



North Coast Regional Water Quality Control Board

November 9, 2021

Alejandro Gutierrez
PO Box 293
Boonville CA 95415
gutierrezorganicfarm@outlook.com

Certified Mail 7021 0950 0001 6499 5264

Dear Mr. Gutierrez:

Subject: **Notice of Violation and Transmittal of Inspection Report for October 11, 2021 Inspection of Mendocino County Assessor's Parcel Number 037-560-08-00**

File: Cannabis Program Inspections, Mendocino County, October 11, 2021, CIWQS Place ID No. 867691

This letter is to notify you of observed violations of the requirements listed below, and cited in Attachment A, at the property identified as Mendocino County Assessor's Parcel Number 037-560-08-00 (the 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 Order¹), various provisions.

According to our records, the cannabis cultivation operation located on this Property is enrolled for coverage under the Cannabis General Order as Tier 1 Low Risk to water quality.

On October 11, 2021, North Coast Regional Water Quality Control Board (Regional Water Board) staff inspected the Property and observed cannabis cultivation and waste and spoil storage areas exceeding 1 acre. Accordingly, this letter directs you to reassess the Tier designation for this Property, and address the violations noticed herein.

¹ The Cannabis General Order can be found at:
https://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2019/wqo2019_0001_dwq.pdf

Within 30 days, please contact Regional Water Board staff to discuss your plan to correct the observed violations.

Background

On June 29, 2020 you submitted information through the State Water Resources Control Board's (State Water Board's) online portal for discharges of waste associated with cannabis cultivation related activities for APN 037-560-08-00. Based on the information you submitted in the enclosed Cannabis General Order Application Summary, the cannabis cultivation activities are classified as Tier 1 Low Risk. Effective September 1, 2020, the Property was enrolled into State Cannabis Order WQ 2019-0001-DWQ, WDID 1_23CC428015.

On October 11, 2021, staff from the Regional Water Board, accompanied by staff from the California Department of Fish and Wildlife (CDFW), the Department of Cannabis Control and the State Water Resources Control Board Division of Water Rights inspected the Property. The purpose of the inspection was to evaluate onsite development and conditions, and to identify and assess any impacts or threatened impacts to the quality and beneficial uses of waters of the state.

Attached is a copy of the water quality inspection report (Attachment A –Facilities Inspection Report, Inspection Map and Photolog). Please review the inspection report carefully and completely. The inspection report contains recommendations for correcting observed violations.

Relevant Requirements

During the inspection, Regional Water Board staff identified several features and conditions on the Property that represent violations of the Cannabis General Order.

Observed Violations

As documented in the October 11, 2021 inspection report, Regional Water Board staff observed violations of the Cannabis General Order Attachment A², Section 2 - Requirements Related to Water Diversions and Waste Discharge for Cannabis Cultivation Nos. 59, 61, 105, 113, 117, 119 and 124. Staff observed these violations at Property locations identified in the inspection report as WQ1, WQ2, WQ3 and WQ4.

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

Alejandro Gutierrez, in his application for enrollment under the Cannabis General Order, on June 29, 2020, indicated that the disturbed area was 28,472 square feet on slopes less than than 20%, and self-certified the site as a Tier 1 Low Risk site.

² The Cannabis General Order Attachment A can be found beginning on page 40 of the Cannabis Policy at:

https://www.waterboards.ca.gov/water_issues/programs/cannabis/docs/policy/final_cannabis_policy_with_attach_a.pdf

During the October 11, 2021, inspection, and using Google Earth, staff observed and documented cultivation areas, waste storage areas and associated land disturbances exceeding one acre. This does not meet requirements to be considered a Tier 1 Low Risk site.

For the purposes of the Cannabis General Order, land disturbance includes 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 Cannabis General Order, are considered disturbed areas, as well.

As disturbed areas on the Property, per Cannabis General Order definition, exceed one acre, you must revise your enrollment under that order to reflect that the site is a Tier 2 site.

Pursuant to Water Code section 13260 and Cannabis General Order Provision 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 Cannabis General Order 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, pursuant to Cannabis General Order Provision C.2.h, the Regional Water Board Executive Officer may terminate a Discharger's coverage under the Cannabis General Order 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.

Be aware that termination of coverage under the Cannabis General Order may impact your ability to maintain a cannabis cultivation license with the California Department of Cannabis Control.

Site Management Plan (SMP)

Pursuant to the Cannabis General Order, all enrollees must submit an SMP within 90 days of enrollment. As of the date of this letter, no SMP has been submitted and the deadline for submitting your SMP has passed.

Additional Potential Liabilities

The Regional Water Board is in the process of considering whether the violations of the Cannabis General Order 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 Cannabis General Order.

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 11, 2021 Inspection Report provides recommendations to correct the alleged violations, as well as to address features and conditions that threaten to impact water quality. **Within 30 days of this letter**, please advise Regional Water Board staff Brian Fuller of your intentions, plan, and schedule to implement recommendations in the inspection report. If you have questions about what is required of you to comply with the requirements outlined above, and to advise as to your plan and schedule to correct the alleged violations, please contact Regional Water Board staff Brian Fuller by email at Brian.Fuller@waterboards.ca.gov or by phone at 707-576-2806.

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.

You may also contact me at Diana.Henriouille@waterboards.ca.gov. 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 Henriouille, P.E.
Senior Water Resource Control Engineer

Attachment:
Facilities Inspection Report, Inspection Maps and Photolog

Enclosure:
Cannabis General Order Application Summary

Certified Mail – Return Receipt requested

cc: Contact for Discharger
Veronica Mendoza, v_mendoza@live.com

North Coast Regional Water Quality Control Board
Northcoast.Cannabis@waterboards.ca.gov
Claudia Villacorta, Claudia.Villacorta@waterboards.ca.gov
Kason Grady, Kason.Grady@waterboards.ca.gov
Brian Fuller, Brian.Fuller@Waterboards.ca.gov

Division of Water Rights
Stormer Feiler, Stormer.Feiler@waterboards.ca.gov
Karen Kramer, Karen.Kramer@Waterboards.ca.gov
Taro Murano, Taro.Murano@waterboards.ca.gov
Richard Ramirez, Richard.Ramirez@Waterboards.ca.gov
Mollie Preijers, Mollie.Preijers@Waterboards.ca.gov

Department of Fish and Wildlife
Warden Justin Rhoades, Justin.Rhoades@wildlife.ca.gov
Lieutenant Douglas Willson, Douglas.Willson@wildlife.ca.gov
Timothy Dodson, Timothy.Dodson@wildlife.ca.gov
Christopher DeTar, Christopher.DeTar@Wildlife.ca.gov

Mendocino County
Cannabis Program, CannabisProgram@mendocinocounty.org

California Department of Cannabis Control
Jaime Masuda, Jaime.Masuda@cannabis.ca.gov

FACILITIES INSPECTION REPORT

Region/Office: 1	Status: Performed	Reg. Measure ID: 438909
Program Type: IRRICANNABIS	WDID: 1_23CC428015	Order Number: 2019-0001-DWQ
Scheduled Insp. Date:	Actual Insp. Date: 10/11/2021	

Discharger Information

Party ID: 610587	Discharger Organization Name: Alejandro Gutierrez		
Address: Po Box 293	City, State, Zip: Boonville, CA 95415		
Discharger Contact Person:	Veronica Mendoza	Discharger Contact Phone:	707-867-7850
Discharger Contact Email Address: v_mendoza@live.com			

Facility Information

Place ID: 867691	Facility Name: Gutierrez Organic Farm		
Address: 7320 Third Gate Road	City, State, Zip: Arnold, CA 95490-9037		
County: Mendocino	Latitude: 39.5037	Longitude: -123.41058	Method: Map Interpolation (digital)

Lead Inspector Information

Lead Inspector Party ID: 568606	Lead Inspector Name: Brian Fuller		
Inspector Type:	<input checked="" type="checkbox"/> State	<input type="checkbox"/> State Contractor	<input type="checkbox"/> EPA Contractor
	<input type="checkbox"/> EPA and State (EPA Lead)	<input type="checkbox"/> EPA and State (State Lead)	<input type="checkbox"/> EPA (Regional)

INSPECTION TYPE

Inspection Type: Complaint inspection

VIOLATIONS

Were Violations noted during this inspection? Yes No

Violation ID	Violation Type	Occurrence Date	Rank	Description
1096331	Order Conditions	10/11/2021	B	State Water Resources Control Board Order WQ 2019-0000-DWQ (Cannabis General Order), various provisions.

INSPECTION SUMMARY (REQUIRED) (500 character limit)

Recommendations:

1. Engage a qualified professional to: a) accurately determine the cultivation and disturbed areas on the Property and reassess the Property's Tier level; correct features on the Property to be consistent with Requirements of the Cannabis General Order; and complete and submit a Site Management Plan.
2. Implement Best Management Practices (BMP) to limit erosion of excavated spoils from stormwater and clean up, haul away, and properly dispose of refuse and cultivation waste.

GENERAL NOTES (OPTIONAL) (2000 character limit)

My inspection was associated with a criminal search warrant and I viewed only portions of the Property. See the attached map and photos for locations and details about features of concern to water quality. I accessed the Property from the northwest and parked at WQ1. At this location, I observed a large pile of waste cannabis stalks. I walked along a road to the south and observed a roadside trench cut at the base of a hillslope and the earthen spoils placed on the opposite side of the road. The spoils lacked any cover or BMP to prevent their transport from stormwater.

I observed a large outdoor cultivation area on the opposite side of the road that has an approximate one-acre disturbed area. I followed the road south to WQ3 where I observed fuel and other chemicals stored without secondary containment or adequate cover from weather. I observed a large amount of refuse both in and outside of black plastic bags without a clear location for collecting waste. I observed locations for bathing and cooking but did not observe an appropriate location for collecting human waste.

I continued walking south and observed fertilizers and nutrients at WQ4 where they are susceptible to being mixed with and transported by stormwater. At WQ5, I observed the frame of a hoop-type greenhouse and associated disturbed area approximating 5,000 square feet in size. I walked back north and observed a well at WQ6.

For Internal Use (Optional)

Reviewed By:	(1)	(2)	(3)
CIWQS Entry Date:		Regional Board File Number:	CIWQS Inspection ID:

Inspection Maps and Photolog for inspection conducted, October 11, 2021

Map and photo selection completed by Brian Fuller, PG, Engineering Geologist

Inspection Map

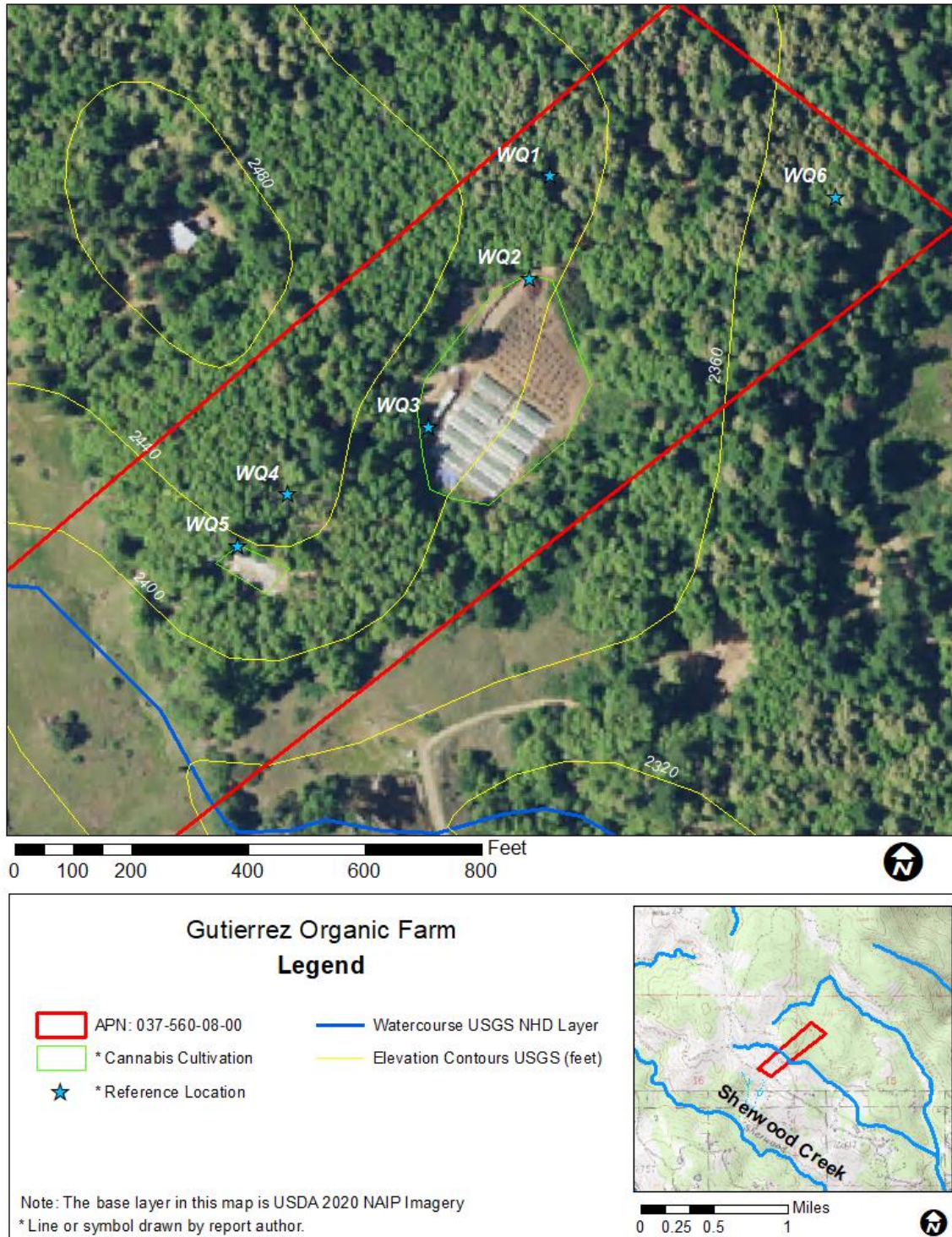


Figure 1: Map of Property, including inspection points of interest.

Photolog:



Photo 1—Pile of waste cannabis stalks and plastic netting at WQ1.



Photo 2—Looking south from WQ2 at outdoor cannabis cultivation area.



Photo 3—Looking north at excavated roadside ditch in the vicinity of WQ2.



Photo 4—Looking south, in the vicinity of WQ2, where earthen spoils from excavation in previous image were placed. The spoils have not been covered or protected from stormwater.



Photo 5—Food preparation area at WQ3. A gallon jug of neem oil is visible in the eating area.



Photo 6—Fuel containers stored at WQ3 without secondary containment.



Photo 7—Refuse in black plastic bags surrounding a shower area in the vicinity of WQ3.



Photo 8—Chemical fertilizers uncovered at WQ4 where they are susceptible to being transported by stormwater.



Photo 9— Chemical fertilizer container open and on its side at WQ4 where it is susceptible to being transported by stormwater.



Photo 10—Outdoor cannabis cultivation area without plants or grow medium present. Clumps of plastic netting are visible uncontained within the frame of the hoop-type greenhouse.