



North Coast Regional Water Quality Control Board

October 14, 2022

Certified Mail No. 7021 0950 0001 6499 8913

James Tomes
1351 Masonic AVE
San Francisco, CA 94117

Certified Mail No. 7021 0950 0001 6499 8906

Vollie and Cathy Powers
5051 N State ST SPC 24
UKIAH, CA 95482

Dear James Tomes, Vollie Powers and Cathy Powers:

**Subject: Notice of Violation, Transmittal of Report for September 12, 2022
Inspection of Mendocino County Assessor's Parcel Numbers 038-121-12-00 and 038-121-14-00**

File: Cannabis Program Inspections, Mendocino County, 2022, Tomes and Powers, CIWQS Place ID 883661

THIS LETTER REQUIRES THAT YOU ACT WITHIN 30 DAYS

This letter is to notify you of observed violations of the requirements listed below, and cited in Attachment A, at the property identified as Sonoma County Assessor's Parcel Numbers: 038-121-12-00 and 038-121-14-00 (the Property):

1. Water Quality Control Plan for the North Coast Region (Basin Plan) Section 4.2.1, Prohibition 2;
2. California Water Code (Water Code) Sections 13260;
3. State Water Resources Control Board (State Water Board) Cannabis Cultivation Policy Principals and Guidelines for Cannabis Cultivation (Cannabis Policy).

According to our records, the cannabis cultivation operation located on this Property is not enrolled for coverage under Order No. WQ 2019-0001-DWQ General Waste

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

Discharge Requirements and Waiver of Waste Discharge Requirements for Discharges of Waste Associated with Cannabis Cultivation Activities (Cannabis General Order). On September 12, 2022, North Coast Regional Water Quality Control Board (Regional Water Board) staff (Staff) inspected the Property and observed cannabis cultivation exceeding 20,000 square feet. Accordingly, this letter directs you to address the violations noticed herein. Within 30 days, please contact Staff to discuss your plan to correct the observed violations.

Background

Land Vision records show that the J Tomes Family Trust purchased APN: 038-121-12-00 on April 28, 2021 and Vollie and Cathy Powers purchased APN: 038-121-14-00 on September 14, 2007. According to review by Staff on October 7, 2022, of aerial imagery available from Google Earth, cannabis has been cultivated at sites WQ6 and WQ8 in the inspection report since at least August 15, 2009. Order No. R1-2015-0023 (the Regional Cannabis Order) was in effect from August 2015 through adoption of the Cannabis General Order, and required cannabis cultivators within the North Coast Region to enroll and implement water quality protection measures. The Property was never enrolled under the Regional Cannabis Order.

On September 12, 2022, during the execution of a criminal search warrant served by the California Department of Fish and Wildlife (CDFW), Staff, accompanied by personnel from CDFW, and various law enforcement agencies, 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. During the inspection, Staff observed cannabis cultivation operations of sufficient size and scope to require regulatory coverage under the Cannabis General Order. According to CDFW personnel, the requisite state and local authorizations for commercial cannabis cultivation are not associated with the Property.

Attached is a copy of the water quality inspection report (Attachment B – Property Inspection Report). 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 report of the September 12, 2022 inspection, Staff observed: violations of the of the Basin Plan Section 4.2.1 Prohibition 2 at locations WQ1, WQ2,

WQ6, WQ7 and WQ8 for threatened discharges of organic and earthen material to Broaddus Creek; Staff observed large-scale cannabis cultivation and associated activities that were being conducted without first obtaining regulatory coverage for associated waste discharges, in violation of Water Code section 13260 at WQ6 and at WQ8; and site conditions at WQ1, WQ2, WQ5, WQ6, WQ7 and WQ8 violate the Cannabis Policy. Additionally, Staff observed a failing on-site wastewater treatment system (OWTS, or septic system) and noted untreated sewage discharges to land, requiring immediate corrective actions.

Legal Requirements

The State Water Board adopted the Cannabis Policy and the Cannabis General Order on October 17, 2017, and updates on February 5, 2019, which remain in effect today. The purpose of the Cannabis Policy is to ensure that the discharge of waste and diversion of water associated with cannabis cultivation does not have a negative impact on water quality, aquatic habitat, riparian habitat, wetlands, and springs. The Cannabis Policy applies to cannabis cultivation activities throughout California including, Commercial Recreational, Commercial Medical, and Personal Use Medical. The Policy does not apply to recreational cannabis cultivation for personal use, which is limited to six plants under the Adult Use of Marijuana Act (Proposition 64, approved by California voters in November 2016).

The Cannabis General Order is the statewide water quality permit that implements the Cannabis Policy through the overarching general Waste Discharge Requirements (WDRs) in accordance with the California Water Code and is available for eligible cannabis cultivators to enroll under. The Cannabis General Order regulates waste discharges from cultivation sites including sediment, irrigation runoff, fertilizers, pesticides/herbicides, petroleum, agricultural related chemicals, cultivation related waste, and refuse. Threats of waste discharge may be from irrigation runoff, over fertilization, pond failure, road construction, grading activities, domestic and cultivation related waste, refuse placement, etc. All commercial cannabis cultivators must obtain coverage under the Cannabis General Order, including for both indoor and outdoor cultivation.

Cultivation activities on the Property requires conformance with the Cannabis Policy and enrollment under the Cannabis General Order. For more information, please visit our website at:

https://www.waterboards.ca.gov/northcoast/water_issues/programs/cannabis/

As documented in the inspection report, the site conditions observed on the Property do not meet the requirements of the Cannabis Policy. Please provide a written response supporting documentation, including photos if relevant, explaining how the Property will be restored in compliance with the Policy.

Additional Potential Liabilities

The Regional Water Board is in the process of considering whether the violations of the Basin Plan, Cannabis Policy and Water Code warrant further enforcement. We encourage you to take steps, to correct the violations as soon as possible, and secure 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 Basin Plan, Cannabis Policy and Water Code.

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 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 our 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 our 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 Jeremiah.Puget@waterboards.ca.gov or by phone at 707-576-2835. 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,

Jeremiah Puget
Senior Environmental Scientist
Enforcement Unit

Attachments: Attachment A – Regulatory Citations
Attachment B – Inspection Report

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

Jeremiah Puget, Jeremiah.Puget@waterboards.ca.gov

Division of Water Rights

Karen Kramer, Karen.Kramer@waterboards.ca.gov

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

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

Department of Fish and Wildlife

Timothy Dodson, Timothy.Dodson@wildlife.ca.gov

Nicholas Bennett, Nicholas.Bennett@Wildlife.ca.gov

Lieutenant Douglas Willson, Douglas.Willson@wildlife.ca.gov

County Sheriff's Office

Sergeant Clinton Wyant, WyantC@mendocinocounty.org

Mendocino County Cannabis Program

CannabisProgram@mendocinocounty.org

Mendocino County Code Enforcement

Trent Taylor, TaylorT@mendocinocounty.org

Department of Cannabis Control

Jaime Masuda, Jaime.Masuda@cannabis.ca.gov

Erin Wonder, Erin.Wonder@cannabis.ca.gov

Attachment A – Regulatory Citations

Regulatory Section	Citation
Basin Plan Section 4.2.1, Prohibition 2	<p>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.”</p> <p>Available at: https://www.waterboards.ca.gov/northcoast/water_issues/programs/basin_plan/</p>
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)	<p>“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).”</p>

Regulatory Section	Citation
California Water Code Section 13264(a)	“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: (3) The issuance of waste discharge requirements pursuant to Section 13263. (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:... (3) The issuance of a waiver pursuant to Section 13269.”
California Water Code Section 13265(a)	“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.”
Cannabis Policy and General Order No. WQ 2019-0001-DWQ	State Water Resources Control Board Cannabis Cultivation Policy and General Waste Discharge Requirements Order No. WQ 2019-0001-DWQ for Discharges of Waste Associated with Cannabis Cultivation Activities Available at: https://www.waterboards.ca.gov/water_issues/programs/cannabis/docs/policy/final_cannabis_policy_with_attach_a.pdf and https://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2019/wqo2019_0001_dwq.pdf



North Coast Regional Water Quality Control Board

TO: Jeremiah Puget

FROM: Brian Fuller

DATE: October 14, 2022

**Inspection Report for September 12, 2022 Warrant Inspection,
Mendocino County
Assessor's Parcel Numbers (APN) 038-121-12-00 and 038-121-14-00
(the "Property")**

File: Cannabis Program Inspections, Mendocino County, 2022, Tomes and Powers, CIWQS Place ID 883661

Property information:

Watershed: Eel River Hydrologic Unit; Upper Main Eel River Hydrologic Area; Outlet Creek Hydrologic Subarea; (HU/HA/HSA 111.61; see Table 2-1 of the Water Quality Control Plan for the North Coast Region (Basin Plan), for beneficial uses)

Inspection information:

Date/time: September 12, 2022 / morning

Weather: sunny

Type: Warrant Inspection

Background/Objective:

Objectives for Regional Water Board 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.

Inspection Map:



Figure 1: Aerial image/map showing inspection points discussed in this report.

Inspection Narrative:

The inspection was associated with a criminal search warrant, and I viewed only portions of the Property. See the above Inspection Map and below Photo Appendix for locations and details about features of concern to water quality. I entered the northeastern portion of APN 038-121-12-00 from the north and observed scour marks on the road surface west of WQ1. I walked behind a residence in the vicinity of WQ1, detected the odor of sewage and observed a septic tank overflowing and discharging onto the hillslope to the north in the direction of Broaddus Creek. I observed trimmed cannabis waste east of the residence at WQ2.

South of the residence at WQ3, I observed a pump and water tanks and followed a waterline that was connected to the top of the tanks south to WQ4. At WQ4 I observed the topography formed a gentle swale that hosted a higher concentration of ferns than the surrounding area. I observed three shallow pits that had been excavated in the saturated ground and had waterlines leading to WQ3.

I followed the road from WQ3 to the east and at WQ5 I observed a parking space with discolored soils, and I detected the odor of diesel fuel in the soil. I suspected a generator had previously been parked at this location. I also observed petroleum products being stored in this area without secondary containment.

I followed the road to the south and observed terraced cultivation pads at WQ6 with hoop-type greenhouses covering an area exceeding 10,000 square feet. I observed wheel ruts on the dirt road in the vicinity of WQ6. I observed an area east of WQ6, between WQ6 and WQ7 where cultivation waste had been dumped. I continued following the road to the south and observed a pad with hoop-type greenhouses covering approximately 10,000 square feet at WQ8. I observed tension cracks and slope failures along the fill-slope's face of one of the pads. I observed water tanks and agricultural chemicals at WQ9 used to irrigate the cannabis cultivation at WQ8.

Recommendations for the Discharger:

1. Immediately cease the discharge of sewage to land, implement corrective actions, and obtain the appropriate county permit for the disposal of on-site wastewater (i.e., septic system permit).
2. Retain a licensed professional to investigate the extent of contaminated soil associated with the spilled petroleum products and develop a workplan and schedule for cleaning up the spill.
3. Immediately collect all refuse and wastes and properly dispose of these wastes at a licensed waste collection facility.
4. Retain a licensed professional to inventory, assess, and develop a workplan and schedule to implement measures to ensure that all developed features, roads, watercourse crossings, and cultivation areas throughout the Property are corrected,

restored, and/or maintained in conditions that comply with the Cannabis Cultivation Policy¹.

5. Dispose of all development and restoration-related earthen spoils in a manner to prevent/minimize transport and delivery to receiving waters.
6. Prior to cultivating cannabis or developing a property for cannabis cultivation, enroll for coverage under the Cannabis General Order².
7. Prior to conducting work in a water of the state of California, submit an application and pay the required application fee for a Water Quality Certification/Waste Discharge Requirement³:

¹ The Cannabis Cultivation Policy can be found at:
https://www.waterboards.ca.gov/water_issues/programs/cannabis/docs/policy/final_cannabis_policy_with_attach_a.pdf

² Details about enrolling in the Cannabis General Order can be found at:
<https://public2.waterboards.ca.gov/mt/Home/Index>

³ The application for instream work can be found at:
https://www.waterboards.ca.gov/northcoast/water_issues/programs/cannabis/pdf/200204/RB1_Cannabis_WQC_401_App.pdf

Photo Appendix:



Photo 1—Looking north along the road accessing the property west of WQ1. Sinuous scour marks on the road surface are visible in the middle of the image.



Photo 2—Looking west at WQ1. A partially buried septic tank is visible in the middle of the image.



Photo 3—Looking north from WQ1. Sewage is visible leaking from the septic tank in the lower left of the image and flowing north toward Broaddus Creek which is out of view to the right of the image.



Photo 4—Looking north-east in the vicinity of WQ1. The leaf litter is darker in the middle of the image where a black pipe discharges waste water from the residence.



Photo 5—Looking north in the vicinity of WQ2. A pile of cannabis cultivation waste, including plant stalks, covers a 10-foot by 16-foot area on the hillslope south of Broaddus Creek.



Photo 6—Looking east from WQ3. Water tanks with black water lines extending from the top of the tanks to the south, (right side of the image).



Photo 7—Looking south at WQ4. One of several pits excavated to access shallow groundwater.



Photo 8—Looking north from WQ4. There is no surface water visible immediately downslope from the excavated pits that are behind the photographer.

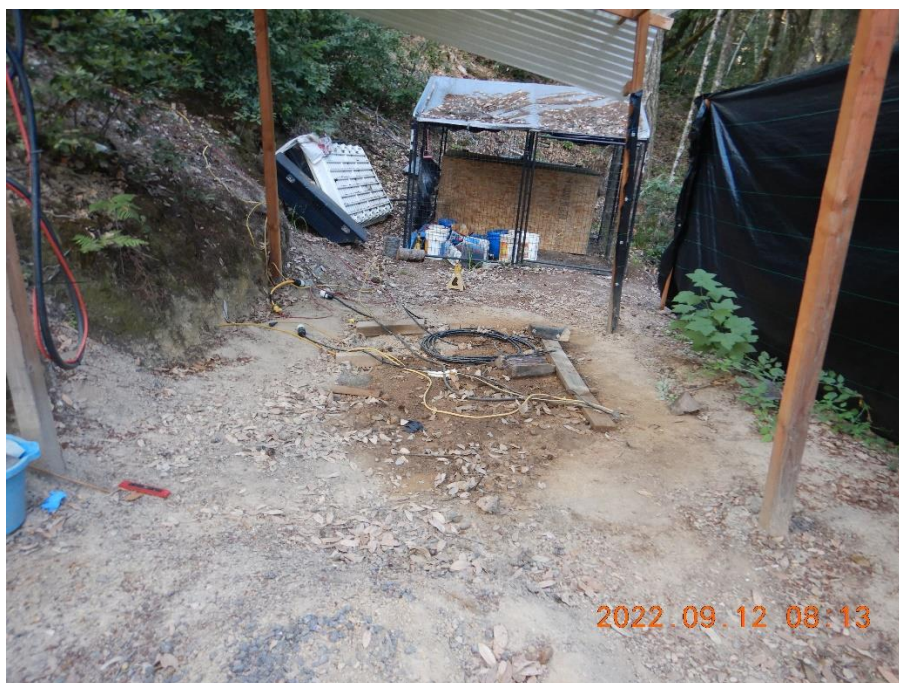


Photo 9—A covered parking area at WQ5. Staff detected a strong odor of diesel fuel emanating from the darker soil in the middle of the image. A shed containing petroleum products is visible in the back of the image.



Photo 10—Closer view of the shed pictured in the previous image at WQ5. Petroleum products are being stored without secondary containment.



Photo 11—Looking south from WQ5 at a fuel storage tank.



Photo 12—Fuel storage tank pictured in previous image. The fuel tank does not have secondary containment.



Photo 13—Looking west from WQ6 at terraced pads with cannabis hoop-type greenhouses.



Photo 14—A road in the vicinity of WQ6. Ruts are visible on the road surface.



Photo 15—Waste cannabis stalks on the hillside east of the road in the vicinity of WQ6.



Photo 16—Cannabis cultivation waste, including plant growth media between WQ6 and WQ7.



Photo 17—Cannabis cultivation waste between WQ6 and WQ7.



Photo 18—Cannabis cultivation waste between WQ6 and WQ7.



Photo 19—Looking south along the eastern edge of a terraced pad at WQ8. Tension cracks are visible along the top of the slope face and the area of the slope face visible in the bottom middle of the image displays a concave-up shape resulting from a previous slope failure.



Photo 20—Cannabis plants growing in a hoop-type greenhouse at WQ8.



Photo 21—Water tanks located at WQ9.



Photo 22—Agricultural chemicals at WQ9.