



Linda S. Adams
Secretary for
Environmental Protection

California Regional Water Quality Control Board San Diego Region

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October 19, 2009

Certified Mail – Return Receipt Requested
Article Number: 7009 1410 0002 2347 5784

Nardy Khan
County of Orange, OC Public Works
300 North Flower Street
Santa Ana, CA 92703-5000

In reply refer to:
205029: cloften

Dear Nardy Khan:

SUBJECT: Amendments to CWA Section 401 Water Quality Certification
No. 05C-009 for Aliso Creek Outlet Maintenance Program Project

On September 09, 2009 the San Diego Regional Water Quality Control Board (Regional Board) public noticed a proposal to amend the Aliso Creek Outlet Maintenance Program (Project) Section 401 Water Quality Certification (File No. 05C-009) (Certification) in response to continued violations of the Certification. As of October 14, 2009 no public comments were received regarding the proposed amendments.

The project is a channel maintenance program located at the mouth of Aliso Creek at the Pacific Ocean in the City of Laguna Beach, Orange County, CA. The project includes semi-annual and routine berm-breaching activities for the lagoon to prevent the creek from meandering up or downcoast, which is a threat to public safety by restricting lifeguard access. No permanent alterations to Aliso Creek are authorized under the Certification.

Pursuant to Condition A.10 of the Certification and Porter-Cologne Water Quality Control Act 13381, the Regional Board has proposed to amend the Certification in response to repeated violations. Amendments are necessary to ensure that Water Quality Standards are protected under the project.

The Regional Board has proposed to amend the Certification to add additional monitoring requirements that will ensure Water Quality Standards are protected over the life of the project. Indicator bacteria monitoring is proposed for maintenance activities which result in the pooling of water within the project area. The water quality of these inadvertently created temporary pools, which when formed are utilized for REC-1 Beneficial Use, is currently unknown. Monitoring is required to ensure Water Quality Standards and public health are protected.

California Environmental Protection Agency



The Regional Board has proposed to amend the Certification to provide clarification regarding the mitigation and other requirements. These changes are necessary to prevent the loss of Beneficial Uses associated with Aliso Creek. Mitigation is currently required for discharges of fill in over 50 linear feet or 0.01 acre of the meandering stream course. Mitigation for a discharge in over 50 linear feet can either be enhancement, creation, or restoration, and mitigation is only necessary for subsequent discharges if the original mitigation site is unsuccessful. This language has been clarified to state that the filling of less than 50 linear feet or 0.01 acre of the meandering streamcourse when the full meander is greater than 50 linear feet or 0.01 acre will be considered the filling of the entire meander. Filling in only a short portion of the meander eventually eliminates the Beneficial Uses associated with the entire reach.

As a result of the continued history of violations, the Certification has been amended to reflect the above changes. The amendments are included as Enclosure 1.

On April 17, 2008 the Regional Board issued a Staff Enforcement Letter to the County of Orange for a late Annual Monitoring Report and for the failure to conduct required monitoring under the Certification. On August 31, 2009 the Regional Board issued a Notice of Violation (NOV) to the County of Orange for violations of the Certification. Violations included the failure to notify the Regional Board of maintenance activities and the failure to submit the required Annual Monitoring Report. To date, the Regional Board has not received the required Annual Monitoring Report, due on March 01, 2009. Pursuant to California Water Code (CWC) Section 13385, any person who violates any waste discharge requirements or dredged and fill material permit or any water quality certification issued pursuant to Section 13160, shall be liable civilly in accordance with the section. Pursuant to CWC Section 13385 the maximum civil liability that the Regional Board may assess is ten thousand dollars (\$10,000) per day of violation (per violation). CWC Section 13385(e) requires that, when pursuing civil liability under CWC Section 13385, "At a minimum, liability shall be assessed at a level that recovers the economic benefit, if any, derived from the acts that constitute the violation." Furthermore, pursuant to Porter-Cologne Water Quality Control Act 13381 waste discharge requirements or dredged or fill material permits may be terminated due to violation of any condition contained in the requirements or permits.

The continued violations of Water Quality Monitoring requirements in the existing Certification, including the lack of required Annual Reporting, has prevented the Regional Board from evaluating if the project, as conducted, is protective of Beneficial Uses. Regardless of the issuance of this amendment and pursuant to Porter-Cologne Water Quality Control Act 13381, the Certification may be rescinded if past and future Water Quality Monitoring Reports are not received or data shows the project is violating Water Quality Standards. Further enforcement, including Administrative Civil Liability, is being considered.

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. If you have any questions regarding this notification, please contact Chad Loflen at (858) 467-2727 or cloflen@waterboards.ca.gov.

Respectfully,



JOHN H. ROBERTUS
Executive Officer

Enclosures

1. Addendum to Clean Water Act Section 401 Water Quality Certification No. 05C-009
2. Clean Water Act Section 401 Water Quality Certification No. 05C-009

cc (via email only):

Crystel Doyle, US Army Corps of Engineers Regulatory Division Office,
crystel.l.doyle@usace.army.mil

Bill Orme, State Water Resources Control Board,
Stateboard401@waterboards.ca.gov

David W. Smith, U.S. Environmental Protection Agency, Region 9
R9-WTR8-Mailbox@epa.gov

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD,
SAN DIEGO REGION

ADDENDUM TO

CLEAN WATER ACT SECTION 401

WATER QUALITY CERTIFICATION NO. 05C-009

FOR

COUNTY OF ORANGE

Clean Water Act Section 401 Water Quality Certification 05C-009 is amended as follows:

1. Condition D.1 is modified:

D.1. The County of Orange shall provide compensatory mitigation at a 1:1 acreage ratio for loss of waters of the State/U.S. resulting from maintenance activities that deposit any dredged or excavated material into the meandering stream course when the meander is more than 50 linear feet or 0.01 acre in length of the meandering stream course. Mitigation is required for the loss and/or degradation of the entire stream course reach impacted as a result of the fill activity. Mitigation shall include enhancement, creation, or restoration of aquatic habitat (e.g., vegetated streambed, unvegetated streambed, or wetlands) within the Aliso Creek watershed. Mitigation shall be completed within 180 days of discharge.


2. Condition C.1.c is modified:

C.1.c. Monitoring Locations shall include the lagoon, any pools that develop within the project area, and the adjacent shoreline. The lagoon station shall be located downstream of the Coast Highway Bridge and upstream of the sand berm (or within 50 feet of Coast Highway Bridge if no sand berm is present during semi-annual maintenance activities). The shoreline station shall be located within 50 feet of the outfall point created by the maintenance activities.

3. Condition C.1.d (Indicator Bacteria Parameter) is modified:

C.1.d. Water quality data shall be obtained by grab samples (except Secchi disc turbidity monitoring) and reported for the following constituents and at the following frequencies:

Parameter	Reporting Unit	Monitoring Frequency
Fecal Coliform	MPN or CFU /100ml	Bacteria monitoring shall be conducted for each semi-annual maintenance event and for no less than two routine berm-breaching events each calendar year. Pre-project and post-project samples shall be collected and analyzed for each station.
E. Coli Or Enterococcus	MPN or CFU /100ml	<p><u>Bacteria monitoring shall be conducted for all pools that develop within the project site during or after semi-annual and routine maintenance activities. If bacteria exceed water quality objectives for contact recreation (REC-1) the pools must be posted.</u></p> <p>For semi-annual maintenance events, the pre-project bacteria sample shall be collected and analyzed 36-72 hours prior to conducting the maintenance activity. If lagoon bacteria concentrations exceed objectives for contact recreation (REC-1) but are below 10,000 MPN (or CFU) per 100ml for fecal coliform and/or enterococcus, then the County shall post appropriate public health warning signs at the beach prior to commencing maintenance activities. If pre-project lagoon bacteria samples show concentrations of more than 10,000 MPN (or CFU) per 100ml for fecal coliform and/or enterococcus, the County shall not commence the maintenance activities until a pre-project lagoon sample shows levels under 10,000 MPN (or CFU) per 100ml.</p>


 JOHN H. ROBERTUS
 Executive Officer


10/19/09
 Date

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Nardy Khan, County of Orange

Street, Apt. No.
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City, State, ZIP+4
Santa Ana, CA 92703-5000

PS Form 3800, August 2006 See Reverse for Instructions

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