



Linda S. Adams
Acting Secretary for
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California Regional Water Quality Control Board
North Coast Region
Geoffrey M. Hales, Chairman

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Edmund G. Brown, Jr.,
Governor

March 30, 2011

Mr. Charlie Fielder
District 1 Director
California Department of Transportation
P.O. Box 3700
Eureka, CA 95501-3700

Dear Mr. Fielder:

Subject: **Notice of Violation**
Proposed Highway 101 Willits Bypass Project

File: CDOT - Highway 101 Willits Bypass Project
WDID No. 1B10019WNME

Introduction

In recent months the California Department of Transportation (Caltrans) has violated multiple sections of the California Water Code and the Clean Water Act while conducting demolition activities associated with the Highway 101 Willits Bypass Project (Project). *Regional Water Board Notice of Violation*, dated August 26, 2010 (WDID No. 1B10019WNME). In addition, soil assessment investigations associated with the off-site mitigation parcels have triggered notifications requirements to the North Coast Regional Water Quality Control Board (Regional Water Board) and waste characterization requirements in accordance with the conditions of the *Clean Water Act Section 401 Water Quality Certification* (401 Certification), issued on August 6, 2010.

401 Certification Violations:

On July 29, 2010, Caltrans conducted soil assessments on the Ford Parcel (108-010-06) wetland establishment site and discovered lumber waste, burnt wood, and ash. Caltrans should have properly notified the Regional Water Board about the discovery of potentially hazardous materials in light of advanced warning from Regional Water Board staff in July, 2010, and after receiving the 401 Certification issued on August 6, 2010. Therefore, the lack of proper notification and disposal work plan constitutes a violation of Condition 44 of the 401 Certification.

- A. Condition 44. *Any potentially hazardous waste(s) (solids, liquids, or slurries) derived or encountered in this project shall undergo the appropriate characterization to demonstrate compliance with all applicable waste disposal laws and regulations. If unanticipated or anticipated waste are encountered or created during the project, Caltrans shall notify the Regional Water Board immediately and at least within 24 hours. Caltrans or their contractor shall prepare applicable work plans for handling, treating, transporting, and disposing of waste. The work plans shall be prepared and signed by an engineer or geologist with the appropriate and valid California licenses.*

The information presented in the Caltrans' Soils Memo (August 10, 2010), the response to USEPA (August 26, 2010), and correspondence with Caltrans (September 28, 2010) fails to adequately consider how the lumber waste, burnt wood, and ash discovered may adversely affect the quality and/or beneficial uses of Waters of the State and any potential wetland establishment site. Currently, the level of assessment at the Ford Parcel is not sufficient to alleviate the Regional Water Board's concerns related to proper waste characterization, disposal, and wetland establishment.

Condition 45 requires Caltrans to provide analysis and verification that non-hazardous waste or inert materials will not result in the degradation of water quality, human health, or the environment. Therefore, planning to incorporate inadequately characterized waste within the bypass alignment or within a proposed wetland establishment site without authorized verification from the Regional Water Board constitutes violations of conditions 44 and 45 of the 401 Certification.

- B. Condition 45. *Caltrans shall provide analysis and verification that placing non-hazardous waste or inert materials (which may include discarded product or recycled materials) will not result in degradation of water quality, human health, or the environment. All project-generated waste shall be handled, transported, and disposed in strict compliance with all applicable State and Federal laws and regulations. When operations are complete, any excess material or debris shall be removed from the work area and disposed of properly and in accordance with the Special Provisions for the project and/or Standard Specification 7-1.13, Disposal of Material Outside the Highway Right of Way. Caltrans shall submit to the Regional Water Board the satisfactory evidence provided to the Caltrans Engineer by the Contractor referenced in Standard Specification 7-1.13. In accordance with State and Federal laws and regulations, Caltrans is liable and responsible for the proper disposal of waste generated by their project.*

Conclusions:

Regional Water Board staff is considering follow-up enforcement actions at this time, including administrative civil liability, and will consider Caltrans' timeliness in correcting

these violations in determining the appropriate enforcement actions to take or to recommend to the Regional Water Board.

Any person failing to provide technical reports containing information required or falsifying any information in the technical reports is, pursuant to Water Code Section 13268, guilty of a misdemeanor and may be subject to administrative civil liabilities of up to one thousand dollars (\$1,000.00) for each day in which the violation occurs. Any person failing to clean up or abate threatened or actual discharges as required by the Regional Water Board, pursuant to Water Code section 13385, are subject to administrative civil liabilities of up to five thousand dollars (\$5,000.00) per day or ten dollars (\$10) per gallon of waste discharged. Any person discharging waste into navigable waters of the United States without waste discharge requirements is, pursuant to Water Code Section 13385(c), subject to administrative civil liabilities of up to ten thousand dollars (\$10,000.00) per day in which the discharge occurs plus ten dollars (\$10.00) per gallon of waste discharged, and may also be subject to criminal prosecution pursuant to Water Code Section 13387.

If you have any questions regarding this matter, please contact Mark Neely of my staff at (707) 576-2689 or by email at MNeely@waterboards.ca.gov.

Sincerely,

Catherine Kuhlman
Executive Officer

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Certified-Return Receipt Requested

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