

California Regional Water Quality Control Board
North Coast Region

ORDER NO. R1-2007-0094

REQUIRING TECHNICAL INFORMATION
PURSUANT TO WATER CODE SECTION 13267(b)

FOR

THE TOWN OF WINDSOR
MITCHEL/SHILOH/CONDE ASSESSMENT DISTRICT
ROAD WIDENING PROJECT
WDID NOS. 149C331289 and 1B04050WNSO

Sonoma County

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

1. The Town of Windsor (hereinafter Discharger), as project sponsor for the Mitchell/Shiloh/Conde Assessment District Road Widening Project (Project), applied for the following permits administered by the Regional Water Board:
 - a) permit coverage under the Statewide General Permit for Discharges of Storm Water from Construction Activities (Construction General Permit) as WDID No. 149C330289.
 - b) Clean Water Act Section 401 Certification (Water Quality Certification) as WDID No. 1B04050WNSO.
2. The Construction General Permit contains enforceable requirements intended to control the discharge of pollutants from construction projects. Additionally, the Water Quality Certification contains additional conditions that the Project is expected to comply with to protect water quality. These requirements are necessary to prevent discharges of sediment from construction projects that can cause or contribute to violations of applicable water quality standards. This is important because surface waters in the Russian River watershed are listed as impaired for excessive sediment under Section 303(d) of the Clean Water Act.
3. The Construction General Permit requires facility operators to reduce or prevent pollutants in storm water discharges and authorized nonstorm water discharges through the development and implementation of BMPs.

These BMPs require control of pollutants using Best Available Technology Economically Achievable (BAT) and Best Conventional Pollutant Control Technology (BCT). However, what are considered BAT and BCT in other watersheds, may not be sufficient in the Russian River watershed. In this watershed, projects that choose to continue construction in the winter season must deal with high precipitation rates and soil containing clay and other fine sediments. Typical BMPs appropriate in other areas (fiber rolls, silt fences, etc.) may not provide adequate construction site sediment control in this watershed. Other BMPs including scheduling construction during the dry season, stabilization of vegetation, and use of advanced sediment treatment systems are required when conventional BMPs are not effective.

4. Additionally, the Water Quality Certification issued by this agency includes additional requirements to ensure that no silt or sediment enters surface waters.
5. On October 9, 10, and 12, 2007, North Coast Regional Water Quality Control Board (Regional Water Board) staff inspected the Project and made recommendations to improve the construction storm water best management practices (BMPs). The site inspection on October 9, 2007, was prior to the rain event that occurred later that day and night. The two subsequent visits, on October 10 and 12, 2007, were after rain events. Adequate BMPs had not been installed, which resulted in numerous areas of the Project discharging sediment into waters of the State. (See photos in Attachment A)
6. BMPs employed during the construction activities at this site are inadequate and have resulted in discharges to waters of the State, and without implementation of appropriate controls, the conditions at the site threaten to impact water quality and beneficial uses. These present and threatened future discharges constitute violations of the Water Quality Control Plan for the North Coast Region and the terms of the Discharger's General Construction Permit and Water Quality Certification.
7. The following sections of the Porter-Cologne Water Quality Control Act authorize the Regional Water Board Executive Officer to make the following requirements for persons suspected of discharging waste that could affect the quality of waters within this region:
 - 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.”*
8. All of the technical reports required by this Order are 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.
 9. In light of the Discharger’s construction Project and staff observations that BMPs employed at the site are inadequate to prevent sediment discharges at the site, the burden, including costs, of the reports required by this Order bear a reasonable relationship to the need for the reports and the benefits to be obtained therefrom.
 10. This enforcement action is being taken for the protection of the environment and, therefore, is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, section 21000 et seq.) in accordance with Section 15321, Chapter 3, title 14, California Code of Regulations.
 11. Failure to comply with the terms of this Order may result in enforcement under the California Water Code. 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 Water Code 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 clean up or abate threatened or actual discharges as required by this Order is, pursuant to Water Code section 13385, 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. Any person discharging waste into navigable waters of the United States without waste discharge requirements is, pursuant to Water Code Section 13385(c), subject to administrative civil liabilities of up to ten thousand dollars (\$10,000.00) per day in which the discharge occurs plus ten dollars (\$10.00) per gallon of waste discharged, and may also be subject to criminal prosecution pursuant to Water Code Section 13387.

12. 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 California Water Code section 13320 and title 23, California Code of Regulations, 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 Board, any person affected by this Order may request the Regional Water Board to reconsider this Order. To be timely, any 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 California Water Code Section 13267(b) the Discharger shall:

Submit, within 10 days of the date of this letter, a report to the Regional Water Board, updating the Town of Windsor's Storm Water Pollution Prevention Plan (SWPPP), and describing measures implemented, and proposed to be implemented, to eliminate or significantly minimize the discharge of pollutants from the Project.

Ordered by _____

Robert R. Klamt
Interim Executive Officer

October 19, 2007