

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LAHONTAN REGION**

CEASE AND DESIST ORDER NO. R6T-2011-0022

**REQUIRING THE UNITED STATES FOREST SERVICE – LASSEN NATIONAL
FOREST TO CEASE AND DESIST FROM DISCHARGING WASTE IN VIOLATION OF
BOARD ORDER NO. R6T-2010-0056 AND THAT THREATENS TO VIOLATE A
WASTE DISCHARGE PROHIBITION,
EAGLE LAKE WASTEWATER FACILITY, EAGLE LAKE BASIN,
WDID NO. 6A188505700**

____Lassen County____

The California Regional Water Quality Control Board, Lahontan Region (Water Board) finds:

1. The United States Department of Agriculture, United States Forest Service, Lassen National Forest (Discharger) owns and operates the Eagle Lake Wastewater Facility (Facility), located approximately two miles from the south shore of Eagle Lake in Lassen County.
2. The Facility is owned and operated by the Discharger on property owned by the Discharger. The Facility, in part, includes two lined primary wastewater ponds¹ and three lined evaporation ponds. The evaporation ponds, Primary Pond No. 2, and the sides of Primary Pond No. 1 are lined with a single, 36-mil hypalon membrane liner. The Facility has received up to 2.6 million gallons (annually) of wastewater from campgrounds, picnic areas, a marina, and a children's camp located near and on the south shore of Eagle Lake.

The Facility has been subject to waste discharge requirements prescribed by Board Order No. 6-94-94. Board Order No. 6-94-94 authorizes the discharge of up to 2,826,510 gallons of wastewater to the Facility during any 12-month period.

3. On November 16, 2010, the Water Board adopted Board Order No. R6T-2010-0056 for the Facility. Board Order No. R6T-2010-0056 rescinds Board Order No. 6-94-94 and prescribes revised waste discharge requirements for the Facility. The revised waste discharge requirements regulate ongoing Facility operations. Board Order No. R6T-2010-0056 also identifies reports the Discharger must submit to demonstrate that future evaporation pond improvements (e.g., new liners, new evaporation ponds, new evaporation pond configuration) comply with applicable California Code of Regulations (CCR) title 27 requirements.

¹ It has been determined that the bottom of Primary Pond No. 1 does not have a synthetic liner.

4. Board Order No. 6-94-94 contains the following General Requirements and Prohibitions:
 - I.C.1. "Any discharge from the Facility with other than a zero discharge of nutrients to surface waters or ground waters in the Eagle Lake basin is prohibited."
 - I.C.8. "The integrity of pond liners shall be maintained throughout the life of the ponds and shall not be diminished as the result of any maintenance or cleaning operation."
5. Board Order No. R6T-2010-0056 contains the following Requirements and Prohibition, in pertinent part:
 - I.C.1. "The disposal ponds used for evaporating wastewater must meet all applicable design requirements in CCR title 27 for Class II surface impoundments as cited in Finding No. 19 of this Order."
 - I.C.2. "The integrity of any pond liner must be maintained and must not be diminished as the result of any maintenance or cleaning operation."
 - I.D.1. "The discharge of wastes containing nutrients from the Facility to surface waters or ground waters in the Eagle Lake Basin is prohibited."
6. The *Water Quality Control Plan for the Lahontan Region* (Basin Plan) contains the following waste discharge prohibition:

"The discharge of wastes containing nutrients from the wastewater treatment facility on lands administered by the U.S. Forest Service, Lassen National Forest, to surface waters or ground waters in the Eagle Lake basin is prohibited."
7. Water Board staff has inspected the Facility and observed numerous holes in the evaporation ponds' liners. Staff has also observed separating liner patches and liner seams during its Facility inspections.² Additionally, Water Board staff has received photographs from a local citizen, showing holes in the evaporation ponds' liners above the water level, and patches and seams separating above and below the evaporation ponds' water level.³
8. On October 1, 2008, the Water Board issued a Water Code section 13267 Investigative Order requiring, in part, submission of a Wastewater Pond Inspection and Corrective Action Report.

² The liner conditions were observed by Water Board staff during its Facility inspections on May 23, 2007, September 18, 2007, August 11, 2008, and May 1, 2009.

³ Water Board staff has received complaints providing photographs of the evaporation ponds' liners on April 24, 2009 and August 24, 2009.

9. On October 5, 2009, Water Board staff received a copy of a report providing the results of leak location surveying performed on the evaporation ponds and the primary ponds on September 22-25, 2009. The leak location survey, performed by Leak Location Services, Inc (LLSI) for the Discharger, provided the following results:
 - Evaporation Pond No. 1 - 16 leaks
 - Evaporation Pond No. 2 - 32 leaks
 - Evaporation Pond No. 3 - Not tested due to empty condition
 - Primary Pond No. 1 - No leaks were detected in the geomembrane liner covering the pond's side slopes. However, the results should be considered inconclusive due to the high potential for interference with the testing method suspected to be caused by the pond's clay bottom.
 - Primary Pond No. 2 - 16 leaks
10. The Discharger had already been developing plans and pursuing funding for, at a minimum, a liner-replacement project prior to receiving the leak location survey report. The Discharger has and continues to consult and coordinate with Water Board staff during its project development process. The Discharger has evaluated several project alternatives and implementation schedules.
11. On March 10, 2010, the Discharger filed a Decision Notice and Finding of No Significant Impact identifying the Discharger's preferred alternative for addressing the deteriorated pond liners. Since then, the Discharger has awarded a design/build contract and has obtained full funding for implementing its preferred alternative over an approximately two-and-a-half-year period.
12. The Discharger's preferred alternative includes:
 - Constructing a sludge dewatering/drying facility.
 - Relocating Primary Pond No. 2.
 - Constructing a new evaporation pond (Pond No. 4).
 - Modifying the Facility's plumbing so that all of the evaporation ponds can be operated in coordination with each other and independently of each other.
 - Lining Primary Ponds No. 1 and No. 2.
 - Constructing/reconstructing all four evaporation ponds to be California Code of Regulations title 27-compliant.
13. On November 16, 2010, the Discharger submitted a Design Report, dated November 15, 2010, for its preferred alternative. The Design Report, in part, included preliminary design plans, and a project schedule. The project schedule tentatively shows the sludge dewatering/drying facilities, Primary Pond No. 2, and Evaporation Pond No. 4 being constructed during the 2011 construction season. The remaining project elements (Primary Pond No. 1, Evaporation Ponds No. 1, No. 2 and No. 3) being completed during the 2012 construction season. The Discharger

has the goal of being able to place all wastewater generated during the 2012 season in newly constructed/newly lined facilities.

14. Based upon the conditions cited in Finding No. 2, above, the Facility's evaporation ponds used for wastewater disposal do not meet CCR title 27 requirements for Class 2 surface impoundments. Based upon the conditions cited in Findings No. 7 and No. 9, above, the integrity of the Facility's pond liners has been compromised. Such conditions constitute violations of Board Order No. 6-94-94, Requirement No. I.C.8 (see Finding No. 4, above), and of Board Order No. R6T-2010-0056, Requirements No. I.C.1 and No. I.C.2 (see Finding No. 5, above).
15. The liner conditions described in Findings No. 7 and No. 9 also allow wastewater containing nutrients (e.g., nitrogen species) to be discharged from the primary ponds and evaporation ponds to the underlying soils, and potentially to the groundwater. Pond underdrain and vadose zone monitoring have and continue to produce water samples containing nutrients, as shown in Attachment B of this Order. Recent shallow groundwater monitoring results provided in Attachment C of this Order also document that groundwater is within 20 feet of the ground surface in close proximity to the evaporation ponds.
16. The combination of the conditions described in Finding No. 15, above, represent, at a minimum, the Discharger threatening to discharge waste in violation of Board Order No. 6-94-94, Requirement No. I.C.1 (see Finding No. 4, above), Board Order No. R6T-2010-0056, Requirement No. I.D.1 (see Finding No. 5, above), and the Basin Plan prohibition, as described in Finding No. 6, above.
17. Water Code section 13301 states:

“When a Regional Board finds that a discharge of waste is taking place, or threatening to take place, in violation of requirements or discharge prohibitions prescribed by the regional board or the state board, the [regional] board may issue an order to cease and desist and direct that those persons not complying with the requirements or discharge prohibitions (a) comply forthwith, (b) comply in accordance with a time schedule set by the [regional] board, or (c) in the event of a threatened violation, take appropriate remedial or preventive action.”
18. As noted in Finding No. 14, above, the Discharger has and continues to discharge waste in violation of waste discharge requirements specified by Board Order No. 6-94-94 and Board Order No. R6T-2010-0056, respectively. Therefore, the Water Board is authorized to issue a Cease and Desist Order for the discharge pursuant to Water Code section 13301.
19. As noted in Finding No. 15, above, the Discharger has and continues to threaten discharging waste in violation of waste discharge requirements specified by Board Order No. 6-94-94 and Board Order No. R6T-2010-0056, respectively. Additionally,

the Discharger has and continues to threaten discharging waste in violation of the Basin Plan prohibition described in Finding No. 6, above. Therefore, the Water Board is authorized to issue a Cease and Desist Order for the threatened discharge pursuant to Water Code section 13301.

20. Water Code section 13267, subdivision (b) states:

“In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge, waste outside of its region that could affect the quality of the waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring these reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.”

21. The technical reports required by this Order are necessary to assess the extent of water quality impacts associated with the above-referenced violations and threatened violations. Additionally, the technical reports are required to monitor the Discharger’s progress towards complying with Board Order No. R6T-2010-0056 and the Basin Plan prohibition described in Findings No. 5 and No. 6 of this Order, respectively. Finally, the technical reports are necessary to monitor compliance with the requirements of this Cease and Desist Order. The burden, including costs, of the reports required by this Order bear a reasonable relationship to the need for the reports and the benefits to be obtained therefrom.

22. The Water Board notified the Discharger and interested persons of its intent to consider adoption of this Cease and Desist Order, and provided an opportunity to submit written comments and appear at a public hearing. The Water Board, in a public hearing, heard and considered all comments.

THEREFORE, IT IS HEREBY ORDERED that, pursuant to Water Code sections 13301 and 13267, the Discharger shall cease and desist from discharging wastes in violation of Board Order No. R6T-2010-0056 and threatening to violate the Basin Plan prohibition described in Finding No. 6, above, and comply with the other provisions of this Order.

I. **ORDERS**

- A. The Discharger must provide to the Water Board the following technical reports by **5:00 p.m. on the specified due dates, below.**

<u>Report</u>	<u>Date</u>
Updated Project Schedule	May 13, 2011
Soil and Groundwater Investigation Work Plan	June 17, 2011
Soil and Groundwater Investigation Report	December 30, 2011
Quarterly Status Reports	As Described Below

1. The **Updated Project Schedule** must, at a minimum, include the following information:
 - a. An update of the Project Schedule provided in the November 15, 2010, Design Report. The updated project schedule will continue to identify **December 31, 2012** as the date in which the Discharger must comply with all requirements of Board Order No. R6T-2010-0056 and cease threatening to discharge waste in violation of the Basin Plan prohibition described in Finding No. 6, above.
 - b. An explanation for any revisions of major project elements (including but not limited to, primary ponds, sludge dewatering/drying facility, evaporation ponds), their primary tasks/activities (including but not limited to, design plan development, permitting, mobilization, construction activities, site winterization, permanent BMP implementation/site stabilization, project completion, and available for use), and their associated scheduled beginning and completion dates, made to the Project Schedule provided in the November 15, 2010, Design Report.
2. The **Soil and Groundwater Investigation Work Plan** must, at a minimum, include the following information:
 - a. A description of plans to collect data necessary to adequately describe the stratigraphy of soils surrounding the Facility, and any soils or other geological features which may affect groundwater movement and aquifer location(s).
 - b. Proposed locations for soil investigation points (e.g. borings) with justification for each location.

- c. A description of plans to collect data necessary to determine the concentrations of the constituents of concern in first-encountered groundwater up-gradient and down-gradient of the Facility. Constituents of concern include nitrate as N, total Kjeldahl nitrogen, total nitrogen, pH, total dissolved solids, chlorides, total coliform, and fecal coliform.
 - d. A description of plans necessary to determine groundwater elevations, groundwater gradient, and groundwater flow direction of first-encountered groundwater.
 - e. A sampling and analysis plan that includes the quality assurance and quality control procedures necessary to ensure valid and representative data is obtained and reported. The sampling and analysis plan must also include procedures/methods that provide data that satisfies the reporting limits for the constituents of concern provided in Attachment D of this Order.
 - f. Proposed locations and designs for a minimum of three groundwater monitoring wells with justification for each location. Groundwater monitoring wells should be located to investigate any impacts caused by the current Facility, in addition to, potentially serving as long-term monitoring wells once Facility upgrades have been completed.
 - g. A schedule for implementing the work plan that results in submittal of the Soil and Groundwater Investigation Report by **December 30, 2011**.
 - h. Signature, stamp, and contact information for the California-licensed Professional Geologist or Professional Engineer acting in responsible charge for the content of the work plan.
3. The **Soil and Groundwater Investigation Report** must, at a minimum, include the following information:
- a. The results of the soil investigation including tabulated and graphical presentation of the subsurface stratigraphy, borehole logs, and maps of appropriate scale illustrating/depicting boring and well locations.
 - b. An analysis of the Facility's hydrogeologic conditions at and immediately surrounding the Facility, based upon the data collected during the investigation and data/information gathered during prior geotechnical investigations. The analysis must also include an estimated percolation rate for the soils surrounding the ponds.

- c. The results of groundwater sampling, including tabulated presentation of analytical data, laboratory reports, and quality assurance/quality control documentation.
 - d. A description of **first-encountered groundwater** quality up-gradient and down-gradient of the Facility with maps of appropriate scale illustrating/depicting the analytical results for each constituent of concern, groundwater elevations, and the direction of groundwater flow beneath the Facility.
 - e. An analysis of the Facility's impacts upon groundwater quality, based upon the data collected during the investigation, and any other data/information collected during previous investigations. The analysis must also include recommendations for additional investigation activities necessary to determine the full extent of the Facility's impacts on groundwater quality.
 - f. Signature, stamp, and contact information for the California-licensed Professional Geologist or Professional Engineer acting in responsible charge for the content of the report.
4. The **Quarterly Status Reports** must, at a minimum, include the following information:
- a. Progress made towards final compliance during the quarter. This information must, at a minimum, identify and describe the specific activities that were implemented/performed during the quarter. This information can be provided in a narrative and/or table format.
 - b. An updated Project Schedule showing beginning and completion dates for primary tasks/activities for all major project elements.
 - c. Identification of primary task/activities whose scheduled beginning and/or completion dates have been revised during the quarter, and an explanation for revising the date(s).
 - d. A budget summary identifying budgeted funds, total costs/payments as of the end of each quarter, percent of budgeted funds spent as of the end of each quarter, and estimated costs of remaining activities, for all major project elements. The budget summary must also identify (e.g., change order title and purpose) any change orders submitted by the contractor(s), the requested costs associated with each change order, and the status of each change order (e.g., submitted, under USFS review, accepted, rejected).

Quarterly Status Reports must be provided to the Water Board by **5:00 p.m. on the following dates:**

<u>Monitoring Period</u>	<u>Quarterly Status Report Due Dates</u>
January – March	May 1 st
April – June	August 1 st
July – September	November 1 st
October – December	February 1 st

The first Quarterly Status Report is due **August 1, 2011** for the April – June 2011 monitoring period.

- B. By **11:59 p.m. on December 31, 2012**, the Discharger must comply with all requirements of Board Order No. R6T-2010-0056 and cease threatening to discharge waste in violation of the Basin Plan prohibition described in Finding No. 6, above.

II. REPORTING REQUIREMENTS

- A. **Signatory Requirements.** All reports required under this Cease and Desist Order shall be signed and certified by the Discharger or by a duly authorized representative of the Discharger and submitted to the Water Board. A person is a duly authorized representative of the Discharger only if: (1) the authorization is made in writing by the Discharger and (2) the authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity. A duly authorized representative may thus be either a named individual or any individual occupying a named position.
- B. **Certification.** Include the following signed certification with all reports submitted pursuant to this Order:

“I certify under penalty of perjury under the laws of the State of California that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information submitted, the document and all attachments are, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

- C. **Report Submittals.** All monitoring and technical reports required under this Order shall be submitted to:

California Regional Water Quality Control Board-Lahontan Region
2501 South Lake Tahoe Blvd.
South Lake Tahoe, CA 96150

III. **NOTIFICATIONS:**

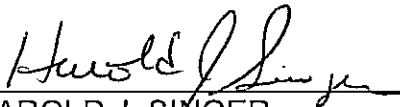
- A. **Technical Reports Ordered Pursuant to California Water Code Section 13267.** The Water Board is ordering the submission of technical reports identified by this Cease and Desist Order pursuant to Water Code section 13267. A fact sheet containing information regarding submittal of technical reports pursuant to Water Code section 13267 is provided in Attachment E of this Order.
- B. **California Environmental Quality Act (CEQA) Compliance.** Issuance of this Order is an enforcement action taken by a regulatory agency and is exempt from the provisions of the California Environmental Quality Act (CEQA) (Public Resources Code, section 21000 et seq.) pursuant to California Code of Regulations, chapter 3, title 14, section 15321 subdivision (a)(2).

Additionally, the Water Board, acting as CEQA Lead Agency, prepared and circulated a Mitigated Negative Declaration (MND) for the Eagle Lake Sewage Ponds Project (SCH #2009122076), which is defined in Finding No. 13 of this Order. The Water Board certified the MND for the Eagle Lake Sewage Ponds Project on August 26, 2010, in association with a Clean Water Act section 401 water quality certification order for constructing a fence around the Facility, and thereafter filed a Notice of Determination with the State Clearinghouse.

- C. **Requesting Administrative Review by the State Water Board.** Any person aggrieved by an action of the Water Board that is subject to review as set forth in Water Code section 13320, subdivision (a), may petition the State Water Resources Control Board (State Water Board) to review the action. Any petition must be made in accordance with Water Code section 13320 and California Code of Regulations, title 23, section 2050 and following. The State Water Board must receive the petition within 30 days of the date the action was taken, except that if the thirtieth day following the date the action was taken falls on a Saturday, Sunday, or state holiday, then the State Water Board must receive the petition by 5:00 p.m. on the next business day. Copies of the law and regulation applicable to filing petitions may be found on the internet at: <http://www.waterboards.ca.gov/publicnotices/petitions/waterquality> or will be provided upon request.

- D. **Request for Extension of Time.** If for any reason, the Discharger is unable to comply with the requirements and schedule set forth in Sections I.A and I.B, above, the Discharger may request, in writing, an extension of the time specified. The extension request shall include justification for the delay. An extension may be granted only by amendment to this Order by action of the Water Board. Any modifications to this Order will be in writing and provided to the Discharger.
- E. **Enforcement Notification.** Failure to comply with the terms or conditions of this Cease and Desist Order may result in additional enforcement action, which may include the issuance of a Time Schedule Order with stipulated penalties pursuant to California Water Code section 13308 for up to \$5,000 a day for each violation⁴; and/or section 13268 for up to \$1,000 a day for each violation, or referral to the Attorney General of the State of California for injunctive relief or civil or criminal liability. The Water Board retains all of its enforcement rights.

I, Harold J. Singer, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Lahontan Region on April 13, 2011.



HAROLD J. SINGER
EXECUTIVE OFFICER

Attachment A: Vicinity Map

Attachment B: Table No. 1 – Eagle Lake Wastewater Facility Underdrain and Vadose Zone Monitoring Results

Attachment C: Table No. 2 – Eagle Lake Wastewater Facility Shallow Groundwater Monitoring Results

Attachment D: Table No. 3 – Reporting Limits for Constituents of Concern

Attachment E: California Water Code Section 13267 Fact Sheet

⁴ Violations of Order No. I.B of this Order, occurring after the Time Schedule Order is issued, are subject to stipulated penalties of up to \$5,000 per day for each violation. Violations of Order No. I.A of this Order, occurring after the Time Schedule Order is issued, are subject to stipulated penalties of up to \$1,000 per day for each violation.

Attachment A Vicinity Map



Attachment B

Table No. 1 - Eagle Lake Wastewater Facility Underdrain and Vadose Zone Monitoring Results

2009 Monitoring Results

Monitoring Location	U.G. Drain Evaporation North #	U.G. Evaporation South #3	U.G. Drain Primary Pond North	U.G. Drain Primary Pond South	U.G. Drain Composite	UG Drain Composite
Date	6/9/2009	6/9/2009	6/9/2009	6/9/2009	8/11/2009	10/13/2009
Parameter						
Nitrate as NO ₃ (mg/L)	10.5	1.8	2.2	<0.4	18.3	1.4
Nitrite (mg/L)	<0.3	<0.3	<0.3	<0.3	<0.3	<0.3
Nitrogen, Total (as N) (mg/L)	2	<1	<1	<1	6	<1
Nitrate + Nitrite (as N) (mg/L)	2.4	0.4	0.5	<0.1	4.1	0.3
Kjeldahl Nitrogen (mg/L)	<1	<1	<1	<1	2	<1

2010 Monitoring Results

Monitoring Location	U.G. Drain Evaporation #3 North	U.G. Drain Evaporation #3 South	U.G. Drain Primary Pond North	U.G. Drain Primary Pond #2 So.	Lysimeter #3
Date	6/8/2010	6/8/2010	6/8/2010	6/8/2010	6/8/2010
Parameter					
Nitrate as NO ₃ (mg/L)	9.1	4.6	1.1	<0.4	73.6
Nitrite (mg/L)	<0.3	<0.3	<0.3	<0.3	<0.3
Nitrogen, Total (as N) (mg/L)	2	1	<1	<1	17
Nitrate + Nitrite (as N) (mg/L)	2.1	1.0	0.3	<0.1	16.6
Kjeldahl Nitrogen (mg/L)	<1	<1	<1	<1	<1

Attachment C

Table No. 2 - Eagle Lake Wastewater Facility Shallow Groundwater Monitoring Results

Monitoring Well MW-4	Sample Dates and Times				
Parameter (units)	11/10/2009, 1:00 p.m. ¹	11/11/2009, 8:30 a.m.	11/11/2009, 9:00 a.m.	5/20/2010, 10:30 a.m.	5/20/2010, 10:45 a.m.
Depth to Groundwater (feet below ground surface)	16.47	Not Measured	Not Measured	2.96 TOC	Not Measured
Temperature (°C)	15.2		15.2	19.3	20.0
pH (pH Units)	8.04		8.03	7.86	7.90
Chloride (mg/L)	230 ²		240 ²	32	32
Total Dissolved Solids (mg/L)	640 ²		700 ²	160	170
Nitrate as N (mg/L)	5.1		5.5	4.4	4.4
Kjeldahl Nitrogen (mg/L)	0.8		0.7	<0.1	<0.1
Total Nitrogen as N (mg/L)	5.9		6.2	4.4	4.4
Total Coliform MFC (colony forming units/100mL)		480,000 ²	760,000 ²	<1,000	<1,000
Fecal Coliform MFC (colony forming units/100 mL)		<10	<10	<2	<2

¹Sample was of water collected during the well purging process. The volume purged was equivalent to approximately one bore volume.

²High levels are attributed to incomplete monitoring well purging and presence of surface soils introduced during drilling operations.

Attachment D

Table No. 3 - Reporting Limits for Constituents of Concern

Constituent	Reporting Limit
Nitrate (as N)	0.5 mg/L
Total Kjeldahl Nitrogen	0.2 mg/L
Total Nitrogen	0.1 mg/L
pH	0.1 pH units
Total Dissolved Solids	10 mg/L
Chloride	0.5 mg/L
Total Coliform	1 colony forming unit/100ml
Fecal Coliform	1 colony forming unit/100ml

Attachment E

Fact Sheet – Requirements for Submitting Technical Reports Under Section 13267 of the California Water Code

October 8, 2008

What does it mean when the regional water board requires a technical report?

Section 13267¹ of the California Water Code provides that "...the regional board may require that any person who has discharged, discharges, or who is suspected of having discharged...waste that could affect the quality of waters...shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires".

This requirement for a technical report seems to mean that I am guilty of something, or at least responsible for cleaning something up. What if that is not so?

Providing the required information in a technical report is not an admission of guilt or responsibility. However, the information provided can be used by the regional water board to clarify whether a given party has responsibility.

Are there limits to what the regional water board can ask for?

Yes. The information required must relate to an actual or suspected discharge of waste, and the burden of compliance must bear a reasonable relationship to the need for the report and the benefits obtained. The regional water board is required to explain the reasons for its request.

What if I can provide the information, but not by the date specified?

A time extension can be given for good cause. Your request should be submitted in writing, giving reasons. A request for a time extension should be made as soon as it is apparent that additional time will be needed and preferably before the due date for the information.

Are there penalties if I don't comply?

Depending on the situation, the regional water board can impose a fine of up to \$1,000 per day, and a court can impose fines of up to \$25,000 per day as well as criminal penalties. A person who submits false information is guilty of a misdemeanor and may be fined as well.

What if I disagree with the 13267 requirement and the regional water board staff will not change the requirement and/or date to comply?

Any person aggrieved by this action of the Regional Water Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must *receive* the petition by 5:00 p.m., 30 days after the date of the Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at:

http://www.waterboards.ca.gov/public_notices/petitions/water_quality or will be provided upon request.

Claim of Copyright or other Protection

Any and all reports and other documents submitted to the Regional Board pursuant to this request will need to be copied for some or all of the following reasons: 1) normal internal use of the document, including staff copies, record copies, copies for Board members and agenda packets, 2) any further proceedings of the Regional Board and the State Water Resources Control Board, 3) any court proceeding that may involve the document, and 4) any copies requested by members of the public pursuant to the Public Records Act or other legal proceeding.

If the discharger or its contractor claims any copyright or other protection, the submittal must include a notice, and the notice will accompany all documents copied for the reasons stated above. If copyright protection for a submitted document is claimed, failure to expressly grant permission for the copying stated above will render the document unusable for the Regional Board's purposes, and will result in the document being returned to the discharger as if the task had not been completed.

If I have more questions, who do I ask?

Requirements for technical reports normally indicate the name, telephone number, and email address of the regional water board staff person involved at the end of the letter.

¹ All code sections referenced herein can be found by going to www.leginfo.ca.gov. Copies of the regulations cited are available from the Regional Board upon request.