

California Regional Water Quality Control Board
North Coast Region

Administrative Civil Liability Complaint No. R1-2008-0054

For
Violations of Clean Water Act, Section 401, Water Quality Certification

In the Matter of
California Department of Transportation (Caltrans)
Hardscrabble Creek Bridge Replacement Project
WDID No. 1A06056WNDN

Del Norte County

The Assistant Executive Officer of the California Regional Water Quality Control Board, North Coast Region (hereinafter the Regional Water Board), hereby gives notice that:

1. On August 28, 2006, the Regional Water Board Executive Officer issued a Clean Water Act section 401 water quality certification (Certification) to the California Department of Transportation (Caltrans) for the Hardscrabble Bridge Replacement Project, and on June 20, 2007, the Executive Officer issued an amended Certification in response to a request by Caltrans. Caltrans is hereinafter referred to as the "Discharger," and the Hardscrabble Creek Bridge Replacement Project is hereinafter referred to as the "Project."
2. In addition to the above-referenced Certification, the Discharger is also responsible for ensuring that the Project complies with the provisions of the Caltrans National Pollutant Discharge Elimination System (NPDES) Permit for Storm Water Discharges (Order No. 99 06 – DWQ), referred to as the Storm Water Permit. Caltrans requested that the State Water Resources Control Board adopt a single statewide NPDES permit for storm water discharges from all of its properties, facilities, and activities. The statewide permit covers all municipal separate storm water sewer systems (MS4s) and statewide Construction General Permit requirements. Therefore, the Storm Water Permit covers all of Caltrans' municipal storm water facilities and systems and construction activities. The Storm Water Permit covers storm water and specifically authorized non-storm water discharges from Caltrans properties, facilities, and activities; discharges of other materials is prohibited. The Hardscrabble Creek Bridge project is subject to the requirements of the Storm Water Permit. The Storm Water Permit requires development and implementation of a Storm Water Pollution Prevention Plan (SWPPP) for every construction project that results in soil disturbance of an acre or more; the SWPPP must describe Best Management Practices (BMPs) for all of the project activities, in order to eliminate or minimize all potential water quality impacts. Caltrans is responsible for updating the SWPPP as needed to reflect any changes in project activities or to address deficiencies in the BMPs.
3. The Project is located on Highway 199 in Del Norte County, between Post Miles 10.8 and 11.2, on Hardscrabble Creek (S26, T17N, R1E), a tributary

to the Middle Fork Smith River in Del Norte County. The purpose of the Project is to replace the Hardscrabble Creek Bridge (DN-199-11.0), a bridge built in 1929, which has pier deterioration. Building the new bridge requires: a) the construction of a temporary bridge upstream of the existing bridge; b) demolition of the existing bridge, including six piers and footings within the stream channel; c) falsework construction; and d) construction of the new single-span bridge. For the construction phase of the project, Caltrans created a temporary stream crossing by confining a portion of Hardscrabble Creek within approximately 200 feet of 36-inch to 48-inch diameter steel pipe sandwiched between up to 300 cubic yards of gravel, installed in two layers, consisting of an upper layer of ¾-inch minus base rock and a lower layer of 1½-inch native washed gravel, separated by a layer of filter fabric.

4. On October 5, 2007, the Discharger notified Regional Water Board staff of two unplanned wastewater discharges to Hardscrabble Creek, which had occurred on October 4, 2007. On October 10, 2007, Caltrans provided a follow-up report describing the incident and the discharge. The description of the events in this complaint is taken from the October 5th communication and the October 10th report.
5. On September 18 through September 22, 2007 and September 24, 2007, the Discharger's contractor, American Civil Constructors (ACC), pressure washed curing compound, trade name CC309-2WS Curing Compound (Northern California), manufactured by W. R. Meadows, from the stem and soffit portions of the bridge. A total of approximately 4,000 gallons of wastewater from this process collected in the soffits on each side of the bridge. The wastewater remained in this area until October 4, 2007. The pressure washing was not part of the project description for the Certification.
6. On October 4, 2007, at approximately 0955 hours, the Discharger's contractor reportedly removed falsework from the south side of the east end of the bridge, releasing the soffit drains and the approximately 2,000 gallons of wastewater accumulated in this area. At 1000 hours, Karen Sanders, Caltrans Assistant Structures Representative, observed water flowing from the east side of the bridge. Ms. Sanders determined the source of the water, observed that it was flowing into Hardscrabble Creek, and noted that it was creating a cloudy plume in the creek. Ms. Sanders advised Caltrans Structures Representative Gary Woodard, the construction superintendent, and the crew, that wastewater was entering and clouding the creek. Per Ms. Sanders' October 5, 2007 report, the crew reacted immediately, placing siltation control devices in the path of the flowing water, but Ms. Sanders' report does not mention any attempt to stop wastewater draining from the soffit. Ms. Sanders' reported that she advised the construction superintendent that a similar discharge might occur when falsework was removed from the north side of the bridge; he

added more silt fence in the vicinity of the falsework on the north side.

7. On October 4, 2007, at 1045 hours, the crew lowered falsework from the north side of the bridge. Ms. Sanders reported that she went down to the creek and observed a plume entering the creek. Mr. Woodard spoke to the construction superintendent, and then Mr. Woodard and Ms. Sanders watched the plume dissipate over the next ten minutes.
8. According to the Discharger's October 10, 2007 report, each discharge comprised approximately 2,000 gallons and transported both curing compound and sediment into Hardscrabble Creek.
9. In addition, according to Caltrans staff, silt fencing had previously been removed to create "a walkway along the creek" for the construction workers. In correspondence dated November 29, 2007 Caltrans staff affirmed that:

"while silt fence and straw fiber rolls may have been in place along the creek channel, neither was in place at the area of discharge. The only filter fabric was located horizontally within the streambed sandwiched between two layers of river run rock that had been installed previously as a part of a stream diversion system. While new silt fence was installed (after the discharge) no fiber rolls were observed as being installed."
10. In an October 16, 2007 telephone conversation, Caltrans District 1 Construction Stormwater Coordinator Walt Dragaloski reported that the contractor had initially planned to sandblast the stem and soffit to remove the curing compound, but had subsequently decided to pressure wash instead. The SWPPP had not been updated to reflect this change or to take into account management, treatment, or disposal needs for the resulting wastewater. Regional Water Board staff noted that the application for 401 water quality certification had not mentioned plans for either sandblasting or pressure washing. Section 3856 of Title 23 of the California Code of Regulations requires applications for water quality certifications to include a full, technically accurate description of the entire activity in order to be considered complete.
11. Mr. Dragaloski also noted that the contractor's SWPPP manager was not on-site at the time of the discharge, was not qualified nor equipped to take water samples anyway, regardless of his presence on site, and that no water samples were collected by any of the personnel onsite at the time of the discharge.
12. Violations of the following provisions of the Discharger's permits are the basis for the civil liability assessed below:

- a. The Discharger has violated numerous conditions of its Water Quality Certification, including the following:
 - i. Additional Condition 4. Except as may be modified by any preceding conditions, all certification actions are contingent on: a) the discharge being limited and all proposed mitigation being completed in strict compliance with the Applicant's project description, and b) compliance with all applicable requirements of the Basin Plan.
 - ii. Additional Condition 5. Caltrans shall construct the project in accordance with the conditions described in the application and the findings above (as listed in the certification), and shall comply with all applicable water quality standards.
 - iii. Additional Condition 6. Any change to the operation of the project that would have a significant or material effect on the findings, conclusions, or conditions of this certification must be submitted to the Executive Officer of the Regional Water Board for prior review and written approval.
 - iv. Additional Condition 9. If, at any time, an unauthorized discharge to surface water (including wetlands, rivers or streams) occurs, or any water quality problem arises, the associated project activities shall cease immediately until adequate BMPs are implemented. The Regional Water Board shall be notified promptly and in no case more than 24 hours after the unauthorized discharge or water quality problem arises.
 - v. Additional Condition 10. No debris, soil, silt, sand, bark, slash, sawdust, rubbish, cement or concrete washings, oil or petroleum products, or other organic or earthen material from any construction or associated activity of whatever nature, other than that authorized by this Order, shall be allowed to enter into, or be placed where it may be washed by rainfall into, waters of the State.
 - vi. Additional Condition 14. BMPs for erosion, sediment and turbidity control shall be implemented and in place at commencement of, during and after any ground clearing activities, construction activities, or any other project activities that could result in erosion or sediment discharges to surface water. The BMPs shall be implemented in accordance with the BMP Manual and all contractors and subcontractors shall comply with the Manual.
- b. The Discharger has violated provisions of its Storm Water Permit (Order No. 99 06 – DWQ), including the following:
 - i. General Discharge Prohibition A.1. Any discharge from Caltrans rights-of-way or Caltrans properties, facilities, and activities within

those rights-of-way that is not composed entirely of storm water to waters of the United States is prohibited unless authorized pursuant to Section B of the NPDES Permit.

- ii. General Discharge Prohibition A.4. The dumping, deposition, or discharge of waste by Caltrans directly into waters of the State or adjacent to such waters in any manner that may allow its being transported in the waters is prohibited unless authorized by the Regional Water Board.
- iii. General Discharge Prohibition A.6. The discharge of sand, silt, clay, or other earthen materials from any activity, including land grading and construction, in quantities which cause deleterious bottom deposits, turbidity, or discoloration in waters of the State or which unreasonably affect or threaten to affect beneficial uses of such waters, is prohibited.
- iv. Receiving Water Limitations for Construction Activities C-2.2. The SWPPP developed for the construction activity covered by this NPDES Permit shall be designed and implemented such that storm water discharges and authorized non-storm water discharges shall not cause or contribute to an exceedence of any applicable water quality standards contained in a Statewide Water Quality Control Plan and/or the applicable RWQCB's Basin Plan
- v. Construction Program Management H. Caltrans shall implement the program specified in the Storm Water Management Plan (SWMP). Caltrans shall also implement any additional requirements contained in this Provision H.

1. Caltrans shall have a program to control all construction in the rights-of-way. This includes both construction by Caltrans, construction done under contract for Caltrans, and construction done by local government agencies or other third parties on Caltrans or non-Caltrans projects. The program must include:
 - a. review of construction site plans;
 - b. requirement of structural and nonstructural BMPs;
 - c. site inspections and enforcement; and
 - d. education of construction site operators.

The program must be implemented year-round on all construction projects in all parts of the State. The SWMP must be revised to address these requirements and have a program and a schedule for inspections.

Caltrans identifies non-compliance events that must be reported under provisions of the SWMP and Provision K.3.a as those discharges that result in violations of narrative and numeric prohibitions and limitations of the permit, discharges that violate requirements of the Clean Water Act, 404 permits and 401

certifications, and discharges that result in violations of narrative and numeric standards and requirements specified in Regional Board Basin Plans.

12. California Water Code section 13385, subdivisions (a)(1), (a)(2), and (a)(4) provides the basis for civil liability. Subdivision (a)(1) provides for civil liability against any person who violates California Water Code section 13376, which requires a person discharging pollutants or dredged or fill material into navigable waters of the United States to file a report of waste discharge. Subdivision (a)(2) provides for civil liability against any person who violates any NPDES permit or water quality certification. Subdivision (a)(4) provides for civil liability for violation of any order or prohibition issued pursuant to Water Code section 13243, if the activity subject to the order or prohibition is subject to the Clean Water Act. As described above, Caltrans violated the discharge prohibitions and requirements set forth in its Clean Water Act Section 401 Water Quality Certification.

13. California Water Code section 13385, subdivision (c) provides that civil liability imposed administratively by the Regional Water Board cannot exceed the sum of both of the following: 1) \$10,000 for each day in which the violation occurs, and 2) \$10 per gallon for each gallon in excess of 1000 gallons of discharge which is not susceptible to cleanup or is not cleaned up. The two discharges that occurred on October 4, 2007 are considered two distinct violations because they were two separate, independent actions, each resulting in a discharge of 2,000 gallons. In addition, there are two additional violations for failure to follow the terms of the Certification and Storm Water Permit, both of which could have resulted in either avoiding or significantly reducing the volumes of the discharges. The maximum civil liability associated with these discharges is calculated as follows:

Event	Explanation of Penalties	Violations	Maximum Civil Liability
First unauthorized wastewater discharge of 2,000 gallons	\$10,000 plus \$10 /gallon X (2,000 – 1,000) gallons	Certification Additional Conditions 4 and 10, and Storm Water Permit General Discharge Prohibitions A.1, A.4, and A.6.	\$20,000
Second unauthorized wastewater discharge of 2,000 gallons	\$10,000 plus \$10 /gallon X (2,000 – 1,000) gallons	Certification Additional Conditions 4, 9, and 10, and Storm Water Permit General Discharge Prohibitions A.1, A.4, and A.6.	\$20,000
Failure to follow project description and make notification of changes in project activities	\$10,000/day	Certification Additional Conditions 4, 5, and 6; Storm Water Permit Receiving Water Limitations for Construction Activities C-2.2.	\$10,000

Event	Explanation of Penalties	Violations	Maximum Civil Liability
Failure to have adequate BMPs in place, and to implement BMPs	\$10,000/day	Certification Additional Conditions 9 and 14; Storm Water Permit Construction Program Management H.	\$10,000
Total Potential Civil Liability			\$60,000

14. In determining the amount of any civil liability, pursuant to California Water Code section 13385, subdivision (e), the Regional Water Board is required to take into account the nature, circumstances, extent, and gravity of the violation; whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. The Regional Water Board is also required to consider the requirement in this section that states that, at a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.

Nature, circumstances, extent and gravity of the violation: Neither the Discharger nor the contractor considered or planned for the treatment/disposal of wastewater generated by the pressure washing operation, nor amended the SWPPP to disclose the proposed use of pressure washing, as required in the 401 certification. Neither the Discharger nor the contractor considered the contaminated nature of the wastewater. The discharges of the wastewater appeared intentional. The fact that between the first and second releases the contractor attempted to place siltation control devices on the slope below the bridge, rather than remove the wastewater from the soffit prior to removing the second falsework, suggests that the contractor intended to discharge wastewater from the second soffit into Hardscrabble Creek. Further, although Caltrans staff were onsite during both releases, and identified the cause of the initial release, it does not appear that Caltrans staff made any effort to prevent the second release from occurring. Prior planning, as required by the 401 certification for the Project, would have prevented both releases. Once the first release was confirmed and its cause identified, the fact that a second, nearly identical release occurred less than an hour later with the same personnel on scene, is particularly egregious, and is in violation of Additional Conditions 4, 5, 6, 9, 10, and 14 of the 401 certification.

The water drained from each of the soffits and picked up sediment as it flowed down the slope to Hardscrabble Creek. If appropriate BMPs had been in place along Hardscrabble Creek, some of the sediment would

have been trapped and would not have entered the Creek.

Another factor that contributes to the gravity of the violation is the fact that Hardscrabble Creek is a tributary to the Middle Fork Smith River, which is protected by the Wild and Scenic Rivers Act (16 U.S.C. 1271-1287), and is one of the largest undammed wild and scenic rivers. The sections of the Middle Fork Smith River that are designated as wild and scenic run from the headwaters to its confluence with the North Fork Smith River, and also includes segments of the main stem and certain tributaries, including Hardscrabble Creek. (Wild and Scenic Rivers Act, *P.L. 90-542, as amended, 16 U.S.C. 1271-1287.*) The Wild and Scenic Rivers Act protects rivers with extraordinary scenic, recreation, fishery, or wildlife values. Hardscrabble Creek is recognized as having outstanding recreational values. Caltrans' two discharges into Hardscrabble Creek are, therefore, especially egregious because of Hardscrabble Creek's special designation.

In addition to being a wild and scenic river, the Smith River system is within the habitat range of several species of salmonids and steelhead, each of which are listed under the federal Endangered Species Act or the California Endangered Species Act. Populations of salmonids in California have declined substantially in the last century. Elevated sediment loads are known to adversely affect salmonids. Sediment delivery to watercourses is known to have substantially increased in this watershed as a result of human activities. Beneficial uses related to aquatic life, including salmonids, are the most sensitive to sediment discharges.

The salmonid and steelhead species present:

- **Chinook (King Salmon)** - (*Oncorhynchus tshawytscha*) runs usually start in October and continue through January, depending on weather.
- **Steelhead** (*Oncorhynchus mykiss*), winter (November to April) and summer (May to October) runs
- **Coho** - coho salmon (*Oncorhynchus kisutch*) are fully protected at the state and federal level as a threatened species
- **Cutthroat** - January through October.
- **Rainbow Trout** - Rainbow trout are a resident fish, which are most visible November through April.

The majority of these species are known to be present in the Smith River during the month of October, the month in which the discharge occurred.

Susceptibility to Cleanup or Abatement and Voluntary Cleanup

Efforts Undertaken: Regional Water Board staff have no knowledge of any voluntary cleanup efforts undertaken by the Discharger. The discharged wastewater flowed from the soffits into the water of Hardscrabble Creek. The discharged water flowed over part of the gravel stream diversion that was in place as part of the construction project. This gravel, which may now be contaminated with curing compound and/or

other constituents, remains onsite. Following removal of the diversion, a portion of the gravel was installed on the road accessing the staging area on the west side of the creek, a portion placed within the turnout area at the northwest quadrant, and the remainder stockpiled in the staging area, covered, and surrounded by fiber rolls. It is unknown how much of the concrete curing compound remains in this material, nor the hazards it poses in the dried form. The Material Safety Data Sheet for the curing compound establishes environmental protection procedures for spills or leaks of the product in liquid form, which include containment, use of protective clothing and respirators. To date, the Discharger has not provided a plan to assess, treat or dispose of the gravel as appropriate. The Discharger had the opportunity first to prevent both discharges by developing a treatment/disposal plan for wastewater from the pressure washing operations, as well as to prevent the second discharge from occurring after identifying the cause of and circumstances associated with the first discharge. It does not appear that the Discharger made any efforts to clean up or abate the original discharges, nor has the discharger made any effort to prevent additional discharges of curing compound and/or other constituents.

Violator's ability to pay: The proposed \$60,000 civil liability is small in comparison to the overall cost of the project. Staff has no information to indicate that Caltrans would be unable to pay any imposed administrative civil liability.

Prior history of violations:

Hardscrabble Creek Bridge Replacement Project Violations

On May 30, 2007, the Regional Water Board issued Discharger a Notice of Violation for the Hardscrabble Creek Bridge Replacement project after learning that the Discharger had removed several times more trees from the project site than had been specified in its Water Quality Certification. Although in a subsequent site inspection, Regional Water Board staff did not observe any apparent adverse impacts to water quality resulting from the unauthorized tree removal, the tree removal constituted a major deviation from the Water Quality Certification and required prior authorization by the Regional Water Board Executive Officer. The Discharger would likely not have advised Regional Water Board staff of this deviation from the specifications of the Water Quality Certification had the Discharger not subsequently determined that it would need to seek an amendment to its Water Quality Certification in order to remove even more trees.

Other Relevant Violations

On October 30, 2006, the Regional Water Board issued Caltrans a Notice of Violation (NOV) for the Confusion Hill Bypass project. The identified violations included turbid water discharges to the South Fork Eel River on August 29 and August 30, 2006 and a discharge of concrete wastewater to an unlined basin within waters of the State on September 29, 2006. During an October 6, 2006 inspection, Regional Water Board staff identified additional violations, and on November 27, 2006, issued an NOV citing these violations of the Water Quality Certification and Storm Water Permit. In July 2007, Regional Water Board staff issued Administrative Civil Liabilities Complaint (ACLC R1-2007-0059).

On April 7, 2006, the Regional Water Board issued a California Water Code section 13267(b) Order requiring that Caltrans submit information related to the disposal of landslide material into the South Fork Eel River at Confusion Hill. Caltrans failed to apply for a permit for these activities or to notify the Regional Water Board of the discharges until Staff discovered the sidecasting activities. Staff also received a complaint from a downstream water user indicating that water quality monitoring had revealed anomalous turbidity readings in the South Fork Eel River that may have been related to the sidecasting activities.

On November 1, 2005, the Regional Water Board issued a Cleanup and Abatement Order to Caltrans for the Dry Creek Bridge Replacement Project. Caltrans violated the Water Quality Certification issued for the project by allowing equipment staging, material stockpiles and refuse disposal within waters of the State without a permit.

On December 28, 2005, the Regional Water Board issued an Administrative Civil Liability Complaint to Caltrans for violations of the Water Quality Certification for the Van Duzen River Bridge Replacement Project. The violations included turbid discharges to the Van Duzen River, inadequate BMPs to protect water quality, leaks and spills of petroleum products within waters of the State, the unauthorized discharge of fill materials to waters of the State, failure to comply with the authorized work schedule required to protect wildlife and endangered species, and failure to report violations, as required by the Water Quality Certification. Caltrans paid an administrative civil liability of \$101,000.

Degree of culpability: Staff have worked closely with Caltrans on the Hardscrabble Creek Bridge Replacement Project, attempting to ensure compliance with the Water Quality Certification and the Storm Water Permit. Staff have spent considerable time providing assistance to Caltrans on the Project by amending the Water Quality Certification at Caltrans' request, performing inspections, and providing guidance for compliance by email and telephone. Regional Water Board staff notified

the Discharger of this Board's water quality concerns verbally while onsite, as well as in writing in a NOV. Caltrans was notified of the Water Quality Certification requirements and was given numerous opportunities to correct procedural deficiencies and to improve communication with its contractors through onsite water quality permit compliance meetings. The Discharger, a State agency, is likely more aware than many other dischargers of State laws and regulations, particularly in light of its ongoing interaction with the State and Regional Water Boards, both within the North Coast Region and statewide in water quality-related matters associated with its road construction and maintenance efforts.

The violations included in this Complaint were easily avoidable through proper planning, the use of adequate BMPs, and implementation of the SWPPP. The Regional Water Board warned Caltrans in the May 30, 2007 notice of violation of Caltrans' responsibility for oversight of its projects. In addition, Caltrans had been instructed numerous times that compliance with the Water Quality Certification and Storm Water Permit and the utilization of appropriate BMPs on its projects is ultimately its responsibility.

Economic benefit or Savings: Staff expect there may have been an economic benefit associated with failure to plan for, and properly treat/dispose of, the wastewater associated with the pressure washing operation; simply considering cost of pumping, trucking, and disposal of liquid waste, staff have conservatively estimated the economic benefit associated with this event to be \$12,000.

15. The issuance of this Complaint is an enforcement action to protect the environment and is, therefore, exempt from provisions of the California Environmental Quality Act (Public Resources Code sections 21000 et seq.) pursuant to title 14, California Code of Regulations, sections 15308 and 15321, subdivision (a)(2).

CALTRANS IS HEREBY GIVEN NOTICE THAT:

1. The Assistant Executive Officer of the Regional Water Board proposes that Caltrans be assessed an administrative civil liability in the amount of \$60,000.
2. A hearing shall be conducted on this Complaint by the Regional Water Board on December 11, 2008, unless Caltrans waives the right to a hearing by signing and returning the waiver form attached to this Complaint. By doing so, Caltrans agrees to pay \$60,000 in full to the State Water Pollution Cleanup and Abatement Account within thirty days of the date of this Complaint.
3. If Caltrans waives the hearing and pays the liability, the resulting settlement will become effective on the next day after the public comment period for this Complaint is closed, provided that there are no significant comments received during the public comment period. If there are significant public comments, the

Assistant Executive Officer may withdraw this Complaint, and reissue a new complaint, or take other appropriate action.

4. If a hearing is held, the Regional Water Board may impose an administrative civil liability in the amount proposed or for a different amount; decline to seek civil liability; or refer the matter to the Attorney General to have a Superior Court consider enforcement.
5. Regulations of the United States Environmental Protection Agency require public notification of any proposed settlement of the civil liability occasioned by violation of the Clean Water Act, including NPDES Permit violations, which includes violations of the Storm Water Permit. Accordingly, interested persons will be given thirty days to comment on any proposed settlement of this Complaint.
6. Notwithstanding the issuance of this Complaint, the Regional Water Board shall retain the authority to assess supplementary penalties for additional violations of Caltrans' Water Quality Certification, Storm Water Permit, and the Water Quality Control Plan for the North Coast Basin.

Ordered by

Luis G. Rivera
Assistant Executive Officer

September 30, 2008