

California Regional Water Quality Control Board
North Coast Region

Cleanup and Abatement Order No. R1-2005-0098

For

Mr. Vince Rizzo, Rizzo and Associates, LLC
and
Bariz Todd Road, LLC

Regarding
Industry West Commerce Center
237 Todd Road, Santa Rosa
APN 134-102-45

Sonoma County

The California Regional Water Quality Control Board, North Coast Region (hereinafter Regional Water Board), finds that:

1. Mr. Vince Rizzo, Rizzo and Associates, LLC and Bariz Todd Road, LLC (hereinafter Dischargers), owners of the Industry West Commerce Center, 237 Todd Road, Santa Rosa, Sonoma County (WDID No. 1B05066WNSO) (APN 134-102-45) (Site) proceeded with mass grading activities on the above mentioned site, that were unauthorized and were in violation of the California Water Code (CWC) and the Clean Water Act, Section 401 (CWA Section 401).
2. Regional Water Board staff member Andrew Jensen had several discussions with the Discharger, beginning in early May, regarding the wetland habitat on the site, discrepancies between the reported wetland delineation performed by Jones and Stokes, the Dischargers' consultants, and one conducted by the Army Corps of Engineers (ACOE) staff. Staff discussed the requirement to obtain a Water Quality Certification and/or Waste Discharge Requirements (Dredge/Fill Projects) for any dredge/fill activities within waters of the US. Staff informed the Discharger that they would need to provide necessary mitigation for all wetland impacts.
3. On May 17, 2005, the Discharger submitted an application for a Water Quality Certification and/or Waste Discharge Requirements (Dredge/Fill Projects), for impacts to wetland habitat associated with the proposed Industry West Commerce Center described above. Two different wetland delineation reports were included with the application, which indicated the presence of at least 0.25 acre of wetland habitat on the site. In addition, the ACOE sent a copy of a Wetland Reconnaissance Report conducted on the Site by Charles Patterson on February 13, 1996 to the Regional Water Board. The report

indicated the presence of 2-3 acres of jurisdictional wetland habitat on the Site. The ACOE has also conducted surveys of the Site and according to Mr. Bryan Matsumoto, the ACOE determined the Site contained approximately 2-3 acres of wetland habitat.

4. On July 21, 2005, the Discharger sent an email to Mr. Jensen formally requesting the application process be stopped while the wetland delineation discrepancies with the ACOE were worked out.
5. On August 9, 2005, ACOE staff contacted the Regional Water Board with a report that mass grading was actively occurring at the Site and that the wetland habitat on the site appeared to be destroyed.
6. On August 10, 2005, Regional Water Board staff went to the Site and verified that mass grading of the Site was actively taking place. Staff met the Site Superintendent, Mr. Sam Lopez with Simmon Construction, and notified him that the project was in violation of the CWC and the Clean Water Act, Section 401 (CWA Section 401). Mr. Lopez stated he would contact the Discharger regarding the matter. According to Mr. Lopez, the work on the Site had commenced on August 3, 2005.
7. The ACOE issued a Cease and Desist Order to the Discharger on August 10, 2005, for the above-mentioned activities and wetland impacts on the Site.
8. Based on the above information Regional Water Board staff have determined that an undetermined amount of jurisdictional wetland habitat has been destroyed and/or significantly impacted by the grading and filling activities that occurred on the Site.
9. The freshwater seasonal wetlands described above are within the Laguna de Santa Rosa Watershed, which is tributary to the Russian River, and have actual and potential beneficial uses, as designated in the Water Quality Control Plan for the North Coast Region (Basin Plan), that include:
 - a. Municipal and domestic supply
 - b. Agricultural supply
 - c. Industrial supply
 - d. Groundwater recharge
 - e. Freshwater replenishment
 - f. Navigation
 - g. Water contact recreation
 - h. Non-contact water recreation
 - i. Warm freshwater habitat
 - j. Cold freshwater habitat
 - k. Rare, threatened, or endangered species
 - l. Wildlife habitat
 - m. Migration of aquatic organisms
 - n. Spawning, reproduction, and/or early development

- o. Native American culture
- p. Flood peak attenuation/Flood water storage
- q. Wetland habitat
- r. Water quality enhancement

10. Section 3 of the Basin Plan contains water quality objectives that specify limitations on certain water quality parameters not to be exceeded as a result of waste discharges. The water quality objectives (pages 3-2.00 and 3-3.00) that are considered of particular importance in protecting the beneficial uses from unreasonable effects due to discharges from logging, construction, or associated activities, include the following:
- Color: Waters shall be free of coloration that causes nuisance or adversely affects beneficial uses.
 - Suspended Material: Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.
 - Settleable Material: Waters shall not contain substances in concentrations that result in deposition of material that causes nuisance or adversely affect beneficial uses.
 - Sediment: The suspended sediment load and suspended discharge rate of surface waters shall not be altered in such a manner as to cause nuisance or adversely affect beneficial uses.
 - Turbidity: Turbidity shall not be increased more than 20 percent above naturally occurring background levels. Allowable zones within which higher percentages can be tolerated may be defined for specific discharges upon the issuance of discharge permits or waiver thereof.
11. The Basin Plan contains specific standards and provisions for maintaining high quality waters of the state that provide for the beneficial uses listed above. The Action Plan for Logging, Construction and Associated Activities (Action Plan) included in the Basin Plan includes two prohibitions:
- Prohibition 1 - *“The discharge of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature into any stream or watercourse in the basin in quantities deleterious to fish, wildlife, or other beneficial uses is prohibited.”*
 - Prohibition 2 - *“The placing or disposal of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature at locations where such material could pass into any stream or watercourse in the basin in quantities which could be deleterious to fish, wildlife, or other beneficial uses is prohibited.”*

12. The following sections of the Porter-Cologne Water Quality Control Act authorize the Regional Water Board to require persons to remediate unpermitted discharges of waste:
- Section 13267(a) - *“A regional board, in establishing or reviewing any water quality control plan or waste discharge requirements, or in connection with any action relating to any plan or requirement or authorized by this division, may investigate the quality of any waters of the state within its region.”*
 - Section 13267(b) - *“In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or proposes to discharge waste within its region...that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires.”*
 - Section 13267(c) - *“In conducting an investigation pursuant to subdivision (a), the regional board may inspect the facilities of any person to ascertain whether the purposes of this division are being met and waste discharge requirements are being complied with. The inspection shall be made with the consent of the owner or possessor of the facilities or, if the consent is withheld, with a warrant duly issued pursuant to the procedure set forth in Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure. However, in the event of an emergency affecting the public health or safety, an inspection may be performed without consent or the issuance of a warrant.”*
 - Section 13304(a) - *“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 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, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts.”*
13. As described above, the Discharger has impacted wetland habitat on the Site, and has therefore caused a discharge of waste into waters of the state. The activities conducted on the Site included grading and filling activities which constitute unpermitted discharges of waste to waters of the State in violation of the Basin Plan and the CWC, as well as discharges to and destruction of federal jurisdictional wetlands. The Regional Water Board did not issue a permit for the grading and filling activities.
14. The mass grading of the Site and the subsequent discharge of waste into waters of the state (wetland habitat) and caused the direct loss of wetland habitat and its associated functions, which is deleterious to wildlife, and other beneficial uses. Wetland habitat generally consists of ponded or saturated areas that perform important functions related to

water quality including but not limited to: providing habitat for amphibians and other wildlife species; groundwater recharge; water quality enhancement; flood peak attenuation and flood water storage; and habitat for rare and endangered species. Removal of this habitat is deleterious to wildlife, and other beneficial uses, and therefore violates the CWC. These detrimental effects also constitute the creation of pollution or nuisance. The discharge of the dirt fill material is therefore subject to cleanup and abatement under CWC 13304.

15. A restoration Workplan required by this Order is necessary to ensure that the prior harm and future threat to water quality created by the discharges described above are properly abated and controlled.
16. This is an enforcement action by a regulatory agency, being taken for the protection of the environment, and is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code, Section 21000 et seq.) in accordance with California Code of Regulations (CCRs), Title 14, Sections 15308 and 15321.
17. Failure to comply with the terms of this Order may result in enforcement under the CWC. Any person failing to provide technical reports containing information required by this Order by the required date(s) or falsifying any information in the technical reports is, pursuant to CWC Section 13268, guilty of a misdemeanor and may be subject to administrative civil liabilities of up to one thousand dollars (\$1,000.00) for each day in which the violation occurs. Any person failing to cleanup or abate threatened or actual discharges as required by this Order is, pursuant to CWC Section 13350(e), subject to administrative civil liabilities of up to five thousand dollars (\$5,000.00) per day or ten dollars (\$10) per gallon of waste discharged.
18. Any person affected by this action of the Regional Water Board may petition the State Water Resources Control Board (State Water Board) to review the action in accordance with CWC Section 13320 and Title 23, CCRs, Section 2050. The State Water Board must receive the petition within 30 days of the date of this Order. Copies of the law and regulations applicable to filing petitions will be provided upon request. In addition to filing a petition with the State Water Board, any person affected by this Order may request the Executive Officer to reconsider this Order. To be timely, such request must be made within 30 days of the date of this Order. Note that even if reconsideration by the Executive Officer is sought, filing a petition with the State Water Board within the 30-day period is necessary to preserve the petitioner's legal rights. If you choose to request reconsideration of this Order or file a petition with the State Water Board, be advised that you must comply with the Order while your request for reconsideration and/or petition is being considered.

THEREFORE, IT IS HEREBY ORDERED that, pursuant to CWC Sections 13267(b) and 13304:

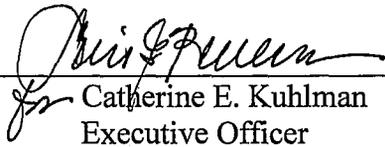
The Discharger shall coordinate and perform the following cleanup and abatement actions:

1. Cease the discharge of earthen materials, soil, and sediment to waters of the state and clean up and abate, in accordance with the schedule in numbers 2, 3 and 4 below, the condition of earthen materials, soil, and sediment discharged or placed into wetlands, surface waters and surface water drainage courses.
2. Submit copies of aerial photographs of the Site, showing both pre-project conditions and post-project conditions by October 25, 2005.
3. Submit a workplan to the Regional Water Board, for Executive Officer concurrence, on or before October 25, 2005, that includes the following:
 - a. A plan for removing the dirt fill, and/or an interagency agreed upon plan for mitigating the impacts, including temporal loss impacts.
 - b. Copies of all wetland studies and delineations performed on the Site.
 - c. An Army Corps of Engineers approved wetland delineation of the Site.
 - d. A detailed restoration and/or mitigation plan that addresses the timely restoration and/or mitigation of the wetland areas affected by the grading and filling activities. The plan shall contain a time schedule for restoration and/or mitigation activities, success criteria, and a monitoring proposal to evaluate whether the success criteria are being met.
 - e. A plan to provide additional mitigation to account for the temporal loss of wetland habitat that has occurred as a result of the unauthorized filling. Such mitigation can include restoration and/or creation of wetland habitat elsewhere in the watershed, restoration and/or creation of wetland habitat in upland areas on the Site, and/or the purchase of wetland mitigation credits at an approved wetland mitigation bank.
4. Following Executive Officer written concurrence, implement the workplan. All work to remove the dirt fill, restore the affected wetland habitat, and/or mitigate for total wetland impacts, shall be completed no later than October 15, 2006.
5. Submit a Notice of Intent to the SWRCB for coverage under the State General Construction Storm Water Permit by October 25, 2005.

If, for any reason, the Dischargers are unable to perform any activity or submit any documentation in compliance with the deadlines in the Workplan implementation schedule submitted pursuant to this Order and concurred with by the Executive Officer, the Dischargers may request, in writing, an extension of the time as specified. The written extension request shall include justification for the delay and shall be received by the Regional Water Board not less than 15 calendar days prior to the deadline sought to be extended. An extension may be granted for good cause, in which case this Order will be accordingly revised.

This CAO in no way limits the authority of this Regional Water Board to institute additional enforcement actions or to require additional investigation and cleanup at the facility consistent with California Water Code. This CAO may be revised by the Executive Officer as additional information becomes available.

Ordered by


Catherine E. Kuhlman
Executive Officer

October 3, 2005

Enclosure 1 – Site Photos taken August 10, 2005, by Regional Water Board staff.

Photo 1. Overview of Site entry off Todd Road, with active grading in background. 8/10/05.



Photo 2. Overview of mass grading of the Site. 8/10/05.



Enclosure 2 – Application for a Water Quality Certification and/or Waste Discharge Requirements (Dredge/Fill Projects), dated May 17, 2005.

Enclosure 3 –Email to Regional Water Board staff from Mr. Vince Rizzo, requesting the application process be stopped, dated July 21, 2005.

Enclosure 4 – Army Corps of Engineers Cease and Desist letter, dated August 10, 2005.