
State Water Resources Control Board

WATER QUALITY ORDER NO. 2019-0044-EXEC CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION AND ORDER

Effective Date: August 30, 2019
Program Type: Fill/Excavation
Project: Regional General Permit (RGP) 5 for Emergency Repair and Protection Activities (Project)
Regulatory Measure ID: 433381
SWRCB ID: SB14008IN
U.S. Army Corps of Engineers File Number: 28218S

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I. Order

This Clean Water Act (CWA) section 401 Water Quality Certification action and Order (Order) and attachments A through E is issued at the request of U.S. Army Corps of Engineers, San Francisco District (Corps), for Certification of Regional General Permit (RGP) 5 for Emergency Repair and Protection Activities (Project). This Order is for the purpose described in the public notice issued by the Corps on July 12, 2019.

II. Public Notice

The State Water Board provided public notice of the application from August 7, 2019 to August 28, 2019. The State Water Board did not receive any comments during the comment period.

III. Project Purpose and Description

RGP 5 serves as the federal Clean Water Act section 404 and/or section 10 of the Rivers and Harbor Act of 1899 authorization for permanent or temporary work or structures in navigable waters of the U.S., and/or the permanent or temporary discharge of dredged and/or fill material into waters of the U.S., including wetlands, for necessary repair and protection measures associated with an emergency situation. An emergency situation, as determined by the Corps, is one where there is clear, sudden, unexpected and imminent threat to life or property demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services (i.e., a situation that could potentially result in an unacceptable hazard to life or a significant loss of property if corrective action requiring a permit is not undertaken immediately).

Typical activities authorized under this RGP include, but are not limited to: bank stabilization; restoration of damaged areas; temporary fills for staging, access, and dewatering; and, repair, replaces of rehabilitation of existing structures and/or fills (i.e. roads, bridges, utility pipelines and flood control structures, including attendant features, irrigation pumps or intakes, and other existing structures located in waters of the U.S.).

IV. Project Location

In any jurisdictional waters of the U.S. throughout the San Francisco District of the U.S. Army Corps of Engineers, including: all of Siskiyou, Trinity, Del Norte, Humboldt, Mendocino, Sonoma, Marin, and Napa Counties; the western parts of Solano, Contra Costa, and Alameda Counties that include or drain to Suisun Bay west of Sherman Island, San Pablo Bay, or San Francisco Bay; all of San Francisco, San Mateo, Santa Clara, Santa Cruz, Monterey, and San Benito Counties; and the inland portions of San Luis Obispo County northeast of the crests of the Santa Lucia Range, Garcia Mountain, and the La Panza and Caliente Ranges, including the Salinas River watershed and the Carrizo Plain watershed. A map showing the Project location is found in Attachment A of this Order.

V. Project Impact and Receiving Waters Information

Individual projects authorized under this Order may be located within the jurisdiction of the Central Coast, Central Valley, North Coast, or San Francisco Bay Regional Water Quality Control Boards (collectively Regional Water Boards). Receiving waters and groundwater potentially impacted by individual projects authorized under this Order are protected in accordance with the applicable water quality control plans (Basin Plans) for the regions and other plans and policies which may be accessed online at the [State Water Resources Control Board Website](http://www.waterboards.ca.gov/plans_policies/) (http://www.waterboards.ca.gov/plans_policies/). The Basin Plans include water quality standards, which consist of existing and potential beneficial uses of waters of the state, water quality objectives to protect those uses, and the state and federal antidegradation policies.

Dischargers must identify the receiving waters as listed in the applicable Basin Plan that would be impacted by a proposed project. This information must be included in the Notice of Intent (NOI; Attachment D).

VI. California Environmental Quality Act (CEQA)

The State Water Board has determined that the Project is exempt from review under the California Environmental Quality Act (CEQA) pursuant to California Code of Regulations, title 14, section 15061. Specifically, the issuance of this Order and the activities described herein are exempt by statute pursuant to Public Resources Code section 21080, subsections (b)(2)-(4). Additionally, State Water Board staff concludes that no exceptions to the CEQA exemptions apply to the activities approved by this Order. The State Water Board will file a Notice of Exemption with the State Clearinghouse within five (5) working days of issuance of this Order in accordance with the California Code of Regulations, title 14, section 15062.

VII. Petitions for Reconsideration

Any person aggrieved by this action may petition the State Water Board to reconsider this Order in accordance with California Code of Regulations, title 23, section 3867. A petition for reconsideration must be submitted in writing and received within 30 calendar days of the issuance of this Order.

VIII. Fees Received

The application fee amount for individual projects authorized under this Order is determined as required by California Code of Regulations, title 23, sections 3833(b)(3) and 2200(a)(3). Note that fees are periodically adjusted. Dischargers should confirm the correct fee amount prior to submitting payment.

IX. Conditions

The State Water Board has independently reviewed the record of the Project to identify impacts to water quality and designated beneficial uses within the watersheds of the Project. In accordance with this Order, the Permittee may proceed with the Project under the following terms and conditions:

A. Reporting and Notification Requirements

The following section details the reporting and notification types and timing of submittals. Requirements for the content of these reporting and notification types are detailed in Attachment C, D, and E.

Written reports and notifications must be submitted using the Reporting and Notification Cover Sheet located in Attachment C, which must be signed by the Enrollee or an authorized representative.

1. Notice of Intent and Fee Requirements

- a. The prospective Enrollee must notify the appropriate Regional Water Board and the State Water Board as early as possible, and no less than forty-eight (48) hours prior to initiating the emergency project, except as set forth in section IX.A.1.b. Notification may be via telephone, e-mail, delivered written notice, or other verifiable means. If not included as part of the notification, the notification must be followed within three (3) business days by submission of all of the information in the Notice of Intent (NOI) form, provided in Attachment D.
 - i. Notification may be via telephone, e-mail, written notice, or other verifiable means.
 - A staff directory that includes contact information for State and Regional Program Managers is found on the [State Water Resources Control Board website](https://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/staffdirectory.pdf) (https://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/staffdirectory.pdf)
 - A map of Regional Board boundaries is found on [the State Water Resources Control Board website](https://www.waterboards.ca.gov/waterboards_map.html) (https://www.waterboards.ca.gov/waterboards_map.html)
 - ii. Electronic Submittal
 - Address e-mail to the “State Program Manager” and the appropriate “Region Program Manager” from the staff directory linked above.
 - Include “Attention – RGP 5 Notice of Intent” in the subject line.

iii. Hardcopy Submittal Addresses:

ATTN: Program Manager
Wetlands Permitting and Planning
Division of Water Quality
State Water Resources Control Board
1001 "I" St. 15th Floor
Sacramento, CA 95814

AND

ATTN: Program Manager
CWA Section 401 WQC Program
Insert mailing address of appropriate Regional Water Board from the
staff directory linked above

- b.** The Water Boards recognize there may be situations where imminent threats to life or property occur and the Enrollee is unable to give the Water Boards notification 48 hours prior to initiating the emergency project. If immediate, specific actions, as defined in the California Code of Regulations, title 14, section 15269(c), are required by the Enrollee and prior notice to the appropriate Regional Water Board and the State Water Board is not possible, then the Enrollee must contact the appropriate Regional Water Board and the State Water Board within one (1) business day of the action. As provided above, this notification must be followed within three (3) business days by submission of all of the information in the NOI (Attachment D).
- c.** The Enrollee must provide the correct fee to the Regional Water Board in accordance with California Code of Regulations, title 23, section 2200 within forty-eight (48) hours of project initiation. Failure to promptly pay the correct fee amount may result in a disqualification for enrollment pursuant to this Certification.
- d.** Once the appropriate Regional Water Board receives a completed NOI and the correct fee from the Enrollee, the Water Board will transmit a Notice of Applicability (NOA) to the Enrollee verifying enrollment in this Certification.

2. Project Status Notifications

- a.** The Enrollee must provide the appropriate Regional Water Board and State Water Board copies of all correspondence and reports that are submitted to the Corps to satisfy the requirements of RGP 5. In addition, the Enrollee must file the Notice of Completion (NOC) form provided in Attachment E.
- b.** A completed NOC must be submitted to the appropriate Regional Water Board and State Water Board within 45 calendar days of completion of any action conducted under RGP 5.

- c. Failure to submit a complete NOC within 45 calendar days of completion of any action conducted under this Order may result in the imposition of administrative and/or civil liability pursuant to Water Code section 13385.

3. Project Reporting

- a. **Annual Reporting:** If required by the NOA, the Enrollee shall submit an Annual Report each year on the anniversary of the date that the individual project is authorized under this Order. Annual reporting shall continue until a Notice of Project Complete Letter is issued to the Enrollee.
- b. **Conditional Notifications and Reports:** The following notifications and reports are required as appropriate. Reporting requirements are found in Attachment C of this Order.
- c. **Accidental Discharges of Hazardous Materials¹**

Following an accidental discharge of a reportable quantity of a hazardous material, sewage, or an unknown material, the following applies (Wat. Code, § 13271):

- i. As soon as (A) Enrollee has knowledge of the discharge or noncompliance, (B) notification is possible, and (C) notification can be provided without substantially impeding cleanup or other emergency measures then:
 - First call – 911 (to notify local response agency)
 - Then call – Office of Emergency Services (OES) State Warning Center at:
(800) 852-7550 or (916) 845-8911
 - Lastly, follow the required OES procedures as set forth in the [California Hazardous Materials Spill/Release Notification Guidance](http://www.caloes.ca.gov/FireRescueSite/Documents/CalOES-Spill_Booklet_Feb2014_FINAL_BW_Acc.pdf) (http://www.caloes.ca.gov/FireRescueSite/Documents/CalOES-Spill_Booklet_Feb2014_FINAL_BW_Acc.pdf)

¹ "Hazardous material" means any material that, because of its quantity, concentration, or physical or chemical characteristics, poses a significant present or potential hazard to human health and safety or to the environment if released into the workplace or the environment. "Hazardous materials" include, but are not limited to, hazardous substances, hazardous waste, and any material that a handler or the administering agency has a reasonable basis for believing that it would be injurious to the health and safety of persons or harmful to the environment if released into the workplace or the environment. (Health & Saf. Code, § 25501.)

- ii. Following notification to OES, the Enrollee shall notify State Water Board, as soon as practicable (ideally within 24 hours). Notification may be via telephone, e-mail, delivered written notice, or other verifiable means.
 - iii. Within five (5) working days of notification to the State Water Board, the Enrollee must submit an Accidental Discharge of Hazardous Material Report.
- d. Violation of Compliance with Water Quality Standards:** The Enrollee shall notify the State Water Board of any event causing a violation of compliance with water quality standards. Notification may be via telephone, e-mail, delivered written notice, or other verifiable means.
- i. Examples of noncompliance events include: lack of stormwater treatment following a rain event, discharges causing a visible plume in a water of the state, and water contact with uncured concrete.
 - ii. This notification must be followed within three (3) working days by submission of a Violation of Compliance with Water Quality Standards Report.
- e. Transfer of Property Ownership:** This Order is not transferable in its entirety or in part to any person or organization except after notice to the appropriate Regional Water Board in accordance with the following term:
- i. The Enrollee must notify the Water Board of any change in ownership or interest in ownership of the Project area by submitting a Transfer of Property Ownership Report. The Enrollee and purchaser must sign and date the notification and provide such notification to the Water Board at least 10 days prior to the transfer of ownership. The purchaser must also submit a written request to the State Water Board to be named as the Enrollee in a revised order.
- f. Transfer of Long-Term BMP Maintenance:** If maintenance responsibility for post-construction BMPs is legally transferred, the Enrollee must submit to the appropriate Regional Water Board a copy of such documentation and must provide the transferee with a copy of a long-term BMP maintenance plan that complies with manufacturer or designer specifications. The Enrollee must provide such notification to the Water Board with a Transfer of Long-Term BMP Maintenance Report at least 10 days prior to the transfer of BMP maintenance responsibility.

B. Water Quality Monitoring

1. **General:** If surface water is present, continuous visual surface water monitoring shall be conducted to detect accidental discharge of construction related pollutants (e.g. oil and grease, turbidity plume, or uncured concrete).

- 2. Accidental Discharges/Noncompliance:** Upon occurrence of an accidental discharge of hazardous materials or a violation of compliance with a water quality standard, State Water Board staff may require water quality monitoring based on the discharge constituents and/or related water quality objectives and beneficial uses.

C. Standard

1. This Order is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to Water Code section 13330, and California Code of Regulations, title 23, chapter 28, Article 6 commencing with section 3867.
2. This Order is not intended and shall not be construed to apply to any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license, unless the pertinent certification application was filed pursuant to subsection 3855(b) of chapter 28, title 23 of the California Code of Regulations, and that application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
3. This Order is conditioned upon total payment of any fee required under title 23 of the California Code of Regulations and owed by the Enrollee.
4. In the event of any violation or threatened violation of the conditions of this Order, the violation or threatened violation shall be subject to any remedies, penalties, process, or sanctions as provided for under state and federal law. For purposes of Clean Water Act, section 401(d), the applicability of any state law authorizing remedies, penalties, processes, or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this Order.

D. General Compliance

1. This certification is limited to emergency actions that meet the CEQA definition of an "emergency," which is defined as follows:

A sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services. Emergency includes such occurrences as fire, flood, earthquake, or other soil or geologic movement, as well as such occurrences as riot, accident, or sabotage. [(Pub. Resources Code, § 21060.3) (emphasis added).]

Emergency actions must meet the CEQA definition of an “emergency” and demonstrate an imminent threat to qualify for enrollment under this Order. For actions that do not qualify for enrollment under this Order, the Enrollee must contact either the State Water Board or the appropriate Regional Water Board to apply for an individual or other suitable general water quality certification.

- 2.** This Order is limited to projects that satisfy one or more of the following exemption criteria, as defined by the CEQA Guidelines (Cal. Code Reg., tit. 14, § 15269):
 - a.** Projects to maintain, repair, restore, demolish, or replace property or facilities damaged or destroyed as a result of a disaster in a disaster stricken area in which a state of emergency has been proclaimed by the Governor pursuant to the California Emergency Services Act, commencing with section 8550 of the Government Code.
 - b.** Emergency repairs to publicly or privately-owned service facilities necessary to maintain service essential to the public health, safety, or welfare.
 - c.** Specific actions necessary to prevent or mitigate an emergency. This does not include long-term projects undertaken for the purpose of preventing or mitigating a situation that has a low probability of occurrence in the short-term.
 - d.** Projects undertaken, carried out, or approved by a public agency to maintain, repair, or restore an existing highway damaged by fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide, provided that the project is within the existing right of way of that highway and is initiated within one year of the damage occurring. This does not apply to highways designated as official State scenic highways, nor any project undertaken, carried out, or approved by a public agency to expand or widen a highway damaged by fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide.
 - e.** Seismic work on highways and bridges pursuant to section 180.2 of the Streets and Highways Code, section 180 et seq.
- 3.** This Order is limited only to sudden, unexpected emergency situations that: (1) have occurred, or (2) have a high probability of occurring in the short term as a result of recently discovered factors or events not related to known or expected conditions. Additionally, the sudden, unexpected emergency situation must have the potential to result in an unacceptable hazard to life or a significant loss of property if corrective action requiring a permit is not undertaken within a time period less than the normal time needed to process the application under standard procedures.

4. Emergency repairs and construction must commence within fourteen (14) calendar days of receiving a Notice of Applicability (NOA) from the Water Boards unless an extension is granted by the Corps and agreed to, in writing, by the appropriate Regional Water Board.
5. Authorized work in waters of the state shall be completed within 180 days of the enrollment date. If it is anticipated that work will not be completed prior to the expiration of enrollment, the Enrollee shall request an extension at least thirty (30) days prior to the expiration date. The request shall include justification for the extension.
6. All repairs and construction shall be kept to the minimum necessary to alleviate the immediate emergency and limited to in-kind replacement or refurbishment of on-site features. Minor upgrading may be considered if the Enrollee uses bioremediation or other environmentally sensitive solutions. Permanent restoration work other than that performed as an associated part of the emergency operations, including any minor upgrades, shall not be performed without prior approval and authorization by the Water Boards.
7. Failure to comply with any condition of this Order shall constitute a violation of the Porter-Cologne Water Quality Control Act and the Clean Water Act. The Enrollee and/or discharger may then be subject to administrative and/or civil liability pursuant to Water Code section 13385.
8. Permitted actions must not cause a violation of any applicable water quality standards, including impairment of designated beneficial uses for receiving waters as adopted in the Basin Plans by any applicable Regional Water Board or any applicable State Water Board (collectively Water Boards) water quality control plan or policy. The source of any such discharge must be eliminated as soon as practicable.
9. In response to a suspected violation of any condition of this Order, the State Water Board may require the holder of this Order to furnish, under penalty of perjury, any technical or monitoring reports the Water Boards deem appropriate, provide that the burden, including costs, of the reports shall bear a reasonable relationship to the need for the reports and the benefits to be obtained from the reports. The additional monitoring requirements ensure that permitted discharges and activities comport with any applicable effluent limitations, water quality standards, and/or other appropriate requirement of state law.
10. The Enrollee must, at all times, fully comply with engineering plans, specifications, and technical reports submitted to support this Order; and all subsequent submittals required as part of this Order. The conditions within this Order and Attachments supersede conflicting provisions within Enrollee submittals.

11. This Order and all of its conditions contained herein continue to have full force and effect regardless of the expiration or revocation of any federal license or permit issued for the Project. For purposes of Clean Water Act, section 401(d), this condition constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements of state law.

E. Administrative

1. Signatory requirements for all document submittals required by this Order are presented in Attachment B of this Order.
2. This Order does not authorize any act which results in the taking of a threatened, endangered or candidate species or any act, which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish & G. Code, §§ 2050-2097) or the federal Endangered Species Act (16 U.S.C. §§ 1531-1544). If a "take" will result from any act authorized under this Order held by the Corps, the Corps and/or the Enrollee must obtain authorization for the take prior to any construction or operation of the portion of the Project that may result in a take. The Corps is responsible for meeting all requirements of the applicable endangered species act for the Project authorized under this Order.
3. The Corps and/or the Enrollee shall grant State Water Board staff, Central Coast, Central Valley, North Coast and San Francisco Bay Regional Water Quality Control Board staff, or an authorized representative (including an authorized contractor acting as a Water Board representative), upon presentation of credentials and other documents as may be required by law, permission to:
 - a. Enter upon the Project or compensatory mitigation site(s) premises where a regulated facility or activity is located or conducted, or where records are kept.
 - b. Have access to and copy any records that are kept and are relevant to the Project or the requirements of this Order.
 - c. Inspect any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Order.
 - d. Sample or monitor for the purposes of assuring Order compliance.
4. A copy of this Order shall be provided to any consultants, contractors, and subcontractors working on the Project. Copies of this Order shall remain at the Project site for the duration of this Order. The Enrollee shall be responsible for work conducted by its consultants, contractors, and any subcontractors.
5. A copy of this Order must be available at the Project site(s) during construction for review by site personnel and agencies. All personnel performing work on the Project shall be familiar with the content of this Order and its posted location at the Project site.

F. Construction

1. At all times, appropriate types and sufficient quantities of materials shall be maintained on site to contain and clean up any spill or inadvertent release of materials that may cause a condition of pollution or nuisance if the materials reach waters of the state. Construction personnel must know how to use appropriate containment and clean up materials.
2. Fueling, lubrication, maintenance, storage, and staging of vehicles and equipment must not result in a discharge to any waters of the state, and shall be located outside of waters of the state in areas where accidental spills will not enter or affect such waters.
3. If construction related materials reach surface waters, appropriate spill response procedures must be initiated as soon as the incident is discovered. In addition, the State Water Board staff contact identified in this Order must be notified via email and telephone within twenty-four (24) hours of occurrence.
4. Construction materials and debris from all construction work areas shall be removed from the site and disposed of properly following completion of individual projects enrolled under this Order.
5. Water diversion activities must not result in the degradation of beneficial uses or exceedances of water quality objectives of any of the receiving waters. Any temporary dam or other constructed obstruction must only be built from materials which will cause little or no siltation (e.g. clean gravel). Normal flows must be restored to the affected water immediately upon completion of work at that location.
6. Effective best management practices (BMPs) must be implemented to control erosion and runoff from areas associated with the emergency project, this includes access roads. All areas of temporary impacts and all other areas of temporary disturbance which could result in a discharge or a threatened discharge to waters of the U.S. and/or state must be restored. Restoration must include grading of disturbed areas to pre-project contours and revegetation with native species.
7. All repairs and reconstruction shall be kept to the minimum necessary to alleviate the immediate emergency and limited to in-kind replacement or refurbishment of on-site features. Minor upgrading may be considered if the Enrollee uses bioremediation or other environmentally sensitive solutions. Permanent restoration work other than that performed as an associated part of the emergency operations, including any minor upgrades, shall not be performed without prior approval and authorization by the Water Boards.

G. Total Maximum Daily Load (TMDL)

1. To the maximum extent practicable, the individual projects authorized under this Order shall not contribute to, or cause, an exceedance of an established TMDL.

H. Mitigation Conditions

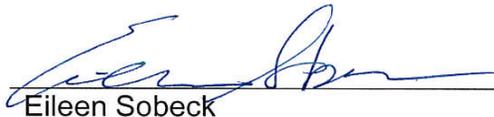
1. Permitted activities shall be the minimum necessary to alleviate the immediate emergency and a sequence of actions must be taken to first avoid and then to minimize adverse impacts to aquatic resources. Compensatory mitigation may be required to offset any remaining unavoidable adverse impacts to aquatic resources.

X. Water Quality Certification

I hereby issue the Order for the Regional General Permit (RGP) 5 for Emergency Repair and Protection Activities, State Water Board I.D. No. SB14008IN certifying that as long as all of the conditions listed in this Order are met, any discharge from the referenced Project will comply with the applicable provisions of Clean Water Act sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards and Implementation Plans), 306 (National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards).

The State Water Board will file a Notice of Exemption (NOE) at the SCH within five (5) working days of issuance of this Order. This discharge is also regulated pursuant to State Water Board Water Quality Order No. 2003-0017-DWQ which authorizes this Order to serve as Waste Discharge Requirements pursuant to the Porter-Cologne Water Quality Control Act (Wat. Code, § 13000 et seq.).

Except insofar as may be modified by any preceding conditions, all Order actions are contingent on: (a) the discharge being limited and all proposed mitigation being completed in strict compliance with the conditions of this Order and the attachments to this Order; and, (b) compliance with all applicable requirements of Statewide Water Quality Control Plans and Policies, the Regional Water Boards' Water Quality Control Plans and Policies.



Eileen Sobeck
Executive Director
State Water Resources Control Board

8/30/19
Date

- Attachment A** RGP 5 Area Map
- Attachment B** Signatory Requirements
- Attachment C** Reporting and Notification Requirements
- Attachment D** Notice of Intent Form
- Attachment E** Notice of Completion Form