

California Regional Water Quality Control Board  
North Coast Region

ORDER NO. R1-2010-0042

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

FOR

California Department of Transportation  
Highway 299 China Slide Safety Project  
WDID No. 1A08121WNTR

Trinity County

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

1. The California Department of Transportation (hereinafter Caltrans), as project sponsor for the China Slide Safety (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. 1A08121WNTR.
  - 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 for Project to protect water quality. These requirements and conditions are necessary to prevent discharges of sediment from construction projects that can cause or contribute to violations of applicable water quality standards.
3. On August 13, 2009, North Coast Regional Water Quality Control Board (Regional Water Board) staff inspected the Project and noted several deficiencies in the implementation of Best Management Practices (BMPs) required by Order No. 99-06-DWQ, the National Pollutant Discharge Elimination System Permit for Storm Water Discharges from Caltrans Properties, Facilities, and Activities (Storm Water Permit) and violations of the Clean Water Act Section 401 Water Quality Certification (401 Certification). Subsequently, Regional Water Board staff notified Caltrans staff of the inspection results; Regional Water Board staff reiterated their concerns with the project to the District One Construction Area Manager, the Area Construction Engineers, the Resident Engineer, the Construction Storm Water Coordinator, and the NPDES coordinator via e-mails dated October 09 and 26, 2009 and November 4, 2009.

In addition, Regional Water Board staff explained concerns in person to the Resident Engineer, Construction Storm Water Coordinator and contractor on-site on October 22, 2009.

4. On October 09, 2009, the Caltrans Construction Storm Water Coordinator notified Regional Water Board staff that the installation of a clear water diversion on September 28, 2009 had caused sediment to discharge into an unnamed tributary to the Trinity River. Finding number 7 of the 401 Certification indicates that “work in all drainages will only be conducted during dry weather from the period of June 1<sup>st</sup> to September 30<sup>th</sup>. The entire project is expected to take 110 working days and is anticipated to be completed by October, 2009.” Based on the date of the installation of the clear water diversion and the date which the discharge was reported, it appears that Caltrans did not provide the correct work window dates in the application for the 401 Certification, had not adequately reviewed the conditions of the 401 Certification for the project, and/or was not planning to limit work in drainages to the dry season, in compliance with the 401 Certification conditions.
5. During subsequent site inspections in October 2009, Caltrans Construction staff informed Regional Water Board staff that the project would not be completed in 2009 and, in fact, would require another construction season, leaving the site with unstable slopes and temporary erosion control throughout the wet season. This is in direct conflict with the project schedule information provided by Caltrans in its applications for Regional Water Board permit coverage for this project.
6. On October 09, 2009, Regional Water Board Staff notified Caltrans staff that the project was violating the work windows which Caltrans had proposed for the project. In addition, staff requested field logs for the “water quality permit compliance meetings” per condition 16 of the 401 Certification; however, to date, Caltrans has not provided these logs. Additionally, Regional Water Board staff provided Caltrans with advance notice to be prepared for a forecast storm on October 13, 2009, and to comply with condition 19 of the 401 Certification “rainy day BMP reports”; however, to date, Caltrans has not submitted any BMP reports for this storm event.
7. As required by the 401 Certification and Storm Water Permit, Caltrans reported sediment discharges on September 09, 2009, October 13, 14 and 16, 2009, November 17, 2009 and February 26, 2010. These discharges, the work window violations, conditions observed by Regional Water Board staff during site inspections, and public complaints concerning this project demonstrate a pattern of continuing violations.
8. The Porter-Cologne Water Quality Control Act authorizes the Regional Water Board Executive Officer to require persons who have “discharged, discharges, or

proposes to discharge waste” that could affect the quality of waters to submit technical information as described below:

- 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 documented site conditions and permit violations associated with Caltrans’ Project, sediment discharges, and failure to conduct required monitoring and reporting, 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 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) Caltrans shall:

Submit reports to the Regional Water Board concerning the above-described violations. The reports shall be received by the Regional Water Board on or before **April 15, 2010** (unless otherwise stated), and shall include, but not be limited to, the following technical information:

1. An explanation of Caltrans' failure to complete the project in accordance with the timeframe provided in the 401 application including:

- a. A complete explanation of any breaches of communication or inadequate training or oversight of Caltrans staff or contractors that contributed to the violations; and
  - b. Procedural changes or training that Caltrans will implement to ensure that similar violations do not occur in the future.
2. A copy of the project Storm Water Pollution Prevention Plan (SWPPP) including updates, amendments and attachments.
3. An application and fee to amend the 401 Certification with the following information:
  - a. The correct project duration and proposed in-stream work windows; and
  - b. A plan to cleanup the site and abate potential sediment discharges through sediment removal and installation of additional BMPs to prevent additional impacts to water quality.
4. Within 10 days of the receipt of this Order, a report providing a description with photos of all areas disturbed by project activities, including all excess materials disposal areas. The report shall describe corrective action measures taken by the Project to prevent additional discharges of sediment and sediment-laden water from discharging to waters of the State.
5. After each rainfall event that generates visible runoff from the project area, Caltrans shall photograph all areas disturbed by project activities, including all excess materials disposal areas, in order to demonstrate that erosion control and revegetation measures are present and have been installed appropriately and successfully in accordance with the Caltrans Construction Site Best Management Practice Manual (CCSBMPM). Caltrans shall submit a brief report describing and containing these photos within 30 days of the rainfall event.
6. Upon Project completion, Caltrans shall provide photos of the completed project with final erosion control installed to the appropriate Regional Water Board staff person, in order to document compliance with the 401 Certification and the Caltrans Storm Water Permit.
7. Any other pertinent information that will assist Regional Water Board staff in evaluating the violations, relevant procedures for abatement of future discharges, 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.*

Ordered by \_\_\_\_\_

Catherine Kuhlman  
Executive Officer

April 7, 2010

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