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Guidance Document for Order No. R1-2004-0016

Categorical Waiver of Waste Discharge Requirements
for Discharges Related to Timber Activities
on Non-Federal Lands in the North Coast Region

Introduction

On June 23, 2004, the North Coast Regional Water Quality Control Board (Regional Water Board) adopted Order No. R1-2004-0016, Categorical Waiver of Waste Discharge Requirements for Discharges Related to Timber Activities on Non-Federal Lands in the North Coast Region (Categorical Waiver). This waiver exempts timber activities conducted on Non-Federal lands from the waste discharge requirements of Article 4 (commencing with Section 13260) of Chapter 4, Division 7 of the California Water Code, except as provided within the waiver. This Order rescinds Order No. R1-2003-0116, except for temporary application to Projects that were accepted for filing, but not approved, by the California Department of Forestry and Fire Protection prior to June 23, 2004. Dischargers with such Projects have until October 15, 2004 to seek temporary coverage under the old Waiver, R1-2003-0116, and then be automatically covered under the new Waiver, R1-2004-0016, provided they meet the eligibility criteria and applicable conditions specified in Section IV of R1-2004-0016. Order No. R1-2004-0016 expires on June 23, 2009.

Activities Covered

Projects that conduct Timber Harvest Activities as defined in the Order means commercial and non-commercial activities relating to forest management and timberland conversions. These activities include the cutting or removal or both of timber and other solid wood forest products, including Christmas trees, as well as, but not limited to, construction, reconstruction and maintenance of roads, fuel breaks, firebreaks, watercourse crossings, landings, skid trails, or beds for the falling of trees; fire hazard abatement and fuel reduction activities; burned area rehabilitation; site preparation that involves disturbance of soil or burning of vegetation following timber harvesting activities; but excluding preparatory treemarking, surveying or roadflagging. A Project is defined as any Timber Harvest Plan, Nonindustrial Timber Management Plan, Modified Timber Harvest Plan, other discretionary permits issued by the California Department of Forestry and Fire Protection (CDF) to harvest timber, including all

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amendments thereto that propose a change in timber harvest activities that in any way could adversely affect water quality, or any Fire Safe Project, Notice of Exemption or Notice of Emergency Timber Operation accepted by CDF, or any other project, as defined by CEQA, that involves timber harvest activities provided that the project has complied with CEQA.

Please be advised that the commencement of timber harvest activities, including the falling of timber, without coverage under a waiver or waste discharge requirements, may constitute the initiation of a discharge under CWC Section 13264, if supported by factual, site-specific findings. If the Regional Water Board finds that a discharge has in fact been initiated, then enforcement actions pursuant to CWC Section 13265 could be pursued.

There are six (6) waiver categories, each with specific eligibility criteria and conditions. These categories are:

Categorical Waiver A: Fire Safe Projects

Categorical Waiver B: Emergencies and Exemptions Projects

Categorical Waiver C: Total Maximum Daily Load Projects

Categorical Waiver D: Modified Timber Harvest Plans

Categorical Waiver E: Nonindustrial Timber Management Plans

Categorical Waiver F: Other Projects (Timber Harvest Plans)

Who Should File for Coverage

Any Discharger proposing to conduct a Project that involves Timber Harvest Activities that qualifies for one of the Categorical Waiver (Order No. R1-2004-0016) categories should apply for coverage. If the Project does not qualify for coverage under the Categorical Waiver, the Discharger should seek Project coverage under an individual waiver, General WDRs (Order No. R1-2004-0030), or individual WDRs.

Any Project that was accepted for filing but not yet approved by the California Department of Forestry and Fire Protection as of June 23, 2004, is eligible for coverage under Order No. R1-2003-0116 until October 15, 2004, should they qualify under the terms and conditions of that Order.

Projects that were previously waived under Order No. R1-2003-0116 can be covered under this Categorical Waiver. Such Projects must have been previously waived under Order No. R1-2003-0116, not be the subject of an unresolved water quality issue or non-concurrence filed by the Regional Water Board staff, and must meet certain eligibility criteria and conditions specified in Section IV of the Categorical Waiver.

How to File for Coverage

The first step in seeking coverage under the Categorical Waiver is to determine if a given Project meets the eligibility criteria for one of the six waiver categories. If the Project meets the

eligibility criteria for a given categorical waiver, the Discharger must comply with all the specific and general waiver conditions, starting with submittal of the application documents, as required.

Please note that one condition in Section III.G.10. requires notification of pesticide use as follows:

- "10. For those Projects where application of pesticides is proposed or being considered, before or after the Project is approved, the Discharger shall notify the Regional Board in writing at least 45 days prior to any proposed aerial application of pesticides and 30 days for any proposed ground-based application of pesticides. The notification shall include the type of pesticide(s), method and area of application, projected date of application, and measures that will be employed to assure compliance with applicable water quality requirements. This Order does not itself authorize the application or discharge of pesticides."

This requirement is specifically noted here because it was not a requirement of the old waiver, but it is a condition of coverage under this new waiver, for both new projects as well as existing projects that are eligible for coverage under Section IV of the new waiver.

For Categorical Waivers C-F, prior to commencement of timber harvest activities, the Discharger shall file with the Regional Water Board a Certification Notice, in which they certify that they understand and intend to comply with all water quality requirements and the eligibility criteria and conditions, specific and general, of the appropriate waiver category. The Certification Notice shall be signed by the Discharger or their duly authorized representative and indicate the type of categorical waiver (i.e. Categorical Waiver C, D, E, or F) being sought. Projects that were previously waived under Order No. R1-2003-0116 and that qualify for coverage under this Categorical Waiver, need not submit a Certification Notice.

Categorical Waiver E, Nonindustrial Timber Management Plans, must also submit, either within the originally approved Project or with each Notice of Timber Operations (NTO), an Erosion Control Plan (ECP). The ECP shall contain:

1. An inventory of all controllable sediment discharge sources within the NTMP or NTO area, and,
2. A time schedule for implementation of prevention and minimization management measures to all controllable sediment discharge sources within the Project area. The implementation of prevention and minimization management measures must be completed within the NTO period of operations.

Controllable sediment discharge sources means sites or locations, both existing and those created by proposed timber harvest activities, within the Project area, that meet all the following conditions:

1. Is discharging or has the potential to discharge sediment to waters of the state in violation of applicable water quality requirements or other provisions of this Categorical Waiver,
2. Was caused or affected by human activity, and

3. May feasibly and reasonably respond to prevention and minimization management measures.

Categorical Waivers F, Other Projects (Timber Harvest Plans), may also be required to submit a Sediment Prevention Plan (SPP) when seeking a variance to specific eligibility criteria. The SPP shall be prepared by a qualified professional and include, but not be limited to, a map clearly showing the location(s) of the site(s) that could discharge sediment, and site-specific designs and/or management measures to prevent and minimize the discharge of sediment.

Unless other timeframes are specified, fourteen (14) day after the Certification Notice is received by the Regional Water Board certifying that timber harvest activities comply with all water quality requirements and the eligibility criteria and conditions of the Categorical Waiver, timber harvest activities may begin. The Regional Board Executive Officer will notify the Discharger in writing if coverage under the categorical waiver is determined to be inappropriate.

Duration/Termination of Coverage

The waiver would then remain in effect until one of the following occurs:

- The Categorical Waiver Order No. R1-2004-0016 expires on June 23, 2009; or,
- The Regional Water Board or its Executive Officer terminates waiver coverage. Grounds for termination are specified in Section V of the Categorical Waiver and include, but are not limited to, the Project not meeting the eligibility criteria for the waiver, the Project not being in compliance with the applicable conditions of the waiver, the Project is reasonably likely to result or has resulted in a violation or exceedence of applicable water quality requirements, the Project has varied in whole or in any part from the approved Project in any way that could adversely affect water quality, etc.; or
- The Discharger terminates coverage under a categorical waiver for a completed Project by submitting, forthwith upon completion of the Project, to the Regional Board a Final Certification Notice signed by the landowner certifying that: (1) the Project was conducted in conformance with the approved or accepted Project and with all applicable provisions of this Order, and (2) discharges resulting from the Project were in compliance or are expected to comply with all requirements of applicable water quality requirements.

Copies of the Categorical Waiver, as well as other information, can be downloaded at the following web address: <http://www.swrcb.ca.gov/rwqcb1/geninfo/timber/timberwg.html>.