



Linda S. Adams
Secretary for
Environmental Protection

California Regional Water Quality Control Board San Diego Region



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Governor

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<http://www.waterboards.ca.gov/sandiego>

Item 8
Doc. 8

December 31, 2007

VIA CERTIFIED MAIL
7006 2760 0000 1615 6717

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

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

CLEANUP AND ABATEMENT ORDER NO. R9-2007-0226
NORTH COUNTY TRANSIT DISTRICT, SPRINTER RAIL PROJECT WITHIN SAN DIEGO COUNTY

Dear Ms. King:

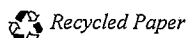
Enclosed is Cleanup and Abatement Order (CAO) No. R9-2007-0226 of the California Regional Water Quality Control Board, San Diego Region (Regional Board) concerning violations of State Water Resource Control Board Order 99-08-DWQ, the Statewide General Construction Storm Water Permit at your Sprinter Rail construction project located along the rail corridor from Oceanside to Escondido, in San Diego County, California.

The CAO is issued pursuant to California Water Code section 13304 and directs you to abate the pollution associated with the discharges from the Sprinter Rail project. Please note the deadlines contained within the CAO. The CAO is based upon inspections performed by the Regional Board on October 5, November 27, November 30, December 3, December 7, and December 19, 2007. Copies of these inspections reports are enclosed.

This Order is self-explanatory and effective immediately. Any person affected by this action of the Regional Board may petition the State Water Resources Control Board (State Board) to review the action in accordance with section 13320 of the California Water Code and Section 2050 of Title 23, California Code of Regulations. The State Board must receive the petition within 30 days of the date of the enclosed Order.

Any person affected by this action of the Regional Board may also request an evidentiary hearing before the Regional Board. To schedule a hearing at a Regional Board meeting, you must submit a written request to this office within 30 days of the issuance of the CAO. Be aware that a request for a hearing does not stay any of the deadlines in the CAO.

California Environmental Protection Agency



I strongly urge a prompt and complete response to each directive in the CAO. Failure to meet these deadlines may subject you to further enforcement actions by the Regional Board, including administrative or judicial proceedings for the assessment of civil liability of up to \$5,000 per day per violation; referral to the State Attorney General for injunctive relief; and referral to the District Attorney for criminal prosecution.

As indicated in the directives of the Order and pursuant to Water Code section 13304, the Regional Board is entitled to reimbursement for all reasonable costs actually incurred to investigate unauthorized discharges of waste and to oversee cleanup of such waste, or other remedial action required by this CAO. Attached to this letter is an invoice for \$7,829 to reimburse the State for costs incurred by the Regional Board for oversight of the CAO from December 13 to December 31, 2007. Included is a detailed chronology of the activities undertaken to oversee the CAO. Please submit a check for payment in full by January 31, 2008 to the Regional Board payable to the California State Water Resources Control Board. Subsequently, the Regional Board will send periodic invoices for additional staff expenditures overseeing cleanup and abatement associated with the Order.

Please contact Ben Neill at (858) 467-2983 or email: bneill@waterboards.ca.gov if you have any questions regarding this matter.

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.

Respectfully,



MICHAEL P. MCCANN
Assistant Executive Officer

MPM:cmc:bin

- Enclosures:
- 1) Cleanup and Abatement Order R9-2007-0226
 - 2) Compact Disc with electronic copies of inspection reports from October 5, November 27, November 30, December 3, December 7, and December 19, 2007.
 - 3) Cost Recovery Invoice #1, December 13 through December 27, 2007

CC via email:

1. Ken Greenberg, USEPA Region IX
2. Don Bullock, NCTD
3. Thomas Lichterman, NCTD
4. Jodie Leothacue, NCTD
5. Peggy Strand, Best Best & Krieger
6. Steve O'Neil, Sheppard and Mullin
7. Rick Felkins, West Coast Rail Constructors,
8. Derek Reed, Dudek
9. Cheryl Filar, City of Escondido
10. Mo Lahasie, City of Oceanside
11. Ken St. Claire, City of San Marcos
12. Jayne Strommer, City of Vista
13. Cid Tesoro, County of San Diego

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

CLEANUP AND ABATEMENT ORDER NO. R9-2007-0226

**FOR
NORTH COUNTY TRANSIT DISTRICT**

**SPRINTER RAIL PROJECT
ALONG THE RAIL CORRIDOR FROM
OCEANSIDE, CA TO ESCONDIDO, CA**

The California Regional Water Quality Control Board, San Diego Region (hereinafter Regional Board), finds that:

1. The North County Transit District (NCTD) owns and operates the Sprinter Rail construction project (hereinafter project), located along 22 miles of the rail corridor and adjacent staging areas within the Cities of Oceanside, Vista, San Marcos, and Escondido, and within the County of San Diego. The project's total disturbed acreage is approximately 280 acres.
2. Storm water runoff from the project discharges directly into waters of the State and to the Municipal Separate Storm Sewer System (MS4) ultimately discharging to Loma Alta Creek, Buena Vista Creek, Buena Creek, San Marcos Creek, Escondido Creek and unnamed tributaries thereto. Downstream receiving waters include, but are not limited to, Loma Alta Slough, Buena Vista Lagoon, Lake San Marcos, Agua Hedionda Lagoon, and the Pacific Ocean.
3. Discharges of storm water runoff from the construction site are regulated pursuant to State Water Resources Control Board (State Board) Order No. 99-08-DWQ, *National Pollutant Discharge Elimination System No. CAS000002, Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity* (hereinafter referred to as the Stormwater Permit). NCTD enrolled in the Stormwater Permit on August 7, 2003 with a Storm Water Pollution Prevention Plan. The State Board assigned the project Waste Discharge Identification number 9 37C322900.
4. The *Water Quality Control Plan, San Diego Basin (9), 1994* designates the following potential and designated beneficial uses for the project's receiving waters:
 - a. Pacific Ocean Coastal Waters: Industrial Process Supply (IND), Navigation (NAV), Contact Water Recreation (REC1), Non-Contact Water Recreation (REC2), Commercial and Sport Fishing (COMM),

- Wildlife Habitat (WILD), Rare, Threatened, or Endangered Species (RARE), Marine Habitat (MAR), Aquaculture (AQUA), Migration of Aquatic Organisms (MIGR), Spawning, Reproduction and/or Early Development (SPWN), and Shellfish Harvesting (SHELL)
- b. Loma Alta Hydrologic Area (904.1): REC1 – Potential, REC2, Warm Freshwater Habitat (WARM), and WILD
 - c. Vista Hydrologic Subarea (904.22): Agricultural Supply (AGR), IND, REC1, REC2, WARM, and WILD
 - d. Buena Vista Lagoon (904.21): REC1, REC2, Area of Special Biological Significance (BIOL), Estuarine Habitat (EST) – Potential, WILD, RARE, MAR, and WARM
 - e. Buena Hydrologic Subarea (904.32): Municipal and Domestic Supply (MUN), AGR, IND, REC1, REC2, WARM, and WILD
 - f. Agua Hedionda Lagoon (904.31): IND, REC1, REC2, COMM, EST, WILD, RARE, MAR, AQUA, MIGR, and SHELL
 - g. Richland Hydrologic Subarea (904.52): AGR, REC1, REC2, WARM, and WILD
 - h. Escondido Hydrologic Subarea (904.62): MUN, AGR, IND – Potential, REC1, REC2, WARM, Cold Freshwater Habitat (COLD), WILD
 - i. San Elijo Lagoon (5.61): REC1, REC2, BIOL, EST, WILD, RARE, MAR, and MIGR
5. Beginning with the rainfall season in October 2007, the Regional Board identified significant violations of the Stormwater Permit along portions of the 22-mile linear project and adjacent sites used for construction staging. These violations included:
- a. Inadequate best management practices (BMPs) to control erosion on graded slopes and within staging sites;
 - b. Inadequate BMPs to control sediment along the project's perimeter and storm drain inlets;
 - c. Sediment tracking onto paved areas due to inadequate BMPs;
 - d. Inadequate BMPs to minimize or eliminate the exposure of storm water to construction waste, trash, and materials;
 - e. Unprotected and unlined storm water conveyance channels adjacent to the tracks exhibited evidence of erosion and were a source of sediment discharge;
 - f. Completed construction areas lacked post-construction soil stabilization; and
 - g. Multiple discharges of sediment and sediment-laden water throughout the length of the project to several storm drain inlets.
6. NCTD is in violation of the State Board Stormwater Permit Order No. 99-08-DWQ. The discharge of sediment violates Discharge Prohibitions A.1

- and A.2 of Order No. 99-08-DWQ, which prohibits the discharge of material other than storm water, i.e. sediment. In addition, ineffective storm water BMPs were installed at the construction site. This is in violation of sections A.5, A.6, A.7, A.8, A.10 and A. 11 of Order No. 99-08-DWQ, which requires implementation and maintenance of BMPs to prevent storm water pollution.
7. NCTD has discharged, and threatens to continue discharging waste (e.g. sediment and sediment-laden water) in violation of the following Basin Plan Waste Discharge Prohibitions:
 - a. Prohibition No. 1: *The discharge of waste to waters of the state in a manner causing, or threatening to cause a condition of pollution, contamination, or nuisance as defined in California Water Code Section 13050, is prohibited.*
 - b. Prohibition No. 8: *Any discharge to a storm water conveyance system that is not composed entirely of "storm water" is prohibited unless authorized by the Regional Board.*
 - c. Prohibition No. 14: *Discharging sand, silt, clay or other earthen materials in quantities which cause deleterious bottom deposits, turbidity or discoloration in waters of the State or which unreasonably affect, or threaten to affect, beneficial uses of such waters is prohibited.*
 8. Unless NCTD immediately implements an adequate storm water management plan (including designing, implementing and maintaining adequate BMPs), discharges of sediment and sediment-laden water from the site will continue to occur, threatening to cause a condition of pollution and nuisance to waters of the State.
 9. California Water Code, Division 7, Section 13304 states that "Any person who has discharged or discharges waste into the waters of this state in violation of any waste discharge requirement or other order or prohibition issued by a regional board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance, shall upon order of the regional board, clean up the waste or abate the effects of the waste, or in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts."
 10. Pursuant to Section 13304 of the Water Code, the Regional Board is entitled to reimbursement for all reasonable costs actually incurred by the Regional Board to investigate unauthorized discharges of waste and to

oversee cleanup of such waste, abatement of the affects thereof, or other remedial actions required by the Order.

11. This enforcement action is being taken for the protection of the environment and, as such, is exempt from the provisions of the California Environmental Quality Action (CEQA) (Public Resources Code, Section 210000 et seq.) in accordance with section 15108, Chapter 3, Title 14, California Administrative Code.

IT IS HEREBY ORDERED THAT, PURSUANT TO SECTIONS 13304 AND 13267 OF THE CALIFORNIA WATER CODE, North County Transit District (NCTD), shall forthwith initiate efforts to cleanup or abate the potential effects of threatened discharges of wastes. The following actions shall constitute the minimum necessary to abate the effects of the discharge:

1. Implement forthwith, in compliance with all requirements of the State Board Construction Storm Water Permit No. 99-08-DWQ, the following:
 - a. An effective and appropriate combination of sediment and erosion controls on all disturbed areas;
 - b. Specific BMPs to prevent the discharge of sediment and sediment-laden water to the MS4 and waters of the State.
 - c. Specific measures to prevent pollution, erosion and sediment transport from off-site runoff flowing through construction areas and storage yards.
 - d. A comprehensive maintenance program to ensure continued BMP effectiveness.
2. NCTD shall certify full compliance with the Stormwater Permit requirements in accordance with the SWPPP. Demonstration of compliance shall be by a 'third party or independent' registered professional with expertise in erosion control techniques, and shall be signed under penalty of perjury by the named certified professional with registration number properly affixed. Until full compliance is achieved, NCTD shall submit a series of status reports describing steps that have been taken, steps that will be taken to achieve compliance and a prioritized schedule to achieve compliance with the Stormwater Permit. The first status report will be due 30 days from issuance of this CAO and subsequent reports submitted every 15 days thereafter.
3. In addition to the post-construction BMPs outlined in the revised Final Water Quality Plan submitted November 14, 2006 to the Regional Board, by January 31, 2008, NCTD shall submit to the Regional Board a plan to abate the existing and threatened pollution associated with the unauthorized discharges along the project's right of way as well as areas

- used for construction staging by providing adequate post-construction storm water management measures including soil stabilization. Post-construction storm water management practices shall be implemented to permanently stabilize disturbed soils from previous construction practices with particular attention to areas temporarily used for construction storage and staging and also addressing exposed soils within storm water conveyance channels throughout the project.
4. Prior to submitting the project's Notice of Termination of coverage under the State Board Construction Storm Water Permit, No. 99-08-DWQ, NCTD shall submit a certified statement that the plan in Directive 3 has been fully implemented and that the project and associated construction areas no longer pose a threat to water quality.
 5. During and after each significant rainfall event, which is defined as when 0.35 or more inches of rain occurs from the start of precipitation to the end of precipitation, preceded by three consecutive dry days, NCTD shall conduct an immediate assessment of BMPs implemented on the project. This assessment shall:
 - a. Identify the source of the silt and sediment,
 - b. Repair or replace any BMP that has failed,
 - c. Maintain any BMP that is not functioning properly,
 - d. Evaluate whether additional or alternative BMPs should be implemented to prevent further discharges of sediment.
 6. After each significant rainfall event, as defined in Directive 5, NCTD shall submit a status report within 8 calendar days, documenting the project's compliance with the State Board Construction Storm Water Permit, No. 99-08-DWQ, and efforts to prevent further discharges and violations of the Basin Plan. Reports shall be submitted until NCTD demonstrates to the satisfaction of the Regional Board that the BMPs and maintenance program are effective in reducing sediment discharges from the project during rain events to the BAT/BCT performance standard. The reports shall include and are not limited to:
 - a. Photo documentation of BMPs effectiveness.
 - b. A narrative description of all actions, BMPs, inspections, and maintenance conducted at the site since the previous significant rainfall event.
 - c. A description of all discharges during the reporting period including photos, location of the discharge, and measures to prevent similar discharges.
 - d. Site maps showing final slopes, temporary slopes, drainages and current BMP placement for the reporting period.

- e. Photocopies of all project inspections reports by NCTD and their contractors for the reporting period.

7. Signatory Requirements:

All reports required under this Cleanup and Abatement Order shall be signed and certified by a responsible corporate officer or a Duly Authorized Representative. A person is a duly authorized representative only if: 1) The authorization is made in writing by a responsible corporate officer; and 2) The authorization specifies either an individual or a position having responsibility of the overall operation of the regulated facility or activity. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.)

8. Certification:

Include the following signed certification with all reports submitted pursuant to this Order:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violation."

9. Report Submittals:

All monitoring and technical reports required under this Cleanup and Abatement Order shall be submitted to:

Assistant Executive Officer
California Regional Water Quality Control Board
San Diego Region
Attn: Ben Neill
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4340

NOTIFICATIONS

- 1. Enforceability:** The Regional Board reserves its right to take any enforcement action authorized by law for violations of the terms and conditions of this Cleanup and Abatement Order.

2. **Applicability:** Requirements established pursuant to California Water Code Sections 13304 and 13267(b) are enforceable when signed by the Assistant Executive Officer of the Regional Board.
3. **Potential Liability:** Pursuant to California Water Code Section 13350, any person who intentionally or negligently violates a cleanup and abatement order may be liable civilly in an amount which shall not exceed five thousand dollars (\$5,000), but shall not be less than five hundred (\$500), for each day in which the cleanup and abatement order is violated.
4. **Cost Reimbursement:** NCTD shall reimburse the State of California for all reasonable costs actually incurred by the Regional Board to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial section required by this Cleanup and Abatement Order, according to billing statement prepared from time to time by the Regional Water Quality Control Board.



Michael P. McCann
Assistant Executive Officer

Dec. 31, 2007
Date

**CLEANUP & ABATEMENT ORDER (CAO)
COST RECOVERY INVOICE #1**

Regional Board: San Diego RWQCB - Region 9
Responsible Party: NCTD
CAO Number: R9-2007-0208
Invoice Period: 12/13/07 - 12/31/07
Invoice Amount: \$7,829

Staff Name	Pay Rate Per Hour	Hours Worked	Recoverable Staff Costs
Ben Neill	\$110	37	\$4,070
Peter Peuron	\$97	10.5	\$1,019
Chad Loflen	\$97	6	\$582
Chris Means	\$97	6	\$582
Chiara Clemente	\$111	7	\$777
Mark Alpert	\$152	3	\$456
Mike McCann	\$166	1	\$166
Jorge Leon	\$177	1	\$177
		71.5	\$7,829
		Total Hours	Reimbursement Requested

Date	Description of Activity	Staff Last Name	Staff Hours	Hourly Rate	Cost
Dec. 17	Pre-COG strategy discussion	Clemente	2	\$111	\$222
	Report write-up	Peuron	1	\$97	\$97
Dec. 18	Inspection report	Neill	8	\$110	\$880
Dec. 19	CAO writeup	Neill	8	\$110	\$880
	Site inspections	Peuron	3	\$97	\$291
Dec. 20	CAO writeup	Neill	8	\$110	\$880
	CAO review	Clemente	2	\$111	\$222
	Report write-up	Peuron	2	\$97	\$194
Dec. 21	CAO rewrite	Neill	3	\$110	\$330
Dec. 26	CAO rewrite review	Neill	4	\$110	\$440
		Alpert	3	\$152	\$456
		Clemente	3	\$111	\$333
		Leon	1	\$177	\$177
	Report writeup	Peuron	2.5	\$97	\$243
Dec. 27	Report writeup	Peuron	2	\$97	\$194
Dec. 28	Inspection	Neill	6	\$110	\$660
		Means	6	\$97	\$582
		Loflen	6	\$97	\$582
Dec. 31	review and sign	McCann	1	\$166	\$166
	TOTAL:		71.5		\$7,829