



Santa Ana Regional Water Quality Control Board

June 8, 2015

Mike Linton
Vulcan Materials Company, Inc.
500 N. Brand Blvd., Ste. 500
Glendale, CA 91203

**CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS CERTIFICATION
AREAS G, H, I, AND J OF CAJON CREEK SPECIFIC PLAN NO. 90-01
COUNTY OF SAN BERNARDINO, CALIFORNIA
ACOE REFERENCE NO. SPL-2013-00061-SLP / SARWQCB PROJECT NO. 362015-10**

Dear Mr. Linton:

On April 21, 2015, we received an application for a Clean Water Act Section 401 Water Quality Standards Certification ("Certification") on behalf of Vulcan Materials Company, Inc. ("Vulcan") for the development of Areas G, H, I and J of the Cajon Creek Specific Plan No. 90-01 ("Specific Plan") area of the City of San Bernardino. The subject project proposes the construction of commercial and industrial buildings within Areas G, H, I, and J of the Specific Plan ("Project") through the use of Nationwide Permit No. 39 (Commercial and Institutional Buildings). The Project includes development of commercial and industrial facilities in a manner that will disturb three ephemeral drainages¹ identified within the Project area and depicted in Exhibit "A" within the application materials. As a result, there will be 0.36 acre and 3,885 linear feet of permanent impacts to waters of the United States.

The applicant has also submitted filing fees totaling \$52,448.00, which satisfies this project's fee requirement for consideration of a 401 Certification. This fee amount was determined using the Dredge and Fill Fee Calculator on the State Water Resources Control Board (SWRCB) web site, which is based on the most current iteration of California Code of Regulations, Division 3, Chapter 9, Article 1, section 2200 (a) (3) in effect when the application was submitted. This letter responds to your request for a Certification, that the Project described in your request and summarized below, will comply with State water quality standards outlined in the Water Quality Control Plan for the Santa Ana River Basin (1995) ("Basin Plan") and subsequent Basin Plan amendments:

Project Description: The Project activities include the construction of commercial and industrial facilities. Activities will include grading; construction of buildings; with onsite and offsite landscaping and infrastructure improvements.

¹ These ephemeral drainages are identified as Drainages 3, 4, and 5S of Exhibit "A" of the 401 application submittal. Note that ephemeral drainage 5N, also shown on Exhibit "A", is not impacted.

Approximately 1,000 cubic yards of clean material (i.e., Tujunga gravelly loamy sand) from the adjacent uplands will be used to fill the ephemeral drainages during the re-contouring of the sites. Flows from these subareas will be routed to the recently constructed Muscoy Groyne No. 2 Storm Drain System ("Storm Drain Project"). The change of flows associated with the proposed Project were considered and addressed within a previous 401 certification, which was issued in 2013 for the Storm Drain Project.

The work will take place within Township 1 North, Range 5 West, of the U.S. Geological Survey *Devore (unsectioned)* quadrangle map (34.183094° N/ -117.369607° W).

- Receiving Water: Three unnamed ephemeral drainages, Cajon Wash, which has the present or potential beneficial uses of Municipal and Domestic Supply (MUN), Groundwater Recharge (GWR), contact recreation (REC1), non-contact recreation (REC2), rare/threatened/endangered species (RARE), wildlife habitat (WILD), and cold freshwater habitat (COLD).
- Fill Area: There will be a total Project fill area of 0.36 acre of permanent impact (3,885 linear feet) to streambed habitat.
- Dredge/Fill volume: Approximately 1,000 cubic yards.
- Federal Permit: U.S. Army Corps of Engineers Nationwide Permit No. 39.

The onsite and offsite water quality mitigation is summarized below:

Onsite Water Quality Standards Mitigation:

- Standard water quality related best management practices (BMPs) will be employed during construction activities.
- The Project landscaping, filtration and drainage improvements will be designed to implement permanent storm water pollution prevention (SWPPP) measures.

Offsite Water Quality Standards Mitigation:

- Project impacts of the Specific Plan to waters of the United States and endangered species were addressed in 1995 with the establishment of the 1,256-acre Cajon Creek Habitat Conservation Management Area (i.e., 768 acres of which were designated as compensatory mitigation for the Cajon Creek Specific Plan). The 768 acres included active portions of the central and western branches of Cajon Creek (Cajon Wash) and adjacent terraces including the confluence of Cajon Wash and Lytle Creek. The establishment of the Conservation Area included habitat restoration and management and the creation of a long-term endowment to fund these activities. As such, additional credits from the Cajon Creek Mitigation Bank are not required.

Should the proposed Project impact state or federally listed endangered species or their habitat, implementation of measures identified in consultation with U.S. Fish and Wildlife Service and the California Department of Fish and Wildlife² will ensure those impacts are mitigated to an acceptable level. Appropriate BMPs will be implemented to reduce construction-related impacts to Waters of the State according to the requirements of the State Water Resources Control Board's General Permit for Storm Water Discharges Associated with Construction Activity Order No. 2009-00009 DWQ, commonly known as the General Stormwater Construction Permit.

Pursuant to California Code of Regulations, Title 14, Chapter 3, Section 15096, as a responsible agency, the Regional Board is required to consider an EIR or Negative Declaration prepared by the lead agency in determining whether to approve a project. A responsible agency has responsibility for mitigating and avoiding only the direct and indirect environmental effects of those parts of the Project that it decides to carry out, finance, or approve. Further, the responsible agency must make findings as required by Sections 15091 and, if necessary, 15093, for each and every significant impact of the Project.

As required by Section 15096, the Regional Board has considered the Final EIR (dated October 9, 1993) prepared for the proposed Project, and information provided subsequently in your application, in approving this permit. Based on the mitigation and the conditions set forth herein, the Regional Board concludes that impacts to water quality will be reduced to a less than significant level and beneficial uses will be protected. The Regional Board independently finds that changes or alterations have been required or incorporated into the Project that avoid or mitigate impacts to water quality to a less than significant level.

This 401 Certification is contingent upon the execution of the following conditions:

- 1) The applicant must comply with the requirements of the applicable Clean Water Act section 404 permit.
- 2) Any proposed mitigation shall be timely implemented.
- 3) All materials generated from construction activities associated with this Project shall be managed appropriately. This shall include identifying all potential pollution sources within the scope of work of this Project, and incorporating all necessary pollution prevention BMPs as they relate to each potential pollution source identified.
- 4) The Project proponent shall utilize BMPs during project construction to minimize the controllable discharges of sediment and other wastes to drainage systems or other waters of the state and of the United States.
- 5) Substances resulting from Project-related activities that could be harmful to aquatic life, including, but not limited to, petroleum lubricants and fuels, cured and uncured cements, epoxies, paints and other protective coating materials, Portland cement concrete or asphalt concrete, and washings and cuttings thereof, shall not be discharged to soils or waters of the state. All waste concrete shall be removed.

² On January 22, 2015 the State Department of Fish and Wildlife ("Department") informed Vulcan that a Lake or Streambed Alternation Agreement would not be required for the Project.

- 6) Motorized equipment shall not be maintained or parked within or near any stream crossing, channel or lake margin in such a manner that petroleum products or other pollutants from the equipment may enter these areas under any flow conditions. Vehicles shall not be driven or equipment operated in waters of the state on-site, except as necessary to complete the Project. No equipment shall be operated in areas of flowing water.
- 7) This Certification is subject to the acquisition of all local, regional, state, and federal permits and approvals as required by law. Failure to meet any conditions contained herein or of any the conditions contained in any other permit or approval issued by the State of California or any subdivision thereof may result in the revocation of this Certification and civil or criminal liability.
- 8) Best management practices to stabilize disturbed soils must include the use of native plant species whenever feasible.
- 9) Construction de-watering discharges, including temporary stream diversions necessary for project construction may be regulated under Regional Board Order No. R8-2009-0003, General Waste Discharge Requirements for Discharges to Surface Waters that Pose an Insignificant (De Minimus) Threat to Water Quality. For more information, please review Order No. R8-2009- 0003 at www.waterboards.ca.gov/santaana/
- 10) Applicant shall ensure that all fees associated with this Project shall be paid to each respective agency prior to conducting any on-site construction activities.
- 11) Site mitigation assessments shall be conducted from October through December, until success criteria are met for consecutive years. This information shall be reported to <http://www.californiawetlands.net/tracker/>

Under California Water Code, Section 1058, and Pursuant to 23 CCR §3860, the following shall be included as conditions of all water quality certification actions:

- (a) Every certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to Section §13330 of the Water Code and Article 6 (commencing with Section 3867) of this Chapter.
- (b) Certification is not intended and shall not be construed to apply to any activity involving a hydroelectric facility and requiring a FERC license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to Subsection §3855(b) of this Chapter and that application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
- (c) Certification is conditioned upon total payment of any fee required under this Chapter and owed by the applicant.

If the above stated conditions are changed, any of the criteria or conditions as previously described are not met, or new information becomes available that indicates a water quality problem, the Regional Board may require the applicant to submit a report of waste discharge and obtain Waste Discharge Requirements.

In the event of any violation or threatened violation of the conditions of this Certification, the holder of any permit or license subject to this Certification shall be subject to any remedies, penalties, process or sanctions as provided for under state law. For purposes of section 401 (d) of the Clean Water Act, the applicability of any state law authorizing remedies, penalties, process or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this Certification. Violations of the conditions of this Certification may subject the applicant to civil liability pursuant to Water Code section 13350 and/or 13385.

This letter constitutes a Water Quality Standards Certification issued pursuant to Clean Water Act Section 401. I hereby certify that any discharge from the referenced Project will comply with the applicable provisions of Sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards and Implementation Plans), 306 (National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards) of the Clean Water Act, and with other applicable requirements of State law. This discharge is also regulated under State Water Resources Control Board Order No. 2003-0017-DWQ (Order No. 2003-0017- DWQ), "General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received Water Quality Certification" which requires compliance with all conditions of this Water Quality Standards Certification. Order No. 2003-0017-DWQ is available at:

www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2003/wqo/wqo_2003-0017.pdf

Should there be any questions, please contact Marc Brown at (951) 321-4584 or Jason Bill at (951) 782-3295

Sincerely



Kurt V. Berchtold
Executive Officer
Santa Ana Regional Water Quality Control Board

cc: (via electronic mail):

Gresham Salvage - Mark Ostoich; mark.ostoich@greshamsavage.com
U. S. Army Corps of Engineers, Ventura Office- Crystal Huerta
State Water Resources Control Board, OCC
State Water Resources Control Board, DWQ -Water Quality Certification Unit
California Department of Fish and Wildlife – Joanna Gibson
U.S. EPA- Supervisor of the Wetlands Regulatory Office WTR- 8