



California Regional Water Quality Control Board

San Francisco Bay Region



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Secretary for
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Arnold Schwarzenegger
Governor

Certified Mail No.
70033110000265558615
Mr. William Criswell
Olympus Calistoga LLC
580 Lommel Road
Calistoga, CA 94515

Date: JUN 23 2004
File No. 2342.03 (TT)

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SUBJECT: Transmittal of Second Amended Cleanup and Abatement Order No. R2-2003-0049 for Calistoga Ranch Club, Napa County

Dear Mr. Criswell:

Please find enclosed with this letter the Second Amended Cleanup and Abatement Order No. R2-2003-0049. The Clean Water Act Section 401 certification for your project was sent under separate cover on June 17, 2004. If you have any questions, please contact Ms. Tobi Tyler of my staff, at (510) 622-2431, or e-mail tt@rb2.swrcb.ca.gov.

Sincerely,

Bruce Wolfe
Executive Officer

Enclosure: Second Amended Cleanup and Abatement Order No. R2-2003-0049

Cc w/ Enc.:

Charles Shinnamon
1541 Third Street
Napa CA 94559

Patrol Lieutenant Don Richardson
California Department of Fish and Game
P.O. Box 47
Yountville, CA 94599

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Napa, CA 94559

U.S. Army Corps of Engineers, S.F. District
Office, Regulatory Branch, Jane Hicks

Preserving, enhancing, and restoring the San Francisco Bay Area's waters for over 50 years

STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

SECOND AMENDED CLEANUP AND ABATEMENT ORDER R2-2003-0049
OLYMPUS – CALISTOGA, LLC
580 LOMMEL ROAD
CALISTOGA
NAPA COUNTY

The California Regional Water Quality Control Board, San Francisco Bay Region (the Regional Board or Board), finds that:

1. Olympus-Calistoga, LLC (hereinafter the Discharger) owns the Calistoga Ranch Project (hereinafter the Site). The Site has operated as a campground, a resort, and a recreational vehicle (RV) park for at least 40 years. Pursuant to a Use Permit adopted by Napa County in 1990 and amended by Napa County in 2000, the Site is being redeveloped to include 200 Park Model RV units and to construct and upgrade support and associated facilities at the Site (hereinafter the Project). The construction contractor is Taisei Construction Corporation (hereinafter the Construction Contractor).
2. On August 20, 1992, the State Water Resources Control Board adopted Order No. 92-08-DWQ, implementing National Pollution Discharge Elimination System (NPDES) General Permit No. CAS000002, amended in 1999 as Order No. 99-08-DWQ, Waste Discharge Requirements (WDRs) for Discharge of Storm Water Runoff Associated with Construction Activity (hereafter the General Permit). The Discharger filed for coverage under the General Permit November 3, 2002. The Discharger's WD1D number is 28S319323.
3. Board staff inspected the Site on February 6, 2003, following up on a complaint call forwarded by USEPA. The complainant alleged sediment pollution to Biter Creek, a water of the State, from the Discharger's construction activities on Lommel Road. Staff were able to verify this sediment and fill-related pollution.
4. During the inspection, Board staff reviewed the Site's Storm Water Pollution Prevention Plan (SWPPP) for compliance with the General Permit. Staff determined that there was a failure to comply with the General Permit. For example, the SWPPP was unsigned and described or depicted generic, idealized, non-site specific Best Management Practices (BMPs).
5. Following the inspection, Board staff issued a Notice to Comply (NTC) to the Site superintendent. The NTC required revision of the SWPPP incorporating a signature by a representative or officer of the Discharger, a Site map depicting the creek and its tributaries, and site-specific sediment and erosion control BMPs. The NTC also required the Discharger to repair several failed sediment fences, to sign and return the

NTC within one week, and submit a copy of the updated SWPPP to the Board within thirty days (by March 10, 2003). The Board received a signed NTC on February 13, 2003.

6. On February 20, 2003, Board staff returned to the Site in the late afternoon for a very brief inspection. At the entrance to the Site, Board staff witnessed a water truck washing tracked mud and dirt from the road surface into Biter Creek.
7. The water in Biter Creek was brown and turbid with sediment for several hundred feet below the discharge areas. Sediment washing into the creek was visible along several sections of the creek.
8. During the inspection, Board staff requested that the Discharger's construction contractor immediately discontinue this street cleaning practice. Board staff asked to review the street cleaning method ascribed within their SWPPP. The SWPPP described sweeping as the BMP for street cleaning.
9. While reviewing the SWPPP, Board staff inquired whether all required permits (i.e., Clean Water Act (CWA) Section 401 water quality certification from the Board, CWA 404 permit from the U.S. Army Corps of Engineers (USACE), and Streambed Alteration Agreement from the California Department of Fish and Game (CDFG), had been obtained for the bridges and storm water conveyance structures (culverts) at various locations along Biter Creek that were marked on a Site map. The Discharger's superintendent and senior project manager stated that they had obtained a Streambed Alteration Agreement from CDFG. The only evidence of permit-related documents present was a form letter from CDFG indicating that their application was received. It was later confirmed that a Fish and Game 1603 Streambed Alteration Agreement had not been obtained.
10. When Board staff asked whether any of these structures had been built, the superintendent replied that he did not know the number of culverts that had been put in, but he thought that some culverts had been installed. Board staff informed the superintendent that culvert placement and bridge demolition and replacement required a CWA Section 401 water quality certification and/or Waste Discharge Requirements from the Board and possibly a CWA Section 404 permit from the Corps. Board staff had not received a CWA Section 401 certification application by February 20, 2003.
11. Board staff issued a second NTC on February 20, 2003, requiring that the Discharger (1) immediately discontinue wash water and cleaning operations that discharge to Biter Creek, (2) sign and update the SWPPP due no later than March 10, 2003 (as required by the previous NTC), and (3) apply to the Board for a CWA Section 401 water quality certification for the culverts and crossing that were proposed on Biter Creek.
12. Board staff contacted Napa County after this second inspection and requested a meeting at the Site to discuss outstanding General Permit violations and other water quality concerns with the project. Board staff met with the Discharger's representatives and County staff at the Site on March 11, 2003. When asked about the requested updated

SWPPP that was due by March 10, 2003, the Discharger's representative presented to Board staff a SWPPP that still had the same deficiencies that staff had previously identified, including lack of site-specific BMPs, Site map, signature, erosion control plan, post-construction elements, and a storm water monitoring plan, all of which had been identified in the two NTCs and/or discussed with the Discharger's Construction Contractor on February 20, 2003.

13. Storm water monitoring plans are used to demonstrate the effectiveness of a site's erosion and sediment controls and, most importantly, compliance with the General Permit. Representatives and consultants for the Discharger claimed that they were unaware that storm water monitoring was a requirement of the General Permit.
14. Board staff verbally instructed the Discharger's representatives to immediately develop and implement a storm water monitoring plan, and complete, sign, and return the February 20, 2003 NTC, which was past due.
15. On April 15, 2003, Board staff received a CWA Section 401 application for structures built within Biter Creek. Board staff received a second CWA Section 401 certification application on April 21, 2003, for dredging the in-stream reservoir on Biter Creek. Both water quality certification applications were withdrawn on June 20, 2003, at the request of Board staff due to the inadequacy of the applications.
16. Appendix E of the April 15, 2003, application included a copy of the Site's SWPPP dated March 20, 2003. The SWPPP still lacked site-specific BMPs, a Site map, signature, erosion control plan, and post-construction control elements. It did, however, include a storm water monitoring program dated March 14, 2003.
17. On April 25, 2003, Board staff joined a CDFG biologist and warden to inspect the Site. CDFG noted that the Discharger had failed to obtain a 1603 Streambed Alteration Agreement for work in and around Biter Creek, including unpermitted creekside vegetation removal.
18. During the inspection, which followed a minor rain event, several incorrect, poor, or lacking BMP applications were noted including: lack of adequate concrete wash-out containment areas, unprotected spoils piles consisting of fine excavated earthen materials, and silt fencing and straw wattles placed within Biter Creek in an attempt to trap a large volume of sediment that had washed down from an active construction area into a tributary to Biter Creek. Staff also observed plumes of fine sediment discharging into Biter Creek from several newly installed, unpermitted culverts.
19. The inspection also revealed that a tributary to Biter Creek, above an in-stream reservoir on Biter Creek, had been lined with concrete (shotcrete) for a length of 370 feet of the tributary. A concrete box culvert was placed in the tributary and a recreational building with a restaurant was built over the box culvert. Further upstream on the same tributary, a "cabin" was placed in the tributary; i.e., one of the foundation piers for the cabin was placed directly in the tributary.

20. On May 29, 2003, Board staff returned to the Site to investigate what improvements to the Site had been made after a new consultant had been hired by the Discharger to develop the SWPPP and oversee its implementation during the on-going construction. A new culvert, which was not present during the April 25, 2003, inspection, had been installed without the Discharger having received proper permits for that work, despite directives from staff during previous inspections that permits were required for such activities.
21. On June 2, 2003, the Discharger submitted a much more thorough SWPPP, which adequately addressed all of the deficiencies noted above except for the post-construction controls. The post-construction section of the SWPPP stated that the post-construction control designs were specified in Project Improvement Plans, which could be accessed through the City of Calistoga or the project engineer, Riechers Spence and Associates, Inc. The General Permit states that the SWPPP shall describe all post-construction BMPs for the project, show the location of each BMP on the map, and describe the agency or parties to be the responsible party for long-term maintenance of these BMPs. Provision 2 of the Second CAO (as defined in Finding 29 below) requested and the Discharger submitted SWPPP revisions adequately addressing post-construction controls.
22. On July 31, 2003, Board staff received a revised water quality certification application incorporated within the Discharger's Site Characterization Report (the "July 2003 Site Characterization Report"), which was submitted in response to requirements in the First CAO (as defined in Finding 29 below). The Discharger submitted supplemental information on December 19, 2003, February 5, 2004, and February 12, 2004. The Discharger submitted a Mitigation and Monitoring Plan dated May 25, 2004, outlining all mitigation measures for the Project, including the mitigation measures addressed in the July 2003 and February 2004 submittals (the "Mitigation and Monitoring Plan").
23. The General Permit prohibits discharges of material other than storm water to waters of the U.S. except where authorized; i.e., where they do not cause or contribute to a violation of any water quality standard and are controlled through implementation of appropriate BMPs for elimination or reduction of pollutants. The General Permit also states that the SWPPP shall be designed and implemented such that storm water discharges and authorized nonstorm water discharges shall not cause or contribute to exceedences of any applicable water quality standards contained in a Statewide Water Quality Control Plan and/or the applicable regional board's basin plan.
24. The San Francisco Bay Basin Water Quality Control Plan (Basin Plan) prohibits the discharge of silt, sand, clay, or other earthen materials from any activity in quantities sufficient to cause deleterious bottom deposits, turbidity or discoloration in surface waters or to affect or threaten to affect beneficial uses (1995 Basin Plan, Chapter 4: Implementation Plan, Table 4-1: Discharge Prohibitions, Item No. 9).
25. Biter Creek is a tributary to the Napa River, which is an impaired water body under Clean Water Act Section 303(d) due to excessive sediment discharges. The Basin Plan defines existing and potential beneficial uses for the San Francisco Bay Region and

contiguous surface waters that are waters of the U.S. and the State. The beneficial uses of any specifically identified water body generally apply to all its tributaries. The following beneficial uses of Napa River also apply to Biter Creek: protection of rare and endangered species, agricultural supply, cold freshwater habitat, warm freshwater habitat, fish spawning and wildlife habitat, water contact recreation, and non-contact water recreation, fish migration, municipal supply, and wildlife habitat.

26. The deposition of waste such as concrete and other fill materials, culverts, rocks and sediments on and into Biter Creek and its tributaries have unreasonably affected the beneficial uses of these waters. It is well documented that sediment-impaired streams negatively impact beneficial uses such as fish spawning, fish migration, wildlife habitat, and freshwater habitat.
27. Based on the above findings, the Board finds that the Discharger has caused or permitted waste to be discharged or deposited where it has or probably will be discharged into waters of the State and waters of the U.S., and created and threatened to continue to create a condition of pollution. Pollution is defined as the alteration of the quality of waters of the State by waste to a degree that unreasonably affects either the waters for beneficial uses or the facilities that serve these beneficial uses. As set forth in Finding 26, the discharge of waste has resulted in unreasonable, unnecessary and avoidable adverse impacts to the beneficial uses of Biter Creek and its tributaries. Additionally, the discharge is in violation of the Basin Plan prohibition referenced in Finding 24.
28. Pursuant to Water Code Sections 13267 and 13304, this Order, therefore, contains requirements for the Discharger to, among other things, a) abate the effects of the waste discharge; and b) carry out corrective actions to clean up the discharge. Additionally, this Order requires the Discharger to comply with the General Permit in order to further prevent discharges of waste into waters of the State, and to obtain all required permits for its activities.
29. On June 20, 2003, the Board issued a Cleanup and Abatement Order (hereinafter the First CAO). On December 9, 2003, the First CAO was amended (hereinafter the Second CAO).
30. This Order amends and supersedes the First CAO and the Second CAO in their entirety. In addition, the Board Executive Officer finds that Olympus-Calistoga has provided the Board with all required technical reports concerning any alleged discharges and effects caused by such discharges at the Site, except for the final report provided for in this Order.
31. The Discharger has filed three Petitions for Review with the State Water Resources Control Board ("State Board") for review of the First CAO, Second CAO, and for review of findings of an incomplete application for CWA Section 401 water quality certification contained in the letter from Board staff to Olympus-Calistoga dated October 28, 2003 (collectively, "Discharger's Petitions for Review"). The Discharger

has committed to dismiss the Discharger's Petitions for Review within five (5) days of issuance of this Order.

32. On June 17, 2004, the Board Executive Officer issued CWA Section 401 water quality certification to the Discharger for the construction, restoration and mitigation activities at the Site.
33. This Order is an action to enforce the California Water Code and as such is exempt from the California Environmental Quality Act, pursuant to Section 15321(a)(2) of Title 14, California Code of Regulations.
34. Pursuant to Section 13304 of the California Water Code, the Discharger is hereby notified that the Board is entitled to, and may seek reimbursement for, all reasonable costs actually incurred by the Board since June 20, 2003, to investigate unauthorized discharge of waste and to oversee cleanup of such waste, abatement of the effect thereof, or other remedial action, required by this Order. The Discharger has completed and submitted to the Board a Cost Recovery Acknowledgment Form.

IT IS HEREBY ORDERED, pursuant to Sections 13304 and 13267, of Division 7 of the California Water Code, that the First CAO and the Second CAO are amended as follows and that the Discharger shall cleanup the waste discharged, abate the effect of the discharge, and take other remedial actions as follows:

A. Prohibitions

1. The direct discharge of wastes, including rubbish, refuse, bark, sawdust, or other solid wastes into surface waters or at any place where they would contact or where they would be eventually transported to surface waters is prohibited.
2. The discharge of floating oil or other floating materials from any activity in quantities sufficient to cause deleterious bottom deposits, turbidity, or discoloration in surface waters is prohibited.
3. The discharge of silt, sand, clay, or other earthen materials from any activity in quantities sufficient to cause deleterious bottom deposits, turbidity, or discoloration in surface waters is prohibited.
4. The groundwater in the vicinity of the Project shall not be degraded as a result of the Project activities or placement of fill for the Project.
5. The discharge of materials other than storm water, which are not authorized by a NPDES permit or allowed by this Order, to waters of the State or U.S. is prohibited.

B. Provisions

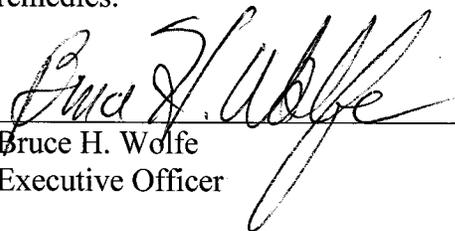
1. Corrective Actions

In accordance with specifications agreed upon by the Board Executive Officer, CDFG, USACE and the County of Napa, the Discharger shall undertake the following actions:

Task 1: By December 31, 2004, the Discharger shall submit a technical report to the Executive Officer documenting that all restoration and mitigation measures proposed in the Mitigation and Monitoring Plan have been successfully completed. If any on-site mitigation measures are permitted to be completed in the following construction season under the 401 Certification, then the Discharger shall so indicate in the December 31, 2004, report, and by December 31, 2005, shall submit a technical report documenting that all such mitigation measures have been successfully completed. Documentation shall include photographs and narrative descriptions. The adequacy of these Reports shall be acceptable to the Executive Officer.

2. Copies of all submittals, reports and correspondence regarding compliance with Task 1 shall also be provided to CDFG, USACE and Napa County.
3. If the Discharger is delayed, interrupted or prevented from meeting one or more of the completion dates specified in this Order, the Discharger shall promptly notify the Board Executive Officer in writing with recommended revised completion dates. The Board or Executive Officer may consider and approve revisions to this Order.
4. As described in Finding 34 above, upon receipt of a billing statement for costs incurred pursuant to Section 13304 of the California Water Code, the Discharger shall reimburse the Board.

Pursuant to California Water Code Sections 13304, 13268, and 13350, if the Discharger fails to comply with the provisions of this Order, the Board may schedule a hearing to consider assessing civil monetary penalties and to consider requesting the Attorney General to take appropriate enforcement action against the Discharger, including injunctive and civil monetary remedies.


Bruce H. Wolfe
Executive Officer

June 18, 2004
Date