



EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

California Regional Water Quality Control Board, San Diego Region

May 23, 2016

**NOTICE OF VIOLATION
No. R9-2016-0126**

Mr. Jose Capati, Vice President of Development
Baldwin & Sons
USA Portola Properties LLC
280 Newport Center Drive
Newport Beach, CA 92660

USA Portola Properties LLC

Portola Center Northeast - TTM 17300
NE Parcel: Temporary Stockpile

PIN No. SM-834084

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

USA Portola Properties LLC and Baldwin & Sons (Baldwin) are 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.

USA Portola Properties LLC and Baldwin are 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 Permit).

USA Portola Properties LLC and Baldwin are constructing approximately 223 dwelling units in the Northeast Planning Area of the Portola Center Project (Project). The Project is located on an approximately 196 acre site in the Portola Hills Community of the City of Lake Forest, California.¹ This Notice of Violation addresses violations of the Construction General Permit in the Portola Center Northeast Planning Area (TTM 17300).

¹ The Portola Center Project is separated into two Tentative Tract Maps (TTM15353 and TTM17300) and consists of a mix of single family and multi-family homes, public and neighborhood parks, public trails, and a small neighborhood serving retail component. The Project site is
(footnote continued on next page)

A. Summary of Violations

Construction General Permit Violations

1. Failure to Comply with Proper Operation and Maintenance of BMPs to Achieve Permit Compliance for Construction Activities:

- a. **Pursuant to Provision IV.E of State Water Board Order No. 2009-0009-DWQ:**
The Discharger shall at all times properly operate and maintain any facilities and systems of treatment and control (and related appurtenances) which are installed or used by the Discharger, including when necessary, proper laboratory controls, quality assurance procedures, and back up or auxiliary systems, to achieve compliance with the conditions of the Permit.
- b. **Observation:** On January 19, 2016, March 14, 2016, and March 21, 2016, the San Diego Water Board inspected the Portola Northeast construction site (WDID 930C372302). Mr. Jose Capati, Vice President of Development for Baldwin & Sons, is the Legally Responsible Person (LRP) enrolled under the Permit for the site and is the owner of USA Portola Properties LLC. The San Diego Water Board inspectors observed on January 19, 2016, March 14, 2016, and March 21, 2016, evidence that Baldwin (Discharger) failed to comply with the proper operation and maintenance of best management practices (BMPs) to achieve permit compliance. The Discharger was conducting construction activities with either missing, or inadequately implemented, construction site access stabilization BMPs and perimeter sediment control BMPs on disturbed slopes and work areas. The Discharger also failed to adequately implement effective soil cover BMPs in disturbed areas which were no longer active. The inactive areas included trench backfill areas and slopes adjacent to the trench backfill areas. See attached January 19, 2016, Facility Inspection Report Findings 17 through 21, Photo Location Maps A through G, Photos 69 through 72, and Attachments 1 through 9.

2. Failure to Comply with Duty to Maintain Records and Provide Information for Construction Activities:

- a. **Pursuant to Provisions IV.G.1 and IV.G.2 of State Water Board Order No. 2009-0009-DWQ:** The Discharger shall maintain a paper or electronic copy of all required records and furnish the Regional Water Board, State Water Board, or U.S. EPA upon request records that are required to be kept by this General Permit.
- b. **Pursuant to Provisions IX and Sections G.1, G.2, G.4, G.5, I.3, and I.6, of Attachment C to State Water Board Order No. 2009-0009-DWQ:** The Discharger

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bifurcated by Glenn Ranch Road east to west and Saddleback Ranch Road north to south, breaking the Project site into three separate planning areas, the Portola South Planning Area, the Portola Northwest Planning Area, and the Portola Northeast Planning Area.

shall perform weekly inspections and observations, and at least once each 24-hour period during extended storm events, to identify and record BMPs that need maintenance to operate effectively, that have failed, or could have failed, or that could fail to operate as intended.

- c. **Observation:** The Discharger failed to maintain or furnish copies of the inspection records required for a Risk Level 1 site from September 1, 2015, through January 30, 2016, as required by the Permit. See attached January 19, 2016, Facility Inspection Report, Findings 19 through 21, and Attachment 8.

3. Failure to Comply with Effluent Limitations for Construction Activities:

- a. **Pursuant to Provisions V.A.2, IX, and Section A.1 of Attachment C to 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 D.2 of Attachment C to State Water Board, Order No. 2009-0009-DWQ:** Dischargers shall provide effective soil cover for inactive areas, and all finished slopes, open space, utility backfill and completed lots.
- c. **Observation:** During the January 19, 2016, March 14, 2016, and March 21, 2016, inspections, the San Diego Water Board inspectors observed that the Discharger failed to minimize or prevent pollutants in storm water discharges to achieve BAT and/or BCT. The Discharger failed to adequately implement control or management practice BMPs required by the Permit for a Risk Level 1 site for inactive areas, all finished slopes, and utility backfill. The Discharger failed to minimize or prevent pollutants in storm water discharges from inactive areas of the site along Glenn Ranch Road. The Discharger failed to include management practice BMPs on the inactive utility trench backfill and finished slope areas. The inactive areas were observed by the San Diego Water Board inspectors to have been inactive from January 19, 2016, through March 21, 2016. See attached January 19, 2016, Facility Inspection Report, Finding 17, Photo Location Maps A through G, Photos 69 through 72, and Attachments 1 through 9.

4. Failure to Control Erosion and Sediment Discharges from the Site

- a. **Pursuant to Provision IX and Section E.1 of Attachment C to State Water Board, Order No. 2009-0009-DWQ:** 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 January 19, 2016, March 14, 2016, and March 21, 2016, inspections, San Diego Water Board inspectors observed that the Discharger failed to implement, or inadequately implement, perimeter control BMPs required by the Permit along active areas of Glenn Ranch Road. The San Diego Water Board inspector also observed missing BMPs to stabilize the construction site access areas on March 21, 2016. See attached January 19, 2016, Facility Inspection Report, Finding 17, Photo Location Maps A through G, Photos 69 through 72, and Attachments 1 through 9.

5. Failure to Include Information in the SWPPP to Demonstrate Compliance with the Requirements of the Permit:

a. Pursuant to Provision XIV.B of State Water Board Order No. 2009-0009-DWQ: To demonstrate compliance with requirements of the Permit, the QSD shall include information in the SWPPP that supports the conclusions, selections, use, and maintenance of BMPs.

b. Observation: Following the January 19, 2016, inspection, the San Diego Water Board inspectors reviewed the SWPPP uploaded by the Discharger to SMARTS. From October 1, 2015, through March 22, 2016, the Discharger failed to update the SWPPP to reflect the change in construction schedule and recalculate the Risk Level from Risk Level 1 to Risk Level 2. In addition, the SWPPP did not reflect the 401 certification requirements for compliance with Order No. 2009-0009-DWQ. See attached January 19, 2016, Facility Inspection Report, Finding 20, Comment 15, and Attachments 1 through 9.

B. Summary of Potential Enforcement Options

These violations may subject you to additional enforcement by the San Diego Water Board or State Water Board, including a potential civil liability assessment of \$10,000 per day per 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/or referral to the municipal or District Attorney for criminal prosecution.

In the subject line of any response, please include the information located in the heading of this letter: "in reply refer to." Questions pertaining to this Notice of Violation should be directed to Erica Ryan at (619) 521-8051 or Erica.Ryan@waterboards.ca.gov.



Laurie Walsh, P.E.
 Senior Water Resource Control Engineer
 Storm Water Management

LAW:DTB:DB:ER

Attachments: Facility Inspection Report dated January 19, 2016 for inspections conducted on January 19, 2016, March 14, 2016, and March 21, 2016

Tech Staff Info & Use	
WDID	930C372302
SMARTS Place ID	SM-834084
Inspection IDs	202919, 202920, 202922
Violation IDs	1/19/16: 860157 (BMP), 860158 (SWPPP) 3/14/16: 860161 (BMP), 860160 (SWPPP) 3/21/16: 860162 (BMP), 860163 (SWPPP)
Enforcement IDs	423102