




North Coast Regional Water Quality Control Board



Via Electronic Mail
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DATE: January 7, 2014

TO: Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board

FROM: Matthias St. John 
Executive Officer
NORTH COAST REGIONAL WATER QUALITY CONTROL BOARD

SUBJECT: COMMENTS TO A-2208(A) AND (B) - JANUARY 21, 2014 BOARD WORKSHOP

The North Coast Regional Water Quality Control Board (North Coast Water Board) greatly appreciates the work of the State Water Resources Control Board and its staff (State Water Board) in reviewing the record and preparing a draft Order upholding Administrative Civil Liability Order No. R1-2012-0034 (ACL Order) in the matter of petitions of California Department of Transportation (Department) and MCM Construction (MCM). The North Coast Water Board would like to express its support of the State Water Board's draft Order in its entirety. This correspondence conveys comments on various aspects of the draft Order identifying significant conclusions in the draft Order which we particularly value. North Coast Water Board counsel Samantha Olson and I will be in attendance at the January 21, 2014 workshop on this item to further show our support of the conclusions reached in the draft Order and answer any questions the State Water Board may have.

Regarding the Department's petition, the North Coast Water Board appreciates State Water Board's recognition that the ACL Order appropriately applied the 2002 Enforcement Policy as well as Water Code section 13385 (section 13385) in requiring payment for administrative costs associated with investigating and prosecuting this enforcement action. In addition, we strongly agree with the draft Order affirming the Evidentiary Rulings of

April and June 2011 regarding admissibility of the evidence. The North Coast Water Board has no objection to removing the redacted violations from the ACL Order. We also thank the State Water Board for identifying the appropriate accounts to which given penalty amounts should be paid; specifically noting that penalties for violations of Clean Water Act section 401 should be directed to the Waste Discharge Permit Fund.

Regarding MCM's petition, we appreciate State Water Board's recognition that the North Coast Water Board acted appropriately in determining the violations of the 401 Certification. We want to thank the State Water Board staff for recognizing the North Coast Water Board for acting with reason and restraint in the imposition of penalties for violations of the Department's stormwater permit.

The draft Order further concurs with the ACL Oder findings in the matter of Leaky Equipment Violations, noting that the North Coast Water Board reduced the recommended liability amount by 83 percent. State Water Board confirms that the North Coast Water Board did not violate MCM's due process rights, because MCM had the ability to access the biological monitors and their reports, had MCM chosen to do so. Further, the draft Order notes that the North Coast Water Board used multiple lines of evidence in assessing violations of the clearly written language, contained within the 401 Certification, prohibiting discharges and threatened discharges associated with leaky equipment. The North Coast Water Board agrees with these interpretations of the evidence and appreciates State Water Board's support on these issues.

The North Coast Water Board concurs with State Water Board's conclusion that the North Coast Water Board did not interpret the 401 Certification as imposing a "zero turbidity" standard. Rather, the draft Order confirms that violations for turbid discharges to the river were correctly assessed in instances where MCM failed to implement or inadequately implemented best management practices to control sediment discharges as required by Condition 7 of the 401 Certification.

With regard to Insufficient Turbidity Measurements Violations, the draft Order points out that *MCM violated Condition 19 of the 401 Certification by repeatedly and chronically failing to adequately monitor the effects of its construction activities on the turbidity of the river.* The North Coast Water Board values and agrees with State Water Board's finding in the draft Order that the expectation for numeric turbidity measurements associated with the Confusion Hill construction project was not ambiguous.

We concur with the draft Order's assessment that the ACL Order clearly stated that the expectation of the North Coast Water Board was not a watertight trestle deck, but rather the implementation of corrective measures to contain discharged materials on the trestle deck. The final ACL Order penalty amount for stormwater permit violations accounted for efforts undertaken by MCM to improve trestle deck containment. We want to thank the State Water Board staff for recognizing the North Coast Water Board for acting with reason and restraint in the imposition of penalties for violations of the Department's stormwater permit.

In the final matter brought by MCM construction for State Water Board review, the draft Order clarifies that MCM mistakenly asserts that the North Coast Water Board did not appropriately consider section 13385 factors when assessing violations. Section 2.4 of the draft Order indeed contains analysis and rationale for each factor required under section 13385, applying these facts to the remainder of the Order. We strongly support the draft Order's finding that nothing in section 13385 prohibits this approach.

The draft Order requires that the ACL Order be amended to:

- (1) strike violations 101, 104, and 112 (the previously withdrawn charges);*
- (2) reduce the total amount of the liability assessed by \$30,000 to \$510,182;*
- (3) require that \$480,182 of the liability shall be paid to the Waste Discharge Permit Fund and \$30,000 shall be paid to the State Water Pollution Cleanup and Abatement Account.*

The North Coast Water Board will immediately revise, post, and distribute as appropriate an amended ACL Order as directed, upon completion of State Water Board action in this matter.