



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



Linda S. Adams
Secretary for
Environmental Protection

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Arnold
Schwarzenegger
Governor

August 26, 2010

Mr. Charlie Fielder, District 1 Director
California Department of Transportation
P.O. Box 3700
Eureka, CA, 95501-3700

Dear Mr. Fielder:

Subject: **Notice of Violation**
Proposed Highway 101 Willits Bypass Project

File: CDOT - Highway 101 Willits Bypass Project
WDID No. 1B10019WNME

On August 10, 2010, while conducting a field inspection associated with the Caltrans Highway 101 Willits Bypass Project (project), North Coast Regional Water Quality Control Board (Regional Water Board) staff encountered an area within the proposed highway alignment that had undergone ground disturbing activities. Apparently, Caltrans had conducted building demolition within the alignment, and created disturbed soil area (DSA). This activity violated:

- California Water Code section 13260;
- the recently issued *Clean Water Act Section 401 Water Quality Certification* for the project (401 Certification);
- Order No. 99-06-DWQ, the *National Pollutant Discharge Elimination System Permit (NPDES) for Storm Water Discharges from Caltrans Properties, Facilities, and Activities* (Caltrans Storm Water Permit), and;
- the current *NPDES General Permit for Storm Water Discharges and Associated Activities with Construction and Land Disturbance Activities* (Construction General Permit) Order No. 2009-0009-DWQ.

California Water Code section 13260 Violation:

The location of the demolition and DSA is adjacent to the south side of Shell Lane, east of the railroad tracks, within the proposed bypass alignment bordering Haehl Creek. The 401 Certification was issued on August 6, 2010; therefore, it appears that the demolition and associated ground disturbing activities were at least partially conducted prior to obtaining an appropriate permit from the Regional Water Board. CWC Section 13260 requires the submittal of a Report of Waste Discharge (ROWD) for a proposed discharge of waste that could affect the quality of waters of the state. The project requires approximately 1.5 million cubic yards or fill, with over 500,000 cubic yards

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placed within waters of the state. Section 13261, provides that “[a]ny person failing to furnish a report or pay a fee under Section 13260 when so requested by a regional board is guilty of a misdemeanor and may be liable civilly...” in an amount of up to \$5,000 for each day the violation occurs.

Staff did not observe best management practices (BMPs) on-site. If a discharge, as a result of a storm event, were to reach Haehl Creek, the baseline monitoring program for the 401 Certification would be compromised. When Regional Water Board staff last observed the subject property in February, the site was of an industrial nature with a large building and significant amount of material that would require appropriate waste disposal. In addition, during the August 10, 2010 field review, several 55-gallon drums and stockpile of tires were observed on the southern portion of the site, along with the disturbed area.

While conducted in the absence of water quality authorization through permit or 401 Certification, the activities would not have met the 401 Certification that was issued for the project on August 6, 2010. Had the demolition and ground disturbing activities been conducted after receiving the 401 Certification, those activities would have violated the following six provisions.

401 Certification Violations:

- A. *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 and mitigation being completed, in strict compliance with the applicant’s project description, as approved herein, and b) compliance with all applicable water quality requirements and water quality control plans including the requirements of the Basin Plan, and amendments thereto.*

Note: The project application did not discuss or propose demolition or ground disturbing activities prior to obtaining the required permit coverage. Section Four – Additional Information required within the application for the 401 Certification asks “Has Any Portion of the Work Been Initiated?” Caltrans answered “no.”

- B. *Condition 8. At least 90 days prior to conducting any channel- ground- or vegetation-disturbing activities associated with bypass construction and no later than December 31, 2010; Caltrans shall acquire by fee title, easement, or deed restriction and permanently preserve all the mitigation lands identified in the Final MMP, dated June 8, 2010. Caltrans must maintain the properties to prohibit any owner/occupier of property to be used for mitigation from using that land, or allowing activities on the land that would interfere with the use of the property as mitigation including dredging, filling, modifying drainage patterns, or removing any vegetation within waters of the State, including riparian areas.*
- C. *Condition 15. At least 90 days prior to conducting any channel- ground- or vegetation-disturbing activities Caltrans shall:*

- a) *Appoint an appropriate land manager that is approved by the Executive Officer of the Regional Water Board.*
 - b) *Obtain the land manager's concurrence with the final MMP and associated management plans*
 - c) *Recalculate the Property Analysis Record (PAR) and long term endowment to include all the conditions of this Order, projected changes to the short term and long term management plans for long term manager approval.*
- D. *Condition 22. At least 90 days before initiating channel- ground- or vegetation-disturbing activities associated with construction, Caltrans shall submit to the Regional Water Board a technical analysis of the proposed haul road(s) and demonstrate that the contractor's proposal will not impact the 100-year floodplain. All temporary bridges, culverts, haul roads, or other structures that will remain in place after October 15 shall be designed to pass the 100-year flood event. Structures and materials not designed to withstand high flows or 100-year flood shall be removed from the floodplain prior to October 1st and the associated areas shall be appropriately stabilized to prevent erosion and sediment discharges to "Waters of the State".*
- E. *Condition 28. Pursuant to its authority under Section D(2) of the Caltrans Storm Water MS4 permit, the Regional Water Board hereby requires Caltrans to conduct a risk determination in accordance with the State Water Resources Control Board (SWRCB) Construction General Permit (CGP) Order No. 2009-0009-DWQ for the entire area of the bypass and the mitigation sites. In addition, Caltrans shall submit the Storm Water Pollution Prevent Plan (SWPPP) in an electronic format using the Storm Water Multi-Application Reporting and Tracking System (SMARTS). <http://smarts.waterboards.ca.gov/>. Risk determination shall include the time frame (i.e. number of years) that will be required to completely construct the bypass. Caltrans shall submit the SWPPP, including the risk level determination(s) 30 days prior to initiating channel- ground- or vegetation-disturbing activities.*
- F. *Condition 49. Caltrans shall retain a dedicated Water Quality Monitor to be on-site daily and document compliance with all applicable water quality requirements. At least 30 days before initiating channel- ground- or vegetation-disturbing activities, Caltrans shall submit to the Regional Water Board in writing the name, qualifications, and contact information for the designated water quality monitor(s). The water quality monitor(s) shall be knowledgeable of and have experience with the Basin Plan, and surface water monitoring procedures, protocols, quality assurance, and quality control protocols. The water quality monitor(s) shall be responsible for monitoring Project activities and/or channel-ground- or vegetation disturbing activities that result in or have the potential to result in a discharge to waters of the State.*

Storm Water Permit Violations:

The Caltrans Storm Water Permit requires Caltrans to comply with the conditions of the Construction General Permit. As explained in the Caltrans Storm Water Permit,

Caltrans will be required to notify the Regional Water Board that a project is to be covered under the Construction General Permit at least 30 days prior to the onset of construction.

In accordance with the Caltrans Storm Water Permit, the Regional Water Board can require submittal of the Storm Water Pollution Prevention Plan (SWPPP) up to 30 days prior to the onset of soil disturbance, require changes to the SWPPP, perform inspections, and take enforcement action.

As stated in Finding 19 of the Construction General Permit, activities covered by this permit include “[c]onstruction activity that results in land surface disturbances of less than one acre if the construction activity is part of a larger common plan of development or the sale of one or more acres of disturbed land surface”. Based on preliminary visual observations, the area of disturbance may exceed one acre; however, the demolition and ground disturbing activities are clearly part of the bypass alignment and are therefore part of a common plan of development. In the absence of an exact definition of “common plan of development or sale,” the State Water Resources Control Board (State Water Board) is required to exercise its regulatory discretion in providing a common sense interpretation of the term as it applies to construction projects and permit coverage¹. Therefore, Caltrans is in violation of the Caltrans Storm Water Permit and Construction General Permit for:

1. Lack of proper notification to the Regional Water Board; and
2. Conducting ground disturbing activities without a SWPPP.

Conclusions:

Regional Water Board staff is considering follow-up enforcement actions at this time, including administrative civil liability, and will consider Caltrans’ timeliness in correcting the violations described herein in determining the appropriate enforcement actions to take or to recommend to the Regional Water Board.

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,

Luis G. Rivera
Assistant Executive Officer

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Certified-Return Receipt Requested

¹ Construction General Permit Fact Sheet, Section 2 Rationale, Subsection B., Construction Activities Covered, pg. 7.

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Photos above and below taken 8/10/10, looking southeast, show the site which buildings were removed and ground disturbing activities were conducted. The riparian area of Haehl Creek, piles of tires, and 55-gallon drums can be seen in the background.

