

EDMUND G. BROWN JR.  
GOVERNORMATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION


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**San Diego Regional Water Quality Control Board**

MARCH 8, 2016

VIA E-MAIL

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**RE: RULING ON EVIDENTIARY OBJECTIONS REGARDING COMPLAINT NO. R9-2015-0110 FOR ADMINISTRATIVE CIVIL LIABILITY AGAINST SAN ALTOS-LEMON GROVE, LLC, VALENCIA HILLS CONSTRUCTION SITE, LEMON GROVE, CALIFORNIA**

This letter transmits rulings on numerous evidentiary objections made by San Altos-Lemon Grove, LLC (San Altos) in their February 3 and February 23, 2016, written submittals.<sup>1</sup> The letter begins with a general discussion concerning evidence at adjudicative hearings before a regional water board and then rules on specific evidentiary objections raised by San-Altos through the attached spreadsheet.

In ruling on evidentiary and other materials to be included in the record, the San Diego Water Board is guided by the following principles. The San Diego Water Board generally prefers to admit all admissible evidence using the more liberal standards applicable to administrative proceedings. (See Gov. Code, § 11513; Cal. Code Regs., tit. 23, § 648, subd. (d).) Any relevant evidence is admissible as long as it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. (Gov. Code, § 11513, subd. (c).)<sup>2</sup> It is permissible for the record to contain hearsay evidence. The Board may not rely solely on that evidence when it makes a finding. It would be premature, prior to the close of the evidentiary hearing, to exclude any evidence objected to solely on the ground of hearsay because this would be contrary to Government Code section 11513 allowing for hearsay evidence to explain or

<sup>1</sup> To the extent San Altos's February 23 submittal also anticipates the Prosecution's characterization of supplemental evidence as rebuttal, the rulings herein address the admissibility of Prosecution rebuttal evidence.

<sup>2</sup> "Relevance" and "the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs" are two separate tests. See *Mast v. State Bd. of Optometry* (1956) 139 Cal.App.2d 78, 85.

supplement evidence. (*Sunseri v. Board of Medical Examiners*, 224 Cal.App.2d 309 (1964).) The San Diego Water Board is aware that circumstances that led to objections may limit or undermine the trustworthiness of that information, and such limits will be taken into account in determining the weight to give the evidence in the proceeding.

The parties have identified numerous witnesses who will or may be called, some of whom have also authored declarations or whose deposition transcripts are evidence in this matter. Opinion testimony by non-expert witnesses may be admissible. Even under the technical rules of evidence, non-expert opinion testimony is allowed where the testimony is rationally based on the witness's perception and is helpful to a clear understanding of the witness's testimony. (Evid. Code § 800.) Although not specifically applicable to this proceeding, Evidence Code section 800 allows a witness to express opinions on matters that are rationally based on his perception and helpful to clearly understand his testimony.

San Altos also makes due process arguments as a basis for its evidentiary objections. In ruling on evidentiary objections (and establishing the Hearing Procedures for this matter), the San Diego Water Board is informed by Government Code section 11425.10, which specifies the minimum due process and public interest requirements that must be satisfied at a regional board hearing. Government Code section 11425, subdivision (a)(1), provides that "[t]he agency shall give the person to which the agency action is directed notice and an opportunity to be heard, including the opportunity to present and rebut evidence." In this case the procedures are fully consistent with the elements enumerated in Section 11425.10. Through adherence to Government Code section 11513, discussed above, formal adjudicative proceedings before the San Diego Water Board afford more than the minimum due process by providing for prehearing discovery, testimony under oath, as well as rights enumerated in the Hearing Procedures, subject to the Chair's reasonable control and limitation.<sup>3</sup>

Moreover, many provisions similar to those outlined Government Code section 11513 which the presiding officer may waive where not statutorily or constitutionally required<sup>4</sup> have already been and continue to be provided by the Board in this proceeding, including (1) the right to have all oral evidence taken under oath; (2) the right to call and examine witnesses; (3) the opportunity to introduce exhibits; (4) the right to cross-examine witnesses on any matter relevant to the issues; and (5) the right to rebut evidence against it. (Gov. Code, § 11513, subd. (b).) In this case, the hearing date was extended by almost a month to enable San Altos to engage in extensive discovery. The rulings herein are consistent with these principles.<sup>5</sup>

<sup>3</sup> The Law Revision Comments to Government Code section 11425.10 state: "Subdivision (a)(1), providing a person the opportunity to present and rebut evidence, is subject to reasonable control and limitation by the agency conducting the hearing, including the manner of presentation of evidence, whether oral, written, or electronic, limitation on lengthy or repetitious testimony or other evidence, and other controls or limitations appropriate to the character of the hearing." The Chair has discretion to modify the hearing procedures, consistent with this provision.

<sup>4</sup> Cal. Code Regs., tit. 23, §648, subd. (d).

<sup>5</sup> San Altos relies on *Clark v. City of Hermosa Beach* (1996) 48 Cal.App.4th 1152, 1171-72 (modified on denial of rehearing, Sept. 11, 1996) to argue that accepting supplemental evidence more than a month before the evidentiary  
(footnote continued on next page)

March 8, 2016

Prehearing Ruling  
On Objections

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Rulings on San Altos's February 3 and February 23, 2016, evidentiary objections are set forth in summary form in the attached spreadsheets, incorporated in full by reference. To the extent San Altos's February 23 submittal also anticipates the Prosecution's characterization of supplemental evidence as rebuttal, the rulings herein address the admissibility of the Prosecution's rebuttal evidence, subject to final ruling.



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Henry Abarbanel, Ph.D., Chair and  
Presiding Officer for Prehearing Proceedings

March 8, 2016

Attachment: Objection/Ruling Spreadsheet 030816

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*(footnote continued from previous page)*

hearing deprives San Altos of the opportunity "refute, test and explain" the evidence against it. San Altos's reliance on *Clark* and similar cases is misplaced. *Clark* involved a city council's reliance on evidence submitted *after* the hearing was closed. The Clarks were unable to address the city council on the issues and their request to reopen the hearing was denied. (*Id.*, at 1173.) In contrast, San Altos has had most if not all of the Prosecution Team's evidence for months, has known for almost one month that all but the evidence in Exhibit 33 was provisionally accepted in the record, had two opportunities to address the evidence in writing and has the opportunity to refute, rebut or explain the evidence at hearing.

Violation No. 1: Discharging sediment-laden storm water from the Site into Encanto Channel			
San Altos Feb. 3 Objection		San Altos Feb. 23 Objections	
Name	Description		Rulings on Objections
Exhibit 3	City Stop Work Notice Dec. 4, 2014	hearsay, improper lay testimony, lack of foundation	Not relevant pursuant to Gov. Code § 11513(c) because 1) inspections were not conducted to determine compliance with CGP 2) inspector was not qualified to inspect for CGP compliance
Exhibit 7	City Administrative Citation December 15, 2014	hearsay, improper lay testimony, lack of foundation	Not relevant pursuant to Gov. Code § 11513(c) because inspections were not conducted to determine compliance with CGP 2) inspector was not qualified to inspect for CGP compliance
			Exhibit is admitted. Hearsay objection overruled. Official records exception to hearsay rule applies (Evid. Code sec. 1280); Lack of foundation objection overruled (see ruling on hearsay objection); Relevance objection overruled. City Reports and Notices are relevant to the issues and are also the sort of evidence upon which responsible persons are accustomed to rely; Improper Lay Testimony Objection Overruled. Board will evaluate evidence and determine what weight to assign (Gov. Code sec. 11513, subd. (c) and (f)).
			Exhibit is admitted. Hearsay objection overruled. Official records exception to hearsay rule applies (Evid. Code sec. 1280); Lack of foundation objection overruled (see ruling on hearsay objection); Relevance objection overruled. City Reports and Notices are relevant to the issues and are also the sort of evidence upon which responsible persons are accustomed to rely; Improper Lay Testimony Objection Overruled. Board will evaluate evidence and determine what weight to assign (Gov. Code sec. 11513, subd. (c) and (f)).

<p>Exhibit 12</p>	<p>City Contractor Report                  December 17, 2014</p>	<p>hearsay, improper lay                  testimony, lack of                  foundation</p>	<p>Not relevant pursuant to Gov. Code § 11513(c)                  because inspections were not conducted to                  determine compliance with CGP</p>	<p>Exhibit is admitted. Hearsay objection                  overruled. Official records exception to hearsay                  rule applies (Evid. Code sec. 1280); Lack of                  foundation objection overruled (see ruling on                  hearsay objection); Relevance objection                  overruled. City Reports and Notices are                  relevant to the issues and are also the sort of                  evidence upon which responsible persons are                  accustomed to rely; Improper Lay Testimony                  Objection Overruled. Board will evaluate                  evidence and determine what weight to assign                  (Gov. Code sec. 11513, subd. (c) and (f)).</p>
<p>Exhibit 21</p>	<p>City Administrative Citation                  September 15, 2015</p>	<p>hearsay, improper lay                  testimony, lack of                  foundation</p>	<p>Not relevant pursuant to Gov. Code § 11513(c)                  because inspections were not conducted to                  determine compliance with CGP</p>	<p>Exhibit is admitted. Hearsay objection                  overruled. Official records exception to hearsay                  rule applies (Evid. Code sec. 1280); Lack of                  foundation objection overruled (see ruling on                  hearsay objection); Relevance objection                  overruled. City Reports and Notices are                  relevant to the issues and are also the sort of                  evidence upon which responsible persons are                  accustomed to rely; Improper Lay Testimony                  Objection Overruled. Board will evaluate                  evidence and determine what weight to assign                  (Gov. Code sec. 11513, subd. (c) and (f)).</p>

Violation No. 2: failing to implement material stockpile BMPs at the Site (10 days)				
Name	Description	D's Feb. 3 Objections	D's Feb. 23 Objections	Notes
Exhibit 2	City Stop Work Notice Dec. 2, 2014	hearsay, improper lay testimony, lack of foundation	Not relevant pursuant to Gov. Code § 11513(c) because 1) inspections were not conducted to determine compliance with CGP 2) inspector was not qualified to inspect for CGP compliance	Exhibit is admitted. Hearsay objection overruled. Official records exception to hearsay rule applies (Evid. Code sec. 1280); Lack of foundation objection overruled (see ruling on hearsay objection); Relevance objection overruled. City Reports and Notices are relevant to the issues and are also the sort of evidence upon which responsible persons are accustomed to rely; Improper Lay Testimony Objection Overruled. Board will evaluate evidence and determine what weight to assign (Gov. Code sec. 11513, subd. (c) and (f)).
Exhibit 3	City Stop Work Notice Dec. 4, 2014	hearsay, improper lay testimony, lack of foundation	Not relevant pursuant to Gov. Code § 11513(c) because 1) inspections were not conducted to determine compliance with CGP 2) inspector was not qualified to inspect for CGP compliance	Exhibit is admissible. Hearsay objection overruled. Official records exception to hearsay rule applies (Evid. Code sec. 1280); Lack of foundation objection overruled (see ruling on hearsay objection); Relevance objection overruled. City Reports and Notices are relevant to the issues and are also the sort of evidence upon which responsible persons are accustomed to rely; Improper Lay Testimony Objection Overruled. Board will evaluate evidence and determine what weight to assign (Gov. Code sec. 11513, subd. (c) and (f)).

Exhibit 4	City Inspection Report Dec. 8, 2014	hearsay, improper lay testimony, lack of foundation	Not relevant pursuant to Gov. Code § 11513(c) because 1) inspections were not conducted to determine compliance with CGP 2) inspector was not qualified to inspect for CGP compliance 3) inspector did not ask which areas of site were active/inactive	Exhibit is admitted. Hearsay objection overruled. Official records exception to hearsay rule applies (Evid. Code sec. 1280); Lack of foundation objection overruled (see ruling on hearsay objection); Relevance objection overruled. City Reports and Notices are relevant to the issues and are also the sort of evidence upon which responsible persons are accustomed to rely; Improper Lay Testimony Objection Overruled. Board will evaluate evidence and determine what weight to assign (Gov. Code sec. 11513, subd. (c) and (f)).
Exhibit 22	City Inspection Report Sept. 15, 2015	hearsay, improper lay testimony, lack of foundation	Not relevant pursuant to Gov. Code § 11513(c) because inspections were not conducted to determine compliance with CGP	Exhibit is admissible. Hearsay objection overruled. Official records exception to hearsay rule applies (Evid. Code sec. 1280); Lack of foundation objection overruled (see ruling on hearsay objection); Relevance objection overruled. City Reports and Notices are relevant to the issues and are also the sort of evidence upon which responsible persons are accustomed to rely; Improper Lay Testimony Objection Overruled. Board will evaluate evidence and determine what weight to assign (Gov. Code sec. 11513, subd. (c) and (f)).
<p style="text-align: center;"><b>Violation No. 3: failing to implement vehicle fluid leak BMPs at the Site (2 days)</b></p> <p style="text-align: center;"><b>D's Feb. 3 Objections N/A D's Feb. 23 Objections N/A</b></p>				
<b>Name</b>	<b>Description</b>	<b>Notes</b>		

Violation No. 4: failing to implement erosion control BMPs in inactive areas at the Site (22 days)				
Name	Description	D's Feb. 3 Objections	D's Feb. 23 Objections	Notes
Exhibit 2	City Stop Work Notice Dec. 2, 2014	hearsay, improper lay testimony, lack of foundation	Not relevant pursuant to Gov. Code § 11513(c) because 1) inspections were not conducted to determine compliance with CGP 2) inspector was not qualified to inspect for CGP compliance	Exhibit is admissible. Hearsay objection overruled. Official records exception to hearsay rule applies (Evid. Code sec. 1280); Lack of foundation objection overruled (see ruling on hearsay objection); Relevance objection overruled. City Reports and Notices are relevant to the issues and are also the sort of evidence upon which responsible persons are accustomed to rely; Improper Lay Testimony Objection Overruled. Board will evaluate evidence and determine what weight to assign (Gov. Code sec. 11513, subd. (c) and (f)).
Exhibit 3	City Stop Work Notice Dec. 4, 2014	hearsay, improper lay testimony, lack of foundation	Not relevant pursuant to Gov. Code § 11513(c) because 1) inspections were not conducted to determine compliance with CGP 2) inspector was not qualified to inspect for CGP compliance	Exhibit is admissible. Hearsay objection overruled. Official records exception to hearsay rule applies (Evid. Code sec. 1280); Lack of foundation objection overruled (see ruling on hearsay objection); Relevance objection overruled. City Reports and Notices are relevant to the issues and are also the sort of evidence upon which responsible persons are accustomed to rely; Improper Lay Testimony Objection Overruled. Board will evaluate evidence and determine what weight to assign (Gov. Code sec. 11513, subd. (c) and (f)).



<p>Exhibit 4</p>	<p>City Inspection Report Dec. 8, 2014</p>	<p>hearsay, improper lay testimony, lack of foundation</p>	<p>Not relevant pursuant to Gov. Code § 11513(c) because 1) inspections were not conducted to determine compliance with CGP 2) inspector was not qualified to inspect for CGP compliance 3) inspector did not ask which areas of site were active/inactive</p>	<p>Exhibit is admissible. Hearsay objection overruled. Official records exception to hearsay rule applies (Evid. Code sec. 1280); Lack of foundation objection overruled (see ruling on hearsay objection); Relevance objection overruled. City Reports and Notices are relevant to the issues and are also the sort of evidence upon which responsible persons are accustomed to rely; Improper Lay Testimony Objection Overruled. Board will evaluate evidence and determine what weight to assign (Gov. Code sec. 11513, subd. (c) and (f)).</p>
<p>Exhibit 9</p>	<p>City Inspection Report Dec. 16, 2014</p>	<p>hearsay, improper lay testimony, lack of foundation</p>	<p>Not relevant pursuant to Gov. Code § 11513(c) because inspections were not conducted to determine compliance with CGP 2) inspector was not qualified to inspect for CGP compliance</p>	<p>Exhibit is admissible. Hearsay objection overruled. Official records exception to hearsay rule applies (Evid. Code sec. 1280); Lack of foundation objection overruled (see ruling on hearsay objection); Relevance objection overruled. City Reports and Notices are relevant to the issues and are also the sort of evidence upon which responsible persons are accustomed to rely; Improper Lay Testimony Objection Overruled. Board will evaluate evidence and determine what weight to assign (Gov. Code sec. 11513, subd. (c) and (f)).</p>

<p>Exhibit 24</p>	<p>City Contractor Report Jan. 16, 2015</p>	<p>hearsay, improper lay testimony, lack of foundation</p>	<p>Not relevant pursuant to Gov. Code § 11513(c) because inspections were not conducted to determine compliance with CGP</p>	<p>Exhibit is admissible. Hearsay objection overruled. Official records exception to hearsay rule applies (Evid. Code sec. 1280); Lack of foundation objection overruled (see ruling on hearsay objection); Relevance objection overruled. City Reports and Notices are relevant to the issues and are also the sort of evidence upon which responsible persons are accustomed to rely; Improper Lay Testimony Objection Overruled. Board will evaluate evidence and determine what weight to assign (Gov. Code sec. 11513, subd. (c) and (f)).</p>
<p>Exhibit 26</p>	<p>City Inspection Report Jan. 14, 2015</p>	<p>hearsay, improper lay testimony, lack of foundation</p>	<p>Not relevant pursuant to Gov. Code § 11513(c) because 1) inspections were not conducted to determine compliance with CGP 2) inspector did not ask which areas of site were active/inactive</p>	<p>Exhibit is admissible. Hearsay objection overruled. Official records exception to hearsay rule applies (Evid. Code sec. 1280); Lack of foundation objection overruled (see ruling on hearsay objection); Relevance objection overruled. City Reports and Notices are relevant to the issues and are also the sort of evidence upon which responsible persons are accustomed to rely; Improper Lay Testimony Objection Overruled. Board will evaluate evidence and determine what weight to assign (Gov. Code sec. 11513, subd. (c) and (f)).</p>

<p>Exhibit 25</p>	<p>City Inspection Report Jan. 6, 2015</p>	<p>hearsay, improper lay testimony, lack of foundation</p>	<p>Not relevant pursuant to Gov. Code § 11513(c) because 1) inspections were not conducted to determine compliance with CGP 2) inspector did not ask which areas of site were active/inactive</p>	<p>Exhibit is admissible. Hearsay objection overruled. Official records exception to hearsay rule applies (Evid. Code sec. 1280); Lack of foundation objection overruled (see ruling on hearsay objection); Relevance objection overruled. City Reports and Notices are relevant to the issues and are also the sort of evidence upon which responsible persons are accustomed to rely; Improper Lay Testimony Objection Overruled. Board will evaluate evidence and determine what weight to assign (Gov. Code sec. 11513, subd. (c) and (f)).</p>
<p>Exhibit 22</p>	<p>City Inspection Report Sept. 15, 2015</p>	<p>hearsay, improper lay testimony, lack of foundation</p>	<p>Not relevant pursuant to Gov. Code § 11513(c) because inspections were not conducted to determine compliance with CGP</p>	<p>Exhibit is admissible. Hearsay objection overruled. Official records exception to hearsay rule applies (Evid. Code sec. 1280); Lack of foundation objection overruled (see ruling on hearsay objection); Relevance objection overruled. City Reports and Notices are relevant to the issues and are also the sort of evidence upon which responsible persons are accustomed to rely; Improper Lay Testimony Objection Overruled. Board will evaluate evidence and determine what weight to assign (Gov. Code sec. 11513, subd. (c) and (f)).</p>

Violation No. 5: failing to implement perimeter sediment control BMPs (14 days)				
Name	Description	D's Feb. 3 Objections	D's Feb. 23 Objections	
Exhibit 3	City Stop Work Notice Dec. 4, 2014	hearsay, improper lay testimony, lack of foundation	Not relevant pursuant to Gov. Code § 11513(c) because 1) inspections were not conducted to determine compliance with CGP 2) inspector was not qualified to inspect for CGP compliance	Exhibit is admissible. Hearsay objection overruled. Official records exception to hearsay rule applies (Evid. Code sec. 1280); Lack of foundation objection overruled (see ruling on hearsay objection); Relevance objection overruled. City Reports and Notices are relevant to the issues and are also the sort of evidence upon which responsible persons are accustomed to rely; Improper Lay Testimony Objection Overruled. Board will evaluate evidence and determine what weight to assign (Gov. Code sec. 11513, subd. (c) and (f)).
Exhibit 4	City Inspection Report Dec. 8, 2014	hearsay, improper lay testimony, lack of foundation	Not relevant pursuant to Gov. Code § 11513(c) because 1) inspections were not conducted to determine compliance with CGP 2) inspector was not qualified to inspect for CGP compliance 3) inspector did not ask which areas of site were active/inactive	Exhibit is admissible. Hearsay objection overruled. Official records exception to hearsay rule applies (Evid. Code sec. 1280); Lack of foundation objection overruled (see ruling on hearsay objection); Relevance objection overruled. City Reports and Notices are relevant to the issues and are also the sort of evidence upon which responsible persons are accustomed to rely; Improper Lay Testimony Objection Overruled. Board will evaluate evidence and determine what weight to assign (Gov. Code sec. 11513, subd. (c) and (f)).

<p>Exhibit 9</p>	<p>City Inspection Report Dec. 16, 2014</p>	<p>hearsay, improper lay testimony, lack of foundation</p>	<p>Not relevant pursuant to Gov. Code § 11513(c) because inspections were not conducted to determine compliance with CGP 2) inspector was not qualified to inspect for CGP compliance</p>	<p>Exhibit is admissible. Hearsay objection overruled. Official records exception to hearsay rule applies (Evid. Code sec. 1280); Lack of foundation objection overruled (see ruling on hearsay objection); Relevance objection overruled. City Reports and Notices are relevant to the issues and are also the sort of evidence upon which responsible persons are accustomed to rely; Improper Lay Testimony Objection Overruled. Board will evaluate evidence and determine what weight to assign (Gov. Code sec. 11513, subd. (c) and (f)).</p>
<p>Exhibit 21</p>	<p>City Inspection Report Dec. 15, 2015 *note this report is actually exhibit 22, exhibit 21 is a Citation issued to Valencia</p>	<p>hearsay, improper lay testimony, lack of foundation</p>	<p>Not relevant pursuant to Gov. Code § 11513(c) because inspections were not conducted to determine compliance with CGP</p>	<p>Exhibit is admissible. Hearsay objection overruled. Official records exception to hearsay rule applies (Evid. Code sec. 1280); Lack of foundation objection overruled (see ruling on hearsay objection); Relevance objection overruled. City Reports and Notices are relevant to the issues and are also the sort of evidence upon which responsible persons are accustomed to rely; Improper Lay Testimony Objection Overruled. Board will evaluate evidence and determine what weight to assign (Gov. Code sec. 11513, subd. (c) and (f)).</p>

Violation No. 6: Failing to implement erosion control BMPs in active areas at the Site (22 days)				
Name	Description	D's Feb. 3 Objections	D's Feb. 23 Objections	Notes
Exhibit 2	Photographs and text in City Stop Work Notice Dec. 2, 2014	hearsay, improper lay testimony, lack of foundation	Not relevant pursuant to Gov. Code § 11513(c) because 1) inspections were not conducted to determine compliance with CGP 2) inspector was not qualified to inspect for CGP compliance	Exhibit is admissible. Hearsay objection overruled. Official records exception to hearsay rule applies (Evid. Code sec. 1280); Lack of foundation objection overruled (see ruling on hearsay objection); Relevance objection overruled. City Reports and Notices are relevant to the issues and are also the sort of evidence upon which responsible persons are accustomed to rely; Improper Lay Testimony Objection Overruled. Board will evaluate evidence and determine what weight to assign (Gov. Code sec. 11513, subd. (c) and (f)).
Exhibit 3	City Stop Work Notice Dec. 4, 2014	hearsay, improper lay testimony, lack of foundation	Not relevant pursuant to Gov. Code § 11513(c) because 1) inspections were not conducted to determine compliance with CGP 2) inspector was not qualified to inspect for CGP compliance	Exhibit is admissible. Hearsay objection overruled. Official records exception to hearsay rule applies (Evid. Code sec. 1280); Lack of foundation objection overruled (see ruling on hearsay objection); Relevance objection overruled. City Reports and Notices are relevant to the issues and are also the sort of evidence upon which responsible persons are accustomed to rely; Improper Lay Testimony Objection Overruled. Board will evaluate evidence and determine what weight to assign (Gov. Code sec. 11513, subd. (c) and (f)).

<p>Exhibit 4</p>	<p>Photograph in City Inspection Report Dec. 8, 2014</p>		<p>Not relevant pursuant to Gov. Code § 11513(c) because 1) inspections were not conducted to determine compliance with CGP 2) inspector was not qualified to inspect for CGP compliance 3) inspector did not ask which areas of site were active/inactive</p>	<p>Exhibit is admissible. Hearsay objection overruled. Official records exception to hearsay rule applies (Evid. Code sec. 1280); Lack of foundation objection overruled (see ruling on hearsay objection); Relevance objection overruled. City Reports and Notices are relevant to the issues and are also the sort of evidence upon which responsible persons are accustomed to rely; Improper Lay Testimony Objection Overruled. Board will evaluate evidence and determine what weight to assign (Gov. Code sec. 11513, subd. (c) and (f)).</p>
<p>Exhibit 9</p>	<p>City Inspection Report Dec. 16, 2014</p>	<p>hearsay, improper lay testimony, lack of foundation</p>	<p>Not relevant pursuant to Gov. Code § 11513(c) because inspections were not conducted to determine compliance with CGP 2) inspector was not qualified to inspect for CGP compliance</p>	<p>Exhibit is admissible. Hearsay objection overruled. Official records exception to hearsay rule applies (Evid. Code sec. 1280); Lack of foundation objection overruled (see ruling on hearsay objection); Relevance objection overruled. City Reports and Notices are relevant to the issues and are also the sort of evidence upon which responsible persons are accustomed to rely; Improper Lay Testimony Objection Overruled. Board will evaluate evidence and determine what weight to assign (Gov. Code sec. 11513, subd. (c) and (f)).</p>

<p>Exhibit 24</p>	<p>City Contractor Report Jan. 16, 2015</p>	<p>hearsay, improper lay testimony, lack of foundation</p>	<p>Not relevant pursuant to Gov. Code § 11513(c) because inspections were not conducted to determine compliance with CGP</p>	<p>Exhibit is admissible. Hearsay objection overruled. Official records exception to hearsay rule applies (Evid. Code sec. 1280); Lack of foundation objection overruled (see ruling on hearsay objection); Relevance objection overruled. City Reports and Notices are relevant to the issues and are also the sort of evidence upon which responsible persons are accustomed to rely; Improper Lay Testimony Objection Overruled. Board will evaluate evidence and determine what weight to assign (Gov. Code sec. 11513, subd. (c) and (f)).</p>
<p>Exhibit 16</p>	<p>Photograph in City Administrative Citation issued on March 24, 2015</p>	<p>hearsay, improper lay testimony, lack of foundation</p>	<p>Not relevant pursuant to Gov. Code § 11513(c) because inspections were not conducted to determine compliance with CGP</p>	<p>Exhibit is admissible. Hearsay objection overruled. Official records exception to hearsay rule applies (Evid. Code sec. 1280); Lack of foundation objection overruled (see ruling on hearsay objection); Relevance objection overruled. City Reports and Notices are relevant to the issues and are also the sort of evidence upon which responsible persons are accustomed to rely; Improper Lay Testimony Objection Overruled. Board will evaluate evidence and determine what weight to assign (Gov. Code sec. 11513, subd. (c) and (f)).</p>



Exhibit 22	City Inspection Report Dec. 15, 2015	hearsay, improper lay testimony, lack of foundation	Not relevant pursuant to Gov. Code § 11513(c) because inspections were not conducted to determine compliance with CGP	Exhibit is admissible. Hearsay objection overruled. Official records exception to hearsay rule applies (Evid. Code sec. 1280); Lack of foundation objection overruled (see ruling on hearsay objection); Relevance objection overruled. City Reports and Notices are relevant to the issues and are also the sort of evidence upon which responsible persons are accustomed to rely; Improper Lay Testimony Objection Overruled. Board will evaluate evidence and determine what weight to assign (Gov. Code sec. 11513, subd. (c) and (f)).
<b>Violation No. 7, failing to apply linear sediment controls at the Site (9 days)</b>				
Exhibit 9	City Inspection Report Dec. 16, 2014	hearsay, improper lay testimony, lack of foundation	D's Feb. 23 Objections	Exhibit is admissible. Hearsay objection overruled. Official records exception to hearsay rule applies (Evid. Code sec. 1280); Lack of foundation objection overruled (see ruling on hearsay objection); Relevance objection overruled. City Reports and Notices are relevant to the issues and are also the sort of evidence upon which responsible persons are accustomed to rely; Improper Lay Testimony Objection Overruled. Board will evaluate evidence and determine what weight to assign (Gov. Code sec. 11513, subd. (c) and (f)).
<b>Violation No. 7, failing to apply linear sediment controls at the Site (9 days)</b>				
			D's Feb. 3 Objections	
<b>Name</b>	<b>Description</b>			<b>Notes</b>

Exhibit 22	City Inspection Report Dec. 15, 2015	hearsay, improper lay testimony, lack of foundation	Not relevant pursuant to Gov. Code § 11513(c) because inspections were not conducted to determine compliance with CGP	Exhibit is admissible. Hearsay objection overruled. Official records exception to hearsay rule applies (Evid. Code sec. 1280); Lack of foundation objection overruled (see ruling on hearsay objection); Relevance objection overruled. City Reports and Notices are relevant to the issues and are also the sort of evidence upon which responsible persons are accustomed to rely; Improper Lay Testimony Objection Overruled. Board will evaluate evidence and determine what weight to assign (Gov. Code sec. 11513, subd. (c) and (f)).
<b>Violation No. 8: failing to effectively manage run-on &amp; runoff at the Site (7 days)</b>				
<b>Name</b>	<b>Description</b>	<b>Notes</b>		
Violation No. 9: failing to remove sediment or other construction materials from roads at the Site (10 days)	D's Feb. 3 Objections N/A	D's Feb. 23 Objections N/A		
<b>Name</b>	<b>Description</b>	<b>Notes</b>		
Exhibit 2	City Stop Work Notice Dec. 2, 2014	hearsay, improper lay testimony, lack of foundation	D's Feb. 23 Objections  Not relevant pursuant to Gov. Code § 11513(c) because 1) inspections were not conducted to determine compliance with CGP 2) inspector was not qualified to inspect for CGP compliance	Exhibit is admissible. Hearsay objection overruled. Official records exception to hearsay rule applies (Evid. Code sec. 1280); Lack of foundation objection overruled (see ruling on hearsay objection); Relevance objection overruled. City Reports and Notices are relevant to the issues and are also the sort of evidence upon which responsible persons are accustomed to rely; Improper Lay Testimony Objection Overruled. Board will evaluate evidence and determine what weight to assign (Gov. Code sec. 11513, subd. (c) and (f)).

<p>Exhibit 4</p>	<p>City Inspection Report Dec. 8, 2014</p>	<p>hearsay, improper lay testimony, lack of foundation</p>	<p>Not relevant pursuant to Gov. Code § 11513(c) because 1) inspections were not conducted to determine compliance with CGP 2) inspector was not qualified to inspect for CGP compliance 3) inspector did not ask which areas of site were active/inactive</p>	<p>Exhibit is admissible. Hearsay objection overruled. Official records exception to hearsay rule applies (Evid. Code sec. 1280); Lack of foundation objection overruled (see ruling on hearsay objection); Relevance objection overruled. City Reports and Notices are relevant to the issues and are also the sort of evidence upon which responsible persons are accustomed to rely; Improper Lay Testimony Objection Overruled. Board will evaluate evidence and determine what weight to assign (Gov. Code sec. 11513, subd. (c) and (f)).</p>
<p>Exhibit 5</p>	<p>City Inspection Report Dec. 9, 2014</p>	<p>hearsay, improper lay testimony, lack of foundation</p>	<p>Not relevant pursuant to Gov. Code § 11513(c) because 1) inspections were not conducted to determine compliance with CGP 2) inspector was not qualified to inspect for CGP compliance 3) inspector did not ask which areas of site were active/inactive</p>	<p>Exhibit is admissible. Hearsay objection overruled. Official records exception to hearsay rule applies (Evid. Code sec. 1280); Lack of foundation objection overruled (see ruling on hearsay objection); Relevance objection overruled. City Reports and Notices are relevant to the issues and are also the sort of evidence upon which responsible persons are accustomed to rely; Improper Lay Testimony Objection Overruled. Board will evaluate evidence and determine what weight to assign (Gov. Code sec. 11513, subd. (c) and (f)).</p>

<p>Exhibit 9</p>	<p>City Inspection Report Dec. 16, 2014</p>	<p>hearsay, improper lay testimony, lack of foundation</p>	<p>Not relevant pursuant to Gov. Code § 11513(c) because inspections were not conducted to determine compliance with CGP 2) inspector was not qualified to inspect for CGP compliance</p>	<p>Exhibit is admissible. Hearsay objection overruled. Official records exception to hearsay rule applies (Evid. Code sec. 1280); Lack of foundation objection overruled (see ruling on hearsay objection); Relevance objection overruled. City Reports and Notices are relevant to the issues and are also the sort of evidence upon which responsible persons are accustomed to rely; Improper Lay Testimony Objection Overruled. Board will evaluate evidence and determine what weight to assign (Gov. Code sec. 11513, subd. (c) and (f)).</p>
<p>Exhibit 22</p>	<p>City Inspection Report Dec. 15, 2015</p>	<p>hearsay, improper lay testimony, lack of foundation</p>	<p>Not relevant pursuant to Gov. Code § 11513(c) because inspections were not conducted to determine compliance with CGP</p>	<p>Exhibit is admissible. Hearsay objection overruled. Official records exception to hearsay rule applies (Evid. Code sec. 1280); Lack of foundation objection overruled (see ruling on hearsay objection); Relevance objection overruled. City Reports and Notices are relevant to the issues and are also the sort of evidence upon which responsible persons are accustomed to rely; Improper Lay Testimony Objection Overruled. Board will evaluate evidence and determine what weight to assign (Gov. Code sec. 11513, subd. (c) and (f)).</p>

Violation No. 10: Failing to protect storm drain inlets at the Site (3 days)			
Name	Description	D's Feb. 3 Objections	D's Feb. 23 Objections
			Notes
Exhibit 4	City Inspection Report Dec. 8, 2015, hearsay, improper lay testimony, lack of foundation		Not relevant pursuant to Gov. Code § 11513(c) because 1) inspections were not conducted to determine compliance with CGP 2) inspector was not qualified to inspect for CGP compliance 3) inspector did not ask which areas of site were active/inactive
Exhibit 19	San Diego Water Board Photographs from May 13, 2015		
Exhibit 22	City Inspection Report Dec. 15, 2015, hearsay, improper lay testimony, lack of foundation		Not relevant pursuant to Gov. Code § 11513(c) because inspections were not conducted to determine compliance with CGP
			Exhibit is admissible. Hearsay objection overruled. Official records exception to hearsay rule applies (Evid. Code sec. 1280); Lack of foundation objection overruled (see ruling on hearsay objection); Relevance objection overruled. City Reports and Notices are relevant to the issues and are also the sort of evidence upon which responsible persons are accustomed to rely; Improper Lay Testimony Objection Overruled. Board will evaluate evidence and determine what weight to assign (Gov. Code sec. 11513, subd. (c) and (f)).
			Exhibit is admissible. Hearsay objection overruled. Official records exception to hearsay rule applies (Evid. Code sec. 1280); Lack of foundation objection overruled (see ruling on hearsay objection); Relevance objection overruled. City Reports and Notices are relevant to the issues and are also the sort of evidence upon which responsible persons are accustomed to rely; Improper Lay Testimony Objection Overruled. Board will evaluate evidence and determine what weight to assign (Gov. Code sec. 11513, subd. (c) and (f)).

Violation No. 11: failing to contain and securely protect stockpiles of waste materials from wind and rain (9 days)			
Name	Description	D's Feb. 3 Objections	D's Feb. 23 Objections
Exhibit 25	City Inspection Report Jan. 6, 2015		<p>Not relevant pursuant to Gov. Code § 11513(c) because 1) inspections were not conducted to determine compliance with CGP 2) inspector did not ask which areas of site were active/inactive</p>
			<p>Exhibit is admissible. Hearsay objection overruled. Official records exception to hearsay rule applies (Evid. Code sec. 1280); Lack of foundation objection overruled (see ruling on hearsay objection); Relevance objection overruled. City Reports and Notices are relevant to the issues and are also the sort of evidence upon which responsible persons are accustomed to rely; Improper Lay Testimony Objection Overruled. Board will evaluate evidence and determine what weight to assign (Gov. Code sec. 11513, subd. (c) and (f)).</p>
Exhibit 26	City Inspection Report Jan. 14, 2015		<p>Not relevant pursuant to Gov. Code § 11513(c) because 1) inspections were not conducted to determine compliance with CGP 2) inspector did not ask which areas of site were active/inactive</p>
			<p>Exhibit is admissible. Hearsay objection overruled. Official records exception to hearsay rule applies (Evid. Code sec. 1280); Lack of foundation objection overruled (see ruling on hearsay objection); Relevance objection overruled. City Reports and Notices are relevant to the issues and are also the sort of evidence upon which responsible persons are accustomed to rely; Improper Lay Testimony Objection Overruled. Board will evaluate evidence and determine what weight to assign (Gov. Code sec. 11513, subd. (c) and (f)).</p>

Violation No. 17 - failing to properly store chemicals at the Site (7 days)			
Name	Description	D's Feb. 3 Objections	D's Feb. 23 Objections
Exhibit 13	City Inspection Report March 1	hearsay, improper lay testimony, lack of foundation	Not relevant pursuant to Gov. Code § 11513(c) because inspections were not conducted to determine compliance with CGP
Exhibit 15	City Correct Work Notice March	hearsay, improper lay testimony, lack of foundation	Not relevant pursuant to Gov. Code § 11513(c) because inspections were not conducted to determine compliance with CGP 2) inspector was not qualified to inspect for CGP compliance
			Exhibit is admissible. Hearsay objection overruled. Official records exception to hearsay rule applies (Evid. Code sec. 1280); Lack of foundation objection overruled (see ruling on hearsay objection); Relevance objection overruled. City Reports and Notices are relevant to the issues and are also the sort of evidence upon which responsible persons are accustomed to rely; Improper Lay Testimony Objection Overruled. Board will evaluate evidence and determine what weight to assign (Gov. Code sec. 11513, subd. (c) and (f)).
			Exhibit is admissible. Hearsay objection overruled. Official records exception to hearsay rule applies (Evid. Code sec. 1280); Lack of foundation objection overruled (see ruling on hearsay objection); Relevance objection overruled. City Reports and Notices are relevant to the issues and are also the sort of evidence upon which responsible persons are accustomed to rely; Improper Lay Testimony Objection Overruled. Board will evaluate evidence and determine what weight to assign (Gov. Code sec. 11513, subd. (c) and (f)).

Violation No. 13: failing to prevent the discharge of concrete waste to the ground at the site (15 days)			
Name	Description	D's Feb. 3 Objections	D's Feb. 23 Objections
Exhibit 14	City Administrative Citation May 14, 2015	hearsay, improper lay testimony, lack of foundation	Not relevant pursuant to Gov. Code § 11513(c) because inspections were not conducted to determine compliance with CGP 2) inspector was not qualified to inspect for CGP compliance
			Notes Exhibit is admissible. Hearsay objection overruled. Official records exception to hearsay rule applies (Evid. Code sec. 1280); Lack of foundation objection overruled (see ruling on hearsay objection); Relevance objection overruled. City Reports and Notices are relevant to the issues and are also the sort of evidence upon which responsible persons are accustomed to rely; Improper Lay Testimony Objection Overruled. Board will evaluate evidence and determine what weight to assign (Gov. Code sec. 11513, subd. (c) and (f)).
Exhibit 16	City Administrative Citation May 14, 2015	hearsay, improper lay testimony, lack of foundation	Not relevant pursuant to Gov. Code § 11513(c) because inspections were not conducted to determine compliance with CGP
			Notes Exhibit is admissible. Hearsay objection overruled. Official records exception to hearsay rule applies (Evid. Code sec. 1280); Lack of foundation objection overruled (see ruling on hearsay objection); Relevance objection overruled. City Reports and Notices are relevant to the issues and are also the sort of evidence upon which responsible persons are accustomed to rely; Improper Lay Testimony Objection Overruled. Board will evaluate evidence and determine what weight to assign (Gov. Code sec. 11513, subd. (c) and (f)).



Exhibit 17	City Administrative Citation April	hearsay, improper lay testimony, lack of foundation	Not relevant pursuant to Gov. Code § 11513(c) because inspections were not conducted to determine compliance with CGP	Exhibit is admissible. Hearsay objection overruled. Official records exception to hearsay rule applies (Evid. Code sec. 1280); Lack of foundation objection overruled (see ruling on hearsay objection); Relevance objection overruled. City Reports and Notices are relevant to the issues and are also the sort of evidence upon which responsible persons are accustomed to rely; Improper Lay Testimony Objection Overruled. Board will evaluate evidence and determine what weight to assign (Gov. Code sec. 11513, subd. (c) and (f)).
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Name	Description	San Altos' Feb. 23 Objections	Rulings on Objections
Exhibit 32	Better quality images of 40 photos already in the record	1) constitutes surprise evidence under § 648.4(e); & 2) is prejudicial and violates due process because San Altos could not respond to evidence in advance	Objections based on surprise, prejudice and due process grounds are overruled. The images/photographs are represented to be better quality (larger/color) images of photographs already submitted with the Prosecution Team's October 19, 2015 Complaint. Better quality images aid the Board's (the public's and the parties') consideration of the issues. Moreover, the Discharger has had the images in Exhibit 32 since at least February 4 so has had ample opportunity to review and respond in writing and will have the additional opportunity to rebut, refute or otherwise address the images at hearing. Exhibit 32 is accepted in the record.
Exhibit 33	23 additional RB staff photos not previously in the record	1) Constitutes surprise evidence under § 648.4(e); 2) Is prejudicial and violates due process because San Altos could not respond to evidence in advance; & 3) Does not constitute rebuttal evidence, but rather, it is mere cumulative evidence of the P's case in chief	Objections based on surprise, prejudice and due process grounds are overruled. The images/photographs were provided to the Discharger at the latest on February 4, 2016. There evidence is not surprise evidence and allowing them does not prejudice the Discharger or violate due process. The Discharger was on notice since the February 8 ruling that the images could be accepted as rebuttal evidence. The Prosecution has identified images 33.A.1-11, C.1 and C.6 as evidence to rebut allegations that the proposed penalties do not comply with Enforcement Policy guidelines. The Prosecution has identified images/photographs 33.B.1-2, C.2-5, C.7, D. 1-3 as evidence to rebut the allegations that there is insufficient evidence in the record to support violations. At this time, the Advisory Team is unable to determine which images, if any, are properly characterized as rebuttal evidence. Exhibit 33 is admitted to the record pending final ruling.

<p>Objections based on surprise, prejudice and due process grounds are overruled. Even if it were not offered as rebuttal evidence, rainfall data from sources such as NOAA and Weather Underground are not improper. The evidence is not surprise evidence and allowing it neither is prejudicial nor violates due process. The data were provided to the Discharger at the latest on February 4. The discharger had two opportunities to respond in writing (February 10 and 23) and may rebut, refute or otherwise address the data at the hearing, almost five weeks after it received this Exhibit. Moreover, the San Diego Water Board may take official notice of scientific or technical information such as weather data and does so in this case. (See Cal. Code Regs., tit. 23, sec. 648.2.) The Prosecution Team also identifies Exhibit 34 as evidence offered to rebut allegations of insufficient evidence. On February 8, Exhibit 34 was provisionally accepted into the record. It is not possible at this time to determine if data in Exhibit 34 is properly characterized as rebuttal evidence. Exhibit 34 remains provisionally accepted pending final determination.</p>	<p>1) Constitutes surprise evidence under § 648.4(e); &amp;  2) Is prejudicial and violates due process because San Altos could not respond to evidence in advance</p>	<p>NOAA rainfall data from weather stations in Spring Valley, La Mesa, &amp; Weather Underground</p> <p>Exhibit 34</p>
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<p>Exhibit 35</p>	<p>Site SWPPP</p>	<p>1) Constitutes surprise evidence under § 648.4(e); 2) Is prejudicial and violates due process because San Altos could not respond to evidence in advance; &amp; 3) To the extent it is allowed it should only be relied on provide background information about the Site</p>	<p>Objections to Exhibit 35 (San Altos's SWPPP) based on surprise, prejudice and due process grounds are overruled. The Advisory Team would have expected that Prosecution to include the SWPPP in its case-in-chief. However, the Discharger prepared the SWPPP and the Prosecution identified it as proposed additional evidence almost three weeks before the deadline to submit rebuttal argument and evidence and almost five weeks before the evidentiary hearing. The Discharger had two opportunities to respond in writing (February 10 and 23) and has the opportunity to refute or otherwise address the SWPPP at hearing. The Discharger has known since at least February 8 that Exhibit 35 may be included in the record. The SWPPP is not surprise evidence and allowing it does not prejudice the Discharger or violate due process. The Prosecution has identified Exhibit 35 as evidence offered to rebut (1) allegations that penalties do not meet enforcement guidelines; (2) allegations in the Discharger's Factual Background portion of its February 3 submittal; and (3) allegations that the culpability multiplier is improper. Exhibit 35 was provisionally accepted into the record on February 8. It is not possible at this time to determine if Exhibit 35 is properly characterized as rebuttal. Exhibit 35 remains provisionally accepted pending final determination.</p>
<p>Exhibit 36</p>	<p>Dischargers NOV Response dated Jan. 1, 2015</p>	<p>1) Constitutes surprise evidence under § 648.4(e); &amp; 2) Is prejudicial and violates due process because San Altos could not respond to evidence in advance</p>	<p>Objections to Exhibit 36 (the Discharger's NOV response dated Jan. 1, 2015) on surprise, prejudice and due process grounds are overruled. San Altos submitted this document as part of its February 3 submittal as Exhibit B to the Declaration of Ben Anderson in Support of San Altos-Lemon Grove, LLC's Legal and Technical Arguments and Analysis in Opposition; to Administrative Civil Liability Complaint No. R9-2015-0110. The Discharger's NOV Response dated January 1, 2015 is part of the record.</p>

<p>Exhibit 37</p>	<p>QSP Reports with additional site photos and weather information; Notes &amp; photos from Dischargers BMP walk in Jan. 2015</p>	<p>6 of the 8 reports should be excluded because:          1) Constitute surprise evidence under § 648.4(e);          2) Are prejudicial and violate due process because San Altos could not respond to evidence in advance; &amp;          3) Are not rebuttal evidence because P does not identify what evidence they are intended to rebut.          San Altos does not object to Exhibit No. 37G and Exhibit No. 37H, which were submitted as part of its evidence.</p>	<p>Exhibits 37A-F are identified as Discharger QSP Reports dated December 2, 3, 4, 5, 10, and 15, 2014 prepared by Whitson CM. The Discharger's objections on the basis of surprise, prejudice and due process are overruled. The Discharger's QSP prepared the reports and the Prosecution identified it proposed additional evidence almost three weeks before the deadline to submit rebuttal argument and evidence and almost five weeks before the evidentiary hearing. The evidence is not surprise evidence and allowing it does not violate the Discharger's due process or prejudice it. The Discharger had two opportunities to respond in writing (February 10 and 23) and an opportunity to refute or otherwise address the SWPPP at hearing. There is no surprise, prejudice or violation of the Discharger's due process. The Prosecution also identified Exhibit 37A-C and F as rebutting allegations that the penalties applied do not meet the Enforcement Policy guidelines. Exhibits 37 D and E are offered to rebut the allegations of insufficient evidence in the record. Exhibit 37 A-F was provisionally accepted into the record on February 8 so the Discharger has been on notice for over a month that it may be included in the record. It is not possible at this time to determine if Exhibit 37 A-F is properly characterized as rebuttal. Exhibit 37 remains provisionally accepted pending final determination.</p>
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<p>Exhibit 38</p>	<p>5 Discharger Photographs</p>	<p>1) Constitutes surprise evidence under § 648.4(e);                  2) Is prejudicial and violates due process because San Altos could not respond to evidence in advance; &amp;                  3) Does not constitute rebuttal evidence, but rather, it is mere cumulative evidence of the P's case in chief</p>	<p>Exhibit 38 consists of 5 photographs attributed to San Altos. The Discharger's objections on the bases of surprise, prejudice and due process are overruled. Exhibit 38 contains five images/photographs attributed to San Altos so have been in San Altos's possession since well before February 4. The evidence is not surprise evidence. The Discharger has not been prejudiced nor has its due process rights been violated. The Discharger has had two opportunities to respond in writing (February 10 and 23) and has the opportunity to refute or explain its images/photographs at the hearing. The Discharger has been on notice since February 8 that Exhibit 38 was provisionally accepted into the record. In its rebuttal submittal, the Prosecution Team has characterized these photographs as rebuttal evidence, offered to rebut the allegation that the penalties applied to not meet the Enforcement Policy guidelines. It is not possible at this time to determine if one or more images in Exhibit 38 are properly characterized as rebuttal. Exhibit 38 remains provisionally accepted pending final determination.</p>
<p>Exhibit 39</p>	<p>original jpgs of 5 Lemon Grove Photos already in the Record</p>	<p>1) Constitutes surprise evidence under § 648.4(e); &amp;                  2) Is prejudicial and violates due process because San Altos could not respond to evidence in advance</p>	<p>Objections based on surprise, prejudice and due process grounds are overruled. The photographs are represented to be better (larger/color) images of photographs already submitted with the Prosecution Team's October 19, 2015 Complaint. Better quality photos aid the Board's (the public's and the parties') consideration of the issues. The photographs are not new to the record.</p>

Exhibit 40	70 Lemon Grove Photos not in the Record	<p>1) Constitutes surprise evidence under § 648.4(e);</p> <p>2) Is prejudicial and violates due process because San Altos could not respond to evidence in advance; &amp;</p> <p>3) does not constitute rebuttal evidence, but rather, it is mere cumulative evidence of the P's case in chief</p>	<p>In its February 4, 2016, Response to Supplemental Evidence Objections, the Prosecution Team states "These photos were produced in accordance with the Discharger's subpoenas to City staff and D-Max employees on December 28, 2015. Not allowing the Prosecution Team to submit them now, over four weeks before the hearing date, would prejudice the Prosecution because the Prosecution did not possess these photos before its December 4, 2015 evidence submission due date. The photos are only offered to support violations already alleged in the Complaint and to supplement existing evidence in the record. City staff and D-Max Engineering employees can verify the accuracy of the photos relating site conditions, and the photos would assist in providing the Board Members with a broader context of the site conditions." (Prosecution Response to Supplemental Evidence Objections, pp. 2-3.) Objections on the basis of surprise, prejudice and due process are overruled. Good cause for not submitting the evidence earlier is established because the photographs were first adduced in the process of discovery initiated after December 4 by the Discharger. Moreover, there is no prejudice or due process violation as the evidence was discovered in response to the Discharger's discovery efforts, the Prosecution Team identified these photographs almost three weeks before the rebuttal evidence and argument deadline and almost five weeks before the hearing. The Discharger has been on notice since February 8 that these photographs may be admitted in the record. The Discharger had two written opportunities to address the images (February 10 and 23) and has an opportunity to rebut, refute or explain them at hearing. The images/photographs in Exhibit 40 were provisionally accepted into the record on February 8 and remain provisionally accepted in the record pending final</p>
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<p>Objections to Exhibit 41 based on surprise, prejudice and due process grounds are overruled. Exhibit 41 contains three documents. Two of these documents are already in the record having been submitted by San Altos. The December 24, 2014, Inspector's Report was included as Exhibit 13 to the Deposition Transcript of Leon Firsh and the D-Max Engineering Memo dated May 15, 2015, was included as Exhibit 9 to the Deposition Transcript of John Quenzer. The third document is a one-page December 16, 2015 letter from Leon Firsh to Ben Anderson of San Altos. In the February 8 preliminary ruling the Advisory Team mistakenly identified this letter as already submitted in the record. However, it is not surprise evidence and allowing it neither is prejudicial nor violates the Discharger's due process rights. The one-page letter was addressed to San Altos's Legally Responsible Person. San Altos became aware no later than February 4 of the Prosecution Team's request to submit the letter into evidence. San Altos had two opportunities to respond in writing (February 10 and 23) and may address the letter at the hearing. The hearing is almost five weeks after San Altos was made aware the Prosecution sought to introduce the letter. The Prosecution did not identify the letter as rebuttal evidence. To the extent this was due to the Advisory Team error, the Prosecution may identify it as rebuttal evidence at the hearing. The December 16 letter to Ben Anderson is provisionally included in the record pending final determination.</p>	<p>1) Constitutes surprise evidence under § 648.4(e); &amp;  2) Is prejudicial and violates due process because San Altos could not respond to evidence in advance</p>
<p>Exhibit 41</p>	<p>Lemon Grove Documents not in the record, including: Dec. 16, 2014 letter; Dec. 24, 2014 Inspectors Report, 2014; Dmax Engineering Memo May 15, 2015</p>