

California Regional Water Quality Control Board
North Coast Region

ORDER NO. R1-2011-0036

REQUIRING TECHNICAL INFORMATION
PURSUANT TO WATER CODE SECTION 13267

FOR

Bohan & Canelis

600 Austin Creek Road, Cazadero
WDID NO. 149I001613

Sonoma County

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

1. Bohan & Canelis operate an industrial mining and ready mix concrete facility, located at 600 Austin Creek Road in Cazadero (hereinafter Facility), California. Construction sand and gravel are mined from Austin Creek, and mixed with crushed and broken stone mined from an upland hard rock quarry.
2. Austin Creek is a tributary to the Russian River and is considered a water of the State and of the United States. The Regional Water Board and the U.S. Environmental Protection Agency (EPA) have listed the Russian River under Clean Water Act section 303(d) as impaired for sediment, temperature, and pathogens.
3. The Discharger enrolled for coverage under Industrial Stormwater Requirements Order No. 97-03-DWQ (hereinafter Industrial Stormwater Order) on June 19, 1997. The Industrial Stormwater Order authorizes the discharge of stormwater and certain non-stormwater discharges from industrial activities to Austin Creek; it does not authorize the disposal of any non-specified wastes from the Facility.
4. The Discharger presently transports gravel washing spoils from its processing facility and discharges those materials onto a nearby parcel, Sonoma County parcel APN 97-03-29 (hereinafter site). The discharge areas appear to be separated from Austin Creek by a line of bermed material within and/or adjacent to Austin Creek's riparian zone. In correspondence over summer 2010, in the process of reviewing a permit application from the Discharger for instream gravel mining, staff asked the Discharger for details about the spoils, including the following specific request contained in a July 2, 2010 email from Stephen Bargsten to Steven Canelis, of Bohan & Canelis, and reiterated in a subsequent Denial without Prejudice letter (August 3, 2010):

“Please describe how the fines are washed from the gravel, how they are removed from the wash water, how they are hauled, and how and where they are dried and disposed of.

Please detail the area where they are hauled to, dumped and dried. Include parcel(s) map with APNs and put on an aerial photo, so that we can see proximity to the creek and Russian River. We need to know quantities, area and depth of fill, how long they are there to dry, BMPs (you mentioned a berm along the creek), where the top of bank of Austin Creek is, the elevation and area of flood inundation for various storms (2 yr, 10 yr, 100 year), if and how often the area floods. Show areas within the area of wetlands/waters of the state (needs to be done by a qualified wetland biologist). Provide any available information about depth to ground water within this area. Please include copies of the County permits that you mentioned that allow the disposal/drying of the fines in this location.

With respect to the fines, please provide a chemical characterization of what is in the fines, including metals, TPH, and EPA 8260 analysis. What chemicals/polymer(s) are used in your process to remove the fines from your recycled wash water? You also mentioned a physical analysis that was done by Kleinfelder - please include this also - for example what portion is clay/fine material, percent of compaction, etc.”

Mr. Canelis did not provide the requested information.

The Regional Water Board and its staff have since received complaints alleging that the Discharger also discharges concrete waste washwater at the site.

5. The Industrial Stormwater Order, under which the Discharger is enrolled, requires the Discharger to report annually (Annual Report) any information regarding the handling and disposal of waste spoils including details on specific areas of decanting and final disposal and a description of how these disposal sites are protected from discharging pollutants into drainages that lead to waters of the State and United States. The Discharger has not provided the Regional Water Board with any information regarding the handling and final disposal of waste spoils in the Annual Report. Failure to submit this information in a timely manner constitutes a violation of the Industrial Stormwater Order.
6. Discharges of waste to land which may impact the quality of surface or ground water are subject to the provisions of the California Water Code, including section 13260 of the Water Code, which requires that 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, file a report of the discharge containing the information which may be required by the Regional Water Board. Depending on the nature of the waste the Discharger is placing on the site, the threat to water quality posed by the waste and the requirements and controls

necessary to insure that the waste does not adversely impact water quality and beneficial uses may be beyond the scope of the Industrial Stormwater Order.

7. The following sections of the Porter-Cologne Water Quality Control Act authorize the Regional Water Board to make the following requirements for persons suspected of discharging waste that could affect the quality of waters within this region:
 - a. 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.”*
 - b. 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.”*
 - c. 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. The technical report required by this Order is necessary to address the above referenced violations and the potential ongoing water quality threat posed by the Discharger’s handling of rock washing spoils and, potentially, concrete washout wastes, and to ensure that any future threat to water quality that may be created by the handling practices described above are properly abated and controlled. The report required by this Order will allow Regional Water Board staff to determine compliance with the Industrial Stormwater Order, as well as whether additional permitting is needed. More detailed information is available in the Regional Water Board’s public file on this matter.
9. In light of the unauthorized waste disposal described in Finding 4, above, 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 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.
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. If you choose to 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, the Discharger shall:

Submit a technical report to the Regional Water Board concerning the handling and disposal of waste both on and off-site. The technical report shall be received by the Regional Water Board on or before March 25, 2011, and shall include, but not be limited to, the following information:

1. A map and description of all aspects of the decanting of rock washing spoils and any other wastes placed and/or discharged on APN 97-03-29. This shall include a description of the type(s)/nature of the waste(s) discharged on APN 97-03-29, estimates of annual discharge volume(s) of the various waste(s) discharged, a description of the condition of the berms that separate the discharge area(s) from Austin Creek, any information about the depth to ground water within the decant areas, and information on any engineering standards/plans employed for the berm construction. On the map, show the top of bank of Austin Creek, and the elevation and area of flood inundation for various storms (2 yr, 10 yr, 100 year). Provide information about whether and how often the area floods. Show any wetlands/waters of the state (note that wetlands must be delineated by a qualified wetland biologist).
2. A description of all other disposal sites where wastes (as described above) are stockpiled. The report must include map(s) and a description of how the wastes are being applied and managed and a description of the practices being employed to ensure that these wastes do not discharge into waters of the State or of the United States.
3. Submit a plan for the characterization of the quality of materials identified in Tasks 1 and 2 above. The plan shall describe a method for collecting

representative samples of waste materials. The plan shall include parameters for determining concentrations of metals and other potential pollutants likely to be contained in the waste that pose a threat to ground and surface water quality.

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

February 23, 2011