

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION**

STAFF REPORT FOR REGULAR MEETING OF SEPTEMBER 4-5, 2008
Prepared on August 8, 2008

ITEM NUMBER: 22

SUBJECT: Proposed Stipulated Administrative Civil Liability Order No. R3-2008-0057; Tract 1990, LLC, San Luis Obispo County

KEY INFORMATION

Discharger:	Tract 1990, LLC
Location:	Lake Nacimiento, approximately 11 miles west of Paso Robles, San Luis Obispo County
Discharge Type:	Storm Water Associated with Construction Activity
Existing Order:	National Pollutant Discharge Elimination System General Permit No. CAS000002, State Water Resources Control Board Order No. 99-08-DWQ, <i>Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity</i> (Permit); Waste Discharger Identification No. 3 40C 330 849
This Action:	Accept or Reject Executed Settlement as Described in Proposed Stipulated Administrative Civil Liability Order

SUMMARY

Tract 1990, LLC (Discharger) is required to operate its 255-acre construction site at Lake Nacimiento in compliance with the above Permit. The site comprises predominantly sandy soil with bedrock approximately 3.5 feet below the surface, with approximately 71 acres disturbed by construction activity for housing and roads.

On November 17, 2005, December 5, 2005, and January 12, 2006, Central Coast Water Board staff conducted compliance inspections at the site. On each inspection, staff found the Discharger's site in violation of Permit requirements and the Clean Water Act. Staff alleges that the Discharger's violations include discharging sediment that caused or threatened to cause nuisance or pollution of waters of the United States, failing to implement the site's Storm Water Pollution Prevention Program (SWPPP), failing to develop a SWPPP according to the Permit, and depositing sediment (as fill for structures such as roads and pump stations) to waters of the United States without a Clean Water Act Section 404 Permit and Section 401 Certification. Each inspection showed progressively increased amounts of sediment in creeks receiving runoff from the Discharger's site. The Discharger submitted noncompliance reports further supporting staff's allegations, and identifying other incidents of noncompliance. Staff discussed the alleged violations with the Discharger during the above site inspections, and in verbal and electronic correspondence. Staff formally notified the Discharger of the alleged violations in a Notice of Violation dated March 7, 2006.

Staff completed the first draft of an administrative civil liability complaint in December 2006. State Water Board legal review determined that the complaint required revisions and additional

information from the Discharger. In October 2007, staff delivered a draft of the complaint to the Discharger to facilitate settlement discussions at its request. After exchanging correspondence on various issues, staff met with the Discharger in May 2008. The proposed stipulated order documents an agreement between Water Board Prosecution Team staff and the Discharger, providing for the Discharger's payment of \$400,000 by December 31, 2008, in settlement of the alleged violations.

Staff recommends that the Central Coast Water Board accept the proposed settlement agreement.

DISCUSSION

Background

On October 12, 2004, the Discharger signed a Notice of Intent to comply with the Permit. By filing a Notice of Intent, the Discharger is required to comply with all terms and conditions of the Permit, which include a prohibition against causing conditions of pollution or nuisance, protecting receiving waters from adverse impacts due to stormwater discharges, and requirements for developing and implementing a SWPPP. The Permit does not authorize fill activities, which require a Clean Water Act Section 404 Permit and Section 401 Certification, or waiver of such certification.

Site Description

The Tract 1990, LLC project, located about 11 miles west/northwest of downtown Paso Robles, consists of two phases of development associated with the construction of 221 single-family residences and related improvements over approximately 71 acres. The remainder of the site is divided into separate open space parcels covering approximately 184 acres.

The site is located in a relatively undeveloped portion of San Luis Obispo County with elevations ranging from approximately 900 to 1,200 feet above mean sea level. Numerous ephemeral creeks drain surface flows from the upper reaches of the hilly site in a primarily southwesterly direction towards Lake Nacimiento.

Main Allegations

In November 2005, two consultants contacted staff to discuss sediment discharges to creeks at Tract 1990, one of them working under the direction of the Discharger. Staff then participated in three multi-agency site inspections on November 17, 2005, December 5, 2005, and January 12, 2006. Other agencies co-inspecting the site were California Department of Fish and Game (DFG) and San Luis Obispo County Code Enforcement. Each inspection followed a rain event that produced site runoff.

On November 17, 2005, Water Board staff confirmed the earlier reports of a large area of dirt fill crossing onsite creeks, with an estimated fill volume of 40,000 cubic yards at the single location inspected on this date (the Discharger's construction manager and DFG staff concurred with this estimate). The fill was used to construct Holly Drive and to provide a construction pad for one of the site's sewage pump stations. The Discharger placed the fill across two creeks near the point they merged to a single creek. At that time, staff estimated that the fill covered the length of the drainages for approximately 200 feet, with depths exceeding 40 feet.

It appeared that the Discharger had not acquired all necessary permits, certifications, or waivers before discharging the fill sediment to waters of the United States. The necessary permits include a Clean Water Act Section 404 permit from the U.S. Army Corps of Engineers, and a Clean Water Act Section 401 Certification (or waiver of such certification)

from the Central Coast Water Board. Staff confirmed later that the above permit and certification were required prior to the construction activities. Subsequent inspections showed a progressive increase in sediment discharges to creeks from the construction site and continued ineffectiveness of some erosion and sediment controls, with increasingly wide spread impacts to surface waters.

The Department of Fish and Game reported the discharge of approximately 1,000,000 (one million) cubic feet (or approximately 40,000 cubic yards) of fill to the Governor's Office of Emergency Services, and issued a Natural Resources Damage Assessment for Lake Nacimiento and the unnamed tributaries to the lake. The assessment's estimate of sediment deposition for the road fill accounted only for the Holly Drive fill location inspected on November 11, 2005, and did not include the fill activities for three other areas of similar scale along Heritage Loop Road that impacted six other creeks flowing to Lake Nacimiento.

Staff returned to the site on December 5, 2005, and expanded the scope of inspection to other areas of the project. Returning again on January 12, 2006, staff observed and documented the Discharger pumping sediment-laden water from an excavated sediment basin to an unnamed creek. The Discharger failed to implement SWPPP-specified controls to reduce pollutants in storm water discharges from the site to the BAT/BCT performance standard required by the Permit (i.e., Best Available Technology Economically Achievable/Best Conventional Pollutant Control Technology). The Permit establishes BAT/BCT by specifying sediment basin design criteria. The Permit's SWPPP requirements also prohibit discharges from sediment basin dewatering that will cause or contribute to an exceedance of a water quality objective, without filtration or equivalent treatment.

Staff's observations of erosion and sediment control deficiencies and sediment discharges during the three inspections discussed above indicated ineffective combinations of erosion and sediment controls on all disturbed areas during the rainy season, and progressively worsening conditions of pollution or nuisance in creeks receiving stormwater from the Discharger's site. Discharges to creeks also impacted the lake.

At the Discharger's request, in October 2007, Prosecution Team staff entered into settlement discussions with the Discharger. Proposed Stipulated Administrative Civil Liability Order No. R3-2008-0057 documents the alleged violations and the terms of settlement agreed upon by the two parties.

Public Notice

Central Coast Water Board staff provided public notice of the proposed settlement by posting it on the Central Coast Water Board web site on July 24, 2008, by sending notice to all parties known to be interested in the matter by US Mail and email on July 25, 2008, and by publishing a notice in the San Luis Obispo Tribune, a newspaper of general circulation, on July 28, 2008. No public comments have been received as of the date of this report.

Options for Water Board Action

The proceeding to approve a proposed settlement is not an evidentiary hearing. The Board will consider information and comments provided to the Board. The Board can approve the proposed settlement and adopt the proposed Administrative Civil Liability Order or it can reject the proposed settlement. The Board may not revise the settlement without agreement of the parties. If the Board rejects the proposed settlement, it can direct the prosecution team to issue a complaint for administrative civil liability for future consideration. The parties would then proceed to an evidentiary hearing before the Board at a later date or the parties could renegotiate the matter and propose a revised settlement for Board consideration.

RECOMMENDATION

Staff recommends the Central Coast Water Board accept the settlement by adopting the proposed Stipulated Administrative Civil Liability Order No. R3-2008-0057 for **Four Hundred Thousand Dollars (\$400,000)**.

ATTACHMENT

Proposed Stipulated Administrative Civil Liability Order No. R3-2008-0057