

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

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Escondido, CA 92025

Various Priority Development Projects

Place ID: 222931: cmeans

### NOTICE OF VIOLATION No. R9-2015-0024

Violations of Order R9-2007-0001

The City of Escondido 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.

The City of Escondido is in violation of San Diego Water Board Order No. R9-2007-0001, National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS0108758, *Waste Discharge Requirements for Discharges of Urban Runoff from the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds of the County of San Diego, the Incorporated Cities of San Diego County, the San Diego Unified Port District, and the San Diego County Regional Airport Authority.*

#### A. Summary of Violations

1. **Failure to Prevent the Discharge of Pollutants Not Reduced to the Maximum Extent Practicable**

a. **Pursuant to Discharge Prohibition A.2 of Order No. R9-2007-0001:**

Discharges from MS4s containing pollutants which have not been reduced to the Maximum Extent Practicable (MEP) are prohibited.

**Observations:** On December 3, 2014, during a rain event, the San Diego Water Board inspected various Priority Development Projects (PDPs) within the City of Escondido and found that the permanent treatment control BMPs were either designed or installed incorrectly or in need of maintenance which affected their ability to properly treat pollutants (i.e. storm water receives little to no treatment before being discharged offsite). Specific findings are discussed in the attached Inspection Report.

Additionally, based on prior investigations (March 13, 2014 Audit, and November 2014 inquiry involving parking lot at 540 West Grand Avenue) the City of Escondido allowed PDPs to be completed with permanent treatment BMPs missing for prolonged periods of time. These missing BMPs provided no treatment of pollutants during multiple rain events over a period of years (e.g. Tract 850/Washington Hills should have had 19 inlet filters in place in 2009, but most of them were not installed until November 2014).

## 2. **Failure to Implement Standard Urban Storm Water Mitigation Plan (SUSMP) Requirements**

### a. **Pursuant to Provision D.1.e(1) of Order No. R9-2007-0001:**

Each Copermittee shall develop and utilize a watershed based database to track and inventory approved treatment control BMPs and treatment control maintenance within its jurisdiction. At a minimum the database shall include information on treatment control BMP type, location, watershed, date of construction, party responsible for maintenance, maintenance certifications or verifications, inspection, inspection findings, and corrective actions.

**Observations:** Based on the March 13, 2014 audit findings, and described in the December 3, 2014 inspection report (Finding 2a), the City of Escondido noted Tract 850/Washington Hills was a residential PDP that was missing treatment control BMPs since 2009. This project, however, in violation of the above provision, is not identified in the FY 2011-2012 JURMP Annual Report Treatment Control Inventory and Summary of Inspections.

Additionally, the FY 2011/2012 inventory did not include all of the minimum required information contained in Provision D.1.e(1) of the Order. The missing information includes watershed, party responsible for maintenance, and maintenance certifications or verifications. If the City's in-house database does not include this information, the failure to do so is also a violation of the above provision.

### b. **Pursuant to Provision D.1.e(2) of Order No. R9-2007-0001:** Each Copermittee shall develop and implement a program to verify that approved treatment control BMPs are operating effectively and have been adequately maintained.

**Observations:** As detailed in the December 23, 2014 Inspection Report, the San Diego Water Board found six of seven PDPs inspected to have ineffective and/or inadequately maintained treatment control BMPs. The City's overall program is not adequate to ensure the proper functioning of the treatment control BMPs and is, therefore, in violation of the above provision.

- c. **Pursuant to Provision D.1.e(4) of Order No. R9-2007-0001:** Inspections of high priority treatment control BMPs shall be conducted prior to each rainy season.

**Observations:** According to the FY 2011-2012 JURMP Annual Report, the City inspected the post-construction treatment control BMPs at 231 E Lincoln Parkway, 600 W Mission Avenue, 150 La Terraza Boulevard, 500 La Terraza Boulevard, and 1215/1223 Pacific Oaks Place near the end of, or soon after the end of, the 2011-2012 rainy season. The failure to inspect these high priority facilities **prior** to the rainy season is a violation of the above provision. Changes in the reporting format for subsequent FY annual reports does not include enough information to determine if inspections in the following years were in compliance with the above provision.

- d. **Pursuant to Provision D.1.f of Order No. R9-2007-0001:** Prior to occupancy of each Priority Development Project subject to SUSMP requirements, each Copermittee shall inspect the constructed Low Impact Development (LID), source control, and treatment control BMPs to verify that they have been constructed in compliance with all specifications, plans, permits, ordinances, and this Order.

**Observations:** As detailed in Findings 3 through 5 of the December 23, 2014 inspection report, treatment control BMPs did not appear to be installed or constructed in compliance with all specifications, plans, permits, ordinances, and Order R9-2007-0001 which is a violation of the above provision.

### 3. **Failure to Adequately Enforce at Priority Development Sites to Maintain Compliance with Order No. R9-2007-0001**

- a. **Pursuant to Provision D.1.h of Order No. R9-2007-0001 of Order No. R9-2007-0001:** Each Copermittee shall enforce its storm water ordinance for all development projects and at all development sites as necessary to maintain compliance with this Order. Copermittee ordinances or other regulatory mechanisms shall include appropriate sanctions to achieve compliance. Sanctions shall include the following or their equivalent: Non-monetary penalties, fines, bonding requirements, and/or permit or occupancy denials for non-compliance.

**Observations:** Our review of the City’s FY 2011/2012 Annual Report found that numerous treatment control BMP deficiencies and maintenance issues were identified by the City as a result of its inspections (including 231 Lincoln Parkway, 600 W Mission Avenue, 150 Terraza Blvd.).

The December 3, 2014 inspection by San Diego Water Board staff noted the same deficiencies and maintenance issues with the same treatment control BMPs. This indicates a lack of followup enforcement action by the City when inspections identify deficiencies.

The City’s FY 2012/2013 Annual Report identified 9 PDPs that had BMP violations, but the City issued no enforcement actions to these PDPs. Further, the City’s FY 2013/2014 Annual Report identified 3 PDPs with violations and no subsequent enforcement actions.

While the City seems to be able to identify issues in need of correction, the City lacks an effective enforcement process to resolve the deficiencies and bring the facilities back into compliance with Order No. R9-2007-0001.

**B. Summary of Potential Enforcement Options**

Failure to address 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 |
|-------------------------------------|-------------------------------|
| Cleanup and Abatement Order         | Section 13304                 |
| Cease and Desist Order              | Sections 13301-13303          |
| Time Schedule Order                 | Sections 13300, 13308         |

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|--------------------|------------------------|
| CIWQS Entries:     | Tech Staff Info & Use  |
| Place ID           | 222931                 |
| Reg Msr ID (NOV)   | 399683                 |
| Reg Msr ID (13267) | 399685                 |
| NPDES No.          | CAS108758              |
| WDID               | 9 000510S13            |
| Violation IDs      | 985747, 985757, 985758 |