California Regional Water Quality Control Board
Santa Ana Region

Order No. R8-2005-0113

Waste Discharge Requirements

for

Richland Meadowland, Ltd.
Tract 27251, City of Moreno Valley

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

1. Richland Meadowland, Ltd. (hereinafter, discharger) proposes to develop Tract 27251 in the City of Moreno Valley by building 154 dwelling units on approximately 49 acres located at the southeast corner of Fir Street and Morrison Street in Section 4, Township 3 South, Range 3 West, shown on the U.S. Geological Service *Sunnymead, California* quadrangle (33 deg. 55 min. 59 sec. N/117 deg. 11 min. 35 sec. W).

2. Beginning at a culvert under Fir Street at the north side of Tract 27251 is an ephemeral drainage consisting of 0.067 acres. The drainage extends 731 feet before terminating in a dry-farmed field on the Tract.

3. On January 9, 2001 the United States Supreme Court issued a decision in *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers* (2001) 121 S.Ct. 675 (*SWANCC*) that held that the language of the Clean Water Act (CWA) cannot be interpreted as conferring authority for the federal government to regulate "isolated, intrastate, and non-navigable waters" merely because migratory birds may frequent them. The Court emphasized the states' responsibility for regulating such waters. Consequently, waters of the ephemeral drainage on Tract 27251 are waters of the State but are outside federal jurisdiction.

4. In a letter dated March 24, 2005, the U.S. Army Corps of Engineers issued a determination that the drainage on Tract 27251 is outside of federal jurisdiction (non-federal waters) as the result of its isolated nature.

5. The discharger has committed to mitigate impacts to non-federal waters of the State through an in-lieu payment, equal to the purchase of 0.25 acres, to the Santa Ana Watershed Association (SAWA) to be applied towards the eradication of *Arundo donax*.

6. In compliance with the California Environmental Quality Act, a Negative Declaration was prepared for Tract 27251 and certified by the City of Moreno Valley on May 13, 1992.

7. The waste discharge requirements proposed herein address the discharge of native soil material into the ephemeral drainage, consisting of a total of 0.067 acres, on Tract 27251. The proposed Order requires the discharger to proceed with the proposed mitigation.

8. The Water Quality Control Plan for the Santa Ana River Basin (1995) does not specifically designate beneficial uses for the isolated surface waters on the project site. Based on Regional Board staff assessment of the site, the requirements of State Board Resolution No. 88-63, and the applicant's biological assessments, beneficial uses that are existing or attainable for the drainage include:

   a. Groundwater recharge (GWR)
   b. Wildlife habitat (WILD)

9. This Order regulates the discharge of fill material to waters of the State. The discharger submitted an application for CWA section 401 Water Quality Standards Certification on May 31, 2005 that describes the proposed fill to non-federal waters of the State. The application has been accepted as a Report of Waste Discharge.

10. Waste Discharge Requirements (WDRs) are necessary to address the impacts of the fill on the beneficial uses of the non-federal waters of the State.

11. The Regional Board has considered anti-degradation pursuant to State Board Resolution No. 68-16 and finds that the discharge is consistent with those provisions.

12. 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.

13. 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. The discharge of floating oil or other floating materials from any activity in quantities sufficient to cause deleterious bottom deposits, turbidity, or discoloration in surface waters is prohibited.

3. The discharge of silt, sand, clay, or other earthen materials from any activity in quantities sufficient to cause deleterious bottom deposits, turbidity, or discoloration in surface waters, except as authorized by this Order, is prohibited.

4. 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 purchase one-quarter (0.25) acre of mitigation credit from the Santa Ana Watershed Association (SAWA) towards the eradication of *Arundo donax*. The purchase shall include a minimum of 6-years of follow-on maintenance and shall not be applied to lands where initial removal of *Arundo donax* was funded using State Bond funds. Evidence of the purchase shall be provided to the Executive Officer no later than 60-days following initial grading in waters of the State.

2. 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, such as

metals, petroleum products, or pesticides, and dispose of unacceptable wastes in a manner acceptable to the Executive Officer.

3. 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.

4. 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.

5. 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.

6. 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.

7. 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.

8. This Order does not convey any property rights of any sort, or any exclusive privilege.

9. This Order is not transferable to any person except after notice to, and approval by, the Executive Officer. The Regional Board may require modification or revocation and re-issuance of this Order to change the name of the discharger.

10. 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 Regional Board.

11. The Regional 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 September 30, 2005.

Gerard J. Thibeault
Executive Officer