

ITEM: 21

SUBJECT: Waste Discharge Requirements General Order for Discharges of Waste Associated with Medicinal Cannabis Cultivation Activities

BOARD ACTION: *Consideration of Adoption of New General Order R5-2015-XXXX*

BACKGROUND: Cannabis cultivation in the Central Valley Region has increased exponentially in recent years, both in the number and the size of operations. Largely unregulated, cannabis cultivation and related activities are resulting in significant water quality impacts. The California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board) has serious concerns about the water quality impacts from cannabis cultivation activities, and has a non-delegable duty to enforce water quality laws.

The Central Valley Water Board is considering the adoption of Waste Discharge Requirements for Discharges of Waste Associated with Medicinal Cannabis Cultivation Activities (General Order) to reduce water quality impacts from cannabis cultivation activities on private lands while the Board either develops a more comprehensive regulatory program specific to cannabis cultivation or fully integrates cannabis cultivators into an existing regulatory program or programs. The proposed General Order will regulate discharges of waste from cannabis cultivation operations to waters of the state, which includes both surface and ground waters. The Central Valley Water Board does not in any way authorize, endorse, sanction, permit or approve the cultivation, use, or sale of cannabis/marijuana.

The proposed General Order uses Discharge Prohibitions and Best Management Practices to reduce and eliminate discharges of waste from medicinal cannabis cultivation activities to waters of the state. Central Valley Water Board staffs have developed a Best Management Practices Manual for Cannabis Cultivation which is part of the proposed General Order. Any Discharger required to enroll in the General Order is required to implement and monitor all applicable best management practices outlined in the Best Management Practices Manual.

Certain monitoring and reporting requirements also apply based on a site's threat to water quality, as determined by specific physical characteristics of their cultivation operations and proximity to wetlands or watercourses. Cultivation activities which occupy and/or disturb less than 1,000 square feet, have not been demonstrated to cause more than *de minimis* impacts to water quality and are therefore not required to obtain coverage under the proposed General Order.

ISSUES: The Marijuana Pilot Program directed resources to both the Central Valley and North Coast Water Boards for permitting, enforcement, education and outreach, and coordination with other agencies. Both regions have made significant efforts to develop a consistent approach in addressing each of these objectives. Permit development however, has in part been shaped by geopolitical differences between the two regions. Four such instances are outlined below:

1. Staffs have held a series of stakeholder meetings throughout the Central Valley Region during the public comment period. Feedback obtained from these meetings suggests general support for the proposed order from both the cultivation industry and participating

environmental groups. However, in some instances, county ordinances conflict with the proposed General Order; for example some local ordinances heavily restrict, or in some cases ban outdoor cultivation. In these cases, applicable county officials have expressed concern regarding these conflicts and have asked that the Board not enroll cultivators in the General Order, if it is adopted. In response, staff proposes that for now, County ordinances take primacy. These circumstances did not materialize during the North Coast Water Board's permit develop.

2. Both the Central Valley and North Coast Water Board permits use a tier structure to regulate discharges of waste from cultivation sites based on the size of the operation, physical characteristics, and proximity to water courses. More specifically, Tiers 1, 2, and 3 are used to reflect low, moderate, and elevated threats to water quality and allows for consistent fee application. However, the Central Valley and North Coast Water Board's use different criteria to classify an operation as Tier 1, 2, or 3.
3. Industry advocates have expressed interest in allowing for a coalition style, or third party, approach to regulating wastes discharged from cultivation sites. Central Valley and North Coast Water Board staff responded by developing permits that contain a third party option. Staff however, is unaware of any such groups within the Central Valley Region sophisticated enough to serve such a role. This is in contrast to the North Coast region, which is benefited by a well-organized and accepted cultivation community.
4. Finally, the Central Valley Water Board's proposed General Order only applies to "Medicinal Cannabis Cultivation" as allowed under State Proposition 215. The North Coast Water Board's Order does not provide such distinction.

RECOMMENDATION: Adopt the proposed order.
Mgmt. Review_____

Legal Review_____

1-2 October 2015
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