

California Regional Water Quality Control Board
North Coast Region

Cleanup and Abatement Order
No. R1-2009-0110

For

Mr. Jack Ludwick
125 Carlson Lane, Eureka

Humboldt County

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

1. Mr. Jack Ludwick (hereinafter Discharger) owns land located at 125 Carlson Lane in Eureka, identified as Humboldt County Assessor's Parcel Number 403-03-171 (hereinafter Site). The Discharger has conducted unauthorized fill activities within the Ryan Slough watershed, which contains waters of the State. The Discharger's activities at the Site have resulted in significant discharges and continued threatened discharges of sediment to downstream waters of the United States, including Ryan Slough.
2. On June 8, 2009, Regional Water Board staff Paul Keiran (Staff) received a complaint call from California Department of Fish and Game (DFG) personnel reporting that a significant volume of soil had been dumped over a steep hillside on the Discharger's Site. Some of the soil was reported to have been deposited into an onsite wetland located at the bottom of the hillside. DFG personnel described the wetland as being pristine, with a direct hydrologic connection to lower Ryan Slough. The sediment discharges allegedly resulted from soils brought to the Site in dump trucks.
3. On June 16, 2009, staff from the Regional Water Board met with the Discharger and inspected the Site. Staff observed that thousands of cubic yards of soil had been brought to the property and dumped over the edge of the steep hillside, which cascaded downslope towards the wetland. The dumped soils were various in nature, ranging from what appeared to be bay muds to fine grained powdery silt. Staff noted numerous redwood trees on the hillside were buried up to four feet deep by the soils. Soils could be seen covering some of the wetland plants at the toe of the hillside.
4. When Staff asked why the Discharger had allowed for such an activity, the Discharger stated that he was out of town at the time of the soil disposal activities and had no idea where the soil came from and why someone had dumped the soil on his property. The Discharger claimed no responsibility for the soil deposition.
5. At the close of the inspection, Staff advised the Discharger that regardless of the source of soil and the reason for its disposal at the Site, the Discharger was responsible for the soils. Staff stated that the Discharger must take the necessary actions to remove all of the dumped soils and initiate effective erosion control practices prior to the onset of the fall rainy season. Staff also discussed the need for a long-term remediation plan for those soils that cannot be reached either from

the top of the hillside or at its toe, soils which will continue to discharge downhill over the next several years.

6. Ryan Slough is tributary to the Freshwater Slough, Eureka Slough, and ultimately to Humboldt Bay, all of whose beneficial uses are designated in the Water Quality Control Plan for the North Coast Region (Basin Plan), and include:
 - a. Navigation (NAV)
 - b. Water contact recreation (REC1)
 - c. Non-contact water recreation (REC2)
 - d. Commercial and sport fishing (COMM)
 - e. Cold freshwater habitat (COLD)
 - f. Wildlife habitat (WILD)
 - g. Marine habitat (MAR)
 - h. Migration of aquatic organisms (MIGR)
 - i. Spawning, reproduction, and/or early development (SPWN)
 - j. Shellfish harvesting (SHELL)
 - k. Estuaries (EST)
 - l. Aquaculture (AQUA)
 - m. Wetland habitat (WET)

Beneficial uses of any specifically identified water body generally apply to all its tributaries and hydrologically connected wetlands, which are critical habitat and important filtering systems for removing pollutants in stormwater runoff.

7. The Basin Plan's 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."*
8. The Action Plan states: "where investigations indicate that the beneficial uses of water may be adversely affected by waste discharges, 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, such as the Discharger's 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.
10. As described above, the Discharger caused sediment to discharge into wetlands and placed sediment where it could enter these wetlands and Ryan Slough in quantities deleterious to fish, wildlife and other beneficial uses, violating both Prohibitions 1 and 2 in the Action Plan, as described in Paragraph 7, above.
 11. In addition to discharging waste in violation of Prohibitions 1 and 2, the discharges to waters of the United States described above and to areas where additional sediment may enter the waters of the State in the future, have created, or threaten to create, a condition of pollution. Water Code Section 13050(l) defines "pollution" as an alteration of the quality of the waters of the State by waste to a degree that unreasonably affects the waters for beneficial uses.
 12. The beneficial uses of state waters have been unreasonably affected by the discharge of the sediments. This includes sediment impacts to onsite wetlands, and potential future impacts to spawning and rearing habitat in Ryan Slough, Freshwater Slough, Eureka Slough and Humboldt Bay. The unauthorized fill activities at the Site are therefore subject to cleanup and abatement under California Water Code section 13304.
 13. Water Code section 13304, subdivision (a) provides: "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."

14. Water Code section 13267, subdivision (a) provides that the Regional Water Board may investigate the quality of any waters of the state within its region in connection with any action relating to the Basin Plan. Water Code section 13267, subdivision (b) provides that the Regional Water Board, in conducting an investigation, may require a discharger to furnish, under penalty of perjury, technical or monitoring program reports. A restoration workplan required by this Order, pursuant to Water Code section 13267, is necessary to ensure that the prior harm and future threat to water quality created by activities on the Site, which resulted in the discharges described above, are properly assessed, abated and controlled.
15. This is an enforcement action taken by a regulatory agency 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, title 14, sections 15308 and 15321.
16. Failure to comply with the terms of this Order may subject the Discharger to an enforcement action under the Water Code, including administrative civil liabilities under Water Code section 13385, in an amount not to exceed the sum of ten thousand dollars (\$10,000) per day and ten dollars (\$10) per gallon of waste discharged in excess of 1,000 gallons.
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 Water Code section 13320 and title 23, California Code of Regulations, section 2050-2068. 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 is sought, filing a petition with the State Water Board within the 30-day period is necessary to preserve the petitioner's legal rights. Additionally, if the Discharger chooses to request reconsideration of this Order or file a petition with the State Water Board, the Discharger is hereby advised that it must comply with the Order while its request for reconsideration and/or petition is being considered.

THEREFORE, IT IS HEREBY ORDERED that, pursuant to Water Code section 13304 and 13267, the Discharger shall provide the following information and perform the following cleanup and abatement actions:

1. Immediately cease the further importation of any soils to the Site.
2. Submit a workplan to the Regional Water Board, for Executive Officer concurrence, on or before October 22, 2009, that describes and shows in detail how the Discharger proposes to clean up and abate all accumulated (non-native) soils that have been deposited both on the hillside at the Site and within the wetlands at the toe of the hillside. The plan shall contain: an engineering and biological design for any wetland restoration components; 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. The plan must include a sediment

control barrier between the toe of the hillside and the wetland. The restoration plan must be prepared by a professional experienced in erosion/sediment control and must be approved by the Executive Officer.

3. Following the Executive Officer's written concurrence, the Discharger shall implement the workplan. All work to remove as much deposited soil as possible and restore the Site to as close to its original native soil condition shall be completed prior to the onset of the 2009 rainy season. Much of the work must be performed by hand labor as it is understood that the majority of the deposited soils cannot be reached with mechanized equipment from either the top of slope or toe of the hillside. All removed soils must be properly disposed of at a site that will not result in any additional water quality concerns.
4. Monitor the sediment control barrier throughout the rain season, removing any accumulated soils that were not able to be mechanically removed or dug out by hand as they migrate down towards the wetland. This effort will likely take several years to accomplish in order to capture and remove all soils. This Order will stay in effect until such time as the Regional Water Board determines that all deposited soils have been completely removed from the hillside and effective erosion controls are installed.
5. If the Discharger is unable to perform any activity or to submit any documentation in compliance with the deadlines in this Order, the Discharger may submit a written request to the Executive Officer for an extension of the time schedule. The written extension request shall explain why the delay is beyond the reasonable control of the Discharger and must be received by the Regional Water Board no less than 15 calendar days prior to the respective deadline. An extension may be granted by the Executive Officer, for good cause, in which case this Order will be accordingly revised.
6. This Order 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 Site consistent with the California Water Code. This Order may be revised by the Executive Officer as additional information becomes available.

Ordered by

Catherine Kuhlman
Executive Officer

September 25, 2009