

California Regional Water Quality Control Board
North Coast Region

Cleanup and Abatement Order and Water Code Section 13267
Order No. R1-2013-0078

For
Mr. James F. Cotter
7005 Hazel Cotter Court, Sebastopol

Sonoma County
WDID# 1B12131WNSO

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

1. Mr. James F. Cotter (hereinafter Discharger) owns land located at 7005 Hazel Cotter Court in Sebastopol, identified as Sonoma County Assessor's parcel Number 004-390-011 (hereinafter Site).
2. The Discharger has conducted unauthorized grading activities in wetlands within the Laguna de Santa Rosa watershed, which are waters of the State and of the United States. The Discharger's grading activities at the Site have resulted in sediment discharges and continued threatened discharges of sediment to downstream waters of the United States, including the Laguna de Santa Rosa.
3. On January 31, 2012, the City of Sebastopol's Engineering Director notified Regional Water Board staff that a significant drainage channel had been dug in a wetland area at the eastern end of Hazel Cotter Court and that soils removed from the channel had been deposited into adjacent onsite wetlands. Numerous stands of mature willows were also reportedly removed.
4. On February, 16, 2012, staff from the Regional Water Board met with City personnel and a representative of the Discharger to inspect the site. Staff observed that an approximately 200 foot long drainage channel had been excavated immediately down gradient of an existing stormwater bubbler box. The channel was up to 11 feet wide by 5 feet deep at the top end of the channel, continuing at that depth and width for approximately 20 feet. The channel continued with a 4 foot width by 4 foot depth for approximately 100 feet, ending with a 2 foot width by 2 foot depth for approximately 80 feet. All excavated soils were dumped on either side of the newly created channel. Within the 4 foot by 4 foot portion of the channel, there were two approximately 70 degree bends, apparently intended to direct the channel around a large thicket of willows. Staff observed that willow trees had been removed and earthen materials had been side cast into existing wetlands, covering wetland plants adjacent to the newly created channel. Construction of this channel appears to have both dewatered adjacent wetlands and caused sediments to be mobilized and transported downstream.

5. According to the Discharger's representative, rains backed up the storm drain system from the bubbler all the way back to a building owned by the Discharger, causing minor flooding in and around the building foundation. Consequently, the Discharger reportedly had the channel installed in order to alleviate the potential for flooding of the building and grounds. The Discharger's representative indicated that the Discharger had also had additional work performed to install a subsurface gravel drainage system to carry storm drain discharges from Highway 116 to a storm drain inlet on Hazel Cotter Court. The Discharger did not apply for or obtain necessary State or federal permits to perform any of this work.
6. During the February 16, 2012 inspection, staff noted evidence of additional large volumes of stormwater runoff drainage discharged directly from lower portions of Hazel Cotter Court into the wetland area, completely bypassing the bubbler. At the close of the inspection, Staff advised the Discharger's representative that regardless of the need for improved site drainage, the work had been performed illegally, was poorly designed, and threatened to be a continued source of sediment delivery to the Laguna, through both down-cutting and channel widening. Regional Water Board staff and City representatives stated that the Discharger must take the necessary actions to initiate immediate erosion control practices for the remainder of the rainy season. City staff emphasized the need for development of an approvable engineered plan for site drainage.
7. Regional Water Board staff re-inspected the Site on April 11, 2012, after several significant rain events. Staff noted that no erosion control efforts had been undertaken by the Discharger to mitigate the damage caused by the grading. Staff noted evidence of accelerated erosion and bank sloughing both in the newly created drainage channel, and also at the head end of the created gravel drainage channel adjacent to the building foundation. The bare soils within the drainage ditch, those soils sidecast to either side of the channel, and the gravel drainage ditch were observed to be causing, and are likely to continue to result in, discharges and threatened discharges of sediment and debris to waters of the State and United States.
8. A draft version of this Order was sent to Discharger on July 17, 2012, to allow the Discharger the opportunity to contact Regional Water Board staff to discuss the draft Order and its requirements prior to its final issuance. On September 25, 2012, Regional Water Board staff received an email correspondence from Mr. Martin McOمبر of McOمبر Law, stating, *"This office represents Jim Cotter in reference to the referenced matter, involving his property at 7005 Hazel Cotter Court Sebastopol. We are in Receipt of your draft cleanup and abatement and 13267 order, dated July 17, 2012. We have met at the site with city officials. I have been researching the problem and its cause, and believe we can reach an appropriate and acceptable solution to this. It is Mr. Cotter's intention to cooperate with the public agencies that have jurisdiction over the matter."*

9. Mr. McOmber last contacted Regional Water Board staff by email on November 8, 2012, and indicated *"I just wanted to drop you a quick note to say I'm still working on this situation, that your not hearing from me for a while doesn't mean otherwise."* Additionally, Regional Water Board staff received telephone calls from a wetland consultant to inquire about the draft Order, to discuss possible work at the site to remedy the situation, and to inform staff that an erosion control specialist had been contacted and would be applying erosion control best management practices to protect the site from erosion.
10. Regional Water Board staff inspected the Site again on July 11, 2013. Regional Water Board staff expected to see that work had been done at the site to apply erosion control best management practices, as that had been discussed. There was no visual evidence that erosion control efforts or best management practices had been implemented at the Site, and staff observed additional erosion within the area of grading/trenching.
11. Wetlands have been destroyed and/or damaged by the excavation of the drainage channel, by removing the wetland soils and plants, as well as by altering the conditions that supported wetland hydrology. Wetland areas that were within the excavated area have been destroyed. Wetland areas that are adjacent to the excavation have been damaged and/or destroyed by the dewatering action of lowering the elevation of the drainage ditch, thus draining surface and groundwater from the adjacent wetlands. Areas of wetland below the excavation will experience changed conditions as the hydrology has changed. Detrimental hydromodification changes due to the excavation may occur within the channel and downstream, due to increased flow velocity and flow quantity, as the destroyed wetlands would have attenuated the peak flow and stored flood waters, thus slowing and reducing quantity of storm water flow exiting the area. Wetlands also provide water quality enhancement by providing erosion control, filtration and purification of water pollutants, channel stabilization, and siltation control. Wetland habitat that supports the natural ecosystem including wetland functions, vegetation, invertebrates, insects, and wildlife habitat, is a beneficial use that has also been impacted.
12. The Laguna de Santa Rosa is tributary to Mark West Creek and the Russian River, 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. Agriculture (AGR)
 - c. Industrial (IND)
 - d. Hydropower generation (POW)
 - e. Groundwater recharge(GWR)
 - f. Freshwater replenishment (FRSH)
 - g. Water contact recreation (REC1)
 - h. Non-contact water recreation (REC2)
 - i. Commercial and sport fishing (COMM)
 - j. Cold freshwater habitat (COLD)

- k. Warm freshwater habitat (WARM)
- l. Wildlife habitat (WILD)
- m. Migration of aquatic organisms (MIGR)
- n. Spawning, reproduction, and/or early development (SPWN)
- o. Rare and endangered species (RARE)

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.

13. The Basin Plan's Action Plan for Logging, Construction and Associated Activities (Action Plan) includes two prohibitions:
 - a. 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."*
 - b. 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."*
14. As described above, the Discharger placed sediments into wetlands, caused sediments to discharge into wetlands, and placed sediments where they could enter wetlands and the Laguna de Santa Rosa in quantities deleterious to fish, wildlife and other beneficial uses, violating both Prohibitions 1 and 2 in the Action Plan.
15. 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 waivers thereof.
16. 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 the Laguna, Mark West Creek and the Russian River. The unauthorized fill activities at the Site are therefore subject to cleanup and abatement under California Water Code section 13304.
 17. 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."
 18. As stated in Item 13 above, the Basin Plan's Action Plan contains two separate prohibitions against the discharge or placement 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. As explained herein, the Dischargers' activities on the Site have violated both of these prohibitions. Therefore, the Dischargers are subject to this Order pursuant to Water Code section 13304.
 19. Section 13050 of the Water Code defines the term "pollution" to include "an alteration of the quality of the waters of the state by waste to a degree which unreasonable affects the waters for beneficial uses." Additionally, sediment, when discharged to waters of the state, constitutes a "waste" as defined in the Water Code section 13050. As explained herein, the Discharger's activities on the Site have caused or permitted, cause or permit, and threaten to cause or permit a condition of pollution, as well as a discharge of waste, because these activities either have, or threaten to, violate water quality objectives and negatively impact beneficial uses as defined in the Basin Plan. Accordingly, the Discharger is subject to the Order pursuant to section 13304.
 20. 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. Due to the importance of protecting water resources as explained herein, the costs associated with developing a restoration work plan bear a reasonable relationship to the benefits that will be realized once the work plan is implemented.

21. 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.
22. 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.

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. Submit a work plan to the Regional Water Board, for Executive Officer concurrence, within 45 days of the date of this Order that describes and shows in detail how the Dischargers propose to restore wetland functions to all delineated wetland areas/waters of the state, impacted by both the ditching and sidecasting of spoils onto existing wetlands. The plan shall contain: a complete delineation of waters of the state on the property and adjacent areas that may be impacted, an engineering and biological design for all 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 restoration plan must be prepared by a professional wetland specialist with experience in wetland restoration/creation, erosion/sediment control, and must be approved by the Executive Officer.
2. Submit a mitigation plan for any wetlands that cannot be restored due to a permanent change of hydraulic grade line. This change in the grade line may be necessary given the existing depth of the storm drain pipe that outfalls to the bubbler.
3. Following the Executive Officer's written concurrence, the Dischargers shall implement the workplan. All work to restore and/or replace wetland function onsite shall be completed no later than August 31, 2014.
4. 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.

5. 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

Original signed by David Leland for

Matthias St. John
Executive Officer

November 15, 2013