



California Regional Water Quality Control Board San Diego Region



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Certified Mail No. 7007 1490 0003 8753 5209
(return receipt requested)

August 21, 2008

In reply, refer to:
Regulatory Measure Number 350883:carias

Bulldog Concrete Pumping
Mr. and Mrs. Oscar Molina Pereyra
249 South 33RD Street
San Diego, California 92113

CIWQS	
Party No.	458970
Party No.	458975
Place No.	713170
Reg. M. No.	350883
Inspection I.D. No.	1318152

**SUBJECT: CLEANUP AND ABATEMENT ORDER NO. R9-2008-0036 FOR
BULLDOG CONCRETE PUMPING**

Dear Mr. and Mrs. Pereyra:

Enclosed is Cleanup and Abatement Order (CAO) No. R9-2008-0036 issued by the California Regional Water Quality Control Board, San Diego Region (Regional Board) concerning unauthorized discharges of concrete slurry into Chollas Creek from a vacant lot located on the 3300 block of Logan Avenue and Gregory Street in the City of San Diego (Chollas Creek Hydrologic Unit).

The CAO is issued pursuant to Water Code section 13304 and directs you to cleanup the concrete and abate the pollution associated with the unauthorized discharge. Please note the deadlines contained within the CAO.

This Order is self-explanatory and effective immediately. Any person affected by this action of the Regional Board may petition the State Water Resources Control Board (State Board) to review the action in accordance with section 13320 of the California Water Code and Section 2050 of Title 23, California Code of Regulations. The State Board must receive the petition within 30 days of the date of the enclosed Order.

Any person affected by this action of the Regional Board may also request an evidentiary hearing before the Regional Board. To schedule a hearing at a Regional Board meeting, you must submit a written request to this office within 30 days of the issuance of the CAO. Be aware that a request for a hearing does not stay any of the deadlines in the CAO.

August 21, 2008

Reimbursement of Regional Board Oversight Costs

As indicated in the directives of the Order and pursuant to Water Code section 13304, the Regional Board is entitled to reimbursement for all reasonable costs actually incurred to investigate unauthorized discharges of waste and to oversee cleanup of such waste, or other remedial action required by this Order. Please be aware that you will receive invoices for costs incurred by the Regional Board in investigating this unauthorized discharge of waste and overseeing implementation of the requirements of this order. Subsequently, the Regional Board will send periodic invoices for additional staff expenditures overseeing cleanup and abatement associated with the Order.

Written correspondence pertaining to this CAO should be directed to the following address:

Michael P. McCann, Assistant Executive Officer
Attn: Southern Watershed Unit
California Regional Water Quality Control Board, San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4340

I strongly urge a prompt and complete response to each directive in the CAO. Please contact Christina Arias at (858) 627-3931 or carias@waterboards.ca.gov if you have any questions regarding this matter.

The heading portion of this letter includes a Regional Board code number noted after "In reply refer to:" In order to assist us in the processing of your correspondence please include this code number in the heading or subject line portion of all correspondence and reports to the Regional Board pertaining to this matter.

Respectfully,



MICHAEL P. MCCANN
Assistant Executive Officer

Enclosure: Cleanup and Abatement Order No. R9-2008-0036.

cc:

Mr. Terry Dean
U.S. Army Corps of Engineers
Regulatory Division
South Coast Branch, San Diego Section
6010 Hidden Valley Road, Suite 105
Carlsbad, California 92011

Ms. Kelly Fisher
California Department of Fish and Game
South Coast Region
Habitat Conservation Planning – South
4949 Viewridge Avenue
San Diego, CA 92123

Ms. Ruth Kolb
City of San Diego
Stormwater Pollution Prevention Program
1970 B Street, MS 27A
San Diego, CA 92102

Mr. David Karlin
Head Deputy City Attorney
Office of the City Attorney
Criminal Division
Consumer and Environmental Protection Unit
1200 3rd Avenue, Suite 700
San Diego, CA 92101-4103

Mr. Ken Greenberg
USEPA
Water Division (WTR-7)
75 Hawthorne Street
San Francisco, CA 94105

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

CLEANUP AND ABATEMENT ORDER NO. R9-2008-0036

FOR

**BULLDOG CONCRETE PUMPING
OSCAR MOLINA PEREYRA
LINDA MICHELLE PEREYRA
249 SOUTH 33RD STREET
SAN DIEGO, CALIFORNIA 92113**

The California Regional Water Quality Control Board, San Diego Region (hereinafter Regional Board), finds that:

1. Bulldog Concrete Pumping is a concrete paving company operating in San Diego, California. Bulldog Concrete Pumping is owned and operated by Oscar Molina Pereyra and Linda Michelle Pereyra (hereinafter, Dischargers).
2. Bulldog Concrete Pumping is responsible for the un-permitted discharge of concrete slurry (water and concrete material) on numerous occasions to Chollas Creek between 2004 and 2005. The discharges occurred via overflow from a vacant lot adjacent to the 3300 block of Logan Avenue and Gregory Street.
3. During 2004 and 2005, the Dischargers rented the vacant lot from Mr. Lonnie Pleasant located at the 3300 block of Logan Avenue and Gregory Street. Drainage from the lot is discharged directly to Chollas Creek, about 1 mile upstream of the creek mouth where it joins San Diego Bay.
4. Chollas Creek is approximately 30 miles long, and drains a watershed of approximately 16,273 acres. Designated existing beneficial uses of inland surface waters in Chollas Creek in the Water Quality Control Plan for the San Diego Basin (Basin Plan) include Non-contact Water Recreation (REC 2), Warm Freshwater Habitat (WARM), and Wildlife Habitat (WILD). Contact Water Recreation (REC 1) is identified as a potential beneficial use.
5. The Chollas Creek watercourse is defined as a water of the State as defined by section 13050(e) of the California Water Code (WC).
6. Pursuant to WC section 13260, "any person discharging waste or proposing to discharge waste, within any region that could affect the quality of the waters of the state..." shall file a report of waste discharge.
7. On numerous occasions before April 6, 2005, the Dischargers caused and/or permitted the discharge of concrete slurry waste from the vacant lot directly into

Chollas Creek. The Regional Board has not received an application/report of waste discharge for wastes discharged at the site and therefore, the discharge was without Waste Discharge Requirements, in violation of Water Code sections 13243¹ and 13260².

8. On April 6, 2005, the California Department of Fish and Game measured a pH of 12.2 in Chollas Creek downstream of the discharge point. A pH of 6.5 to 8.5 is optimal for most aquatic organisms, and a pH of 11.0 or higher is considered lethal to all species of fish. Concrete and concrete slurry wastes are likely to have high pH values.
9. On November 12, 2006, Mr. Pereyra individually and d.b.a. Bulldog Concrete Pumping pled guilty to three counts of violating Fish & Game Code section 5650(a) (unlawful deposit of lime into waters of the state) for discharging the concrete slurry to Chollas Creek pursuant to a plea agreement with the City of San Diego, City Attorney's Office. (Superior Court Case No. M982775CF). The plea agreement signed by Mr. Pereyra states that the defendant shall "comply with all reasonable requests of the involved agencies (Regional Water Quality and State Water Resources Control Boards, Army Corps of Engineers, California Fish and Game, and City of San Diego Storm Water Pollution Prevention Division)."
10. Based on a site inspection by the Regional Board on January 8, 2008, the estimated volume of concrete slurry discharged to Chollas Creek for which Mr. Pereyra and/or Bulldog Concrete are responsible is roughly 2,500 cubic feet. Concrete slurry flowed over vegetation including native wetland habitat plants that grows within Chollas creek and its channel. Photographs taken by the Regional Board of the hardened concrete in Chollas Creek are provided in Attachment 1.
11. Discharges of concrete slurry in waters of the State cause violations of Water Quality Objectives and Basin Plan Prohibitions by causing deleterious bottom deposits, changes in pH, increase in turbidity and mineral concentrations, loss of habitat for benthic organisms which provide an important food source for fish, birds, and mammals; and impair normal ongoing creek functions such as infiltration, water recharge, and sediment transport.

¹ Pursuant to Water Code (WC) section 13243, the Basin Plan specifies that "the discharge of waste to inland surface waters, except in cases where the discharge complies with applicable receiving water quality objectives, is prohibited.

² WC section 13260 (a) (1) states that: Any person discharging waste, or proposing to discharge waste, within any region that could affect the quality of the waters of the state, other than into a community sewer system...shall file with the appropriate regional board a report of the discharge, containing the information which may be required by the regional board.

12. Any person that violates California Water Code Sections 13260(a) is guilty of a misdemeanor and may subject the dischargers to civil liability in accordance with Section 13261³ and 13265⁴ of the Water Code.
13. Cleanup of the unauthorized discharges of concrete slurry waste into Chollas Creek from Bulldog Concrete Pumping is necessary to abate the conditions of pollution and the ongoing threat to water quality impacts.
14. Pursuant to WC section 13304, the Regional Board is entitled to, and may seek reimbursement for, all reasonable costs it actually incurs to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action, required by this Order.
15. In accordance with WC section 13267 (b), these findings provide the Dischargers with a written explanation with regard to the need for remedial action and identify the evidence that supports the requirement to implement cleanup and abatement activities and submit follow-up reports.
16. This enforcement action is being taken for the protection of the environment and, as such, is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Section 2100 Et seq.) in accordance with Section 15321 (Enforcement Actions by Regulatory Agencies), Chapter 3, Title 14 of the California Code of Regulations.

IT IS HEREBY ORDERED that, pursuant to Section 13225, 13267, and 13383 of Division 7 of the Water Code, Oscar Pereyra, and Linda Pereyra individually and d.b.a. Bulldog Concrete Pumping, shall do the following:

1. By **October 17, 2008** submit a draft Creek Restoration and Monitoring Plan (Plan), including any necessary permits, prepared by a qualified professional with at least five years professional experience in stream restoration work. The Plan shall address the actions that will be taken to restore Chollas Creek to its pre-discharge state and comply with the Directives of this order. The Plan will be provided to the Regional Board prior to implementation. A final Plan shall be submitted by **November 21, 2008**.
2. By **January 7, 2009** cleanup and abate existing and threatened pollution associated with the unauthorized discharge of waste into Chollas Creek by:

³ WC section 13261 (a) states that: Any person failing to furnish a report under 13260 when so requested by a regional board is guilty of a misdemeanor and may be liable civilly...

⁴ WC section 13265 (a) states that: Any person discharging waste in violation of WC 13264, after such violations has been called to his attention in writing by the regional board, is guilty of a misdemeanor and may be liable civilly... Each day of such discharge shall constitute a separate offense.

- a. Removing of 2,500 or more cubic yards of solidified concrete slurry from Chollas Creek bed and bank;
 - b. Including management measures for erosion control to prevent further conditions that threaten beneficial uses of Chollas Creek; and
 - c. Re-vegetating the restored creek with native vegetation along the banks in a manner to mimic the diversity and distribution of vegetation in Chollas Creek in the vicinity of the affected area.
3. All waste material including concrete that is removed from the site shall be disposed of properly at facilities permitted to accept such waste in accordance with all relevant federal, state, and local laws, regulations, orders, resolutions, and ordinances. All work conducted in and around Chollas Creek shall comply with all applicable state and federal laws and regulations.
 4. The Plan shall include bioassessment monitoring using benthic macroinvertebrates to provide information about the biological integrity of Chollas Creek after removal of concrete. Bioassessment shall include: 1) the collection, analysis and reporting of benthic macroinvertebrate data and 2) the collection and reporting of specified physical habitat and chemical data (pH, dissolved oxygen, specific conductance, alkalinity, water temperature). Data collection shall follow the *Standard Operating Procedures for Collecting Benthic Macroinvertebrate Samples and Associated Physical and Chemical Data for Ambient Bioassessments in California* protocol, published in February 2007.

In order to assess if habitat impacted by concrete has been fully restored, the Plan shall include measurements to be taken at two stations: a soft-bottom control site downstream of the restored area, and one at the restored area. At least 2 measurements shall be taken at each of the two stations (for a total of 4 measurements). A pair of measurements should be taken on or around **April 1, 2009**, and on or around **October 1, 2009**. This data shall be used to assess the stream's recovery following the removal of concrete.

Reporting Requirements

5. By **January 31, 2009**, submit a draft Cleanup and Abatement Progress Report that documents that the required on-site cleanup and abatement actions have been taken and that Chollas Creek streambed within and downstream of the remediation area resembles pre-discharge conditions. The Cleanup and Abatement Progress Report shall include an estimation of the volume and aerial extent of the discharge and photographs of the remedial activities and completed cleanup conditions.
6. By **October 15, 2009**, the Dischargers shall submit a draft Monitoring Report to include the results of bioassessment monitoring conducted in April and October, 2009.

7. By **November 12, 2009**, submit a Final Chollas Creek Restoration Report that includes comprehensive information from the draft Cleanup and Abatement Progress Report and the draft Monitoring Report, to incorporate any comments received by the Regional Board on either of these two interim reports.
8. **Signatory Requirements.** All reports required under this Cleanup and Abatement Order shall be signed and certified by the Dischargers or by a duly authorized representative of the Dischargers and submitted to the Regional Board. *Duly Authorized Representative.* A person is a duly authorized representative only if: 1) The authorization is made in writing by the Discharger; and 2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity (A duly authorized representative may thus be either a named individual or any individual occupying a named position).
9. **Certification.** Include the following signed certification with all reports submitted pursuant to this Order:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

10. **Electronic and Paper Media Reporting Requirements.** The Dischargers shall submit both electronic and paper copies of all workplans, technical reports, and monitoring reports required under this Cleanup and Abatement Order. Electronic submission shall be in PDF format, and include the signed transmittal letter and professional certification.
11. **Report Submittals.** All monitoring and technical reports required under this Cleanup and Abatement Order shall be submitted to:

Michael P. McCann
Assistant Executive Officer
Attn: Southern Watershed Unit
California Regional Water Quality Control Board
San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4340

NOTIFICATIONS

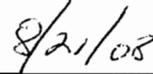
12. **Enforceability.** The Regional Board reserves its right to take any enforcement action authorized by law for violations of the terms and conditions of this Cleanup and Abatement Order.
13. **Applicability.** Requirements established pursuant to Water Code sections 13304 and 13267(b) are enforceable when signed by the Executive Officer of the Regional Board.
14. **Potential Liability.** Pursuant to Water Code section 13350, any person who intentionally or negligently violates a cleanup and abatement order may be liable civilly in an amount which shall not exceed five thousand dollars (\$5,000), but shall not be less than five hundred dollars (\$500), for each day in which the cleanup and abatement order is violated.

Pursuant to Water Code section 13268, any person failing or refusing to furnish technical or monitoring program reports as required by section 13267, or falsifying any information provided therein, is guilty of a misdemeanor, and may be liable civilly in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.
15. **Cost Reimbursement.** The Dischargers shall reimburse the State of California for all reasonable costs actually incurred by the Regional Board to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action, required by this Cleanup and Abatement Order, according to billing statements prepared from time to time by the Regional Board or the California State Water Resources Control Board.
16. **Waste Management.** The Dischargers shall properly manage, store, treat, and dispose of contaminated soils and ground water in accordance with applicable federal, state, and local laws and regulations. The storage, handling, treatment, or disposal of soil containing waste constituents and polluted groundwater shall not create conditions of pollution, contamination or nuisance as defined in Water Code section 13050(m). The Discharger shall obtain, or apply for coverage under waste discharge requirements, or a conditional waiver of waste discharge requirements for any discharge of the waste to (a) land for treatment, storage, or disposal or (b) waters of the state.
17. **Duty to Use Qualified Professionals.** The Dischargers shall provide documentation that plans and reports required under this Cleanup and Abatement Order are prepared under the direction of appropriately qualified professionals. Business and Professions Code sections 6735, 7835 and 7835.1 require that engineering and geologic evaluations and judgments be performed by or under the direction of registered professionals. The Dischargers shall include a statement of

Mr. & Mrs. Pereyra

Bulldog Concrete Pumping

qualifications and registration numbers, if applicable, of the responsible lead professionals in all plans and reports required under this Cleanup and Abatement Order. The lead professional shall sign and affix their registration stamp, as applicable, to the report, plan, or document.



MICHAEL P. MCCANN

Assistant Executive Officer

Attachment No. 1: Photographs of Site Conditions on January 8, 2008

ATTACHMENT NO. 1 to CAO NO. R9-2008-0036

SITE CONDITIONS ON JANUARY 8, 2008

