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Environmental Protection

California Regional Water Quality Control Board San Diego Region

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Item 8
Doc. 3

March 4, 2008

VIA CERTIFIED MAIL

Karen King, Executive Officer
North County Transit District
810 Mission Avenue
Oceanside, CA 92054-2825

In reply refer to:
CWU: 10-3022900.02:ppuron

Dear Ms. King:

COMPLAINT NO. R9-2008-0021 FOR ADMINISTRATIVE CIVIL LIABILITY IN THE AMOUNT of \$685,000 AGAINST NORTH COUNTY TRANSIT DISTRICT FOR VIOLATION OF STATE BOARD ORDER NO. 99-08-DWQ, SPRINTER RAIL PROJECT, WDID NO. 9 37C322900

Enclosed find Administrative Civil Liability Complaint No. R9-2007-0093 against the North County Transit District (NCTD) for the Sprinter Rail construction project from Oceanside to Escondido, WDID No. 9 37C322900. The Complaint in the amount of \$686,000 is for violations of California State Water Resources Control Board (State Board) Order No. 99-08-DWQ, *National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction Activity* (General Permit). A Technical Analysis explaining the basis for the issuance of the Complaint is also included.

Waiver of Hearing

The NCTD may elect to waive its right to a hearing before the California Regional Water Quality Control Board, San Diego Region (Regional Board). Waiver of the hearing constitutes admission of the validity of the allegation of violations in the Complaint and acceptance of the assessment of civil liability in the amount of \$685,000 as set forth in the Complaint. The Regional Board requests that the waiver of NCTD's right to a public hearing be submitted with the following by 5 P.M., April 5, 2008:

1. The enclosed waiver form signed by an authorized agent of NCTD;
2. A check for the full amount of civil liability of \$685,000 made out to the "California State Water Resources Control Board;" and
3. Verification that the enclosed notice has been published in a newspaper circulated in the project's area.

California Environmental Protection Agency

Please note that any waiver will not be effective until reasonable opportunity for public participation has been provided for pursuant to federal NPDES regulations (40 Code of Federal Regulations [CFR] Parts 122,123, and 124).

Public Hearing

If NCTD does not elect to waive its right to a public hearing, a hearing is tentatively scheduled to be held at the Regional Board meeting on May 14, 2008. The meeting is scheduled to begin at 9 A.M. If the District intends to present any written exculpatory evidence, or written evidence in mitigation at the hearing in response to Complaint No. R9-2007-0093, it must be received by 5 P.M. April 14, 2008 in order to be considered by the Regional Board at the public hearing.

The *Submittal of Written Information Procedures* further describing the written materials and prescribed submittal dates required by the Regional Board and *Hearing Procedures* for the public hearing will be mailed to you not less than 30 days before the hearing date. An agenda for the hearing will also be mailed to you approximately ten days before the hearing date.

The heading portion of this letter includes a Regional Board code number noted after "In reply refer to:" In order to assist us in the processing of your correspondence, please include this code number in the heading or subject line portion of all correspondence and reports to the Regional Board pertaining to this matter.

The Regional Board has no other comments on the above-mentioned complaint at this time. Please contact Peter Peuron of my staff at (858) 637-7137 or email ppeuron@waterboards.ca.gov if you have any questions concerning this matter.

Respectfully,



MICHAEL P. McCANN
Assistant Executive Officer

MPM:mja:pmp

- Attachments: 1. ACL Complaint No. R9-2008-0021
2. Technical Analysis
3. Waiver of Hearing Form
4. Public Notice of Waiver of Hearing

Copy without Enclosures:

Name	Email or mailing address
Ken Greenberg, USEPA Region IX	Greenberg.ken@epa.gov
Thomas Lichterman Don Bullock, North County Transit District	tlichterman@nctd.org dbullock@nctd.org
Peggy Strand Best, Best & Krieger	Peggy.Strand@bbklaw.com
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**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

IN THE MATTER OF:

NORTH COUNTY TRANSIT DISTRICT)	COMPLAINT NO. R9-2008-0021
NONCOMPLIANCE WITH STATE)	FOR
BOARD ORDER NO. 99-08-DWQ)	ADMINISTRATIVE CIVIL LIABILITY
SPRINTER RAIL PROJECT)	March 4, 2008
WDID NO. 9 37C322900)	

NORTH COUNTY TRANSIT DISTRICT IS HEREBY GIVEN NOTICE THAT:

1. North County Transit District (NCTD) is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, San Diego Region (Regional Board) may impose civil liability under section 13385 of the California Water Code.
2. The NCTD owns and operates the Sprinter Rail construction site (hereinafter site) located along the 22-mile long rail corridor between the cities of Oceanside and Escondido. The project transects the jurisdiction of the Cities of Oceanside, Vista, San Marcos, and Escondido, and the County of San Diego. The site has been regulated by the Regional Board in accordance with State Board Order No. 99-08-DWQ, *NPDES General Permit No. CAS000002, Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity* (Order No. 99-08-DWQ) since August 7, 2004, when the Notice of Intent (NOI) to comply with the terms of Order No. 99-08-DWQ was submitted by NCTD. The project was issued WDID No. 9 37C322900.

ALLEGATIONS

3. **Failure to Implement Best Management Practices (BMPs):**
The NCTD failed to implement and maintain adequate BMPs at the site in violation of Order No. 99-08-DWQ Special Provision C.2 and section A.1.c for at least 112 days between October 5, 2007, and January 25, 2008.

Pursuant to Water Code section 13385, the maximum liability for failure to implement and maintain effective BMPs is \$10,000 per day. The maximum liability that can be assessed for 112 days of violation is \$1,120,000.

4. **Discharge of Sediment to Municipal Separate Storm Water Conveyance System (MS4) and Waters of the United States:**

The NCTD discharged sediment to a Municipal Separate Storm Sewer System (MS4) and navigable waters of the United States in the San Diego Region in violation of Order No. 99-08-DWQ, Discharge Prohibition A.2. NCTD discharged sediment from the site on the following dates and locations:

On November 30, 2007:

1. Into storm drain inlet along the east side of the tracks that parallel Tremont Street near the Oceanside Transit Center Station in the City of Oceanside. Drainage from this inlet discharges into Loma Alta Creek.
2. Into storm drain inlet in drainage channel along the east side of tracks near the Coast Highway Station in Oceanside. This drainage discharges into Loma Alta Creek.
3. Into storm drain inlet in drainage channel across from the Coast Highway Station in Oceanside. Drainage from this inlet discharges into Loma Alta Creek.
4. Into storm drain inlet along the south side of the tracks east of the Coast Highway Station in Oceanside. This drainage discharges into Loma Alta Creek.
5. Directly into Loma Alta Creek, near the Crouch Street Station in Oceanside.
6. Into storm drain inlet near Rancho Del Oro Station in Oceanside. This drainage discharges into Loma Alta Creek which traverses through this site.
7. Into storm drain inlet in the parking lot of the Escondido Avenue Station in Vista. This storm drain discharges into Buena Vista Creek and ultimately into Buena Vista Lagoon.
8. Into storm drain inlet at the Escondido Avenue Station in Vista. This storm drain discharges into Buena Vista Creek and ultimately into Buena Vista Lagoon.
9. Into storm drain inlet near the north boundary of the Mar Vista storage yard. This drainage discharges into Buena Vista Creek and ultimately into Buena Vista Lagoon.
10. Into storm drain inlet at the northwestern corner of the Mar Vista storage yard. This storm drain discharges into Buena Vista Creek and downstream into Buena Vista Lagoon.
11. Into drainage channel along the south side of Palomar Station in San Marcos. This drainage discharges into a storm drain and then into San Marcos Creek and further downstream to Lake San Marcos.

12. Into storm drain inlet near the tracks at Barham Lane in San Marcos. The storm drain discharges into San Marcos Creek and further downstream to Lake San Marcos.
13. Into drainage channel along the south side of Barham Lane tracks. This drainage discharges into San Marcos Creek and further downstream to Lake San Marcos.
14. Into storm drain inlet near the Barham Lane construction area (again discharging to San Marcos Creek and further downstream to Lake San Marcos).
15. Into storm drain inlet near Shelley Circle in San Marcos. The storm drain discharges to San Marcos Creek and further downstream to Lake San Marcos.
16. From Nordahl Road discharging to an unprotected MS4 inlet in Escondido. Discharge is to San Marcos Creek and further downstream to Lake San Marcos.

On December 7, 2007:

17. Into storm drain inlet on the northeast corner of the Vista Transit Center Station. Drainage discharges into Buena Vista Creek.

On December 19, 2007:

18. Into storm drain inlet near Shelley Circle in San Marcos and further downstream to Lake San Marcos. The drainage discharges into San Marcos Creek. This is the same inlet where discharges were observed on November 30, 2007 (listed as No. 14, above).

On January 7, 2008:

19. Into storm drain inlet in the northwest corner of the Mar Vista storage yard. This storm drain discharges into Buena Vista Creek and ultimately into Buena Vista Lagoon.
20. Into storm drain inlet at the Escondido Avenue Station in Vista. This drainage discharges into Buena Vista Creek and ultimately into Buena Vista Lagoon.
21. Into drainage channel at Melrose Station in Vista that discharges into Loma Alta Creek.
22. Directly into Loma Alta Creek at Melrose Station in Vista.
23. Directly into Loma Alta Creek on the north bank at Crouch Street Station in Oceanside.
24. Directly into Loma Alta Creek on the south bank at Crouch Street Station in Oceanside.
25. Into a storm drain inlet on the north side of the tracks at the Coast Highway Station in Oceanside. The storm drain discharges into Loma Alta Creek.

Pursuant to Water Code Section 13385, the maximum liability for a discharge of sediment is \$10,000 per day. Therefore, the maximum liability for 25 days of sediment discharges between November 30, 2007 and January 7, 2008 is \$250,000.

PROPOSED CIVIL LIABILITY

5. Based on consideration of the factors listed in section 13385 of the California Water Code, civil liability should be imposed on NCTD in the amount of \$685,000 for all violations, as follows:
 - a. The NCTD failed to implement adequate BMPs on at least 112 days. Civil liability should be imposed at a rate of \$5,000 per day for a total liability of \$560,000.
 - b. The NCTD discharged sediment and sediment-laden water into the MS4 and waters of the United States on at least 25 instances. Civil liability for these unregulated discharges should be imposed at \$5,000 per violation for a total liability of \$125,000

Dated this 4th day of March 2008



Michael P. McCann
Assistant Executive Officer

Signed pursuant to the Authority
delegated by the Executive Officer
to the Assistant Executive Officer