
North Coast Regional Water Quality Control Board

April 2, 2019

Gary VanDenBerghe
263 East Valley Street
Willits, CA 95490

Dear Mr. VanDenBerghe:

Subject: **Notice of Violation** and Transmittal of Inspection Report for Mendocino County
APN 056-170-10-00

File: Gary VanDenBerghe, Cannabis Waste Discharge Regulatory Program,
CIWQS Place ID No. 842079

This letter is to notify you of observed violations of the requirements listed below for unauthorized discharges to waters of the state and the United States from the above-referenced parcel (Property).

1. Water Quality Control Plan for the North Coast Region (Basin Plan) section 4.2.1,
2. The California Water Code (Water Code) sections 13264, and
3. The North Coast Regional Water Quality Control Board's (Regional Water Board) Order No. R1-2015-0023 *Waiver of Waste Discharge Requirements and General Water Quality Certification for Discharges of Waste Resulting from Cannabis Cultivation and Associated Activities or Operations with Similar Environmental Effects*, (Regional Cannabis Order), various provisions

State Water Resources Control Board Onsite Wastewater Treatment System (OWTS)
Policy Requirement 12.0.1

As described below and pursuant to section I.B of the Regional Cannabis Order, please provide us with a Water Resource Protection Plan for the Property, including a description of proposed work and schedule to correct the violations discussed herein, within 30 days of the date of this letter.

I. Background

On April 3, 2018, staff from the Regional Water Board and the State Water Board Division of Water Rights (Division), accompanied by staff of the California Department of Fish and Wildlife (CDFW), inspected the Property. The purpose of the inspection was to evaluate onsite development and conditions associated with cannabis cultivation and associated activities and, for Regional Water Board staff to identify and assess any impacts or threatened impacts to the quality and beneficial uses of waters of the state. The Property is currently enrolled for coverage as a Tier 2 site under the Regional Cannabis Order, with an effective enrollment date of July 3, 2017.

II. Relevant Requirements

Based upon observations made during the inspection, and in reviewing available documentation associated with enrollment under the Regional Cannabis Order, Regional Water Board staff identified several features and conditions on the Property that represent violations of water quality requirements and regulations. References to these requirements and regulations are included in Attachment A – Regulatory Citations.

III. Observed Violations

As documented in the enclosed April 3, 2018, inspection report (April 2018 Inspection Report), Regional Water Board staff observed violations of the Regional Cannabis Order Standard Conditions I.A.1.d, I.A.1.f, I.A.2.d, I.A.2.e, I.A.5.f, I.A.10, I.A.11.a, I.A.11.b, I.D, II.A, IV.A, IV.B, OWTS Policy Requirement 12.0.1 and Basin Plan Section 4.2.1 Prohibition 2. Staff observed these violations at Property locations identified in the April 2018 Inspection Report as C1, C2, C3, C4, S1, P1, US1, PIT1, and at several points throughout the property where cultivation related waste and refuse were not properly stored or contained. Additionally, the Water Resource Protection Plan was not available onsite during the inspection and it was not produced upon request by Regional Water Board staff, which violated Regional Cannabis Order, sections I.B and II.A.

IV. Potential Liabilities

These observed violations create potential liability enforceable by the Regional Water Board. Discharges or threatened discharges of waste, including earthen material, into waters of the state that create a condition of nuisance or pollution may subject a person to a Cleanup and Abatement Order pursuant to Water Code section 13304. An actual discharge to waters of the state, including waste discharges in violation of a waste discharge requirement, waiver condition, certification, or other order or prohibition issued by a regional board may subject a person to an administrative liability up to \$5,000 per day of violation for each violation, or \$10 for each gallon of waste discharged pursuant to Water Code section 13350.

The Regional Water Board staff is in the process of assessing these violations and retains its full authority and discretion to bring formal enforcement for all violations.

You may contact me at Diana.Henrioulle@waterboards.ca.gov or (707)576-2350. Additionally, we are available to meet with you if you wish to discuss this letter or our waste discharge regulatory programs in further detail.

Sincerely,

Diana Henrioulle, P.E.
Enforcement Unit

190402_CPM_mc_VenDenBerghe Inspection NOV Letter

Enclosure: 1) Attachment A
2) April 3, 2018, Water Quality Inspection Report

cc: Department of Fish and Wildlife

Ms. Cheri Sanville, Cheri.Sanville@wildlife.ca.gov

Mr. John Herrera, John.Herrera@wildlife.ca.gov

North Coast Regional Water Quality Control Board

Mr. Kason Grady, Kason.Grady@waterboards.ca.gov

Ms. Claudia Villacorta, Claudia.Villacorta@waterboards.ca.gov

Mendocino County

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Division of Water Rights

Mr. Roberto Cervantes, Roberto.Cervantes@waterboards.ca.gov

Mr. Zachary Gomer, Zachary.Gomer@waterboards.ca.gov

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Ms. Heather Mapes, Heather.Mapes@waterboards.ca.gov

Regulatory Section	Citation
Basin Plan Section 4.2.1, Prohibition 2	prohibits “[t]he placing or disposal of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature at locations where such material could pass into any stream or watercourse in the basin in quantities which could be deleterious to fish, wildlife, or other beneficial uses.”
Regional Cannabis Order section I.A Standard Condition 1.d.	“[r]oads, clearings, fill prisms, and terraced areas (cleared/developed areas with the potential for sediment erosion and transport) shall be maintained so that they are hydrologically disconnected, as feasible, from surface waters, including wetlands, ephemeral, intermittent and perennial streams.”
Regional Cannabis Order section I.A Standard Condition 1.f.	“[s]tockpiled construction materials are stored in a location and manner so as to prevent their transport to receiving waters.”
Regional Cannabis Order section I.A Standard Conditions 2.d.	“[s]tream crossings shall be maintained so as to prevent or minimize erosion from exposed surfaces adjacent to, and in the channel and on the banks”
Regional Cannabis Order section I.A Standard Conditions 2.e.	“[c]ulverts shall align with the stream grade and natural stream channel at the inlet and outlet where feasible.”
Regional Cannabis Order section I.A Standard Condition 5.f.	“[w]ater storage features, such as ponds, tanks, and other vessels shall be selected, sited, designed, and maintained so as to insure integrity and to prevent release into waters of the state in the event of a containment failure.”
Regional Cannabis Order section I.A Standard Condition 10.	“[c]ultivation-related wastes including, but not limited to, empty soil/soil amendment/fertilizer/pesticide bags and containers, empty plant pots or containers, dead or harvested plant waste, and spent growth medium shall, for as long as they remain on the site, be stored at locations where they will not enter or be blown into surface waters, and in a manner that ensures that residues and pollutants within those materials do not migrate or leach into surface water or ground waters.”
Regional Cannabis Order section I.A Standard Conditions 11.a.	“[r]efuse and garbage shall be stored in a location and manner that prevents its discharge to receiving waters and prevents any leachate or contact water from entering or percolating to receiving waters”

<p>Regional Cannabis Order section I.A Standard Conditions 11.b.</p>	<p>“[d]isposal of domestic sewage shall meet applicable County health standards, local agency management plans and ordinances, and/or the State Water Board’s Onsite Wastewater Treatment System (OWTS) policy, and shall not represent a threat to surface water or groundwater.”</p>
<p>Regional Cannabis Order, Section I.D</p>	<p>Monitor and Reporting Program states that “Tier 2 Dischargers shall submit an annual report (Appendix C) by March 31 of each year that documents implementation and effectiveness of management measures during the previous year.”</p>
<p>Regional Cannabis Order, Section II.A</p>	<p>“Procedure” states that, “Dischargers under Tier 2 shall develop and begin implementing a water resource protection plan by 180 days from the submittal date of the NOI.”</p>
<p>Regional Cannabis Order, Section IV.A</p>	<p>“The placement or disposal of earthen materials, soil, silt, plant waste, slash, or other organic, or inorganic refuse, rubbish, and solid waste, bio-stimulatory substances and/or water containing elevated temperatures above background conditions, and/or chemicals, such as but not limited to pesticides, fertilizers, or other substances into any stream or watercourse is prohibited.”</p>
<p>Regional Cannabis Order, Section IV.B</p>	<p>“The placing or disposal of earthen materials, soil, silt, plant waste, slash, or other organic, or inorganic refuse, rubbish, and solid waste, water containing elevated temperatures above background conditions, chemicals, bio-stimulatory substances, and/or chemicals such as but not limited to pesticides, fertilizers or other substances in a location where such may discharge into streams or watercourses is prohibited.”</p>
<p>OWTS Policy</p>	<p>OWTS Policy Requirement 12.0.1 states that, “the Onsite Wastewater Treatment System shall function as designed with no surfacing effluent.”</p>
<p>Regional Cannabis Order, Provision I.B</p>	<p>“Tier 2 Dischargers and Tier 3 Dischargers who intend to cultivate cannabis before, during, or following site cleanup activities shall develop and implement a water resource protection plan that contains the elements listed below. Dischargers must keep this plan on site, and produce it upon request by Regional Water Board staff.”</p>
<p>Regional Cannabis Order, Provision II.A</p>	<p>“Dischargers under Tier 2 shall develop and begin implementing a water resource protection plan by 180 days from the submittal date of the NOI.”</p>
<p>California Water Code Section 13264</p>	<p>“No person shall initiate any new discharge of waste or make any material changes in any discharge, or initiate a discharge to, make any material changes in a discharge to, or construct, an injection well, prior to the filing of the report required by Section 13260</p>