California Regional Water Quality Control Board
North Coast Region

Cleanup and Abatement Order No. R1-2007-0060

For

Richard Holm and Holm Industries

Mendocino County

The California Regional Water Quality Control Board, North Coast Region (Regional Water Board), finds that:

1. In May 2007, the Regional Water Board staff (Staff) received a citizen complaint about recent heavy equipment activities on lands adjacent to Windy Hollow Road, near the town of Point Arena (hereafter referred to as Site or Project). The complainant alleged that grading and clearing activities were occurring adjacent to and within Hathaway Creek, a tributary to the Garcia River. The alleged activities included: reconstruction of roads and a watercourse crossing, clearing of riparian vegetation, and stockpiling of soils and vegetation adjacent to Hathaway Creek where they could potentially be discharged into waters of the State.

2. On June 4, 2007, Diana Henrioulle and Jonathan Warmerdam, Regional Water Board Staff, conducted a drive-by inspection of the Site. Although access to the Site was not available at that time, Staff were able to see portions of the Project from Windy Hollow Road, including recent road reconstruction, disturbed soils, and signs of excavation, including sidecasting and stockpiling of removed vegetation. Staff determined that further investigation was warranted in order to determine if impacts to waters of the State had occurred as a result of the grading and clearing activities and to determine whether conditions at the Site threaten to impact waters of the State by discharging soil, silt, or other organic and earthen material into Hathaway Creek during storm events occurring the next winter period. Staff followed up the inspection by contacting the Mendocino County Planning and Building Services and the California Department of Fish and Game (CDFG).

3. Parcel data from the County of Mendocino identifies Mr. Richard Holm and/or Holm Industries (hereinafter referred to as the Dischargers) as the property owners for the Site, composed of two parcels, APN numbers 027-051-02 (22 acres) and 027-031-02 (8 acres). The Global Positioning System coordinates for the Site are North 38°55.496' and W. 123°41.919'.

4. Hathaway Creek and an unnamed ephemeral stream on the property are both tributary to the Garcia River watershed. The Water Quality Control Plan for the North Coast Region (Basin Plan) recognizes that the beneficial uses of any

specifically identified water body generally apply to all its tributaries. The Basin Plan designates the following beneficial uses for the Garcia River watershed, and therefore its tributaries, including Hathaway Creek, as:

- Municipal and domestic supply
- Agricultural supply
- Industrial supply
- Freshwater Replenishment
- Navigation
- Water Contact Recreation
- Non-Contact Water Recreation
- Commercial and Sport Fishing
- Cold Freshwater Habitat
- Wildlife Habitat
- Rare, Threatened, or Endangered Species
- Migration of Aquatic Organisms
- Spawning, Reproduction, and/or Early Development
- Estuarine Habitat

5. The Garcia River watershed is listed as impaired under Section 303d of the Clean Water Act due to excessive sediment and elevated temperatures. On January 3, 2002, the Regional Water Board adopted the Action Plan for the Garcia River Watershed Sediment Total Maximum Daily Load (Garcia TMDL Action Plan) into the Basin Plan. The Regional Water Board is currently implementing the Garcia TMDL Action Plan to improve water quality conditions and restore fish habitat in the Garcia River Watershed.

6. To control existing and future sources of sediment delivery resulting from human activity to the Garcia River and its tributaries, the Garcia TMDL Action Plan provides landowners with three options to achieve compliance. The Holm Industries property is subject to the Option 1 waste discharge prohibitions.. Option 1, the default option, requires landowners to comply with the following two Garcia River Watershed Waste Discharge Prohibitions:

   I. The controllable discharge of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, gravel mining, agricultural, grazing, or other activity of whatever nature into waters of the State within the Garcia River watershed is prohibited.

   II. The controllable discharge of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, gravel mining, agricultural, grazing, or other activity to a location where such material could pass into waters of the State within the Garcia River watershed is prohibited..

7. On June 6, 2007, Paula Deeter of the Mendocino County Planning Department placed a Stop Work Order on the chained gate to the property along Windy

Hollow Road. The notification stated that the project was in violation of Section 20.532 of the Mendocino County Coastal Zone Code (MCCZC). The posted Stop Work Order requested that the Dischargers contact the County in order to address potential violations of County Code regulations.

8. On June 13, 2007, the Regional Water Board Staff met staff persons from the DFG and the Mendocino County Planning Department at the property in order to inspect the Site. Present during the inspection were: Jonathan Warmerdam from the Regional Water Board; Officer Kevin Joe, Tracie Nelson, and Rick Macedo from the DFG; and Paula Deeter from the Mendocino County Planning Department. State law allows peace officers from the DFG and any accompanying DFG biologists to access properties suspected of causing environmental damage or pollution. However, Water Code section 13267(c) requires either consent of the owner or possessor of the facilities, or a warrant duly issued pursuant to Title 13 of Part 3 of the California Code of Civil Procedure before any Regional Water Board staff may inspect facilities of any person to ascertain whether the purposes of the Porter-Cologne Water Quality Act are being met. Because Mr. Warmerdam of the Regional Water Board Staff had not obtained specific permission or a warrant to enter the Site, he was unable to access the property. Therefore, Staff are using photographic documentation and site evaluation and descriptions provided by the DFG personnel to help provide the basis for this Cleanup and Abatement Order (Order) (photographs are included at end of this Order).

9. The following activities have recently occurred on the Site: road reconstruction, watercourse crossing reconstruction, clearing of riparian and hillslope vegetation, inboard ditch construction, and stockpiling of sediment and debris. Additionally, the project may have included the filling of wetlands, sidecasting of fill material above Hathaway Creek that could potentially have resulted in a discharge into the water below, discharges of sediment during watercourse crossing reconstruction, and crossing of unstable landforms, causing, or threatening to cause, discharges of material from the hillside into the water below.

10. The road reconstruction begins at Windy Hollow Road and descends westward for approximately 60 feet until it crosses Hathaway Creek. The surface of the road is slightly crowned with drainage ditches on either side that lead to the watercourse. Beyond the watercourse crossing, the road turns northward and climbs the contour of the adjacent hillside for approximately 120 feet until it reaches a large switchback. A recently excavated inboard ditch drains along the length of this road segment. Beyond the switchback, the road turns back southward and continues to ascend the hillside for approximately 250 feet until it dead ends at a large clearing near the ridge.

11. Portions of the road are not adequately drained and/or sufficiently surfaced to minimize erosion, and will likely result in discharges of sediment to Hathaway

Creek during future storm events unless upgraded. Additional surface armoring and/or treatment of the road surface, inboard ditch, and disturbed soils should be implemented prior to the upcoming winter period in order to prevent sheet, rill, and gully erosion. Drainage of the road surface can be enhanced through commonly used techniques such as: crowning, insloping, outsloping, berm removal, rolling dips, or installation of ditch relief culverts. The road surface should also be stabilized through the addition of surfacing material to minimize erosion and sediment discharges.

12. There is a 24-inch culverted watercourse crossing within Hathaway Creek which was either recently installed during reconstruction of the road prism or reoriented at that time. Rust lines inside the culvert show that the pipe is slightly rotated in relation to stream flows suggesting that the culvert was either reoriented during the road grading activities or has been previously used in a different location and recently installed at this location. If the culvert has been previously used at this location, the fact that the rust lines are three-quarters up the side of the culvert also indicate that the culvert is undersized, and cannot adequately accommodate the high winter flows plus watershed products (100-year storm event) in Hathaway Creek. That the culvert is undersized is also supported by the fact that a landowner on a property upstream of the project (also on Hathaway Creek) who recently replaced a culvert, with permits, determined that it would be necessary to install a 48-inch culvert to in order to accommodate high winter flows. Because the culverted watercourse crossing on the Site was not installed according to current standards and best management practices, there is an increased potential for the culvert to become plugged during the winter period, causing Hathaway Creek to flow over the top the road prism, which would likely result in erosion of the recently graded road prism and sediment discharges into Hathaway Creek.

13. The reconstruction of the culverted watercourse crossing may have resulted in filling waters of the state, which requires either the Dischargers to obtain from the Regional Water Board either Waste Discharge Requirements or a Clean Water Act Section 401 (Water Quality Certification) if the fill occurs in waters of the United States and a Clean Water Act Section 404 Permit is obtained from the U.S. Army Corps of Engineers. The Regional Water Board has not issued either Waste Discharge Requirements or Water Quality Certification for the Project.

14. The activities described paragraphs 9-13, above, either have resulted in, or have the potential to result in, the discharge of soil, silt, or other organic and earthen material into Hathaway Creek in violation of the waste discharge prohibitions that apply within the Garcia River watershed, described in paragraph 6 above.

15. The California Department of Fish and Game has determined that activities on the property constitute violations of the following Fish and Game Codes sections:
    - FG 1602: Substantially change the bed, bank or channel of a stream.

- FG 5650(a)(6): Place material deleterious to fish, plant and bir life where it can pass into waters of the state.

16. Water Code section 13304, subdivision (a) provides: "Any person who has discharged or discharges waste into the waters of this state in violation of any waste discharge requirement or other order or prohibition issued by a regional board or the state board … shall upon order of the regional board, clean up the waste or abate the effects of the waste …"

17. The Erosion Control Plan required by this Order is necessary to ensure that the prior harm and future threat to water quality created by the activities described above are properly assessed, abated and controlled.

18. This is an enforcement action by a regulatory agency, being taken for the protection of the environment, and is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code, section 21000 et seq.) in accordance with California Code of Regulations, title 14, sections 15308 and 15321.

19. Failure to comply with the terms of this Order subjects the Dischargers to further enforcement action under the Water Code, including possible administrative civil liabilities under Water Code section 13350, subdivision (e), of up to five thousand dollars ($5,000.00) per day or ten dollars ($10) per gallon of waste discharged.

20. Any person affected by this action of the Regional Water Board may petition the State Water Resources Control Board (State Water Board) to review the action in accordance with Water Code section 13320 and title 23, California Code of Regulations, section 2050-2068. The State Water Board must receive the petition within 30 days of the date of this Order. Copies of the law and regulations applicable to filing petitions will be provided upon request. In addition to filing a petition with the State Water Board, any person affected by this Order may request the Executive Officer to reconsider this Order. To be timely, such request must be made within 30 days of the date of this Order. Note that even if reconsideration is sought, filing a petition with the State Water Board within the 30-day period is necessary to preserve the petitioner's legal rights. Additionally, if you choose to request reconsideration of this Order or file a petition with the State Water Board, be advised that you must comply with the Order while your request for reconsideration and/or petition is being considered.

THEREFORE, IT IS HEREBY ORDERED that, pursuant to Water Code section 13304:

The Dischargers shall perform the following cleanup and abatement actions:

1. Submit an Erosion Control Plan (ECP) for the Site by **August 15, 2007.** The ECP shall evaluate the entire Site and propose methods to address the potential sediment discharges to waters of the State. The ECP should identify all potential

sediment sources associated with the road surface and road prism, culverted watercourse crossing of Hathaway Creek, inboard ditches, sidecast material, stockpiled material, and any unstable areas on the Site. The ECP should provide recommended actions to address all identified potential sediment sources. The ECP shall be prepared by a California licensed or certified professional experienced in erosion control and watercourse crossing design (i.e. licensed engineer, professional geologist, registered professional forester, or Certified Professional in Erosion and Sediment Control).

2. For any proposed watercourse crossing reconstruction activities, submit an application for a water quality certification and/or Report of Waste Discharge Requirements for Dredge/Fill Projects (Enclosure 1), and appropriate processing fees, to the Regional Water Board, for Executive Officer concurrence, to cover activities associated with the ECP by **August 15, 2007**.

3. Following Executive Officer written concurrence, implement the ECP. The Workplan shall be implemented during the **summer season of 2007**, and must be completed by no later than **October 15, 2007**.

If, for any reason, the Dischargers are unable to perform any activity or submit any documentation in compliance with the deadlines in the ECP implementation schedule submitted pursuant to this Order and concurred with by the Executive Officer, the Dischargers may request, in writing, an extension of the time as specified. The written extension request shall include justification for the delay and shall be received by the Regional Water Board not less than 15 calendar days prior to the deadline sought to be extended. An extension may be granted for good cause, in which case this Order will be accordingly revised.

This Order in no way limits the authority of the Regional Water Board to institute additional enforcement actions or to require additional investigation and cleanup at the Site consistent with the Water Code.

Ordered by _____
Catherine E. Kuhlman
Executive Officer

Photograph 1: View of Project taken from Windy Hollow Road - June 4, 2007, Diana Henrioulle, NCRWQCB

Photograph 2: Inspection of Culverted Watercourse Crossing – June 13, 2007. Photo taken by Richard Macedo CDFG

Photograph 3: Perched fill material above crossing on Hathaway Creek – June 13, 2007. Photo taken by Richard Macedo, CDFG

Photograph 4: Interior View of rusted culvert on Hathaway Creek – June 13, 2007. Photo taken by Richard Macedo CDFG

Photograph 5: Westward view of inboard ditch draining into Hathaway Creek – June 13, 2007. Photo taken by Richard Macedo CDFG

Photograph 6: View of road and inboard ditch draining into Hathaway Creek – June 13, 2006, Ricard Macedo, CDFG

Photograph 7: View looking westward towards Hatahway Creek and Windy Hollow Road – June 13, 2007. Richard Macedo CDFG

Photograph 8: View of road and inboard ditch – June 13, 2007. Photo taken by Richard Macedo CDFG