

California Regional Water Quality Control Board
North Coast Region

Cleanup and Abatement Order No. R1-2005-0107

For

California Department of Transportation
District 1

For

Dry Creek Bridge Replacement Project, Highway 128 PM 43.3
WDID No. 1B03007WNME

Mendocino County

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

1. On July 2, 2003, the Executive Officer of the Regional Water Board issued a 401 Certification (Water Quality Certification) to the California Department of Transportation (Caltrans) for the Dry Creek Bridge Replacement Project.
2. Caltrans or their contractor discharged dirt and debris fill material into seasonal wetland habitat and a seasonal stream on a property (hereinafter Site), located at Post Mile 43.3 on Highway 128 in Mendocino County, adjacent to the Dry Creek Bridge Replacement Project. The wetland fill and stream discharges were not covered by the Water Quality Certification described above, or otherwise permitted by the Regional Water Board, and therefore constituted a violation of the California Water Code (CWC) and the Clean Water Act, Section 401 (CWA Section 401).
3. On April 5, 2005, two Regional Water Board staff members observed unauthorized fill of seasonal wetland habitat on the Site. The staff observed a substantial amount of dirt and debris discharged within a potential wetland area directly adjacent to Dry Creek. The area appeared to have been used for a staging area and asphalt disposal location for the adjacent bridge replacement project.
4. On April 26, 2005, Regional Water Board staff and Caltrans staff viewed the Site and verified that an unknown amount of dirt and debris fill had been discharged into wetland habitat and a seasonal stream. Regional Water Board staff also observed failure of storm water best management practices (BMPs) on the Site. Staff informed Caltrans that the dirt and debris fill 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. Caltrans staff agreed to investigate the unauthorized fill, prepare a report for the Regional Water Board, survey and delineate the Site to determine the area of wetland habitat filled, contact local agencies and the United States Army Corps of Engineers (ACOE), improve the storm water BMPs and develop a restoration and mitigation plan.

5. The stream and wetlands described above are tributary to Dry Creek, which is tributary to the Russian River, and have actual and potential beneficial uses, as designated in the Water Quality Control Plan for the North Coast Region (Basin Plan), that include:
 - a. Municipal and domestic supply
 - b. Agricultural supply
 - c. Industrial supply
 - d. Industrial service supply
 - e. Groundwater recharge
 - f. Navigation
 - g. Hydropower generation
 - h. Water contact recreation
 - i. Non-contact water recreation
 - j. Commercial and sport fishing
 - k. Warm freshwater habitat
 - l. Cold freshwater habitat
 - m. Rare, threatened, or endangered species
 - n. Wildlife habitat
 - o. Migration of aquatic organisms
 - p. Spawning, reproduction, and/or early development
 - q. Estuarine habitat
 - r. Aquaculture
 - s. Wetland habitat
 - t. Flood peak attenuation/ flood water storage
 - u. Water quality enhancement

6. The 401 Certification issued on July 2, 2003, contained the following conditions for the Dry Creek Bridge Replacement Project:
 - “No debris, soil, silt, sand, bark, slash, sawdust, rubbish, cement or concrete washings, oil or petroleum products, or other organic or earthen material from any construction or associated activity of whatever nature shall be allowed to enter into or be placed where it may be washed by rainfall into waters of the state. When operations are completed, any excess material or debris shall be removed from the work area. No rubbish shall be deposited within 150 feet of the high water mark of any stream. Equipment shall be refueled off-site.

 - Disturbance or removal of vegetation shall not exceed the minimum necessary to complete operations. The disturbed portions of any creek channel shall be restored to as near their original condition as possible.

 - BMPs for sediment and turbidity control shall be implemented and in place prior to, during, and after construction in order to ensure that no significant turbidity results from the project.

- The Applicant shall provide photos of the completed work to the appropriate Regional Water Board staff person, in order to document compliance. The Applicant shall also provide photos of the completed work areas after the first significant rainfall event in order to ensure that the project has been successful.
- This Order authorizes discharges related to the dredge and fill activities described in the project application. Any further discharges associated with the project such as, but not limited to, dewatered groundwater or surface waters, waste from the bridge removal, and cleaning of any structures shall be described in a supplemental report to be received by the Regional Water Board no later than 60 days before the first day of construction. The supplemental report shall describe all additional planned discharges and the associated potential impacts and BMPs and be evaluated by Regional Water Board staff for coverage under this Order or additional permits. Construction shall not commence until Caltrans has received written confirmation from the Regional Water Board regarding the additional discharges.”

On April 26, 2005, Regional Water Board staff found violations of these conditions.

7. 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.”*
8. 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.”
9. 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 back ground 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.
10. 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.”*
11. As described above, Caltrans, through their contractor has placed or caused to be placed dirt and debris fill material into seasonal wetland and stream habitat, and has therefore caused a discharge of waste into waters of the state.
 12. The quantity and manner in which the dirt and debris 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 CWC 13304.
 13. A restoration 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.
 14. 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.
 15. 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.

16. 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, Caltrans shall provide the following information and perform the following cleanup and abatement actions:

1. Submit a report by December 2, 2005, that includes the following:
 - a. The name and contact information for the owner of the property at which the unauthorized fill activities took place;
 - b. Information regarding a grading permit for the activities;
 - c. A schedule to complete and submit an analysis of the area impacted, volume of fill added and delineation of impacted waters;
 - d. Information on agencies and personnel contacted regarding the unauthorized fill activities and copies of any related correspondence;
 - e. An investigation and chronology of events related to the unauthorized fill activities;
 - f. Information on procedures that Caltrans uses to ensure that project debris is disposed of properly and an explanation of the failure to implement the procedures in this instance;
 - g. A complete explanation of any breaches of communication or inadequate oversight of contractors that contributed to the violations;
 - h. An explanation of Caltrans' failure to notify the Regional Water Board, leaving staff to discover the violations, and how this failure will be rectified;
 - i. Procedural changes that Caltrans will implement to ensure that similar violations don't occur in the future; and
 - j. Identification of storm water violations and steps taken to improve storm water control on Site.
2. Submit a workplan to the Regional Water Board, for Executive Officer concurrence, on or before December 2, 2005, that includes the following:

- a. A plan for removing the dirt and debris fill, which shall include a copy of the proposed wetland delineation of the Site, an Army Corps of Engineers (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 and stream areas affected by the filling activity. The plan shall contain a time schedule for restoration activities, criteria to judge the success of 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.
3. 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 January 31, 2006.

Ordered by _____

Catherine E. Kuhlman
Executive Officer

November 1, 2005