

California Regional Water Quality Control Board
North Coast Region

Cleanup and Abatement Order No. R1-2003-0101

For

Mr. Ken Coster and Ms. Sue Coster
and
Trendwest Resorts, Inc.

Sonoma County

The California Regional Water Quality Control Board, North Coast Region (hereinafter Regional Water Board), finds that:

1. Mr. Ken Coster and Ms. Sue Coster (hereinafter Landowner) and Trendwest Resorts, Inc., (hereinafter Contractor) discharged dirt fill material into seasonal wetland habitat on a property (hereinafter Site), located at 8025 Starr Road, Windsor, Sonoma County.
2. On March 11, 2003, the Regional Water Board received a complaint regarding unauthorized filling of seasonal wetland habitat on the Site. The complainant indicated that they had observed a substantial amount of dirt piled within a potential wetland area directly adjacent to Starr Creek.
3. On April 24, 2003, Regional Water Board staff viewed the Site and verified the complaint received on March 11, 2003. Staff observed that approximately 100 cubic yards of dirt fill had been discharged into a wetland pond on the Site (Attachment 1-3).
4. On May 27, 2003, the Army Corps of Engineers (ACOE) issued a Cease and Desist letter to the Landowner. The letter directed the Landowner to cease all activities within potential ACOE jurisdiction on the Site immediately and to submit a report of the history of the activity.
5. On June 11, 2003, Regional Water Board staff member Andrew Jensen met the Landowner and inspected the Site. The Landowner stated that permission had been given to the Contractor to import a small amount of dirt fill, which originated from the Trend West Development on Shiloh Road in Windsor, onto the Site. According to the Landowner the dirt fill was brought in by the Contractor and discharged on the Site during Summer 2002. Staff informed the Landowner that the dirt fill discharge was an unauthorized discharge to wetland habitat, and was subject to enforcement, including a Cleanup and Abatement Order, by the Regional Water Board, and potential civil liabilities.
6. On July 11, 2003, staff met on the Site with the Landowner, and representatives of California Department of Fish and Game and the Army Corps of Engineers to determine the extent of wetland habitat on the Site and appropriate enforcement and remediation measures. The ACOE had previously determined that most of the Site is a wetland, and the dirt fill had been placed in a wetland pond. The ACOE had already issued a Cease

and Desist letter regarding the unauthorized wetland filling. In addition, the ACOE stated that a wetland delineation map would be produced for the Site, and that a Clean Water Act Section 404 Nationwide Permit would be issued for the removal of the dirt fill.

7. The seasonal wetland beneficial uses, as designated in the Water Quality Control Plan for the North Coast Region (Basin Plan), include:
- a. Municipal and domestic supply
 - b. Agricultural supply
 - c. Industrial supply
 - d. Industrial service supply
 - e. Groundwater recharge
 - f. Freshwater replenishment
 - g. Water contact recreation
 - h. Non-contact water recreation
 - i. Warm freshwater habitat
 - j. Cold freshwater habitat
 - k. Rare, threatened, or endangered species
 - l. Wildlife habitat
 - m. Estuarine habitat

and proposed beneficial uses designations include:

- n. Wetland habitat
 - o. Flood peak attenuation/ flood water storage
 - p. Water quality enhancement
8. The Basin Plan contains specific standards and provisions for maintaining high quality waters of the state that provide for the beneficial uses listed above. The Action Plan for Logging, Construction and Associated Activities (Action Plan) included in the Basin Plan includes two prohibitions:
- Prohibition 1 - *“The discharge of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature into any stream or watercourse in the basin in quantities deleterious to fish, wildlife, or other beneficial uses is prohibited.”*
 - Prohibition 2 - *“The placing or disposal of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature at locations where such material could pass into any stream or watercourse in the basin in quantities which could be deleterious to fish, wildlife, or other beneficial uses is prohibited.”*
9. The Action Plan states: “where investigations indicate that the beneficial uses of water may be adversely affected by waste dischargers, the staff shall require the submission of Reports of Waste Discharge.”

10. Section 3 of the Basin Plan contains water quality objectives that specify limitations on certain water quality parameters not to be exceeded as a result of waste discharges. The water quality objectives (pages 3-2.00 and 3-3.00) that are considered of particular importance in protecting the beneficial uses from unreasonable effects due to discharges from logging, construction, or associated activities, include the following:
- Color: Waters shall be free of coloration that causes nuisance or adversely affects beneficial uses.
 - Suspended Material: Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.
 - Settleable Material: Waters shall not contain substances in concentrations that result in deposition of material that causes nuisance or adversely affect beneficial uses.
 - Sediment: The suspended sediment load and suspended discharge rate of surface waters shall not be altered in such a manner as to cause nuisance or adversely affect beneficial uses.
 - Turbidity: Turbidity shall not be increased more than 20 percent above naturally occurring background levels. Allowable zones within which higher percentages can be tolerated may be defined for specific discharges upon the issuance of discharge permits or waiver thereof.
11. The following sections of the Porter-Cologne Water Quality Control Act authorize the Regional Water Board to require persons to remediate unpermitted discharges of waste:
- Section 13267(a) - *“A regional board, in establishing or reviewing any water quality control plan or waste discharge requirements, or in connection with any action relating to any plan or requirement or authorized by this division, may investigate the quality of any waters of the state within its region.”*
 - Section 13267(b) - *“In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or proposes to discharge waste within its region...that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires.”*
 - Section 13267(c) - *“In conducting an investigation pursuant to subdivision (a), the regional board may inspect the facilities of any person to ascertain whether the purposes of this division are being met and waste discharge requirements are being complied with. The inspection shall be made with the consent of the owner or possessor of the facilities or, if the consent is withheld, with a warrant duly issued pursuant to the procedure set forth in Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure. However, in the event of an emergency affecting the public health or safety, an inspection may be performed without consent or the issuance of a warrant.”*

- Section 13304(a) - *“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 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.”*
12. As described above, the Landowner and Contractor have placed dirt fill material into seasonal wetland habitat and has therefore caused a discharge of waste into waters of the state.
 13. The quantity and manner in which the dirt fill material was placed caused the direct loss of wetland habitat and its associated functions, which is deleterious to wildlife, and other beneficial uses, and therefore violates Prohibitions 1 and 2 in the Action Plan. Wetland habitat generally consists of ponded or saturated areas that perform important functions related to water quality including but not limited to: providing habitat for amphibians and other wildlife species; groundwater recharge; water quality enhancement; flood peak attenuation and flood water storage; and habitat for rare and endangered species. Removal of this habitat is deleterious to wildlife, and other beneficial uses, and therefore violates Prohibitions 1 and 2 in the Action Plan. These detrimental effects also constitute the creation of pollution or nuisance. The discharge of the dirt fill material is therefore subject to cleanup and abatement under California Water Code Section (CWC) 13304.
 14. The workplan required by this Order is necessary to ensure that the prior harm and future threat to water quality created by the discharges described above are properly abated and controlled. More detailed information is available in the Regional Water Board’s public file on this matter.
 15. This is an enforcement action by a regulatory agency, being taken for the protection of the environment, and is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code, Section 21000 et seq.) in accordance with California Code of Regulations (CCRs), Title 14, Sections 15308 and 15321.
 16. Failure to comply with the terms of this Order may result in enforcement under the CWC. Any person failing to provide technical reports containing information required by this Order by the required date(s) or falsifying any information in the technical reports is, pursuant to CWC Section 13268, guilty of a misdemeanor and may be subject to administrative civil liabilities of up to one thousand dollars (\$1,000.00) for each day in which the violation occurs. Any person failing to cleanup or abate threatened or actual discharges as required by this Order is, pursuant to CWC Section 13350(e), subject to administrative civil liabilities of up to five thousand dollars (\$5,000.00) per day or ten dollars (\$10) per gallon of waste discharged.

17. Any person affected by this action of the Regional Water Board may petition the State Water Resources Control Board (State Water Board) to review the action in accordance with CWC Section 13320 and Title 23, CCRs, Section 2050. The petition must be received by the State Water Board within 30 days of the date of this Order. Copies of the law and regulations applicable to filing petitions will be provided upon request. In addition to filing a petition with the State Water Board, any person affected by this Order may request the Regional Water Board to reconsider this Order. To be timely, such request must be made within 30 days of the date of this Order. Note that even if reconsideration by the Regional Water Board is sought, filing a petition with the State Water Board within the 30-day period is necessary to preserve the petitioner's legal rights. If you choose to request reconsideration of this Order or file a petition with the State Water Board, be advised that you must comply with the Order while your request for reconsideration and/or petition is being considered.

THEREFORE, IT IS HEREBY ORDERED that, pursuant to CWC Sections 13267(b) and 13304, the Landowner and Contractor shall coordinate and perform the following cleanup and abatement actions:

1. Submit a workplan to the Regional Water Board, for Executive Officer concurrence, on or before September 12, 2003, that includes the following:
 - a. A plan for removing the dirt fill, which shall include a copy of the proposed wetland delineation of the Site. An ACOE-approved wetland delineation and the location of an appropriate disposal site for removed dirt fill material shall be submitted upon completion of ACOE wetland delineation verification.
 - b. A detailed restoration plan that addresses the timely restoring of the wetland areas affected by the filling activity. The plan shall contain a time schedule for restoration activities, success criteria to judge the success or the restoration project, and a monitoring proposal to evaluate whether the success criteria are being met.
 - c. A plan to provide additional mitigation to account for the temporal loss of wetland habitat that has occurred as a result of the unauthorized filling. Such mitigation can include restoration and/or creation of wetland habitat elsewhere in the watershed, restoration and/or creation of wetland habitat in upland areas on the Site, and/or the purchase of wetland mitigation credits at an approved wetland mitigation bank.

2. Following Executive Officer written concurrence, implement the workplan. All work to remove the dirt fill and restore the affected wetland habitat shall be completed before October 31, 2003.

Ordered by _____

Catherine E. Kuhlman
Executive Officer

August 19, 2003

(cao8025starroad)

Attachment 1 – Photo of fill material within wetland habitat at 8025 Starr Road, Windsor, Sonoma County, California, taken April 24, 2003.



Attachment 2 – Photo of fill material and heavy equipment within wetland habitat at 8025 Starr Road, Windsor, Sonoma County, California, taken April 24, 2003.



Attachment 3 – Overview of fill material within wetland habitat at 8025 Starr Road, Windsor, Sonoma County, California, taken April 24, 2003.

