



California Regional Water Quality Control Board

San Francisco Bay Region



Arnold Schwarzenegger
Governor

Linda S. Adams
Secretary for
Environmental Protection

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Certified Mail No. 7007-2560-0001-7505-0902
Return Receipt Requested

December 11, 2009
CIWQS Place ID 735449 (HTK)

Mr. Millard Tong and Mrs. Alicia Tong
Millwood Ranch
One Picardo Ranch Road
Pacifica, CA 94044
Also sent via email: milltong@sbcglobal.net

Subject: Cleanup and Abatement Order No. R2-2009-0045 for Millwood Ranch, One Picardo Ranch Road, City of Pacifica, San Mateo County

Dear Mr. and Mrs. Tong:

Enclosed is a Cleanup and Abatement Order ("Order") issued to you for the subject site. The copy of the Order enclosed has been revised since you received an e-mailed copy on December 3, 2009. Please direct your attention to the first compliance due date of December 21, 2009, for submittal of your Notice of Intent to obtain coverage under the Construction General Permit. Other minor changes to the Order are detailed in the enclosed errata sheet.

The Order is the legal document the Regional Water Board will use to oversee your cleanup and abatement of your site. It requires you to evaluate the impacts you have caused to creeks and wetlands at your site, your current business practices associated with your horse boarding facility, and the complete restoration, cleanup and remedial measures, as appropriate. In addition, it requires you to obtain the necessary permits and related approvals for work at your site.

Cost Recovery Program

Water Code section 13304 allows the Regional Water Board to recover its reasonable expenses for overseeing the investigation and cleanup of illegal discharges, contaminated properties, and other releases adversely affecting or threatening to adversely affect the State's waters. Your site falls into the category for which we may recover our oversight costs. Our cost recovery program is more fully described in the enclosed "Reimbursement Process for Regulatory Oversight."

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

Estimate of Work to be Performed and Expected Outcome

Regional Water Board staff will be actively overseeing the cleanup and abatement of the site. We estimate that the following work has been or will be performed by the Regional Water Board staff for your site during fiscal year 2009-2010, ending June 30, 2010:

- 1) Draft and finalize the site's Order;
- 2) Review submittals required under the Order and associated plans and correspondence from you, your consultant(s), and/or interested parties;
- 3) Conduct site inspections during and after drafting of the site's Order, including following up on submittals required under the Order;
- 4) Conduct meetings regarding the site on issues relevant to the Order; and
- 5) Discuss issues related to the site and prepare written correspondence between the Regional Water Board and interested parties.

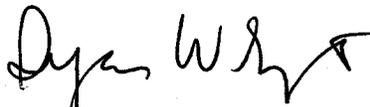
To date, we have expended approximately 120 hours in the preparation of the Order, which includes drafting the Order, site inspections, and investigating your site. We estimate that an additional 130 hours will be required for our oversight of the site for the remainder of the State's fiscal year. This is an estimate. The actual time needed will depend on the nature and extent of the necessary oversight. Based on our average billing rate of \$150 per hour, our estimated oversight cost for this site during fiscal year 2009-2010 is about \$37,500.

The "Billing Rates" enclosure lists the billing rates for employees expected to engage in the oversight of work on your site.

Site conditions will not reach the target cleanup/restoration goals and remedial measures, including creek and wetland restoration, are unlikely to be fully implemented within fiscal year 2009-2010. Thus, Regional Water Board oversight will continue past June 30, 2010. In accordance with Water Code section 13365, we will identify more detailed, specific outcomes in the future as work progresses and more site-specific data become available. This will include providing you with estimates of our oversight costs for oversight completed after June 30, 2010.

If you have any questions, please contact Habte Kifle of my staff at (510) 622-2371 or via email to hkifle@waterboards.ca.gov.

Sincerely,



Dyan C. Whyte
Assistant Executive Officer

Enclosures:

Cleanup and Abatement Order No. R2-2009-0045
Errata Sheet
Reimbursement Process for Regulatory Oversight
Billing Rates

cc w/attachments (via email):

SWRCB, Office of the Chief Counsel – Dorothy Dickey
SWRCB, Division of Water Quality – Bruce Fujimoto
SWRCB, Office of Enforcement – Laura Drabandt
Regional Water Board Lyris Enforcement email list

State of California Dept. of Fish and Game
350 Harbor Blvd.
Belmont, CA 94002
ATTN: Ryan McCoy #655, Game Warden
Via email rmccoy@dfg.ca.gov

State of California Dept. of Fish and Game
P.O. Box 47
Yountville, CA 94599
ATTN: Suzanne DeLeon
Via Email sdeleon@dfg.ca.gov

U.S. EPA Region 9
Clean Water Act Compliance Office
Water Division (WTR-7)
75 Hawthorne Street
San Francisco, CA 94105
ATTN: Ken Greenberg, Chief
Via email Greenberg.Ken@epamail.epa.gov

City of Pacifica
Planning Department
1800 Francisco Blvd.
Pacifica, CA 94044
ATTN: Christina Horrisberger
Via Email horrisbergerc@ci.pacifica.ca.us

Golden Gate National Recreation Area
Golden Gate National Parks
Building 201, Fort Mason
San Francisco, CA 94123-0022
ATTN: Nancy Hornor

Via Email Nancy_Hornor@nps.gov

Consumer & Environmental Protection Unit
San Mateo County District Attorney's Office
400 County Center, 3rd Floor
Redwood City, CA 94063
ATTN: Chuck Finney, Deputy DA
Via email cfinney@co.sanmateo.ca.us

San Francisco BayKeeper
785 Market Street, Ste 850
San Francisco, CA 94103
ATTN: Sejal Choksi
Via email sejal@baykeeper.org

Toyon Consultants
P.O. Box 1197
Watsonville, CA 95077
ATTN: Joe Rigney
Via email joe@toyonconsultants.com

ERRATA SHEET

CLEANUP AND ABATEMENT ORDER NO. R2-2009-0045

MR. MILLARD TONG & MRS. ALICIA TONG
DOING BUSINESS AS MILLWOOD RANCH

FOR THE PROPERTY LOCATED AT:
ONE PICARDO RANCH ROAD
PACIFICA, SAN MATEO COUNTY

CAO SENT DECEMBER 3, 2009

The following changes have been made to Cleanup and Abatement Order (CAO) No. R2-2009-0045. Changes below are shown in **bold and underline**/~~strikeout~~ format to indicate added and removed language, respectively. Changes are to correct typographic errors in the original CAO.

Errata No.	Page/ Section	Revision	Basis for Revision
1	5/Finding 6.f	Regional Water Board staff again observed that the Dischargers have not complied with the requirements set forth in the Notice to Comply issued on January 18, 2008.	Corrects typographic error.
2	11/Provision B.3.(vi)	... These BMPs must be consistent with the Equestrian Facilities Management Plan required in task 3, above.	Corrects typographic error.
3	12/Provision B.5	COMPLIANCE DATE: December 2114, 200910.	Corrects typographic error.

REIMBURSEMENT PROCESS FOR REGULATORY OVERSIGHT

We have identified your facility or property as requiring regulatory cleanup oversight. Pursuant to the Porter-Cologne Water Quality Control Act, reasonable costs for such oversight can be recovered by the Regional Water Quality Control Board (Regional Water Board) from the responsible party. The purpose of this enclosure is to explain the oversight billing process structure.

Introduction

The Porter-Cologne Water Quality Control Act authorizes the State Water Resources Control Board (State Water Board) to set up Cost Recovery Programs. The Budget Act of 1993 authorized the State Water Board to establish a Cost Recovery Program for the Site Cleanup Program (SCP). The program is set up so that reasonable expenses incurred by the State Water Board and Regional Water Boards in overseeing cleanup of illegal discharges, contaminated properties, and other unregulated releases adversely impacting the State's waters can be reimbursed by the responsible party. Reasonable expenses will be billed to responsible parties and collected by the Fee Coordinator at the State Water Board in the Division of Financial Assistance.

The Billing System

Each cost recovery account has a unique charge number assigned to it. Whenever any oversight work is done, the hours worked are charged to the account number on the employee's time sheet. The cost of the hours worked is calculated by the State Accounting System based on the employee's salary and benefit rate and the State Water Board overhead rate.

State Water Board and Regional Water Board administrative charges for work such as accounting, billing preparation, general program meetings and program specific training cannot be charged directly to an account. This work will be charged to administrative accounting codes. The Accounting Office totals these administrative charges for the billing period and distributes them back to all of the accounts based on the number of hours charged to each account during that billing period. These charges show as State Water Board Program Administrative Charges and Regional Water Board Program Administrative Charges on the Invoice.

The Overhead Charges are based on the number of labor hours charged to the account. The overhead charges consist of rent, utilities, travel, supplies, training, and personnel services. If there is no labor charged to the account during the billing period, there will be no overhead charges for that billing period with the exception of the last month of each fiscal year. This is due to the fact that the labor charges end June 30 for the current fiscal year. However, several kinds of overhead charges such as supply orders and travel expenses are paid after the fiscal year ends. The State Water Board Accounting Office keeps track of these charges and distributes them back to all of the accounts based on the number of hours charged to each account for the whole fiscal year that has just ended. Therefore, the quarterly statements for the last month of the fiscal year could show no labor hours charged for the billing period, but some overhead charges could be charged to the account.

Invoices are issued quarterly, one quarter in arrears. If a balance is owed, a check is to be remitted to the State Water Board with the invoice remittance stub within 30 days after receipt of the invoice. The Accounting Office sends a report of payments to the Fee Coordinator on a quarterly basis.

Copies of the invoices are sent to the appropriate Regional Water Boards so that they are aware of the oversight work invoiced. Questions regarding the work performed should be directed toward your Regional Water Board project manager. If the responsible party becomes delinquent in its quarterly payments, oversight work may cease immediately. Work will not begin again unless the payments are brought up-to-date.

Daily Logs

A detailed description (daily log) of the actual work being done at each specific site is kept by each employee in the Regional Water Board who works on cleanup oversight at the property. This information is provided on the quarterly invoice using standardized work activity codes to describe the work performed. *Upon request, a more detailed description of the work performed is available from the Regional Water Board staff.*

Removal From The Billing System

After the cleanup is complete, the Regional Water Board will submit a closure form to the State Water Board to close the account. If a balance is due, the Fee Coordinator will send a final billing for the balance owed. The responsible party should then submit a check to the State Water Board to close the account.

Regional Water Board Dispute Resolution

Based on the Regional Water Board's review and comment, the following section has been added as a San Francisco Bay Regional Water Board attachment to the SCP Cost Recovery Program's "Guide to the Billing Process" enclosure, "Reimbursement Process for Regulatory Oversight".

The Regional Water Board staff proposes to provide each responsible party (upon request) with daily logs of actual oversight work done and supporting accounting information for the responsible party's site. If, upon the receipt of the billing statement, the responsible party disputes the amount due, the responsible party may follow the dispute resolution procedure described below. If the responsible party follows the procedure, the Regional Water Board will not initiate, except as noted, enforcement action for failure to reimburse the State Water Board. During this procedure, the responsible party is encouraged to confer with Regional Water Board staff at any time to discuss the areas in question and attempt to resolve the dispute.

1. The responsible party must notify the Regional Water Board in writing within 30 calendar days of receipt of the billing statement to indicate that it disputes the billing statement and requests a meeting with the Regional Water Board Assistant Executive Officer. This notification must indicate the specific areas of dispute and provide all appropriate support documentation. Upon completion of the meeting, the Assistant Executive Officer will provide a recommendation to the Regional Water Board Executive Officer on the dispute and recommend an amount due, based on documentation provided by both the responsible party

and the Regional Water Board staff at the meeting. The Executive Officer will submit a written decision and resultant amount due to the responsible party and specify the new due date by which the resultant amount due must be paid to avoid enforcement action. This due date will be not less than ten working days from the date of the Executive Officer's written decision.

2. If, upon receipt of the Executive Officer's written decision, the responsible party still disputes the amount due and so notifies the Executive Officer by the new due date, the Executive Officer will schedule an appeal hearing of the decision before the Regional Water Board at the next appropriate monthly meeting. The Executive Officer may also consider recommending that the Regional Water Board take enforcement action for the responsible party's failure to pay the resultant amount due by the new due date if the Regional Water Board finds the responsible party's appeal without basis. Any amount due and not appealed to the Regional Water Board will be considered a violation of the Regional Water Board's order.

California Code of Regulations - Dispute Resolution

If a dispute regarding oversight charges cannot be resolved with the Regional Water Board, Section 13320 of the California Water Code provides an appeal process to Regional Water Board decisions. Regulations implementing Water Code Section 13320 are found in Title 23 of the California Code of Regulations, Section 2050.

BILLING RATES

SITE CLEANUP PROGRAM (SCP) BILLING COST EXPLANATION

Employee Salary and Benefits by Classification ¹	ABR	SALARY SCALE
Associate Governmental Program Analyst	AGPA	5,852 – 7,113
Engineering Geologist	EG	9,213 – 11,201
Environmental Scientist	ES	4,092 – 7,596
Office Assistant (G)	OA	2,758 – 3,684
Office Assistant (T)	OA	2,850 – 3,759
Office Technician (G)	OT	3,509 – 4,268
Office Technician (T)	OT	3,572 – 4,341
Principal Water Resources Control Engineer	PWRCE	13,090 – 14,434
Sanitary Engineering Associate	SEA	6,597 – 8,016
Sanitary Engineering Technician	SET	4,543 – 6,339
Senior Engineering, Water Resources	SWRCE	9,811 – 13,090
Senior Engineering Geologist	SEG	10,802 – 13,127
Senior Environmental Scientist	SRES	7,248 – 8,749
Senior Water Resources Control Engineer	SRWRCE	10,802 – 13,127
Staff Counsel	STCOUN	6,216 – 10,411
Staff Counsel III	STCOUNIII	10,217 – 12,606
Staff Counsel IV	STCOUNIV	11,286 – 13,934
Staff Environmental Scientist	SES	7,242 – 8,745
Student Assistant	SA	2,663 – 2,938
Student Assistant Engineer	SAE	2,663 – 3,985
Supervising Engineering Geologist	SUEG	10,769 – 13,090
Supervising Water Resources Control Engineer	SUWRCE	10,769 – 13,090
Water Resources Control Engineer	WRCE	7,883 – 11,144

Operating Expenses and Equipment ² (both Headquarters and Regional Board offices)

Indirect Costs (Overhead – cost of doing business) 135%

Billing Example

Water Resources Control Engineer

Salary:	\$	11,144
Overhead (indirect costs):	\$	<u>15,044</u>
Total Cost per month	\$	26,188.

Divided by 176 hours per month equals per hour: \$ 148.80

(Due to the various classifications that expend SCP resources, an average of \$ 150 per hour can be used for projection purposes.)

¹ The name and classification of employees performing oversight work will be listed on the invoice you receive.

² The examples are estimates based on recent billings. Actual charges may be slightly higher or lower.

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

CLEANUP AND ABATEMENT ORDER NO. R2-2009-0045

MR. MILLARD TONG & MRS. ALICIA TONG
DOING BUSINESS AS MILLWOOD RANCH

FOR THE PROPERTY LOCATED AT:
ONE PICARDO RANCH ROAD
PACIFICA, SAN MATEO COUNTY

This Order is issued to Mr. Millard Tong and Mrs. Alicia Tong, doing business as Millwood Ranch (hereafter "Dischargers"), based on provisions of California Water Code ("CWC") sections 13304 and 13267, which authorize the Assistant Executive Officer of the California Regional Water Quality Control Board, San Francisco Bay Region ("Regional Water Board") to issue a Cleanup and Abatement Order ("Order") and to require the submittal of technical and monitoring reports.

The Assistant Executive Officer of the Regional Water Board finds, with respect to the Dischargers' acts, or failure to act, the following:

1. **Purpose of Order:** This Order requires the cleanup and abatement of waste discharged at Millwood Ranch, One Picardo Ranch Road, City of Pacifica, San Mateo County, as well as remedial actions including creek, pond, and other wetland restoration actions to restore impacted creeks, ponds, and other wetlands and prevent future discharge of waste.
2. **Site Location:** The 166-acre Millwood Ranch ("Site") is located at One Picardo Ranch Road east of Highway 1 and west of Skyline Boulevard in the City of Pacifica, San Mateo County. The Site borders Terra Nova High School to the south, Golden Gate National Recreation Area ("GGNRA") open space to the north/northwest and residential areas to the east/southeast. The Site provides trails leading to the GGRNRA. Attachment A is a site location map.
3. **Site History:** The Site was historically used for agriculture. The former owner, the Picardo family, grew vegetables from the 1930s until early 1970s. Since then, the land use of the Site has shifted from agriculture to horse boarding. In January 2005, Millard and Alicia Tong acquired the Site and the horse boarding business from the Picardo family and changed the name to Millwood Ranch.
4. **Named Dischargers:** Millard Tong and Alicia Tong ("Dischargers"), doing business as Millwood Ranch, are named as dischargers because they own and operate the horse boarding business at the Site and have caused or permitted, and threaten to cause or

permit waste to be discharged into waters of the state, and have created, or threatened to create, a condition of pollution or nuisance.

If additional information is submitted indicating that other parties caused or permitted any waste to be discharged on the Site where it entered or could have entered waters of the state, the Regional Water Board will consider adding those parties to this Order.

5. **Regulatory Status:** This site is currently not subject to any Regional Water Board orders.
6. **Basis of Order:** CWC section 13304 authorizes the Regional Water Board to issue orders requiring a discharger to cleanup and abate waste where the discharger has caused or permitted waste to be discharged or deposited where it is or probably will be discharged into water of the state and United States, and creates or threatens to create a condition of pollution or nuisance. CWC section 13267 authorizes the Regional Water Board to require Dischargers to submit technical and monitoring reports.
 - (a) On January 15, 2008, Regional Water Board staff received a complaint that illegal creek fill and unauthorized grading and construction activities were taking place in the upper watershed of the north fork of San Pedro Creek. The impacted water bodies were an unnamed perennial creek tributary to San Pedro Creek and associated ponds and other wetlands. The impacted creek provides habitat for the California red-legged frog (*Rana aurora draytonii*), a federally-listed threatened species, and is a potential habitat for the San Francisco garter snake (*Thamnophis sirtalis tetrataenia*), a federally-listed endangered species.
 - (b) On January 18, 2008, Regional Water Board staff and a representative from the City of Pacifica's Code Enforcement Unit jointly inspected the Site and observed multiple violations committed by the Dischargers. Staff observed that the Dischargers had completed and were completing construction activities on their property, including, but not limited to: grading, placement of fill in waters of the state and the United States, and construction of structures including barns and a new house. At the end of the site inspection that day, Regional Water Board staff issued a Notice to Comply pursuant to CWC section 13399.2, specifying the immediate actions required to abate the ongoing impacts to water quality. Later that day, Regional Water Board staff sent an email message to the Dischargers summarizing the violations observed during the inspection of the Site and urging the Dischargers to correct their violations consistent with the Notice to Comply (See Attachment B for copies of the Notice to Comply and follow up email message from Cecil Felix to Mr. Tong).
 - (c) During the January 18 site inspection, Regional Water Board and City of Pacifica staff observed the following:
 - (i) The Dischargers had filled, altered and/or buried an estimated 1,060 linear feet of an unnamed creek that runs through the Site and associated other wetlands, including a spring, by filling the creek with horse manure and construction waste imported from another location, and by installing plastic pipes and related

infrastructure to convey flows through the filled reaches. The perennial creek and associated springs and other headwaters are tributaries to the north fork segment of San Pedro Creek. The Dischargers detrimentally impacted reaches of the creek by their activities that included grading, earth moving, clearing of vegetation, and using heavy equipment. The detrimental impacts in total reached approximately one-half mile in length. This work was completed without the required regulatory agency approvals, including, but not limited to:

- A Clean Water Act (“CWA”) section 401 water quality certification from the Regional Water Board;
- A CWA section 404 permit from the United States Army Corps of Engineers (“Corps”);
- Approval from the United States Fish and Wildlife Service (“USFWS”) pursuant to section 7 or 10 of the federal Endangered Species Act;
- A Streambed Alteration Agreement from California Department of Fish and Game (“CDFG”); or
- Coverage under the Statewide National Pollutant Discharge Elimination System (“NPDES”) General Permit for Discharges of Stormwater Associated with Construction Activity, Water Quality Order 99-08-DWQ (“Construction Stormwater Permit”) through the State Water Resources Control Board.

(ii) The Construction Stormwater Permit regulates construction activities pursuant to federal Clean Water Act NPDES requirements, with the goal of appropriately avoiding and minimizing discharges of pollutants, including turbid water, sediment, and construction wastes, to navigable waters. There is a one-acre threshold of disturbed land area for which coverage is required. Coverage under the permit is obtained by filing a Notice of Intent (“NOI”) and paying the required annual fee. A permittee must also: prepare and implement a Storm Water Pollution Prevention Plan (“SWPPP”) to guide and perform compliance; implement Best Management Practices (“BMPs”) to prevent and minimize discharges of pollutants to navigable waters; complete required inspections, monitoring, and reporting; and revise the SWPPP as necessary if BMPs are not fully adequate to control pollutants.

The Dischargers neither filed an NOI to obtain Construction Stormwater Permit coverage, nor did they comply with the Construction Stormwater Permit’s substantive requirements in the absence of coverage. The Dischargers did not have a SWPPP nor were they implementing appropriate BMPs to control pollutants, including erosion and sediment transport, from their construction activities. The Dischargers did not submit any monitoring reports to the Regional Water Board.

- (iii) The Dischargers discharged construction waste, including asphalt and approximately 3,822 cubic feet of concrete debris, into the creeks, ponds, and other wetland areas to expand their horse corrals, barns, stables and horse boarding facilities. These wastes were discharged directly to waters of the state and United States, and to locations from which they could subsequently discharge to waters of the state and United States;
 - (iv) The Dischargers did not implement BMPs sufficient to prevent the animal waste from discharging into waterways on the site, nor to prevent the animal waste from leaving the Site. As a result, the Dischargers discharged animal waste directly to waters of the state and the United States; and
 - (v) The Dischargers expanded the horse boarding facilities and associated improvements at their Site without completing an environmental assessment required under the California Environmental Quality Act (“CEQA”) Guidelines to identify and avoid, and to minimize and mitigate environmental impacts associated with the grading, filling and construction activities.
- (d) On July 23, 2008, Regional Water Board staff and a CDFG warden jointly inspected the site and observed ongoing grading and earth moving activities and fill in stream channel headwater areas. Stranded tree frog tadpoles were observed at the surface of a buried spring in the graded area. At the end of the inspection, the warden ordered the Dischargers’ bulldozer and backhoe operators to immediately cease all operations in the area until a professional biologist performed a thorough biological assessment, and appropriate permits had been obtained from jurisdictional regulatory agencies to restore the impacted creek and riparian corridors. The warden’s order included, but was not limited to, ceasing the grading and clearing of vegetation. During this site inspection, Regional Water Board staff observed that the Dischargers had attempted to implement netting and straw roll BMPs for erosion and sediment transport control in some of the exposed grading spots. However, the implemented BMPs were inadequate and incomplete.
- (e) On April 14, 2009, the Dischargers submitted an application for section 401 water quality certification (“Certification”) to the Regional Water Board. The application proposed to restore about 1,060 linear feet of filled or altered creek bed and 0.39 acres of impacted riparian habitat. The application did not include acceptable design measures and comprehensive restoration plans to remove all the unauthorized discharged waste material from the creek channels and riparian habitat. On May 14, 2009, Regional Water Board staff sent a notice of an incomplete application for the Certification describing the major deficiencies of the application and requiring the Dischargers to resubmit an acceptable and complete application to fully remove all the unauthorized fill and waste materials from the creek bed, channel, and riparian corridors and to fully restore the waterways to their natural pre-discharge conditions (See Attachment C). As of November 18, 2009, the Dischargers had not submitted a response.

- (f) On September 24, 2009, Regional Water Board staff inspected the site and observed ongoing unauthorized grading, vegetation clearing, and earth moving activities in the middle and the northern portions of the Site. There were newly excavated areas, newly constructed arenas, unstable soil piles, disturbed roads, newly graded steep dirt roads, a newly installed storm drain outlet to drain storm water runoff from the loading dock of a barn, massive exposed soil piles and new paths all over the northern portion of the Site. There were minimal or no BMPs implemented to control erosion and sedimentation. No BMPs were observed around the corrals to prevent horse manure from discharging to natural drainage areas. The Dischargers had performed this additional work again without obtaining required approvals from the respective agencies (see 6.c.(i)), including, but not limited to: CWA section 401 water quality certification; a CWA section 404 permit; approval from USFWS pursuant to section 7 or 10 of the federal Endangered Species Act; a Streambed Alteration Agreement; Construction Stormwater Permit coverage; or even a grading permit.

Regional Water Board staff again observed that the Dischargers have not complied with the requirements set forth in the Notice to Comply issued on January 18, 2008. The Dischargers did not implement appropriate erosion and sediment transport control measures, did not obtain the proper permits, and did not stop their detrimental construction and other grading activities.

7. **Basin Plan Discharge Prohibitions Violations:** The discharges of waste by the Dischargers to waters of the state and United States are violations of the December 22, 2006, Water Quality Control Plan for the San Francisco Bay Basin ("Basin Plan") Discharge Prohibitions 7 and 9.

- (a) Discharge Prohibition 7 prohibits the discharge of rubbish, refuse, bark, sawdust, or other solid wastes into surface waters or at any place where they could contact or where they would eventually be transported to surface waters, including flood plain areas. The Dischargers discharged solid wastes, including, but not limited to, construction wastes and horse manure, directly into surface waters and adjacent to surface waters, such that they would eventually be transported to surface waters; and
- (b) Discharge Prohibition 9 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 unreasonably affect or threaten to affect beneficial uses. The Dischargers discharged earthen wastes both directly into surface waters and to a location where the wastes subsequently discharged into surface waters, filling those waters and likely causing bottom deposits and excess turbidity.
- (c) The Basin Plan designates beneficial uses and water quality objectives for waters of the State and includes programs to achieve water quality objectives. The

existing beneficial uses for San Pedro Creek include: cold freshwater habitat; fish migration; municipal and domestic water supply; noncontact water recreation; fish spawning; and warm freshwater habitat. In addition, San Pedro Creek is known to provide habitat for rare, threatened, and/or endangered species as described below.

- (d) The discharge and depositing of fill/waste materials, as described in the findings above, have significantly impacted the beneficial uses of the unnamed perennial creek, a tributary to San Pedro Creek. These adverse impacts include: destruction of aquatic and wildlife habitat; removal of habitat for threatened and endangered species, specifically of habitat for the California red-legged frog and San Francisco garter snake; alteration of natural stream flow and sedimentation dynamics; and contributing to an observed increase in erosion and the discharge of animal waste into onsite waters of the state and United States.
8. **Jurisdictional Requirements:** The Dischargers did not apply for, nor obtain, 401 Certification or Waste Discharge Requirements from the Regional Water Board prior to the creek, pond, and other wetland fill and waste discharges into waters of the state and the United States. The Dischargers did not file a Report of Waste Discharge with the Regional Water Board, and did not file for, nor obtain, Construction Stormwater Permit coverage from the State Water Resources Control Board for their construction storm water discharges. The Dischargers did not apply for, nor obtain, permits from any local, state, or federal regulatory agencies as required for such activities.
9. **Watershed and Topography:** The Site is within the San Pedro Creek watershed and discharges into the north fork of San Pedro Creek. The watershed's steep headwater tributaries begin in the northern Santa Cruz Mountains and discharge into the main stem of San Pedro Creek, which flows west across the San Pedro Valley and into the Pacific Ocean in the City of Pacifica. The San Pedro Creek watershed has a total drainage area of approximately 8 square miles (20.7 km²). San Pedro Creek has three major forks: the south, middle, and north forks. The north fork watershed is approximately 2.37 square miles (6.13 km²) and consists of residential and light commercial facilities in the valley, and open space in the headwaters where the subject Site is located. With the exception of the steep headwaters, including in the proximity of the Site, the lower portion of the north fork has been partially culverted as a result of past urban development. San Pedro Creek provides habitat for steelhead trout, a state and federally-listed threatened species. In 2005, the City of Pacifica restored about 1,300 linear feet of San Pedro Creek bed segment and restructured the Capistrano Bridge culvert to improve fish passage and habitat. The total cost of the stream restoration project was over five million dollars (\$5 million).
10. **Remedial Investigation:** The Regional Water Board has no records of soil, surface water or groundwater remediation activities conducted to date at the Site. However, the Dischargers' unauthorized discharge of horse manure, direct and indirect disposal of construction waste materials, discharge of fill materials and wood debris into waterways, and the clearing of vegetation from adjacent riparian corridors have

adversely impacted, and threaten to continue to adversely impact the beneficial uses of waters of the State.

11. **Basis for 13304 Order:** Based on the above findings, the Regional Water Board finds that the Dischargers have caused or permitted waste to be discharged or deposited where it can be and has been discharged into waters of the state and the United States, and created and threatened to create a condition of pollution. The discharged wastes have resulted in unnecessary and avoidable adverse impacts to beneficial uses of waters of the state in violation of the Basin Plan, CWC, CWA, and Fish and Game Code. This Order, therefore, contains tasks for investigating and remediating existing and likely future impacts to the unnamed perennial creek, other waters on-site, and associated downstream waters, including San Pedro Creek, as described in the aforementioned findings.
12. **CEQA:** This enforcement action is being undertaken by a regulatory agency to enforce a water quality law. Such action is categorically exempt from provisions of the California Environmental Quality Act ("CEQA") according to Guidelines section 15321 in Article 19, Division 3, Title 14 of the California Code of Regulations. This Order requires the submittal of detailed work plans that address cleanup activities. The proposed activities under the work plans are not yet known, but implementation of the work plans may result in significant physical impacts to the environment that must be evaluated under CEQA. The appropriate lead agency will address the CEQA requirements prior to implementing any work plan that may have a significant impact on the environment.
13. **Wetland Tracker System:** It has been determined through regional, state, and national studies that tracking of mitigation/restoration projects must be improved to better assess the performance of these projects, following monitoring periods that last several years. In addition, to effectively carry out the State's No Net Loss Policy for wetlands, the State needs to closely track both wetland losses and mitigation/restoration project success. Therefore, this Order requires the Dischargers to use a standard form to provide site information related to impacts and mitigation/restoration measures for the Site.

IT IS HEREBY ORDERED, pursuant to CWC sections 13304 and 13267 that the Dischargers (or their agents, successors, or assigns) shall clean up and abate the effects described in the above findings as follows:

A. Prohibition

The discharge of wastes, including solid wastes such as construction wastes, horse manure, and deleterious amounts of earthen materials, that will degrade, or threaten to degrade, water quality or adversely affect, or threaten to affect beneficial uses of the waters in violation of the Basin Plan is prohibited.

B. Cleanup and Abatement Tasks

1. Preliminary Assessment

COMPLIANCE DATE: February 5, 2010

The Dischargers shall submit a preliminary assessment of all creeks, pond, and other wetland areas on the Site. This assessment must be conducted by a professional fluvial geomorphologist, wetland biologist, and/or a creek restoration specialist and, at a minimum, include:

- (a) An upstream and downstream survey and analysis of: existing watershed hydrology, bank erosion, riparian habitat, sediment transport functions, and channel bed stability, and changes thereto associated with Dischargers' activities since acquiring the Site;
- (b) Identification all state- and federally-listed special-status species that are present or may be present at or in the vicinity of the Site including, but not limited to, the California red-legged frog and San Francisco garter snake, and evaluate aquatic habitat protection needs (this task is to be conducted by a qualified biologist);
- (c) Detailed topographic site maps and geo-referenced aerial photos that specifically document the location, volume, and type of fill materials that have been placed in the stream channels and wetlands on the Site, and on slopes adjacent to streams and wetlands;
- (d) An estimate of the areal extent of impervious surface that has resulted from the unauthorized grading, compacting, and construction activities from when the Dischargers acquired the property in 2005 to the present.

2. Corrective Action Plan and Schedule

COMPLIANCE DATE: February 19, 2010

The Dischargers shall submit for approval by the Regional Water Board's Assistant Executive Officer a Corrective Action Plan to restore and protect water quality beneficial uses. The Corrective Action Plan shall be designed to restore the creeks, ponds, and other wetlands to the Site's conditions prior to the Dischargers' expanding the horse boarding facilities when they acquired the property in 2005 (hereafter "pre-expansion conditions") and ensure the restoration of their beneficial uses.

The Corrective Action Plan shall include a schedule for completing each task and all associated subtasks, including a listing of proposed dates to submit technical and monitoring reports to the Regional Water Board. Prior to implementing the Corrective

Action Plan, the Dischargers must obtain all required permits from the Regional Water Board, CDFG, the Corps, USFWS, the City of Pacifica, and any other agency that requires a permit for the work. After the Regional Water Board approves the Corrective Action Plan, the Dischargers must complete its tasks and comply with its schedule.

The Corrective Action Plan shall include, but is not limited to, the following:

- (i) Removal of all waste materials, fill, and debris from the creek channel, its bed and banks, springs and other wetlands on the property that Dischargers placed in those waterways including all animal waste; construction waste including but not limited to concrete, grout, rock and debris; culverts and pipes; wood debris; and other fill/wastes;
- (ii) Stabilizing and revegetating all slopes the Dischargers have created that have discharged or may discharge sediment and/or debris into Waters of the State;
- (iii) Inventorying the number and size (length and diameter) of all pipes and culverts that have been illegally installed to divert flows into or away from waterways. Describe how the pipes and culverts will be removed and the Site's pre-expansion and pre-expansion hydrology will be restored;
- (iv) Actions to address any adverse impacts the restoration may have on the Site's hydrology and channel morphology.
- (v) Restoring the wetlands' function and ensuring their full re-establishment with carefully calculated design details, specified scheduled performance and success criteria, and a minimum period of five years of annual monitoring for those criteria. Monitoring periods may be extended if performance and success criteria are not met in a timely manner;
- (vi) Mitigation to compensate for the temporary loss of stream, wetland, and riparian functions and values that resulted from the unauthorized grading and filling of State and Federal waters at the Site. This compensatory mitigation shall be in addition to restoring the impacted creek, wetlands, and riparian corridors to their natural pre-expansion condition. The Corrective Action Plan shall include construction of mitigation and monitoring for mitigation success and shall include, but is not limited to, an implementation schedule, appropriate design details, performance criteria, success criteria, and monitoring periods of not less than five years for herbaceous vegetation criteria, and not less than ten years for woody riparian vegetation and creek geomorphology criteria. Monitoring periods may be extended if performance and success criteria are not met as scheduled;
- (vii) Removing all horse corrals, pathways, roads, and all other built structures and associated improvements the Dischargers created without proper permits that are

within 25 feet from the top of each creek bank, and the edge of each pond or other wetland, or as required by the relevant permitting agency's procedures;

- (viii) Restoring and re-vegetating the creeks, ponds, and other wetlands work areas, and an associated buffer zone adjacent to them, after all construction and restoration work is completed, including implementing a long-term monitoring plan and achieving performance and success criteria for the restored areas as described in this Task;
- (ix) All grading and excavation activities shall be conducted during the dry season (April 15 through October 15) unless, in the event of no rainfall, a later period is approved by the Regional Water Board, CDFG, and USFWS as required in their respective regulatory procedures. The Dischargers shall contact the Regional Water Board at least two weeks (14 calendar days) prior to any request to grade after October 15 or prior to April 15. Should rain occur prior to October 15 or after April 15, the Dischargers shall be responsible to ensure the Site is fully stabilized prior to such rain;
- (x) Consistent with the Preliminary Assessment (see task 1), the biologist must halt all work in the area if threatened or endangered species are observed during the pre-construction survey or while construction is ongoing, to avoid adverse impacts. The biologist shall contact CDFG and USFWS for further guidance before work commences or recommences. The Corrective Action Plan shall include or be amended to incorporate any steps necessary to protect the threatened and/or endangered species observed;
- (xi) All debris and construction wastes shall be kept outside waterways and shall be properly disposed of to an offsite facility; and
- (xii) The Dischargers are required to use the standard Wetland Tracker form to provide Site information describing impacts and mitigation/restoration measures within 14 days from the approval of the Corrective Action Plan. The completed Wetland Tracker form shall be submitted electronically to wetlandtracker@waterboards.ca.gov or shall be submitted as a hard copy to both: 1) San Francisco Bay Regional Water Quality Control Board, to the attention of Wetland Tracker, and, 2) San Francisco Estuary Institute, 7770 Pardee Lane, Oakland, CA 94621-1424, to the attention of Mike May.¹ (See finding 13 above.)

¹ An electronic copy of the form and instructions can be downloaded at: <http://www.waterboards.ca.gov/sanfranciscobay/certs.shtml>. Site information concerning impacts and mitigation/restoration will be made available at: <http://www.wetlandtracker.org>.

3. Equestrian Facilities Management Plan

COMPLIANCE DATE: January 4, 2010

The Dischargers shall submit an Equestrian Facilities Management Plan for the Regional Water Board's Assistant Executive Officer's approval that describes how the facility will be managed to appropriately prevent and minimize discharges of pollutants to creeks, ponds, and other wetlands. At a minimum, the Equestrian Facilities Management Plan must:

- (i) Include a site map describing all areas of the horse boarding facility, including stables, turnout, paddocks, arenas, manure storage, trails, areas where horse access is prohibited such as creeks, ponds, and other wetlands, and all other information, as appropriate;
- (ii) Describe how concentrated flows of water (e.g., flow from roof downspouts and runoff from roads and trails) across the facility will be managed to minimize transport and potential discharge of pollutants to creeks ponds, and other wetlands;
- (iii) Include BMPs to control runoff from the corrals, paddocks, barns, and horse boarding area. The BMPs must be effective and consistently implemented to prevent runoff from these facilities from reaching the waters of the state and United States;
- (iv) Include a manure management plan that describes how, where, and on what schedule manure will be collected and disposed of;
- (v) Identify who is responsible for implementing the Equestrian Facilities Management Plan, including contact information for those responsible; and
- (vi) Be updated when there have been changes at the Site and when visual and water quality monitoring indicate that current BMPs are inadequate.

The Regional Water Board's requirements that you submit technical and monitoring reports via the Corrective Action Plan and Equestrian Facilities Management Plan are made pursuant to CWC section 13267. The Regional Water Board needs the required information in these reports to ensure the Dischargers will restore the Site to its pre-expansion conditions in a manner consistent with water quality objectives contained in the Basin Plan. The Dischargers are required to submit this information because they are the current property owners and they conducted operations at the Site that caused the waste discharge, evidenced during the site inspections described above. More detailed information is available in the Regional Water Board's public file on this matter.

4. Municipal NPDES Stormwater Regional Water Board Permit

COMPLIANCE DATE: February 5, 2010

If the total impervious area is equal or more than 10,000 square feet as determined in the Preliminary Assessment, the Dischargers shall submit to the Regional Water Board for the Assistant Executive Officer's approval a proposed Storm Water Management Plan ("SWMP") described in task 6 below, that proposes post-construction permanent control measures that comply with Provision C.3 of Order No. R2-2009-0074 of the Municipal Stormwater Regional Permit.²

5. Construction Stormwater Permit

COMPLIANCE DATE: December 21, 2009

The Dischargers shall file a complete Notice of Intent ("NOI") for the Construction Stormwater Permit to obtain coverage for the construction activities on the Site. Dischargers shall file the NOI with the State Water Resources Control Board, and send a copy of the NOI and a copy of payment verification for the annual permit fee to: San Francisco Bay Regional Water Board, attn. Habte Kifle, 1515 Clay Street, Suite 1400, Oakland CA 94612. The Dischargers shall also complete the above for the reissued Construction Stormwater Permit, Order No. 2009-0009-DWQ, by its effective date of July 1, 2010. The Dischargers shall submit to the Regional Water Board for the Assistant Executive Officer's approval a SWPPP prepared pursuant to the requirements of the effective Construction Stormwater Permit, as described in task 6 below.

6. Stormwater Pollution Prevention Plan

COMPLIANCE DATE: January 4, 2010

Pursuant to the San Mateo Water Pollution Prevention Program, the Municipal Stormwater Regional Water Board Permit, and the Construction Stormwater Permit, the Dischargers shall submit a SWPPP for the Assistant Executive Officer's approval that meets the requirements of these programs. The Dischargers must submit an updated copy of the SWPPP to the Regional Water Board for the Assistant Executive Officer's approval by July 31 of each calendar year until the Dischargers have been notified in writing by the Assistant Executive Officer that such submittal is no longer required.

The SWPPP shall include, but is not limited to, the following:

² The permit is accessible at:

http://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/stormwater/mrp.shtm.

- (i) Engineering calculations, design specifications, implementation dates, and all other information necessary to construct and maintain the measures for the duration of the restoration project and for any future expansions at the Site.
- (ii) BMPs to prevent and control erosion and sediment transport during restoration and construction at the Site. Soil piles and disturbed areas shall be properly covered with appropriate erosion and sedimentation control measures to minimize impacts to water quality;
- (iii) The Dischargers shall update the BMPs when there have been changes at the Site and when visual and water quality monitoring indicate that current BMPs are inadequate.
- (iv) If required pursuant to task 4, above, the SWPPP shall include as an appendix a SWMP that proposes permanent post-construction measures to treat stormwater runoff from the Site's impervious surfaces for the life of the project. The SWMP shall be prepared according to the permits referenced above.

C. Provisions

1. **Good Operation and Maintenance:** The Dischargers shall maintain in good working order and operate as efficiently as possible any facility or control system installed, including BMPs and post-construction permanent control measures, to achieve compliance with the requirements of this Order.
2. **Cost Recovery:** The Dischargers are and shall be liable, pursuant to CWC section 13304, to the Regional Water Board for all reasonable costs actually incurred by the Regional Water Board and associated agencies to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action, required by this Order. Such costs include, but are not limited to, staff time for investigation of the discharge, preparation of this Order, review of reports and correspondence submitted pursuant to this Order, work to complete the Tasks specified in this Order, and communications between Water Board staff and parties associated with the cleanup and abatement of the discharged waste, including the Dischargers, County, interested members of the public, and other regulatory agencies. The Site has been enrolled in a State Water Resources Control Board managed reimbursement program. Reimbursement shall be made pursuant to this Order and according to the procedures established in that program. Any disputes raised by the Dischargers over reimbursement amounts or methods used in that program shall be consistent with the dispute resolution procedures for that program.
3. **Contractor/Consultant Qualifications:** With the exception of the Preliminary Assessment, which shall be signed by its author, all technical documents shall be signed by and stamped with the seal of a California registered geologist, engineering geologist, or civil engineer, and signed by the registered professional.

4. **Reporting of Changed Owner or Operator:** The Dischargers shall file a written report on any changes in the Site's occupancy or ownership associated with the Site described in this Order. This report shall be filed with the Regional Water Board within 30 days following a change in Site occupancy or ownership.
5. **Document Distribution:** Electronic copies of all correspondence, technical reports, and other documents pertaining to compliance with this Order shall be provided upon request within two weeks of the established task deadline to the following recipients:
 - (i) California Department of Fish and Game (CDFG)
 - (ii) United States Army Corps of Engineers (the Corps)
 - (iii) United State Fish and Wildlife Service (USFWS)
 - (iv) City of Pacifica.

The Assistant Executive Officer may modify this distribution list as needed.

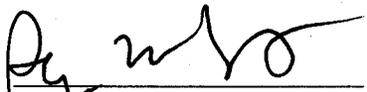
6. **Delayed Compliance:** If the Dischargers are delayed, interrupted or prevented from meeting one or more of the completion dates specified in this Order, the Dischargers shall promptly notify the Regional Water Board Assistant Executive Officer in writing with recommended revised completion dates. The Regional Water Board may consider revisions to this Order.
7. **Enforcement:** If, in the opinion of the Assistant Executive Officer, the Dischargers fail to comply with the provisions of this Order, the Assistant Executive Officer may refer this matter to the Attorney General for judicial enforcement or may issues a complaint for administrative civil liability. Failure to comply with this Order may result in the assessment of an administrative civil liability up to \$10,000 per violation per day, pursuant to CWC sections 13350, 13385, and/or 13268. The Regional Water Board reserves its right to take any enforcement actions authorized by law.
8. **Evidentiary Hearing before the Regional Water Board:** Any person affected by this action of the Regional Board may request an evidentiary hearing before the Regional Board. The Regional Board's Executive Officer may elect to hold an informal hearing or a "paper hearing" in lieu of scheduling a hearing before the Regional Board itself. If you decide to request an evidentiary hearing, send your request to the San Francisco Bay Regional Board Executive Officer, Attn: Habte Kifle, 1515 Clay Street, Suite 1400, Oakland CA 94612. Please consider the following carefully:
 - a. The Regional Board must receive your request within **30 calendar days** of the date of this Order.
 - b. Your request must include all comments, technical analysis, documents, reports, and other evidence that you wish to submit for the evidentiary hearing. However, please note that the administrative record will include all materials the Regional

Water Board has previously received regarding this Site. You are not required to submit documents that are already in the record.

- c. The Executive Officer or Regional Water Board may deny your request for a hearing after reviewing the evidence.
- d. If you do not request an evidentiary hearing, the State Water Board may prevent you from submitting new evidence in support of a State Water Board petition.
- e. Your request for an evidentiary hearing, if you submit one, does not stay the effective date of the Order, whether or not a hearing is scheduled.
- f. A request for a hearing does not extend the 30-day period to file a petition with the State Water Board (see below). However, we suggest that you ask the State Water Board to hold the petition in abeyance while your request for a hearing is pending. (Refer to CCR Title 23 section 2050.5(d).) Additional information regarding the State Water Board petition process is provided below.

9. **State Water Board Petition:** Any person aggrieved by this action may petition the State Water Board to review the action in accordance with CWC section 13320 and Title 23, California Code of Regulations, section 2050 et al. The State Water Board, Office of Chief Counsel, must receive the petition by 5:00 p.m. 30 days after the date this Order becomes final (if the thirtieth day falls on a weekend or state holiday, the petition must be received by the next business day).³ This Order is effective upon the date of signature.

10. **Periodic Cleanup and Abatement Order Review:** The Regional Water Board may review this Order periodically and may revise it when necessary.



Dyan C. Whyte
Assistant Executive Officer

December 11, 2009
Date

Attachment A: Site Location Map

Attachment B: Notice to Comply and follow up email message from Cecil Felix to Mr. Tong

Attachment C: Notice of an incomplete section 401 certification application

³ Instructions for petitioning will be provided upon request or you may view them at: http://www.waterboards.ca.gov/public_notices/petitions/water_quality/index.shtml

Attachment A: Site Location Map



Attachment B

You are hereby notified that MILLARD TONG (hereafter Discharger) has violated provisions of:

Order No. _____

NPDES Permit No. (if applicable) _____

California Water Code Section _____

Regional Basin Water Quality Control Plan Prohibitions _____

Other FEDERAL CLEAN WATER ACT

Federal, State, and Local Agency Contacts:
JASON LO, CITY OF PACIFICA (650) 735-7343

I. FACILITY INFORMATION

Inspection Date: 1/18/08 Time: 10:50 Prior Notification: Yes No Unknown

Discharger Contact: MILLARD TONG Title: OWNER/OPERATOR Phone: (650) 355-7400

Site Name & Location: 1 PICARDO RANCH ROAD County: SAN MATEO

Headquarters/Owner Name & Address: ~~SAN MATEO~~
MILLWOOD RANCH

II. NON-COMPLIANCE INFORMATION

Nature of Violation :	Recommendation to Correct :	Time to Comply (Not to exceed 30 days)
<u>NO CONSTRUCTION GENERAL STORMWATER PERMIT (1 ACRE DISBURSABLE)</u>	<u>APPLY FOR PERMIT</u>	<u>IMMEDIATELY</u>
<u>DISCHARGE OF ANIMAL WASTE TO SURFACE WATER</u>	<u>ELIMINATE DISCHARGE</u>	<u>IMMEDIATELY</u>
<u>UNPERMITTED FILLING OF CREEK</u>	<u>DIRECTION TO FOLLOW</u>	
<u>UNPERMITTED CONSTRUCTION AND GRADING</u>	<u>CEASE CONSTRUCTION + GRADING SECURE PERMITS FROM LOCAL AGENCY</u>	<u>IMMEDIATELY</u>
<u>DISCHARGE OF SEDIMENT AND CONSTRUCTION MATERIALS TO CREEK</u>	<u>ELIMINATE DISCHARGE INSTALL CONTROLS FOR EROSION + SEDIMENTATION</u>	<u>IMMEDIATELY</u>
<u>UNPERMITTED ALTERATION AND CONSTRUCTION OF CREEK</u>	<u>CEASE ACTIVITIES, APPLY FOR PERMITS WITH CA FISH + GAME, US ARMY CORP + APPROPRIATE AGENCIES (RWQS, FFG, ACE)</u>	<u>IMMEDIATELY</u>

III. SIGNATURE SECTION

Without acknowledging noncompliance, I accept this Notice (must be owner, operator, or duly designated representative of facility):

RECIPIENT NAME (print): ~~RANDY~~ MILLARD TONG TITLE: OWNER

SIGNATURE: [Signature] DATE: 1-18-08

INSPECTOR NAME: SECILIO FELIX PHONE: (510) 622-2343

SIGNATURE: [Signature] DATE: 1/18/07

IV. CERTIFICATION OF COMPLIANCE

Sign and return by mail or fax within 5 working days of achieving compliance

FOR REG. BD. USE ONLY

**INSTRUCTIONS TO DISCHARGER
REGARDING
NOTICE TO COMPLY**

You must correct the violations listed in section **II. NON-COMPLIANCE INFORMATION** of the **NOTICE TO COMPLY** within the time specified. Recommendations to correct the violation(s) are listed with each violation. Other means of compliance may be possible, however, it remains your responsibility to comply.

Within **five working days** of achieving compliance, you must:

- 1) sign the statement certifying compliance in section **IV. CERTIFICATION OF COMPLIANCE**,
and
- 2) return the form to the Regional Board.

Signing the form certifies that **all** violations noted have been corrected and you are now in compliance. If any violations listed in section **II.** have not been corrected, clearly describe the uncorrected violation(s) on a separate sheet of paper and enclose it with your signed **NOTICE TO COMPLY** form. Failure to correct the violations identified in this Notice may result in an enforcement action leading to Administrative Civil Liability (ACL).

A false statement that compliance has been achieved is a violation of law and is punishable by substantial penalties. This facility may be subject to re-inspection by the Regional Board at any time.

If you disagree with any of the violations identified in this **Notice**, you must submit a written appeal to the Regional Water Quality Control Board **within 30 days** of the date you receive the **Notice**. Your written appeal must fully explain your reasons.

From: Cecil Felix
To: milltong@sbcglobal.net
Date: 1/18/2008 4:38 PM
Subject: followup to inspection today

Millard, following is more information regarding the Notice To Comply which we issued to you at the site today. The Notice to Comply specified the immediate actions necessary to abate ongoing impacts to water quality.

1. A construction general stormwater permit must be secured ASAP. Construction activity resulting in ground disturbance of greater than 1 acre is subject to a NPDES General Construction Stormwater Permit. The Permit requires that the responsible party put together a Stormwater Prevention Plan which specifies the methods (Best Management Practices) to be implemented in order to prevent the discharge of materials to surface waters during construction and during storm events. The plan and followup reporting and monitoring required by the permit must be generated by qualified individuals and certified by you.

2. Discharge of animal waste must cease immediately. Throughout the site Water Board and city staff observed conditions leading to active discharges of animal waste, including: 1) ground surface sloped toward the creek; 2) structures in place to contain animal waste or divert the waste away from the creek, such as berms, drains, etc.; 3) large accumulations of waste throughout the facility, as opposed to active collection and removal of the waste; and 4) uncontrolled runoff of urine toward the creek. Additional conditions leading to violations may exist, for which there may be additional mitigation methods, and we intend to conduct further inspections to further evaluate animal waste impacts and mitigation. You will need to evaluate and implement measures which prevent any further discharge of the waste to the creek.

3. Unpermitted filling of creek must cease immediately. Any kind of alteration of the creek requires a streambed alteration permit from the CA Dept. of Fish and Game. Alterations observed during our inspection included: 1) modification of the stream alignment; 2) filling of the creekbed with imported soil and concrete; 3) undergrounding the creek by containing the flow within a structure comprised of rock and covered with geofabric; 4) placement of large volumes of imported fill and rock onto the sideslopes of the creek bank; 5) altering the hydraulic inputs into the creek by all the new constructions at the site. Because no permit was secured, the filling must cease immediately.

Other regs justifying cessation of filling:

CEQA: The types of construction projects undertaken at the site requires that the CEQA process be followed. CEQA requires an evaluation of the project's potential impacts to the environment and the evaluation of alternatives, mitigation measures, and controls to minimize the impacts.

USACE/RWQCB requirements for filling: Approval by US Army Corp of Engineers is

required; they issues permits under Section 404 of the Clean Water Act. 401 permits in California requires 401 Water Quality Certifications by the Water Board, to insure that CA standards are met.

US Fish and Wildlife: there may be present at the site endangered species which need to be considered before any construction is allowed. A consultation and determination by USFWS may be required.

4. Grading, construction, and filling activities must cease immediately. As described above, the construction is causing serious impacts to water quality. All necessary permits (building, grading, etc.) must be secured at the local level so that that the local concerns (including stormwater management) can be met.

5. Discharge of sediment and construction materials to the creek must cease immediately. All unstable materials and ground surfaces related to the construction activities must be prevented from further impacting the surface waters. Erosion and sediment controls must be put into place immediately. Controls may include cover, hydroseeding, matting, silt fence, straw wattle, temporary detention or settlement areas, filtration, etc. In addition, no construction related materials such as wood, trash, etc. should be allowed to enter the creek.

6. Alteration of the creek and creekbed must cease immediately. As stated in 3 above, all creek alterations require necessary approvals from a number of agencies. For the time being, cease further alteration, but DO NOT attempt to undo or mitigate the alterations until further direction. Doing so may cause further impairment of the creek.

I plan on visiting the site next week to see how things have progressed. I also plan on discussing this internally and with the local agencies to coordinate our efforts, and will further document issues and requirements in a letter to you which will follow soon.

We realize that this is a difficult issue for you. We will try to work constructively with you to find solutions and bring you back into compliance. Please don't hesitate to call or email me if you have any questions.

Cecilio Felix
SFBRWQCB
(510) 622-2343

Attachment C



Linda S. Adams
Secretary for
Environmental Protection

California Regional Water Quality Control Board

San Francisco Bay Region

1515 Clay Street, Suite 1400, Oakland, California 94612
(510) 622-2300 • Fax (510) 622-2460
<http://www.waterboards.ca.gov/sanfranciscobay>



Arnold
Schwarzenegger
Governor

Date: May 14, 2009
Site No. 02-41-C0608 (MG)

Mr. Millard Tong
Millwood Ranch
1 Picardo Ct.
Pacifica, CA 94044

SUBJECT: Millwood Ranch, City of Pacifica, San Mateo County – NOTICE OF INCOMPLETE 401 WATER QUALITY CERTIFICATION APPLICATION

Dear Mr. Tong:

This is in response to the 401 Water Quality Certification Application (Application) for the proposed Millwood Ranch Mitigation Plan. The Application was received in our office on April 14, 2009. The application is completely and wholly inadequate. The proposed mitigation does not properly address the removal of fill materials that were illegally placed in State Waters and does not provide compensation for the temporal loss of stream and wetlands on the property. All unauthorized fill material (Examples: rocks, soil, manure, concrete chunks, etc.) must be removed from the stream channels and wetlands on the property and the impacted areas must be restored to their natural conditions.

The major deficiencies in the application are as follows:

- The application materials submitted do not provide enough detail to determine the areal extent of the impacts and the temporal loss of wetland and stream functions that have occurred at the property. No timeline or description of activities resulting in impacts has been provided.
- The application relies on aerial photographs of the sites, ground photos of impacts, and brief narrative descriptions that do not provide enough specific detail to accurately assess the extent of impacts at the site and the areas in need of restoration. The maps are not geo-referenced and scaled and the site photos and descriptions do not provide enough detail to determine the specific amount, type, and location of the fill materials.
- The application materials do not provide the methods used to determine the amount of fill placed. Additionally, there are no topographic and scaled maps of the site to determine the accuracy of the measurements and the geographical distribution of impacts.
- You have not accurately detailed the type and extent of the piping that has been installed to drain and divert the stream and wetlands on site.

- The description of mitigation measures for restoring the stream and wetland areas are completely inadequate. There are no plan view maps and cross sectional diagrams that detail the channel designs and bank repair techniques. The planting plan utilizing hydro-seeding and planting of willow stakes does not provide specific detail to determine the exact locations on the site where these techniques will be implemented. Additionally, there is no discussion of the appropriateness of these methods to restore the site.
- The placement and removal of fill may have destabilized the slopes of the channel banks and surrounding hillsides. You have not included an analysis of potential impacts from the existing fill materials and the possible impacts of the removal methods.
- The application does not include a plan to mitigate for the temporal loss of wetland and stream functions on the site. This compensatory mitigation is in addition to the restoration of the impacted stream and wetlands, removal of fill materials, culverts, and piping.
- The application does not discuss how the site will be managed in the future to prevent horse feces and wastes from entering the stream and wetlands on site.
- There is no plan for moving or discussion of modifications to the horse corrals that are extending into the stream channels.
- You have not applied to and consulted with Army Corps of Engineers (ACOE) in order to obtain a 404 Permit under the Clean Water Act (CWA). We can not issue a 401 certification until the Corps has made a jurisdictional determination.
- No CEQA analysis has been conducted for the project. We can not issue a certification until CEQA compliance has been demonstrated.

In order to continue the review of you project and process the application, the Water Board will need the following information:

- Detailed topographic site maps and geo-referenced aerial photos that specifically document the location, amount, and type of fill materials that have been placed in the steam channels and wetlands on the property. The maps should also document where un-engineered fill material has been placed on slopes adjacent to stream and wetlands.
- A detailed plan for removal of all debris that is in stream channels and wetlands on the site and on un-engineered slopes that may slide into wetlands or stream channels. This plan must describe how all fill material in stream channels, wetlands, and slopes adjacent to the channels will be removed without compromising stream channel or slope stability. You should also include a timeline to document when the impacts occurred.
- The plan must include a detailed plan for stabilizing the stream banks with vegetation and re-vegetating the slopes adjacent to the stream that may erode into the stream channels and wetlands. Your proposal to use willow posts alone is inadequate. The re-vegetation plan must include the planting of riparian trees, understory species, and ground cover in the stream channels and appropriate wetland species in the wetland areas. The plan must also have detailed specifications for the location of the plants, describe the planting methods, and provide a plan for long term maintenance and monitoring to insure successful re-establishment.

- The plan must document the number and size all pipes that have been installed to divert stream and wetland flow and describe how the pipes will be removed and the pre-development hydrology to the site restored.
- Your plan must contain provisions for moving all horse corrals out of the stream channels on the property. Additionally, you must detail provisions for managing the corrals to prevent horse wastes from entering the streams and wetlands in the vicinity of the corrals. You must also provide a long-term manure management plan that will prevent feces and runoff contaminated with feces from entering the streams and wetlands.
- The restoration plans for the streams and wetlands must be detailed in scaled construction drawings that show the exact location and dimensions of the restored areas. Cross-sectional diagrams must document that the stream channels will be rebuilt in a manner that will match the upstream channel form, maintain the pre-development hydrology, and reestablish the natural channels slope and dimensions.
- You must also include a plan for compensatory mitigation to compensate for the temporal loss of wetland and riparian functions that resulted from the unauthorized grading and filling of Waters of the State. The plan should propose creation of wetlands and stream channel in addition to restoring the impacted areas.
- You must contact the ACOE to determine their jurisdiction and if necessary obtain a CWA 404 Permit.
- You must conduct a CEQA analysis for the proposed project to in order to maintain compliance with State environmental regulations. We can not issue Certification until and acceptable CEQA document has been completed.

If you have any questions, please contact Matthew Graul of my staff at (510) 622-2381 or via email to mgraul@waterboards.ca.gov.

Sincerely,



Dale Dwyer
South Bay Section Leader
Watershed Division

cc:

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Habte Kifle, SF Bay Regional Water Quality Control Board, hkifle@waewrboards.ca.gov

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