
North Coast Regional Water Quality Control Board

April 13, 2016

California Regional Water Quality Control Board North Coast Region

13267 INVESTIGATIVE ORDER R1-2016-0023

DIRECTING CALIFORNIA DEPARTMENT OF TRANSPORTATION DISTRICTS 1, 2, AND 4 TO SUBMIT A TECHNICAL REPORT PERTAINING TO MAINTENANCE OPERATIONS IN THE NORTH COAST REGION:

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

- 1. Legal and Regulatory Authority:** This California Water Code (Water Code) section 13267 Investigative Order (Order) conforms to and implements policies and requirements of the *Porter-Cologne Water Quality Control Act* (Division 7, commencing with California Water Code section 13000) including section 13267, and the *Water Quality Control Plan for the North Coast Region* (Basin Plan) adopted by the Regional Water Board including beneficial uses, water quality objectives, and implementation plans. The Regional Water Board has the authority to investigate discharges of waste or suspected discharges of wastes to waters of the United States and waters of the state pursuant to Water Code section 13267. Any discharge of waste to waters of the United States is unlawful unless in compliance with the federal Clean Water Act (33 U.S.C. § 1311 et seq.). Such an unlawful discharge of waste may subject a person to up to \$10,000 a day and \$10 per gallon of discharge not cleaned up over 1,000 gallons pursuant to Water Code section 13385.
- 2. Responsible Party and the Project:** The California Department of Transportation (Caltrans) owns and operates roadways and maintenance facilities throughout the North Coast Region. Discharges of storm water and non-storm water from these facilities are conditionally authorized by the State Water Resources Control Board through Water Quality Order No. 2012-0011-DWQ, National Pollution Discharge Elimination System (NPDES) Order No. CAS000003, Statewide Storm Water Permit Waste Discharge Requirements (WDRs) for State of California Department of Transportation (Statewide Storm Water Permit).

3. **Caltrans Maintenance:** Caltrans maintenance crews regularly work with materials that may become pollutants if discharged to waters of the state. Such materials include herbicides, soil, street sweeping waste, asphalt concrete grindings, animal carcasses, and thermoplastic. The Statewide Storm Water Permit includes requirements that address the handling and disposal of these potential pollutants.
4. **SWMP:** The Statewide Storm Water Permit requires Caltrans to implement the requirements of the Statewide Storm Water Permit in a Storm Water Management Plan (SWMP). The most recent SWMP approved by the State Water Board is dated May 2003. A revised SWMP has been submitted to, but not yet approved by the State Water Board.
5. **Herbicide Use:** Caltrans uses herbicides within its right-of-way to control vegetation. The Statewide Storm Water Permit specifies measures to prevent and minimize discharge of herbicides to waters of the state, including that Caltrans assess site-specific and application specific conditions to prevent discharge, including the following variables:
 - A. Expected precipitation events, especially those with the potential for high intensity;
 - B. Proximity to water bodies;
 - C. Intrinsic mobility of the chemical;
 - D. Application method, including any tendency for aerial dispersion;
 - E. Fate and transport of the chemical after application;
 - F. Effects of using combinations of chemicals; and
 - G. Other conditions as identified by the applicator.

The 2003 SWMP notes that each Caltrans district shall prepare a "Vegetation Management Plan" (VMP) to implement Caltrans's statewide "Vegetation Control Program." The SWMP also specifies for preparation of "Vegetation Control Plans (VCPs)," but it is unclear in the SWMP whether VCPs and VMPs are two distinct plans or considered the same plan¹. According to the SWMP, both the VCPs and VMPs shall include, among other things, elements that require application of herbicides in a manner that minimizes or eliminates the discharge of herbicides to receiving waters. The SWMP specifies that District VMPs shall include a "herbicide use plan" that includes various measures, including, "[F]actors considered in developing a plan for herbicide use include timing in relation to expected precipitation events, proximity to water bodies, and the effects of using combinations of chemicals."

¹ The revised, unapproved July 2012 SWMP abandons VCP in favor of VMP, yet the July 2014 Maintenance Manual, Chapter C2, uses VCP rather than VMP.

The SWMP also notes that “[E]ach Department District will submit its proposed vegetation control program that includes its herbicide use plan to the RWQCBs by May 15 of each year.” While the Regional Water Board receives annual herbicide use types and amounts from Caltrans Districts 1, 2, and 4, we have not yet received an herbicide use plan that includes herbicide use guidelines employed by maintenance staff.

The Regional Water Board does not know what specific herbicide pollution prevention control measures Caltrans maintenance staff in District’s 1, 2, and 4 are following to implement the Statewide Storm Water Permit, SWMP, and to prevent and minimize the discharge of herbicides to receiving waters.

6. **Stockpiles:** The Statewide Storm Water Permit makes a distinction between temporary and permanent stockpile locations; storm water pollution prevention plans for permanent stockpile locations shall be addressed in a corresponding Facility Pollution Prevention Plan, whereas temporary stockpile locations shall implement the applicable best management practices (BMPs) defined in the Caltrans Stormwater Quality Handbook Maintenance Staff guide.

On December 2, 2015, Regional Water Board staff observed two stockpile locations in Mendocino County on State Route 128 that were not protected with erosion control, did not have sediment control, and were nearby waters of the state immediately prior to a forecast rain event. We have included an inspection memo that provides details, including photographs (see Attachment).

7. **Animal Carcasses:** On December 2, 2015, Regional Water Board staff observed a concentrated area of animal carcasses and parts adjacent State Route 128 at a maintenance stockpiling area. We have included an inspection memo that provides details, including photographs (see Attachment). Animal carcasses were placed either directly into waters of the state, or in locations where they could affect waters of the state. Decaying animal carcasses and/or parts may cause or contribute to exceedances of applicable water quality objectives in the waters of the state (e.g., pathogens, nutrients, dissolved oxygen), especially when placed in a concentrated manner. The Statewide Storm Water Permit prohibits discharge of such waste into waters and to locations where it may affect waters of the state. Additionally, the state Porter-Cologne Water Quality Control Act section 13260(a) requires that any person discharging waste or proposing to discharge waste within any region that could affect the quality of waters of the state, other than into a community sewer system, shall file with the appropriate regional water board a Report of Waste Discharge containing such information and data as may be required by the Regional Water Board.

Additionally, section 91.8 was added to the California Streets and Highways Code in 2008 to address Caltrans disposal of animal carcasses from its right-of-way. The code requirements include that:

- (a) *The department shall, within its maintenance program, establish procedures for the removal and disposal of animal carcasses on state highways;*
- (d) *Animal carcasses shall not be relocated to or disposed of within 150 feet of waterways or drainage ways that lead directly to waterways, or buried within five feet of groundwater; and*
- (e) *The department shall maintain a record of designated disposal sites used for consolidation of animal carcasses.*

Caltrans July 2014 Maintenance Manual includes the following guidance to maintenance staff in the disposal of animal carcasses:

Each Area Superintendent should establish a procedure for the removal of dead animals from the State right of way. In some areas, there are local animal control agencies that handle injured, dying, or dead animals. If such a service is available, make arrangements to utilize their services through an agreement or service contract. When such services are not available, the Superintendent should select the most reasonable form of disposal, including authorized dumps or burial, considering local rules and regulations.

Regional Water Board has not identified any other guidance or protocol for Caltrans maintenance staff to address the disposal of animal carcasses. Caltrans's implementation of section 91.8 is crucial to ensuring water quality protection.

8. **Technical Report Pursuant to Water Code Section 13267:** This Order requires Caltrans to submit technical reports pursuant to Water Code section 13267. The technical reports are necessary for the Regional Water Board to evaluate the nature, extent, circumstances, and impacts from the discharges and/or threatened discharges emitted from the Project to waters of the state and United States. The technical reports required are needed to provide information to the Regional Water Board to determine (a) presence of pollutants of concern from Caltrans property, (b) the threat to public health and the environment posed by the potential pollutants of concern and (c) compliance with Provisions A.1, A.3, A.5, A.7, and B.1 of the Statewide Storm Water Permit. The burden of providing the required reports is significantly outweighed by the need for the reports, the costs, and the benefits to be obtained from the reports.
9. **IT IS HEREBY ORDERED,** pursuant to California Water Code section 13267, that the Discharger shall submit the following technical reports to the Regional Water Board in response to the above findings as follows:

- A. Caltrans Districts 1, 2, and 4 shall provide current VCPs and/or VMPs that include herbicide use plans detailing the specific protocol followed by maintenance staff in the application of herbicides to prevent and minimize discharges of herbicides to waters of the state. Caltrans shall note whether there are variations in protocol between maintenance regions within the district. If there are variations between maintenance regions within your district, then current individual herbicide use plans shall be provided for the respective region(s). Caltrans shall note the date the respective VCP/VMP was prepared. Caltrans only needs to provide information for maintenance regions that operate within the Regional Water Board jurisdiction.
- B. Caltrans District 1 shall provide a detailed report to address the findings and observations include in the attached inspection memo regarding the stockpiles. The report shall include:
1. A summary of findings and corrective actions taken in response to the Regional Water Board's December 3, 2015, telephone notification;
 2. The date response actions were taken;
 3. Photographs of current conditions at the two locations;
 4. Caltrans assessment of site conditions and whether maintenance protocol had been appropriately followed. If shortcomings in procedure or protocol were found, describe those shortcomings and describe actions Caltrans will implement to prevent their reoccurrence;
 5. An explanation of the origin of the asphalt grinding stockpile and a description of all analytical testing and other protocol used to evaluate the environmental risk of the material, given the presence of yellow thermoplastic; and
 6. An explanation of the origin of the dirt stockpiles observed at post-mile 43, the reason for their placement at that location, and the final destination of the dirt.
- C. Caltrans Districts 1, 2, and 4 shall describe their District's storm water pollution prevention controls for maintenance-generated stockpiles and their effectiveness.
- D. Caltrans Districts 1, 2, and 4 shall provide animal carcass disposal procedures from every maintenance region within their district, operating within the jurisdiction of the Regional Water Board. Caltrans shall also provide the date the procedures became effective. If the procedures became effective after December 2, 2015, Caltrans shall also provide the procedures that were previously in place. If Caltrans has implemented other procedures to comply with section 91.8 of the California Streets and Highways Code, please provide documentation of these procedures.

The above reports and required documentation shall be submitted no later than May 27, 2016.

10. **Provisions**

- A. **Use of Registered Professionals:** Caltrans shall provide documentation that its technical report was prepared under the direction of appropriately qualified professionals. In preparing the technical report required by this Order, any engineering or geologic evaluations and judgments must be performed by or under the direction of registered professionals pursuant to California Business and Professions Code sections 6735, 7835, and 7835.1. A statement of qualifications and registration numbers of the responsible lead professional shall be included in the report submitted by the Districts. The lead professional shall sign and affix his or her registration stamp to the report.
- B. **Qualified Professionals:** Caltrans' reliance on qualified professionals promotes proper planning, implementation, and long-term cost-effectiveness of investigation, and cleanup and abatement activities. Professionals shall be qualified, licensed where applicable, and competent and proficient in the fields pertinent to the required activities.
- C. **Signatory Requirements:** The technical report shall be signed and certified by either a principal executive officer, ranking elected official, or the person with overall responsibility for environmental matters for the District. Additional reports submitted in support of the technical report must be signed by the principal author.
- D. **Certification Statement:** Any report submitted in response to this Order shall include the following perjury statement:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

E. **Report Submittal:** The technical report shall be submitted electronically to:

Shin-Roei Lee, Assistant Executive Officer
North Coast Regional Water Quality Control Board
NorthCoast@waterboards.ca.gov

If the report cannot be sent by email, it shall be submitted electronically on a compact disc to the following address:

Ms. Shin-Roei Lee
North Coast Regional Water Quality Control Board
5550 Skylane Blvd., Suite A
Santa Rosa, CA 95403

11. Notifications

- A. **Enforcement Discretion:** The Regional Water Board and the State Water Board reserve their rights to take any enforcement action authorized by law for violations of the terms and conditions of this Order. Furthermore, compliance with this Order is wholly distinct from any possible enforcement that may follow from the discharges themselves, pursuant to violations of the California Water Code or other orders issued by the Regional Water Board or State Water Board.
- B. **Enforcement Notification:** Pursuant to California Water Code section 13268, failure to submit the required technical reports as required by Water Code section 13267(b), or falsifying any information provided therein, may result in the imposition of administrative civil liability up to \$1,000 per violation per day. Any actual unauthorized discharge to waters of the United States may subject the Discharger to up to \$10,000 for each day of discharge, and \$10 for each gallon over 1,000 gallons not cleaned up pursuant to Water Code section 13385. The Regional Water Board reserves its rights to take any further enforcement action authorized by law.
- C. **California Environmental Quality Act Compliance:** The issuance of this Order is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations, section 15306. The submission of technical information does not constitute a project with environmental impacts.
- D. **Appeal Notification:** Any person aggrieved by this action of the Regional Water Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must receive the petition by

5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at: http://www.waterboards.ca.gov/public_notices/petitions/water_quality or will be provided upon request.

It is hereby ordered.

Shin-Roei Lee
Assistant Executive Officer

April 13, 2016

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Attachment: Inspection Memo dated December 10, 2015