

San Diego Regional Water Quality Control Board

August 1, 2016

In reply refer to: SM-828060:FMelbourn
Hand Delivered & Via E-mail

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Prosecution Team Comments on Tentative Order No. R9-2016-0064

On July 20, 2016, the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) released Tentative Order No. R9-2016-0064 (Tentative Order) assessing \$603,232 in administrative civil liability against San Altos-Lemon Grove, LLC, for violations of the statewide Construction General Storm Water Permit, Order No. 2009-0009-DWQ, as amended. The San Diego Water Board requested written comments on the Tentative Order from the parties and interested persons by noon on August 1, 2016, with a particular interest "in any factual errors the parties or the public may find." The following is the San Diego Water Board Prosecution Team's comments on the Tentative Order:

1. Tentative Order page 3 of 26, paragraph 12: The Tentative Order reads "However, the Discharger again failed to implement required BMPs and the City issued a Correct Work Notice on December 9, 2014, citing failure to remove sediment from roads (PT Ex. 4) and an Administrative Warning on December 11, 2014 (PT Ex. 6)." The sentence should read "However, the Discharger again failed to implement required BMPs and the City issued a Correct Work Notice on December 9, 2014, citing failure to remove sediment from roads (PT Ex. 5) and an Administrative Warning on December 11, 2014 (PT Ex. 6)."
2. Tentative Order page 16 of 26, paragraph 47: The Tentative Order reads "City of Lemon Grove images document lack of erosion control measures in inactive areas of this day (PT Ex. 41, images 6840, 6841, and 6885)." The sentence should read "City of Lemon Grove images document lack of erosion control measures in inactive areas of this day (PT Ex. 40, images 6840, 6841, and 6885)."

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3. Tentative Order page 16 of 26, paragraph 48: The Tentative Order reads “The Board finds there is insufficient evidence in the record to support the inferences that violations occurred on the other nine days as alleged in the Complaint.” The sentence should read “The Board finds there is insufficient evidence in the record to support the inferences that violations occurred on the other ten days as alleged in the Complaint.”
4. Tentative Order page 24 of 26, paragraph 63: “Therefore, the minimum liability that the San Diego Water Board shall assess pursuant to Water Code section 13385 subdivision (e) for all of the violations established is \$31,604.” The sentence should read “Therefore, the minimum liability that the San Diego Water Board shall assess pursuant to Water Code section 13385 subdivision (e) for all of the violations established is \$32,918.”
5. Tentative Order Attachment 1, page 15, Step 4: The “Cleanup and Cooperation” factor is listed as 1.5; however the Step 5 calculation box utilizes a “Cleanup and Cooperation” factor of 1.1 for the two December 2014 violations. The inconsistency should be corrected.
6. Tentative Order Attachment 1, page 18, Step 4: A “Culpability” factor is not identified; however the Step 5 calculation box utilizes a “Culpability” factor of 1.3. Step 4 should be corrected by inserting a “Culpability” factor of 1.3 in the text.
7. Tentative Order Attachment 1, page 41, Table No. 1, Violation No. 3: Under the column “Liability Amount” it reads “\$3,550” and it should read “\$3,500.”
8. Tentative Order Attachment 1, page 41, Table No. 1, Violation No. 10: Under the column “Liability Amount” it reads “\$4,500” and it should read “\$4,550.”

Respectfully,



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