

**California Regional Water Quality Control Board
Santa Ana Region
September 16, 2010**

ITEM: *6

SUBJECT: Order No. R8-2010-0052, Metropolitan Water District of Southern California, Box Springs Feeder Repair Phase 3 Project, City of Riverside, Riverside County

SUMMARY

The matter before the Board is to consider adoption of Order No. R8-2010-0052, authorizing the excavation and discharge of fill to waters of the State that have been determined to be within the U.S. Army Corps of Engineers' (Corps) jurisdiction. However, as the discharge will occur as part of maintenance of a project that has previously received a Clean Water Act (CWA) Section 404 permit and the maintenance does not include any modification that changes the character, scope, or size of the original fill design, federal regulations exempt this discharge from further Section 404 permitting. While no water quality certification by the Regional Board is thus necessary, discharges associated with the project must be regulated under Waste Discharge Requirements. Order No. R8-2010-0052 is proposed to provide this regulation.

BACKGROUND

California Water Code (CWC) Section 13376 states that, "any person discharging dredge or fill material or proposing to discharge dredged or fill material into the navigable waters of the United States within the jurisdiction of this state shall file a report of the discharge in compliance with Section 13260." Section 13260(a) of the CWC requires that any person discharging waste or proposing to discharge waste within any region, other than to a community sewer system, that could affect the quality of the waters of the State, file a report of waste discharge (ROWD). Under federal Clean Water Act (CWA) Section 401, every applicant for a federal permit or license for any activity that may result in a discharge to waters of the United States must obtain State Water Quality Certification (Certification) that the proposed activity will comply with state water quality standards.

Most Certifications are issued in connection with U.S. Army Corps of Engineers (Corps) CWA Section 404 permits for dredge and fill discharges. The State Water Resources Control Board (State Board) and Regional Water Quality Control Boards administer the Certification program in accordance with the requirements of California Code of Regulations Title 23, Section 3830 *et seq.* Since November 2003, all Certifications have been issued by the Executive Officer accompanied by authorization to discharge in accordance with State

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Water Resources Control Board Order No. 2003-0017-DWQ (Order No. 2003-0017-DWQ), "General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received State Water Quality Certification."

On May 4, 2004, the State Board issued Water Quality Order No. 2004-0004-DWQ, "Statewide General Waste Discharge Requirements for Dredge and Fill Discharges to Waters Deemed by the U.S. Army Corps of Engineers to be Outside of Federal Jurisdiction (Order No. 2004-0004-DWQ)." Numeric impact thresholds limit the application of Order No. 2004-0004-DWQ to relatively small discharges of fill.

On March 8, 2010, Board staff received a report of waste discharge (Report) from Metropolitan Water District of Southern California (Metropolitan). Metropolitan proposes to excavate and repair parts of its Box Springs Feeder, a 96" diameter, 2.26 mile long, prestressed concrete cylinder pipe (PCCP) pipeline between the Department of Water Resources' State Water Project Santa Ana Valley Pipeline and Metropolitan's Henry J. Mills Water Treatment Plant. Routine inspections of the pipeline have found that sections of it are in need of prompt structural repair.

The repair sites include locations within the City of Riverside's Sycamore Canyon Wilderness Park. Metropolitan proposes to excavate some 70 lineal feet of waters of the state over an area of less than 0.01 acres as part of its proposed repair work. The affected waters include Sycamore Creek, a normally perennial stream, and one of its ephemeral, un-named tributaries.

The proposed maintenance work is within Corps jurisdiction. However, Metropolitan asserts that the project is a maintenance activity exempt from Section 404 permitting, citing 33 CFR323.4(a)(2)¹. Since no federal permit is required, no water quality certification is required from the Regional Board. Coverage under Order No. 2003-0007-DWQ is not appropriate. Further, since the project is subject to Corps jurisdiction, coverage under Order No. 2004-0004-DWQ is also inappropriate. Therefore, it is appropriate to authorize the discharge of fill from this project using individual waste discharge requirements.

The project will result in minor, temporary impacts to waters of the state, and no permanent impacts will occur. Metropolitan commits to restoring the impacted

¹ 33CFR 323.4 (a) General. Except as specified in paragraphs (b) and (c) of this section, any discharge of dredged or fill material that may result from any of the following activities is not prohibited by or otherwise subject to regulation under section 404:

(2) Maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, bridge abutments or approaches, and transportation structures. Maintenance does not include any modification that changes the character, scope, or size of the original fill design. Emergency reconstruction must occur within a reasonable period of time after damage occurs in order to qualify for this exemption.

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streambed to pre-construction contours. In its application to the California Department of Fish and Game for a Streambed Alteration Agreement, Metropolitan also commits to revegetate the impacted streambed. This restoration will also mitigate any temporary impacts to beneficial uses of the waters of the state that will be affected by the project. Therefore, no additional mitigation for the proposed discharge of fill is proposed. Waste discharge requirements are proposed to protect the water quality standards of Sycamore Creek.

Pursuant to the California Environmental Quality Act (CEQA), Metropolitan prepared a Mitigated Negative Declaration (MND) and approved it on April 13, 2010. A Notice of Determination was filed on April 21, 2010. Metropolitan's MND was considered in the preparation of these proposed waste discharge requirements.

RECOMMENDATION

Board staff recommends that the Board adopt Order No. R8-2010-0052.

Comments were solicited from the following agencies and parties:

U.S. Army Corps of Engineers, Los Angeles District
California Department of Fish and Game
U.S. Environmental Protection Agency, Supervisor of the Wetlands Regulatory Office
State Water Resources Control Board, Department of Water Quality, Water Quality Certification Unit

California Regional Water Quality Control Board
Santa Ana Region

Waste Discharge Requirements

Order No. 2010-0052

for

Metropolitan Water District of Southern California
Box Springs Feeder Repair Phase 3 Project
Riverside, Riverside County

The California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), finds that:

1. Metropolitan Water District of Southern California (hereinafter, Discharger) proposes to excavate and discharge fill to less than 0.01 acre and approximately 70 linear feet of waters of the State as part of the Box Springs Feeder Repair Phase 3 Project, within the City of Riverside, Riverside County.
2. The Box Springs Feeder is a 96" diameter, 2.26 mile long, reinforced concrete cylinder pipe (RCCP) pipeline between the Department of Water Resources' State Water Project Santa Ana Valley Pipeline and Metropolitan's Henry J. Mills Water Treatment Plant. Routine inspections of the pipeline have found that sections of it are in need of structural repair. Several repair sites are located within the City of Riverside's Sycamore Canyon Wilderness Park, where the pipeline crosses Sycamore Creek and one of its un-named tributaries. The project site is located within Township 3 South, Range 4 West, Section 8, as shown on the U.S. Geological Survey's *Riverside East, CA*, quadrangle.
3. The Board commonly regulates discharges of dredge or fill to waters of the State through the issuance, in part, of Clean Water Act (CWA) Section 401 Water Quality Standards Certifications (Certifications) where the discharge is also subject to regulation by the U.S. Army Corps of Engineers (Corps). These Certifications are typically accompanied by authorization to discharge in accordance with State Water Resources Control Board Order No. 2003-0017-DWQ (Order No. 2003-0017-DWQ), "General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received State Water Quality Certification." This occurs when the receiving water is both a water of the State as defined by the California Water Code and a water of the U.S. under CWA Section 404. In the absence of an applicable federal permit or license, the Board regulates the proposed discharge to waters of the State through coverage under State Water Resources Control Board Water Quality Order No. 2004-0004-DWQ (Order No. 2004-0004-DWQ), "Statewide General Waste Discharge Requirements for Dredged or Fill Discharges to Waters Deemed by the U.S. Army Corps Of Engineers to be Outside of Federal Jurisdiction", or through the issuance of individual Waste Discharge Requirements or a waiver thereof.

4. The Discharger asserts that while the proposed activity, maintenance of an existing facility that does not change the character, scope or size of the original facility design, is subject to Clean Water Act Section 404 permitting by the Corps, the activity is exempt from Section 404 permitting, pursuant to 33 CFR Section 323.4(a)(2)¹. Since a Section 404 permit will not be issued, a Section 401 water quality standards certification will not be necessary. Furthermore, since the project is subject to Section 404, it is inappropriate to provide coverage under Order No. 2004-0004 DWQ.
5. Waste Discharge Requirements (WDRs) are necessary to address impacts of the fill on the beneficial uses of waters of the State.
6. The Water Quality Control Plan for the Santa Ana River Basin, 1995, and subsequent amendments (Basin Plan) designates the following beneficial uses of Sycamore Creek:
 - a) Groundwater Recharge (GWR).
 - b) Contact and Non-contact Water Recreation (REC-1 and REC-2)
 - c) Wildlife Habitat (WILD).
 - d) Warm Water Aquatic Habitat (WARM)
 - e) Spawning, Reproduction and Development (SPAWN)
7. This Order regulates the excavation and discharge of fill material to waters of the State that are not within the Corps' authority to permit. The discharger submitted a Report of Waste Discharge on March 8, 2010.

¹ 33CFR 323.4(a) General. Except as specified in paragraphs (b) and (c) of this section, any discharge of dredged or fill material that may result from any of the following activities is not prohibited by or otherwise subject to regulation under section 404:

(2) Maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, bridge abutments or approaches, and transportation structures. Maintenance does not include any modification that changes the character, scope, or size of the original fill design. Emergency reconstruction must occur within a reasonable period of time after damage occurs in order to qualify for this exemption.

8. The Discharger reports that the project will not result in any permanent impacts to beneficial uses. Temporary impacts to less than 0.01 acres and 70 lineal feet will be mitigated by restoring pre-construction contours to the project site and by revegetating the site. These restoration activities will be carried out in accordance with a Stream Bed Alteration Agreement between Metropolitan and the California Department of Fish and Game.
9. Pursuant to CEQA, Metropolitan prepared a Mitigated Negative Declaration (MND) and approved it on April 13, 2010. A Notice of Determination was filed on April 21, 2010. The Board has considered Metropolitan's MND and determined that there will be no un-mitigated significant impacts on water quality as a result of the proposed project.
10. The Board has considered anti-degradation pursuant to State Board Resolution No. 68-16 and finds that the discharge is consistent with those provisions.
11. The Board has notified the discharger and other interested agencies and persons of its intent to prescribe waste discharge requirements for the discharge and has provided them with an opportunity for public hearing and opportunity to submit their written views and recommendations.
12. The Board, in a public meeting, heard and considered all comments pertaining to the discharge.

IT IS HEREBY ORDERED that the discharger, in order to meet the provisions contained in Division 7 of the California Water Code and regulations adopted there under, shall comply with the following:

A. DISCHARGE SPECIFICATIONS:

1. Excavation or discharge of fill shall not result in an increase in turbidity in receiving waters resulting from controllable factors in excess of the following:
 - If background turbidity is 0-50 NTU, not to increase more than 20%
 - If background turbidity is 50-100 NTU, not increase more than 10 NTU
 - If background turbidity is >100 NTU, not to increase more than 10%
2. Excavation or discharge of fill shall not cause dissolved oxygen (DO) in the receiving water to be depressed below 5.0 mg/l, or if the background DO level is below 5.0 mg/l, the discharge shall not cause a further DO depression.
3. No activities associated with the project shall cause or threaten to cause a nuisance or pollution as defined in Section 13050 of the California Water Code.
4. The surface water and groundwater in the vicinity of the project shall not be degraded as a result of the project activities or placement of fill for the project.

5. The discharge of fill materials shall be limited to inert materials, as defined in Section 20230, Division 2, Title 27. The discharge of fill material other than native soil shall be only with the prior approval of the Executive Officer.

B. DISCHARGE PROHIBITIONS:

1. The discharge of any substance in concentrations toxic to animal or plant life is prohibited
2. The direct discharge of wastes, including cured or uncured Portland cement concrete and washings and cutting thereof, welding and metal cutting slag, rubbish, refuse, bark, sawdust, or other solid wastes into surface waters or at any place where they would contact or where they would be eventually transported to surface waters, including flood plains, is prohibited.
3. The discharge of floating oil or other floating materials from any activity in quantities sufficient to cause deleterious bottom deposits, turbidity, or discoloration in surface waters is prohibited.
4. The discharge of silt, sand, clay, or other earthen materials from any activity in quantities sufficient to cause deleterious bottom deposits, turbidity, or discoloration in surface waters is prohibited.
5. Discharges of wastes or pollutants to surface waters, unless otherwise regulated by a separate National Pollutant Discharge Elimination System (NPDES) permit, are prohibited.

C. PROVISIONS:

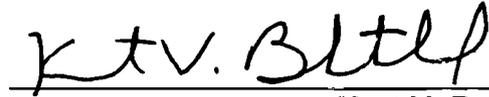
1. The discharger shall maintain a copy of this Order at the site so that it is available to site operating personnel at all times. Key operating personnel shall be familiar with its content.
2. The discharger shall remove from the site any waste or fill material found to contain substances that may have a deleterious effect on water quality, and dispose of unacceptable wastes in a manner acceptable to the Executive Officer.
3. The discharger must comply with all of the requirements of this Order. Any violation of this Order constitutes a violation of the California Water Code and may constitute a violation of the CWA and its regulations, and is grounds for enforcement action, termination of this Order, revocation and re-issuance of this Order, denial of an application for re-issuance of this Order, or a combination thereof.
4. The Discharger shall comply with Attachment A, Monitoring and Reporting Program No. R8-2010-0052. Revision of this monitoring and reporting program

by the Executive Officer may be necessary to confirm that the Discharger is in compliance with the requirements and provisions contained in this Order. Revisions may be made by the Executive Officer at any time during the term of this Order.

5. The discharger shall take all reasonable steps to minimize or prevent any discharge that has a reasonable likelihood of adversely affecting human health or the environment.
6. The provisions of this Order are severable, and if any provision of this Order, or the application of any provisions of this Order to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this Order shall not be affected thereby.
7. The filing of a request by the discharger for modification, revocation and reissuance, or termination of this Order or a notification of planned changes or anticipated noncompliance does not stay any requirements of this Order.
8. The requirements prescribed herein do not authorize the commission of any act causing injury to the property of another, nor protect the discharger from liabilities under federal, state, or local laws, nor guarantee the discharger a capacity right in the receiving waters.
9. This Order does not convey any property rights of any sort, or any exclusive privilege.
10. This Order is not transferable to any person except after notice to, and approval by, the Executive Officer. The Board may require modification or revocation and re-issuance of this Order to change the name of the discharger.
11. In the event of any change in control or ownership of land or waste discharge facility presently owned or controlled by the discharger, the discharger shall notify the succeeding owner or operator of the existence of this Order by letter, a copy of which shall be forwarded to the Board.
12. The Board and other authorized representatives shall be allowed:
 - a) Entry upon premises where a regulated facility or activity is located or conducted, or where records are kept under the requirements of this Order;
 - b) Access to copy any records that are kept under the requirements of this Order;
 - c) To inspect any facility, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Order; and

- d) To photograph, sample and monitor for the purpose of assuring compliance with this Order.

I, Kurt V. Berchtold, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Santa Ana Region, on September 16, 2010.



Kurt V. Berchtold
Executive Officer

ATTACHMENT A - MONITORING AND REPORTING PROGRAM (MRP)

California Water Code (CWC) Sections 13267 and 13383 authorize the Regional Water Quality Control Board (Regional Water Board) to require technical and monitoring reports. This MRP establishes monitoring and reporting requirements which implement state regulations.

1. GENERAL MONITORING PROVISIONS

A. All sampling and sample preservation shall be in accordance with the current edition of "Standard Methods for the Examination of Water and Wastewater" (American Public Health Association).

B. All laboratory analyses, shall be performed in accordance with test procedures under 40 CFR 136 (revised as of April 11, 2007) "Guidelines Establishing Test Procedures for the Analysis of Pollutants," promulgated by the United States Environmental Protection Agency (EPA), unless otherwise specified in this MRP. In addition, the Regional Water Board and/or EPA, at their discretion, may specify test methods that are more sensitive than those specified in 40 CFR 136.

C. Chemical, bacteriological, and bioassay analyses shall be conducted at a laboratory certified for such analyses by the California Department of Public Health in accordance with the provision of Water Code Section 13176, or conducted at a laboratory certified for such analyses by the EPA or at laboratories approved by the Regional Water Board's Executive Officer.

D. The Discharger shall submit to the Regional Water Board reports necessary to determine compliance with effluent limitations in this Order.

2. MONITORING LOCATIONS

The Discharger shall establish monitoring locations to demonstrate compliance with the discharge limitations, specifications, and other requirements in this Order. The monitoring stations shall be located upstream and downstream of the discharge where representative stream flow conditions can be monitored. The approximate volume of daily average stream flow shall be recorded daily on a permanent water quality log.

3. MONITORING REQUIREMENTS

The following shall constitute the effluent monitoring program for the discharge:

A. Daily during excavation or filling activities, stream flow shall be monitored upstream and downstream of the project site for turbidity (as Nephelometric Turbidity Units - NTU) and for Dissolved Oxygen (DO)(as milligrams/liter - mg/l).

Results of monitoring shall be recorded in a permanent water quality log at the project site.

B. Monitoring determinations shall be made on-site using appropriately calibrated instruments operated by properly trained staff.

C. Documentation of monitoring instrument calibration and staff training in the use of these instruments shall be maintained at the project site.

D. Should any monitoring for a constituent show stream concentrations above the specified limit, the frequency of monitoring for that constituent shall be increased to twice daily. To return to the monitoring frequency specified, the Discharger shall request and receive approval from the Regional Water Board's Executive Officer or designee.

E. If the discharge does not last for more than a day, one monitoring event shall be conducted during the duration of the discharge and the results recorded in the water quality log.

4. REPORTING REQUIREMENTS

Monitoring reports shall be submitted by the 30th day of each month following the month during in which monitoring was conducted, and shall include:

A. The results of all chemical analyses for the previous month

B. A summary of the month's activities including a report detailing compliance or noncompliance with the requirements of this order.

C. For every item of monitoring data where the requirements are not met, the monitoring report shall include a statement discussing the reasons for noncompliance, and of the actions undertaken or proposed which will bring the discharger into full compliance with requirements at the earliest time, and an estimate of the date when the discharger will be in compliance. The discharger shall notify the Regional Water Board by letter when compliance with the time schedule has been achieved.