

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

CLEANUP AND ABATEMENT ORDER NO.R5-2004-0716

FOR
BELL SOUTH L.L.C.,
BELL SOUTH COMMERCIAL DEVELOPMENT PROJECT
SACRAMENTO COUNTY

This Order is issued to Bell South L.L.C. based on provisions of California Water Code Section 13304, which authorizes the Regional Water Quality Control Board, Central Valley Region (Regional Board) to issue a Cleanup and Abatement Order (Order).

The Executive Officer of the California Regional Water Quality Control Board, Central Valley Region, finds that:

1. Bell South L.L.C. (hereafter Discharger) is the owner and developer of approximately 8-acres of the land known as Bell South Commercial Development in the City of Elk Grove, Sacramento County. The site is located at the southwest corner of the intersection of Elk Grove–Florin Road and Bond Road. Runoff from the site discharges to Laguna Creek, a perennial drainage with the banks lined with aquatic and riparian vegetation.
2. On 19 August 1999, the State Water Resources Control Board (State Board) adopted NPDES General Permit No. CAS000002, Order No. 99-08-DWQ, implementing the Waste Discharge Requirements (WDRs) for storm water discharges associated with construction activity. General Order No. 99-08 DWQ requires that dischargers of storm water to surface waters associated with construction activity including clearing, grading, and excavation activities file a Notice of Intent (NOI) to obtain coverage under the General NPDES permit, and to implement Best Available Technology Economically Achievable and Best Conventional Control Technology to reduce storm water pollution. The Discharger submitted an NOI for coverage under the General Permit in March 2003 and received confirmation and WDID No. 5S34C321293 on 30 April 2003.
3. Clean Water Act (CWA) Section 404 requires any person proposing to discharge dredged or fill material into navigable waters of the United States to obtain a Section 404 permit prior to such discharge. California Water Code (CWC) Section 13376 requires any person who is proposing to discharge pollutants or dredged or fill material into waters of the state to submit a report of waste discharge pursuant to CWC section 13260 prior to such discharge.
4. Regional Board staff received information on 11 May 2004 from Army Corps of Engineers (Corps) staff that the Discharger disturbed approximately 700 linear feet of bank along Laguna Creek, discharging fill material to Laguna Creek. Regional Board staff inspected the site on 12 May 2004 and observed sediment that had been discharged to Laguna Creek. The Discharger had cleared shrubs and excavated the banks of Laguna Creek, failed to implement best management practices causing sediment to discharge to Laguna Creek. Laguna Creek is a

water of the state and a navigable water of the United States. According to the Corps, the Discharger failed to obtain a CWA Section 404 permit prior to the discharge of fill material to Laguna Creek. The Discharger also failed to submit a report of waste discharge prior to such discharge to Laguna Creek. The Discharger violated CWC Sections 13260 and 13376 for discharging waste and pollutants and dredged or fill material to waters of the State and the United States without submitting a Report of Waste Discharge and obtaining waste discharge requirements.

5. On 15 May 2004, staff of the Department of Fish and Game (DFG) inspected the Bell South Commercial Development area. DFG staff observed fill placed within the stream zone of Laguna Creek, in violation of Fish and Game Code Sections 1602 (a) (B) and 5650 (a) (6). As a result, DFG staff issued a Stop Work Order – Notice of Violation letter. The letter stated construction work could not commence until a plan for corrective measures is approved by DFG and other jurisdictional agencies.
6. On 25 May 2004, the Corps issued a Cease and Desist letter for violation of the CWA and notified the Discharger to cease and desist from any additional discharge of fill material. The Discharger was also informed that prior to any discharge of dredge or fill material into waters of the U.S. including wetlands, a CWA Section 404 permit is required.
7. On 26 May 2004, Regional Board staff issued a Notice of Violation (NOV) for the violations observed on 15 May 2004. The NOV required the submittal of a revised Storm Water Pollution Prevention Plan (SWPPP) and a Cleanup Activities Plan describing the methods proposed to clean up the sediment discharged to Laguna Creek by 11 June 2004. The NOV required a written summary calculating the duration and amount of fill discharged and the events that led to the discharge.
8. On 10 June 2004, the Discharger submitted a revised SWPPP and a Cleanup Activities Plan. The plan identified Best Management Practices (BMPs) and aquatic restoration techniques to reestablish native habitat that was destroyed by construction activities.
9. On 15 July 2004, the Discharger submitted a letter stating that about 700 linear feet averaging 1.5 feet in width, or 0.024 acres of waters of the U.S., were impacted during the movement of soil by the excavator and approximately 3.23 cubic yards of soil discharged to Laguna Creek.
10. On 22 June 2004, DFG staff issued a letter approving the Cleanup Activities Plan and the SWPPP. On 9 July 2004, Regional Board staff also issued a letter approving the plan and the SWPPP. However, both DFG and Regional Board staff letters indicated implementation of the Cleanup Activities Plan could only commence if Corps approval was received.
11. On 22 September 2004, nine days prior to the beginning of the rainy season (1 October), Regional Board staff inspected the Bell South Commercial Development area and observed the Discharger has failed to implement the Cleanup Activities Plan. Failure to implement this plan prior to the rainy season represents a threat to the water quality in Laguna Creek.

12. The *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins, Fourth Edition*, (hereafter Basin Plan) designates beneficial uses, establishes water quality objectives, contains implementation programs for achieving objectives, and incorporates by reference plans and policies adopted by the State Water Resources Control Board. The Basin Plan identifies the beneficial uses applicable to the Cosumnes River and its tributaries. Laguna Creek is a tributary to the Cosumnes River. The designated beneficial uses are: municipal and domestic supply; agriculture; industry; recreation; freshwater habitat; cold water migration; spawning; and wildlife habitat.

13. Section 13304(a) of the California Water Code provides that:

“Any person who has discharged or discharges waste into waters of this state in violation of any waste discharge requirements or other order or prohibition issued by a regional board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance, shall upon order of the regional board clean up such waste or abate the effects thereof or, in the case of threatened pollution or nuisance, take other necessary remedial action. Upon failure of any person to comply with such cleanup or abatement order, the Attorney General, at the request of the board, shall petition the superior court for that county for the issuance of an injunction requiring such person to comply therewith. In the suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the fact may warrant.”

14. Section 13304(c)(1) of the California Water Code provides that:

“If the waste is cleaned up or the effects of the waste are abated, or, in the case of threatened pollution or nuisance, other necessary remedial action is taken by any governmental agency, the person or persons who discharged the waste, discharges the waste, or threatened to cause or permit the discharge of waste within the meaning of subdivision (a), are liable to that governmental agency to the extent of the reasonable costs actually incurred in cleaning up the waste, abating the effects of the waste, supervising the cleanup or abatement activities, or taking other remedial action. The amount of the costs is recoverable in a civil action by, and paid to, the governmental agency and state board to the extent of the latter’s contribution to the cleanup costs from the State Water Pollution and Abatement Account or other available funds.”

15. Section 13267(b) of the California Water Code provides that:

“In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste outside of its region that could affect the quality of waters of the state within its region shall furnish, under penalty of perjury, technical or monitoring program

reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports.”

16. The technical reports required by this Order are necessary to assure compliance with this Order and to protect the waters of the state. Existing data and information about the site indicates that waste has been discharged or may continue to be discharged at the property, which is currently owned and operated by the discharger named in this Order.
17. The Basin Plan lists specific water quality objectives for inland surface waters. These objectives include limitations on sediment, settleable and suspended material, and turbidity. Based on staff observations, the Discharger’s construction activities have discharged waste, e.g., sediment and soil, into surface waters and surface water drainage courses and placed waste in areas where it threatens to discharge into surface water drainage courses during subsequent storm events. The discharge of waste and pollutants to Laguna Creek has created a condition of pollution and threatens to continue to create a condition of pollution or nuisance when earthen materials are transported in stormwater during the upcoming rainy season to downstream receiving waters increasing levels of sediment, settleable and suspended material, and turbidity.
18. The issuance of this Order is an enforcement action taken by a regulatory agency and is exempt from the provisions of the California Environmental Quality Act, pursuant to Section 15321(a)(2), Title 14, California Code of Regulations.
19. Any person adversely affected by this action of the Regional Board may petition the State Water Resources Control Board (State Board) to review the action. The petition must be received by the State Board within 30 days of the date of this Order. Copies of the law and regulations applicable to filing petitions may be found on the Internet at www.swrcb.ca.gov/rwqcb5 or will be provided upon request.

IT IS HEREBY ORDERED THAT, pursuant to Sections 13267 and 13304 of the California Water Code, Bell South L.L.C. shall:

1. Clean up and abate, forthwith, the condition of soil materials discharged or placed into Laguna Creek.
2. Compliance with No. 1 above shall include, but not necessarily be limited to, the following measures:
 - (a) Clean up all soil discharged to Laguna Creek from the construction activities.
 - (b) Stabilize the banks of Laguna Creek disturbed by the construction activities
 - (c) **By 8 October 2004**, revise and submit the Cleanup Activities Plan originally submitted on 10 June 2004. Ensure the Cleanup Activities Plan includes a time schedule for

submittal of a final report that addresses the impacts of the discharge, demonstrates completion of the plan, and evaluates the effectiveness of the cleanup.

- (d) **By 15 October 2004** complete the implementation of the Cleanup Activities Plan. The Discharger shall provide staff access to areas of the property, as needed.
- (e) **By 15 October 2004**, implement the BMPs identified in your SWPPP.
3. If requested, reimburse the Regional Board for reasonable costs associated with oversight of actions taken in response to this Order. **By 15 October 2004** submit the name and address to be used for billing purposes for oversight charges.
4. If in the opinion of the Executive Officer the Discharger fails to comply with the provisions of this Order, the Executive Officer may refer this matter to the Attorney General for judicial enforcement or issue a complaint for Administrative Civil Liability.
5. Failure to comply with a cleanup and abatement order or the dates specified may result in further enforcement actions, including actions under section 13350, 13385, and 13387 of the California Water Code, which allows for administrative civil liability up to a maximum of twenty five thousand dollars (\$25,000) for each day of violation.

THOMAS R. PINKOS, Executive Officer

(Date)