
Central Coast Regional Water Quality Control Board

IRRIGATED LANDS REGULATORY PROGRAM

RESOURCES FOR GROWERS RESPONSIBLE PARTIES: LANDOWNER AND OPERATOR Updated October 31, 2013

One of the most common questions about the Agricultural Order (Order) R3-2012-0011 is: Who is responsible for compliance with the Order, the landowner or the operator? The answer is BOTH.

Landowner and Operator Responsibility

Dischargers are responsible for complying with the conditions of the Order. As identified in the Order (page 7, Finding #24), both landowners and operators are considered dischargers of irrigated lands on or from which there are discharges of waste that could affect the quality of any surface water or groundwater. The Central Coast Water Board will hold both the landowner and the operator liable for noncompliance with the Order.

To ensure that landowners are fully aware of the Order and activities on their land, the enrollee (landowner or operator) must submit a statement of understanding of the conditions of the Order and Monitoring and Reporting Program signed with the electronic Notice of Intent (eNOI) submittal. If the operator signs and submits the electronic NOI, the operator must provide a copy of the completed eNOI form to the landowner(s). In cases where an operator may be operating less than 12 months, the Order requires the landowner to submit the eNOI.

It is important that landowners and operators communicate with each other regarding compliance with the Order. In some cases, landowners and operators choose to document responsibility in lease agreements. Although some operators may lease land for long periods of time, many operators are transient, short-term tenants. In many cases, the operator has more direct control of the farming operations and management practices implemented to protect water quality. Conversely, landowners may have more control over permanent infrastructure such as groundwater well construction. Issues can arise if the landowner is absent and takes little interest in ensuring that the tenants comply with applicable requirements. Issues can also arise if the tenant is not cooperative in providing the landowner with information regarding their compliance.

In cases of noncompliance, both the landowner and operator are accountable for resolving any issues. Central Coast Water Board staff typically interacts primarily with the operator and the operator is typically the primary contact on the eNOI. Thus, staff works first with operators to resolve compliance issues. However, when the Central Coast Water Board finds an operation in violation of the requirements of the Order, the landowner is included in related correspondence. Additionally, landowners and other interested parties can request information about compliance of a particular operation from the Central Coast Water Board at any time using a Public Records Act (PRA) request.

Water Board Policy

State Water Board and Regional Water Boards have a long policy of naming both landowners and operators/lessees in waste discharge requirements. That policy was affirmed in a May 8, 1987 Memorandum from William R. Attwater, Chief Counsel, to Regional Board Executive Offices entitled "Inclusion of Landowners in Water Discharge Requirements and Enforcement Orders"

The memorandum noted that there were several basic principles for naming landowners: 1) anyone who owns land on which a discharge is occurring is a discharger under Porter-Cologne; 2) any discharger can be named in waste discharge requirements and made generally responsible for what goes on with regard to the property; and 3) enforcement orders can be issued to a landowner only if the cleanup involves something about which the landowner knew or should have known and over which he or she had some measure of control. In a petition of South California Edison Company (Southern California Edison Company, WQ 86-11, pg. 2-3; see also In the Matter of the Petition of Zoecon Corporation, WQ 86-2), the State Water Board again affirmed the right of the Regional Water Boards to name landowners in waste discharge permits, noting that there are several reasons to justify inclusion of a landowner in waste discharge requirements. Those reasons include the existence of nuisance conditions on the leased premises at the time the lease is made or renewed or the creation by the tenant of dangerous conditions on the premises of which the landlord has actual knowledge or the ability to abate may serve as bases for imposing liability on the landlord. Additionally, inclusion of the landlord in requirements serves to put the landlord on notice of the tenant's activities and will help to insure access to the site.

Stay Informed

It is essential that landowners and operators enrolled in the Agricultural Order keep the contact information in the eNOI up-to-date, so that the Water Board can contact the proper individuals regarding farm-specific compliance issues. In addition, to stay informed about the general status of the Agricultural Order, we recommend that owners and operators also subscribe to the Agricultural Discharges electronic mailing list at:

http://www.waterboards.ca.gov/resources/email_subscriptions/reg3_subscribe.shtml.

For more information about the Agricultural Regulatory Program, including additional resources and guidance for landowners and operators, please visit the Water Board's Internet site at:

http://www.waterboards.ca.gov/centralcoast/water_issues/programs/ag_waivers/index.shtml

If you have questions regarding the Agricultural Regulatory Program or need additional assistance, please contact the Water Board at (805) 549-3147.