



California Regional Water Quality Control Board San Diego Region



Winston H. Hickox
Secretary for
Environmental
Protection

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CERTIFIED MAIL NO. 7099 3400 0016 5764 9123 (RETURN RECEIPT REQUESTED)

April 11, 2003

Pioneer Builders Inc.
Attn: Paul Douglas
c/o Pacific Environmental Planning
33862 Barcelona Place
Dana Point, California 92629

CLEANUP AND ABATEMENT ORDER NO. R9-2003-0158

Dear Mr. Douglas:

Enclosed is California Regional Water Quality Control Board, San Diego Region (Regional Board) Cleanup and Abatement Order (CAO) No. R9-2003-0158 concerning unauthorized discharges of fill material into an unnamed waters of the State in the Capistrano Beach community of the City of Dana Point (San Juan Hydrologic Unit).

The CAO is issued pursuant to California Water Code section 13304 and directs you to clean up all wastes and abate the effects associated with the discharges from the proposed Castillo del Mar Project. Please note the deadlines contained within the CAO. Failure to meet the deadlines may subject you to further enforcement action by the California Regional Water Quality Control Board, San Diego Region, including administrative or judicial proceedings for the assessment of civil liability in amounts of up to \$10,000 per day; referral to the State Attorney General for injunctive relief; and, referral to the District Attorney for criminal prosecution.

You may contest the issuance of this CAO by requesting a public hearing on the matter before the Regional Board. In order to schedule a hearing meeting, this office must receive a written request no later than 5 PM on April 22, 2003. The next scheduled meeting of the Regional Board is May 14, 2003. Be aware that a request for a hearing does not stay any of the deadlines in the CAO.

I strongly urge a prompt and complete response to each directive in CAO No. R9-2003-0158. Please contact Mr. Jeremy Haas of my staff at (858) 467-2735 if you have any questions regarding this matter.

Respectfully,

JOHN H. ROBERTUS
Executive Officer

California Environmental Protection Agency

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CC: Donna Cobb
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San Diego, CA 92123

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Greg Gearheart
State Water Resources Control Board
OSI

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

**CLEANUP AND ABATEMENT ORDER NO. R9-2003-0158
FOR**

**PIONEER BUILDERS INC.
C/O PACIFIC ENVIRONMENTAL PLANNING
33862 BARCELONA PLACE
DANA POINT, CALIFORNIA 92629**

The California Regional Water Quality Control Board, San Diego Region (hereinafter Regional Board), finds that:

1. Pioneer Builders Inc. owns a 2-acre parcel located in the County of Orange, within the municipality of Dana Point. The site is located on the north side of Camino Capistrano, between Paseo Pinzon and Calle Anejo, at 35262 and 35272 Camino Capistrano (Tentative Tract Map No. 16197). The site is located in the San Clemente Hydrologic Area (901.30) of the San Juan Hydrologic Unit (901) as described in the "Water Quality Control Plan, San Diego Basin (9)" (hereinafter Basin Plan).
2. An unnamed creek runs through the southern portion of the parcel described in Finding No. 1. The Basin Plan has established the following designated beneficial uses for this inland surface water: Municipal and Domestic Supply (MUN), Agricultural Supply (AGR), Non-contact Water Recreation (REC-2), Warm Freshwater Habitat (WARM), Wildlife Habitat (WILD), and the following potential beneficial use: Contact Water Recreation (REC-1).
3. On or before January 24, 2003, Pioneer Builders Inc. caused and/or permitted the clearing of vegetation, grading and the discharge of fill into the unnamed creek. These activities have obstructed the surface flow and eliminated the ability of the creek to support water quality functions impacting beneficial uses in violation of Waste Discharge Prohibition No. 1 of the Basin Plan.
4. On or before January 24, 2003, Pioneer Builders Inc. caused and/or permitted the discharge of pollutants and/or fill to waters of the United States without authorization of an NPDES permit or a dredged or fill material permit (subject to the exemption described in California Water Code Section 13376) in violation of Waste Discharge Prohibition No. 3 of the Basin Plan.
5. On or before January 24, 2003, Pioneer Builders Inc. caused and/or permitted the clearing of vegetation, grading, and stockpiling of material near the unnamed creek in a manner that caused or threatened to cause a condition of pollution or nuisance.

6. Pioneer Builders Inc. failed to file a report of waste discharge and 401 Water Quality Certification application with the Regional Board prior the discharge of wastes/pollutants to waters of the United States/waters of the state in violation of California Water Code Section 13376. Section 13376 states in part that any person discharging pollutants or fill material to navigable waters of the United States shall file a report of the discharge in compliance with Section 13260 requirements. Section 13260 requires that any person discharging waste that could affect the quality of waters of the state shall file a report of the discharge.
7. Between January 22 and March 24, 2003 Pioneer Builders Inc. conducted soil disturbance activities in excess of one acre at the site without obtaining coverage under the General Permit for Storm Water Discharges Associated with Construction Activity, Order No. 99-08-DWQ in violation of California Water Code Section 13376.
8. At some time between January 24, 2003, and March 24, 2003, Pioneer Builders Inc. caused and/or permitted the discharge of sediment laden storm water directly into the municipal separate storm sewer system and subsequently to downstream receiving waters in violation of Waste Discharge Prohibition No. 8 of the Basin Plan.
9. An active restoration effort is needed to protect the unnamed creek from long-term, adverse consequences of the discharge and cleanup activities, and to restore water quality functions and beneficial uses.
10. Pursuant to CWC Section 13304, the Regional Board is entitled to, and may seek reimbursement for, all reasonable costs actually incurred by the Regional Board to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action, required by this Order.
11. This enforcement action is being taken for the protection of the environment and, as such, is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Section 2100 Et seq.) in accordance with Section 15108, Chapter 3, Title 14, California Administrative Code.

IT IS HEREBY ORDERED that, pursuant to Section 13304 and Section 13267 of Division 7 of the California Water Code:

1. Pioneer Builders Inc. shall forthwith initiate efforts to cleanup and abate the effects of the unauthorized discharge of waste to waters of the state by removing the waste material and restoring the beneficial uses of the waters of the State on the site (property at 35262 and 35272 Camino Capistrano, Tentative Tract Map No. 16197).
2. By August 15, 2003, Pioneer Builders Inc. shall have completed on-site restoration of the beneficial uses of the unnamed creek.

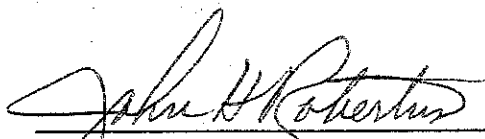
3. By May 12, 2003, Pioneer Builders Inc. shall develop and submit to this Board a plan, by a qualified biologist, for mitigation of any environmental impacts associated with development of the project and shall mitigate for unauthorized temporal and spatial impacts to waters of the U.S. This mitigation plan must include, but not be limited to, the following:
 - a. Plans for restoration of no less than 0.066 acres of wetlands in the area where wetlands existed prior to disturbance.
 - b. A figure showing the proposed plant layout and plant palette that includes herbaceous, shrub, and canopy layers of locally-native material and that results in continuous canopy coverage to the tree canopy along the eastern property line.
 - c. Cross-sections and plan views of the proposed mitigation areas that show how they will be integrated into adjacent areas.
 - d. A time schedule for restoration activities and mitigation implementation, including initial planting, submittal of "as-built" documents, and a five-year monitoring and reporting period.
 - e. A discussion of maintenance and monitoring activities and duration.
 - f. Proposed functional success criteria for the mitigation area(s).
4. Upon Regional Board review of the restoration plan, Pioneer Builders Inc. shall implement the plan in accordance with the time schedule.
5. By April 18, 2003 Pioneer Builders Inc. shall submit to the Regional Board a complete application for Section 401 Water Quality Certification and a Report of Waste Discharge.
6. By April 18, 2003 Pioneer Builders Inc. shall submit a technical report, under penalty of perjury, to the Regional Board identifying any significant impacts to waters of the State resulting from the project.
7. Pioneer Builders Inc. shall dispose of all removed waste in a manner that complies with applicable codes and regulations.
8. Pioneer Builders Inc. shall obtain all necessary approvals from the California Department of Fish and Game, the U.S. Army Corps of Engineers, Regional Water Quality Control Board, and other applicable federal, state, and local authorities for any streambed cleanup work.
9. Pioneer Builders Inc. shall forthwith comply with all requirements of the General Permit for Storm Water Discharges Associated with Construction Activity, Order No. 99-08-DWQ.
10. By April 18, 2003 Pioneer Builders Inc. shall provide the Regional Board with a copy of the Notice of Intent submitted to the State Water Resources Control Board to comply with Order No. 99-08-DWQ and a copy of the Storm Water Pollution Prevention Plan (SWPPP) developed pursuant to Order 99-08-DWQ.

11. By July 15, 2003, Pioneer Builders Inc. shall submit a report that documents that the required abatement actions have been taken and that all necessary approvals for the cleanup and restoration work were obtained, and provide under penalty of perjury under the laws of California a "Certification of Completion" statement to the Regional Board identifying that directives of this Order have been met.

The "Certification of Completion" shall include the following signed 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.

Pursuant to California Water Code section 13350, any person who intentionally or negligently violates a cleanup and abatement order may be liable civilly in an amount which shall not exceed five thousand dollars (\$5,000), but shall not be less than five hundred dollars (\$500), for each day in which the cleanup and abatement order is violated.



JOHN H. ROBERTUS
Executive Officer

11 April, 2003
Date