

**California Regional Water Quality Control Board
North Coast Region
Order No. R1-2011-0038**

Limited Term Amendment to NTMP Provisions of Order No. R1-2009-0038, Categorical Waiver of Waste Discharge Requirements for Discharges Related to Timber Harvest Activities on Non-Federal Lands in the North Coast Region

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

1. On June 4, 2009, the Regional Water Board adopted Order No. R1-2009-0038, Categorical Waiver of Waste Discharge Requirements for Discharges Related to Timber Harvest Activities on Non-Federal Lands in the North Coast Region (Timber Waiver).
2. The Timber Waiver includes conditions for controlling sediment discharges and temperature increases that also implement Total Maximum Daily Loads (TMDLs) in impaired waterbodies throughout the North Coast region. It includes updated and additional conditions for Non-industrial Timber Management Plans (NTMPs), including those that were previously enrolled under the Categorical Waiver, Order No. R1-2004-0016 (2004 Waiver).
3. Three petitions for review were filed with the State Water Resources Control Board by a landowner group, several non-governmental organizations, and the California Department of Forestry and Fire Protection (CAL FIRE). Petitioners' concerns included among other things, the specific NTMP conditions in the Timber Waiver, because such conditions allegedly impose unnecessary additional burdens on CAL FIRE and on NTMP landowners.
4. The Regional Water Board did not intend for the Timber Waiver to create unnecessary regulatory burdens on CAL FIRE or NTMP landowners, or to create conditions that are duplicative of adequately-protective Forest Practice Rules (FPRs). It was the Regional Water Board's intent to include NTMP conditions to accommodate site-specific circumstances and to provide regulatory consistency in areas where the FPRs provide adequate water quality protection.
5. The Timber Waiver was adopted prior to the California Board of Forestry and Fire Protection adoption of revisions to the FPRs referred to as the new Anadromous Salmonid Protection (ASP) rules, which went in effect January 2010.
6. At this time, it is uncertain as to how ASP rules are applied to existing NTMPs. To more fully understand the application of the new ASP rules, as well as other FPRs, to NTMPs, Regional Water Board staff are in the process of reviewing ASP protection levels as applied to all NTMPs in the North Coast to better inform the Regional Water Board for its regulatory actions in the future.

7. To allow appropriate review time, it is reasonable to temporarily suspend the (2009) NTMP Timber Waiver provisions to allow an inquiry into water quality protections provided for NTMPs by the FPRs, including the new ASP rules.
8. It is necessary for Regional Water Board staff to work with NTMP landowners, CAL FIRE and other interested parties to evaluate the adequacy of the existing FPRs and their effectiveness and implementation to achieve compliance for protecting water quality, particularly in areas designated as sediment and temperature impaired.
9. In the meantime, it is appropriate for the NTMP provisions from the 2004 Waiver to apply until February 1, 2012, after which time the 2009 NTMP Timber Waiver conditions will automatically become effective again, unless the Regional Water Board takes action to modify the conditions in the Waiver prior to that date.
10. The Regional Water Board retains all its authorities under the Water Code to address discharges of waste from NTMPs during this interim time period, including enforcement actions, requesting reports of waste discharge for individual sites, and authority to deny or terminate coverage under the Timber Waiver, as appropriate.
11. For the reasons stated above, a limited term amendment suspending the NTMP provisions of the 2009 Timber Waiver is in the public interest and consistent with the Water Quality Control Plan for the North Coast Region (Basin Plan).
12. In accordance with the California Environmental Quality Act (Public Resources Code section 21000 et seq.) (CEQA), the revision of a categorical waiver is a "project" and Regional Water Board is the lead agency responsible for approving that project. Section 15061(b)(3) of the CEQA Guidelines (section 15000 et seq of title 14 of the California Code of Regulations) allows a lead agency to find a project exempt from CEQA if "it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment." The limited term suspension of 2009 NTMP Timber Waiver provisions will not have any effect on the environment because the environmental baseline, against which the Regional Water Board considers the environmental impacts of a project includes the protections provided by the previous waiver. There is no possibility that the project will have a significant effect on the environment, and it is, therefore, exempt from CEQA.
13. The Regional Water Board has notified interested parties of its intent to amend the Categorical Waiver to temporarily suspend 2009 NTMP Timber Waiver provisions of the 2009 Timber Waiver and apply 2004 Waiver protections in the interim time period. The Regional Water Board, in a public meeting on March 24, 2011, heard and considered all comments pertaining to this amendment.

THEREFORE, IT IS HEREBY ORDERED, that

NTMP provisions in the Timber Waiver Order No. R1-2009-0038, including Section I(E), Section III, and application procedures contained in Section II as applicable to NTMPs are stayed until February 1, 2012. All other sections of the 2009 Timber Waiver remain unchanged.

In this interim time period, NTMP provisions from the 2004 Waiver (Order R1-2004-0016) shall apply: These temporary provisions are as follows:

Categorical Waivers E: Nonindustrial Timber Management Plan

In the case of NTMPs, the following eligibility criteria and conditions apply:

Eligibility Criteria:

1. Project is a Nonindustrial Timber Management Plan (NTMP) under the FPRs.
2. The NTMP has been approved by CAL FIRE.
3. No Non-Concurrence has been filed with CAL FIRE by Regional Water Board staff, which was not resolved prior to CAL FIRE's approval.

Conditions:

1. The Discharger and NTMP complies with the general waiver conditions set out in Section III(G) of the 2004 Waiver.
2. Dischargers shall incorporate into the approved NTMP or submit with each Notice of Timber Operations (NTO) an Erosion Control Plan as follows:

Erosion Control Plan

An Erosion Control Plan (ECP), as described below, shall be developed and implemented for the NTMP or the area covered by each NTO, including roads used for timber harvest activities owned by or under the control of the Discharger. The ECP shall be designed to prevent and minimize the discharge or threatened discharge of sediment from controllable sediment discharge sources into waters of the state to the degree necessary to avoid a violation of water quality requirements or other provisions of this Order. Sediment discharge sources include, but are not limited to, failing or failed watercourse crossings, road failures, road surfaces, landslides, unstable features discharging to or near watercourses, unstable watercourse banks, soil stockpiles, storage of waste, skid trails, landings, exposed harvest units, or any other location discharging waste or earthen materials. The ECP shall be amended and revised, when necessary, to meet this standard.

a. Contents of an ECP

- i. An inventory of all controllable sediment discharge sources within the NTMP or NTO area, and

- ii. A time schedule with each NTO for implementation of prevention and minimization management measures to address the inventoried controllable sediment discharge sources, and

b. Inventory and Treatment of Controllable Sediment Sources

The on-the-ground inventory of controllable sediment discharge sources will be used to identify the existing or threatened controllable sediment discharge sources, and provide a time schedule for implementation of prevention and minimization management measures. Any method or model used to develop the inventory shall be briefly described and shall be of demonstrated effectiveness and applicability for the specific sediment discharge sources to attain compliance with applicable water quality requirements. Site evaluations are required in preparing the inventories to fully assess on-the-ground conditions and to facilitate the detection of threatened or existing controllable sediment discharge sources. The inventory shall include:

- i. A brief description of the inventory method(s) and/or model(s) used,
- ii. A topographic map, at a scale of 1:12000 or greater (e.g. 1:6000) with no greater than 80' contours, showing the NTMP and/or NTO boundary and location of all inventoried controllable sediment discharge sources, and
- iii. An estimate of the sediment volume and the relative potential for sediment delivery from each inventoried site.

c. Implementation Schedule

Each NTO shall include an area-wide (i.e. the NTO area) time schedule for implementation of prevention and minimization management measures that will be used to guide corrective actions. Prevention and minimization management measures shall be of demonstrated effectiveness and applicability for the specific sediment discharge sources in the NTO area to achieve compliance with applicable water quality requirements. The time schedule must be during the time an individual NTO is active, and provide for timely implementation to prevent and minimize sediment discharge sites in the order of priority, unless an alternative time schedule is agreed to in writing by the Executive Officer. The time schedule will include:

- i. A narrative description of the site-specific prevention and minimization management measure(s) prescribed for each controllable sediment discharge source identified in the inventory, and
- ii. A schedule for implementing prevention and minimization management measures for controllable sediment discharge sources. The priority shall be based on the volume of sediment and threat to water quality, with the highest priority assigned to the largest sediment discharge sources that discharge to waters that support domestic water supplies or fish.

Application Procedures

To seek coverage for new NTMPs, Discharger shall file a Certification Notice with the Regional Water Board. The Certification Notice shall be signed by the Discharger and shall state that the Discharger understands and intends to comply with all water quality requirements and the eligibility criteria and conditions, specific and general, of Categorical Waiver E. Unless otherwise specified by the Regional Water Board, timber harvest activities may commence no sooner than fourteen (14) days after Regional Water Board receipt of the Certification. Pursuant to 2004 Waiver, general condition 11, Discharger must submit a Notice of Timber Operations (NTO) to the Regional Water Board at least five (5) days prior to commencement of timber harvest activities. The Regional Board Executive Officer will notify the Discharger in writing if coverage under the categorical waiver is determined to be inappropriate.

NTMPs Previously Waived Under Order No. R1-2003-0116

NTMPs approved by CAL FIRE pursuant to the FPRs that were previously waived under Order No. R1-2003-0116 can be covered under this Order. Such NTMPs must not be the subject of an unresolved water quality issue or non-concurrence filed by Regional Water Board staff, and must comply with the general conditions set forth in Section III(G) of the 2004 Waiver. These NTMPs need not comply with application procedures for new NTMPs. Pursuant to 2004 Waiver, general condition 11, Discharger must submit a Notice of Timber Operations (NTO) to the Regional Water Board at least five (5) days prior to commencement of timber harvest activities.

Certification

I, Catherine Kuhlman, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a Resolution adopted by the California Regional Water Quality Control Board, North Coast Region, on March 24, 2011.

Catherine Kuhlman
Executive Officer