



Linda S. Adams
Secretary for
Environmental Protection

**California Regional Water Quality Control Board
North Coast Region
Geoffrey M. Hales, Chairman**

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Arnold
Schwarzenegger
Governor

April 7, 2010

Mr. John Bulinski, District 2 Director
California Department of Transportation
P.O. Box 496073
Redding, CA 96049-6073

Dear Mr. Bulinski:

Subject: Notice of Violation Associated with Construction Activities on Highway 299
China Slide Safety Project

File: CDOT – Highway 299 China Slide Safety Project
WDID No. 1A08121WNTR

On August 13, 2009, North Coast Regional Water Quality Control Board (Regional Water Board) staff inspected the California Department of Transportation (Caltrans) Highway 299 China Slide Safety Project (project) and noted several deficiencies in the implementation of Best Management Practices (BMPs) required by Order No. 99-06-DWQ, the *National Pollutant Discharge Elimination System (NPDES) Permit for Storm Water Discharges from Caltrans Properties, Facilities, and Activities* (Storm Water Permit) and violations of the Clean Water Act Section 401 Water Quality Certification (401 Certification) for the project.

401 Certification Violations:

- A. Working in the streams after September 30th is a violation of conditions 4, 5, and 6 of the 401 Certification.
- B. Discharges resulting from the project and conducting construction activities after October 2009 are violations of conditions 4, 5, 6 and 10 of the 401 Certification. As required by the 401 Certification and Caltrans Storm Water Permit, Caltrans reported sediment discharges on September 09, 2009, October 13, 14 and 16, 2009, November 17, 2009 and February 26, 2010.
- C. The lack of notification with 24 hours regarding the discharge of sediment during the installation of the clear water diversion is a violation of condition 9 of the 401 Certification.

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- D. The lack of proper BMPs throughout the project is a violation of condition 14 of the 401 Certification.
- E. The lack of verification of field logs from the required water quality compliance meetings is a violation of condition 16 of the 401 Certification. On October 09, 2009, Regional Water Board staff requested field logs for the “water quality permit compliance meetings”; however, to date we have received no field logs.
- F. The lack of rainfall event monitoring reports is a violation of condition 19 of the 401 Certification. Regional Water Board staff provided Caltrans with advance notice to be prepared for a forecast storm on October 13, 2009, and to comply with condition 19 of the 401 Certification “rainy day BMP reports”; however, to date, we have received no BMP reports.

Discussion:

On October 09, 2009, the Caltrans construction storm water coordinator notified Regional Water Board staff that the installation of a clear water diversion on September 28, 2009 had created a discharge of sediment into a tributary to the Trinity River, a water body that is on the Federal Clean Water Act 303 (d) list for sediment impairment. Finding number 7 of the 401 Certification indicates that “work in all drainages will only be conducted during dry weather from the period of June 1st to September 30th. The entire project is expected to take 110 working days and is anticipated to be completed by October, 2009.” On October 09, 2009, Regional Water Board Staff notified Caltrans staff that the project was violating the in-stream work window in the 401 Certification, which Caltrans had stated in the application for the project.

Based on the date of the installation of the clear water diversion and the date which the discharge was reported, it appears that Caltrans had not adequately reviewed the 401 Certification for the project and/or was not planning to limit work in drainages to the dry season, in compliance with the 401 Certification conditions. During subsequent site inspections in October, 2009, Caltrans staff advised Regional Water Board staff that the project would not be completed in 2009 and, in fact, would require another construction season, leaving the site with unstable slopes and temporary erosion control throughout the wet season. Photos from the October 21, 2009 inspection are attached.

As noted above, the Regional Water Board’s 401 Certification for this project describes and places conditions on a project that was to be completed by October, 2009, per the project application from Caltrans. Providing incorrect information about project scheduling and activity timing is a significant violation by Caltrans staff responsible for obtaining and ensuring compliance with the 401 Certification. Single season construction projects have less potential for impacting water quality than do projects that span wet seasons with unstable slopes, incomplete structures, and temporary erosion control. In addition, projects of this size that span multiple seasons typically undergo

more extensive review by our staff and likely require additional surface water mitigation and monitoring to ensure compliance with water quality standards.

As discussed above, the discharges, work window violations, as well as staff inspections and public complaints, demonstrate a continuing pattern of violations. The lack of proper BMPs, discharge of excess sediment, lack of notification, lack of reporting, and duration of project activities violate the following conditions of the 401 certification for the project:

- 401 Condition 4 - *Except as may be modified by any preceding conditions, all certification actions are contingent on: a) the discharge being limited and all proposed revegetation being completed in strict compliance with the Applicant's project description, and b) compliance with all applicable requirements of the Basin Plan.*
- 401 Condition 5 - *Caltrans shall construct the project in accordance with the project described in the application and the findings above, and shall comply with all applicable water quality standards.*
- 401 Condition 6 - *Any change in the implementation of the project that would have a significant or material effect on the findings, conclusions, or conditions of this Order must be submitted to the Executive Officer of the Regional Water Board for prior review and written approval.*
- 401 Condition 9 - *If, at any time, an unauthorized discharge to surface water (including wetlands, rivers or streams) occurs, or any water quality problem arises, the associated project activities shall cease immediately until adequate BMPs are implemented. The Regional Water Board shall be notified promptly and in no case more than 24 hours after the unauthorized discharge or water quality problem arises.*
- 401 Condition 10 - *No debris, soil, silt, sand, bark, slash, sawdust, rubbish, cement or concrete or concrete washings, welding slag, oil or petroleum products, or other organic or earthen material from any construction or associated activity of whatever nature, other than that authorized by this Order, shall be allowed to enter into or be placed where it may be washed by rainfall into waters of the State.*
- 401 Condition 14 - *BMPs for erosion, sediment and turbidity control shall be implemented and in place at commencement of, during and after any ground clearing activities, construction activities, or any other project activities that could result in erosion or sediment discharges to surface water. The BMPs shall be implemented in accordance with the CCSBMPM and all contractors and subcontractors shall comply with the CCSBMPM.*
- 401 Condition 16 - *The Resident Engineer shall hold on-site water quality permit compliance meetings (similar to tailgate safety meetings) to discuss permit compliance,*

including instructions on how to avoid violations and procedures for reporting violations. The meetings shall be held at least every other week, and particularly before forecasted storm events and when a new contractor or subcontractor arrives to begin work at the site. The contractors, subcontractors and their employees, as well as any inspectors or biological monitors assigned to the project, shall be present at the meetings. Caltrans shall maintain dated sign-in sheets for attendees at these meetings, and shall make them available to the Regional Water Board on request

- 401 Condition 19 - The applicant shall take photos of all areas disturbed by project activities, including all excess materials disposal areas, after the first rainfall event that generates visible runoff from these areas in order to demonstrate that erosion control measures have been successful. A report containing these photos shall be submitted within 60 days of the first rainfall event that generates runoff from the disturbed areas.

Storm Water Permit Violations:

The following are the specific sections of the Caltrans Storm Water Permit (Permit) that Caltrans has violated on this project:

- A. The October 9, 2009 discharge of sediment into a tributary to the Trinity River from the clear water diversion is in violation of Prohibition A.1.

General Discharge Prohibition A.1. of the Permit provides that, "Any discharge from Caltrans rights-of-way or Caltrans properties, facilities, and activities within those rights-of-way that is not composed entirely of storm water to Waters of the United States is prohibited unless authorized pursuant to Section B of the NPDES Permit. The discharge of runoff from Caltrans owned rights-of-way or Caltrans properties, facilities and activities to Waters of the United States which have not been reduced to the Maximum Extent Practicable (MEP) is prohibited. The discharge of runoff from construction sites containing pollutants which have not been reduced using the best available technology economically achievable (BAT) for toxic pollutants and best conventional technology (BCT) for conventional pollutants to Waters of the United States is prohibited."

- B. The conditions on the project site, unless corrected and carefully monitored, threaten to continue to impact water quality and beneficial uses in violation of Prohibition A.4, and could result in additional violations of provisions of the Water Code, Basin Plan, the 401 certification, and provisions of the Storm Water Permit that prohibit the discharge of non-storm water to waters of the State.

General Discharge Prohibition A.4 of the Permit provides that, "The dumping, deposition, or discharge of waste by Caltrans directly into Waters of the State or adjacent to such waters in any manner that may allow its being transported into the waters is prohibited unless authorized by the RWQCB."

Conclusions:

The Regional Water Board is considering potential follow-up enforcement actions at this time and suggests that Caltrans immediately assess site conditions and storm water drainage issues and implement adequate BMPs to avoid discharges in violation of the 401 Certification and the Storm Water Permit at this site. The Regional Water Board may initiate an appropriate enforcement action under the Water Code or other provision of law at any time.

Please note that we anticipate receiving a report from the United States Environmental Protection Agency (USEPA) regarding its audit of the Caltrans Storm Water Program in the near future, and may take additional follow up enforcement actions on this project based on findings in that report, if applicable.

The Regional Water Board has issued a 13267(b) order requiring additional technical information to investigate the violations and the additional temporal impacts on beneficial uses, and to gain information needed to revise the 401 Certification to reflect the true work window and additional BMPs that may be required.

If you have any questions, regarding this matter, please contact Mark Neely of my staff at (707) 576-2689 or by email at MNeely@waterboards.ca.gov.

Sincerely,

Robert R. Klamt
Chief, Timber Harvest and Nonpoint Source Division

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Certified-Return Receipt Requested

Attachment: 13267 (b) Order No. R1-2010-0042

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10/21/09 - Picture above shows hillside cut with erosion control BMPs. The upper portion of the slope failed during the winter and has been a continual source of sediment throughout the wet season.



10/21/09 - Picture above shows the same slope. Steep slopes, erodible soils, and insufficient BMPs continually pose a threat to water quality.