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.

---

[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,

Digitally signed by Claudia E. Villacorta
Date: 2024.05.21 15:36:04 -07'00'

Water Boards

Claudia Villacorta, P.E.
Assistant Executive Officer

cc: [via email only]

Charles Reed, P.E., Point Source Control & Groundwater Protection Division Supervisor, NCRWQCB,
Charles.Reed@waterboards.ca.gov

Heaven Moore, NPDES Unit, Senior Water Resource Control Engineer, NCRWQCB,
jeremiah.puget@waterboards.ca.gov

Jeremiah Puget, Enforcement Unit Coordinator, NCRWQCB,
jeremiah.puget@waterboards.ca.gov

Nathan Jacobsen, Esq., State Water Resources Control Board, Office of Chief Counsel, Nathan.Jacobsen@waterboards.ca.gov

Ryan Bey, Senior Environmental Scientist, NCRWQCB, Ryan.Bey@waterboards.ca.gov

Farzad Kasmaei, Water Resource Control Engineer, NCRWQCB, Farzad.Kasmaei@waterboards.ca.gov

Amanda Piscitelli, Environmental Scientist, NCRWQCB, Amanda.Piscitelli@waterboards.ca.gov

Ryan Bourque, Senior Environmental Scientist, CDFW ryan.bourque@wildlife.ca.gov

Jonathan Hollis, Environmental Scientist, CDFW Jonathan.Hollis@wildlife.ca.gov

Joshua Dorris, Senior Planner, County of Humboldt JDorris@co.humboldt.ca.us

Steve Madrone, Fifth District Supervisor, County of Humboldt smadrone@co.humboldt.ca.us

Stephen Ryan, US Army Corps of Engineers Stephen.Q.Ryan@usace.army.mil

Dan Free, NOAA Fisheries dan.free@noaa.gov

Yolynn St. John, Compliance/Safety Supervisor, Facility's QISP, ystjohn@kernenconstruction.com

Allison Jackson, Esq., Facility's attorney, ajackson@harlandlaw.com

Attachments:

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