

California Regional Water Quality Control Board  
North Coast Region

Cleanup and Abatement Order No. R1-2007-0033

For

Robert and Alice Larsen Trust

Regarding

Larsen Property  
7671 Derby Lane, Cotati  
APN 046-076-003

Sonoma County

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

1. Mr. Robert and Ms. Alice Larsen (Discharger), owners of the Larsen Property located at 7671 Derby Lane, in Cotati, Sonoma County (APN 046-076-003) (site), discharged fill material into wetland habitat on the site. The Porter-Cologne Water Quality Act (California Water Code (CWC) 13000 et seq.) requires that any person discharging waste or proposing to discharge waste within any region, other than to a community sewer system, which could affect the quality of the waters of the State, must file a report of waste discharge. "Waters of the State" include wetlands, and the discharge of dredged or fill material constitute a discharge of waste that could affect the quality of waters of the State. Because the Discharger did not file a report of waste discharge prior to filling and threatening to fill an onsite wetland with soil fill material, the activities constituted a violation of the Porter-Cologne Water Quality Act. In addition, if the wetlands are also considered "waters of the United States," there is likely a violation of section 401 of the Clean Water Act (CWA Section 401).
2. On January 25, 2007, Vincent Griego of the United States Fish and Wildlife Service (USFWS) contacted the Regional Water Board with a report that vernal pool wetland habitat had been filled at the site. Mr. Griego submitted photographs of the fill placed on the site and aerial photographs of the site prior to the fill activities, clearly demonstrating the presence of vernal pool wetlands on the site. These photographs were provided by Tracy Love of the Department of Fish and Game on January 11, 2007.
3. On February 20, 2007, Regional Water Board staff verified that there had been a layer of fill placed on the site, appearing to be up to two feet thick in some locations.

4. Based on the above information Regional Water Board staff have determined that an undetermined amount of waters of the State (wetland habitat) has been destroyed and/or significantly impacted by the filling activities that occurred at the site. In addition, the presence of unstabilized soil fill on other portions of the site constitutes a threat of further impacts to waters of the State.
5. Section 13304 of the California Water Code (CWC) states that any person who has discharged waste into waters of the 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, 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.
6. As described in paragraphs 2-4, above, a discharge of waste into waters of the State has occurred. This discharge creates a condition of pollution, which is defined in CWC Section 13050(I) as “an alteration of the quality of the waters of the state by waste to a degree which unreasonably affects...the waters for beneficial uses.”
7. In the Water Quality Control Plan for the North Coast Basin (Basin Plan), the Regional Water Board has identified present and potential beneficial uses of waters within its jurisdiction, including wetlands. The Regional Water Board is responsible for protecting the beneficial uses of wetlands through regulation and was a member of the Conservation Strategy Team that participated in development of the Santa Rosa Plain Conservation Strategy to protect endangered species.
8. The Basin Plan designates the following existing and potential beneficial uses of wetlands:
  - a. Municipal and domestic supply
  - b. Agricultural supply
  - c. Industrial service supply
  - d. Groundwater recharge
  - e. Freshwater replenishment
  - f. Navigation
  - g. Water contact recreation
  - h. Non-contact water recreation
  - i. Commercial and sport fishing
  - j. Warm freshwater habitat
  - k. Cold freshwater habitat
  - l. Rare, threatened, or endangered species

- m. Wildlife habitat
  - n. Migration of aquatic organisms
  - o. Spawning, reproduction, and/or early development
  - p. Native American culture
  - q. Estuarine habitat
  - r. Aquaculture
  - s. Shellfish harvesting
  - t. Flood peak attenuation/Flood water storage
  - u. Wetland habitat
  - v. Water quality enhancement
9. The discharge of fill material into the wetlands on the site unreasonably affects beneficial uses, including the following: 1) wildlife habitat (WILD) – the uses of water, including wetlands, that support the preservation and enhancement of terrestrial habitats, vegetation, wildlife, and wildlife water and food sources; 2) rare, threatened or endangered species (RARE) – the uses of waters, including wetlands, that support habitats necessary for the survival and successful maintenance of plant or animal species established under state or federal laws as rare, threatened or endangered; and 3) wetland habitat (WET) - the preservation of unique wetland functions, vegetation, fish, shellfish, invertebrates, insects, and wildlife habitat.
10. The wetlands on the site served as habitat for wildlife and endangered species, specifically the California tiger salamander (*Ambystoma californiense*), a designated federal endangered species. The US Fish and Wildlife Service has identified the wetlands filled on the site as a breeding site for the California tiger salamander. In addition, upland areas of the site constitute additional habitat for the California tiger salamander. The site is also within the boundary of the Santa Rosa Plain Conservation Strategy and subject to its requirements as described below.
11. On December 1, 2005, the Santa Rosa Plain Conservation Strategy (Strategy) was issued by the Conservation Strategy Team composed of public agencies and private interested parties to develop a cohesive conservation strategy to protect endangered species including the California tiger salamander while allowing future development on the Santa Rosa Plain. The Strategy states that, “If these [development] projects would result in the fill of wetlands they must be authorized under the Federal CWA (sections 404 and 401) and/or the State Porter Cologne Act. In obtaining these permits, appropriate mitigation must be provided to assure that there is no net loss of wetland function and/or acreage. These projects must also comply with the State and Federal endangered species acts as appropriate.”
12. The California tiger salamander requires upland habitat adjacent to breeding areas (wetlands) to successfully reproduce and mature. The Strategy requires that loss of both wetland habitat and upland habitat within the boundary area are mitigated in accordance with the Strategy.

13. Dredging and/or filling wetlands severely damages or eliminates wetlands and significantly impacts their ability to provide habitat for the California tiger salamander, one of the beneficial uses of wetlands (RARE) that the Regional Water Board is required to protect.
14. The discharge of waste into the wetlands also destroys the beneficial use of preserving unique wetland functions, vegetation, fish, shellfish, invertebrates, insects, and wildlife habitat. This beneficial use is a statewide priority, as demonstrated by the goals of the California Wetlands Conservation Policy (Executive Order W-59-93, signed August 23, 1993). That policy includes ensuring “no overall loss” and achieving a “...long-term net gain in the quantity, quality, and permanence of wetland acreage and values...” primarily through the implementation of regional wetlands protection programs. Senate Concurrent Resolution No. 28 states that “[i]t is the intent of the legislature to preserve, protect, restore, and enhance California’s wetlands and the multiple resources which depend on them for benefit of the people of the State.” Similarly, section 13142.5 of the CWC requires that the “[h]ighest priority shall be given to improving or eliminating discharges that adversely affect...wetlands, estuaries, and other biologically sensitive areas.”
15. Section three of the Basin Plan contains water quality objectives that are necessary for the reasonable protection of beneficial uses. Several of these objectives (pages 3-2.00 and 3-3.00) are considered particularly important in protecting beneficial uses from unreasonable effects due to discharges from logging, construction, or associated activities. These include:
  - 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.

The discharge of fill into wetlands on the site has caused violations of these objectives, unreasonably affecting beneficial uses.

16. As described above, the Discharger has caused or permitted waste, in the form of fill, to be discharged into waters of the State, creating a condition of pollution by altering the quality of the waters of the State to a degree which unreasonably affects the beneficial use of those waters. Beneficial uses unreasonably affected include the use of wetlands as habitat for wildlife and rare and endangered species, and the preservation of unique wetland functions, vegetation, fish, shellfish, invertebrates, insects, and wildlife habitat. The discharge of waste into waters of the State caused the direct loss of wetland habitat and its associated functions. The Discharger never filed a Report of Waste Discharge with the Regional Water Board before discharging the waste, in violation of CWC sections 13260 and 13263. Similarly, the Regional Water Board never issued waste discharge requirements or a waiver of waste discharge requirements for the filling activities.
17. In addition, fill material discharged to the upland areas on site constitutes a threatened discharge to waters of the State, which threatens to cause a condition of pollution by unreasonably affecting habitat for the California tiger salamander, an endangered species.
18. In addition to allowing a clean up and abatement order where a person causes or permits, or threatens to cause or permit, waste to be discharged or deposited where it is, or probably will be, discharged into waters of the state and creates a condition of pollution, section 13304 also permits the Regional Water Board to issue a clean up and abatement order where there is a discharge of waste in violation of any prohibition issued by a regional board.
19. The Basin Plan includes implementation plans that present measures required to be taken with respect to actual and potential point and nonpoint sources of water quality degradation. It is now recognized that in many areas nonpoint source discharges, such as storm water runoff and discharges associated with construction activities, are the principal sources of contaminant discharges to surface water and groundwater. The Basin Plan Action Plan for Logging, Construction and Associated Activities (Action 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.”*

The discharge of fill into the wetlands on the site violates these prohibitions.

20. In addition to allowing the Regional Water Board to require clean up of the waste or abatement of the effects of the waste, CWC section 13267 also authorizes the Regional Water Board to investigate the quality of any waters of the State within its region and require persons to furnish technical or monitoring reports where the burden, including costs, of these reports bears a reasonable relationship to the need for the reports and the benefits to be obtained from the reports.
21. A restoration work plan 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 and is justified by the findings in this order. The burden and costs of the work plan bear a reasonable relationship to its need and the benefits to be obtained from the restoration work plan, especially given the state-wide importance put on the preservation of wetland areas.
22. 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.
23. 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.
24. 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 State Water Board must receive the petition 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 Executive Officer 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 Executive Officer 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 Discharger shall provide credible evidence that waters of the State were not present on site or the Discharger shall provide the following information and perform the following clean up and abatement actions:

1. Cease the discharge of earthen materials, soil, and sediment to waters of the State and clean up and abate, in accordance with requirement no. 2 below, the condition of earthen materials, soil, and sediment discharged or placed into wetlands, surface waters and surface water drainage courses.
2. Submit a work plan to the Regional Water Board, for Executive Officer concurrence, on or before July 2, 2007, that includes the following:
  - a. A plan for removing the fill, which shall include a copy of an Army Corps of Engineers (ACOE)-approved wetland delineation and the location of an appropriate disposal site for removed fill material.
  - b. A detailed restoration plan, for Executive Officer approval, that addresses the timely restoration of the wetland 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 restoration is successful. Alternatively, the Discharger may submit a 401/Waiver of Waste Discharge Requirements application including adequate mitigation for the loss of wetland area and beneficial uses.
  - c. A plan to provide mitigation to account for the temporal loss of wetland habitat that has occurred as a result of the unauthorized filling. Such mitigation shall 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. Submit a report by July 2, 2007, that includes the following:
  - a. A schedule to complete and submit an analysis of the area impacted, including the volume of fill added and delineation of impacted waters;
  - b. Information on agencies and personnel contacted regarding the unauthorized fill activities and copies of any related correspondence;

- c. An investigation into and chronology of events related to the unauthorized fill activities; and
  - d. Identification of erosion and sediment transport control best management practices (BMPs) that are being implemented on the site to prevent further discharge to wetlands or streams.
4. Following Executive Officer written concurrence, implement the work plan. All work to remove the fill, restore the affected wetland habitat, and mitigate for total wetland impacts shall be completed before November 30, 2007, except for continuing monitoring requirements.

This Cleanup and Abatement Order (CAO) in no way limits the authority of this Regional Water Board to institute additional enforcement actions or to require additional investigation and cleanup at the facility consistent with the California Water Code. This CAO may be revised by the Executive Officer as additional information becomes available.

Ordered by \_\_\_\_\_

Catherine E. Kuhlman  
Executive Officer

May 2, 2007

Attachment 1 - Site Photographs taken by Tracy Love of the Department of Fish and Game on January 11, 2007. Photos 1 – 3 were taken from Derby Lane, looking towards the south.

**Photo 1.**



**Photo 2.**



**Photo 3.**

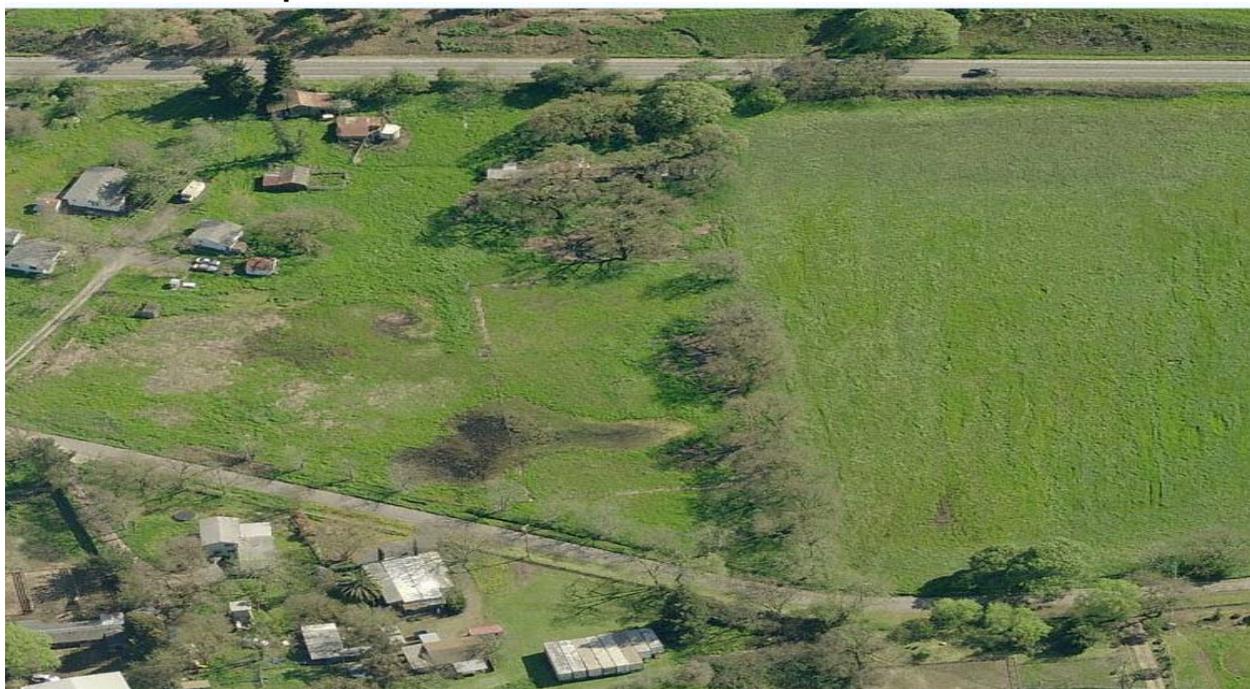


Attachment 2 – Site Aerial Photographs taken in 2006.

**Photo 4. View is from the west towards the east. Derby Lane on left, Hwy 116 on right side of photo.**



**Photo 5. View is from the north towards the south. Highway 116 at top, Derby Lane at bottom of photo.**



**Photo 6. View is from the south towards the north. Derby Lane at top of photo.**

