
North Coast Regional Water Quality Control Board

April 5, 2016

Mr. Jere Kleinbach
Noyo Harbor District
19101 South Harbor Drive
Fort Bragg, CA 95437

Dear Mr. Kleinbach:

Subject: Notice of Violation of Your September 9, 2015 Clean Water Act Section 401 Water Quality Certification (Water Quality Certification) and Regional Water Board Order No. 86-51

File: Noyo Harbor Mooring Basin Maintenance Dredging Project
WDID No. 1B15106WNME, ECM PIN CW-81762

Please be advised that the Noyo Harbor District has violated provisions of the California Water Code and the Clean Water Act, due to discharges from the District's dredge material upland disposal site in violation of provisions of its Water Quality Certification and Waste Discharge Requirements issued by the North Coast Regional Water Board. This letter directs you to provide a plan and schedule by May 15, 2016, to take steps to prevent future such violations again using the upland disposal site for dredge material dewatering.

Background

Regional Water Board staff understand that on October 1, 2015, the Noyo Harbor District began conducting permitted dredging operations at their mooring basin location at approximately latitude 39.424074°N and longitude 123.801380°W. Operations included using a suction head dredge that pumped dredged material to the approved permitted upland dredged material dewatering and temporary storage site (facility). Operations were discontinued on October 31, 2015.

On December 8, 2015, SHN Consulting Engineers and Geologists, Inc. submitted a dredge effluent monitoring report for compliance with reporting requirements of the Order and certification. The monitoring report indicated that over the course of the dredging

operations, the District recorded numerous effluent limitation and receiving water violations. Specifically, monitoring pursuant to requirements of Regional Water Board Waste Discharge Requirements Order No. 86-51 (WDRs) documented unauthorized discharges of suspended solids on October 9, 12, 19, and 28. Additionally, monitoring showed turbidity levels in excess of authorized discharge limits of 20 percent above background during 22 of the 37 monitoring events (turbidity measurements were taken two times daily when dredging occurred). At no time during dredging operations did the District report these exceedances to the Regional Water Board.

The SHN report also indicates that the water level in the upland disposal site dropped on October 28, 2015. In response, the District reportedly deployed best management practices in the structure including installation of filter fabric and gravel behind the structure for stability. However, again, the District did not report this incident to the Regional Water Board. The SHN report indicates that a preliminary inspection of the facility conducted by your consultant on November 5, 2015 identified possible structural deficiencies at the facility.

Applicable Requirements and Alleged Violations

The Regional Water Board's September 9, 2015 Water Quality Certification for the dredging project (Certification) condition #6, states "...The Applicant shall comply with Regional Water Board Order No. 86-51 Waste Discharge Requirements for U.S. Army Corps of Engineers and the Noyo Harbor District Maintenance Dredging, Noyo Harbor, including associated monitoring and reporting."

The monitoring and reporting requirements of WDRs Order No. 86-51 identify effluent monitoring constituents Suspended Solids (mg/l), Settleable Solids (ml/l/hr) and Turbidity (NTU) and receiving water monitoring constituent Turbidity (NTU).

The WDRs identify the following effluent limitations, not to be exceeded:

Constituent	Units	30-Day Average	Max at anytime
Suspended Solids	mg/l	30	60
Settleable Solids	ml/l/hr	---	1.0

The WDRs further prohibit waste discharges that cause Turbidity of Noyo Bay to be increased more than 20 percent above naturally occurring background levels.

As noted above, the District's monitoring document multiple exceedances of the effluent limitations for suspended solids and the receiving water limitations for turbidity.

Certification condition #11 states: "If, at any time, an unauthorized discharge to surface water (including wetlands, lakes, rivers or streams) occurs, or any water quality problem arises, the associated Project activities shall cease immediately until adequate BMPs are

implemented including stopping work. The Regional Water Board shall be notified promptly and in no case more than 24 hours after the unauthorized discharge or water quality problem arises.”

As noted above, at no time during the course of the dredging operation did the District report to the Regional Water Board the documented water quality violations, nor did the District report to the Regional Water Board the drop in water level in the upland disposal site necessitating implementation of BMPs.

Finally, Provision #5 of the Order No. 86-51 states that, “The discharger shall maintain in good working order and operate as efficiently as possible any facility or control system installed by the discharger to achieve compliance with the waste discharge requirements.”

As noted above, your consultant reports identifying possible structural deficiencies in the upland disposal site.

The monitoring and reporting requirements of both Order No. 86-51 and the Certification are designed to be protective of water quality and to inform the Harbor District as to the effectiveness of the facility for dewatering dredged material. Exceedance of effluent limitations and violation of receiving water limit prohibitions not only violate the Certification and WDR Order conditions, but represent unauthorized discharges of waste in violation of the Clean Water Act and Porter-Cologne Water Quality Control Act (Water Code). Be advised that violations of the Clean Water Act and Water Code are subject to enforcement action, including assessment of penalties on a per gallon and per day basis, and can range as high as \$10,000/day per violation and \$10/gallon for discharge violations.

Recommended Actions

The upland disposal facility is designed to settle dredged solids and filter liquid fraction so that the discharge to Noyo Bay does not exceed effluent and receiving water limitations. Any exceedances to these limitations (unauthorized discharge) could signify that there are problems with the facility that require stopping dredging operations, repairing the facility, or implementing additional Best Management Practices (BMPs) in order to maintain liquid fraction constituent levels within authorized discharge limitations. Turbidity measurements monitored in real-time best achieve immediate notification and feedback of effectiveness of the facility, and allow you to respond and address problems quickly to minimize adverse impacts to receiving waters. Chronic violations of the effluent and receiving water limits call into question the effectiveness of the dewatering facility for future use for dredged material, in its current state. The District’s failure to take effective corrective action in response to the chronic exceedances call into question the District’s conduct and culpability in this matter, factors that the Regional Water Board considers in recommending and/or assessing penalties.

We are continuing to review this matter and will consider potential additional enforcement action associated with the violations which occurred during the October 2015 dredging event. However, we also understand that the U.S. Army Corps of Engineers plans to dredge the main channel at Noyo Harbor in 2016, with the expectation of placing dredged material in the upland disposal site for dewatering. This proposed project is subject to authorization by the Regional Water Board, and we expect that approval to use the upland site will be contingent on a demonstration that the upland site is in good repair and capable of serving its intended function to ensure that the effluent from the facility meet permit limits. We further expect to include increased reporting frequency during authorized dredging operations to allow our staff to review performance, compliance, and any corrective measures being taken to ensure permit compliance while dredging is underway.

Accordingly, we require that by no later than **May 15, 2016**, you provide us with a plan and schedule to conduct a thorough inspection and evaluation of the facility, identify corrective actions with time schedules and implement any appropriate corrective actions or additional Best Management Practices to show that future use would not exceed effluent limitations. Work will need to be completed prior to any further use for dredge material dewatering.

Submit the plan and schedule to Gil Falcone of the Regional Water Board staff at Gil.Falcone@waterboards.ca.gov. If you have questions regarding this Notice of Violation, you may contact Gil Falcone by email or by telephone at (707) 576-2830.

Sincerely,

Shin-Roei Lee
Assistant Executive Officer

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Certified Mail Return Receipt Required

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