUALITY LICENSING REQUIREMENTS:

- | | |
|---|---|
| <input type="checkbox"/> MS4 URBAN RUNOFF REQUIREMENTS | <input type="checkbox"/> GENERAL OR INDIVIDUAL WASTE DISCHARGE REQUIREMENTS OR NPDES |
| <input checked="" type="checkbox"/> CONSTRUCTION GENERAL PERMIT | <input type="checkbox"/> GENERAL OR INDIVIDUAL WAIVER OF WASTE DISCHARGE REQUIREMENTS |
| <input type="checkbox"/> CALTRANS GENERAL PERMIT | <input type="checkbox"/> SECTION 401 WATER QUALITY CERTIFICATION |
| <input type="checkbox"/> INDUSTRIAL GENERAL PERMIT | <input type="checkbox"/> CWC SECTION 13264 |

INSPECTION TYPE (Check One):

- "A" TYPE COMPLIANCE--COMPREHENSIVE INSPECTION IN WHICH SAMPLES ARE TAKEN. (EPA TYPE S)
- "B" TYPE COMPLIANCE--A ROUTINE NONSAMPLING INSPECTION. (EPA TYPE C)
- NONCOMPLIANCE FOLLOW-UP--INSPECTION MADE TO VERIFY CORRECTION OF A PREVIOUSLY IDENTIFIED VIOLATION.
- ENFORCEMENT FOLLOW-UP--INSPECTION MADE TO VERIFY THAT CONDITIONS OF AN ENFORCEMENT ACTION ARE BEING MET.
- COMPLAINT--INSPECTION MADE IN RESPONSE TO A COMPLAINT.
- PRE-REQUIREMENT--INSPECTION MADE TO GATHER INFO. RELATIVE TO PREPARING, MODIFYING, OR RESCINDING REQUIREMENTS.
- NO EXPOSURE CERTIFICATION (NEC) - VERIFICATION THAT THERE IS NO EXPOSURE OF INDUSTRIAL ACTIVITIES TO STORM WATER.
- NOTICE OF TERMINATION REQUEST FOR INDUSTRIAL FACILITIES OR CONSTRUCTION SITES - VERIFICATION THAT THE FACILITY OR CONSTRUCTION SITE IS NOT SUBJECT TO PERMIT REQUIREMENTS.
- COMPLIANCE ASSISTANCE INSPECTION - OUTREACH INSPECTION DUE TO DISCHARGER'S REQUEST FOR COMPLIANCE ASSISTANCE.

INSPECTION FINDINGS:

Y WERE VIOLATIONS NOTED DURING THIS INSPECTION? (YES/NO/PENDING SAMPLE RESULTS)

Facility: San Diego Marriott Marquis
Inspection Date: 5/15/2015

I. COMPLIANCE HISTORY / PURPOSE OF INSPECTION

On May 7, 2015, the San Diego Unified Port District (Port) notified the San Diego Water Board by telephone of a water main break at the San Diego Marriott Marquis construction site (Site) [WDID 9 37C370699] resulting in an unauthorized non-storm water discharge of sediment laden water to San Diego Bay and the City of San Diego's municipal separate storm sewer system (MS4). The San Diego Water Board issued a Staff Enforcement Letter (SEL) by email to the Legally Responsible Person (LRP) identified in the Storm Water Multiple Application & Report Tracking System (SMARTS) database that the non-storm water discharge from the Site was an unauthorized discharge and at least one violation of the Statewide Construction General Storm Water Permit, Order No. 2009-0009-DWQ (CGP).

The SEL requested information and documentation to be provided to the San Diego Water Board about the unauthorized discharge. A representative of the LRP provided a written response on May 11, 2015 that estimated 476,491 gallons were discharged from the Site, and all non-storm water and storm water discharge best management practices (BMPs) in the Storm Water Pollution Prevention Plan (SWPPP) had been implemented before the discharge. The response also indicated no samples had been collected because the Site was a Risk Level 1 construction site.

On May 15, 2015, during a predicted storm event, Wayne Chiu of the San Diego Water Board conducted an inspection of the Site to review the SWPPP and BMPs that were being implemented for compliance with the requirements of the CGP for a Risk Level 1 construction site. According to SMARTS, the Site is approximately 5.3 acres in total area, of which 5.3 is to be disturbed. The San Diego Water Board inspector was accompanied by Dan DeCurtains of the Port, Miguel Parames of Geosyntec, who is a consultant that conducts construction site inspections on behalf of the Port, and Dan Heacock of Clark Construction, superintendent for the Site.

II. FINDINGS

1. The SWPPP available on the site had the following deficiencies:
 - a) The SWPPP did not include a certification page signed by the LRP or any other documentation to indicate the SWPPP had received certification of the Notice of Intent.
 - b) The SWPPP that was available for review did not appear to include all the information to support the conclusions, selections, use, and maintenance of BMPs. In particular, the SWPPP failed to include any erosion control measures that could be used to provide effective soil cover for areas that are inactive, as required for all construction sites. There was no documentation that the SWPPP was amended at any time by the Qualified SWPPP Developer (QSD) to include additional erosion control measures.

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- c) Weekly inspection reports were available for the last several weeks, but none of them indicated that stockpile management, erosion control, or perimeter sediment control BMPs were inadequate or required implementation. Weekly inspection reports were signed and certified by Mr. Heacock.
2. Mr. Heacock, the Site superintendent is conducting the weekly inspections but he is not a Qualified SWPPP Practitioner (QSP). According to Mr. Heacock, there is no QSP for the Site to supervise his inspections and ensuring BMPs are being adequately deployed and maintained. All construction sites are required to ensure all inspection, maintenance, repair, and sampling activities at the project location are performed or supervised by a QSP representing the LRP.
 3. Several stockpiles observed without adequate containment (See Photos 1 and 2). All construction sites are required to contain and securely protect stockpiled waste material from wind and rain at all times unless actively being used.
 4. Several areas were observed to be inactive, or could be scheduled to be inactive, without effective soil cover to control potential erosion (See Photos 3 through 5). All construction sites are required to provide effective soil cover for inactive areas (i.e. areas that have been disturbed and not scheduled to be re-disturbed for at least 14 days) and all finished slopes, open space, utility backfill, and completed lots.
 5. Lack of effective perimeter sediment controls observed (See Photo 6). All construction sites are required to establish and maintain effective perimeter controls and stabilize all construction entrances and exits to sufficiently control erosion and sediment discharges from the site.
 6. Lack of effective run-on and runoff controls observed within and around the site (See Photo 7). All construction sites are required to effectively manage run-on, all runoff within the site and all runoff that discharges off the site.

III. COMMENTS AND RECOMMENDATIONS

Comments

1. There is evidence that weekly inspections of the Site are not being adequately implemented and performed or supervised by a QSP, and a QSP was not adequately identifying and recommending implementation of good site management “housekeeping,” erosion control, sediment control, and run-on/runoff control BMPs (See Findings 1 and 2).
2. There is evidence that good site management “housekeeping” stockpile management BMPs were not being adequately implemented (See Finding 3).

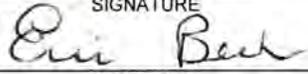
Facility: San Diego Marriott Marquis
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3. There is evidence that erosion controls were not adequately implemented for several inactive areas contributing to discharges of sediment from the Site during the unauthorized non-storm water discharge on May 7, 2015 (See Finding 4).
4. There is evidence that perimeter sediment controls, as well as run-on and runoff controls, were not adequately implemented (See Findings 5 and 6).
5. There was evidence observed during the inspection that the site has not implemented BMPs to meet BCT Technology Based Effluent Limitations (TBELs) under Section V.A.2 of the CGP, as required for all construction sites, which resulted in the unauthorized non-storm water discharges of sediment and sediment-laden water from the Site documented on December 7, 2105 (See Compliance History discussion and Findings 1 through 6).

Recommendations

1. Issue a Notice of Violation to the LRP for the unauthorized non-storm water discharge and inadequate implementation of the requirements of the CGP.
2. Provide the LRP and opportunity to bring the Site into compliance by hiring a QSP to identify the appropriate BMPs are implemented at the Site, to recommend amendments to the SWPPP to ensure it includes the appropriate BMPs to be implemented at the Site, and to perform or supervise all inspections, maintenance, repair, and sampling activities at the Site.
3. Monitor the Port's inspections of the Site to determine if the San Diego Water Board should conduct additional inspections or issue any enforcement actions to bring the Site into compliance with the requirements of the CGP.

IV. SIGNATURE SECTION

Wayne Chiu		5/15/2015
STAFF INSPECTOR	SIGNATURE	INSPECTION DATE
Eric Becker		5/20/15
REVIEWED BY SUPERVISOR	SIGNATURE	DATE

SMARTS:

Tech Staff Info & Use	
WDID	937C370699
Place ID	SM-831060
Inspection ID	2025741
Violation ID	857252,857253

Facility: San Diego Marriott Marquis
Inspection Date: 5/15/2015



Photo 1



Photo 2

Photos 1 and 2 shows soil stockpiles without adequate containment and protection during a rain event.

Facility: San Diego Marriott Marquis
Inspection Date: 5/15/2015



Photo 3



Photo 4



Photo 5

Photos 3 through 5 show areas within the Site that are inactive or could be sectioned off and made inactive without an erosion control measures implemented to provide effective soil cover.

Facility: San Diego Marriott Marquis
Inspection Date: 5/15/2015



Photo 6

Photo 6 shows part of the Site perimeter where perimeter sediment controls have not been adequately established to sufficiently control erosion and sediment discharges from the Site.



Photo 7

Photo 7 shows sediment laden water buildup at a storm drain inlet that discharges to San Diego Bay without additional internal runoff controls to reduce sediment before getting to the storm drain inlet.