



North Coast Regional Water Quality Control Board

February 26, 2020

CAE Holdings Inc.
Attn: Ehud Lissauer
7801 Third Gate Road
Willits, CA 95490

Dear Mr. Lissauer:

Subject: Notice of Violation, for violations of the State Water Resources Control Board Order WQ 2019-0000-DWQ General Waste Discharge Requirements for Discharges of Waste Associated with Cannabis Cultivation Activities (Cannabis General Order)

File: Cannabis Program Inspections, Mendocino County, October 23, 2019 CAE Holdings Inc. and Ehud Lissauer, CIWQS: Place ID 844208, Cannabis General Order WDID:1_23CC419072

This letter is to notify you of observed violations of the requirements listed below at the property identified as Mendocino County Assessor's Parcel Number (APN) 037-620-07-00 (Property).

1. State Water Resources Control Board Order WQ 2019-0000-DWQ General Waste Discharge Requirements for Discharges of Waste Associated with Cannabis Cultivation Activities (Cannabis General Order, or CANGO various provisions,
2. Water Quality Control Plan for the North Coast Region (Basin Plan) section 4.2.1,
3. The California Water Code (Water Code) sections 13260, 13264, and 13376, and

Failure to take corrective action may result in penalties of up to \$1,000 per day

You are receiving this letter because you operate on and/or own the Property that is used for commercial cannabis cultivation purposes. As of the date of drafting this letter, the cannabis cultivation operation located on this Property is enrolled in the Cannabis General Order as Tier 1, low risk to water quality. On October 23, 2019, Regional Water

VALERIE L. QUINTO, CHAIR | MATTHIAS ST. JOHN, EXECUTIVE OFFICER

Board staff (staff) inspected the Property and determined that the risk designation for this Property must be reassessed, and the violations of the Cannabis General Order, see Appendix A at the end of this letter, must be addressed.

Background

On October 23, 2019, Regional Water Board staff participated with personnel from Mendocino County in inspecting the Property in response to a complaint of a diesel fuel spill into a pond. Inspection objectives for staff included observing site development and activities and identifying and assessing onsite features or conditions that are causing or may cause adverse impacts to the quality and beneficial uses of receiving waters, including surface and ground water.

Attached is a copy of the water quality inspection report (October 23, 2019 Inspection Report). Please review the inspection report carefully and completely. The inspection report contains recommendations for correcting observed violations and water quality concerns observed on the Property and advises you of the Regional Water Board permits necessary for instream work and projects/activities that result in discharges of waste to receiving waters.

On June 28, 2019, you transferred enrollment of the Property from the Regional Cannabis Order to CANGO. At the time of the inspection, the Property was enrolled for coverage as a Tier 1 low-risk site under the CANGO, with an effective enrollment date of July 1, 2019.

Relevant Requirements

During the inspection, Regional Water Board staff observed features and conditions on the Property that represent violations of water quality requirements and regulations. Attachment A – Regulatory Citations, provides references to these requirements and regulations.

Observed Violations

As documented in the October 23, 2019 Inspection Report, staff observed evidence of an unreported diesel spill, an onstream pond within the minimum riparian setbacks of the cannabis cultivation area and an earthen pad, constructed as part of the cannabis operation, encroaching on a watercourse. Staff observed these violations in the vicinity of Property locations identified in the October 23, 2019 Inspection Report as WQ 1, WQ 2, WQ 3, and WQ 4.

Legal requirements and directive to reassess and modify enrollment in the Cannabis General Order

In your application for enrollment under the CANGO, in June 2019, you indicated that no portion of the disturbed area was located within the setback requirements. As a result, you self-certified as a Tier 1 Low Risk. However, the cultivation areas and associated land disturbances identified in the October 23, 2019 inspection report, are within the required setback of an onstream pond. Therefore, the risk designation for the

Property must be reassessed. It is the responsibility on the enrollee to update any enrollment information.

For the purposes of CANGO, land disturbance is defined as including all activities whatsoever associated with developing or modifying land for cannabis cultivation, related activities, or access. Land disturbance activities include, but are not limited to, construction of roads, buildings, water storage areas; excavation, grading, and site clearing. Disturbed land includes cultivation areas, storage areas where soil or soil amendments (e.g., potting soil, compost, or biosolids) are located. All access roads and water crossings that have not been designed, constructed, and maintained consistent with the Handbook for Forest, Ranch, and Rural Roads and Attachment A of the CANGO, are considered disturbed areas, as well.

If any land disturbance activities have occurred or are occurring within the riparian setback, the site must be enrolled as high-risk.

The Cannabis General Order provides for a high-risk designation as a temporary condition that exists until you stabilize the disturbed area and cease all cannabis cultivation-related activities located within the riparian setback. Once the riparian setback area is stabilized and the Regional Water Board approves the work, you can request to reclassify the site as either low or moderate risk, depending upon the site conditions, allowing a lower annual fee to be assessed. Your high-risk designation is therefore temporary until you reconfigure your operations to comply with the riparian setback requirements, per an approved plan.

Pursuant to California Water Code section 13260 and Cannabis General Order Provisions C.2.h. and C.2.i, the Regional Water Board requires you to modify your application information by doing the following:

Within 30 days of the date of this letter you must:

Obtain appropriate coverage under the Cannabis General Order, representative of disturbed area based on tier and risk level.

- a. To modify enrollment, you must handwrite in your selection on pages seven and eight of the enclosed Application Summary and sign and date next to the handwritten change.
- b. Submit a copy of the edited summary to NorthCoast.Cannabis@waterboards.ca.gov.

If you fail to take the action described above, the Regional Water Board may impose penalties of up to \$1,000 per day pursuant to Water Code section 13261 for violations of section 13260. In addition, the Regional Water Board Executive Officer may terminate a Discharger's coverage under the CANGO for cause including, but not limited to, any of the following:

- i. Violation of any of the terms or conditions contained in the General Order.
- ii. Obtaining the General Order by misrepresentation, or failure to disclose fully all relevant facts.
- iii. A change in any condition that results in either a temporary or permanent need to reduce or eliminate the authorized discharge activities.
- iv. A material change in the activity, character, location, or volume of discharge.
- v. Adoption of a TMDL amendment, new TMDL, or TMDL alternative.

Additional Potential Liabilities

The Regional Water Board is in the process of considering whether the violations of the Water Code and the Basin Plan warrant further enforcement. We encourage you to take steps, to correct the violations as soon as possible, securing any applicable permits from this and other agencies prior to conducting work. Please note that the existing conditions, as observed and documented in the Inspection Report, may represent continuing violations of the Water Code and the Basin Plan.

Please note that correcting the conditions of non-compliance at the Property does not preclude enforcement for the violations alleged in this notice. As noted above, the Regional Water Board reserves its right to fully enforce the law against any violation and threatened violation by taking enforcement actions such as a cleanup and abatement order, time schedule order, administrative civil liabilities, and referral to the California Attorney General's office. Administrative civil liabilities may be assessed on a daily basis in the amount up to \$5,000 for each day the violation occurs or up to \$10 per gallon, but not both pursuant to Water Code section 13350.

Inspection Report Recommendations

As mentioned above, the October 23, 2019 Inspection Report provides recommendations to correct violations, as well as to address features and conditions that threaten to impact water quality. **Within 30 days of this letter**, please advise Maurice Washington of your intentions, plan, and schedule to implement recommendations in the inspection report. Maurice Washington can be reached at (707) 576-2831 or by email at Maurice.Washington@waterboards.ca.gov.

Future correspondence regarding this matter will be sent to you at this address unless an alternative address is provided to the Regional Water Board. Failure to accept mail from the Regional Water Board is not a valid excuse for non-compliance with any future enforcement orders, and a failure to respond or otherwise appear at a future enforcement proceeding could subject you to a default order and the imposition of administrative civil liability.

If you have any questions regarding this matter, please contact Maurice Washington at the phone number or email above. You may also contact me at Diana.Henriouille@waterboards.ca.gov or by phone at (707) 576-2350.

Additionally, we are available to meet with you if you wish to discuss this letter, in inspection report, or our waste discharge regulatory programs in further detail.

Sincerely,

Diana Henriouille, P.E.
Enforcement Unit

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Attachments: Attachment A – Regulatory Citations
Water Quality Report of October 23, 2019 Inspection

cc: Department of Fish and Wildlife

Angela Liebenberg, Angela.Liebenberg@wildlife.ca.gov

Mendocino County

Jessi Laughlin, laughlinj@mendocinocounty.org

Nicholas Duncan, duncann@mendocinocounty.org

Daniel Knapp, knappd@mendocinocounty.org

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North Coast Regional Water Quality Control Board

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

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State Water Resources Control Board Division of Water Rights

Zachary Zwahlen, Zachary.Zwahlen@Waterboards.ca.gov

Attachment A – Regulatory Citations

| 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.” |
| California Water Code Section 13260 | <p>“(a) Each of the following persons shall file with the appropriate regional board a report of the discharge, containing the information that may be required by the regional board:</p> <p>(1) A person discharging waste, or proposing to discharge waste, within any region that could affect the quality of the waters of the state, other than into a community sewer system.</p> <p>(2) A person who is a citizen, domiciliary, or political agency or entity of this state discharging waste, or proposing to discharge waste, outside the boundaries of the state in a manner that could affect the quality of the waters of the state within any region.”</p> |
| California Water Code Section 13261(a) | “A person who fails to furnish a report or pay a fee under Section 13260 when so requested by a regional board is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b).” |

| Regulatory Section | Citation |
|---|--|
| California Water Code Section 13264 (a) | <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 and no person shall take any of these actions after filing the report but before whichever of the following occurs first:</p> <p>(1) The issuance of waste discharge requirements pursuant to Section 13263.</p> <p>(2) The expiration of 140 days after compliance with Section 13260 if the waste to be discharged does not create or threaten to create a condition of pollution or nuisance and any of the following applies:...</p> <p>(3) The issuance of a waiver pursuant to Section 13269.”</p> |
| California Water Code Section 13265(a) | <p>“Any person discharging waste in violation of Section 13264, after such violation has been called to his attention in writing by the regional board, is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b). Each day of such discharge shall constitute a separate offense.”</p> |
| California Water Code Section 13350 | <p>“A person who (1) violates a cease and desist order or cleanup and abatement order hereafter issued, reissued, or amended by a regional board or the state board, or (2) in violation of a waste discharge requirement, waiver condition, certification, or other order or prohibition issued, reissued, or amended by a regional board or the state board, discharges waste, or causes or permits waste to be deposited where it is discharged, into the waters of the state, or (3) causes or permits any oil or any residuary product of petroleum to be deposited in or on any of the waters of the state, except in accordance with waste discharge requirements or other actions or provisions of this division, shall be liable civilly, and remedies may be proposed, in accordance with subdivision (d) or (e).”</p> |

| Regulatory Section | Citation |
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| Cannabis General Order, Attachment A, Cannabis Cultivation Policy, Section 1 Term 13 | The cannabis cultivator shall immediately report any significant hazardous material release or spill that causes a film or sheen on the water's surface, leaves a sludge or emulsion beneath the water's surface, or a release or threatened release of a hazardous material that may potentially discharge to waters of the state, to the California Office of Emergency Services at (800) 852-7550 and the local Unified Program Agency. ⁶ The cannabis cultivator shall also immediately notify the appropriate Regional Water Board and CDFW of the release. |
| Cannabis General Order, Attachment A, Cannabis Cultivation Policy, Section 1 Term 32 | Tier 1 or 2 cannabis cultivators with any portion of the disturbed areas existing within the setbacks shall submit a Disturbed Area Stabilization Plan to the Regional Water Board Executive Officer. The Disturbed Area Stabilization Plan shall be approved by the applicable Regional Water Board Executive Officer prior to the cannabis cultivator initiating any land stabilization activities. This requirement does not apply to disturbed areas resulting from activities authorized under 404/401 CWA permits, a CDFW LSA Agreement, coverage under the Cannabis Cultivation General Order water quality certification, or site-specific WDRs issued by the Regional Water Board. |
| Cannabis General Order, Attachment A, Cannabis Cultivation Policy, Section 1 Term 37 | Cannabis cultivators shall comply with the minimum riparian setbacks described below for all land disturbance, cannabis cultivation activities, and facilities (e.g., material or vehicle storage, petroleum powered pump locations, off-stream water storage areas, and chemical toilet placement). The riparian setbacks shall be measured from the waterbody's bankfull stage (high flow water levels that occur every 1.5 to 2 years) or from the top edge of the waterbody bank in incised channels, whichever is more conservative. Riparian setbacks for springheads shall be measured from the springhead in all directions (circular buffer). Riparian setbacks for wetlands shall be measured from the edge of wetland as delineated by a Qualified Professional with experience implementing the Corps of Engineers Wetlands Delineation Manual (with regional supplements). The Regional Water Board Executive Officer may require additional riparian setbacks or additional requirements, as needed, to meet the performance requirement of protecting surface water from discharges that threaten water quality. If the cannabis cultivation site cannot be managed to protect water quality, the Executive Officer of the applicable Regional Water Board may revoke authorization for cannabis cultivation activities at the cannabis cultivation site. |

| Regulatory Section | Citation | | |
|--|--|--------------------------------|--------------------------------------|
| Cannabis General Order, Attachment A, Cannabis Cultivation Policy, Section 1 Term 37 (continued) | Minimum Riparian Setbacks ^{1,2} | | |
| | Common Name | Watercourse Class ³ | Distance |
| | Perennial watercourses, waterbodies (e.g. lakes, ponds), or springs ⁴ | I | 150 ft. |
| | Intermittent watercourses or wetlands | II | 100 ft. |
| | Ephemeral watercourses | III | 50 ft. |
| | Man-made irrigation canals, water supply reservoirs, or hydroelectric canals that support native aquatic species | IV | Established Riparian Vegetation Zone |
| All other man-made irrigation canals, water supply reservoirs, or hydroelectric canals | IV | N/A | |

¹ A Regional Water Board may adopt site-specific WDRs or an enforcement order for a cannabis cultivator with requirements that are inconsistent with the setbacks in this table if the Executive Officer determines that the site-specific WDRs or enforcement order contains sufficient requirements to be protective of water quality.

² Cannabis cultivators enrolled in a Regional Water Board order adopting WDRs or a waiver of WDRs for cannabis cultivation activities prior to October 17, 2017, may retain reduced setbacks applicable under that Regional Water Board order unless the Regional Water Board's Executive Officer determines that the reduced setbacks applicable under that order are not protective of water quality.

³ Except where more restrictive, the stream class designations are equivalent to the Forest Practice Rules Water Course and Lake Protection Zone definitions (California Code of Regulations, title 14, Chapter 4. Forest Practice Rules, Subchapters 4, 5, and 6 Forest District Rules, Article 6 Water Course and Lake Protection).

⁴ Spring riparian setbacks default to the applicable watercourse riparian setback 150 feet downstream and/or upstream of the spring's confluence with the watercourse or 150 feet downstream of the point where the spring forms a watercourse with defined bed and banks.