

US EPA ARCHIVE DOCUMENT

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 9**

IN THE MATTER OF:

State of California,)	
Department of Transportation)	Docket No. CWA-09-2011-0001
)	
Proceedings under Sections 308(a))	FINDINGS OF VIOLATION
and 309(a)(3), (a)(4) and (a)(5)(A) of the)	AND
Clean Water Act, as amended,)	ORDER FOR COMPLIANCE
33 U.S.C. Sections 1318(a) and)	
1319(a)(3), (a)(4), and (a)(5)(A).)	

I. STATUTORY AUTHORITY

The following Findings are made and Order issued pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) under Sections 308(a) and 309(a)(3), (a)(4), and (a)(5)(A) of the Clean Water Act (CWA), as amended, 33 U.S.C. §§ 1318(a) and 1319(a)(3), (a)(4), and (a)(5)(A). This authority has been delegated by the Administrator to the Regional Administrator of EPA Region 9, and re-delegated by the Regional Administrator to the Director of the Water Division of EPA Region 9.

II. FACTUAL AND LEGAL FINDINGS

A. Statutory and Regulatory Requirements

1. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person except in compliance with, *inter alia*, a NPDES permit issued under Section 402 of the CWA, 33 U.S.C. § 1342.
2. Section 502(5) of the CWA, 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.
3. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines “pollutant” to mean dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological material, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.
4. Section 502(12)(A) of the CWA, 33 U.S.C. §1362(12)(A), defines the term “discharge of pollutants” to mean any addition of any pollutant to navigable waters from any point source.

5. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as “the waters of the United States, including the territorial seas.” EPA’s implementing regulations at 40 C.F.R. § 122.2 further define “waters of the United States” to include, *inter alia*, all waters that are subject to the ebb and flow of the tide, including their tributaries.

6. Section 502(14) of the CWA, 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.

7. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), required NPDES permits for certain municipal and industrial storm water discharges. EPA promulgated regulations at 40 C.F.R. § 122.26 to implement the storm water permit provisions of Section 402(p).

8. “Storm water” is defined as “storm water runoff, snow melt runoff, and surface runoff and drainage”. 40 C.F.R. § 122.26(b)(13).

9. NPDES permits are required for discharges of storm water from a “municipal separate storm sewer system” or “MS4”, which includes:

[A] conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains): (i) Owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity

40 C.F.R. § 122.26(b)(8).

10. NPDES permits are also required for discharges of storm water associated with industrial activity. 33 U.S.C. § 1342(p)(3)(A); 40 C.F.R. § 122.26 (a)(ii). The regulations define “industrial activity”, to include, *inter alia*, construction activity, including clearing, grading and excavation (except operations that result in disturbance of less than five acres of total land area and that are not part of a larger common plan of development or sale). 40 C.F.R. § 122.26(b)(14)(x). Storm water discharges associated with small construction activity (resulting in land disturbance of equal to or greater than one acre and less than five acres) are also regulated. 40 C.F.R. § 122.26 (b)(15).

11. Section 402(b) of the CWA, 33 U.S.C. § 1342(b), authorizes States with an EPA-approved NPDES program to issue NPDES permits. The State of California, through its State Water Resources Control Board (SWRCB), is a state approved under section 402(b) of the CWA to administer the NPDES program, including the issuance of storm water permits within California.

12. EPA is authorized under Section 308 of the CWA, 33 U.S.C. § 1318, to require owners and operators of point sources to establish records and make such reports as may be necessary to carry out the objective of the statute, including determining whether any person is in violation of any effluent limitation, or other limitation, prohibition or effluent standard, pretreatment standard or standard of performance.

13. Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a), provides, *inter alia*, that whenever, on the basis of any information available to him, the Administrator finds that any person is in violation of any permit condition or limitation implementing certain CWA sections in a permit issued under Section 402 of the CWA, he shall issue an order requiring such person to comply with such section or requirement.

B. Respondent's Operations and Discharges

14. The State of California, Department of Transportation ("Caltrans" or "Respondent") is an agency of the State of California and, therefore, a "person" as defined by Section 502(5) of the CWA, 33 U.S.C. 1362(5), and subject to its requirements.

15. Respondent operates through its Headquarters office in Sacramento, California and twelve (12) District offices, including: The North Coast region (District 1), Northern Central Valley and Far Northeastern region (District 2), Sacramento area (District 3), San Francisco Bay area (District 4), Central Coast (District 5), Lower Central Valley (District 6), Los Angeles Basin (District 7), San Bernardino area (District 8), Mono/Inyo area (District 9), Middle Central Valley (District 10), San Diego area (District 11), and Orange County (District 12).

16. Respondent is primarily responsible for the design, construction, management, and maintenance of the California highway system, including roads, freeways, bridges, tunnels, maintenance facilities, and related properties, and facilities. These operations include roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, and storm drains. It owns and operates a MS4.

17. Respondent conducts and/or controls construction activities, including clearing, grading, and excavation, and other land disturbance activities, which at various locations result in disturbance of at least one acre of total land area, throughout the State ("Construction Activities").

18. Respondent conducts maintenance activities, including highway maintenance (such as slope stabilization, vegetation control, and drain inlet cleaning) and highway surveillance (such as spill and illicit connection/discharge reporting and response), throughout the State ("Maintenance Activities"). Respondent also owns and/or operates maintenance facilities, including vehicle maintenance facilities, salt and sand storage facilities, material and equipment storage facilities, roadside rest areas, agricultural and highway patrol weigh stations, and sweeper and roadway waste and vector decant storage or disposal locations, throughout the State ("Maintenance Facilities").

19. Respondent's discharges consist of storm water and non-storm water runoff generated from its operations and properties, including its Construction Activities, Maintenance Activities and Maintenance Facilities.

20. Respondent's discharges of storm water and non-storm water have been shown to be contributors of pollutants to waters of the United States. Pollutant sources from Respondent's operations include motor vehicles, highway maintenance, construction site runoff, maintenance facility runoff, dumping, spills, and landscaping care. Pollutant categories include metals (such as copper, lead, and zinc), synthetic organics (petroleum products and pesticides), sediment, nutrients (nitrogen and phosphorus fertilizers), debris, oxygen demanding substances (decaying vegetation, animal waste, and other organic matter), and other pollutants which may cause aquatic toxicity in the receiving waters.

21. Respondent's discharges flow directly or through MS4s to multiple surface water bodies in the State, including creeks, rivers, reservoirs, lakes, wetlands, lagoons, estuaries, bays, and the Pacific Ocean and tributaries thereto. These surface waters are "waters of the United States" as defined in 40 C.F.R. §122.2.

C. Respondent's NPDES Permit Requirements

22. On July 15, 1999, the SWRCB issued to Respondent National Pollutant Discharge Elimination System ("NPDES") Permit Statewide Storm Water Permit and Waste Discharge Requirements ("WDRs"), State Water Resources Control Board, Order No. 99-06-DWQ, NPDES NO. CAS000003 (the "Permit").

1. Discharge Prohibitions

23. Permit Provision A prohibits unauthorized discharges from Respondent's rights-of-way, properties, facilities and activities, including:

a. Provision A.1 provides: "The discharge of runoff from Caltrans owned rights-of-way or Caltrans properties, facilities, and activities to waters of the United States which have not been reduced to the [Maximum Extent Practicable] MEP is prohibited."

b. Provision A.1 further provides: "The discharge of runoff from construction sites containing pollutants which have not been reduced using [Best Available Technology Economically Achievable] BAT for toxic pollutants and [Best Conventional Technology] BCT for conventional pollutants to waters of the United States is prohibited."

c. Provision A.4 provides: "The dumping, deposition, or discharge of waste by Caltrans directly into waters of the State or adjacent to such waters in any manner that may allow its being transported into the waters is prohibited unless authorized by the RWQCB."

d. Provision A.6 provides: "The discharge of sand, silt, clay, or other earthen materials from any activity, including land grading and construction, in quantities which cause

deleterious bottom deposits, turbidity, or discoloration in waters of the State or which unreasonably affect or threaten to affect beneficial uses of such waters, is prohibited.”

e. Provision A.7 provides: “Wastes or wastewater from road sweeping vehicles or from other maintenance or construction activities shall not be discharged to any surface waters or to any storm drain leading to surface water bodies.”

2. Statewide Storm Water Management Program Requirements

24. Permit Provisions A.1, E.1, and F.1 require Respondent to comply with the MEP and BAT/BCT pollutant reduction standards by maintaining and implementing an effective Storm Water Management Plan. Permit Provisions E.1, F.2 and F.3 require Respondent to submit the Storm Water Management Plan to the SWRCB for approval and to update it annually. As provided in Permit Finding 15, the approved Storm Water Management Plan (and approved revisions) are integral to, and an enforceable component of, the Permit.

25. Respondent’s statewide Storm Water Management Plan, dated May 2003 SWMP, CTSW-RT-02-008 (the “SWMP”), identifies how Respondent will comply with the Permit. SWMP Section 1.2 provides that the Permit and SWMP provide the framework for “consistent, effective and efficient implementation of storm water management practices statewide in all of the Department’s Districts”. SWMP Appendix D contains Respondent’s Storm Water Quality Practice Guidelines (May 2003 CTSW-RT-02-009) (the “Guidelines”), which describe each approved Best Management Practice (BMP) included in the SWMP for statewide application.

26. Permit Provision E.1 requires Respondent’s storm water program to “reflect the principles that storm water management is to be a year-round proactive program to eliminate or control pollutants at their source or to reduce them from the discharge by either structural or nonstructural means when elimination at the source is not possible.”

3. Construction Program Requirements

27. Permit Provision H requires Respondent to implement the construction elements specified in its SWMP as well as additional construction program requirements in Provision H, including:

a. Provision H.1 requires Respondent to implement the storm water program “year-round on all construction projects in all parts of the State”. SWMP Section 4.5 similarly states that Respondent “implements storm water pollution management on construction sites year-round.”

b. Provision H.1.b requires Respondent’s construction program to require “structural and nonstructural BMPs”;

c. Provision H.2 requires Respondent’s construction management program to “be in compliance with requirements of the NPDES General Permit for Construction Activities (Construction General Permit) not including NOI filing.” At the time the Permit was issued, the Construction General Permit in effect was SWRCB Order 92-08-DWQ. As of

September 2, 2009 (and effective on July 1, 2010), the current Construction General Permit is State Water Resources Control Board NPDES General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order No. 2009-0009-DWQ, NPDES No. CAS000002 (the "State CGP").

d. Provision H.8.b requires Respondent to develop and implement a site-specific Storm Water Pollution Prevention Plan (SWPPP) "for each construction project as required by the State Construction General Permit . . . The SWPPP shall contain a BMP program that meets the performance standards of BAT/BCT. The resident engineer shall approve the SWPPP prior to construction and ensure that the SWPPP is effectively implemented. The SWPPP shall contain all of the elements required by the Construction General Permit. Caltrans is responsible for having an effective SWPPP at all times and for implementing the SWPPP at an appropriate level through the entire year." SWMP Section 4.5 also specifies that "WPCPs [Water Pollution Control Plans] must be prepared for all construction projects that do not require the preparation of an SWPPP."

4. Maintenance Program Requirements

28. Permit Provision I requires Respondent to implement the maintenance elements specified in its SWMP as well as additional maintenance program requirements in Provision I, including:

a. Provision I.3.a requires Respondent to "prepare [Maintenance Facility Pollution Prevention Plans] FPPPs for all maintenance facilities. Because these facilities are considered municipal activities rather than industrial activities, these FPPPs must have BMP programs that reduce pollutants to MEP." Permit Provision I.3.b further provides that: "Generic FPPP elements can be used for activities that are performed at more than one maintenance facility; however, each site must be evaluated separately and provided with appropriate site specific BMPs."

b. Provision I.1.a requires Respondent to "develop and implement runoff management programs and systems for existing roads, highways, and bridges to reduce runoff pollutant concentrations and volumes entering surface waters.

- (1) Identify priority and watershed pollutant reduction opportunities (e.g., improvements to existing urban runoff control structures).
- (2) Establish schedules for implementing appropriate controls.
- (3) Identify road segments with slopes that are prone to erosion and discharge of sediment and stabilize these slopes to the extent possible."

c. Provision I.1.c (1) requires Respondent to "remove all waste from those inlets that pose a significant threat to water quality on an annual basis prior to the winter season each year. All waste removed from drain inlets shall be managed in accordance with all applicable laws and regulations, including CCR Title 27, Division 2, Subdivision 1." SWMP Section 5.3.2.1 further provides that: "Maintenance Supervisors are responsible for inspecting storm water drainage systems and assess the need for cleaning or clearing. The Department should observe culverts and drain inlets annually in the fall and

throughout the winter as needed to determine if cleaning or repairs are required. . . . Solid and liquid wastes generated by the cleaning of storm water drainage system facilities are disposed of in accordance with federal, state and local liquid and solid waste disposal regulations.”

29. Permit Provision B.1 requires Respondent to “effectively prohibit non-storm water discharges into its storm water conveyance system unless such discharges are either” authorized by the Permit or a separate NPDES permit. SWMP Section 5.4 states that Maintenance personnel take actions to prevent the discharge of nonpermitted non-storm water discharges, including:

- a. “Set up work areas to minimize the tracking of material by vehicles and equipment in and out of the work area;”
- b. “Collect and properly dispose of wastes, materials removed as a result of equipment and system maintenance, and litter and debris;”
- c. “Have appropriate spill cleanup material on site and protect drainage systems and watercourses from spilled material.”

30. Permit Provision G.1.b requires Respondent to submit a Municipal Coordination Plan to the SWRCB for approval. The Municipal Coordination Plan must “describe the approach that Caltrans will take in establishing communication, coordination, cooperation, and collaboration of Caltrans storm water management activities and other pertinent activities with MS4 storm water management programs including establishing agreements with municipalities, flood control department, or districts as necessary or appropriate.”

31. Permit Provision G.2.a requires Respondent to “establish and maintain adequate legal authority through ordinance, statute, permit, contract or other means to control discharges to and from Caltrans properties, facilities and activities pursuant to 40 CFR 122.26(d)(2)(i)(A-F).” Permit Provision G.2.b states that “Caltrans has provided a statement certified by its chief legal counsel that Caltrans has adequate legal authority to implement and enforce each of the key regulatory requirements contained in 40 CFR 122.26(d)(2)(i)(A-F).” Those regulations authorize Respondent, among other items, to (1) “[p]rohibit through ordinance, order or similar means illicit discharges to the municipal separate storm sewer;” (2) “[c]ontrol through ordinance, order or similar means the discharge to a municipal separate storm sewer of spills, dumping or disposal of materials other than storm water;” and (3) “[c]arry out all inspection, surveillance and monitoring procedures necessary to determine compliance and noncompliance with permit conditions including the prohibition on illicit discharges to the municipal separate storm sewer.” 40 C.F.R. § 122.26(d)(2)(i)(B),(C) and (F).

32. Permit Provision I.2.b requires Respondent to “implement the [Illicit Connection/Illicit Discharge] IC/ID Detection Element in the SWMP in conjunction with the legal authority with the following changes:

- (1) Detection of IC/IDs: Caltrans shall develop procedures for receiving and

investigating public complaints including establishing telephone numbers which the public can use to report IC/IDs and shall post these numbers in places where illegal dumping is found to be a problem.

- (2) Investigation of each IC/ID: Caltrans shall develop procedures to conduct investigations of every IC/ID to identify the source. These procedures may include further field screening (observations and field analyses), collection and laboratory analysis of samples (upstream and downstream), smoke or dye tests, video taping with a remote control camera, or other appropriate means.
- (3) Elimination of IC/IDs: Caltrans shall eliminate all identified IC/IDs as expeditiously as possible. In addition to reporting IC/IDs to the municipal authorities and to the RWQCBs, Caltrans shall use its own legal authority to eliminate IC/IDs.
- (4) Caltrans shall develop a procedure to track all reports of IC/IDs and the action taken on them. . . .”

33. SWMP Section 5.3.2.3 provides that when IC/IDs are discovered, “they will be referred to the District Maintenance or NPDES Storm Water coordinator for initial investigation and reporting. Illegal dumping that may impact storm water quality will be removed. All cleanup activities will also be reported to the District Maintenance Storm Water Coordinator, as well as all illegal-dumping incidents found but not cleaned.”

34. SWMP Sections 4.2.2 also identifies additional duties of the Resident Engineers to include “inspecting for, reporting, and under certain circumstances, directing the cleanup and/or removal of illegally dumped material, spills or discharges through illicit connections with the limits of the construction site”

5. Inspections and Oversight

35. General: Permit Provision G.5 requires Respondent to “have an inspection program to insure actions are implemented and facilities are constructed, operated, and maintained in accordance with this NPDES Permit and the SWMP. The program shall include training for inspection personnel, documentation of field activities, a reporting system that can be used to track effectiveness of control measures, enforcement procedures (or referral for enforcement) for noncompliance, and responsibilities and responsible personnel of all affected functional offices and branches”. SWMP Section 8.3 further provides that: “The Department’s management provides oversight to ensure compliance with the Statewide SWMP. Such oversight includes observing and evaluating Design and Construction personnel as they implement the requirements of the Statewide SWMP on new projects and Maintenance division personnel as they conduct highway maintenance activities.”

36. Construction: Permit Provision H.1.c requires Respondent’s construction program to include “site inspections and enforcement”, including “a program and a schedule for inspections”. Permit Provision H.8.c provides that: “Monitoring and inspection of construction sites shall be done in accordance with the Provisions of the Construction General Permit.” In addition, SWMP Section 4.2.2 provides: “The [Resident Engineer] RE periodically inspects the

construction site for proper installation and maintenance of BMPs and overall implementation of the approved WPCP or SWPPP.”

37. Maintenance: Permit Provision K.3.c (1) provides for maintenance inspections: “Caltrans is required to conduct periodic inspections. The purpose of the inspections is to identify areas contributing to a discharge of storm water associated with the maintenance facility activities and to evaluate whether control practices to reduce pollutant loadings identified in the FPPP are adequate and properly implemented or whether additional control practices are needed.” SWMP Section 5.6 requires Maintenance Supervisors to “inspect their maintenance facilities monthly to monitor the implementation and adequacy of the BMPs.” In addition to those monthly facility inspections, Section 5.6 further provides that “the District Maintenance Storm Water Coordinators will review at least 20% of each District’s facilities each year.”

6. Training

38. Permit Provision J requires Respondent to implement the training elements specified in its SWMP as well as additional requirements contained in Provision J, including:

a. Provision J.1.b requires Respondent to “provide frequent educational reminders to employees to reinforce the training.” SWMP Section 6.2.2 states that Respondent’s “comprehensive introduction/refresher course will be attended by new targeted employees and other targeted employees that have not received training in the first year, and repeated by all targeted staff once every four years.” SWMP Section 6.2.3 further provides that “the Department makes expert services available on an on-call status to provide on-the-job training to employees in the Design, Construction, and Maintenance Divisions.”

b. Provision J.2.b. requires Respondent to “provide outreach to contractors to raise their awareness of the problems and causes of storm water pollution and to reinforce their training.” SWMP Section 6.3.4 states that “[t]he Department has developed and implemented a construction contractor training program to educate contractors about developing and implementing an SWPPP, the importance of complying with the SWPPP, inspection and reporting requirements, the role of the RWQCB in the SWPPP and construction project, and the consequences associated with not adequately implementing the SWPPP.”

D. Respondent’s Violations

39. On October 5-7, 13-14, and 21-22, 2009, EPA, along with its contractor, PG Environmental, LLC, and SWRCB and RWQCB representatives, audited Respondent’s compliance with the Permit in Caltrans Districts 1 through 4 in northern California. The audit included interviews with Respondent’s Headquarters and District representatives, record reviews, and inspections of approximately 55 individual Construction Activities, Maintenance Facilities, and Maintenance Activities located in Respondent’s rights-of-way and/or served by Respondent’s MS4 in its Districts 1 through 4. The EPA audit report, dated February 26, 2010 (the “Audit Report”), is attached hereto as Exhibit 1.

1. Statewide Storm Water Management Program Violations

40. As more fully set forth in Section 2.1 of the Audit Report, contrary to Permit Provisions E.1 and SWMP Sections 1.2 (referenced in Section C.2 of this Order above), Respondent failed to implement its SWMP consistently throughout Districts 1 through 4. Districts 1 through 4 varied significantly in applying Respondent's storm water guidance and forms. For example, each District was not consistently implementing the January 2003 Construction Storm Water Coordinator Guidance Manual requirements for electronically tracking construction projects. Neither Respondent's Headquarters nor the Districts could produce a list that identified and provided the status of current construction projects within each District. Similarly, Districts 1 through 4 were unaware of, and thus not implementing, the procedures specified in Appendix C of the Caltrans Maintenance Staff Guide for investigating and responding to public complaints of IC/IDs.

2. Construction Program Violations

41. As more fully set forth in Section 2.3.1 of the Audit Report, contrary to Permit Provisions E.1 and H.1.b (referenced in Sections C.2 and C.3 above), Respondent failed to implement adequate structural and nonstructural BMPs at its construction sites. For example:

- a. District 1: At the Smith River Safety Roadway Project, adequate BMPs for erosion and sediment control were not implemented for several disturbed areas, including a drainage ditch and culvert crossing. See, Audit Report, Appendix D, Site Visit No.12.
- b. District 2: At the Thomes Creek Bridge Project, adequate BMPs were not implemented for the contractor's staging and material storage areas. See, Audit Report, Appendix D, Site Visit No. 1. In addition, although erosion log BMPs were present at areas of disturbance located directly adjacent to the flowing Thomes Creek, the logs were not staked as required, and as a result, a discharge of sediment was observed bypassing the logs to Thomes Creek. Id.
- c. District 3: At the Nicolaus Bypass Project, silt fence BMPs at the toe of the disturbed slope had collapsed and were incapable of preventing the discharge of sediment to adjacent Yankee Slough. See, Audit Report, Appendix D, Site Visit No. 5.
- d. District 4: At the Isabel Avenue/Route 580 Interchange Project, silt fence BMPs were improperly installed on impervious surfaces (instead of entrenched in the ground to retain sediment) or had collapsed and/or failed to retain sediment. See, Audit Report, Appendix D, Site Visit No. 10.

42. As more fully set forth in Appendix D of the Audit Report, contrary to Permit Provisions A.1, A.4, A.6 and A.7 (referenced in Section C.1 above), Respondent failed to prevent the discharge of runoff from Respondent's construction sites containing pollutants that had not been reduced using BAT for toxic pollutants and BCT for conventional pollutants. For example:

- a. At the Thomes Creek Bridge Project in District 2, the EPA Audit Team observed a discharge of uncontrolled sediment and/or other pollutants leading from the contractor staging and material storage areas to Thomes Creek and a discharge of sediment bypassing improperly installed BMPs and leading to Thomes Creek. See, Audit Report, Appendix D, Site Visit No. 1.
 - b. At the South Avenue On-Ramp Project in District 2, the EPA Audit Team observed a discharge of sediment from interconnected basins, unstabilized embankment slopes, and other disturbed areas to a culvert inlet and drainage pipe leading to Birch Creek. See, Audit Report, Appendix D, Site Visit No. 2.
 - c. At the Top of Buckhorn Project in District 2, the EPA Audit Team observed a discharge of sediment from the field constructed sediment basin and other disturbed slope areas to an unnamed tributary of Crystal Creek. See, Audit Report, Appendix D, Site Visit 7.
 - d. At the Yankee Gulch Project in District 2, the EPA Audit Team observed a discharge of uncontrolled sediment from disturbed slope areas to Crystal Creek and Yankee Gulch. See, Audit Report, Appendix D, Site Visit 8.
 - e. At the Tudor Bypass Project in District 3, the EPA Audit Team observed a discharge of uncontrolled sediment to the irrigation channel that drains to levees at Sutter Bypass and ultimately to the Sacramento River. See, Audit Report, Appendix D, Site Visit 14.
43. As more fully set forth in Appendix D of the Audit Report, contrary to Permit Provisions E.1 and H.1 and SWMP Section 4.5 (referenced in Sections C.2 and C.3 above), Respondent failed to implement proactively the storm water management program at its construction sites year-round. The Audit Team visited approximately 25 construction sites in Districts 1-4 between October 6 and 22, 2009, which corresponds to the beginning of Respondent's defined "rainy season" (SWMP Appendix C).¹ The Audit Team found the lack of or inadequately implemented BMPs at most of the sites. Thus, Respondent was not prepared to implement and was not implementing adequate BMPs at the beginning of its defined "rainy season". For example:
- a. District 1: At the Smith River Safety Roadway Construction Project on October 21, 2010 (twenty days after the beginning of Respondent's "rainy season"), adequate BMPs for erosion and sediment control were not implemented for several disturbed areas at the site. See, Audit Report, Appendix D, Site Visit No. 12.

¹ Respondent defined "rainy" and "non-rainy" seasons for different areas of the State (SWMP Section 4.5.2 and Guidelines Section 4.3) for determining the erosion and sediment control BMPs to be implemented at active and inactive areas at construction sites during those defined seasons. For District 1, Respondent defined the rainy season to be from October 1 through May 1. (SWMP, Appendix C at p. C-18; Guidelines at p. 4-7). For Districts 2 through 4, Respondent defined the rainy season to be from October 15 through April 15. *Id.*

- b. District 2: At the Top of Buckhorn Project on October 14, 2009 (one day before the beginning of Respondent's defined "rainy season", and on the second day of a heavy rainfall event that produced 5.47 inches of precipitation, as measured at the closest State data center two miles from the site), adequate BMPs were not implemented to prevent the discharge of sediment from areas of disturbance to an unnamed tributary of Crystal Creek. See, Audit Report, Appendix D, Site Visit No. 7.
- c. District 3: At the Lincoln Bypass Project on October 7, 2009 (eight days before the beginning of Respondent's defined "rainy season"), BMPs had not been implemented to prevent the discharge of sediment from many disturbed soil areas located near North Ingram Slough and Auburn Ravine. See, Audit Report, Appendix D, Site Visit No. 6.
- d. District 4: At the Sunol Grade/Route 680 Interchange Project on October 7, 2009 (eight days before the beginning of Respondent's defined "rainy season"), adequate BMPs were not implemented for disturbed areas associated with the construction access road near drainage areas. See, Audit Report, Appendix D, Site Visit No. 15.
44. As more fully set forth in Section 2.3.2 of the Audit Report, contrary to Permit Provisions G.5, H.1.c, H.8.c, and SWMP Sections 4.2.2 (referenced in Section C.6 above), Respondent failed to conduct and document adequate inspections and enforcement at construction sites. For example:
- a. District 1: The District 1 Construction Storm Water Coordinator reported that for his inspections, he does not document inspections results or his recommended corrective actions. See, Audit Report, Section 2.3.2.
- b. District 2: The October 6, 2009 oversight inspection report at the South Avenue On-Ramp Project indicated the SWPPP for the project reflected current site conditions. Audit Report, Appendix B, Exhibit 5. One week later, on October 13, 2009, however, the EPA Audit Team found that the SWPPP did not reflect current site conditions. The inconsistencies included (1) failure to implement the soil binder and fiber roll BMPs identified in the SWPPP on the disturbed slope areas; (2) failure of the SWPPP to identify and include BMPs for the culvert pipe inlet at the site; and (3) installation of an inappropriate and ineffective BMP at the culvert pipe inlet. See, Audit Report, Appendix D, Site Visit No. 2.
- c. District 4: The September 28, 2009 Caltrans oversight inspection of the Sunol Grade/Route 680 Roadway Rehabilitation Project identified a lack of adequate vehicle tracking control and inadequate toe of slope BMP measures, and those issues had not been corrected as of the EPA Audit Team's October 7, 2009 site visit. Similarly, the September 9, 2009 Caltrans inspection of the Scott Creek Staging yard for the Sunol Grade project identified the absence of secondary containment for asphalt release agent and petroleum products, and that condition had not been corrected as of the EPA Audit Team's October 7, 2009 site visit. See, Audit Report, Appendix D, Site Visit No. 11.

45. As more fully set forth in Section 2.3.3 of the Audit Report, contrary to Permit Provisions G.5 and H.1.c (referenced in Section C.6 above), Respondent failed to implement an effective system for tracking construction sites and the control measures implemented at those sites as part of its required inspection program. Respondent's staff could not identify the locations and status of active construction projects within their Districts.

3. Maintenance Program Violations

46. As more fully set forth in Sections 2.4.1.1 and 2.4.1.2 of the Audit Report, contrary to Permit Provisions I.3.a and I.3.b (referenced in Section C.4 above), Respondent failed to prepare Maintenance Facility Pollution Prevention Plans (FPPPs) for all maintenance facilities. For example:

- a. Vehicle Maintenance Facilities: FPPPs had not been prepared for two vehicle maintenance facilities (District 3 Equipment Shop No. 23110 in Marysville and District 1 Equipment Shop No. 21110 in Eureka).
- b. Equipment Facilities: Respondent's records did not indicate whether the required FPPPs were prepared and implemented for two equipment facilities (District 3 Equipment Sale Yard and District 3 Equipment Shop, both in Sacramento).
- c. Sweeper and Roadway Waste Stockpile Facilities: FPPPs were not prepared for a number of sweeper and waste stockpile facilities, including: (1) District 4 Washington Waste Storage Site; (2) District 4 Livorna Waste Storage Site; (3) District 4 Schaefer Ranch Waste Storage Site; and (4) District 4 Scott Creek Road – Sunol Grade/Route 680 project (closed construction site containing sweeper and roadway waste storage).

47. As more fully set forth in Sections 2.4.1.2 - 2.4.1.4 of the Audit Report, contrary to Permit Provisions A.7 and I.3.b (referenced in Sections C.1 and C.4 above), Respondent failed to implement adequate site-specific BMPs at its Maintenance Facilities. For example:

- a. Highway Maintenance Facilities: District 1 Willow Creek Maintenance Facility (roadway abrasives stockpiled on ground surface with improperly installed straw wattles); District 3 Marysville Maintenance Station (no BMPs for sweeper waste stockpiles and improperly installed BMPs for site perimeter and storm drain inlets); District 1 Garberville Highway Maintenance Facility (improper BMPs used for stockpiles); District 1 Bracut Maintenance Facility (improperly maintained inlet protection BMPs and improper BMPs for stockpiles); and District 1 Crescent City Highway Maintenance Facility (improperly installed and maintained BMPs for storm drain inlet and outlet). See, Audit Report, Appendix E, Site Visits 16, 20, 21, 22, and 24.
- b. Waste Storage Facilities: Coverage and containment BMPs were not implemented for sweeper and roadway wastes stockpiles at District 4 Washington Waste Storage Site, District 4 Livorna Waste Storage Site, District 4 Schaefer Ranch Waste Storage Site, and District 1 Berry Summit Sand Storage Facility. See, Audit Report, Appendix E, Site Visits 17, 18, 19 and 23.

c. Temporary Storage Facilities: Coverage and containment BMPs were not implemented for stockpiles at the District 4 Scott Creek Staging Yard at Sunol Grade/Route 680; District 2 Lake Boulevard Temporary Storage Site, and District 3 Colusa Temporary Storage Site. See, Audit Report, Appendix D, Site Visit 11 and Appendix E, Site Visits 26 and 27.

48. As more fully set forth in Appendix D of the Audit Report, contrary to Permit Provision E.1 (referenced in Section C.2 above), Respondent failed to proactively implement adequate BMPs at its maintenance facilities year-round. For example, on October 7, 2009, BMP supplies were not stored or installed to control and contain waste stockpiles in the event of precipitation at the District 4 Washington Waste Storage, Livorna Waste Storage, and Schaefer Ranch Waste Storage sites. See, Audit Report, Appendix E, Site Visits 17, 18 and 19.

49. As more fully set forth in Section 2.4.1.3 of the Audit Report, Respondent failed to comply with Permit Provisions A.7, B.1, and I.3.b and SWMP Section 5.4 (referenced in Sections C.1 and C.4 above), by failing to implement adequate BMPs at its Maintenance Facilities to prevent non-storm water discharges (including wastewater from road sweeping vehicles or other maintenance activities) to any surface waters or storm water conveyance system. For example:

a. At the District 1 Bracut Highway Maintenance Facility, personnel used an area directly adjacent to two storm drain inlets to wash vehicles and equipment (instead of designated washing racks).

b. At the District 1 Willow Creek Highway Maintenance Facility, personnel used an uncovered area for truck bed washing (instead of the designated wash rack), where discharges flowed to an offsite drainage ditch.

c. At the District 1 Garberville Highway Maintenance Facility, an overflow pipe from the wash rack sump empties into a drainage ditch that flows toward the South Fork Eel River. District personnel could not demonstrate that the overflow pipe was plugged or disconnected to prevent wastewater from discharging into the drainage ditch.

d. At the District 4 Washington Waste Storage facility, vehicles were pre-washed in an unprotected and uncontrolled area (to remove large waste) before being taken to the San Leandro Maintenance Yard for cleaning in the dedicated wash area.

50. As more fully set forth in Section 2.4.1.2 of the Audit Report, contrary to Permit Provisions K.3.c (1) and SWMP Sections 5.6 and 8.3 (referenced in Section C.5 above), Respondent failed to include all of its Maintenance Facilities (including the District 4 Livorna and Schaefer Ranch Waste Storage Sites, District 4 Scott Creek Road/Sunol Grade/Route 680 staging area, and District 1 Sweeper Waste Storage location) on the list of facilities it uses for NPDES reporting. Because Respondent uses that list to schedule oversight inspections, those facilities were not included in the inspection program.

51. As more fully set forth in Section 2.4.3.1 and Appendix D of the Audit Report, contrary to Permit Provisions I.1.c (1) and SWMP Section 5.3.2.1 (referenced in Section C.4 above), Respondent failed to “remove all waste from those inlets that pose a significant threat to water quality on an annual basis prior to the winter season”. Respondent failed to identify inlets that pose a significant threat to water quality. In addition, Respondent does not use water quality criteria for identifying whether such inlets must be cleaned. Instead, Respondent’s personnel conduct storm drain inlet cleaning based on flood control rather than threat to water quality. For example:

- a. At the District 1 Bracut Highway Maintenance Facility on October 22, 2009, the inlet BMPs had not been properly maintained and significant pollutant accumulation was observed around the inlets, as well as within at least one of the inlets.
- b. At the District 1 Berry Summit Sand Storage Facility on October 22, 2009, personnel reported there was no established frequency for regular cleaning and maintenance of the storm drain inlet catch basin and unprotected stockpiles of abrasive materials were stored up-gradient of the inlet.
- c. At the District 1 Crescent City Highway Maintenance Facility on October 22, 2009, a significant amount of sediment accumulation was observed within a storm drain inlet that discharges to a drainage ditch. It appeared the inlet had not been cleaned recently.
- d. At the District 4 Schaefer Ranch Waste Storage Site on October 7, 2009, BMPs installed to protect a culvert inlet were not maintained and had collapsed.

52. As more fully set forth in Section 2.4.3.2 of the Audit Report, contrary to Permit Provision I.1.a (referenced in Section C.4 above), Respondent failed to “develop and implement runoff management programs and systems for existing roads, highways, and bridges to reduce runoff pollutant concentrations and volumes entering surface water”, including establishing “schedules for implementing appropriate controls” and identifying and stabilizing “road segments with slopes that are prone to erosion and discharge of sediment”. Respondent failed to identify roadway erosional areas and to establish schedules for stabilizing such areas. Respondent also failed to conduct oversight inspections of erosional areas and stabilization efforts.

4. IC/ID Program Violations

53. As more fully set forth in Sections 2.4.2.1 – 2.4.2.3 of the Audit Report, contrary to Permit Provision I.2.b and SWMP Section 5.3.2.3 (referenced in Section C.4 above), Respondent failed to track and investigate all IC/ID incidents, including:

- a. Respondent’s records fail to demonstrate an adequate system for identifying all IC/ID incidents. For example, the records of Districts 2, 3 and 4 indicate it is their practice to include only IC/ID incidents that result in large-scale encroachments of Caltrans rights-of-way. District 1 records claim no IC/ID incidents occurred (see, Audit Report Appendix B, Exhibit 12), despite the presence of major highways within the District and the storage of materials collected from IC/IDs at District storage facilities. District

personnel were also unaware of Respondent's procedures for tracking and responding to reports of IC/IDs.

b. Respondent failed to develop procedures for conducting investigations of every IC/ID to identify the source. SWMP Section 5.3.2.3 provides that all IC/IDs, as well as cleanup activities, will be referred to District Maintenance or NPDES Storm Water Coordinators for initial investigation and reporting. In addition, the Caltrans Maintenance Staff Guide, Appendix C.22.3, instructs Maintenance personnel to forward all observations of IC/ID incidents to District NPDES Storm Water Coordinators. However, those Coordinators were generally unaware of such obligations. Moreover, neither the SWMP nor the Maintenance Staff Guide provide maintenance staff with procedures on how to conduct investigations and identify the source of IC/IDs.

c. Respondent failed to establish procedures for receiving and investigating public complaints (including establishing reporting telephone numbers) of IC/IDs. District personnel were generally unaware of how public complaints were to be collected and tracked. For example, the District 1 Storm Water Coordinator had never heard of a public-initiated call being logged or reported. The Districts also described different telephone numbers for reporting IC/IDs and a test of Respondent's hotline number failed to provide for IC/ID reporting.

54. As more fully set forth in Section 2.4.2.4 of the Audit Report, contrary to Permit Provisions G.2 and I.2.b(3) (referenced in C.4 above), Respondent's Districts were not consistently using their legal authorities to eliminate IC/IDs within their Districts. For example, District 1 could not produce any record of enforcement and District 2 provided one example of identifying an IC/ID, but no follow-up investigation or resolution, whereas Districts 3 and 4 provided examples of some level of response and coordination with local jurisdictions.

55. As more fully set forth in Section 2.4.2.4 of the Audit Report, contrary to Permit Provision G. 1.b (referenced in Section C.4 above), Respondent has not developed or submitted to the SWRCB a Municipal Coordination Plan for coordinating its storm water management activities with other MS4 storm water management programs.

E. Conclusion of Law

56. Based on all of the above findings, I find Respondent in violation of its Permit and thus in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

III. ADMINISTRATIVE ORDER

In consideration of the above Factual and Legal Findings and the potential environmental and human health effects of the violations and all good faith efforts to comply, EPA has determined that compliance in accordance with the following requirements is reasonable. Pursuant to Sections 308(a) and 309(a)(3), (a)(4) and (a)(5)(A) of the Act, 33 U.S.C. §§ 1318(a) and 1319(a)(3), (a)(4) and (a)(5)(A), IT IS HEREBY ORDERED that Respondent comply with the following requirements:

A. Compliance Follow-up at Audited Locations

1. By no later than December 31, 2010, Caltrans shall submit a compliance certification, in accordance with the requirements contained within Section III.C, Paragraph 18 of this Order, that Respondent has corrected all deficiencies identified in the Audit Report concerning the failure to implement adequate structural and non-structural BMPs at the 55 inspected construction and maintenance locations and has returned all those locations to full compliance with the Permit and SWMP. Such certification shall include supporting documentation and photographs.
2. By no later than December 31, 2010, Caltrans shall submit a compliance certification from each District Maintenance Division Chief, in accordance with the requirements contained in Section III.C, Paragraph 18 of this Order, that all permanent and temporary sweeper and roadway waste and vector decant storage or disposal locations are either operating in compliance with the Permit or have been permanently and properly closed in accordance with all applicable federal and state waste management laws and regulations, including CCR Title 27, Division 2, Subdivision 1.
3. By no later than December 31, 2010, Caltrans shall provide a compliance certification, in accordance with the requirements contained within Section III.C, Paragraph 18 of this Order, and documentation that its Construction Division has implemented the revised training program identified in its March 9, 2010 Memorandum from the Chief, Division of Construction Re: Consistent Implementation of Caltrans Stormwater Management Program, including the Stormwater Refresher Training and Best Management Practices Training. Such documentation shall include records identifying (1) the percentage of employees who have completed the Refresher Training; and (2) the names of the contractors who have completed the Best Management Practices Training.

B. Storm Water Management Plan Revisions

4. By no later than March 31, 2011, Caltrans shall submit to EPA for review and approval a revised SWMP addressing each of the requirements contained within Paragraphs 7 - 17 below and a schedule for implementation of each of the requirements, with full implementation to be completed no later than December 31, 2011.
5. Within 30 days of receiving written comments from EPA, Caltrans shall make further revisions to its SWMP and submit such further revisions to EPA for approval.
6. Upon EPA approval, Caltrans shall implement the approved SWMP in accordance with the approved implementation schedule.

1. Program Management

7. To address the Findings in Section II.D of this Order, Caltrans shall revise the Program Management section of its SWMP to demonstrate how it will ensure consistent implementation of storm water management practices across its statewide operations, including ensuring the

accountability of Resident Engineers and Maintenance Supervisors for compliance with the Permit, including the revised SWMP, and the newly effective State CGP (as applicable).

8. To address the Findings in Section II.D of this Order, Caltrans shall revise the Training section of its SWMP to ensure that all Caltrans employees (including Resident Engineers, SWPPP inspectors, and Maintenance Supervisors) and Caltrans construction contractors are effectively trained at their field locations on all storm water requirements, including the selection and correct implementation of adequate BMPs.

2. Inspection and Enforcement Program

9. To address the Findings in Section II.D, Paragraphs 44, 45, 46, 50 and 52 of this Order, Caltrans shall revise its SWMP to develop a comprehensive Inspection and Enforcement Program that contains all elements necessary to comply with the Permit, including the newly effective State CGP. At a minimum, Caltrans' revised Inspection and Enforcement Program shall:

a. Tracking Compliance: Include a system to track at least the following Inspection Program elements: Dates and locations of inspections of Construction Activities, Maintenance Activities, and Maintenance Facilities; inspection findings; correction of deficiencies; and resolution of concerns through, among other approaches, follow-up inspections and appropriate enforcement response.

b. Construction Inventory: Maintain a comprehensive inventory of all current Construction Activities. The inventory shall be updated no less frequently than once each calendar quarter, made available to the public through posting on a Caltrans website, and include at least the following fields of information:

- i. Description of the type of Construction Activity (e.g. road, bridge, tunnel, etc.).
- ii. Location of Construction Activity (including latitude and longitude coordinates).
- iii. Size of Construction Activity (total number of acres).
- iv. Date the site-specific SWPPP was signed.
- v. Name of Caltrans primary contractor (if any) performing the work.
- vi. Name and telephone number of Caltrans Resident Engineer responsible for oversight of the work, including contractor performance.
- vii. Construction Activity start date and estimated completion date.
- viii. Estimate of current percent Construction Activity completion.
- ix. Whether the Construction Activity includes the construction of treatment BMP(s) (such as biofiltration, infiltration, and detention devices).
- x. Name of the MS4(s) and/or water body(ies) receiving storm water discharges from the project.

c. Maintenance Inventory: Maintain a comprehensive inventory of all permanent and temporary Maintenance Facilities and all locations where treatment BMPs have been

installed. The inventory shall be updated no less frequently than biannually, made available to the public through posting on a Caltrans website, and include at least the following fields of information:

- i. Description of the Facility or treatment BMP.
- ii. Location of the Facility or treatment BMP (including latitude and longitude coordinates).
- iii. The date the FPPP was signed.
- iv. Name and telephone number of Caltrans Maintenance Supervisor responsible for maintenance of the treatment BMP and/or compliance with the FPPP.
- v. Name of the MS4(s) and/or water body(ies) receiving storm water discharge from the Facility or treatment BMP.

d. Construction to Maintenance Tracking: Maintain a system for tracking the transfer of completed Construction Activities to the Maintenance Division for ongoing maintenance of BMPs, including treatment BMPs. The tracking system shall include, at a minimum, the following elements:

- i. Date the Construction Activity was completed and turned over to Caltrans Maintenance Division.
- ii. Name and telephone number of Caltrans Maintenance Supervisor responsible for maintenance of BMPs.
- iii. Date the treatment BMP was transferred from the Construction Division to the Maintenance Division.
- iv. Dates when maintenance was performed on the treatment BMPs.

e. Oversight Inspection Program: Provide an Oversight Inspection Program that ensures actions are implemented and facilities are constructed, operated, and maintained in accordance with the Permit, SWMP, and the newly effective State CGP, and include, at a minimum, the following elements:

- i. Procedures for conducting prioritized oversight inspections of all Construction Activities, Maintenance Facilities, and Maintenance Activities based on their relative risk to water quality, using among other approaches the Risk Determination Methodology contained in the newly effective State CGP and the CWA 303(d) list of impaired water bodies.
- ii. A protocol to ensure that all inspections are (1) unannounced to allow for observation of representative conditions, unless safety or other considerations necessitate reasonable pre-inspection notification; (2) conducted by properly trained personnel who are not responsible for or affiliated with the location (Caltrans may use an outside inspection contractor); and (3) adequately documented (including photographic documentation of conditions at each location) and signed and certified by the inspector.

- iii. Procedures, including use of follow-up inspections and appropriate enforcement response, to ensure that all deficiencies identified as part of the Caltrans Oversight Inspection Program are adequately addressed.

f. Enforcement Response Program - Provide an Enforcement Response Program (“ERP”) that establishes a range of escalating enforcement response to address deficiencies (such as inadequate or inappropriate BMPs, lack of FPPPs, lack of non-storm water control, etc.) identified at Construction Activities, Maintenance Activities, and Maintenance Facilities. The ERP shall include clear guidelines for selection of enforcement response, including escalating use of: Verbal warnings, written notices, disciplinary action, stop work orders, contractor reimbursement of corrective action costs, contract termination, and referral for formal Caltrans enforcement action, as appropriate to the construction or maintenance deficiency. Caltrans shall apply its ERP to the identified deficiencies to ensure compliance with the Permit, including the newly effective State CGP, including as follows:

- i. In the event that Caltrans identifies deficiencies, based on an oversight inspection conducted pursuant to the program described in Paragraph 9.e of this Order or by other means, it shall ensure, based on a follow-up inspection or other means, that the deficiencies have been timely corrected.
- ii. In the event that, based on the follow-up inspection or other information, Caltrans finds that the deficiencies have not been timely corrected, it shall take further enforcement action in accordance with its ERP.
- iii. Caltrans shall initiate an investigation of all complaints transmitted by EPA, SWRCB or RWQCBs of storm water compliance or water quality concerns related to its Construction Activities, Maintenance Activities, or Maintenance Facilities within its jurisdiction. The initial investigation shall include, at a minimum, an inspection of the Construction Activity, Maintenance Activity, or Maintenance Facility and a written inspection report documenting the inspection findings that shall be transmitted to the applicable agency.
- iv. Caltrans shall initiate investigation of all complaints from the public or reports by Caltrans personnel of IC/IDs. The initial investigation shall include, at a minimum, an inspection of the IC/ID, abatement or further investigation of the source of the IC/ID, and a written report documenting the inspection findings and response.
- v. Caltrans shall maintain records, including: (1) a log with the date of all complaints of storm water compliance or water quality concerns and/or IC/IDs received and the date of follow-up actions taken to address the complaint; (2) inspection reports generated in response to complaints; and (3) enforcement actions initiated in response to identified deficiencies such as warning letters, notices of violation, and other enforcement records demonstrating its efforts to bring the Construction Activity, Maintenance Activity or Maintenance Facility into compliance

with the applicable requirements, including site specific SWPPPs or FPPPs.

3. Construction Management Program

10. To address the Findings in Section II.D, Paragraphs 41-44 of this Order, Caltrans shall revise its SWMP to achieve full compliance with the Permit, including the newly effective State CGP and its effluent standards, good site management housekeeping, non-storm water management, erosion control, sediment controls, run-on and run-off controls, inspection, maintenance and repair, and Rain Event Action Plan (REAP) requirements.

11. To address the Findings in Section II.D, Paragraphs 41-44 of this Order, Caltrans shall revise its SWMP to reflect the revised training program for the Construction Division (identified in Section III.A, Paragraph 3 and Section III.B, Paragraph 8 of this Order), including a schedule for how it will continue such training on an ongoing basis.

4. Maintenance Management Program

12. To address the Findings in Section II.D, Paragraphs 46-50 of this Order, Caltrans shall revise the Maintenance section of its SWMP to ensure that FPPPS are prepared and fully implemented at all Maintenance Facilities.

13. To address the Findings in Section II.D, Paragraphs 53-54 of this Order, Caltrans shall revise the IC/ID component of its SWMP to ensure prompt and thorough identification, investigation, reporting, and response to all IC/IDs. The revised IC/ID program shall include, at a minimum:

- a. A system for receiving and investigating tips and complaints from the public of IC/IDs within Caltrans rights-of-way, and tracking all reported IC/IDs and the action taken in response to each report; and
- b. Procedures and associated training for maintenance personnel on how to identify, investigate, and respond to IC/IDs.

14. To address the Findings in Section II.D, Paragraphs 51-52 of this Order, Caltrans shall develop a storm drain system inventory. This inventory shall identify, at a minimum, the location of all storm drain inlets, outfalls, and tributary areas to inlets at all Caltrans Construction Activities, Maintenance Activities, and Maintenance Facilities.

15. To address the Findings in Section II.D, Paragraphs 51-52 of this Order, Caltrans shall develop a maintenance schedule for storm drain inlets that pose a significant threat to water quality based on, among other factors, the CWA 303(d) list of impaired water bodies for pollutants likely to be discharged from Caltrans facilities and rights-of-way, applicable Total Maximum Daily Loads (TMDLs), and known "hot spot" areas for pollutant accumulation as identified by Maintenance personnel, complainants, and others.

16. To address the Findings in Section II.D, Paragraphs 51-52 of this Order, Caltrans shall develop an inventory of road segments prone to erosion and the discharge of sediment. Caltrans

shall include in this submission a schedule for the stabilization of erosion prone slopes with priority given first to slopes discharging to water bodies on the CWA 303(d) list or where other data shows that water quality standards are not being met.

17. To address the Findings in Section II.D, Paragraph 55 of this Order, Caltrans shall develop and implement the Municipal Coordination Plan for coordinating its storm water management activities with other MS4 storm water management programs as required under Permit Provision G.1.b.

C. General

18. All reports submitted pursuant to this Order must be signed by a principal executive officer, ranking elected official, or duly authorized representative of Respondent (as specified by 40 C.F.R. § 122.22(b)) and shall include the following statement:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

19. Unless otherwise specified by EPA or the State Water Resources Control Board, Respondent shall provide each deliverable required under this Order by first-class mail and email to:

U.S. ENVIRONMENTAL PROTECTION AGENCY
75 Hawthorne Street
San Francisco, CA 94105
Attn: Greg Gholson, Clean Water Act Compliance Office (WTR-7)
gholson.greg@epa.gov

and

STATE WATER RESOURCES CONTROL BOARD
Division of Water Quality
1001 I Street
Sacramento, CA 95814
Attn: Leo Sarmiento
LSarmiento@waterboards.ca.gov

20. This Order shall be binding upon Respondent and Respondent's officers, directors, agents, employees, heirs, successors, and assigns.

21. This Order is not a permit under the CWA and does not waive or modify Respondent's obligation and responsibility to ascertain and comply with all applicable federal, state, or local laws, regulations, ordinances, permits, or licenses, including the Permit.
22. This Order is not to be deemed an election by EPA to forgo any remedies available to it under the law, including without limitation, any administrative, civil, or criminal action to seek penalties, fines, or other appropriate relief under the Act. EPA reserves all rights and remedies, legal and equitable, available to enforce any violations of the CWA, including those cited in this Order, and to enforce this Order.
23. Requests for information contained within this Order are not subject to review by the Office of Management and Budget under the Paperwork Reduction Act because it is not a "collection of information" within the meaning of 44 U.S.C. § 3502(3). It is directed to fewer than two persons and is an exempt investigation under 44 U.S.C. § 3518(c)(1) and 5 C.F.R. § 1320.4(a)(2).
24. Respondent may not withhold from EPA any information on the grounds that it is confidential business information. However, EPA has promulgated, under 40 C.F.R. Part 2, Subpart B, regulations to protect confidential business information it receives. If legally supportable, a claim of business confidentiality may be asserted in the manner specified by 40 C.F.R. § 2.203(b) for all or part of the information requested by EPA. EPA will disclose business information covered by such claim only as authorized under 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies the information at the time EPA receives it, EPA may make it available to the public without further notice.
25. Section 309(a), (b), (d) and (g) of the CWA, 33 U.S.C. § 1319(a), (b), (d) and (g), provides administrative and/or judicial relief, including civil penalties, for failure to comply with the CWA. In addition, Section 309(c) of the Act, 33 U.S.C. § 1319(c), provides criminal sanctions for negligent or knowing violations of the CWA and for knowingly making false statements.
26. The State of California has been notified of this action.
27. This Order shall become effective upon the date of receipt by Respondent.

IT IS SO ORDERED:

Alexis Strauss

Alexis Strauss, Director
Water Division
U.S. Environmental Protection Agency, Region 9

26 October 2010

Date