STATE OF CALIFORNIA-BUSINESS, TRANSPORTATION AND HOUSING AGENCY ARNOLD SCHWARZENEGGER, Governor

DEPARTMENT OF TRANSPORTATION - District 4 Toll Bridge Program
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Oakland, CA 94607
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MCM Construction, Inc.
450 Burma Road
Oakland, CA 94607

February 21, 2008

Contract No. 04-0120L4
04-Ala-80-1.6/2.7
Oakland Touchdown
SFOBB-ESSSP

Attn: Mr. Greg Allen
Project Manager

Letter No. 05.03.01-000504

Subject: Response to MCM NOPC #4

Dear Mr. Allen,

We are in receipt of MCM Notice of Potential Claim #4 (NOPC#4) and find it to be without merit.

In your NOPC #4 you have stated "An unwarranted Notice of Suspension of Work was presented to MCM after supposedly minute amount of sediment entered the Bay even though open water excavation has been approved for this project."

This statement is not correct. Open water excavation was allowed under an approved dredging plan, which MCM elected not to submit. The excavation operations you are performing at the Piers, at your option, are performed under an approved "Inside Cofferdam Excavation Plan" which is an amendment to your SWPPP. Therefore, all requirements of the SWPPP apply to these operations, including the deployment of appropriate BMPs to prevent the discharge of sediments and other pollutants into the Bay or leaving the project limits.

Additionally, Section 500.3.1, page 500-3, fifth bullet from top of page, states: " Structural Excavation for Bridge Foundations. This will be performed inside sealed cofferdams. Type H and Class II materials will be immediately removed from the site and disposed of at a permitted receiving facility. Clean materials will be either removed from the site or stored in designated materials storage area."

You did not remove the Class II material at Piers 19L and 20L immediately from the site as stated in your approved SWPPP. Instead, you elected to store the material onsite without deploying appropriate BMPs and without amending your SWPPP. For excavated material at Pier 18L, you elected to store the excavated material onsite without deploying appropriate BMPs and without indicating a designated storage area on your Water Pollution Control Drawings, Attachment B, as stated in your approved SWPPP. As a result, your approved SWPPP did not reflect the actual field operations. This is a violation of the requirements of the permit and the contract.

Two of the three reportable sediment discharges (one on the trestle and one just north of your excavated material storage area) were due to inadequate implementation of appropriate BMPs that you were repeatedly asked to deploy.

The "Notice of Suspension of Work" issued by State Letter 473 was due to lack of implementation of appropriate BMPs necessary to prevent leakage from stockpiled excavated material which eventually caused tracking and/or discharge of sediment into the Bay. Caltrans stormwater inspectors perform their own parallel inspections and prepare their own inspection reports. The decision to suspend your excavation operations at 18L had no bearing on the inspection results by the Task Force and was based on findings by Caltrans stormwater inspectors and deficiencies documented by their reports and photographic evidence.

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Sincerely,

Ben Ghafghazi
Resident Engineer

file: 05.03.01
18.02, 18.09, 19.02