

**State of California  
California Regional Water Quality Control Board  
Santa Ana Region**

**July 18, 2008**

**ITEM:** \*12

**SUBJECT:** Order No. R8-2008-0073, Alvord Unified School District, High School No. 4, City of Riverside

**SUMMARY**

The matter before the Board is to consider adoption of Order No. R8-2008-0073, authorizing the discharge of fill to waters of the State that have been determined to be outside of the U.S. Army Corps of Engineers' (Corps) jurisdiction and not subject to regulation under Clean Water Act (CWA) Section 404 (non-federal waters). In the event a later determination is made finding that the discharge is subject to Corps' jurisdiction, this Order will also serve as a CWA Section 401 Water Quality Standards Certification.

**BACKGROUND**

California Water Code (CWC) Section 13376 states that, "any person discharging dredge or fill material or proposing to discharge dredged or fill material into the navigable waters of the United States within the jurisdiction of this state shall file a report of the discharge in compliance with Section 13260." Section 13260(a) of the CWC requires that any person discharging waste or proposing to discharge waste within any region, other than to a community sewer system, that could affect the quality of the waters of the State, file a report of waste discharge (ROWD). Under federal Clean Water Act (CWA) Section 401, every applicant for a federal permit or license for any activity that may result in a discharge to waters of the United States must obtain State Water Quality Certification (Certification) that the proposed activity will comply with state water quality standards.

Most Certifications are issued in connection with U.S. Army Corps of Engineers (Corps) CWA Section 404 permits for dredge and fill discharges. The State Water Resources Control Board (State Board) and Regional Water Quality Control Boards administer the Certification program in accordance with the requirements of California Code of Regulations Title 23, Section 3830 *et seq.* Since November 2003, all Certifications have been issued by the Executive Officer accompanied by authorization to discharge in accordance with State Water Resources Control Board Order No. 2003-0017-DWQ (Order No. 2003-0017-DWQ), "General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received State Water Quality Certification."

**STAFF REPORT**

Due to recent decisions by the United States Supreme Court that increasingly have limited the authority of the Corps to regulate discharges of dredge and fill to waters of the U.S., some projects discharge dredge or fill to waters of the State that are 'non-federal' waters. As a result, these projects are not subject to a CWA Section 404 permit from the Corps and do not require a Certification. In the absence of the need to obtain a Certification, the State Board has asserted the State's authority to regulate discharges of dredge and fill to waters of the State under the Porter-Cologne Water Quality Control Act, codified as California Water Code Division 7.

On May 4, 2004, the State Board issued Water Quality Order No. 2004-0004-DWQ, "Statewide General Waste Discharge Requirements for Dredge and Fill Discharges to Waters Deemed by the U.S. Army Corps of Engineers to be Outside of Federal Jurisdiction (Order No. 2004-0004-DWQ)." However, numeric impact thresholds limit the application of Order No. 2004-0004-DWQ to relatively small discharges of fill.

On March 24, 2008, Board staff received a report of waste discharge (Report) from Shannon Allen, a consultant representing the Alvord Unified School District (AUSD). In the Report, AUSD proposes to discharge fill to 0.015 acre of waters of the State. The affected waters are two ephemeral headwater drainages located on a proposed 68-acre school site. The school site is located south of the intersection of Pierce Street and Indiana Avenue, partly within the City of Riverside, at the base of the El Sobrante Hills. A total of 653 linear feet of drainage will be filled.

The two ephemeral drainages flow down from the El Sobrante Hills onto the flatter portion of the site where an ordinary high water mark or other indications waters of the State disappear. Runoff from the site then generally sheet-flows to the north, across the site and into the Riverside Canal, an open channel along Indiana Avenue. The Riverside Canal was constructed in 1871 and extends 19 miles from Colton to Corona as a whole. Within the project area, the Canal has been abandoned. An abandoned reservoir, known as the Frost Reservoir, is also on the site.

The discharges will occur as part of the construction of High School No. 4 with a capacity for 2,500-students. The proposed school will include play fields, a lighted track, an outdoor pool, a neighborhood park, three detention/infiltration basins, 800 parking lot spaces, an amphitheater, 8 main structures, and a recreational trail along the southern boundary of the campus perimeter.

The construction of High School No. 4 will involve the fill of the Frost Reservoir, the Riverside Canal, and the lower reaches of the ephemeral drainages. The upper reaches, located in the steeper portion of the El Sobrante Hills on the property, will not be developed. The combination of the siting of the structures

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and the proposed trail will provide sufficient buffer to prevent the need for fuel modification of the drainages within the avoided reaches.

The discharger believes that none of the drainages on the project site are subject to regulation by the U.S. Army Corps of Engineers (Corps) under Section 404 of the Clean Water Act because the drainages do not have a connection to a navigable water pursuant to the U.S. Supreme Court Consolidated Case titled *Solid Waste Authority of Northern Cook County vs. United States Army Corps of Engineers* (2001). The Corps has not yet produced a formal determination.

As a result of Board staff review of reports provided in the report of waste discharge, Board staff has determined that the existing or potential beneficial uses of the natural drainages include wildlife habitat (WILD) and groundwater recharge (GWR). Board staff has determined that the discharges to the non-federal waters of the State would affect beneficial uses of the natural drainages. Board staff is unable to determine that the discharge of fill to the abandoned irrigation facilities will impact beneficial uses. Therefore, the fill of the irrigation facilities will not be regulated. However, the Board could not authorize the discharges to the ephemeral drainages in accordance with Order No. 2004-0004-DWQ because the discharges exceeded the impact thresholds of that Order. Consequently, the discharge would need to be authorized using individual waste discharge requirements.

AUSD proposes to mitigate impacts to beneficial uses by paying an in-lieu fee to the Santa Ana Watershed Association or the Riverside County Regional Parks and Open Space District towards the eradication of 0.05-acre of invasive plant species in riparian waters in the Santa Ana River watershed.

Other discharges that will occur as part of the development of High School No. 4 are construction and post-construction (urban) discharges of storm water runoff. Both discharges are addressed by State Board Water Quality Order No. 99-08-DWQ, "General Permit for Discharges Associated with Construction Activity" (Order No. 99-08-DWQ). AUSD is not a permittee under Regional Board Order No. R8-2002-0011, NPDES Permit No. CAS618033, commonly known as the Riverside County Urban Storm Water Runoff Permit, and subsequent renewals. However, storm water runoff from the High School will enter the City of Riverside storm drainage system. The City of Riverside, as a permittee, is required to review the best management practices that will be used to remove pollutants from runoff from the site before it enters the municipal separate storm sewer system and ensure that these best management practices are implemented. Additionally, the Regional Board has reserved its authority to issue separate waste discharge requirements should they be necessary.

Pursuant to the California Environmental Quality Act (CEQA), AUSD prepared a Mitigated Negative Declaration (MND) and adopted it on August 11, 2005 (State Clearinghouse No. 2005071045). A Notice of Determination was filed on August

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15, 2005. The District's MND was considered in the preparation of these waste discharge requirements.

**RECOMMENDATION**

Board staff recommends that the Board adopt Order No. R8-2008-0073.

Comments were solicited from the following agencies and parties:

U.S. Army Corps of Engineers, Los Angeles District

California Department of Fish and Game

U.S. Environmental Protection Agency, Supervisor of the Wetlands Regulatory Office

State Water Resources Control Board, Department of Water Quality, Water Quality Certification Unit

State of California  
California Regional Water Quality Control Board  
Santa Ana Region

Order No. R8-2008-0073

Waste Discharge Requirements

for

Alvord Unified School District  
High School No. 4  
City of Riverside

The California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), finds that:

1. Alvord Unified School District (hereinafter, discharger) proposes to discharge fill to 0.015 acre (653 linear feet total) of waters of the State as part of the construction of High School No. 4 in the City of Riverside.
2. High School No. 4 will have capacity for 2,500 students and will include play fields, a lighted track, an outdoor pool, a neighborhood park, three detention/infiltration basins, 800 parking lot spaces, an amphitheater, 8 main structures, and a recreational trail along the southern boundary of the campus perimeter. The High School will be located on 68 acres south of the intersection of Pierce Street and Indiana Avenue, partly within the City of Riverside, at the base of the El Sobrante Hills within an unsectioned portion of Township 3 South, Range 6 West, as shown on the U.S. Geological Service *Riverside West, California* quadrangle (33 deg. 53 min. 23 sec. N/-117 deg. 29 min. 12 sec. W).
3. The discharger believes that the drainages proposed for fill are not subject to Clean Water Act Section 404 permits administered by the U.S. Army Corps of Engineers (Corps). The discharger has requested a jurisdictional determination from the Corps.
4. The Board commonly regulates discharges of dredge or fill to waters of the State through the issuance of Clean Water Act (CWA) Section 401 Water Quality Standards Certifications (Certifications) where the discharge is also subject to regulation by the Corps. This occurs when the receiving water is both a water of the State as defined by the California Water Code and a water of the U.S. under CWA Section 404. In the absence of an applicable federal permit or license, the Board may regulate the proposed

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The California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), finds that:

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3. The discharger believes that the drainages proposed for fill are not subject to Clean Water Act Section 404 permits administered by the U.S. Army Corps of Engineers (Corps). The discharger has requested a jurisdictional determination from the Corps.
4. The Board commonly regulates discharges of dredge or fill to waters of the State through the issuance of Clean Water Act (CWA) Section 401 Water Quality Standards Certifications (Certifications) where the discharge is also subject to regulation by the Corps. This occurs when the receiving water is both a water of the State as defined by the California Water Code and a water of the U.S. under CWA Section 404. In the absence of an applicable federal permit or license, the Board may regulate the proposed

discharge through the issuance of Waste Discharge Requirements or a waiver thereof.

5. The waters of the State on the site consist of two headwater ephemeral drainages that convey runoff from the El Sobrante Hills located south of the site. Where flows enter onto the flatter portions of the property, indications of an ordinary high water mark, or other means of identifying waters of the State, disappear.
6. Based on the applicant's Report of Waste Discharge, beneficial uses that are existing or attainable for the drainages include:
  - a. wildlife habitat (WILD); and
  - b. groundwater recharge (GWR);
7. Waste Discharge Requirements (WDRs) are necessary to address impacts of the fill on the beneficial uses of waters of the State.
8. This Order regulates the discharge of fill material to waters of the State that may not be considered under Corps' CWA Section 404 jurisdiction (non-federal). The discharger submitted a ROWD on March 24, 2008.
9. The discharger has committed to mitigate direct impacts to waters of the State by paying an in-lieu fee to the Santa Ana Watershed Association or the Riverside County Regional Parks and Open Space District towards the eradication of 0.05 acre of invasive plant species.
10. Pursuant to CEQA, the Alvord Unified School District adopted a Mitigated Negative Declaration (MND) for High School No. 4 on August 11, 2005. A Notice of Determination was filed on August 15, 2005.
11. As a Responsible Agency under CEQA, the Board is required to consider the Lead Agency's environmental documents and make findings on the significant impacts within its jurisdiction to approve. (Public Resources Code, Section 21002.1(d); California Code of Regulations, Title 14, Section 15096(g), (h).) The Regional Board has considered the MND prepared by Alvord Unified School District in the adoption of these waste discharge requirements.
12. State Water Resources Control Board (State Board) Resolution No. 68-16 (hereafter Resolution 68-16 or the "Antidegradation Policy") requires the Regional Water Board, in regulating the discharge of waste, to maintain high quality waters of the state until it is demonstrated that any change in quality will be consistent with maximum benefit to the people of the State, will not unreasonably affect beneficial uses, and will not result in water quality less than that described in the Regional Board's policies (e.g.,

quality that exceeds water quality objectives). This Order is consistent with Resolution No. 68-16.

13. The Board has notified the discharger and other interested agencies and persons of its intent to prescribe waste discharge requirements for the discharge and has provided them with an opportunity for public hearing and opportunity to submit their written views and recommendations.
14. The Board, in a public meeting, heard and considered all comments pertaining to the discharge.

**IT IS HEREBY ORDERED** that the discharger, in order to meet the provisions contained in Division 7 of the California Water Code and regulations adopted thereunder, shall comply with the following:

**A. DISCHARGE SPECIFICATIONS:**

1. No activities associated with the project shall cause or threaten to cause a nuisance or pollution as defined in Section 13050 of the California Water Code.
2. The discharge of any substance in concentrations toxic to animal or plant life is prohibited.
3. The groundwater in the vicinity of the project shall not be degraded as a result of the project activities or placement of fill for the project.
4. The discharge of fill materials shall be limited to inert materials, as defined in Section 20230, Division 2, Title 27. The discharge of fill material other than native soil shall be only with the prior approval of the Executive Officer.

**B. DISCHARGE PROHIBITIONS:**

1. The direct discharge of wastes, including rubbish, refuse, bark, sawdust, or other solid wastes into surface waters or at any place where they would contact or where they would be eventually transported to surface waters, including flood plains, is prohibited.
2. Discharges to surface waters of wastes or pollutants that are not otherwise regulated by a separate National Pollutant Elimination System (NPDES) permit, is prohibited.

**C. PROVISIONS:**

1. The discharger shall pay an in-lieu fee to the Santa Ana Watershed Association or the Riverside County Regional Parks and Open Space District towards the eradication of 0.05 acre of invasive plant species. The fee shall include monies for a minimum of 20 years of follow-on maintenance. Evidence of the payment shall be provided to the Executive Officer by October 18, 2008.
2. The discharge of fill to waters of the State is prohibited until the evidence of payment of the in-lieu fee is received by the Executive Officer.
3. The discharger shall maintain a copy of this Order at the site so that it is available to site operating personnel at all times. Key operating personnel shall be familiar with its content.
4. The discharger shall remove from the site any waste or fill material found to contain substances that may have a deleterious effect on water quality, and dispose of unacceptable wastes in a manner acceptable to the Executive Officer.
5. The discharger must comply with all of the requirements of this Order. Any violation of this Order constitutes a violation of the California Water Code and may constitute a violation of the CWA and its regulations, and is grounds for enforcement action, termination of this Order, revocation and re-issuance of this Order, denial of an application for re-issuance of this Order, or a combination thereof.
6. The discharger shall take all reasonable steps to minimize or prevent any discharge that has a reasonable likelihood of adversely affecting human health or the environment.
7. The provisions of this Order are severable, and if any provision of this Order, or the application of any provisions of this Order to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this Order shall not be affected thereby.
8. The filing of a request by the discharger for modification, revocation and re-issuance, or termination of this Order or a notification of planned changes or anticipated noncompliance does not stay any requirements of this Order.
9. The requirements prescribed herein do not authorize the commission of any act causing injury to the property of another, nor protect the

- discharger from liabilities under federal, state, or local laws, nor guarantee the discharger a capacity right in the receiving waters.
10. This Order does not convey any property rights of any sort, or any exclusive privilege.
  11. This Order is not transferable to any person except after notice to, and approval by, the Executive Officer. The Board may require modification or revocation and re-issuance of this Order to change the name of the discharger.
  12. In the event of any change in control or ownership of land or waste discharge facility presently owned or controlled by the discharger, the discharger shall notify the succeeding owner or operator of the existence of this Order by letter, a copy of which shall be forwarded to the Board.
  13. This Order will serve as a Clean Water Act Section 401 Water Quality Standards Certification in the event that one is required by any federal agency, except as noted below. Under California Water Code, Section 1058, and Pursuant to 23 CCR §3860, the following shall be included as conditions of all water quality certification actions:
    - a. Every certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to Section §13330 of the Water Code and Article 6 (commencing with Section 3867) of this Chapter.
    - b. Certification is not intended and shall not be construed to apply to any activity involving a hydroelectric facility and requiring a FERC license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to Subsection §3855(b) of this Chapter and that application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
    - c. Certification is conditioned upon total payment of any fee required under this Chapter and owed by the applicant.
  14. The discharger shall comply with any and all Clean Water Act Section 404 Permits that are issued for this project.
  15. The Board and other authorized representatives shall be allowed:
    - a. Entry upon premises where a regulated facility or activity is located or conducted, or where records are kept under the requirements of this Order;

- b. Access to copy any records that are kept under the requirements of this Order;
- c. To inspect any facility, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Order; and
- d. To photograph, sample and monitor for the purpose of assuring compliance with this Order.

I, Gerard J. Thibeault, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Santa Ana Region, on July 18, 2008.

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Gerard J. Thibeault  
Executive Officer