

State of California

California Regional Water Quality Control Board
Santa Ana Region

Cleanup and Abatement Order No. R8-2008-0095
For
Lake Elsinore Realty #2, LLC

The California Regional Water Quality Control Board, Santa Ana Region (hereinafter, Regional Board) finds that:

BACKGROUND

- 1) On April 28, 2008, Lake Elsinore Realty #2, LLC (hereinafter, the discharger) submitted an application for an after-the-fact Clean Water Act Section 401 Water Quality Standards Certification ("Certification") for discharges of fill to an ephemeral drainage channel located at 32371 Corydon Road in the City of Lake Elsinore.
- 2) On December 11, 2007, U.S. Army Corps of Engineers ("Corps") staff contacted the discharger's representatives by telephone, alleging that activities occurring at 32371 Corydon Road were resulting in the discharge of fill to waters of the U.S. Corps staff directed the discharger to obtain an after-the-fact permit from the Corps.
- 3) On May 19, 2006, the Corps issued a Cease and Desist Order ("CDO") to the discharger. The CDO indicates that the discharges cited occurred at 32371 Corydon Road in early 2006. According to the Corps' CDO, fill was discharged to seasonal pools and wetlands in the Back Basin area adjacent to Lake Elsinore.
- 4) Regional Board records indicate that in late 2006, Elsinore Realty #1, LLC obtained coverage under State Board Order No. 99-08-DWQ, General Waste Discharge Requirements for Discharges of Storm Water Associated with Construction Activities, for the construction of Corydon Industrial, 32543 Corydon Road. The addresses 32371 and 32543 Corydon are both located at the Corydon Industrial site, which currently consists of two industrial buildings and one vacant parcel.
- 5) Prior to construction of Corydon Industrial, a drainage channel conveyed storm water runoff across and through the site from a culvert under Corydon Road. Corps staff believes that this channel supplied water to a seasonal pool and wetland immediately to the northwest of Corydon Industrial, in the Lake Elsinore Back Basin area.

- 6) The discharger proposes to construct a third industrial building on the vacant parcel at the Corydon Industrial site. With the third building, the discharger proposes to convey flows from the Corydon Street culvert into the relocated earthen channel segment. The earthen channel has been designed to convey offsite runoff with vegetation densities that are comparable to the densities found in the previously filled channel, i.e., those associated with grasses such as those that were present in the channel. The new channel will total 0.03 acre (575 linear feet) of waters of the State, in compensation for the fill of 0.02 acre (660 linear feet) of the previous channel.
- 7) In response to the discharger's request, Regional Board staff prepared a draft Certification. However, upon further consideration, Regional Board staff determined that the issuance of a Certification for discharges that had already occurred was an inappropriate response to a violation and potentially unenforceable. In order to assure that the impacts of the discharge on water quality are adequately mitigated, Regional Board staff determined that the mitigation proposed by the discharger should be required pursuant to a Cleanup and Abatement Order as opposed to an after-the-fact Certification.
- 8) On September 16, 2008, Regional Board staff contacted Corps staff to discuss the circumstances surrounding the Corps issuance of the May 19, 2006 CDO. Regional Board staff learned that the alleged discharges of fill to a seasonal pool occurred on the property adjacent to the northwest boundary of the Corydon Industrial site. The discharge was the result of grading work during construction of Corydon Industrial that incidentally spilled dirt into the seasonal pool. Corps staff indicated that the unauthorized discharge to the seasonal pool had been satisfactorily resolved. However, the drainage identified in the Corps' CDO provides water to the seasonal pool. Corps staff has expressed its desire that development of Corydon Industrial not interrupt the flow of water to the seasonal pool and that storm water runoff that reaches the pool be free of pollutants. Corps staff indicated their belief that the seasonal pool is also a wetland.
- 9) On October 7, 2008, Regional Board staff contacted the discharger's legal counsel to obtain additional information regarding the circumstances surrounding the Corps issuance of the May 19, 2006 CDO. The discharger's legal counsel alleges that the discharge described in the CDO occurred as the result of excavation of a man-made levee on the adjacent property. The levee was impounding water and causing flooding which threatened one of the buildings at Corydon Industrial. The excavation occurred to remedy the flooding, with the participation of the adjacent landowner, and pursuant to a judicial order issued by the Riverside County Superior Court¹.

¹ It is Regional Board staff understanding that the Corps regards the adjacent landowner as the discharger with respect to the excavation of the levee and, subsequently, has taken enforcement action against that party. Nevertheless, Regional Board staff is not attempting to fully resolve the circumstances

AUTHORITY – LEGAL REQUIREMENTS

- 10) California Water Code Section 13376 requires, in part, that, “Any person discharging pollutants or proposing to discharge pollutants to the navigable waters of the United States within the jurisdiction of this state or any person discharging dredged or fill material or proposing to discharge dredged or fill material into the navigable waters of the United States within the jurisdiction of this state shall file a report of the discharge.”
- 11) Furthermore, CWC Section 13376 states, in part, “The discharge of pollutants or dredged or fill material or the operation of a publicly owned treatment works or other treatment works treating domestic sewage by any person except as authorized by waste discharge requirements or dredged or fill material permits is prohibited.”
- 12) Clean Water Act Section 401 requires, in part, “Any applicant for a Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge into the navigable waters, shall provide the licensing or permitting agency a certification from the State.”
- 13) CWC Section 13304(a) states, in part, “Any person who has discharged or discharges waste into the waters of this state in violation of any waste discharge requirement 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 the waste or abate the effects of the waste.”
- 14) This enforcement action is being undertaken by a regulatory agency to enforce a water quality law. Such action is categorically exempt from provisions of the California Environmental Quality Act (CEQA) according to CEQA Guidelines Section 15321 in Article 19, Division 3, Title 14 of the California Code of Regulations.

of the discharges on the adjacent property at this time. The purpose of describing the adjacent seasonal pool is to relate the potential for discharges of fill at Corydon Industrial to impact the existing or potential beneficial uses of the seasonal pool.

IT IS HEREBY ORDERED THAT, pursuant to Section 13304, Article 1, Chapter 5, Division 7 of the California Water Code, Lake Elsinore Realty #2, LLC shall abate the effects of the unauthorized discharge of fill to waters of the State, in accordance with the following:

- 1) Fully construct and make operational all structural storm water pollution treatment controls approved by the City of Lake Elsinore pursuant to the City's implementation of the Riverside County Water Quality Management Plan ("WQMP") as required by Regional Board Order No. R8-2002-0011, commonly known as the Riverside County Urban Storm Water Runoff Permit, and subsequent reauthorizations of this Permit, prior to the occupancy of the proposed third building at Corydon Industrial.
- 2) Fully implement, in conformance with the final approved WQMP, best management practices to eliminate discharges of non-storm water runoff from the third building to the downstream seasonal pool.
- 3) Construct, for the safe conveyance of offsite storm water runoff through the site and the maintenance of storm water runoff flow to the downstream seasonal pool, an earthen drainage channel that will become not less than 0.03 acres and 575 linear feet of waters of the State, no later than 240-days from the issuance of this CAO.
- 4) Include, as part of best management practices for the ultimate stabilization of the earthen drainage channel, vegetation of the channel using native grass species, in conjunction with a "grow and kill" cycle, or other generally accepted method for the reduction of the non-native seed bank within the channel.
- 5) Maintain a copy of this CAO on site for the duration of construction activities, as part of a denoted element of any Storm Water Pollution Prevention Plan ("SWPPP") or WQMP.
- 6) Comply with the requirements of the Corps' Clean Water Act Section 404 Permit(s).

Failure to comply with the terms and conditions of this Order may result in the imposition of civil liability in accordance with Section 13350 of the California Water Code.

10/14/08

Date

for Gerard J. Thibeault
Executive Officer