

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 9
75 Hawthorne Street
San Francisco, California 94105**

IN THE MATTER OF:) Docket No. CWA-09-2015-0002
)
Caltrans District 2)
NPDES Permit No. CAS000002)
)
Respondent) **COMPLAINT/CONSENT AGREEMENT**
) **AND [~~PROPOSED~~] FINAL ORDER**
) *SJ*
) *Class II Administrative Penalty Proceeding*
) *under Section 309(g) of the Clean Water Act,*
) *33 U.S.C. § 1319(g,) and 40 C.F.R. §§ 22.13(b)*
) *and 22.18*
)
_____)

CONSENT AGREEMENT

I. AUTHORITIES AND PARTIES

1. This is a Class II civil administrative penalty proceeding under section 309(g)(1)(A) and (2)(B) of the Clean Water Act (“the Act”), 33 U.S.C. § 1319(g)(1)(A) and (2)(B), and 40 C.F.R. Part 22 (*Consolidated Rules of the Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits*).
2. Complainant is the Director of the Enforcement Division, U.S. Environmental Protection Agency (“EPA”), Region 9, who brings this action pursuant to the authority delegated by the EPA Administrator and EPA Region 9 Administrator.
3. Respondent is the California Department of Transportation (Caltrans) District 2.
4. This Consent Agreement and Final Order (“CA/FO”), which contains the elements of a complaint required by 40 C.F.R. § 22.14(a), simultaneously commences and concludes this penalty proceeding, as authorized by 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

NOW THEREFORE, before the taking of any testimony, without adjudication of any issue of fact or law, and upon consent by EPA and Respondent, it is hereby STIPULATED, AGREED, AND ORDERED:

II. STATUTORY AND REGULATORY FRAMEWORK

5. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person from a point source into water of the United States except, *inter alia*, in compliance with a National Pollutant Discharge Elimination System (NPDES) permit issued in accordance with Section 402 of the Act, 33 U.S.C. § 1342.
6. Section 502(5) of the Act, 33 U.S.C. § 1362(5), defines “person” to mean an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body.
7. Section 502(6) of the Act, 33 U.S.C. § 1362(6), defines “pollutant” to mean sewage, garbage, sewage sludge, rock, sand, chemical wastes, biological materials, dredged spoil, solid waste, incinerator residue, munitions, radioactive materials, heat, wrecked or discarded equipment, cellar dirt, and industrial, municipal, and agricultural waste discharged into water.
8. Section 502(12), 33 U.S.C. § 1362(12), defines the term “discharge of pollutants” to mean any addition of any pollutant to navigable waters from any point source.
9. Section 502(7), 33 U.S.C. § 1362(7), defines the term “navigable waters” to mean a “water of the United States” as defined by EPA regulation at 40 C.F.R. § 122.2.
10. Section 502(14), 33 U.S.C. § 1362(14), defines “point source” to mean any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel, or other floating craft, from which pollutants are or may be discharged.
11. Section 308(a) of the Act, 33 U.S.C. § 1318(a), authorizes EPA to require the owner or operator of any point source to establish and maintain records; make reports; install, use and maintain monitoring equipment; sample effluent; and provide other reasonably required information.
12. Pursuant to CWA section 309(g), 33 U.S.C. § 1319(g), and 40 C.F.R. § Part 19, EPA may assess a Class II civil administrative penalty of up to \$16,000 per day of violation, not to exceed \$177,500 in total, against a person for CWA section 301(a) violations that occurred from January 12, 2009 through December 6, 2013.

III. FINDINGS AND ALLEGED VIOLATIONS

13. Caltrans is responsible for the construction, management, and maintenance of the California highway system. Caltrans operates through its headquarters office in Sacramento, California and twelve district offices. The activities at issue here fall within Caltrans District 2.
14. Caltrans’ Interstate 5 Antlers Bridge Replacement project site (“Site”) is located within Shasta County near Lakehead, from 0.3 kilometers north of the Antlers Summit overcrossing

to 0.5 kilometers north of the Antlers underpass.

15. Caltrans is an agency of the State of California and, therefore, a “person” as defined by Section 502(5) of the Act, 33 U.S.C. § 1362(5).
16. Caltrans discharges storm water and authorized non-storm water associated with construction and land disturbance activities via “point sources,” namely a series of storm drain inlets, culverts, and outfalls from the Site to Lake Shasta, which is a “navigable water” as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and a “water of the United States” as defined by EPA regulations in 40 C.F.R. § 122.2.
17. On August 13, 2009, Caltrans District 2 submitted a Notification of Construction (“NOC”) to the Central Valley Regional Water Quality Control Board (“Regional Board”) in order to obtain coverage under the NPDES Statewide Storm Water Permit (NPDES No. CAS000003, Waste Discharge Requirement Order No. 99-06-DWQ) for the State of California Department of Transportation.
18. Under NPDES permit No. CAS000003, Section H.2, Caltrans’ construction activities are subject to the requirements of the California NPDES General Permit for Construction Activities (NPDES Permit No. CAS000002)(“CGP”) for construction activities that are equal to or greater than 1 acre, first issued in 1992 as Order No. 92-08-DWQ, and then re-issued in 1999 (Order No. 99-08-DWQ) and in 2009 (Order No. 2009-0009-DWQ).
19. According to the NOC, and an email sent to the Regional Board on November 12, 2009, Caltrans initiated soil disturbing activities at the Site on or about November 30, 2009.

October 27, 2011 Inspection

20. On October 27, 2011, staff from EPA, its contractor PG Environmental, LLC, and the Regional Board (“Inspection Team”) inspected the Site and observed multiple CWA violations. The Inspection Team assessed compliance with the 1999 and 2009 CGPs, Orders 99-08-DWQ and 2009-0009-DWQ, respectively. Both permits were considered because while construction activity at the Site began in November 2009, the 2009 CGP was not effective until July 1, 2010. The site conditions observed on October 27, 2011 were assessed under the 2009 CGP, and the document review considered both the 1999 and 2009 CGPs.
21. The Inspection Team prepared an Inspection Report that was sent to Caltrans on January 30, 2012.
22. On March 12, 2012, EPA issued a CWA Section 308 Information Request to Caltrans.
23. Based on the October 27, 2011 inspection and review of documents provided by Caltrans in April 2012 in response to EPA’s Section 308 request, EPA alleges the following violations:

Best Management Practices (“BMPs”)

24. Caltrans failed to implement adequate BMPs. Under the 2009 CGP, Attachment D, Section A.1(b), dischargers “shall minimize or prevent” pollutants associated with construction activities in storm water discharges using best available technology economically achievable (“BAT”) for toxic and non-conventional pollutants and best conventional pollutant control technology (“BCT”) for conventional pollutants. Caltrans failed to implement adequate BMPs to achieve this objective. Specifically, it failed to adequately maintain the following:
- a. Perimeter controls at the concrete batch plant and material stockpile area located in Area 3 contributing runoff to adjacent storm drain inlets (i.e., sample sites #12 and #10, respectively) that drain to Lake Shasta in violation of Attachment D, Section E.1;
 - b. Good housekeeping measures for waste management at the concrete batch plant and northeast staging yard to minimize the exposure of construction materials to precipitation in violation of Attachment D, Section B.2.d.;
 - c. Erosion and sediment controls on a haul road constructed to provide access to and drainage of stockpiled materials stored within Area 3 contributing runoff to an adjacent storm drain inlet (i.e. sample site # 9) in violation of Attachment D, Section E.1.;
 - d. Storm drain inlet controls at sample site #10 down-gradient of stockpiled materials stored in Area 3 in violation of Attachment D, Section E.6; and
 - e. Vehicle tracking control BMPs from the construction site entrance/exit onto Antlers Road in Area 3 of the Site in violation of Attachment D, Section E.7.

Monitoring and Reporting

25. Caltrans failed to implement an adequate inspection, monitoring and reporting program consistent with the requirements of the 2009 CGP, as follows:
- a. Attachment D, Section G.5. describes requirements regarding the contents of inspection reports, including site information detailing the stage of construction activities completed, and approximate area of the site exposed, as well as corrective action implementation dates. The Inspection Team reviewed the inspection records and found that they did not contain this information.
 - b. Under Attachment D, Section I.10, dischargers must provide reports regarding quarterly non-storm water discharge visual observations. Caltrans, however, had not conducted such inspections and, accordingly, could not provide the required reports to the Inspection Team.

- c. Attachment D, Section I.15 requires reporting exceedances of Numeric Action Levels (“NALs”) (250 NTU and 6.5 to 8.5 pH for Risk Level 2 dischargers), which are required under Section V.C. of the 2009 CGP. Dischargers’ NAL Exceedance Reports are required to include a description of the current BMPs associated with the effluent sample that exceeded the NAL and the proposed corrective actions taken. Although Caltrans had generally described the BMPs in place at the time, it failed to document corrective actions taken to reduce pollutants in storm water runoff to levels consistently below the NALs in response to the following exceedances:
1. October 10, 2011 NAL Exceedance Report indicated the discharge of storm water containing a storm event daily average turbidity of 389 NTU and pH of 8.9, but failed to document the corrective actions taken to address the elevated turbidity of runoff at sample sites 7, 8, 10 and 11 and the elevated pH levels of runoff at sample sites 4, 8, 11 and 23;
 2. November 22, 2011 NAL Exceedance Report indicated a storm event daily average turbidity of 747 NTU, but failed to document the corrective actions taken to address the elevated turbidity of runoff at sample sites 10 and 11;
 3. December 30, 2011 NAL Exceedance Report indicated a storm event daily average turbidity of 636 NTU, but failed to document the corrective actions taken to address the elevated turbidity of runoff at sample sites 3, 4, 7, 8, 10, 14, 18, 21, and 22;
 4. January 18, 2012 NAL exceedance report indicated a storm event daily average turbidity of 693 NTU, but failed to document the corrective actions taken to address the elevated turbidity of runoff at sample sites 12 and 14;
 5. January 25, 2012 NAL exceedance report indicated a storm event daily average turbidity of 340 NTU, but failed to document the corrective actions taken to address the elevated turbidity of runoff at sample site 12; and
 6. March 14, 2012 NAL exceedance report indicated a storm event daily average turbidity of 538 NTU, but failed to document the corrective actions taken to address the elevated turbidity of runoff at sample site 11.

January 8, 2013 Inspection

26. On January 8, 2013, EPA staff conducted a second inspection of the Site. Caltrans representatives were present during the inspection, along with staff from the Regional Board.
27. As a result of the January 8, 2013 inspection, EPA alleges the following violations:

BMPs

28. Caltrans failed to implement adequate BMPs. Under the 2009 CGP, Attachment D, Section A.1(b), dischargers “shall minimize or prevent” pollutants associated with construction activities in storm water discharges using BAT for toxic and non-conventional pollutants and BCT for conventional pollutants. Caltrans failed to implement adequate BMPs to achieve this objective, as follows:
- a. In Area 1, EPA observed erosion along the toe of the slope adjacent to the new I-5 alignment, indicating that check dam sediment controls were insufficient to minimize erosion and sediment discharges during storm events. This violates Attachment D of the 2009 CGP, Section D.2.
 - b. EPA reviewed the Post-Storm Inspection Report dated January 2, 2013, which showed that maintenance activities to address storm damage to erosion and sediment controls were not initiated within 72 hours of identification, in violation of Attachment D, Section G.3.
 - c. In Area 2, EPA observed that adequate erosion control BMPs were not implemented to minimize erosion and sediment discharges from the Site. Extensive gully erosion on the slope north of trestle # 2, indicated that use of erosion control blankets and straw mulch as temporary slope/soil stabilization measures did not minimize erosion and the discharge of sediment from the Site, in violation of Attachment D, Section D.2.
 - d. In Area 3, EPA observed that silt fencing used as a perimeter control to divert storm water run-on around sand and gravel stockpiles located along the northern perimeter of the concrete batch plant was ineffective due to, among other reasons, incomplete installation, in violation of Attachment D, Section E.1.
 - e. In Area 3, EPA observed erosion through straw mulch used as a temporary erosion control measure and an accumulation of sediment overtopping gravel bag check dams installed across the stockpile access road. In addition, sediment accumulation had inundated the storm drain inlet controls, and a storm-damaged silt fence had not been repaired, all of which indicate that maintenance of erosion and sediment controls was necessary at the Site. Review of the Post-Storm Inspection Report dated January 2, 2013 indicates that Caltrans was aware that maintenance was necessary to address these deficiencies but failed to correct them, in violation of Attachment D, Section G.3.
 - f. In Area 4, EPA observed unstabilized, exposed soils lacking erosion control BMPs at a former sediment/treatment pond located within a staging area draining to storm drain inlet/sample site # 11, in violation of Attachment D, Section D.2.

Waste and Materials Management

29. Caltrans failed to implement adequate waste and materials management as follows:

- a. In Area 3, EPA observed that good site management measures for construction materials were not implemented to minimize exposure of construction materials to precipitation. Sand and gravel had spilled out of a three-sided, uncovered containment structure at the concrete batch plant indicating that the capacity of the structure was insufficient to contain the volume of materials stored. In addition, the location of the stockpile was determined to be inappropriate given evidence of concentrated storm water flow through spilled material and the proximity of a storm drain inlet, estimated to be within 50 feet down gradient of the stockpile area, in violation of Attachment D, Section B.1(d).
- b. In Area 4, EPA observed that good site management measures for construction materials were not implemented to minimize exposure of construction materials not actively being used to precipitation. Sand had spilled out of an uncovered containment structure in the northeast staging yard indicating that the capacity of the structure was insufficient to contain the volume of materials stored. In addition, the location of the stockpile was determined to be inappropriate given the proximity of a storm drain inlet, estimated to be within 50 feet down gradient of the stockpile area, in violation of Attachment D, Section B.1(b).

Management Pollution Control

30. Caltrans failed to implement adequate Site management pollution control practices as follows:

- a. In Area 4, EPA observed that good site management practices were not implemented to minimize exposure of potential pollutants to storm water. Sediment observed on the surface of the trestle #5 structure indicated that the frequency of routine sweeping was inadequate to minimize the potential for discharge of these materials to Lake Shasta. Gaps between the boards forming the surface of the trestle were observed, providing a direct pathway for sediment, fines and other leaked or spilled materials to become mobilized in storm water run-off and discharge into Lake Shasta, in violation of Attachment D, Section B.5.e.

IV. ADMINISTRATIVE PENALTY

31. In consideration of the penalty factors of CWA section 309(g), 33 U.S.C. § 1319(g), Respondent shall pay to the United States a civil administrative penalty in the amount of **Eighty Thousand Dollars (\$80,000.00)** within sixty (60) calendar days of the Effective Date, as defined in Section IX below, of this CA/FO.

32. Respondent shall make penalty payment by one of the options listed below.

a. Check Payment. Payment by a state controller's warrant shall be made payable to "Treasurer, United States of America" and be mailed as follows:

i. *If by regular U.S. Postal Service mail:*

U.S. Environmental Protection Agency
Fines and Penalties
PO Box 979077
St. Louis, MO 63197-9000

ii. *If by overnight mail:*

U.S. Environmental Protection Agency
Government Lockbox 979077
USEPA Fines and Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

b. Automated Clearinghouse Payment: Payment by Automated Clearinghouse (ACH) via Vendor Express shall be made through the U.S. Treasury as follows:

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking

c. Fedwire: Payment by wire transfer to EPA shall be made through the Federal Reserve Bank of New York as follows:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
(Field Tag 4200 of the Fedwire message should read: D 68010727 Environmental Protection Agency)

33. To ensure proper credit, Respondent shall include the following transmittal information with the penalty payment:

- a. Respondent's name (as appeared on the CA/FO), complete address, contact person, and phone number;
- b. the EPA case docket number;
- c. the EPA contact person; and
- d. the reason for payment.

34. Concurrent with the payment, Respondent shall send a true and correct copy of the payment and accompanying transmittal information to the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 9
75 Hawthorne Street
San Francisco, California 94105

Marcela von Vacano
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 9
75 Hawthorne Street
San Francisco, California 94105

35. Respondent shall not, and shall not allow any other person to, deduct any penalties and interest paid under this CA/FO from federal, state or local taxes.

36. Pursuant to CWA section 309(g)(9), 33 U.S.C. § 1319(g)(9), if Respondent fails to pay the assessed penalty on time, EPA may request the U.S. Department of Justice to bring a civil action to recover the overdue amount, plus interest at currently prevailing rates from the effective date of this CA/FO. In such an action, the validity, amount or appropriateness of the assessed penalty shall not be subject to review. In addition to any assessed penalty and interest, Respondent shall pay attorney fees, costs for collection proceedings, and a quarterly nonpayment penalty, which shall equal 20% of the aggregate amount of Respondent's penalties and nonpayment penalties that are unpaid as of the beginning of such quarter, for each quarter during which such failure to pay persists. EPA may also take other debt collection actions as authorized by law, including but not limited to the Debt Collection Act, 33 U.S.C. § 3711, and 33 C.F.R. Part 13.

V. APPLICABILITY

37. This CA/FO shall apply to and be binding on Respondent, Respondent's officers, directors, partners, agents, employees, contractors, successors and assigns.

VI. RESPONDENT'S ADMISSIONS AND WAIVERS

38. In accordance with 40 C.F.R. § 22.18(b), for the purpose of this proceeding, Respondent:

- a. admits that EPA has jurisdiction over the subject matter of this CA/FO;
- b. neither admits nor denies the specific factual allegations contained in Section III. above;
- c. consents to any and all conditions specified in this CA/FO and to the assessment of the civil administrative penalty under Section IV above;
- d. waives any right to contest the allegations contained in this CA/FO; and
- e. waives any right to appeal the CA/FO.

VII. RESERVATION OF RIGHTS

39. In accordance with 40 C.F.R. § 22.18(c), this CA/FO only resolves Respondent's CWA civil penalty liabilities for the violations specifically alleged herein. EPA reserves the right to take enforcement action against Respondent for any past, current or future violations not resolved in this proceeding.

40. This CA/FO is not a permit or modification of any existing permit issued pursuant to any federal, state, or local laws or regulations, and shall in no way relieve or affect Respondent's obligations under any applicable federal, state or local laws, regulations, or permits.

VIII. ATTORNEY'S FEES AND COSTS

41. Each party shall bear its own attorney fees and costs.

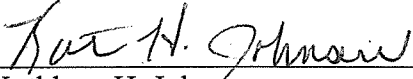
IX. EFFECTIVE DATE AND TERMINATION

42. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CA/FO shall take effect on the date that the Final Order, having been signed by the Regional Judicial Officer, is filed with the Regional Hearing Clerk (the "Effective Date"), and shall terminate when Respondent has complied with this CA/FO in full.

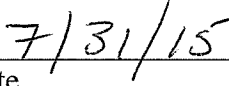
X. PUBLIC NOTICE

43. Pursuant to CWA section 309(g)(4), 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45(b), this Consent Agreement is subject to public notice and comment no less than 40 days prior to issuance of the proposed Final Order. Complainant reserves the right to withhold or withdraw consent to this Consent Agreement if public comments disclose relevant and material information that was not considered by Complainant in entering into this Consent Agreement. Respondent may withdraw from this Consent Agreement only upon receipt of written notice from EPA that it no longer supports entry of this Consent Agreement.
44. Pursuant to CWA section 309(g)(1), 33 U.S.C. § 1319(g)(1), EPA has provided notice to the State of California regarding this penalty action.

For Complainant the U.S. Environmental Protection Agency, Region 9




Kathleen H. Johnson
Director
Enforcement Division




Date

For Respondent Caltrans District 2



David Moore
Acting Caltrans District 2 Director

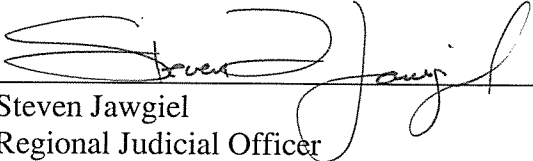


Date

In the Matter of Caltrans, District 2, NPDES Permit No. CAS000002
EPA Docket No. CWA - 09 - 2015 - 0002

FINAL ORDER

IT IS HEREBY ORDERED that Respondent shall comply with all terms and conditions of this Consent Agreement and Final Order, which shall take effect immediately upon filing with the Regional Hearing Clerk.


Steven Jawgiel
Regional Judicial Officer
United States Environmental Protection Agency
Region 9

10/30/15
Date

CERTIFICATE OF SERVICE

I hereby certify that the foregoing FINAL ORDER incorporating a CONSENT AGREEMENT in the matter of *Caltrans District 2* (CWA-09-2015-0002), dated October 30, 2015, has been filed with the Regional Hearing Clerk, and a copy was served on Counsel for Respondent, and Counsel for EPA, as indicated below:

FIRST CLASS MAIL - CERTIFIED

Respondent -
(By Counsel)

Judith A. Carlson
Deputy Attorney
California Department of Transportation
1120 N Street
Sacramento, CA 94273

HAND DELIVERED

Complainant -
(By Counsel)

Marcela Von Vacano
Office of Regional Counsel
ENVIRONMENTAL PROTECTION AGENCY
75 Hawthorne Street
San Francisco, CA. 94105

Dated at San Francisco, Calif., this 30th day of October, 2015.



Steven Armsey
Regional Hearing Clerk
EPA, Region 9