
North Coast Regional Water Quality Control Board

January 17, 2014

Mr. Richard Young
Crescent City Harbor District
101 Citizens Dock Road
Crescent City, CA 95531

Dear Mr. Young:

Subject: **NOTICE OF VIOLATION:** Disposal of construction debris from Crescent City Harbor District repair projects in violation of Clean Water Act Section 401 Water Quality Certification Orders and the General Construction Storm Water Permit

Files: Crescent City Harbor District – Riprap/Breakwater Repair at Various Locations
WDID No. 1A09009WNDN

Crescent City Harbor District – Tsunami Repairs and Dredging (Formerly referred to as the Inner Boat Basin Rehabilitation Project)
WDID No. 1A10115WNDN

Crescent City Harbor District – Citizen’s Dock Fender Pile Repair
WDID No. 1A13027WNDN

Regional Water Board staff have been investigating complaints we received regarding the disposal of construction materials by Crescent City Harbor District (CCHD) and/or its agents onto a privately owned parcel in Crescent City located north of Crescent City Hay and Feed. The parcel is owned by the Ted Pappas Partnership, and is sometimes referred to as the “Pappas Property.” The Regional Water Board’s investigation was initially prompted by a complaint we received from California Department of Fish and Wildlife (CDFW) staff on March 11, 2013.

We understand that Del Norte County staff inspected the “Pappas Property”, and observed various stockpiles of large rock, sand, and other unconsolidated earthen materials on the property. Based on the vegetation types observed onsite and the known presence of wetlands near the parcel, onsite wetlands may have been filled or otherwise impacted by

uncontrolled discharges from CCHD's disposal activities. Del Norte County staff reported that they were planning to issue an after-the-fact coastal grading permit to address the ongoing unpermitted debris disposal activities that were already occurring on the "Pappas Property."

On April 18, 2013, Regional Water Board staff Diana Henriouille inspected the "Pappas Property" with you and your staff. During that inspection you indicated that most of the stockpiled materials that were present on the "Pappas Property" appeared to have originated from the CCHD's projects. Note that these projects are subject to the conditions of the above listed Certification Orders. Ms. Henriouille reported observing that some effort had been made to pull back the stockpiles from vegetated areas and potential wetland areas, however, it also appeared to her that some potential wetland areas were still buried around the edges of the parcel and stockpiles. Ms. Henriouille also reported observing that the disturbed area appeared to be much larger than one acre, there was evidence of sediment being transported via stormwater runoff offsite towards Elk Creek, and sediment control measures were absent, inadequate, and/or improperly installed. Ms. Henriouille did not attempt to walk to Elk Creek during the site visit, so was not able to confirm sediment delivery from the site into Elk Creek, however, there appears to be a threatened discharge.

Any project that disturbs one or more acres of soil is required to obtain coverage under State Water Resources Control Board (State Water Board) Order No. 2009-009-DWQ for Discharges of Storm Water Runoff Associated with Construction and Land Disturbance Activities (General Permit). Construction and land disturbance activities subject to this General Permit include clearing, grading, and disturbances to the ground such as stockpiling or excavation. The stockpiling and spreading of construction debris on the "Pappas Property" are subject to the requirements of the General Permit. Failure to obtain coverage under General Permit Order 2009-0009-DWQ for storm water discharges to waters of the United States is a violation of the Clean Water Act (CWA) and California Water Code (CWC). To obtain coverage under this General Permit, dischargers shall electronically file the Permit Registration Documents, which include a Notice of Intent, Storm Water Pollution Prevention Plan (SWPPP), and other compliance related documents required by the General Permit and mail the appropriate permit fee to the State Water Board.

Water Quality Certification (Certification) Orders for: *Crescent City Harbor District - Riprap/Breakwater Repair at Various Locations; Crescent City Harbor District - Tsunami Repairs and Dredging (Formerly referred to as the Inner Boat Basin Rehabilitation Project); and, Crescent City Harbor District - Citizen's Dock Fender Pile Repair* were issued by the North Coast Regional Water Quality Control Board (Regional Water Board) on July 27, 2010, April 29, 2011, and May 9, 2013 respectively. All three of these Certification Orders contain the following conditions:

- No debris, soil, silt, sand, bark, slash, sawdust, rubbish, cement or concrete washings, 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. When operations are completed, any excess material or debris shall be removed from the work area.

- All activities and BMPs shall be implemented according to the submitted application and the conditions in this certification.
- BMPs for erosion, sediment and turbidity control shall be implemented and in place at commencement of, during and after any ground clearing activities or any other project activities that could result in erosion or sediment discharges to surface water.
- All project work shall be conducted as described in this Order and in the application submitted by the Applicant.

The Certification Orders for *Crescent City Harbor District – Tsunami Repairs and Dredging and Crescent City Harbor District – Citizen’s Dock Fender Pile Repair* also state the following:

All conditions of this order apply to the Applicant (and all their employees) and all contractors (and their employees), sub-contractors (and their employees), and any other entity or agency that performs activities or work on the project as related to this Water Quality Certification.

The application documents submitted by CCHD and its representatives for the Certification Orders listed above contain similar statements regarding the planned proper disposal of all waste materials and debris from these projects at an approved disposal site. The following are examples of language that you provided in these applications.

- The Final Environmental Assessment for the Inner Boat Basin Rehabilitation Project (4.2 Avoidance and Minimization Measures for Listed Species) states, “All debris, sediment, rubbish, vegetation or other material removed from the sea wall shall be disposed of at an approved disposal site. All petroleum products chemicals, silt, fine soils, and any substance or material deleterious to listed species shall not be allowed to pass into, or be placed where it can pass into the water. There will be no sidcasting of material into any waterway.” The Final Environmental Assessment for the Inner Basin Sea Wall Repair Project included with the application for the *Crescent City Harbor District - Riprap/Breakwater Repair at Various Locations* project contains the same wording.
- In the **Proposed Source Controls** section of your January 28, 2009, application (*Riprap/Breakwater Repair at Various Locations*) you entered, “All construction material and fill will be stored and contained in a designated area that is located away from channel areas to prevent transport of materials into adjacent waterways.”

- In the **Proposed Source Controls** section of your October 25, 2010, application (*Inner Boat Basin Rehabilitation Project*) you refer to Section 7.7 of the Environmental Assessment, **Mitigation Measures Recommended**. Section 7.7 includes a list of measures to eliminate or minimize adverse environmental impacts. That list includes the following mitigation measure; “All debris, materials, damaged and destroyed items, sediment, and other materials removed from the inner boat basin shall be disposed of at an approved disposal site.”
- Application documents submitted by the CCDH for the Department of Army Permits associated with the certifications listed above also state, “All debris, materials, damaged and destroyed items, sediment, and other materials removed from the inner boat basin shall be disposed of at an approved disposal site.”

The “Pappas Property” is not an approved disposal site for several reasons. Based on the need for Del Norte County to issue an after-the-fact permit for the disposal activities that were occurring on the “Pappas Property,” the property was not an approved disposal site for the purpose of these CCHD projects. Failure to obtain coverage under, and to comply with, the terms and conditions of General Permit Order 2009-0009-DWQ prior to disturbing one acre on the “Pappas Property” are other reasons the property is not an approved disposal site.

Regional Water Board staff have inspected the “Pappas Property” and confirmed that construction waste and debris materials from these recent CCHD disposal activities have been placed where they may be discharged into the waters of the State and of the United States, in violation of the above listed water quality certifications, the CWA, the Porter-Cologne California Water Quality Control Act (California Water Code), and the Water Quality Control Plan for the North Coast Region (Basin Plan).

Federal Clean Water Act Violation

Dredge and fill activities within waters of the United States require prior authorization from the U.S. Army Corps of Engineers under section 404 of the CWA and issuance of a state water quality certification by the Regional Water Board under section 401 of the CWA. As we have no record of such permits for material stockpiling and spreading on the “Pappas Property,” the CCHD and the property owner may be in violation of the CWA sections 404 and 401.

Basin Plan Prohibitions and Objectives

The Basin Plan contains an Action Plan for Logging, Construction, and Associated Activities (Action Plan, page 4-26.00) which includes two prohibitions that apply to the discharge of earthen materials or debris to surface waters:

- 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.”*

The Basin Plan also contains specific narrative and numeric water quality objectives for inland surface waters of the North Coast Region (pages 3-3.00 – 3-11.00). The objectives include limitations on sediment, floating material, suspended material, color, and turbidity. The unregulated dumping, stockpiling and/or placement of such material or rip-rap violates Prohibitions 1 and 2 of the Basin Plan, and creates or threatens to create a condition of pollution or nuisance by increasing or potentially increasing levels of sediment, turbidity, floating, and suspended materials in nearby Elk Creek and/or other nearby surface waters in violation of the Basin Plan’s water quality objectives.

For the reasons stated above, the Regional Water Board directs you to immediately cease any activities that involve the disposal of any construction debris or other materials from the CCHD projects at any location that does not have all the appropriate and required permits in place prior to their use, and in any manner that may adversely affect water quality. The Regional Water Board also directs you to obtain all the required permits for past and potential future use of the “Pappas Property” including coverage under General Permit Order 2009-0009-DWQ and preparation of an appropriate Storm Water Pollution Prevention Plan. In addition, consider this formal notice of the requirements of California Water Code (CWC) section 13260, section 13264, and 13376, which require that a report of waste discharge be filed with the Regional Water Board prior to the initiation of a discharge.

Be advised that, as set forth above, you are currently discharging without a permit in violation of state and federal law and are currently subject to administrative civil liability pursuant to CWC section 13385 in the amount of up to \$10,000 per day of violation. Regional Water Board staff request the CCHD to take immediate action to resolve these violations as outlined below:

- 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 CCHD proposes to conduct a wetland delineation of the “Pappas Property” to accurately map onsite wetlands and restore wetland functions to all delineated wetland areas impacted. The plan shall contain: a plan to delineate wetlands 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 competent professional wetland specialist with experience in wetland delineation, restoration/creation, and erosion/sediment control, and must be approved by the Executive Officer.

- 2) No later than January 27, 2014 please submit evidence that "Pappas Property" has obtained coverage under and is in compliance with General Permit Order 2009-0009-DWQ to the Executive Officer, Regional Water Board, 5550 Skylane Boulevard, Suite A, Santa Rosa, CA 95403. Requested evidence shall include copies of all required Permit Registration Documents and photos demonstration implementation of the SWPPP.

If you have any questions please contact Stephen Bargsten at (707) 576-2653 or Dean Prat at (707) 576-2801.

Sincerely,

Fred Blatt
Chief, Nonpoint Source and Timber Harvest Division

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Certified-Return Receipt Requested

cc: Mr. Michael van Hattem, California Department of Fish and Wildlife,
Northern Region, 619 Second Street, Redding, CA 96001

Mr. Ted Pappas, Ted Pappas Partnership, 2320 Parkway Drive, Crescent City,
CA 95531

Electronic

Copy to: Laurie. A. Monarres, U.S. Army Corps of Engineers
Laurie.A.Monarres@usace.army.mil