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**San Diego Regional Water Quality Control Board**

September 29, 2015

**Certified Mail – Return Receipt Requested**  
Article Number: 7010 1060 0000 4953 0730

Jim Linthicum  
San Diego Association of  
Governments  
401 B Street, Suite 800  
San Diego, California 92101

In reply refer to: SM-456294:RStewart

**SUBJECT: Notice of Violation No. R9-2015-0154 for Construction Storm Water Violations at the LOSSAN/Mid Coast Corridor Rail Project in Rose Canyon (WDID 937C373277)**

Mr. Linthicum:

Enclosed is Notice of Violation (NOV) No. R9-2015-0154, issued to the San Diego Association of Governments (SANDAG) for violations of Order No. 2009-0009-DWQ, *National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities* (Construction General Permit).

As described in the NOV, SANDAG's failure to comply with requirements of the Construction General Permit subject you to further enforcement pursuant to the California Water Code (CWC). The San Diego Water Board reserves the right to take any enforcement action authorized by law. In making the determination of whether and how to proceed with further enforcement action, the San Diego Water Board will consider the severity and effect of the violation, the level of cooperation, the time it takes to correct the identified violations, and the sufficiency of the corrections.

Written correspondence pertaining to this NOV should be sent electronically to [sandiego@waterboards.ca.gov](mailto:sandiego@waterboards.ca.gov). In the subject line of any response, please include the information located in the heading of this letter: " SM-456294:RStewart." For questions pertaining to the subject matter, please contact Rebecca Stewart at (619) 516-1977 or [Rebecca.Stewart@waterboards.ca.gov](mailto:Rebecca.Stewart@waterboards.ca.gov).

Respectfully,



Chiara Clemente  
Senior Environmental Scientist

Enclosure: NOV R9-2015-0154

Cc (by email w/ encl.):

Mr. Brad Helgason, SANDAG Project Contact, [bhe@sandag.org](mailto:bhe@sandag.org)  
Ms. Sharon Humphreys, SANDAG, [Sharon.Humphreys@sandag.org](mailto:Sharon.Humphreys@sandag.org)  
Ms. Laurie Walsh, San Diego Water Board, [Laurie.Walsh@waterboards.ca.gov](mailto:Laurie.Walsh@waterboards.ca.gov)  
Mr. Eric Becker, San Diego Water Board, [Eric.Becker@waterboards.ca.gov](mailto:Eric.Becker@waterboards.ca.gov)  
U.S. EPA, OWOW, Region 9, [R9-WTR8-Mailbox@epa.gov](mailto:R9-WTR8-Mailbox@epa.gov)

Tech Staff Info & Use	
Place ID	SM-456294
WDID	937C373277
Inspection ID	2026871
Violation ID	857987, 857986
Enforcement ID	420222

California Regional Water Quality Control Board, San Diego Region

September 29, 2015

**NOTICE OF VIOLATION**  
**No. R9-2015-0154**

Jim Linthicum  
San Diego Association of Governments  
401 B Street, Suite 800  
San Diego, California 92101

LOSSAN & Mid Coast Corridor Rail Projects  
PIN No. SM-456294:RStewart

**Violations of**

**Order No. 2009-0009-DWQ,  
Construction General Permit**

San Diego Association of Governments (SANDAG) 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.

SANDAG 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 or CGP).

**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:** On September 15, 2015, the San Diego Water Board inspected the LOSSAN/Mid Coast Corridor Rail Project Construction (WDID 937C373277) at Rose Canyon (Site). According to the SMARTS database, the Site owner is SANDAG. Jim Linthicum is the Legally Responsible Person for the organization. During their

inspection, the San Diego Water Board inspectors observed evidence of sediment discharges from the Site due to inadequate and ineffective implementation of BMPs, constituting an unauthorized discharge of sediment. See attached Facility Inspection Report Photos 12 through 15.

**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 September 15, 2015 inspection, the San Diego Water Board inspectors observed the lack of effective erosion controls, sediment controls, and run-on and runoff controls required by the CGP, which directly lead to erosion and sedimentation that ultimately resulted in the discharge of sediment from the site observed on that same day. The discharge was a result of the inadequate implementation of controls, structures, and BMPs that do not achieve BCT. See attached September 15, 2015 Facility Inspection Report Photos 1 through 11.

**3. Failure to Implement Good Site Management “Housekeeping” BMPs for Vehicle Storage and Maintenance:**

- a. Pursuant to Provision X and Section B.3.a of Attachment D of State Water Board Order No. 2009-0009-DWQ:** Risk Level 2 dischargers are required to prevent oil, grease, or fuel to leak in to the ground, storm drains or surface waters.
- b. Pursuant to Provision X and Section B.3.b of Attachment D of State Water Board Order No. 2009-0009-DWQ:** Risk Level 2 dischargers are required to place all equipment or vehicles, which are to be fueled, maintained and stored in a designated area fitted with appropriate BMPs.
- c. Observation:** During the September 15, 2015 inspection, the San Diego Water Board inspectors observed several construction vehicles stored without appropriate BMPs to prevent oil, grease or fuel to leak in to the ground, storm drains or surface waters. See attached September 15, 2015 Facility Inspection Report Photos 3 and 4.

#### 4. Failure to Implement Adequate Erosion Controls for Inactive Areas:

- a. **Pursuant to Provision X and Section D.2 of Attachment D of State Water Board Order No. 2009-0009-DWQ:** Risk Level 2 dischargers shall provide effective soil cover for inactive areas and all finished slopes, open space, utility backfill, and completed lots.
- b. **Observation:** During the December 15, 2014 inspection, the San Diego Water Board inspectors observed areas 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 of erosion control measures for inactive areas were observed throughout the site during the inspection. See attached September 15, 2015 Facility Inspection Report Photo 7.

#### 5. Failure to Implement Adequate Erosion Controls for Active Areas:

- a. **Pursuant to Provision X and Section E.3 of Attachment D of State Water Board Order No. 2009-0009-DWQ:** Risk Level 2 dischargers shall implement appropriate erosion control BMPs (runoff control and soil stabilization) in conjunction with sediment control BMPs for areas under active construction.
- b. **Observation:** During the September 15, 2015 inspection, the San Diego Water Board inspectors observed several active areas of the site that did not have appropriate erosion control BMPs in place. See attached September 15, 2015 Facility Inspection Report Photos 5, 6, and 8.

#### 6. Failure to Implement Adequate Perimeter Sediment Controls:

- a. **Pursuant to Provision X and Section E.1 of Attachment D of State Water Board Order No. 2009-0009-DWQ:** Risk Level 2 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 September 15, 2015 inspection, the San Diego Water Board inspectors observed several areas of the site where perimeter controls were not established or maintained to sufficiently control erosion and sediment discharges from the site. See attached September 15, 2015 Facility Inspection Report Photos 1 and 2.

#### 7. Failure to Implement Adequate Linear Sediment Controls for Exposed Slopes:

- a. **Pursuant to Provision X and Section E.4 of Attachment D of State Water Board Order No. 2009-0009-DWQ:** Risk Level 2 dischargers shall apply linear sediment controls along the toe of the slope, face of the slope, and at the grade breaks of exposed slopes to comply with sheet flow lengths in accordance with Table 1.

- b. **Observation:** During the September 15, 2015 inspection, the San Diego Water Board inspectors observed several slopes throughout the site without linear sediment controls along the toe and grade breaks of exposed slopes. See attached September 15, 2015 Facility Inspection Report Photos 8 through 11.

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

- a. **Pursuant to Provision X and Section F of Attachment D of State Water Board Order No. 2009-0009-DWQ:** Risk Level 2 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 September 15, 2015 inspection, the San Diego Water Board inspectors observed a lack of effective runoff controls within the site, and at several areas around the site where perimeter controls were not established or maintained to prevent run-on to and runoff from the site, resulting in sediment being allowed to be discharged in runoff from the site. See attached September 15, 2015 Facility Inspection Report Photos 1 and 2.

## 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 District Attorney for criminal prosecution.

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Chiara Clemente  
Senior Environmental Scientist  
Compliance Assurance Unit

Attachments: Facility Inspection Report dated September 15, 2015

Tech Staff Info & Use	
Place ID	SM-456294
WDID	937C373277
Inspection ID	2026871
Violation ID	857987, 857986
Enforcement ID	420222





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

**FACILITY INSPECTION REPORT**

**FACILITY:** LOSSAN-Mid Coast Corridor Project      **INSPECTION DATE/TIME:** 9/15/2015; 2:00 pm  
**WDID/FILE NO.:** 937C373277

**REPRESENTATIVE(S) PRESENT DURING INSPECTION:**

**NAME:** Chiara Clemente, Frank Melbourn, Rebecca Stewart, Christopher Means, Sarah Mearon      **AFFILIATION:** San Diego Water Board

**NAME:** Paul Svacina (AECOM), Zeb Hutchison (MCTC) Paul Manning (Skanska), Bob Duffy (Safework) & others      **AFFILIATION:** Sandag Project Representatives

**NAME:** Deborah Knight      **AFFILIATION:** Friends of Rose Canyon

San Diego Association of Governments      same  
**NAME OF OWNER, AGENCY OR PARTY RESPONSIBLE FOR DISCHARGE**      **FACILITY OR DEVELOPER NAME (if different from owner)**

401 B Street, Suite 800      same  
San Diego, CA 92101      same  
**OWNER MAILING ADDRESS**      **FACILITY ADDRESS**

Brad Helgason, 619-699-1900      same  
**OWNER CONTACT NAME AND PHONE #**      **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: LOSSAN-Mid Coast Corridor Project  
Inspection Date: 9/15/2015

## I. HISTORY / PURPOSE OF INSPECTION

Prior to September 15, 2015 the San Diego Water Board received a complaint from Debbie Knight (Friends of Rose Canyon) alleging and photodocumenting inadequate construction best management practices (BMPs) at the subject site.

On the morning of Sunday, September 13, 2015, the National Weather Service predicted > 50% chance of rain:

MONDAY NIGHT...CLOUDY WITH A CHANCE OF RAIN. LOWS 67 TO 72.  
LIGHT WINDS. CHANCE OF MEASURABLE PRECIPITATION 50 PERCENT.  
.TUESDAY...RAIN LIKELY. HIGHS 77 TO 82. LIGHT WINDS BECOMING  
SOUTHWEST 15 MPH IN THE AFTERNOON. CHANCE OF MEASURABLE  
PRECIPITATION 60 PERCENT.

On September 15, 2015, during the anticipated rain event, additional documentation of alleged violations was submitted to San Diego Water Board staff via email by Debbie Knight. The Compliance Assurance Unit (CAU) staff was conducting routine inspections that day. In light of the complaint received, CAU staff was contacted in the field and asked to stop by the site to conduct an inspection.

CAU staff arrived at the site at approximately 2 pm. While walking along the public trail east of the site, I (Chiara Clemente) met Debbie Knight (Friends of Rose Canon) who proceeded to explain what she had observed earlier that day. We walked along the public trail westbound towards the site. At the site, we met project representative Bob Duffy and I stated the San Diego Water Board's intent to conduct an inspection. I explained that our inspection was being conducted independently from Ms. Knight, and that neither she nor Friends of Rose Canyon was acting as our agent. Mr. Duffy contacted the Resident Engineer, and informed us of the need for rail safety training and a flag man to access the right of way. Mr. Duffy clarified that we were free to follow the public trail that parallels the rail line on the north side of the canyon. CAU staff convened at the Regents Road terminus and continued the inspection walking westerly along the public trail, accompanied by Ms. Knight. Walking back (east) towards the Regents Road terminus, we encountered additional project representatives, and began to explain our findings. Project representatives provided a Storm Water Pollution Prevention Plan (SWPPP) and Rain Event Action Plan (REAP). The QSP was not on-site and had not yet conducted a rain inspection.

According to the NOAA website, the [Miramar weather station](#) registered 0.8 inches of rain on September 15, 2015.

According to the SMARTS database, the Notice of Intent (NOI) was certified 6/16/2015, and construction commenced on or about 7/15/2015. The project is a Risk Level 2, disturbing a total of 70 acres, and construction is scheduled for completion on 6/1/2016. The project site inspected is situated in Rose Canyon, north of, and parallel to, Rose Creek; discharging to Mission Bay. There is no record of prior compliance inspections at the site.

Facility: LOSSAN-Mid Coast Corridor Project  
Inspection Date: 9/15/2015

## II. FINDINGS

1. Missing and/or ineffective perimeter control- project boundaries were only partially identified with construction fencing. Construction fencing alone is an ineffective form of perimeter control because it does not provide any form of erosion control.
2. Inadequate runoff/runoff controls- Evidence of runoff without BMPs was noted throughout northern project boundary. All construction sites are required to effectively manage runoff, all runoff within the site, and all runoff that discharges off the site.
3. Construction equipment and vehicles observed without appropriate BMPs (e.g. drip pans) to prevent oil, grease, or fuel to leak into the ground, storm drains, or surface waters. All construction sites are required to prevent oil, grease or fuel to leak in to the ground, storm drains, or surface waters, and to place all equipment and vehicles, which are to be fueled, maintained and stored in a designated area fitted with appropriate BMPs.
4. Missing and/or ineffective erosion control BMPs- Multiple slopes showed evidence of rilling and erosion. Although site representatives stated that slopes were sprayed with tackifier as part of their REAP, it was not evident from the site visit. It is likely that the tackifier was applied inappropriately, not given sufficient time to cure, and/or may have washed off during the storm.
5. Missing and/or ineffective sediment control BMPs- Several slopes throughout the site were observed to lack linear sediment controls along the toe and grade breaks of exposed slopes. Some slopes had wattles that were improperly staked as evidenced by sagging and rilling. Risk Level 2 construction sites are required to apply linear sediment controls along the toe of the slope, face of the slopes, and at the grade breaks of exposed slopes to comply with sheet flow lengths given in Table 1 of Attachment D to the CGP.
6. Unauthorized discharges- Multiple unauthorized discharges of sediment and sediment laden stormwater to Rose Creek were observed due to missing or ineffective BMPs.

## III. COMMENTS AND RECOMMENDATIONS

### Comments

1. 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 discharges of sediment and sediment-laden water from the site, also observed on September 15, 2015.

Facility: LOSSAN-Mid Coast Corridor Project  
 Inspection Date: 9/15/2015

Recommendations

1. CAU will refer the site to the COG to determine whether formal enforcement action is appropriate.

**IV. SIGNATURE SECTION**

Chiara Clemente  
 STAFF INSPECTOR

SIGNATURE

9/15/2015

INSPECTION DATE

Jeremy Haas  
 REVIEWED BY SUPERVISOR

SIGNATURE

9/28/2015

DATE

SMARTS:

Tech Staff Info & Use	
WDID	937C373277
Place ID	SM-456294
Inspection ID	2026871
Violation ID	857986
	857987

Facility: LOSSAN-Mid Coast Corridor Project  
Inspection Date: 9/15/2015



Photo 1



Photo 2

Photos 1 and 2 show runoff onto project site and inadequate perimeter control.

Facility: LOSSAN-Mid Coast Corridor Project  
Inspection Date: 9/15/2015



Photo 3

Photos 3 and 4 show construction vehicles without appropriate BMPs (e.g. drip pans) to prevent oil, grease, or fuel to leak into the ground, storm drains, or surface waters. Photo 4 shows that (some) BMPs were present but not in use.



Photo 4

Facility: LOSSAN-Mid Coast Corridor Project  
 Inspection Date: 9/15/2015



Photo 5



Photo 6



Photo 7

**Photos 5 through 8** show several slopes lacking effective soil cover for erosion control.

Photos 5 & 6 show rilling on the north and south bank of a constructed bowl.

Photo 7 shows what appears to be a finished (i.e. inactive) slope with rilling.

Photo 8 shows another constructed bowl with no sediment or erosion control.

Facility: LOSSAN-Mid Coast Corridor Project  
Inspection Date: 9/15/2015



**Photo 8**

**Photos 8-11** show missing or ineffective sediment control BMPs. Photo 8 contains no sediment or erosion controls. Photos 9 and 10 show slopes with no linear controls along the toe and grade breaks. Photo 9 also demonstrates that wattles that were improperly installed, as evidenced by sagging and rilling. Photo 11 shows rilling due to missing linear controls at grade breaks.



**Photo 9**



**Photo 10**



Facility: LOSSAN-Mid Coast Corridor Project  
Inspection Date: 9/15/2015



**Photo 11**

**Photos 12 -15** show unauthorized discharges of sediment and sediment laden storm-water from the site to Rose Creek due to missing and ineffective BMPs.



**Photo 12** shows discharge from easternmost "bowl" due to inadequate perimeter, sediment, erosion, and runoff controls.

Facility: LOSSAN-Mid Coast Corridor Project  
Inspection Date: 9/15/2015



**Photo 13 and 14** show discharge from bowl #2 (shown in Photo 8), due to missing sediment or erosion controls.



**Photo 15** shows discharge point #3 due to inadequate sediment and erosion control (shown in Photo 7).

Facility: LOSSAN-Mid Coast Corridor Project  
Inspection Date: 9/15/2015



**Photo 16** shows additional BMPs (gravel bags and wattles) on site, but not in use.

