

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LAHONTAN REGION

**CEASE AND DESIST ORDER NO. R6V-2012-0006
WDID NO. 6B360704003**

**REQUIRING GREEN VALLEY FOODS PRODUCTS, INC. AND HECTOR HUERTA
TO CEASE AND DESIST FROM DISCHARGING WASTE IN VIOLATION OF WASTE
DISCHARGE REQUIREMENTS PRESCRIBED BY WATER BOARD ORDER NO.
R6V-2010-0019, GREEN VALLEY FOODS PRODUCTS, INC. CHEESE
PRODUCTION FACILITY**

San Bernardino County

This Cease and Desist Order requires Green Valley Foods Products, Inc. and Hector Huerta to cease and desist, forthwith, discharging waste from their cheese production facility in a manner that violates waste discharge requirements prescribed by Board Order No. R6V-2010-0019. This Cease and Desist Order also requires Green Valley Foods Products, Inc. and Hector Huerta to submit technical reports on a monthly basis to indicate whether any discharge has occurred, and if so, identifying the nature and extent of any unauthorized waste discharges from their cheese production facility, and interim and final corrective actions to such waste discharges from occurring in the future.

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

1. Discharger

Green Valley Foods Products, Inc. and Hector Huerta own and operate a cheese production facility, which processes milk (both liquid and solid) into rounds of Mexican style hard cheese known as Cotija. Green Valley Foods Products, Inc. and Hector Huerta are identified as the "Discharger" in waste discharge requirements prescribed by Board Order No. R6V-2010-0019. As the Discharger named in Board Order No. R6V-2010-0019, Green Valley Foods Products, Inc. and Hector Huerta are responsible for complying with the waste discharge requirements prescribed by that Water Board Order. For the purpose of this Water Board Cease and Desist Order (Order), Green Valley Foods Products, Inc. and Hector Huerta are referred to as the "Dischargers."

2. Facility

The Dischargers' cheese production facility is located at 25684 Community Boulevard, San Bernardino County Assessor's Parcel No. 0497-221-14-0000, north of the community of Lenwood and the Mojave River. The Dischargers discharge untreated wash water (waste) from the cheese production facility to a largely

undeveloped parcel located at 36293 Community Boulevard, San Bernardino County Assessor's Parcel No. 0497-221-13-0000 (Waste Disposal Area). Hector Huerta owns both parcels. A map showing both parcels is attached hereto as Attachment A, and incorporated herein by this reference. For purposes of this Order, the Dischargers' cheese production facility, waste storage and conveyance system, and Waste Disposal Area are referred to as the "Facility." A site plan of the Facility is attached hereto as Attachment B, and incorporated herein by this reference.

3. Waste Discharge Requirements

On May 13, 2010, the Water Board adopted Board Order No. R6V-2010-0019 prescribing waste discharge requirements for the Facility's waste discharge. Board Order No. R6V-2010-0019 specifies discharge specifications, prohibitions and requirements, and provisions necessary to protect the beneficial uses of the surface and ground waters within the Middle Mojave River Valley Groundwater Basin, as identified in the *Water Quality Control Plan for the Lahontan Region* (Basin Plan). Board Order No. R6V-2010-0019 also identifies the design criteria (California Code of Regulations, Title 27) that the surface impoundment, proposed by the Dischargers to contain all of the Facility's waste, must satisfy. The Dischargers' surface impoundment must satisfy the Title 27 design criteria because the Facility's waste is a "designated waste" as defined by California Water Code section 13173, subdivision (b).

4. Board Order No. R6V-2010-0019, in relevant part, contains the following requirements:

II.A.1. "Following **March 30, 2011**, no discharge must occur outside of the Surface Impoundment."

II.A.3. "There must be no discharge, bypass, or diversion of wastewater from the collection, conveyance, or disposal facilities to adjacent land areas or surface waters."

II.A.8. "The discharge of waste, except to the authorized Surface Impoundment, is prohibited."

II.C. "A leachate collection and removal system (LCRS) is required to be constructed per CCR, title 27, section 20340."

II.C.1. "The LCRS must be placed between the inner and outer liner of the Surface Impoundment."

V.E.1. "The Surface Impoundment and associated monitoring systems must be installed, per the accepted plans, no later than **March 30, 2011**.

5. Discharges and Threatened Discharges

- a. The Dischargers have failed to install the surface impoundment and associated monitoring systems, and the leachate collection and recovery system for the surface impoundment by March 30, 2011, as required by Board Order No. R6V-2010-0019, Requirement Nos. V.E.1, II.C, and II.C.1. Water Board staff inspected the Facility on April 4, 2011, April 5, 2011, April 6, 2011, July 11, 2011, July 22, 2011, August 26, 2011, October 28, 2011, and November 8, 2011, respectively. Water Board staff observed during each of the above-referenced inspections, except for October 28, 2011, that the Dischargers had failed to construct the surface impoundment, its associated monitoring systems, and the leachate collection and recovery system. Additionally, the Dischargers' project manager, John Driscoll, submitted a letter dated June 24, 2011, requesting additional time (90 to 120 days) to study a possible alternative to the surface impoundment waste disposal system.
- b. The Dischargers have discharged waste from their cheese production facility to undeveloped land on San Bernardino County Assessor's Parcel No. 0497-221-13-0000 for over ten years according to information provided in the Dischargers' April 6, 2007 Report of Waste Discharge. The Dischargers have continued to discharge the Facility's waste to the Waste Disposal Area since March 31, 2011, in violation of Board Order No. R6V-2010-0019, Requirement Nos. II.A.1, II.A.3, and II.A.8. Water Board staff observed during its April 6, 2011, July 22, 2011, and August 26, 2011 inspections, respectively, a discharge from the pipeline that conveys waste from the Dischargers' cheese production facility to the Dischargers' Waste Disposal Area
- c. The Dischargers in written communication dated December 5, 2011, stated that they no longer plan to construct the surface impoundments. The Dischargers in written communication dated December 8, 2011, advised the Water Board that they had ceased operations and all discharges on November 23, 2011, and requested that WDRs for the Facility be rescinded. In an additional written communication dated December 20, 2011, the Dischargers advised the Water Board that they operated their cheese production facility during portions of December 2011, but that all wastewater produced had been hauled to a legal off-site facility.

6. Compliance Schedule

The Dischargers have demonstrated that they are able to immediately comply with prohibiting discharges to land and no compliance schedule is necessary.

7. Water Board Authority

a. California Water Code section 13301 states, in part:

“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.”

b. The Dischargers have discharged waste, and at a minimum, threaten to continue discharging waste in violation of waste discharge requirements prescribed by the Water Board, as discussed in Finding No. 5, above. The Dischargers do not have a plan to comply immediately with the discharge prohibition set forth in Board Order No. R6V-2010-0019. Therefore, the Water Board is authorized to issue a Cease and Desist Order for the above-referenced violations and threatened violations associated with future unauthorized waste discharges.

c. California Water Code section 13267, subsection (b)(1) states, in part:

“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, ... 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 those 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.”

d. Water Code Section 13267 Fact Sheet is attached hereto as Attachment C, and is incorporated herein by this reference.

Groundwater quality data and Facility waste characterization data provided in Board Order No. R6V-2010-0019 establish that the Facility's waste discharges to

land, at a minimum, have a significant potential to adversely impact groundwater quality and beneficial uses, if such impacts have not already occurred. The technical reports required by this Order are necessary to monitor the Dischargers' compliance with this Cease and Desist Order, and to identify corrective actions, both interim and final, in the event that the Cease and Desist Order is violated. Compliance with this Cease and Desist Order will, at a minimum, reduce the potential for the Facility's waste discharges to adversely impact groundwater quality and beneficial uses. Identifying and implementing effective interim and final corrective actions, in the event that this Cease and Desist Order is violated, will at a minimum, minimize the Facility's waste discharges' adverse impacts to groundwater quality and beneficial uses. 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 from them.

8. California Environmental Quality Act

Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, section 21000, et seq.), in accordance with section 15321, subsection (a)(2), title 14, California Code of Regulations.

9. Notification of Interested Parties

The Water Board sent written notification to the Dischargers, the County of San Bernardino, and other affected and interested parties 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.

10. Requesting Administrative Review by the State Water Board

Any person aggrieved by an action of the Water Board that is subject to a review as set forth in California 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 California 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/public_notices/petitions/water_quality/index.shtml or will be provided upon request.

THEREFORE, IT IS HEREBY ORDERED that, pursuant to California Water Code sections 13301 and 13267, the Dischargers shall cease and desist from discharging wastes or threatening to discharge wastes, in violation of waste discharge requirements prescribed by Board Order No. R6V-2010-0019, and shall comply with the other provisions of this Order:

I. ORDERS

- A. The Dischargers shall comply with Board Order No. R6V-2010-0019, as partially rescinded on January 11, 2012. The legal transportation of waste produced at the Facility to an off-site location that is legally able to accept this waste is not a discharge in violation of Board Order No. R6V-2010-0019.
- B. The Dischargers shall notify the Water Board by phone within 24 hours of the start of any discharge in violation of Board Order No. R6V-2010-0019, as partially rescinded on January 11, 2012. Notification shall be made to the Water Board's Victorville office at (760) 241-6583. The legal transportation of waste produced at the Facility to an off-site location that is legally able to accept this waste is not a discharge in violation of Board Order No. R6V-2010-0019.
- C. Beginning **February 15, 2012**, and on the 15th of each month thereafter, the Dischargers shall provide a technical report (Monthly Compliance Report), under penalty of perjury under the laws of the State of California, that includes the following information for the previous month:

Either a statement that there were no discharges in violation of Board Order No. R6V-2010-0019, as partially rescinded on January 11, 2012, and if waste was hauled to an off-site location, submittal of waste hauling and disposal receipts,

or

1. The date of each day the Facility discharges waste in violation of Board Order No. R6V-2010-0019, as partially rescinded on January 11, 2012, and/or any of its successors (unauthorized Facility waste discharge).
2. For each day an unauthorized Facility waste discharge occurs:
 - i. the duration of the discharge, including estimated time period (e.g., date, time when discharge begins – time when discharge ceases);
 - ii. the discharge volume; and
 - iii. the discharge location.

3. A Facility Site Plan illustrating the location and date of each unauthorized Facility waste discharge.
 4. The cause of each unauthorized Facility waste discharge.
 5. A description of and scheduled completion date(s) for any interim corrective actions the Dischargers plan to implement to address the cause(s) of each unauthorized Facility waste discharge.
 6. A description of and schedule for completing final corrective actions to prevent future unauthorized Facility waste discharges, and completion dates for those final corrective actions that have been completed during the previous month.
- C. The Dischargers shall continue to submit the Monthly Compliance Reports for the lifetime of this Order, or until notified in writing by the Executive Officer or the Executive Officer's designee that the Dischargers are no longer required to submit the Monthly Compliance Reports.
- D. Pursuant to Water Code section 13264, the Dischargers shall not initiate any new discharge of waste prior to the filing of a complete Report of Waste Discharge, as accepted by the Water Board staff, and not initiate any new discharge of waste until after filing a complete Report of Waste Discharge but before whichever of the following occurs first:
1. The issuance of waste discharge requirements pursuant to Water Code section 13263.
 2. The expiration of 140 days after compliance with Water Code section 13260 if the waste to be discharged does not create or threaten to create a condition of pollution or nuisance.
 3. The issuance of a waiver pursuant to Water Code section 13269.

II. REPORTING REQUIREMENTS

- A. **Signatory Requirements.** All reports required under this Cease and Desist Order shall be signed and certified by a duly authorized representative of the Dischargers and submitted to the Water Board. A person is a duly authorized representative of the Dischargers only if: (1) the authorization is made in writing by the Dischargers 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 technical reports required under this Order shall be submitted via hard copy to the following addresses:

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

California Regional Water Quality Control Board-Lahontan Region
14440 Civic Drive, Suite 200
Victorville, CA 92392

III. NOTIFICATION

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 imposition of administrative civil liability pursuant to California Water Code section 13350 for up to \$5,000 a day for each violation or \$10 per gallon discharged; and/or California Water Code section 13268 for up to \$1,000 a day for each violation; and/or referral to the Attorney General of the State of California for injunctive relief or civil or criminal liability. The Water Board reserves its right to take any further enforcement action authorized by law.

GREEN VALLEY FOODS PRODUCTS
AND HECTOR HUERTA
San Bernardino County

-9-

CEASE AND DESIST
ORDER NO. R6V-2012-0006

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 January 11, 2012.



HAROLD J. SINGER
EXECUTIVE OFFICER

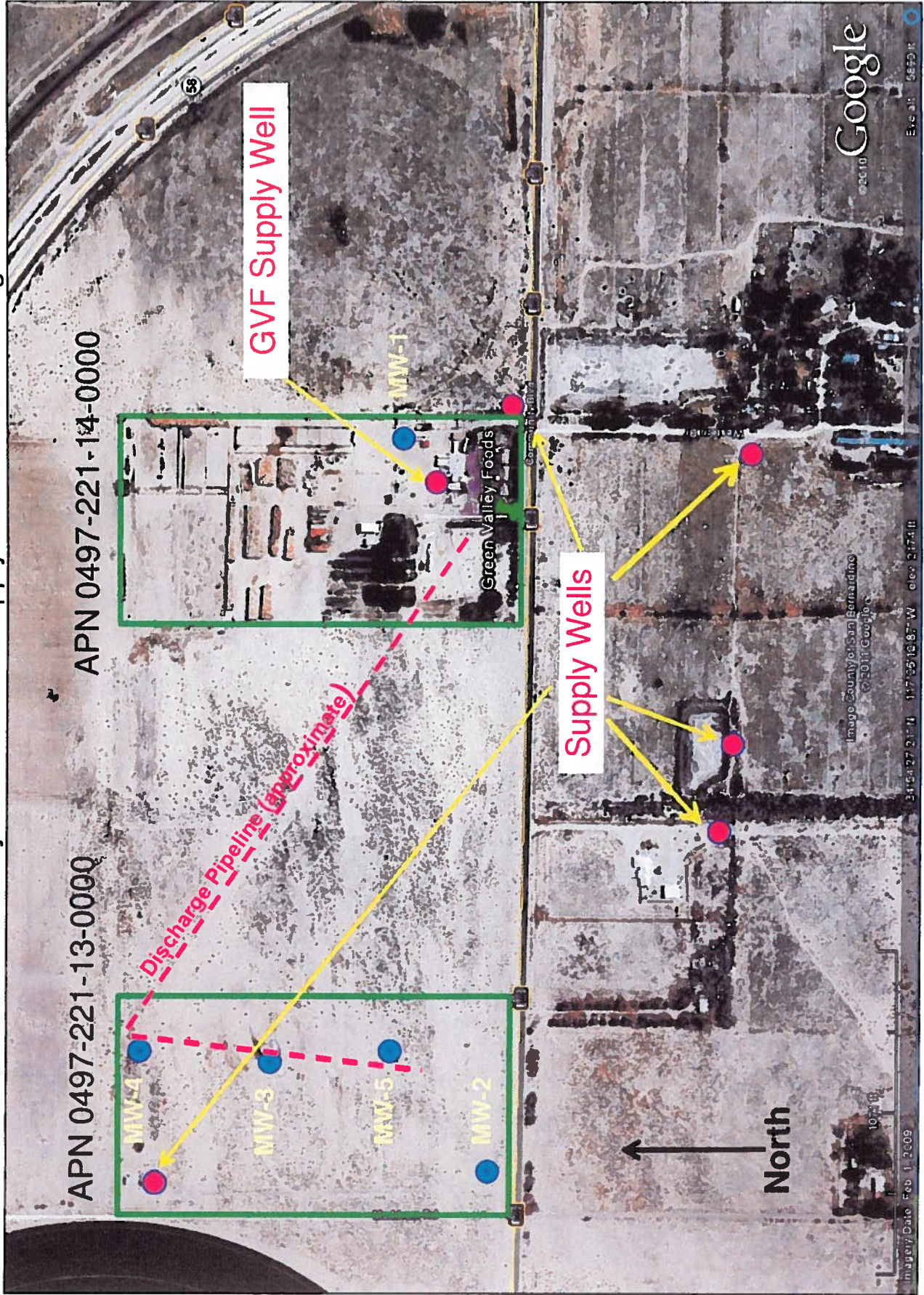
Attachments:

- A. Vicinity Map
- B. Facility Site Plan
- C. Water Code Section 13267 Fact Sheet

Attachment A – Vicinity Map



Attachment B – Facility Site Plan with Supply Wells and Monitoring Wells



ATTACHMENT C

California Environmental Protection Agency – Ca. Regional Water Quality Control Board, Lahontan Region

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.