



North Coast Regional Water Quality Control Board

June 25, 2021

Certified Mail 7016 2070 0000 6486 1947

Kaya Phelps
PO Box 242
Alderpoint, CA 95511

Dear Kaya Phelps:

Subject: Notice of Violation and Transmittal of Inspection Report for May 25, 2021 Inspection of Humboldt County Assessor's Parcel 223-101-005-000

File: Cannabis Program Inspections, Humboldt County, May 25, 2021, CIWQS Place ID 874393

This letter is to notify you of observed violations of the requirements listed below, and cited in Attachment A, at the property identified as Humboldt County Assessor's Parcel Numbers: 223-101-005-000 (the Property):

1. Water Quality Control Plan for the North Coast Region (Basin Plan) Section 4.2.1
2. California Water Code (Water Code) Section 13260
3. Federal Clean Water Act Section 301, 404, and 401

On May 25, 2021, North Coast Regional Water Quality Control Board (Regional Water Board) staff (Staff) inspected the Property and observed active outdoor cannabis cultivation including cultivation occurring in hoop-house style greenhouses. Accordingly, this letter directs you to address the violations noticed herein. Within 30 days, please contact Regional Water Board staff to discuss your plan to correct the observed violations.

Background

On May 25, 2021, staff from the Regional Water Board, accompanied by staff of California Department of Fish and Wildlife and personnel from the Humboldt County Sheriff's Office, inspected the Property. The purpose of the inspection was to evaluate

GREGORY A. GIUSTI , CHAIR | MATTHIAS ST. JOHN, EXECUTIVE OFFICER

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 B –Facilities Inspection Report and Attachment C – Inspection Map and Photolog). Please review the inspection report carefully and completely. The inspection report contains recommendations for correcting observed violations 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.

Relevant Requirements

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

Observed Violations

As documented in the May 25, 2021 inspection report, Regional Water Board staff observed violations of the California Water Code, the Basin Plan, and Federal Clean Water Act. Staff observed these violations at Property locations identified in the inspection report as CA1 through CA3, XNG1A, XNG1B, and XNG2.

Directive to Obtain Regulatory Coverage Prior to Future Activities Involving or Resulting in Discharges of Waste to Waters of the State

During the May 25, 2021, inspection, staff observed cannabis cultivation operations of sufficient size and scope to require regulatory coverage under the State Water Resources Control Board (State Water Board) Order No. WQ 2019-0001-DWQ, *General Waste Discharge Requirements and Waiver of Waste Discharge Requirements for Discharges of Waste Associated with Cannabis Cultivation Activities* (Statewide General Order).

Please be aware that, pursuant to Water Code sections 13260 and 13264, if you elect to resume/continue cannabis cultivation on the subject Property, you must either:

- 1) Enroll the property under the Statewide General Order by providing the information required in the online application process. The application can be accessed at: https://www.waterboards.ca.gov/water_issues/programs/cannabis/
Submit the application fee within **30 days** of submitting the on-line application. Failure to submit the application fee within 30 days will result in the application being voided and authorization terminated. Payments shall be identified using the Fee Payment Application Number (found on the Notice of Receipt). All checks or money

orders shall be made payable to: "State Water Resources Control Board," and shall be delivered to:

(By US Mail):

Accounting Office
Attn: Water Quality Fees – Cannabis General Order
P.O. Box 1888
Sacramento, CA 95812-1888

- 2) File a Report of Waste Discharge in order to obtain individual Waste Discharge Requirements (WDRs) specific to your property.

Please submit the appropriate documents and payments to:

North Coast Water Board
Attn: Cannabis Permitting
5550 Skylane Boulevard, Suite A
Santa Rosa, CA 95403

Water Code section 13260 states, in relevant part:

- (a) Each of the following persons shall file with the appropriate regional board a report of the discharge, containing the information which may be required by the regional board:

- (1) Any 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.

Water Code section 13264 states, in relevant part:

- (a) No person shall initiate any new discharge of waste or make any material changes in any discharge...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:

- (1) The issuance of waste discharge requirements pursuant to Section 13263.

Failure to comply with Water Code sections 13260 and 13264 may result in an administrative civil liability under Water code sections 13261 and 13265 not to exceed \$1,000 per violation for each day in which each violation occurs.

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 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 May 25, 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 Shannon Utley 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 Shannon Utley by email at Shannon.Utley@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.

You may also contact me at Mona.Dougherty@waterboards.ca.gov or by phone at (707) 445-6129. 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,

Mona Dougherty, P.E.
Senior Water Resource Control Engineer
Northern Cannabis Permitting Unit

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Attachments: Attachment A - Regulatory Citations
Attachment B – Facilities Inspection Report
Attachment C – Inspection Map and Photolog

Certified Mail – Return Receipt requested

cc: 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

Shannon Utley, Shannon.Utley@waterboards.ca.gov

Division of Water Rights

Stormer Feiler, Stormer.Feiler@waterboards.ca.gov

Taro Murano, Taro.Murano@waterboards.ca.gov

Department of Fish and Wildlife

Ryan Bourque, Ryan.Bourque@wildlife.ca.gov

Scott Bauer, Scott.Bauer@wildlife.ca.gov

Humboldt County Sheriff's Office

Sergeant Conan Moore, cmoore@co.humboldt.ca.us

Deputy Spellman Stallworth, sshallworth@co.humboldt.ca.us

Attachment A – Regulatory Citations

Regulatory Section	Citation
Basin Plan Section 4.2.1, Prohibition 1	Prohibits “[t]he discharge of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature into any stream or watercourse in the basin in quantities deleterious to fish, wildlife, or other beneficial uses.”
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 style="padding-left: 40px;">(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 style="padding-left: 40px;">(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).”
Federal Clean Water Act Section 301 (a):	Section 301(a) provides that subject to certain exceptions, “the discharge of any pollutant by any person shall be unlawful.” 33 U.S.C. § 1311(a). One of the exceptions allowed for under the Clean Water Act is the discharge from a dredge and fill activity under the auspices of § 404 and 401 of the Clean Water Act. 33 U.S.C. § 1342. The Clean Water Act prohibits the discharge of any pollutant from a point source into waters of the United States without a section 404 dredge and fill permit and a section 401 state water quality certification.
Federal Clean Water Act Section 401	Section 401 (a)(1) “Any applicant for a Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge into the navigable waters, shall provide the licensing or permitting agency a certification from the State in which the discharge originates”
Federal Clean Water Act Section 404	Section 404(a) provides, in relevant part, “The Secretary may issue permits...for the discharge of dredged or fill material into the navigable waters...” The Code of Federal Regulations defines the term “dredged material” as material that is excavated or dredged from waters of the United States. 33

Regulatory Section	Citation
	C.F.R. § 323.2(c). The term “discharge or dredged material” mean any addition of dredge material into the waters of the United States. 33 C.F.R. § 323.2(d)(1). The Code of Federal Regulations defines “fill material” as material placed in waters of the United States that has the effect of replacing any potion of a water of the United States with dry land or changing the bottom elevation of any potion of a water of the United States. 33 C.F.R. § 323.2(e)(1). The term “discharge of fill material” means the additional of fill material into waters of the United States. 33 C.F.R. § 323.2(f).

FACILITIES INSPECTION REPORT

Region/Office: 1	Status: Performed	Reg. Measure ID: 443598
Program Type: IRRICANNABIS	WDID:	Order Number:
Scheduled Insp. Date:	Actual Insp. Date: 05/25/2021	

Discharger Information

Party ID: 624837	Discharger Organization Name: Kaya Phelps	
Address: Po Box 242	City, State, Zip: Alderpoint, CA 95511	
Discharger Contact Person:	Discharger Contact Phone:	
Discharger Contact Email Address:		

Facility Information

Place ID 874393	Facility Name: Kaya Phelps	
Address: 28908 Dyerville Loop	City, State, Zip: Garberville, CA 95542	
County: Humboldt	Latitude: 40.12321	Longitude: -123.70583 Method: Address Matching

Lead Inspector Information

Lead Inspector Party ID: 545131	Lead Inspector Name: Shannon Utley	
Inspector Type:	<input checked="" type="checkbox"/> State <input type="checkbox"/> State Contractor <input type="checkbox"/> EPA Contractor <input type="checkbox"/> EPA (Regional) <input type="checkbox"/> EPA and State (EPA Lead) <input type="checkbox"/> EPA and State (State Lead)	

INSPECTION TYPE

Inspection Type: Miscellaneous inspection

VIOLATIONSWere Violations noted during this inspection? Yes No

Violation ID	Violation Type	Occurrence Date	Rank	Description
1091009	Other Codes	05/25/2021	B	California Water Code Section 13260 and 13261(a): cannabis cultivation operations of sufficient size and scope to require regulatory coverage under Order No. WQ 2019-0001-DWQ.
1091022	Unauthorized Discharge	05/25/2021	B	Federal Clean Water Act Section 301, 404, and 401 at XNG1A and XNG1B, XNG2, and OUT.
1091023	Basin Plan Prohibition	05/25/2021	B	Basin Plan Section 4.2.1, Prohibition 1 and Prohibition 2 at XNG1A and XNG1B, and XNG2.

INSPECTION SUMMARY (REQUIRED) (500 character limit)

Recommendations:
 Enroll in the State Water Resources Control Board Cannabis Policy and General Waste Discharge Requirements Order No. WQ 2019-0001-DWQ for cannabis cultivation and comply with the General Order and Policy.

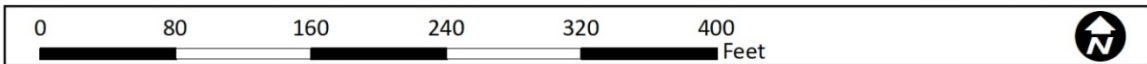
Hire a qualified professional to assess the stability of the pond and overflow infrastructure; and assess the size of the stream crossings for a minimum 100-year flow capacity. Apply for WDRs or 401 Water Quality Certification for any proposed work in a surface water.

GENERAL NOTES (OPTIONAL) (2000 character limit)

Inspection Description:
 The May 25, 20121, inspection was associated with a criminal search warrant and only portions of the Property were viewed. Please see the attached Map and Appendices for locations and details about features of water quality concern. Active cannabis cultivation was occurring in three locations on the Humboldt County Accessor Parcel Number 223-101-005-000 (hereafter the Property) which requires enrollment under General Order No. WQ 2019-0001-DWQ for cultivation over 2,000 square feet. Cannabis cultivation was occurring within covered hoop-house style greenhouses at cultivation area CA1 (CA1 on the Inspection Map), outdoor cannabis cultivation was also occurring on what appeared to be an old road (CA2), and outdoor cultivation was occurring adjacent to a garage/secondary residence (CA3). The Property has an off-stream pond (POND) that discharges within approximately 50 feet of a Class II watercourse through a small pipe (OUT). The Class II watercourse was directed beneath the primary parking area for the residence through an undersized and partially plugged culvert (XNG1A and XNG1B approximately 24-inch diameter) that ends adjacent to a fuel storage shed and then the Class II watercourse passes through another culverted stream crossing (XNG2) to the natural stream channel.

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


Attachment C – Inspection Map and Photolog



Site Map of Kaya Phelps Property Humboldt County


5/25/2021

- Point of Interest
- Cultivation Area
- Pond
- Parcel Boundary
- Water Course



CALIFORNIA
Water Boards
STATE WATER RESOURCES CONTROL BOARD
REGIONAL WATER QUALITY CONTROL BOARD

Note: 2020 NAP Imagery provided by California Department of Fish and Wildlife online mapping services
points of interest may be drawn in by hand



1.5 Miles

All photographs and GPS locations were taken by Shannon Utley, North Coast Regional Water Quality Control Board

Photo 1: View of cultivation area CA1 from the POND.



Photo 2: Closer view of cultivation area CA1 and greenhouses.



Photo 3: Active cannabis cultivation occurring at CA1.



Photo 4: Active cannabis cultivation occurring at CA3.



Photo 5: Active cannabis cultivation occurring at CA2.



Photo 6: View looking down at cultivation area CA2.



Photo 7: View of off-stream pond looking towards pond outflow.



Photo 8: View from OUT looking down to the Class II watercourse and XNG1A



Photo 9: View from XNG1B looking down at XNG2.



Photo 10: View from midpoint between XNG1B and XNG2 looking at XNG1B.



Photo 11: Fuel storage shed located next to XNG2.



Photo 12: Closer view of proximity between the fuel shed and XNG2.

