

Regional Water Quality Control Board
North Coast Region

Executive Officer's Summary Report
Wednesday, March 8, 2017
Fortuna City Council Chambers
Fortuna, California

ITEM: 3

SUBJECT: Resolution No. R1-2017-0012 Clarifying the North Coast Regional Water Board's Position on the Public Nature of Documents Held or Maintained by Approved Third Party Programs Associated with *Waiver of Waste Discharge Requirements and General Water Quality Certification and Monitoring and Reporting Program for Discharges of Waste Resulting from Cannabis Cultivation and Associated Activities or Operations with Similar Environmental Effects in the North Coast Region* (Order No. R1-2015-0023).

BOARD ACTION: The Board will consider adoption of Resolution No. R1-2017-0012

BACKGROUND: The Regional Water Board adopted *Waiver of Waste Discharge Requirements and General Water Quality Certification and Monitoring and Reporting Program for Discharges of Waste Resulting from Cannabis Cultivation and Associated Activities or Operations with Similar Environmental Effects in the North Coast Region* (Order No. R1-2015-0023 or "Order") on August 13, 2015, as California's first regional water quality regulatory order to prevent and address poor water quality conditions and adverse impacts to water resources associated with cannabis cultivation on private land.

The Order requires any landowners, operators, lessees, tenants and occupiers (hereinafter referred to as "Dischargers") of any private property where there is 2,000 square feet or more of cannabis cultivation to enroll for coverage under the Order. Dischargers fall within one of three enrollment tiers depending on the nature of their operation and risk to water quality. Tier 1 and 2 Dischargers have the option to enroll, participate and comply with this Order through an approved, third party program. The Regional Water Board currently has four approved third party programs with approximately 650 Dischargers enrolled through these third party programs.

The Order leaves undefined whether relevant documents developed, received, or maintained by third parties as part of enrolling a Discharger under the Order or tracking and assessing compliance with the Order are considered public documents available for public review and disclosure. The Order requires third party programs to provide those documents upon Regional Water Board request. The current approved third party programs all utilize a unique identifier to enroll a Discharger into the California Integrated Water Quality System (CIWQS) database. Thus, unless specifically requested, the Regional Water Board does not receive individually identifiable information for Dischargers who enrolled through third party programs.

DISCUSSION: The regulatory landscape for cannabis cultivation in California has changed rapidly since the Regional Water Board's adoption of the Order. The passing of the Medical Cannabis Regulation and Safety Act in 2015 and the Adult Use of Marijuana Act in 2016 have clarified the legality of cannabis cultivation in California and have initiated a rapid

rulemaking process leading to public licensing of cannabis cultivations by January 1, 2018. Additionally, recent legal developments involving the State Water Board and other Regional Water Quality Control Boards supports the need for the Regional Water Board to require public disclosure of third party program documents. Public disclosure of third party program documents, among other things, furthers Regional Water Board transparency and accountability in its administration of the Order, and allows for public feedback on the effectiveness of the Order.

This proposed Resolution clarifies the Regional Water Board's position on the public nature of documents held or maintained by approved third party programs associated with Order No. R1-2015-0023 as well as provides direction to third parties regarding submittal of enrollment documents. There are three main points to the resolution:

- A clarification that the Regional Water Board considers all relevant documents required by Order R1-2015-0023 held by approved third party programs as public documents; and
- A directive that all future approved third party programs be required to automatically submit the Notice of Intent to Enroll to the Regional Water Board as part of a Discharger's enrollment; and
- A directive that all currently approved third party programs modify their procedures to begin automatically submitting the Notice of Intent to Enroll to the Regional Water Board as part of a Discharger's enrollment on or before June 1, 2017.

RECOMMENDATION: Adopt Resolution No. R1-2017-0012, as proposed.

SUPPORTING DOCUMENTS:

1. Proposed Resolution No. R1-2017-0012
2. Order No. 2015-0023:
http://www.waterboards.ca.gov/northcoast/board_decisions/adopted_orders/pdf/2015/15_0023_Cannabis_Order.pdf