

California Regional Water Quality Control Board
North Coast Region

Administrative Civil Liability Order No. R1-2009-0115

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 North Coast Regional Water Quality Control Board (hereinafter the Regional Water Board), hereby finds 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.
3. The 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.

4. 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 $\frac{3}{4}$ -inch minus base rock and a lower layer of $1\frac{1}{2}$ -inch native washed gravel, separated by a layer of filter fabric.
5. On October 5, 2007, the Discharger notified Regional Water Board staff of two unexpected discharges of wastewater into Hardscrabble Creek on October 4, 2007. Per reports from Caltrans, this wastewater had been trapped inside of the bridge following pressure washing operations in September 2007. On October 4, 2007, as Caltrans' contractor, American Civil Constructors (ACC), was removing falsework from the bridge, the trapped wastewater was released from inside the bridge, discharged onto the ground, flowed along an exposed soil slope, entraining and transporting sediment as it went, and discharged into Hardscrabble Creek. On October 10, 2007, Caltrans provided a follow-up report describing the incident and the discharge. The description of the events taken from the October 5th communication and the October 10th report formed the basis for Administrative Civil Liability Complaint R1-2008-0054 ("Complaint:") issued by Regional Water Board Assistant Executive Officer Luis Rivera on September 30, 2008. The Complaint assessed a total penalty of \$60,000 for the discharges described in the Complaint.
6. On November 25, 2008, Caltrans responded to the Complaint and provided additional information regarding the incident and related reporting. On May 20, 2009, representatives from Caltrans and its contractor met with Regional Water Board staff to further discuss and describe the factors associated with the incident. Based on the information provided by Caltrans staff and related discussions during the May 20, 2009 meeting, staff determined that it was appropriate to revise the proposed penalty to \$26,000, as discussed below.
7. 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 1,000 gallons (revised from 2,000 gallons per incident based on information provided by Caltrans and its contractor following issuance of the ACLC). 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 civil liability associated with these discharges is as follows:

Event	Maximum Penalty	Violations	Proposed Civil Liability
First unauthorized wastewater discharge of 1,000 gallons	\$10,000	Certification Additional Conditions 4 and 10, and Storm Water Permit General Discharge Prohibitions A.1, A.4, and A.6.	\$8,000
Second unauthorized wastewater discharge of 1,000 gallons	\$10,000	Certification Additional Conditions 4, 9, and 10, and Storm Water Permit General Discharge Prohibitions A.1, A.4, and A.6.	\$6,000
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
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.	\$2,000
Total Civil Liability			\$26,000

8. The issuance of this Order 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).
9. Any person affected by this action of the Regional Water Board may petition the State Water Board to review the action in accordance with section 13320 of the Water Code and title 23, California Code of Regulations, section 2050. The petition must be received by the State Water Board within thirty days of the date of this Order. Copies of the law and regulations applicable to filing petitions will be provided upon request.

CALTRANS IS HEREBY GIVEN NOTICE THAT:

1. Caltrans has been assessed a penalty of \$26,000 for the violations listed in Finding 7 above, and described in detail in ACLC No. R1-2008-0054. Caltrans shall pay \$26,000 to the State Water Pollution Cleanup and Abatement Account by November 4, 2009.

2. The Regional Water Board will conduct a hearing on this Order on December 10, 2009.
3. 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.
4. 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.

Certification

I, Catherine Kuhlman, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, North Coast Region on December 10, 2009.

Catherine Kuhlman
Executive Officer