
North Coast Regional Water Quality Control Board

June 12, 2013

Mr. Joung Min Yi
16226 Linview Drive,
San Leandro, CA 94578

Mr. Brian S. Momsen
c/o Carter, Momsen & Knight, LLP
444 North State Street
P.O. Box 1709
Ukiah, CA 95482

Dear Mr. Yi and Mr. Momsen:

Subject: **Notice of Violation of Cleanup and Abatement
Order No. R1-2011-0089 (CAO)**

File: Joung Min Yi, Mendocino County Assessor's Parcel Number(s) 037-120-09
(29980 Highway 101 North) and 037-120-08 (30010 Highway 101 North),
Mendocino County, WDID No. 1B10052CNME

The purpose of this letter is to inform you that Mr. Yi is in violation of Directives 2 c. and 3 of the subject CAO for failure to complete the required replanting of exposed soils portion of the Emergency Plan submitted for the properties identified above.

Directive 2 c. required the restoration and replanting of the properties subject to 13267/CAO Order No. R1-2011-0089. Directive 3 required that this work be completed by November 1, 2011. The directives are provided below with the requirements relevant to this Notice of Violation (NOV) underlined and bolded for emphasis.

2. Under the direction of a qualified licensed California Certified Engineering Geologist and Geotechnical Engineer experienced in slope stability, erosion control, and design and construction of engineered fills, develop an Emergency Plan to remove and/or properly stabilize all unstable earthen and woody material. The plan must include design and construction standards, and a monitoring plan for the following:

- c. The Emergency Plan must include: a map at 1:12000 or larger scale (e.g., 1:6000) (illustrating all restoration plan work points, debris piles, any unstable areas, watercourses, roads and highways, spoil disposal sites, bank stabilization locations, re-vegetation planting and any other factor that requires mapping or site construction details to complete the scope of work); design and construction standards for earthen material and woody debris stabilization; soil compaction; **re-planting of exposed soils**; and erosion control for unanticipated precipitation during remediation. Clearly state the method and manner of reconstruction including, as necessary, compaction standards, erosion controls, rock sizing, and planting densities. To ensure a successful re-vegetation/earthen stabilization effort, plantings shall be monitored and maintained (including irrigation if necessary) for five years. **All tree and shrub plantings shall have a minimum of 85% success of thriving growth at the end of five years with a minimum of two consecutive years (two growing seasons) of monitoring after the removal of irrigation. The discharger is responsible for replacement planting, additional watering, weeding, invasive exotic eradication, or any other practice to achieve these goals.** In addition, the plan must include a time schedule for completing the work including receiving any necessary permits from State, County and/or federal agencies that may be required.
3. Following Assistant Executive Officer written concurrence, and consistent with the directives of and in compliance with any necessary approvals and/or permits from the CDFG, and other agencies, the Discharger shall implement the work plan. Monitoring may be continued beyond the scope required above, at the discretion of the Assistant Executive Officer, should monitoring reports indicate the Site requires further stabilization. **The Discharger must complete all work to restore the site by November 1, 2011.**

In order to comply with the CAO you must complete the required replanting of the site.

Background

Via e-mail, on June 5, 2012, Regional Water Board staff requested from your consultant, Pacific Watershed Associates (PWA), a planting schedule. On November 15, 2012, we received a planting schedule that indicated that the subject properties would be replanted no later than January 2013.

In a letter dated January 14, 2013, Regional Water Board Executive Officer Matthias St. John granted PWA's December 24, 2012 request for modification to the Order to allow for fewer monitoring events per year, issuing an Amended CAO. In that letter, Mr. St. John also stated that:

With respect to your request to schedule a final inspection, it appears to be premature to schedule such an inspection before replanting is completed, as directed under the CAO and as required by CAL FIRE. Once you have completed necessary replanting efforts at the Site, please contact my staff, and we will schedule a mutually agreeable joint final inspection with interested agencies to allow both our and other agency staff to determine whether all requirements have been met to address the violations on the Site.

The post office returned the correspondence, as Mr. Yi did not pick up the certified mail. Regional Board staff contacted Mr. Momsen, the Attorney of Record, and confirmed that staff was sending the mail to the right address. Subsequently, staff mailed the material again. Following the second mailing and again receiving returned mail, staff confirmed with Mr. Momsen that Mr. Yi had received the correspondence, and was aware of the monitoring changes granted and the necessity of completing replanting.

On April 2, 2013, PWA contacted Stormer Feiler via email and submitted Monitoring Report #8 and informed Mr. Feiler that Mr. Yi had not yet paid them, and they were no longer going to proceed with required monitoring and replanting work necessary to comply with directives of the CAO.

To date, Regional Water Board enforcement staff have not recommended penalties for your delay in replanting the subject properties for two reasons: 1) trees were reportedly not available in the 2010/2011 winter when the site was restored, and site restoration work occurred too late in the season to be optimum for replanting, anyway¹, and 2) PWA consultants have been competent and timely in monitoring and reporting efforts and had indicated that site revegetation/replanting would occur, as noted above. Given that PWA consultants are no longer engaged for this project, and that Mr. Yi has not yet made any effort to revegetate the site, it appears that Mr. Yi does not intend to complete the work required under the CAO.

As stated in previous correspondence, each violation of the CAO may subject Mr. Yi to penalties of up to \$1,000 a day pursuant to Water Code section 13268, and/or up to \$5,000 a day pursuant to Water Code section 13350. Any discharge to receiving waters may subject Mr. Yi to penalties of up to \$10,000 a day plus \$10 for each gallon of discharge over 1,000 gallons not cleaned up pursuant to Water Code section 13385. The North Coast Regional Water Quality Control Board reserves the right to take any enforcement action authorized by law.

¹ Telephone communication with Danny Hagans of PWA.

If you have any questions regarding this matter, please contact Stormer Feiler by email at stormer.feiler@waterboards.ca.gov or by phone at (707) 543-7128 or his supervisor, Diana Henriouille by email at diana.henriouille@waterboards.ca.gov or by phone at (707) 576-2350.

Sincerely,

David Leland
Acting Assistant Executive Officer

130612_Yi_CAO_NOV

Certified-Return Receipt Requested

Enclosures to be mailed to Joung Min Yi, and Brian S. Momsen:

110823_SRF_Final_CAO_Min_Trans

130114_SRF_ef_Yi_CAO_MonitoringRequestForChangeResponse

130114_CAO_13267_R1_2010_0089_Amendment_#1

cc by email:

Mendocino County

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