Dorris, Joshua

From: Linda Miller <krazykat745@gmail.com>
Sent: Wednesday, November 20, 2024 4:34 PM
To: Ford, John; Johnson, Cliff; Dorris, Joshua; Madrone, Steve
Cc: Cindy Trobitz-thomas; Jarl Johansen; Heather Trobitz; Claire McAdams; Jim Rydelius; Ethan Luckens; Maria Luckens; Suzanne Wolf
Subject: Public comment RE: Notice of Potential Conditional Use Permit Revocation, CUP-00-27
Attachments: Dec 3rd Public Hearing comments - Linda Miller.docx; Timeline of violations, lawsuits, and enforcement.docx; 2024_Kernen Construction_NOV_Final.pdf; 2225_kernan_13267revised.pdf; 021924 inspection memo.pdf

Dear Mr. Ford,

Please see the attached comments regarding the subject notice and additional Regional Water Board attachments that I hope will be helpful to the Board of Supervisors in their review preparation for the public hearing on December 3rd.

Attachments:
Public comments
- Dec 3rd Public Hearing comments - Linda Miller.docx
- Timeline of violations, lawsuits, and enforcements.docx

Regional Water Board documents
- Revised Water Code Section 13267 Investigative Order R1-2022-0025
- Feb. 19 2024 Inspection Memo
- 2024 Kernen Construction NOV Final

Thank you,

Linda Miller
Liscom Hill Road
McKinleyville

To: Humboldt County Board of Supervisors
RE: Revocation of Kernen Construction Conditional Use Permit – Public Hearing, December 3, 2024

My name is Linda Miller, and I have lived on Liscom Hill Road for 28 years. Our home is on a hill just above Kernen's upper yard, where we have put up with their construction noise since they began working there. We have been woken up in the early hours prior to their permitted operating hours for many years. We have lived with loud gravel and rock processing noise and loud beeping, and a highly dusty environment in our home and on our cars due to all the rock trucks on Liscom Hill Road and Glendale Drive. In addition, we have witnessed the degradation of the environment at Kernen's northern yard for many years.

Our quality of life has been greatly impacted, as well as a probable decrease in our property value. Yet, for the most part, we have lived with these impacts and kept to ourselves for many years. However, the events of the recent two to five years, Kernen Construction's behaviors have been particularly egregious, and we have been prompted to file complaints. They built the detention pond on the northern yard without a grading permit and without any plans being reviewed by the Regional Water Board; they removed riparian vegetation during bird nesting season; placed fill within the swale/ditch with resulting stranding of tadpoles; built a fence with razor wire without first obtaining a permit; repeatedly refused to provide weigh logs when requested; they have graded and placed fill within the floodplain of Hall and Noisy Creeks without a grading permit, engineering plan, or certification by the ACOE; and encroached on the minimal 25 ft SMA on Noisy Creek. To its credit, Kernen Construction has installed "white noise" backup beepers on three pieces of equipment after the community requested this, and we thank them for this. We have asked that they install these white noise beepers on all of their equipment, in respect for their neighbors who live here.

As Kernen neighbors and community members, we feel that we have done our due diligence in working with the Planning Department and Kernen Construction, attending many meetings, patiently working with Planning to allow Kernen Construction to come into compliance with its CUP. I believe the Planning Department staff and my neighbors and I have been tremendously patient working through the system to allow Kernen Construction to do what's right for its neighbors and the environment. At times it seemed to us that the Planning Department was being way too lenient, but it is now obvious that the company is not capable of coming into compliance even after all these months of being given an adequate chance. Kernen Construction's pattern of behavior seems to be that they do whatever they want and deal with the consequences later, if necessary. This is not a good way to run a business. Please see attached "Timeline of violations, lawsuits, and enforcement actions".

I am in favor of the revocation of their permit for the northern yard, as Kernen Construction has demonstrated that they are not capable of operating there in compliance with laws and without heavily impacting the environment. In addition, Hall and Noisy Creek are both Coho streams, and with their wide, low-gradient floodplain, these streams could provide excellent spawning and rearing habitat if restored. Multiple agencies and non-profit organizations have been

interested in restoring this watershed for many years, as they see it as one of the most important Coho tributaries of the lower Mad River watershed.

Furthermore, Kernen Construction has also violated the CUP at their southern yard, in regards to operating outside permitted hours; rock trucks operating prior to permitted operating hours; bright lights shining off the property; dust abatement; and BMP requirements for stormwater runoff (per Water Board reports). The County admits that Kernen's CUP was written very poorly in 2000, without clear enforcement provisions and without a review or expiration date.

I respectfully request the Board to take this opportunity to revisit the entire CUP and insist that it be rewritten with clear enforcement provisions and regular review. In addition, please require that there be additional review permitted by the Glendale community so that all impacted neighbors are able to comment and make suggestions for the rewritten permit. Given Kernen Construction's history, this is a very reasonable suggestion.

In conclusion, I support the revocation of the CUP for the northern yard, and in addition I request that the Board of Supervisors direct the Planning Department to rewrite the entire CUP with community input and review.

Respectfully,

Linda Miller
Liscom Hill Road

Timeline of known Kernen Construction violations, lawsuits, and enforcement actions showing pattern of disregard for neighbors; the environment; and county, state, and federal laws:

Approx. Date	Violation or action	Notes
circa 2000	Violation for filling of wetlands	Mitigated w/restoration
2021	CATs lawsuit resulting in federal Court Injunction and Clean Water Act violation with $2M fine	
May 2021	Tadpole stranding due to filling of swale - Waters of the State	
2021	Detention pond constructed without grading permit or approval from Regional Water Board	County required a grading permit again in 2023, Kernen still has not provided a complete application.
September 2022	Regional Water Board Investigative Order R1-2022-0025	
July 2023	Neighboring community noticed changes in Kernen operations: Increase in operating hours outside of permitted hours, intensification of dust, noise, truck traffic, and nighttime lights; Increased operations within Hall/Noisy Creek floodplain.	Complaints filed with Code Enforcement by community members - County begins working with Kernen to bring them into compliance
June 2024	Clearing riparian vegetation near Noisy Creek during bird nesting season without checking with CDFW	Violation of Migratory Bird Act
August 2023	Letter from Humboldt County to Kernen – Notice of Formal Complaint	
October 2023	NOV from Humboldt County to Kernen – Notice of Violation	
January 2024	Major flooding event – 4 inches of rain in one day, with almost entire northern yard (floodplain) filled and flooded	Resulted in discharge of stormwater into Hall and Noisy Creeks
February 2024	Post-Storm Inspection Memo, Regional Water Board (Feb. 19, 2024). Conclusion: “Minimum BMP implementation at the Facility is inadequate and ineffective”; “Facility is not in compliance with the monitoring and reporting requirements of the IGP and the SWPPP”.	
May (?) 2024	Additional CATs lawsuit filed against company	
May 2024	Water Board NOV issued, with Eleven Violations	Still being investigated/resolved?
September 2024	Unauthorized grading and adding fill to floodplain of Hall/Noisy Creek – elevation of floodplain appears to be increased 2-3’	
October 2024	Potential Revocation of Permit letter from County to Kernen Construction	

California Regional Water Quality Control Board
North Coast Region

Revised Water Code Section 13267 Investigative Order R1-2022-0025

Directing Kernen Construction (Operator/Discharger)

To Submit Technical Reports

Pertaining to Wetland Alteration and Potential

Stormwater Discharges from its Glendale Yard to Waters of the State

WDID No. 1 12I017319

Humboldt County

Findings

The California Regional Water Quality Control Board, North Coast Region (Regional Water Board) finds that:

1. Mr. Scott Farley operates the Kernen Construction Glendale Yard (Facility) located at 2350 Glendale Drive, in McKinleyville, Humboldt County, California. The property is owned by Bedrock Investment LLC. and Kurt Kernen. The Facility includes five parcels: APN 516-141-017 which is referred to as Southern or "Upper" Yard, APN 516-141-005 which is a small portion of the Southern Yard that is not currently used for industrial purposes, APN 516-151-016 which is referred to the Northern or "Lower" Yard, and APNs 516-151-017 and 516-151-008 which are a portion of the Northern Yard that is not currently used for industrial purposes. Please see the attached site maps.

2. The Southern Yard drains to Noisy Creek and the Northern Yard drains to Hall Creek. Hall Creek and Noisy both discharge directly to the Mad River which is approximately 15,000 feet downstream of the Facility.

3. The Facility is located on an approximately 37-acre property, with approximately 36 acres of industrial activities exposed to storm water. Construction equipment, materials, stockpiles, and construction wastes such as aggregate, asphalt grinding, and scrap roofing shingles materials are stored outside within the upper and lower yards exposed to rain. The receiving water bodies are Hall Creek and Noisy Creek, tributaries to the Mad River, both located along the northeast side of the facility. Stormwater runoff from the Facility's upper (southern) yard discharges into Noisy Creek. Stormwater runoff from the Facility's lower (northern) yard enters an approximately 15-foot-wide swale (Swale) originating onsite which is hydrologically connected to Hall Creek.

4. The Swale contains riparian vegetation, including willows, sedges, and cattails that provide both year-round and seasonal terrestrial and aquatic habitat. The observed conditions and characteristics within the Swale, including the presence of a bed, bank, and channel, as well as vegetation, indicate that the Swale may be a watercourse.

5. The Facility is currently enrolled for coverage under the Industrial Storm Water General Permit Order No. 2014-0057-DWQ (Industrial Permit, Permit, or IGP), with WDID No. 1 12I017319 and SMARTS Application ID 178335.

6. On June 24, 2021, in response to a complaint received from California Department of Fish and Wildlife (CDFW) in May 2021 regarding tadpole stranding along an existing Swale entering Hall Creek, Regional Water Board staff participated in an inspection of the facility in the company of CDFW staff and Kernen Construction Company operator, Scott Farley; Qualified Industrial Stormwater Practitioner (QISP), Yolynn St. John; and Facility staff, Nick Randle.

7. Per CDFW's staff (Ryan Bourque, Senior Environmental Scientist) recommendations, the Discharger was required to take action to resolve tadpole stranding issue within the Swale by smoothing out the check dams created by the Discharger from auger spoils and removing the rock piles placed in the holes (infiltration drains). Per the Regional Water Board staff request, a few photos were provided by the Discharger indicating that the corrective actions have been taken for the auger piles in response to CDFW recommendation. The photos were forwarded to CDFW staff. However, per CDFW request, the Regional Water Board staff directed the Discharger to provide more photos of the Swale that indicate CDFW comments have been fully addressed. Per Regional Water Board staff direction, a report was provided and uploaded to SMARTS by the Discharger to include additional photos of the Swale.

8. During the inspection, Regional Water Board staff observed check dams and vertical infiltration drains in the Swale, and a settling basin adjacent to the Swale. Stormwater drains from the basin into the Swale through a vegetated outlet.

9. The amended Facility's Storm Water Pollution Prevention Plan (SWPPP), section 2.1.4, identifies all areas of existing and constructed drainage including infiltration trenches, sediment/settling traps, stormwater retention area, swales, settling basin and check dams.

10. As described by the Discharger's representative, Mr. Farley, and shown in the Facility's SWPPP, the Discharger has constructed approximately 30

check dams and vertical infiltration drains within an approximately 1,200 long Swale. The vertical infiltration drains are augered holes, approximately 6 to 8 feet deep, backfilled with clean cobble. The check dams are approximately 10 feet long by 15 feet wide, and 3 to 4 feet tall in average, and each spans the width of the Swale channel.

11. The Facility sampling results show exceedances for Total Suspended Solids (TSS), iron, aluminum, and Chemical Oxygen Demand (COD) during the 2015-2016 and 2016-2017 reporting years. The facility moved into Level 2 status for TSS, iron, aluminum, and COD on July 1, 2017. Per the level 2 ERA technical report uploaded to SMARTS, the following BMPs were installed during the 2018-2019 reporting year: construction of the swales and an asphalt dike around the entire southern facility boundary; removal of the recycled concrete stockpile; sediment traps and check dams modifications. According to SMARTS, the facility is currently in level 2 status for Iron and Aluminum only.

12. Aggregate, asphalt grindings, roofing waste materials, and rusty equipment are stored within the upper yard and exposed to rain. Per the Facility's SWPPP dated February 2022, the Upper yard runoff captures by multiple sediment traps and then drains to infiltration trenches and allows the untreated industrial stormwater to be infiltrated to groundwater.

13. During the June 24, 2021 inspection, the Qualified Industrial Stormwater Practitioner (QISP) informed Regional Water Board staff that the check dams were installed approximately 10 years ago, and additional rock was added in 2020 as a maintenance action. Additionally, the QISP advised staff that silt and sediment are periodically removed from the Swale channel as deemed necessary, typically at two-year intervals. Each removal occurs along approximately 20 linear feet of Swale.

14. During the June 24, 2021 inspection, the QISP informed staff that the check dams installed in the Swale modify the channel to slow the flow of stormwater to Hall Creek, reducing sediment transport, while the vertical infiltration drains are in place to reduce runoff.

15. On December 23, 2021, Regional Water Board staff was made aware that the Discharger had constructed a new stormwater retention area in the lower yard. Through communication with QISP, additional information about the design, use, and discharge points from this new basin were requested. As of the issuance date of this Order, the information has not yet been provided. However, per the amended SWPPP uploaded to SMARTS on February 11, 2022, the stormwater retention area receives a portion of the runoff from the northern (lower) yard and retained water will be used to water the yard for dust suppression. Additional specific design

criteria, sizing, and detail on use and function of this feature were not provided.

16. The Facility is located within the Mad River Valley Groundwater Basin and groundwater within the North Coast Region is generally of high-quality. Beneficial Uses of Groundwater within the North Coast Region include Municipal/Domestic, Industrial Process/Use, Agricultural, Aquaculture, Native American Culture, and Freshwater Replenishment. The infiltration of untreated industrial stormwater via infiltration trenches, vertical infiltration drains, an existing settling basin and a new stormwater retention area at the Facility poses a potential threat to groundwater.

17. The Discharger did not select the "On-Site Compliance Option," included as Attachment I of the IGP. As such, the Discharger did not conduct monitoring and characterization of the Facility's industrial stormwater prior to infiltration to groundwater, nor completed associated required technical reports, to ensure the protection of groundwater.

18. The Discharger routinely "maintains" the Swale by removing accumulated silt and sediment and regrading. During these periodic clearing activities riparian vegetation is also removed, resulting in reduced ecological function and temporal loss of riparian habitat.

19. The Swale contains several indicators suggesting that the feature might be waters of the state, including, but not limited to the presence of aquatic vegetation.

Legal and Regulatory Authority

20. This California Water Code (Water Code) section 13267 Investigative Order (Order) conforms to and implements policies and requirements of the Porter-Cologne Water Quality Control Act (Division 7, commencing with Water Code section 13000), including section 13267, and the Water Quality Control Plan for the North Coast Region (Basin Plan) adopted by the Regional Water Board, including beneficial uses, water quality objectives, and implementation plans.

21. Water Code section 13267, subdivision (a), provides that the Regional Water Board may investigate the quality of any waters of the state within its region in connection with any action relating to the Basin Plan. Water Code section 13267, subdivision (b) provides that the Regional Water Board, in investigating, may require a Discharger to furnish, under penalty of perjury, technical or monitoring program reports. The reports required by this Order, pursuant to Water Code section 13267, are necessary to

understand the impacts of these discharges to Hall Creek, and to ensure that any threat to water quality created by activities at the facility are properly assessed and controlled. Hall Creek is tributary to the Mad River, which is Clean Water Act section 303(d)-listed as impaired by sediment. The Facility poses a threat to discharge untreated stormwater containing sediment and hydrocarbon. The costs associated with developing the requested reports and workplans bear a reasonable relationship to the benefits that will be obtained from having the necessary information for the Regional Water Board to properly evaluate and monitor the Facility.

22. Regional Water Board staff estimate that the costs for producing the technical reports, including a wetland delineation study and stormwater monitoring plan required by this Order could range from $36,000 to $44,000 if developed by consultants. See attached estimated cost.

The technical or monitoring reports required by this Order are necessary for Regional Water Board staff to determine/assess the nature and volume of stormwater discharges to waters of the state from the Facility, the potential impacts to the quality and beneficial uses, and determining if wetlands were impacted or destroyed during the construction of drainage features. The Discharger owns and/or operates the Property and is responsible for causing the unauthorized and/or threatened discharges of waste to waters of the state that are the subject of this Order. For the above reasons, the burden, including costs, of the reports bear a reasonable relationship for the need for the reports and the benefits to be obtained from the reports.

Information Required

The Directives, below, include a requirement that the Discharger submit a formal wetland delineation that characterizes the full scope of the potential wetland and waters of the state prior to any disturbance, and that assesses the threat of any future discharges. Based upon the Executive Officer's acceptance of the delineation Report, and the results contained therein, the Discharger may be directed to submit a Restoration and Monitoring Plan (RMP) to address site conditions identified in the Report.

Pursuant to the requirements of the revised section 13267 of the Water Code, Kernen Construction Co. is directed to submit the information for Directive 1 to the Regional Water Board **no later than September 9, 2022, unless otherwise stated. Also, the required reports regarding the Directives 2 and 3 must be submitted by March 1, 2023.**

Directives:

1. Provide the following information for the newly installed stormwater retention area:

    a. The location and types of water (stormwater/non-stormwater) to be captured.

    b. How it is designed and operated to protect the groundwater quality.

2. Submit a wetland delineation that is developed by a professional wetland specialist with experience in wetland delineation; pursuant to the methodology described in the 1987 US Army Corps of Engineers Wetlands Delineation Manual, Section F. A typical Situations (pages 73-83). The delineation should cover portions of the lower (northern) yard (APNs 516-151-016 and 516-151-017) along the Swale and Hall Creek, and should include the following elements:

    a. At a minimum, characterization of vegetation, including an analysis of the types of vegetation that may have previously been in, and in the vicinity of, the disturbed area in question, including the Swale entering Hall Creek and the area along Hall Creek.

    b. Characterization of soils that may have previously been in the vicinity of the disturbed area in question, taking into account the nature and extent of site alterations, including steps to identify and characterize the soils that were on site prior to site disturbance. This may include investigating soils that have been buried and/or soils that have been moved onsite or removed offsite.

    c. Characterization of hydrology that may have previously been in the vicinity of the disturbed area in question taking into account the nature and extent of alterations to site hydrology resulting from site development and the effects of those alterations, including characterization of the hydrology that previously existed, analysis of adjacent areas for hydrologic indicators, and review of aerial imagery.

3. Submit an assessment of other existing and historic non-wetland waters of the state located in the lower (northern) yard. This assessment should include, but not be limited to, the drainage swale

(Swale) adjacent to the access road that is hydrologically connected to Hall Creek and also Hall Creek itself.

4. Develop a Stormwater Monitoring Plan that meets the following:

Stormwater samples of influent entering infiltration BMPs shall be collected. In the upper yard, samples must be collected from surface runoff at a point immediately prior to entering the infiltration trenches in Drainage Areas 1b, 2, and 3 (one sample for each Drainage Area), In the lower yard, samples must be collected from the settling basin and the new stormwater retention area.

a. The samples must be representative of stormwater associated with industrial activities and any commingled authorized non-stormwater discharges.

b. Samples collection from each drainage area shall occur within four hours of the start of the discharge from the drainage area, or the start of facility operations if the QSE occurs within the previous 12-hour period (e.g., for storms with discharges that begin during the night for facilities with day-time operating hours).

c. Sample collection should occur during scheduled facility operating hours and when sampling conditions are safe in accordance with Section XI.C.6.a of the Industrial General Permit.

d. All samples shall be analyzed for the following parameters:

i. Oil and grease (O&G)
ii. Total Dissolved Solids (TDS)
iii. pH
iv. Total and dissolved iron and aluminum
v. Total and dissolved zinc, copper, and lead
vi. Nitrite plus Nitrate as Nitrogen
vii. Volatile Organic Compounds by EPA Method 8260 (report all peaks)
viii. Semi-Volatile Organic Compounds by EPA Method 8720 (report all peaks)

e. Samples collected under Directive 4.a shall be analyzed for constituents in Directive 3.d for each precipitation event that generates runoff until five samples have been collected and

analyzed at each sampling location. Analysis may be discontinued for a constituent if two consecutive results have been reported at less than one-half the primary (or secondary if no primary) maximum contaminant level.

f. For each constituent reported above the primary or secondary drinking water maximum contaminant level for samples collected under this Order, within 90 days of receipt of the laboratory report with the exceedance, provide an updated pollutant source assessment in accordance with Section X.G.2 of the IGP.

g. Sampling Analysis Reporting shall be compliant with Sections XI. B.8, 10, and 11 of the IGP.

h. Visual Observation must be conducted in accordance with Section XI. A of the IGP.

i. All sampling results, laboratory reports, chains of custody, and all other supporting documentation shall be submitted within 30 days after laboratory results are received. All reports must be uploaded to SMARTS.

PROVISIONS

1. Use of Registered Professionals: If the Discharger opts to have this information prepared by a registered professional, the report shall include a statement of qualifications and registration numbers of the responsible lead professional. The lead professional shall sign and affix his or her registration stamp to the report.

2. Signatory Requirements: The technical report shall be signed and certified by a principal executive officer, ranking elected official, or the person with overall responsibility for environmental matters by the Discharger. Additional reports submitted in support of the technical report must be signed by the principal author.

3. Certification Statement: Any person signing a document under this provision shall make the following certification:

   "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."

4. Delayed Compliance: If for any reason, Kernen Construction is unable to perform any activity or submit any document in compliance with the schedule set forth herein, Kernen Construction may request, in writing, an extension of the time specified. The extension request shall include justification for the delay. Any extension request shall be submitted as soon as a delay is recognized and prior to the compliance date. An extension may only be granted by modification of this Order or by a letter from the Executive Officer or his/her delegee.

5. Report and Data Submittals: The technical reports and sample results, lab reports, and supporting documentation required under this Order shall be uploaded into the Stormwater Multiple Application and Report Tracking System (SMARTS), the Electronic Content Management system (ECM). Additionally, these documents shall be submitted electronically to: Ryan Bey at Ryan.Bey@Waterboards.ca.gov. All sample results, lab reports, and supporting documentation shall be submitted electronically to: Farzad Kasmaei at Farzad.Kasmaei@waterboards.ca.gov.

Should you have any questions regarding this matter, please contact Farzad Kasmaei of my staff at Farzad.Kasmaei@waterboards.ca.gov.

You may also contact Heaven Moore at Heaven.Moore@waterboards.ca.gov or Ryan Bey at Ryan.Bey@Waterboards.ca.gov.

Notifications

1. **Enforcement Discretion:** The Regional Water Board reserves its rights to take any enforcement action authorized by law for violations of the terms and conditions of this Order. Furthermore, compliance with this Order is wholly distinct from any possible enforcement that may follow from the discharges themselves, pursuant to violations of the Water Code or other orders issued by the Regional Water Board.

2. **Enforcement Notification:** Pursuant to Water Code section 13268, failure to submit the required technical reports as required by Water Code section 13267(b), or falsifying any information provided therein, may result in the imposition of administrative civil liability of up to $1,000 per violation per day.

Any actual unauthorized discharge to waters of the United States may subject the Discharger to up to $10,000 for each day of discharge, and $10 for each gallon over 1,000 gallons not cleaned up pursuant to Water Code section 13385. The Regional Water Board may refer this matter to the Attorney General for enforcement in civil court. The Regional Water Board reserves its rights to take any further enforcement action authorized by law.

3. **California Environmental Quality Act Compliance:** The issuance of this Order is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant California Code of Regulations, title 14, section 15306. The submission of technical information does not constitute a project with environmental impacts.

4. **Appeal Notification:** Any person aggrieved by this action of the Regional Water Board may petition the State Water Resources Control Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00pm, 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday (including mandatory furlough days), the petition must be received by the State Water Board by 5:00pm on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at: https://www.waterboards.ca.gov/public_notices/petitions/water_quality/ or will be provided upon request.

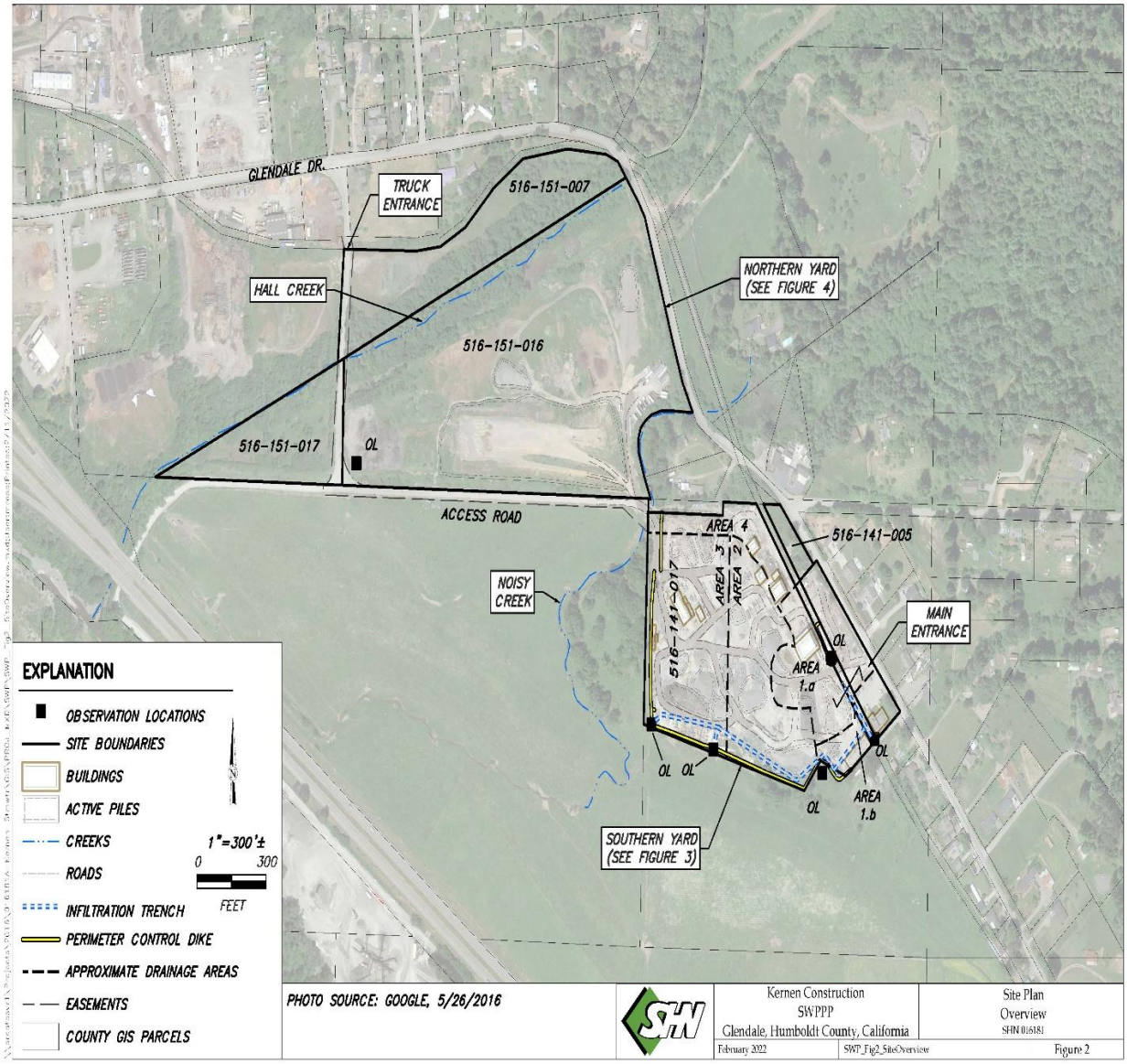
It is hereby ordered.

Claudia E. Villacorta, P.E.
Assistant Executive Officer

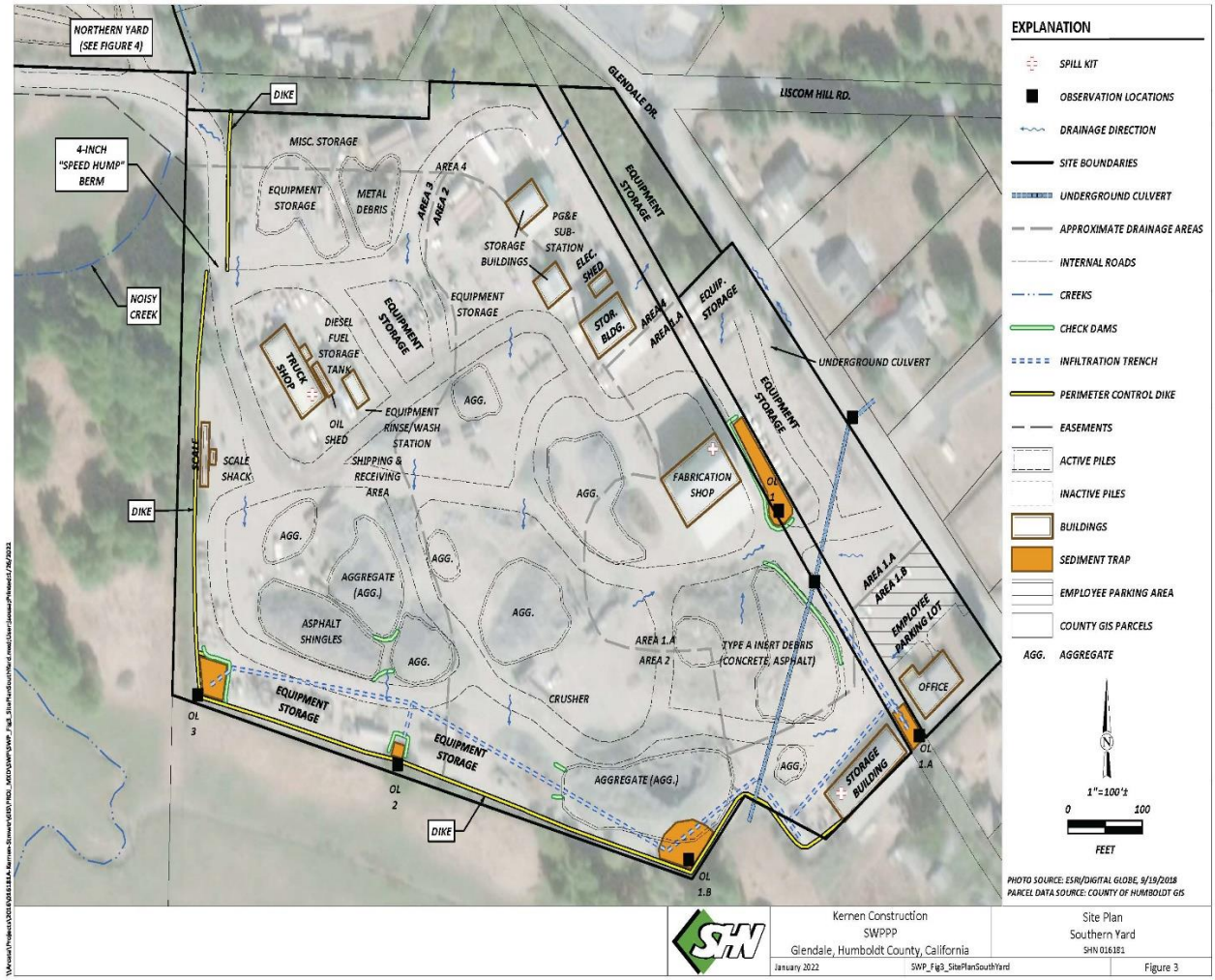
22_0025_Kernen Construction_13267_Revised

Attachments:
- **Attachment 1: Site maps**
- **Attachment 2: Estimated Cost**

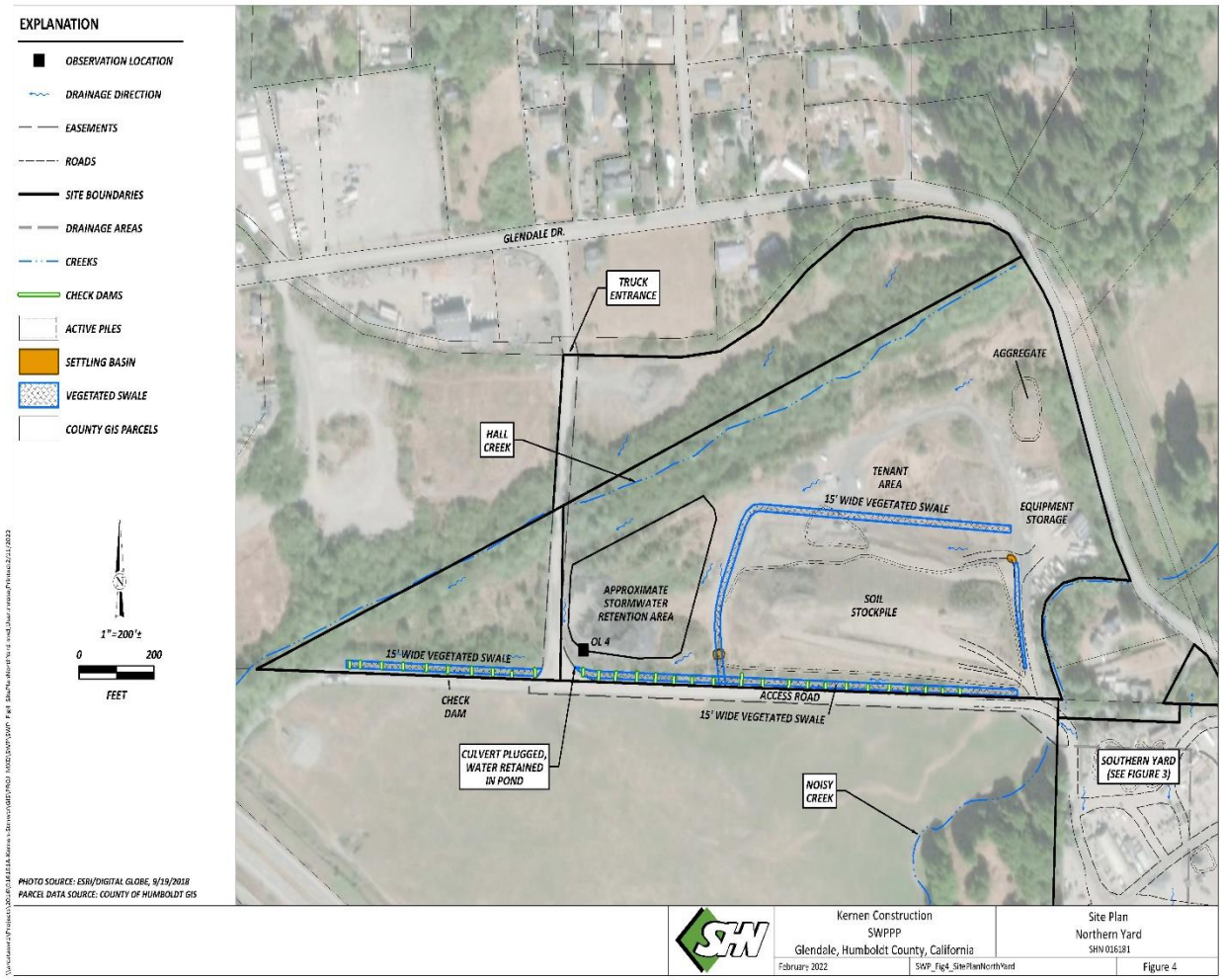
Attachment 1: Site Maps



Site map 1. Uploaded site map in SMARTS prepared by the Kernen Construction consultant that indicates drainage areas within the upper yard and the receiving water locations that receive runoff from both yards. Note that the parcel labeled 516-151-007, is incorrectly labeled and is actually APN 516-151-008 per County Assessor records available through LandVision.



Site map 2. Uploaded site map in SMARTS prepared by the Kernen Construction consultant that indicates the sediment traps and infiltration trench locations within the upper yard.



Site map 3. Uploaded site map in SMARTS prepared by the Kernen Construction consultant that indicates the existing Swale along the south side of the lower yard and the new stormwater retention area within the lower yard.

Attachment 2: Estimated Cost

Kernen Construction							
Task	**Designation**	**Events**	**Hours/Units**	**Rate (hourly)**		**Subtotal**	
				Low	**High**	**Low**	**High**
Stormwater Monitoring and inspection (5 rain inspections)	Facility stormwater staff / Consultant	5	3	$50	$90	$750	$1,350
Field sampling collection and analysis for pH for 5 observation locations (5 rain events w/ runoff)	Facility stormwater staff / Consultant	5	3	$50	$90	$750	$1,350
Incidental Costs		5	1	$200	$300	$1,000	$1,500
Lab Costs / 5 sampling locations / 5 rain events	TDS	5	5	$50	$50	$1,250	$1,250
	Oil & Grease	5	5	$95	$95	$2,375	$2,375
	Dissolved Fe	5	5	$35	$35	$875	$875
	Dissolved Al	5	5	$47	$47	$1,175	$1,175
	Dissolved Pb	5	5	$59	$59	$1,475	$1,475
	Dissolved Cu	5	5	$71	$71	$1,775	$1,775
	Dissolved Zn	5	5	$83	$83	$2,075	$2,075
	N+N (as N)	5	5	$55	$55	$1,375	$1,375
	VOCs	5	5	$150	$150	$3,750	$3,750
	SVOCs	5	5	$300	$300	$7,500	$7,500
Total Cost						$26,125	$27,825

North Coast Regional Water Quality Control Board

INSPECTION MEMO

Name and Location of Facility Inspected
Kernen Construction Glendale Yard
2350 Glendale Dr.
McKinleyville, Humboldt County

Industrial General Permit
WDID #: 1 12I017319

Inspection Date
February 19, 2024

Inspection Time
4:10 pm – 5:30 pm

Names & Titles of Site Representative
Yolynn St. John, Compliance/Safety Supervisor

Consent for inspection Provided?
Yes, by Yolynn St. John

Notified of Inspection?
No, conducted an unannounced during storm inspection for the site evaluation.

Inspector Name & Affiliation
Walt Dragaloski, Regional Water Board

Weather Conditions at the Time of the Inspection:
Cloudy, post storm inspection

Inspection Memo Prepared By:
Farzad Kasmaei

A. Background

The Kernen Construction Glendale Yard (Facility) is located at 2350 Glendale Drive, in McKinleyville, Humboldt County, California and the Facility is currently enrolled for coverage under the Industrial Storm Water General Permit Order No. 2014-0057-DWQ (Industrial Permit, Permit, or IGP).

The Facility is located on an approximately 37-acre property, with approximately 36 acres of industrial activities exposed to stormwater. Construction equipment, materials, stockpiles, and construction wastes such as aggregate, asphalt grinding, and scrap roofing shingles materials are stored outside within the upper and lower yards exposed to rain. The receiving water bodies are Hall Creek and Noisy Creek, which are tributaries to the Mad River which is impaired for sediment and temperature.

Stormwater runoff is captured by the existing infiltration trenches, sediment traps, roadside swale (Swale) and stormwater ponds within the upper and lower yards.

On June 24, 2021, in response to a complaint received from California Department of Fish and Wildlife (CDFW) in May 2021 regarding tadpole stranding within the roadside swale entering Hall Creek, Regional Water Board staff participated in an inspection of the Facility with CDFW staff and Kernen Construction Company operator, Scott Farley; Qualified Industrial Stormwater Practitioner (QISP), Yolynn St. John; and Facility staff, Nick Randle.

On June 14, 2022, Regional Water Board issued a 13267 Investigative Order (Order) requiring the Discharger to collect samples from the infiltration BMPs and submit the sampling reports and requiring a full delineation study to identify all jurisdictional waters at the Facility. Also, the Order required the Discharger to submit design information for the newly constructed retention pond to determine whether the infiltration and discharge was negatively impacting surface water and groundwater quality.

Regional Water board staff participated in multiple compliance support meetings with Facility staff to discuss the Order's requirement and provide technical guidance and clarification. However, the Discharger currently remains in violation of the requirements of the Order for failure to submit the required reports including the delineation report and sampling data set for the infiltration BMPs including the existing ponds and infiltration trenches.

Several complaints were received from the Facility's neighbor during the 2023/2024 wet season and the supportive documents provided indicates that turbid runoff has been discharged from the Facility into Noisy Creek even during the Facility's operating hours.

The IGP requires that the Discharger to collect a minimum of four representative samples when discharge occurs from the Facility. However, the Discharger has claimed that no discharge occurred from the Facility for the entire reporting year. As a result, no

discharge monitoring has been done and no ad hoc reports have been submitted under the IGP since 2020.

B. Inspection Narrative and Findings

The Regional Water Board staff arrived on-site at 4:10 pm and met Ms. Yolynn St. John, Facility Staff for an announced Facility inspection. It had been raining up until the inspection began. Multiple uncovered aggregate and construction waste stockpiles were observed at the Facility upper and lower yards without any minimum BMPs (See pictures 1a, 1b, 2 and 3). These materials can be readily mobilized by contact with stormwater; however, no minimum BMPs were observed at the Facility to minimize the discharge of sediment and other pollutant of concerns in Facility's runoff.

Evidence of erosion due to concentrated flow from the Facility toward and into Noisy Creek was observed near the fence line within the lower yard, corroborating observation of stormwater discharge by the adjacent homeowner on the east side of the lower yard (See picture 11 and attached site map for the location). No BMPs such as perimeter control and/or sediment and erosion control BMPs were installed within this area to control the discharge of sediment from the Facility. Per the SWPPP, this location has not been identified as a potential discharge/sampling point and no samples were collected which is a violation of the IGP requirement.

Due to lack of minimum BMP installation/implementation, such as housekeeping and sediment and erosion control BMPs, the infiltration trenches and sediment traps receive highly turbid runoff and a thick layer of fines and muddy material was observed around and within the sediment traps in the upper yard (See pictures 2, 3, 4 and 5). Minimum BMPs are not implemented in conjunction with advanced BMPs as required by IGP. Also, no sediment and erosion control BMPs were observed within the lower yard along the access road where sediment and fine clay materials are stored. The existing ditch adjacent to this access road within the lower yard receives turbid water that drains the runoff to the existing stormwater pond (See pictures 9 and 10). The Discharger failed to install the required sediment and erosion control BMPs to stabilize the erodible areas in order to minimize the amount of sediment and other pollutants which discharge to the advanced BMPs (pond and infiltration trenches) and ultimately Waters of the State and/or United States.

Construction waste and salvaged construction vehicles are stored inappropriately on the ground, and they are all exposed to rain without BMPs (See picture 6).

A sheen was observed on the water surface and a black oily residue was observed on the gravel and the absorbent sock within the sediment trap within the upper yard (See picture 7). The IGP requires the Discharger to evaluate the Facility for areas where spills and leaks can likely occur and control these sources of pollutants. The preventative maintenance and spill prevention and response sections of the IGP must be implemented.

Process wastewater slurry was observed on the ground underneath the screen deck within the upper yard (See picture 8). There is no designated pond to capture the wastewater and slurry adjacent to this operation. No BMPs were observed within this area. The material handling and waste management requirements of the IGP are not implemented.

The Discharger disturbed the roadside Swale, a Waters of the State, on the south portion of the lower yard by installing rock check dams within the Swale, the runoff from the Swale is pumped into the newly constructed retention pond and again pumped from the pond to the infiltration trenches in the upper yard using three diesel pumps (See the site map for the location). Furthermore, the Discharger has recently plugged the culvert within the roadside swale immediately downstream of the pumping location preventing discharge into Hall Creek. These diesel pumps are placed directly on the ground without required secondary containments to contain any potential leaks (See pictures 12, 13, 14a and 14b). This work within Waters of the State has been done without obtaining the appropriate permits.

C. Conclusion

Minimum BMP implementation at the Facility is inadequate and ineffective. Additionally, advanced BMPs are ineffective at preventing discharge of pollutants from the Facility. The Facility is also not in compliance with the monitoring and reporting requirements of the IGP and the SWPPP and associated documents are out of date and require revision to reflect current conditions.

Additionally, the roadside Swale is incorrectly identified and utilized as a BMP. This feature is Waters of the State and must be protected from discharge of pollutants. Discharges into this feature must be sampled and constitute a discharge under the IGP. The Facility's drainage and treatment practices must be revised to reflect this.

Required Documents:

As required by the IGP, a site evaluation must be conducted and the SWPPP and site map shall be updated to address the following issues:

1. Evidence of discharge from the east portion of the lower yard into Noisy Creek was observed. However, this discharge point was not identified as a sampling point in the SWPPP. All discharge points must be included in the SWPPP and site map and samples must be collected from all discharge points.

2. BMP deficiencies were observed throughout the lower and upper yards. A site evaluation must be conducted to ensure that adequate and effective BMPs are installed. Minimum BMPs must be implemented/installed in conjunction with advanced BMPs. The information regarding the minimum BMP implementation must be included in the revised SWPPP and site map in detail.

3. Material handling and waste management section of the SWPPP must be updated to demonstrate how the wastewater slurry is managed, contained, and disposed of properly.

4. All construction waste material, and salvaged construction vehicles are stored on the ground. The SWPPP must be updated to include these pollutant sources and the proposed BMP implementations to minimize the exposure of such wastes to rain and control the discharge of pollutants.

5. No technical information provided in the existing SWPPP regarding the newly constructed retention pond and the pumping operations. Design storm standard calculation must be included for the retention pond demonstrating that the pond is sized in accordance with Section X.H.6 of the IGP requirements. The SOP must be included for the retention pond and pumping operations.

6. The culvert at the end of the Swale, a Waters of the State, has been plugged and the Discharger deployed three pumps to pump the runoff from the Swale, and from the Swale to infiltration trenches in the upper yard. The SWPPP has not been updated since 2022. Since the roadside Swale is considered as a Waters of the State, any discharge to this swale must be sampled. As a result, the SWPPP and site map must be revised to include any potential discharge point(s) to this receiving water (Swale).

7. The roadside Swale has been determined to be a Water of the State and it is not part of the Facility's stormwater treatment or conveyance system. As a result, any discharge locations from the upper and lower yard into this Swale must be identified as a discharge point and samples must be collected from the designated sampling points accordingly.

Attachments:

- **Photos**
- **Site Map**

Photos:

Pictures 1a, 1b – View of uncovered asphaltic roofing waste materials that were exposed to rain located in the Upper Yard. No BMPs are installed to avoid releasing pollutants from the piles or to minimize the exposure to rain. Picture taken by Walt Dragaloski.

Picture 2- View of a large and uncovered aggregate stockpile located in the Upper Yard. Accumulated turbid runoff was observed around the stockpile within this muddy area. The runoff from this area drains to the infiltration trench via an infiltration trench inlet. Picture taken by Walt Dragaloski.

Picture 3 – Looking east at accumulated turbid stormwater along southern portion of the upper yard flowing to infiltration trench inlet. Picture taken by Walt Dragaloski.

Picture 4 - View of sediment trap at the southern portion of the upper yard. The adjacent upper yard area flows through this sediment trap to the infiltration trench inlet. A thick layer of sediment was observed on the ground within the sediment trap. Additionally, a sheen was observed on the water surface and a black residue stain was visible in this area. This sediment trap drains the turbid water into the infiltration trench. Minimum BMPs were not observed within this area. Picture taken by Walt Dragaloski.

Picture 5 – Looking west at the sediment trap located on the southwest corner of the upper yard. A significant amount of sediment is captured with this non-standard sediment and erosion control BMP. Picture taken by Walt Dragaloski.

Picture 6 – View of construction waste material and salvaged hauling vehicle. No BMPs are implemented to minimize the exposure of industrial/construction wastes and equipment to rain. Picture taken by Walt Dragaloski.

Picture 7 - View of an absorbent sock in the sediment trap. A sheen was observed on the water surface and a black oily residue was observed on the gravel and the absorbent sock within the sediment trap. Picture taken by Walt Dragaloski.

Picture 8 - View of the processing area in upper yard. Wastewater slurry was observed on the ground. Picture taken by Walt Dragaloski.

Picture 9 - View of unpaved access road adjacent to an on-site drainage ditch in the lower yard. No sediment and/or erosion control BMPs were observed. Overflow from this ditch discharges into Waters of the State into Noisy Creek or into Waters of the State at an unnamed tributary to Hall Creek. Picture taken by Walt Dragaloski.

Picture 10 – View of fine clay sediment material (light colored material in picture) that was stockpiled on the ground in the lower yard. This entire area was exposed to rain and no sediment and/or erosion control BMPs were observed. Picture taken by Walt Dragaloski.

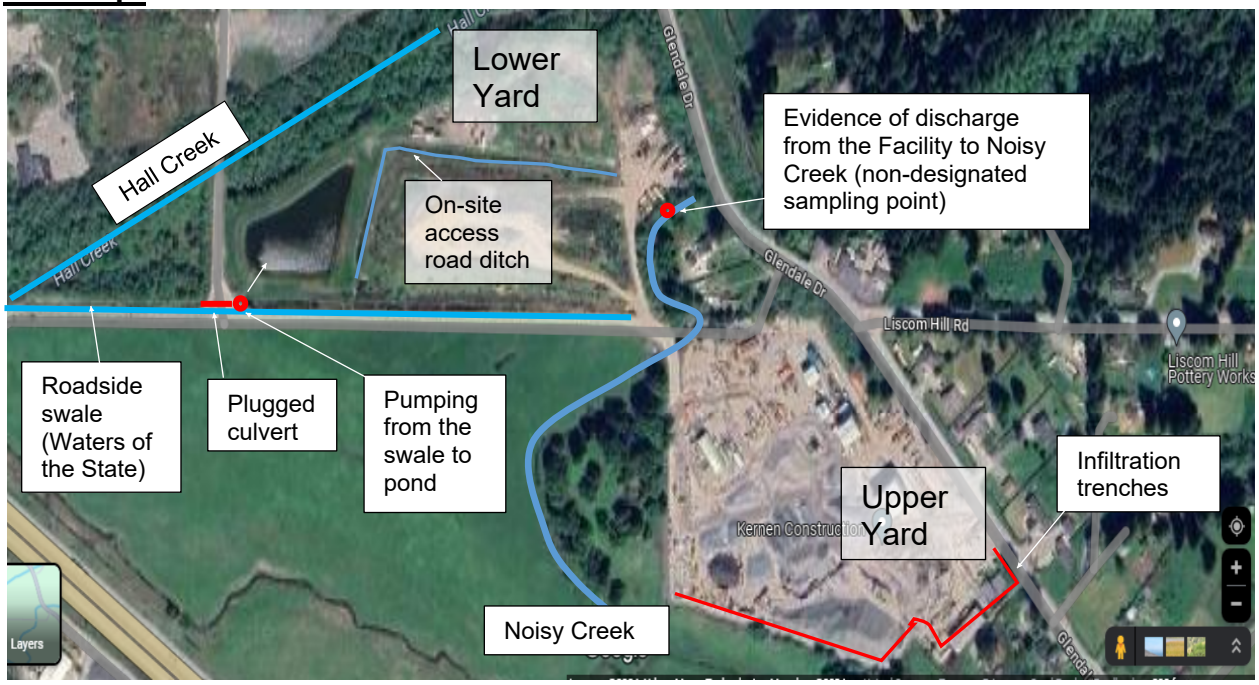
Picture 11 - View of damaged fences adjacent to Noisy Creek along the eastern boundary of the Facility in the lower yard. Evidence of erosion due to concentrated flow towards Noisy Creek was observed near the fence line, corroborating observation of stormwater discharge from the Facility to Waters of the State by the adjacent homeowner. Picture taken by Walt Dragaloski.

Picture 12 – Looking east at the roadside swale adjacent to the lower yard. These Waters of the State receive runoff from the adjacent stockpile and from the haul roads in the lower yard area. The non-standard rock check dams were installed by the Discharger without obtaining an appropriate permit from the Regional Water Board. Picture taken by Walt Dragaloski.

Picture 13 – View of three diesel generators and their pumps observed without required secondary containments. Stormwater is pumped from the swale via the black riser pipe into the newly constructed retention pond. Picture taken by Walt Dragaloski.


Picture 14a and 14b – The left picture shows the hose used to pump the stormwater from this retention pond in the lower yard to the infiltration trenches in the upper yard. The right picture shows the three hoses used to pump stormwater from the swale shown in the previous picture into the retention pond. Picture taken by Walt Dragaloski.

Site Map:



Picture 15 – Site map prepared by Regional Water Board staff indicating the lower and upper yards, Noisy and Hall Creeks, roadside swale and plugged culvert.

May 21, 2024

Kernen Construction Co.
P. O. Box 1340
Blue Lake, CA 95525

Scott Farley, Partner
Kernen Construction Glendale Yard
2350 Glendale Drive
McKinleyville, CA 95519

Certified Mail 7021-0950-0001-6500-2336

Bedrock Investment LLC
Kurt Kernen
P.O.Box 384
Blue Lake, CA95525

Dear Mr. Farley:

Subject: **Notice of Violation of Water Code Section 13267** Investigative Order R1-2022-0025 (13267 Order or Order) and Industrial General Permit Order No. 2014-0057-DWQ (IGP) for Kernen Construction and **Directive to Apply for Water Quality Certification/**Waste Discharge Requirements for Activities in Waters of the State pursuant to Water Code section 13260.

File: Kernen Construction, 2350 Glendale Drive, McKinleyville, WDID 1 12I017319

THIS LETTER REQUESTS THAT YOU ACT AND RESPOND WITHIN 30 DAYS

This letter is to notify you that the facility identified as Kernen Construction (Facility) located at 2350 Glendale Drive, McKinleyville is alleged to be in violation of the subject Water Code 13267 Investigative Order (13267 Order) and the Industrial General Permit Order No. 2014-0057-DWQ (IGP). Additionally, the Facility is directed to apply for Water Quality Certification/Waste Discharge Requirements pursuant to Water Code section 13260.

On December 13, 2022, and January 3, 2024 Staff have held virtual compliance assistance meetings with your representative, Ms. Yolynn St. John, to discuss and clarify the requirements of the 13267 Order, newly constructed Pond and the IGP. As of the date of this letter, multiple deliverables required by the Order are past due and remain outstanding.

The Discharger is required to take all necessary action to comply with the IGP and 13267 Order. Additionally, the Discharger is directed to obtain necessary required permits for action within waters of the state and the discharge of waste to land.

Please review this letter/directive and the attached inspection memo carefully. The 13267 Order issued on June 14, 2022, is included here as an attachment for your reference.

Background

The Facility is currently enrolled for coverage under the Industrial Storm Water General Permit Order No. 2014-0057-DWQ (Industrial Permit, Permit, or IGP), with WDID No. 1 12I017319.

As recorded in the Stormwater Multiple Application and Report Tracking System (SMARTS), the Discharger claimed that no discharge has occurred, and no samples have been collected since 2020 due to the installation of discharge reduction BMPs [1].

On May 24, 2021, a complaint was received by the Regional Water Board from the California Department of Fish and Wildlife (CDFW) regarding tadpole stranding along an existing Swale which runs through the Facility before entering Hall Creek. Regional Water Board staff inspected the Facility, including the Swale, and all associated industrial areas with CDFW staff and the Discharger on June 24, 2021. The Discharger took corrective actions to address the comments from the CDFW staff and address tadpole stranding.

On December 23, 2021, the Regional Water Board staff was notified about a newly constructed retention pond/area within the lower yard at the Facility. Based on inspection observations, aerial photography, and records, the pond is adjacent to the Swale and the riparian area of Hall Creek. Water is pumped by the Discharger from the Swale to the pond by plugging a culvert. Dredge and Fill activities that directly or indirectly impact waters of the state typically require a permit from the Regional Water Board. Our records indicate a permit for these activities was not obtained.

On June 14, 2022, the 13267 Order was issued directing the Discharger to submit a delineation and related documents, develop a Stormwater Monitoring Plan, conduct

[1] Including settling basins, newly constructed retention pond, sediment traps and infiltration trenches.

monitoring and sampling for all drainage areas, and provide additional information about the newly constructed retention pond area by specified deadlines.

On July 25, 2022, the Discharger requested an extension from September 9, 2022, to March 1, 2023, to complete Directives 2 and 3 of the Order. The Discharger stated in its extension request that additional time was needed due to the lack of consultant availability and to conduct the delineation during the 2022-2023 wet season when wetland features would be most prominent. The Regional Water Board approved the extension request on August 31, 2022. On April 21, 2023, the Discharger submitted a delineation that was dated December 17, 2000, without any current field evaluation. The scanned document was difficult to read in its entirety; however, the document did identify the roadside Swale as waters of the state. Staff directed the Discharger to submit a legible copy of the delineation. To date, a legible version of the document has not been provided, and a current wetland delineation has not been conducted.

In accordance with Directive 4.e of the Order, the Discharge was required to collect and analyze five sample sets and to date only two sets have been collected; the results for these two sample sets are incomplete and the samples exceeded the maximum hold time. The Discharger submitted the first sampling data set for the storm event dated December 1, 2022. However, the report was incomplete because the samples were not analyzed for all required analytical parameters including dissolved metals. Additionally, some sample results submitted are invalid due to exceedances of the hold times specified by the applicable analytical method. The Discharger stated that additional samples were collected during a second storm event on December 30, 2022. On January 4, 2024, the lab results were submitted via SMARTS with a significant delay; however, the Discharger failed to notify the Regional Water Board staff for this submittal as required by the Order.

On February 19, 2024, Regional Water Board staff (Staff) inspected the entire drainage areas within the upper/southern and lower/northern yards immediately following a storm event. Several uncovered stockpiles including aggregate and scrap roofing shingles materials were observed exposed to rain. No minimum BMPs were observed implemented or installed at the Facility to minimize the exposure of industrial materials to rain. No effective sediment and erosion control BMPs were observed to minimize the sediment and other pollutants of concern in the Facility’s runoff.

During an inspection of the eastern portion of the lower yard, Staff observed evidence of erosion due to concentrated flow toward and into Noisy Creek near the fence line. These field observations are consistent with the photographic/video documentations submitted by the third party which indicate that the Facility was discharging directly into Noisy Creek and that at least several of these discharge incidents occurred the 2023-2024 wet season during the Facility’s operating hours. The inspection memo attached to this letter (Attachment A) provides additional details of Staff’s observations during the February 2024 inspection.

On April 24, 2024, the Discharger submitted a summary of the influent sampling results associated with two sampling events, an extension request letter for the Order requirements and design information for the newly constructed retention basin/pond.

Alleged Violations of the 13267 Order

As the owners and operators of the Kernen Construction, you are hereby given notice of alleged violations of the following Directives (italicized) of the 13267 Order (Attachment B):

Violation 1 - Directive 1.b:

How the newly constructed retention area/pond is designed and operated to protect the groundwater quality.

Staff Evaluation of Compliance: The most recent design information that was submitted by the Discharger includes a drainage plan, topography, and general information about the retention pond. However, the Discharger did not submit information to demonstrate that infiltrating the Facility's runoff via the newly constructed pond does not impact groundwater quality. The design submitted does not satisfy the requirement of Directive 1.b as it does not include hydrological features, a hydraulic design and analysis, and details about how the pond is operated to protect groundwater quality. Also, the design information provided does not satisfy the design storm standard section of the IGP for treatment control BMPs including the new sediment/retention basin. No calculation is provided demonstrating that this new stormwater basin is sized in accordance with IGP requirements.

Violation 2 - Directive 4.b:

Samples collection from each drainage area shall occur within four hours of the start of the discharge from the drainage area, or the start of facility operations if the QSE occurs within the previous 12-hour period (e.g., for storms with discharges that begin during the night for facilities with day-time operating hours).

This Order requires the Discharger to *collect Stormwater samples of influent entering infiltration BMPs. In the upper yard, samples must be collected from surface runoff at a point immediately prior to entering the infiltration trenches in Drainage Areas 1b, 2, and 3 (one sample for each Drainage Area), In the lower yard, samples must be collected from the settling basin and the new stormwater retention area.*

Staff Evaluation of Compliance: The Discharger has submitted two sampling data sets since June 2022 when the Order was issued. However, both sampling data sets submitted to date are incomplete and do not satisfy the requirement of the Order. As described in the background section of this NOV, the Discharger claimed that no discharges occurred during the past reporting years due to the existing discharge reduction BMPs on-site including the infiltration trenches, sediment traps and existing ponds. As a result, it was anticipated that the existing settling basin, the newly constructed retention pond and other infiltration BMPs received the entire runoff multiple times and resulted in zero discharge from the Facility during the storm events. However, a recent field inspection indicates that discharge has occurred from the lower yard directly into Noisy Creek. This is further supported by complaints received by Regional Water Board staff. Discharge into the Swale constitutes a discharge to waters of the state and requires sampling.

Violation 3 - Directive 4d:

All samples shall be analyzed for the following parameters:

i. *Oil and grease (O&G)*
ii. *Total Dissolved Solids (TDS)*
iii. *pH*
iv. *Total and dissolved iron and aluminum*
v. *Total and dissolved zinc, copper, and lead*
vi. *Nitrite plus Nitrate as Nitrogen*
vii. *Volatile Organic Compounds by EPA Method 8260 (report all peaks)*
viii. *Semi-Volatile Organic Compounds by EPA Method 8720 (report all peaks)*

Staff Evaluation of Compliance: The Discharger failed to submit the referenced dissolved metals analyses for the first and second sampling events.

Violation 4 -Directive 4i:

All sampling results, laboratory reports, chains of custody, and all other supporting documentation shall be submitted within 30 days after laboratory results are received. All reports must be uploaded to SMARTS.

Staff Evaluation of Compliance: The Discharger failed to submit the first and second sampling data set within 30 days after laboratory results were received.

Alleged Violations of the IGP

Violation 5 - Section III. Discharge Prohibitions

C. Industrial storm water discharges and authorized [non-storm water discharges] that contain pollutants that cause or threaten to cause pollution, contamination, or nuisance as defined in section 13050 of the Water Code, are prohibited.

Violation 6 - Section V. Effluent Limitations

A. Dischargers shall implement BMPs [Best Management Practices] that comply with the Best Available Technology/Best Control Technology (BAT/BCT) requirements of this General Permit to reduce or prevent discharges of pollutants in their stormwater discharge in a manner that reflects best industry practice considering technological availability and economic practicability and achievability.

Staff Evaluation of Compliance: Required minimum BMPs are not implemented as described in the attached inspection memo (Attachment A).

Violation – 7 Section X.B. SWPPP Implementation and Revision

The Discharger shall:

1. *Revise their on-site SWPPP whenever necessary;*
2. *Certify and submit via SMARTS their SWPPP within 30 days whenever the SWPPP contains significant revision(s); and,*

Staff Evaluation of Compliance: The Discharger failed to revise the SWPPP and site map since 2022 to reflect the current condition of the site. A site evaluation may be necessary to identify new or changed discharge locations as required by the IGP.

Violation 8 - Section X.H.1. Minimum BMPs

a. *Good Housekeeping: The Discharger shall:*

   i. *Observe all outdoor areas associated with industrial activity; including storm water discharge locations, drainage areas, conveyance systems, waste handling/disposal areas, and perimeter areas impacted by off-facility materials or storm water run-on to determine housekeeping*

needs. Any identified debris, waste, spills, tracked materials, or leaked materials shall be cleaned and disposed of properly;

v. *Cover all stored industrial materials that can be readily mobilized by contact with storm water to the extent feasible.*

Staff Evaluation of Compliance: Lack of housekeeping, including uncovered stockpiles of industrial materials and wastes, observed throughout the Facility. (See Inspection Memo Attachment A)

b. *Preventative Maintenance: The Discharger shall Identify all equipment and systems used outdoors that may spill or leak pollutants.*

Staff Evaluation of Compliance: A sheen was observed on the water surface and a black oily residue was observed on the gravel within the sediment trap in the upper yard with no spill response, cleanup, or containment BMPs deployed. (See Inspection Memo, Attachment A)

c. *Spill and Leak Prevention and Response: The Discharger shall establish procedures and/or controls to minimize spills and leaks.*

Staff Evaluation of Compliance:
A sheen was observed within the upper yard with no spill response, cleanup, or containment BMPs deployed. (See Inspection Memo, Attachment A)

d. *Material handling and waste management: The Discharger shall:*

i. *Prevent or minimize handling of industrial materials or wastes that can be readily mobilized by contact with storm water during a storm event;*

ii. *Contain all stored non-solid industrial materials or wastes (e.g., particulates, powders, shredded paper, etc.) that can be transported or dispersed by the wind or contact with storm water;*

iii. *Cover industrial waste disposal containers and industrial material storage containers that contain industrial materials when not in use;*

iv. *Divert run-on and stormwater generated from within the facility away from all stockpiled materials;*

v. *Clean all spills of industrial materials or wastes that occur during handling in accordance with the spill response procedures (Section X.H.1.c); and,*

vi. *Observe and clean as appropriate, any outdoor material or waste handling equipment or containers that can be contaminated by contact with industrial materials or wastes.*

Process wastewater slurry was observed on the ground underneath the screen deck within the upper yard. Also, roofing waste material, construction wastes and aggregate stockpiles are all exposed to rain and the Discharger failed to divert stormwater generated within the facility away from these piles.

e. *Erosion and Sediment Control: The Discharger shall:*

ii. *Provide effective stabilization for inactive areas, finished slopes, and other erodible areas prior to a forecasted storm event;*

iii. *Maintain effective perimeter controls and stabilize all site entrances and exits to sufficiently control discharges of erodible materials from discharging or being tracked off the site;*

iv. *Divert run-on and storm water generated from within the facility away from all erodible materials; and,*

v. *If sediment basins are implemented, ensure compliance with the design storm standards in Section X.H.6.*

Staff Evaluation of Compliance: The Discharger failed to provide the design storm standard for the newly constructed retention pond to demonstrate that this advanced BMP is sized to meet the design storm standards in section X.H.6. Also, Regional Water Board staff observed that erosion and sediment control BMPs were missing throughout the Facility (See Staff Inspection Memo, Attachment A).

Violation 9 - Section XI.B. Sampling and Analysis

2. *The Discharger shall collect and analyze storm water samples from two (2) QSEs within the first half of each reporting year (July 1 to December 31), and two (2) QSEs within the second half of each reporting year (January 1 to June 30).*

Staff Evaluation of Compliance: The Discharger has not collected any samples since 2020, claiming that no discharge occurred due to “discharge reduction BMPs”. According to the attached inspection memo, evidence of erosion due to concentrated flow from the Facility toward and into Noisy Creek was observed near the fence line within the lower yard, corroborating observation of stormwater discharge by the adjacent homeowner on the east side of the lower yard. The Discharger failed to collect samples at least from this undesignated discharge point during the operating hours. (See Staff Inspection Memo, Attachment A.)

Additional Alleged Violations of the Clean Water Act and California Water Code

Violation 10 – Water Code section 13260[2] and 13376 for Unauthorized Dredge and Fill Activities without Necessary Permits

Regional Water Board staff have reviewed available records and determined that culvert plugging, water pumping from swale, pond construction, and dredge and/or fill within waters of the state (swale) have occurred at the Property without necessary regulatory coverage, including Clean Water Act section 401 Water Quality Certification and/or Waste Discharge Requirements from the Regional Water Board.

Activities that may directly or indirectly impact waters of the state require you to apply for a Water Quality Certification and/or Waste Discharge Requirements (WDRs). These activities might also require input, consultation, and permits from other federal, state, and local agencies. If you have record of a 401 Water Quality Certification and/or Waste Discharge Requirements for the check dams, culvert plug, and water pump, please provide a copy. Based on a current lack of documentation showing that these activities have received authorization, you are directed below to submit an application for Water Quality Certification and/or Waste Discharge Requirements for these activities.

Violation 11 – Unpermitted Discharge of Process Wastewater

The discharge of process wastewater to land, groundwater, or surface water is not authorized by the IGP and requires separate permitting. During the most recent inspection, the discharge of process wastewater to land was observed.

The Regional Water Board, pursuant to Water Code section 13260, may issue a future directive requiring you to seek permit coverage for any discharge, or proposed discharge of process water that is not covered by the IGP or other appropriate permit if these observed conditions are not corrected.

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[2] "(a) Each of the following persons shall file with the appropriate regional board a report of the discharge, containing the information that may be required by the regional board:A person discharging waste, or proposing to discharge waste, within any region that could affect the quality of the waters of the state, other than into a community sewer system. A person who is a citizen, domiciliary, or political agency or entity of this state discharging waste, or proposing to discharge waste, outside the boundaries of the state in a manner that could affect the quality of the waters of the state within any region."

Necessary Actions to comply with IGP and 13267 Order

Outstanding tasks include the following:

1. In response to the 13267 Order violations, the Discharger is required to submit five sampling data sets collected from the infiltration BMPs along with the abovementioned delineation reports. If the samples were not collected, the Discharger must provide the reasons for failure to take the samples. Also, the Discharger failed to provide technical documents regarding the design storm standard calculation for the newly constructed pond and to demonstrate that the infiltration of the Facility's runoff does not pose a threat to groundwater quality. These required documents must be submitted.

2. In response to IGP violations, the Discharger is required to conduct a site evaluation and revise the SWPPP to identify the discharge locations and include additional and applicable BMPs to address the issues. A report must be submitted with descriptive photos and a site map indicating the locations of the installed BMPs to demonstrate that all BMP deficiencies that were observed on-site have been addressed.

Directive to Apply for Water Quality Certification/Waste Discharge Requirements for Activities Within Waters of the State/United States

Pursuant to water code section 13260, the Discharger is directed to obtain necessary required permits for action within waters of the state as described below:

By no later than **July 1, 2024,** submit a Water Quality Certification and/or Waste Discharge Requirements permit application. A current delineation of waters of the state is a required component of the permit application. The wetland and waters of the state delineation may be submitted as one document, with a Restoration Plan (Plan) describing how you propose to remediate the swale and restore it to pre-disturbed conditions. The Plan should include, but is not limited to: a description of how check dams will be removed, how culvert plug will be removed, culvert replacement with appropriate size if necessary, how the site will be revegetated, equipment and materials to be used, anticipated start date and duration of work, BMPs that will be used to control sediment discharge during and following work, and a monitoring plan that ensures the Plan goals are achieved. Submit the application for review and authorization, to NorthCoast@waterboards.ca.gov and copy Ryan Bey at Ryan.Bey@Waterboards.ca.gov.

Penalty Liability

Please note that correcting the conditions of non-compliance does not preclude enforcement for the violations alleged in this notice. The Regional Water Board reserves its right to fully enforce the law against any violation and threatened violation by taking

enforcement actions. Discharges or threatened discharges of waste, including earthen material, into waters of the state that create a condition of nuisance or pollution may subject a person to a Cleanup and Abatement Order pursuant to Water Code section 13304. An actual discharge to waters of the state, including allowing fill to remain within a wetland, may subject a person to an administrative liability up to $5,000 per day of violation for each violation, or $10 for each gallon of waste discharged pursuant to Water Code section 13350. Unlawful discharges to waters of the United States and/or violations of the Clean Water Act may subject a person to up to $10,000 per day of violation for each violation, and up to $10 per gallon of waste discharged over 1,000 gallons not cleaned up pursuant to Water Code section 13385. The Regional Water Board retains its discretion to refer this matter to the State Attorney General for enforcement. We will contact you upon further assessment of these violations to discuss any potential associated civil liability or other enforcement actions.

If you have questions about what is required of you to comply with the Order requirements, please contact Farzad Kasmaei by email at Farzad.Kasmaei@waterboards.ca.gov or by phone at 707-576-2609. You may also contact the NPDES Stormwater Program manager Heaven Moore, Heaven.Moore@waterboards.ca.gov, or by phone at 707-576-2753.

Additionally, we are available to meet with you if you wish to discuss this letter or our regulatory programs and/or enforcement process in further detail.

Sincerely,

Claudia Villacorta, P.E.
Assistant Executive Officer

cc: [via email only]

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Attachments:

Attachment A: February 19, 2024, Inspection Memo
Attachment B: 13267 Investigative Order No. R1-2022-0025