

California Regional Water Quality Control Board
North Coast Region

ORDER NO. R1-2009-0051

REQUIRING TECHNICAL INFORMATION
PURSUANT TO WATER CODE SECTION 13267(b)

FOR

California Department of Transportation
Ten Mile River Bridge Replacement Project
WDID NO. 1B02207WNME

Mendocino County

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

1. The California Department of Transportation (hereinafter Discharger), as project sponsor for the Ten Mile River Bridge Replacement (Project), applied for the following permits administered by the Regional Water Board:
 - a) Clean Water Act Section 401 Water Quality Certification (Water Quality Certification) as WDID No. 1B02207WNME .
 - b) Order No. 99-06-DWQ, the National Pollutant Discharge Elimination System (NPDES) Permit for Storm Water Discharges from Caltrans Properties, Facilities, and Activities (Storm Water Permit).
2. The Caltrans Storm Water Permit contains enforceable requirements intended to control the discharge of pollutants from construction projects. Additionally, the Water Quality Certification contains conditions that the Project is expected to comply with to protect water quality. These requirements are necessary to prevent discharges of sediment from construction projects that can cause or contribute to violations of applicable water quality standards.
3. On March 23, 2009, the Regional Water Board was contacted by the California Department of Transportation (Caltrans) regarding appropriate disposal methods for portland cement concrete (PCC) grindings generated from the Ten Mile River Bridge Replacement Project (project). Regional Water Board staff recommended, and Caltrans staff agreed to, placing the PCC slurry in a drying bed on site and disposing of the waste in a landfill. A few days later, Caltrans staff contacted Regional Water Board staff about incorporating the dried material into on-site fill. Regional Water Board staff stated that if Caltrans wished to reuse the PCC grindings as fill for the project they could place them and the associated slurry in an impermeable drying bed and comply with Title 27 of the California Code of Regulations for Solid Waste disposal. Regional Water Board staff specifically told Caltrans staff not to place the PCC grindings and associated

slurry in an unlined pit where potential contaminants could be mobilized and adversely impact ground water.

4. On April 3, 2009, Caltrans staff notified the Regional Water Board that the PCC grindings were hauled off-site on March 30, 2009, and placed in an unlined excavated pit at a Caltrans maintenance facility. On April 4, 2009, at the direction of the Regional Water Board Caltrans staff excavated the PCC grindings and slurry and placed them in a lined drying bed. In addition, the unlined pit was excavated and sampled for potential pollutants of concern. Caltrans staff stated that the PCC grindings would undergo waste characterization tests to determine proper disposal options.
5. The following sections of the Porter-Cologne Water Quality Control Act authorize the Regional Water Board Executive Officer to make the following requirements for persons suspected of discharging waste that could affect the quality of waters within this region:
 - Section 13260 (a) – *“All of the following persons shall file with the appropriate regional board a report of the discharge, containing the information which may be required by the regional board: (1) Any person discharging waste, or proposing to discharge waste, within any region that could affect the quality of the waters of the state, other than into a community sewer system.”*
 - 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.”*

8. All of the technical reports required by this Order are necessary to ensure that the prior harm and future threat to water quality created by the discharges described above are properly abated and controlled. More detailed information is available in the Regional Water Board's public file on this matter.
9. In light of the Discharger's construction project and staff observations that PCC grindings and slurry were discharged to unlined excavated pits, the burden, including costs, of the reports required by this Order bear a reasonable relationship to the need for the reports and the benefits to be obtained therefrom.
10. This enforcement action is being taken for the protection of the environment and, therefore, is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, section 21000 et seq.) in accordance with Section 15321, Chapter 3, title 14, California Code of Regulations.
11. Failure to comply with the terms of this Order may result in enforcement under the California Water Code. 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 Water Code 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 clean up or abate threatened or actual discharges as required by this Order is, pursuant to Water Code section 13385, 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. Any person discharging waste into navigable waters of the United States without waste discharge requirements is, pursuant to Water Code Section 13385(c), subject to administrative civil liabilities of up to ten thousand dollars (\$10,000.00) per day in which the discharge occurs plus ten dollars (\$10.00) per gallon of waste discharged, and may also be subject to criminal prosecution pursuant to Water Code Section 13387.
12. 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 California Water Code section 13320 and title 23, California Code of Regulations, section 2050. The petition must be received by the State Water Board 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 Board, any person affected by this Order may request the Regional Water Board to reconsider this Order. To be timely, any such request must be made within 30 days of the date of this Order. Note that even if reconsideration by the Regional Water Board 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 California Water Code Section 13267(b) the Discharger shall:

Submit a technical report to the Regional Water Board concerning the above-described violation. The report shall be received by the Regional Water Board on or before **August 12, 2009**, and shall include, but not be limited to, the following technical information:

1. A site investigation report including the results of the soil samples collected from the original unlined pit and the PCC grinding characterization.
2. A report discussing policies, procedures and corrective actions implemented at the site including:
 - a. An explanation of Caltrans' failure to implement direction from Regional Water Board staff;
 - b. A complete explanation of any breaches of communication or inadequate training or oversight of Caltrans staff or contractors that contributed to the violations;
 - c. Procedural changes or training that Caltrans will implement to ensure that similar violations do not occur in the future;
 - d. Corrective action measures taken to prevent the PCC grindings and slurry from impacting waters of the State (ground water and/or surface water) related to the project and district wide; and
 - e. An appropriate disposal plan for the PCC grindings and slurry currently located at the Caltrans facility.
3. Any other pertinent information that will assist Regional Water Board staff in evaluating the violations, relevant procedures, and necessary mitigation measures.

All information provided in response to this Order must include the following signed certification statement:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

The foregoing report is needed to address the potential ongoing water quality threat at the project and district wide. The report required by this Order will allow Regional Water Board staff to determine the mitigation and other measures that are needed to protect water quality and ensure that similar violations do not recur. In addition, the information within the required report may be used in further enforcement actions taken against Caltrans.

Ordered by _____

Catherine Kuhlman
Executive Officer

May 19, 2009