



California Regional Water Quality Control Board

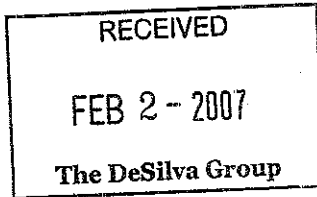
San Francisco Bay Region



Linda S. Adams
Agency Secretary

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

Arnold Schwarzenegger
Governor



Date: JAN 31 2007
File No. 1538.09 (lmt)

Notice of Violation

Leona LLC / The DeSilva Group
Attn: Mr. Jim Summers
P.O. Box 2922
Dublin, CA 94568

Subject: Violation of Statewide NPDES Construction Storm Water Permit, Leona Quarry, City of Oakland, Alameda County; WDID No. 2 01C326257.

Dear Mr. Summers:

It has come to our attention, through City of Oakland inspection findings, that Leona LLC / The DeSilva Group (permittee and owner of the Leona Quarry project located at 7100 Mountain Blvd, Oakland) has violated terms of the Statewide NPDES General Permit for Discharges of Storm water Associated with Construction Activity (State Water Resources Control Board Order 99-08-DWQ)(General Permit) and a Basin Plan Discharge Prohibition by discharging sediment-laden storm water from the Leona Quarry project (project) detention basin to Waters of the State. This notice requires you to take immediate action in order to abate such discharges, revise your Storm Water Pollution Prevention Plan (SWPPP), and implement the attached Sampling and Analysis Requirements in Attachment B.

On December 15, 2006, City inspectors responded to reports of silty water entering Chimes Creek from the project's detention basin. It was determined that storm water from the project's permanent detention basin was discharging directly to the City of Oakland's storm drain system (and subsequently to Chimes Creek) through a drain located in the bottom of the basin. Photos of the basin indicate that sediment-laden storm water was allowed to uncontrollably discharge without required treatment. **The discharge of sediment-laden water into any receiving water or storm drain without filtration or equivalent control measures is prohibited by the General Permit and the Basin Plan.**

We understand that this basin has been approved by the City of Oakland for use as a permanent detention basin, designed to mitigate post-construction storm water flows such that downstream hydromodification impacts are minimized. This design, which is currently in use, includes the establishment of wetland vegetation and the use of a "low-flow" discharge structure located on the pond floor. However, the Board has stated in previous correspondence (Notice of Non-Compliance dated November 2, 2004), that the permanent design capability of this basin is inappropriate and inadequate for construction phase sediment control and should not be used as

such. This basin design is not in compliance with the General Permit minimum design criteria for sediment basins (Attachment A), and has caused or contributed to discharges of sediment-laden storm water to Waters of the State. In fact, in previous storm seasons, a supplemental filtration system, including the use of flocculants and weir tanks, was required in order to adequately treat the collected storm water prior to discharge.

In addition, the project SWPPP dated July 26, 2006, incorrectly describes the use and capability of the detention basin, stating in part that "As of 2006 these weir tanks were removed, and permanent water quality overflow risers have been installed. The basin will provide sufficient holding time to allow for settlement of particles, and the appropriate water will be diverted through the accompanying risers." In addition to the fact that risers are not currently installed, this basin is not providing sufficient holding time for the turbid construction related storm water depicted in recent site photos.

Provisions of the General Permit include:

- A.3 Storm water discharges shall not cause or threaten to cause pollution, contamination, or nuisance
- C.2 All dischargers must develop and implement a Storm Water Pollution Prevention Plan (SWPPP) in accordance with Section A: Storm Water Pollution Prevention Plan. The discharger shall implement controls to reduce pollutants in storm water discharges from their construction sites to the BAT/BCT (Best Available Technology Economically Achievable and Best Conventional Pollutant Control Technology) performance standard.
- B.2 The SWPPP developed for the construction activity covered by this General Permit shall be designed and implemented such that storm water discharges and authorized nonstorm water discharges shall not cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan and/or the applicable Regional Water Quality Control Board's Basin Plan.

Discharge Prohibitions of the Basin Plan include:

- Table 4-1 - It shall be prohibited to discharge:
 - 9. Silt, sand, clay or other earthen materials from any activity in quantities sufficient to cause deleterious bottom deposits, turbidity or discoloration in surface waters or to unreasonably affect or threaten to affect beneficial uses.

It is apparent that the current use of the site's detention basin does not meet the General Permit's minimum requirements for reducing pollutants in stormwater discharges to the BAI/BCT performance standard and has caused or contributed to the discharge of sediment-laden water to Waters of the State.

Failure to comply with the General Permit, and the discharge of sediment-laden storm water while being out of compliance with the General Permit and Basin Plan, are violations of the California Water Code. Pursuant to California Water Code Section 13385, the Board may impose civil liability on Leona LLC / The DeSilva Group in an amount not to exceed \$10,000 per day of each violation, plus \$10 per gallon of sediment-laden water discharged in excess of 1000 gallons.

REQUIRED ACTIONS

You shall take immediate steps to reduce the discharge of sediment-laden runoff from the detention basin to Waters of the State. You must implement all terms of the General Permit and Basin Plan including the following:

- Implement alternative control measures to address the detention basin's inability to sufficiently trap and remove sediment prior to discharge;
- Prevent erosion by stabilizing all disturbed areas, thereby reducing sediment inputs to the detention basin;
- Implement the attached Sampling and Analysis Requirements (in addition to the General Permit's monitoring requirements) in order to demonstrate the effectiveness of your erosion and sediment control measures in preventing sediment-laden storm water or any other deleterious substance from being discharged to waters of the State. **A pollutant discharge above the benchmark level of 50 NTUs indicates that an effective SWPPP is not being implemented and that investigation and corrective action are required;**
- Conduct site inspections before and after each storm event, and every 24 hours for extended storm events, to identify areas that contribute to erosion and sediment problems or any other pollutant discharges. If additional measures are needed, revise the SWPPP and implement the measures immediately. Document all your inspection findings and actions taken, and retain those records on-site with a copy of the site's amended SWPPP.

We require that you address the above violations by submitting to this office a technical report identifying how you have complied with the above items and what steps you have taken, or plan to take, to adequately control sediment inputs to your storm water discharges. As provided for in Section A.4 of the General Permit, the site's SWPPP shall be amended to reflect the alternative control measures required for General Permit compliance. The technical report and revised SWPPP shall be **submitted to this office by February 9, 2007**, and certified by a practicing professional engineer, licensed by the State of California, with expertise in the area of sediment and erosion control.

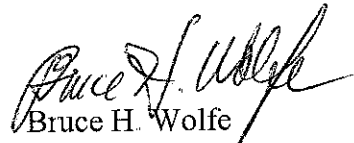
Jim Summers
The DeSilva Group

Page 4 of 4

This requirement for a report is made pursuant to Water Code Section 13267, which authorizes the Board to require technical or monitoring program reports from any person who has discharged, discharges, proposes to discharge, or is suspected of discharging waste that could affect water quality. Attachment C provides additional information about Section 13267 requirements. This report is needed in order to determine the adequacy of Leona LLC / The DeSilva Group's compliance with its General Permit terms. Any extensions of the time deadline set forth above must be confirmed in writing by Board staff.

If you have any questions, please contact my staff Keith Lichten at (510) 622- 2380, email to klichten@rb2.swrcb.ca.gov or Laurie Taul at (510) 622-2508, email to ltaul@rb2.swrcb.ca.gov.

Sincerely,


Bruce H. Wolfe
Executive Officer

Attachments:

- A: Minimum Criteria for Sediment Basins
- B. 2007 Sampling and Analysis Requirements
- C. Fact Sheet – Requirements for Submitting Technical Reports

cc: Craig Pon, David Lau, Leslie Estes and Marcel Uzegbu - City of Oakland Public Works Agency
J.A. "Charley" Lella - DeSilva Gates Construction
Dana Owyong - Discovery Builders

Attachment A
Permit Section A.8. Sediment Control
Minimum Criteria for Sediment Basins

If the discharger chooses to rely on sediment basins for treatment purposes, sediment basins shall, at a minimum, be designed and maintained as follows:

Option 1: Pursuant to local ordinance for sediment basin design and maintenance, provided that the design efficiency is as protective or more protective of water quality than Option 3.

OR

Option 2: Sediment basin(s), as measured from the bottom of the basin to the principal outlet, shall have at least a capacity equivalent to 3,600 cubic feet of storage per acre draining into the sediment basin. The length of the basin shall be more than twice the width of the basin. The length is determined by measuring the distance between the inlet and the outlet; and the depth must not be less than three feet nor greater than five feet for safety reasons and for maximum efficiency

OR

Option 3: Sediment basin(s) shall be designed using the standard equation:

$$A_s = 1.2Q/V_s$$

Where: A_s is the minimum surface area for trapping soil particles of a certain size; V_s is the settling velocity of the design particle size chosen; and $Q = C \times I \times A$ where Q is the discharge rate measured in cubic feet per second; C is the runoff coefficient; I is the precipitation intensity for the 10-year, 6-hour rain event and A is the area draining into the sediment basin in acres. The design particle size shall be the smallest soil grain size determined by wet sieve analysis, or the fine silt sized (0.01mm) particle, and the V_s used shall be 100 percent of the calculated settling

The length is determined by measuring the distance between the inlet and the outlet; the length shall be more than twice the dimension as the width; the depth shall not be less than three feet nor greater than five feet for safety reasons and for maximum efficiency (two feet of storage, two feet of capacity) The basin(s) shall be located on the site where it can be maintained on a year-round basis and shall be maintained on a schedule to retain the two feet of capacity;

OR

Option 4: The use of an equivalent surface area design or equation, provided that the design efficiency is as protective or more protective of water quality than Option 3.

A sediment basin shall have a means for dewatering within 7-calendar days following a storm event. Sediment basins may be fenced if safety (worker or public) is a concern

The outflow from a sediment basin that discharges into a natural drainage shall be provided with outlet protection to prevent erosion and scour of the embankment and channel.

Attachment B
2007 Sampling and Analysis Requirements for Leona Quarry Project
WDID# 2 01C326257

Storm water sampling and analysis shall be conducted for all points of offsite discharge from your construction activity. The results of the monitoring program shall be submitted to the Board's Executive Officer on a weekly basis. The program requirements are as follows:

Monitoring Parameters

- Water samples shall be analyzed for the following water quality parameters: pH, Turbidity, and polymer residue (if polymer is used).
- pH analysis may be conducted on-site with pH paper
- Visual Observations of discharge points and effectiveness of Best Management Practices (BMPs) as required by the General Permit.

Monitoring Stations

- Sample at each of the site's discharge points. These include, but may not be limited to: any discharge from the detention basin; any storm drain inlet discharging offsite; and a discharge point from any treatment system.

Monitoring Frequency

- Samples shall be collected at the above stated locations at least once every 4 hours during any offsite discharge
- Water quality sampling shall continue through April 30, 2007. Once the discharger has demonstrated the effectiveness of corrective actions implemented, the discharger may propose, and the Board's Executive Officer shall consider, a proposal for a less rigorous monitoring program.
- Visual observations shall be conducted before, during, and after every storm event that produces measurable runoff (and/or greater than 0.25 inches of rain). During extended storm events, inspections should be conducted each 24-hour period.

Monitoring Methods

- Grab samples shall be collected within the first two hours of the beginning of a discharge, and shall be representative of the discharge.
- For laboratory analysis, all sampling and preservation shall be in accordance with the current edition of "Standard Methods or the Examination of Water and Wastewater" (American Public Health Association)
- For field analysis, site personnel must be properly trained in the use and calibration of any field test equipment.
- You are not required to collect samples and conduct visual observations if dangerous conditions exist during the first two hours of any discharge such as darkness, flooding, and/or electrical storms. However, should those conditions abate, then samples should be taken once it is safe to do so.

Attachment B
2007 Sampling and Analysis Requirements for Leona Quarry Project
WDID# 2 01C326257

Monitoring Reports

Monitoring Reports shall be submitted each Friday starting on February 23, 2007 and shall include information for the prior week. For example, the report submitted on Friday February 23, 2007 would contain sampling, analysis, and corrective action information for the week of February 11, 2007. Reports may be submitted electronically or by mail and shall include:

- The date, location, and time of visual observations, sampling, and/or measurements, and name of person conducting the monitoring;
- Storm event information including when storm started and ended and amount of rainfall per day;
- Analytical results, method detection limits, and analytical techniques or methods used;
- Quality assurance/quality control records and results (from laboratory); and
- Records of any corrective actions and follow-up activities that resulted from the visual observations and/or sampling results.



California Regional Water Quality Control Board

San Francisco Bay Region



Arnold Schwarzenegger
Governor

Alan C. Lloyd, Ph.D.
Secretary for
Environmental Protection

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

Fact Sheet – Requirements For Submitting Technical Reports Under Section 13267 of the California Water Code

What does it mean when the regional water board requires a technical report?

Section 13267¹ of the California Water Code provides that “...the regional board may require that any person who has discharged, discharges, or who is suspected of having discharged or discharging, or who proposes to discharge waste that could affect the quality of waters...shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires.”

This requirement for a technical report seems to mean that I am guilty of something, or at least responsible for cleaning something up. What if that is not so?

The requirement for a technical report is a tool the regional water board uses to investigate water quality issues or problems. The information provided can be used by the regional water board to clarify whether a given party has responsibility

Are there limits to what the regional water board can ask for?

Yes. The information required must relate to an actual or suspected or proposed discharge of waste (including discharges of waste where the initial discharge occurred many years ago), and the burden of compliance must bear a reasonable relationship to the need for the report and the benefits obtained. The regional water board is required to explain the reasons for its request.

What if I can provide the information, but not by the date specified?

A time extension may be given for good cause. Your request should be promptly submitted in writing, giving reasons

Are there penalties if I don't comply?

Depending on the situation, the regional water board can impose a fine of up to \$5,000 per day, and a court can impose fines of up to \$25,000 per day as well as criminal penalties. A person who submits false information or fails to comply with a requirement to submit a technical report may be found guilty of a misdemeanor. For some reports, submission of false information may be a felony.

Do I have to use a consultant or attorney to comply?

There is no legal requirement for this, but as a practical matter, in most cases the specialized nature of the information required makes use of a consultant and/or attorney advisable.

What if I disagree with the 13267 requirements and the regional water board staff will not change the requirement and/or date to comply?

You may ask that the regional water board reconsider the requirement, and/or submit a petition to the State Water Resources Control Board. See California Water Code sections 13320 and 13321 for details. A request for reconsideration to the regional water board does not affect the 30-day deadline within which to file a petition to the State Water Resources Control Board.

If I have more questions, whom do I ask?

Requirements for technical reports indicate the name, telephone number, and email address of the regional water board staff contact

Revised August 2005

¹ All code sections referenced herein can be found by going to www.leginfo.ca.gov

