



Santa Ana Regional Water Quality Control Board

December 18, 2024

McDougal Brothers
600 Dale Kuni Road
Creswell, OR 97426
(Via Certified Mail)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Edward Simmons
ewsimm@gmail.com
(Via Email)

Robert L Mezzetti
Agent for Service of Process for McDougal Brothers
31 East Julian Street
San Jose, CA 95112
(Via Certified Mail)

CONDITIONAL SETTLEMENT OFFER NO. R8-2024-0082 TO PARTICIPATE IN EXPEDITED PAYMENT PROGRAM RELATING TO VIOLATIONS OF THE GENERAL PERMIT FOR STORM WATER DISCHARGES ASSOCIATED WITH CONSTRUCTION ACTIVITIES (ORDER NO. 2009-0009-DWQ, NPDES NO. CAS000002) FOR CRAFTON HILLS ESTATES, HIGHWAY 38 & MILL CREEK ROAD, YUCAIPA, W DID NO. 8 36C341683

Dear Mr. Simmons,

This letter is to notify McDougal Brothers. (hereinafter "Discharger" or "you") of alleged violations of the California Water Code (Water Code) identified in the State Water Resources Control Board's water quality data system, and to allow the Discharger to participate in the Santa Ana Regional Water Quality Control Board's (Santa Ana Water Board) Expedited Payment Program for reporting violations to address mandatory minimum penalties that must be assessed pursuant to Water Code section 13399.31.

NOTICE OF VIOLATION:

Based on information in the Stormwater Multiple Application & Report Tracking System (SMARTS), the Santa Ana Water Board alleges that the Discharger is in violation of the General Permit Associated with Construction and Land Disturbing Activities, Order No. 2009-0009-DWQ, National Pollutant Discharge Elimination System (NPDES) Permit No. CAS000002 (General Permit), for the failure to submit the 2023-2024 Annual Report for

KRISTINE MURRAY, CHAIR | JAYNE JOY, EXECUTIVE OFFICER

the construction site located at Highway 38 & Mill Creek Road in the City of Yucaipa. The Annual Report was due to the Santa Ana Water Board by September 1, 2024, as required by Section XVI.A of the General Permit. The Discharger failed to submit the construction site's Annual Report by September 1, 2024 as required based on the Notices of Non-Compliance (NNCs) issued on September 17, 2024 and October 16, 2024. To date, the 2023-2024 Annual Report has not been submitted. The Discharger will have the opportunity to address the alleged violations as discussed below.

STATUTORY LIABILITY:

Pursuant to Water Code section 13399.33(c)-(d), the Discharger is subject to a minimum penalty of not less than one thousand dollars (\$1,000) plus staff costs for failing to submit the required Annual Report in accordance with Water Code section 13399.31 within sixty (60) days after the first NNC was sent. The Discharger is also subject to discretionary administrative civil liabilities of up to ten thousand dollars (\$10,000) for each day in which the violation occurs. These minimum and discretionary administrative civil liabilities may be assessed by the Santa Ana Water Board beginning with the date that the violations first occurred. The formal enforcement action that the Santa Ana Water Board uses to assess such liability is an administrative civil liability complaint (ACLC), although the Santa Ana Water Board may instead refer such matters to the Office of the Attorney General for prosecution. If referred to the Attorney General for prosecution, the Superior Court may assess up to twenty-five thousand dollars (\$25,000) per violation.

DISCHARGER'S OPTIONS FOR RESPONSE TO OFFER:

You have two options to respond as outlined below.

1. **Accept the Conditional Settlement Offer**, waive your right to a board hearing, and pay a settlement of **one thousand six hundred and thirty-five dollars (\$1,635)**. The minimum administrative civil liability pursuant to California Water Code section 13399.33(c) is \$1,000 for failure to submit an annual report. Staff costs in this matter are \$635. This is a Conditional Settlement Offer subject to certain terms and conditions set forth below. If you choose this option, **you must sign and submit the enclosed Acceptance and Waiver form by January 17, 2025**. The form provides submittal instructions. Final closure on this action is only possible after ultimate submission of the settlement amount.

Please submit an original (blue ink) signed Acceptance and Wavier form to:

Nilwala Abeysekara, General Stormwater Unit
Santa Ana Regional Water Quality Control Board
3737 Main Street, Suite 500
Riverside, CA 92501-3348

In response to the Conditional Settlement Offer and payment in settlement of this enforcement action, the Santa Ana Water Board Prosecution Team will forego

issuance of a formal administrative complaint, will not refer the violation to the Attorney General, and will waive its right to seek additional discretionary civil liabilities for the violations identified in the NNCs.

2. **Contest the non-filing violation** by submitting, in writing, the basis of your challenge with supporting evidence. For example, you may have evidence that you previously submitted your Annual Report, or you are no longer in business. If you choose this option, you must **submit your written documentation by January 17, 2025**. The Santa Ana Water Board Prosecution Team will review your submission, and if we agree with you, we will notify you in writing that you are no longer considered in violation of the permit and that our enforcement action has been terminated. All responses should be directed to Nilwala Abeysekara.

If you do not respond in a manner described in the above options, the Santa Ana Water Board Prosecution Team will prepare an ACLC for the violations cited in the NNCs. The liability amount sought in the ACLC and/or imposed by the Santa Ana Water Board may be higher than the liability amount set forth in this Conditional Settlement Offer. Moreover, additional staff costs associated with formal enforcement may be considered in the recommended liability amount in an ACLC.

CONDITIONS FOR SANTA ANA WATER BOARD ACCEPTANCE OF RESOLUTION:

If you accept the Conditional Settlement Offer, the settlement will be published in the following manner: Federal regulations require the Santa Ana Water Board to publish notice of, and to provide at least thirty (30) days for public comment on, any settlement of an enforcement action addressing NPDES permit violations (40 C.F.R. section 123.27(d)(2)(iii)). Upon receipt of the Discharger's Acceptance and Waiver and other requested technical reports on or before **January 17, 2025**, Santa Ana Water Board staff will publish a notice of the proposed resolution of the alleged violations.

If no comments are received within the notice period, the Santa Ana Water Board Executive Officer will execute the Acceptance and Waiver as a stipulated order assessing the uncontested penalty amount pursuant to Water Code section 13399.33. You will then be notified that payment is due within 30 days. Failure to pay the penalty within that time frame may result in further liability, referral of the matter to the Attorney General, and/or may void the offer to participate in this Expedited Payment Program.

If, however, significant comments are received in opposition to the settlement, this offer may be withdrawn. In that case, the Discharger's waiver pursuant to the Acceptance and Waiver will also be treated as withdrawn, and the violations will be addressed through a formal enforcement action.

This Conditional Settlement Offer does not address or resolve liability for any violation that is not specifically identified in the attached NNCs. The Santa Ana Water Board reserves the right to pursue formal enforcement of any violations not specifically cited in the attached NNCs.

Should you have any questions about this Conditional Settlement Offer, please contact Nilwala Abeysekara via email at nilwala.abeysekara@waterboards.ca.gov or via phone at (951) 782-7959.

Sincerely,

A handwritten signature in black ink, appearing to read 'Eric Lindberg', with a large, stylized flourish extending to the right.

Eric Lindberg, P.G, C.H.G.
Assistant Executive Officer
Santa Ana Water Board Prosecution Team

enclosures:

Notice of Non-Compliance, dated September 17, 2024

Notice of Non-Compliance, dated October 16, 2024

Acceptance of Conditional Resolution and Waiver of Right to Hearing; (proposed)
Order

9589 0710 5270 0843 5762 95

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Extra Services & Fees (check box, add fee as appropriate)

- Return Receipt (hardcopy) \$ _____
- Return Receipt (electronic) \$ _____
- Certified Mail Restricted Delivery \$ _____
- Adult Signature Required \$ _____
- Adult Signature Restricted Delivery \$ _____

Postage

\$ _____

MCDUGAL BROTHERS
600 DALE KUNI ROAD
CRESWELL OR 97426

Postmark
Here

8 36C341683
MRB

9589 0710 5270 0843 5763 01

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<input type="checkbox"/> Return Receipt (electronic)	\$ _____
<input type="checkbox"/> Certified Mail Restricted Delivery	\$ _____
<input type="checkbox"/> Adult Signature Required	\$ _____
<input type="checkbox"/> Adult Signature Restricted Delivery	\$ _____
Postage	
\$ _____	

Postmark Here

MCDUGAL BROTHERS
 ROBERT L MEZZETTI AGENT FOR SERVICE OF
 PROCESS FOR MCDUGAL BROTHERS
 31 EAST JULIAN STREET
 SAN JOSE CA 95112

PS Form 3800, January 2023 PSN 7530-02-000-9047 See Reverse for Instructions

8 36C341683
 MRB



Santa Ana Regional Water Quality Control Board

September 17, 2024

McDougal Brothers
600 Dale Kuni Road
Creswell, Oregon, 97426

CERTIFIED MAIL
RETURN RECEIPT REQUIRED
7019 2970 0001 3690 4808

Edward Simmons
ewsimm@gmail.com

NOTICE OF NON-COMPLIANCE: FAILURE TO COMPLY WITH THE GENERAL PERMIT FOR STORM WATER DISCHARGES ASSOCIATED WITH CONSTRUCTION AND LAND DISTURBANCE ACTIVITIES (ORDER NO. 2009-0009-DWQ, NPDES NO. CAS000002) (GENERAL PERMIT), WDID No. 8 36C341683

Dear Edward Simmons:

Your construction site located at Hwy 38 & Mill Creek Road, in the city of Yucaipa, is regulated under the General Permit and is identified by WDID No. 8 36C341683. Section XVI.A of the General Permit requires that you prepare and electronically submit an annual report by September 1st of each year. According to our records, we have not received your 2023-2024 annual report.

Currently, you are in violation of the General Permit, the California Water Code, and the federal Clean Water Act for failure to submit a complete 2023-2024 annual report. We request that you submit a complete 2023-2024 annual report via the Stormwater Multiple Application and Report Tracking System (SMARTS) no later than **October 16, 2024**. Help guides related to SMARTS are available at https://www.waterboards.ca.gov/water_issues/programs/stormwater/smarts.

Failure to submit the requested information will result in further enforcement action, which may include civil monetary penalties of up to \$10,000 for each day of violation. Please note that Section 13399.33 of the California Water Code stipulates a mandatory minimum penalty of \$1,000 to those permittees that do not submit their annual report after notification.

If you need assistance in completing the annual report, please contact the SMARTS Help Desk at Stormwater@waterboards.ca.gov. If you have any questions specific to your site, please contact Nilwala Abeysekara via email at nilwala.abeysekara@waterboards.ca.gov or via phone at (951) 782-7959.

Sincerely,

Michelle R. Beckwith, Supervisor
Senior Environmental Scientist
General Stormwater Unit

KRISTINE MURRAY, CHAIR | JAYNE JOY, EXECUTIVE OFFICER

7019 2970 0001 3690 4808

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OFFICIAL USE

Certified Mail Fee	\$
Extra Services & Fees (check box, add fee as appropriate)	
<input type="checkbox"/> Return Receipt (hardcopy)	\$
<input type="checkbox"/> Return Receipt (electronic)	\$
<input type="checkbox"/> Certified Mail Restricted Delivery	\$
<input type="checkbox"/> Adult Signature Required	\$
<input type="checkbox"/> Adult Signature Restricted Delivery	\$
Postage	\$
Total Postage and Fees	\$

Postmark
Here

Sent To _____
 Street and Apt. No., or PO Box No. _____
 City, State, ZIP+4® _____

McDougal Brothers
600 Dale Kuni Road
Creswell, Oregon 97426

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

McDougal Brothers
600 Dale Kuni Road
Creswell, Oregon 97426



9590 9402 8280 3094 0853 88

2. Article Number (Transfer from service label)

7019 2970 0001 3690 4808

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

Dennis Marxen

- Agent
- Addressee

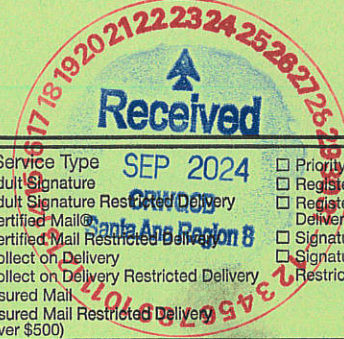
B. Received by (Printed Name)

DENNIS MARXEN

C. Date of Delivery

9-20-24

D. Is delivery address different from item 1? Yes No



3. Service Type

- Adult Signature
- Adult Signature Restricted Delivery
- Certified Mail®
- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery
- Insured Mail
- Insured Mail Restricted Delivery (over \$500)
- Priority Mail Express®
- Registered Mail™
- Registered Mail Restricted Delivery
- Signature Confirmation™
- Signature Confirmation Restricted Delivery

SEP 20 2024
Santa Ana Region 8

Domestic Return Receipt

USPS TRACKING #



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First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

United States
Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box •

CA REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION
3737 MAIN STREET, SUITE 500
RIVERSIDE, CA 92501-3348

8 36C341683 - NA





Santa Ana Regional Water Quality Control Board

October 16, 2024

McDougal Brothers
600 Dale Kuni Road
Creswell, Oregon, 97426

CERTIFIED MAIL
RETURN RECEIPT REQUIRED
9589 0710 5270 0558 5717 83

Edward Simmons
ewsimm@gmail.com

NOTICE OF NON-COMPLIANCE: FAILURE TO COMPLY WITH THE GENERAL PERMIT FOR STORM WATER DISCHARGES ASSOCIATED WITH CONSTRUCTION AND LAND DISTURBANCE ACTIVITIES (ORDER NO. 2009-0009-DWQ, NPDES NO. CAS000002) (GENERAL PERMIT), WDID No. 8 36C341683 SECOND NOTICE

Dear Edward Simmons:

Your construction site located at Hwy 38 & Mill Creek Road, in the city of Yucaipa, is regulated under the General Permit and is identified by WDID No. 8 36C341683. Section XVI.A of the General Permit requires that you prepare and electronically submit an annual report by September 1st of each year. According to our records, we have not received your 2023-2024 annual report.

Currently, you are in violation of the General Permit, the California Water Code, and the federal Clean Water Act for failure to submit a complete 2023-2024 annual report. We request that you submit a complete 2023-2024 annual report via the Stormwater Multiple Application and Report Tracking System (SMARTS) no later than **November 15, 2024**. Help guides related to SMARTS are available at https://www.waterboards.ca.gov/water_issues/programs/stormwater/smarts.

This is your second and final notice. The first notice was sent on September 17, 2024 and to date, we have not received an adequate response to that notice. Please note that Section 13399.33 of the California Water Code stipulates a mandatory minimum penalty of \$1,000 to those permittees that do not submit their annual reports. Further enforcement action, including civil monetary penalties of up to \$10,000 for each day of violation, may result.

If you need assistance in completing the annual report, please contact the SMARTS Help Desk at Stormwater@waterboards.ca.gov. If you have any questions specific to your site, please contact Nilwala Abeysekara via email at nilwala.abeysekara@waterboards.ca.gov or via phone at (951) 782-7959.

Sincerely,

Michelle R. Beckwith, Supervisor
Senior Environmental Scientist
General Stormwater Unit

KRISTINE MURRAY, CHAIR | JAYNE JOY, EXECUTIVE OFFICER

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<input type="checkbox"/> Return Receipt (hardcopy)	\$
<input type="checkbox"/> Return Receipt (electronic)	\$
<input type="checkbox"/> Certified Mail Restricted Delivery	\$
<input type="checkbox"/> Adult Signature Required	\$
<input type="checkbox"/> Adult Signature Restricted Delivery	\$

Postmark
Here

Postage	\$
Total Postage and Fees	\$

Sent To _____
 Street and Apt. No., or PO Box No. _____
 City, State, ZIP+4® _____

McDougal Brothers
600 Dale Kuni Road
Creswell, Oregon 97426

MRB

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
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- Attach this card to the back of the mailpiece, or on the front if space permits.

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McDougal Brothers
600 Dale Kuni Road
Creswell, Oregon 97426



9590 9402 8280 3094 0894 61

2. Article Number (Transfer from service label)

9589 0710 5270 0558 5717 83

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

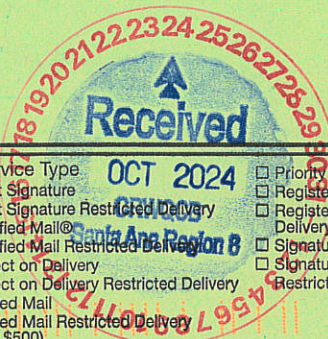
X *Bobbi Hendrick* Agent
 Addressee

B. Received by (Printed Name)

Bobbi Hendrick - 10-21-24

C. Date of Delivery

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No *18*



3. Service Type

- Adult Signature
- Adult Signature Restricted Delivery
- Certified Mail®
- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery
- Insured Mail
- Insured Mail Restricted Delivery (over \$500)
- Priority Mail Express®
- Registered Mail™
- Registered Mail Restricted Delivery
- Signature Confirmation™
- Signature Confirmation Restricted Delivery

OCT 2024

456789

Domestic Return Receipt

USPS TRACKING #



9590 9402 8280 3094 0894 61

United States
Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box. •

CA REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION
3737 MAIN STREET, SUITE 500
RIVERSIDE, CA 92501-3348

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

8 36C 341683 - NA





Santa Ana Regional Water Quality Control Board

ACCEPTANCE OF CONDITIONAL RESOLUTION AND WAIVER OF RIGHT TO A BOARD HEARING: (Proposed) ORDER

McDougal Brothers (WDID No. 8 36C341683)
Settlement Offer No. R8-2024-0082

By signing below and returning this Acceptance of Conditional Resolution and Waiver of Right to a Board Hearing (Acceptance and Waiver) to the Santa Ana Regional Water Quality Control Board (Santa Ana Water Board), McDougal Brothers (Discharger) hereby accepts the "Offer to Participate in Expedited Payment Program" and waives the right to a hearing before the Santa Ana Water Board to dispute the violations described in the Notices of Non-Compliance (NNCs) which are attached and incorporated herein by reference.

The Discharger agrees that the Conditional Settlement Offer shall serve as a complaint pursuant to Article 2.5 of the California Water Code and that no separate complaint is required for the Santa Ana Water Board to assert jurisdiction over the alleged violations through its Chief Prosecutor. The Discharger agrees to pay the administrative civil liability authorized by California Water Code sections 13399.31 and 13399.33, in the sum of \$1,635 (Expedited Payment Amount) which shall be deemed payment in full of any civil liability pursuant to California Water Code section 13399.33 that otherwise might be assessed for the violations described in the NNCs.

The Discharger understands that this Acceptance and Waiver waives its right to contest the allegations in the NNCs and the amount of civil liability for such violations. The Discharger understands that this Acceptance and Waiver does not address or resolve liability for any violation that is not specifically identified in the NNCs.

Upon Execution by the Discharger, submit the completed Acceptance and Waiver to:

Nilwala Abeysekara, General Stormwater Unit
Santa Ana Regional Water Quality Control Board
3737 Main Street, Suite 500
Riverside, CA 92501

The Discharger understands that federal regulations set forth at title 40, Code of Federal Regulations, section 123.27(d)(2)(iii) require the Santa Ana Water Board to publish notice of and provide at least (30) days for public comment on any proposed resolution of an enforcement action addressing NPDES permit violations. Accordingly, this Acceptance and Waiver, prior to execution by the Santa Ana Water Board Executive Officer, will be published as required by law for public comment.

If no comments are received within the notice period that causes the Santa Ana Water Board Executive Officer to question the Expedited Payment Amount, the Santa Ana Water Board Executive Officer will execute the Acceptance and Waiver.

The Discharger understands that if significant comments are received in opposition to the Expedited Payment Amount, the Conditional Settlement Offer on behalf of the Santa Ana Water Board to resolve the violations set forth in the NNCs may be withdrawn. In that circumstance, the Discharger will be advised of that withdrawal, and an administrative civil liability complaint may be issued, and the matter may be set for a hearing before the Santa Ana Water Board. In the event that this matter proceeds to hearing, the Discharger understands that this Acceptance and Waiver executed by the Discharger will be treated as a settlement communication and will not be used as evidence in that hearing.

The Discharger further understands that once this Acceptance and Waiver is executed by the Santa Ana Water Board Executive Officer, the full payment required by the deadline set forth below is a condition of this Acceptance and Waiver. In accordance with California Water Code section 13399.37(a), funds collected for violations pursuant to sections 13399.33(c) and 13399.33(d) shall be deposited in the Waste Discharge Permit Fund. Accordingly, the \$1,635 liability including staff costs shall be paid by a cashiers or certified check made out to the "State Water Resources Control Board" referencing this Order number for deposit into the Waste Discharge Permit Fund. The payment must be submitted to the State Water Resources Control Board no later than thirty (30) calendar days after the date the Acceptance and Waiver is executed by the Santa Ana Water Board Executive Officer.

Please mail check to:

State Water Resources Control Board
Division of Administrative Services, Accounting Branch
Re: Order No. R8-2024-0082
P.O. Box 1888
Sacramento, CA 95812-1888

I hereby affirm that I am duly authorized to act on behalf of and to bind the Discharger in the making and giving of this Acceptance and Waiver.

McDougal Brothers

By: *Daniel Fischer*
(Signed Name)

2-21-25
(Date)

Daniel Fischer
(Printed or Typed Name)

Legally responsible person
(Title)

IT IS SO ORDERED PURSUANT TO CALIFORNIA WATER CODE SECTION 13323 AND GOVERNMENT CODE SECTION 11415.60.

By: _____
Jayne E. Joy, P.E.
Executive Officer

