

Regional Water Quality Control Board
North Coast Region

Executive Officer's Summary Report
Friday, June 10, 2022
North Coast Regional Water Quality Control Board Office
Santa Rosa, California

ITEM: 8

SUBJECT: Post-fire Timber Salvage Operations, Wildfire Remediation, and Monitoring (*Jonathan Warmerdam, Regional Water Board; Eric Huff and Drew Coe, CAL FIRE; Edith Hannigan and Dr. Keith Gillless, Board of Forestry*)

BOARD ACTION: This is an informational item. No action will be taken by the Regional Water Board.

BACKGROUND: The purpose for this information item is to hold a joint presentation by staff from the Regional Water Board, CAL FIRE, and the Board of Forestry, related to post-fire timber salvage activities, wildfire remediation actions, and monitoring to inform potential revisions to how post-fire timber salvage operations are regulated. The information item will include presentations by: Regional Water Board Division Supervisor Jonathan Warmerdam, CAL FIRE Staff Chief Eric Huff, CAL FIRE Watershed Protection Program Manager Drew Coe, Board of Forestry Executive Officer Edith Hannigan, and Board of Forestry Chair Dr. Keith Gillless.

DISCUSSION: Wildfire activity in the western United States has been increasing in frequency, scale, and intensity during the 21st century. In California, all but three of the 20 largest fires on record occurred within the past two decades, and 10 of them came in 2018 or later. As wildfires impact our communities and forest, there has been a steady rise in the number of post-fire timber harvest projects on private lands.

Under normal circumstances (i.e., not following a wildfire), timber harvesting of green trees occurs within the multi-disciplinary review team process, with oversight by California's state regulatory agencies. This process provides clear recognition of the environmental protection standards, permitting, CEQA requirements, and an understanding of all the applicable "operational provisions" included in CalFire's Forest Practice Rules. "Non-discretionary" or "ministerial" regulatory authorizations, like the Forest Practice Rules Emergency Notice process established through 14 CCR §§ 1052, provide very limited regulatory oversight and have the potential to result in significant environmental impacts, as compared to "discretionary" authorizations, like those found in the normal timber harvest planning process. The CAL FIRE process for authorizing emergency notices (EM) is substantially different in comparison to normal timber harvest planning and raises questions about the appropriateness of this ministerial permitting approach given the recent increase in wildfire activity, and anticipated increase in EM use.

Since 2017 the Regional Water Board has increased its oversight and investigation of post-fire timber salvage operations in the North Coast Region. Before that time, post-fire timber salvage operations received less review or oversight by the Regional Water

Board due to their infrequent use or perceived threat to water quality. In 2018, Regional Water Board staff initiated a post-fire timber salvage monitoring effort to review these activities and their authorization process, as well as to contemplate the adequacy of the Regional Water Board's own permitting mechanism to protect water quality during post-fire timber salvage operations.

CAL FIRE and the Regional Water Board's current authorization mechanisms for EMs provide expedited and efficient automatic approvals to conduct post-fire salvage operations, so long as certain criteria are met. The Regional Water Board currently has its own ministerial authorization process – Categorical Waiver of Waste Discharge Requirements Order No. R1-2014-0111 - which is automatically triggered when an EM is authorized by CAL FIRE. Regional Water Board staff are contemplating potential revisions to the Categorical Waiver to ensure that our ministerial permitting process is sufficient to protect water quality.

In 2018, CAL FIRE and other forest practice review team agencies, including the Regional Water Board, initiated monitoring of EM projects to evaluate project performance as required following the passage of Senate Bill 901. These monitoring requirements aligned well with the Regional Water Board's interest in deeper evaluations of EM projects and provided an important collaboration opportunity amongst the review team agencies to support these investigations. Under the leadership and design by CAL FIRE staff, a random probabilistic sample design and an accompanying monitoring protocol was developed to evaluate EM projects throughout the state. The original sample design included more than 50 randomly selected EM projects, approximately 20 of which were located within the North Coast Region. Regional Water Board staff participated in all the monitoring inspections conducted in the North Coast Region.

The resulting 2019 Monitoring Report identified that performance on 40% of the EMs surveyed was identified as either "substandard" or "unacceptable" as that relates to water quality protections. These results have become the catalyst for increased scrutiny of these project activities as the monitoring revealed that the existing authorization processes for EMs should be reevaluated. Since that time, CAL FIRE, the Board of Forestry, and the review team agencies have taken multiple actions to address these shortcomings and to improve project performance, including but not limited to: increased inspections; dissemination of information to registered professional foresters, licensed timber operators and landowners; new regulatory informational flyers that are distributed with each EM authorization, increased enforcement for regulatory violations, and changes to the Forest Practice Rules (FPRs).

Regional Water Board staff have identified several areas of concern that remain, which we believe would improve the EM authorization and project performance. Section 1052(b) of the FPRs state as a requirement that any authorized EN must conform with the "operational provisions" of the Forest Practice Rules. However, what those operational provisions are, have not been defined, leaving the review team agencies, registered professional foresters, and licensed timber operators in a somewhat ambiguous regulatory arena, subjected to differing interpretation of standards. These ambiguities increase the risks for individual landowners and the environment. Clarification on which FPR operational provisions apply to EM projects would greatly

improve regulatory oversight, project implementation, environmental protection, and reduce landowner liabilities.

Regional Water Board staff have also highlighted concerns regarding the construction and reconstruction of road and watercourse crossings that are often necessary to conduct EM projects but are not authorized or approved as part of the CAL FIRE authorization process. Roads and watercourse crossings can be one of the largest sources of pollution discharge, and are closely examined during normal, “green tree” timber harvest activities to ensure that they are properly designed and functioning. However, CAL FIRE has clarified that post-fire timber salvage activities are approved through a “ministerial” authorization, and that road and watercourse crossing construction/reconstruction activities are “discretionary”, therefore falling outside the realm of the EN authorization.

During Fiscal Year 2021/22, Regional Water Board staff have inspected 35 emergency notices as of the beginning of May 2022. Although several outstanding concerns remain about the EM authorization process, anecdotally, Regional Water Board staff believe that performance does appear to be improving because of increased regulatory oversight, outreach and education efforts.

In 2022, CAL FIRE intends to conduct an additional round of EM monitoring in the same manner as was conducted in 2018 to evaluate their performance once again. Regional Water Board staff will support these efforts by participating in monitoring inspections and reviewing and collaborating on the subsequent report to the legislature, which CAL FIRE hopes to have completed sometime in early 2023.

The results of the 2022 monitoring of EM projects, as well as any potential changes to the Forest Practice Rules to address identified concerns, will guide the Regional Water Board’s future decisions regarding potential revisions to the Categorical Waiver of Waste Discharge Requirements Order No. R1-2014-0111, the existing regulatory mechanism for covering post-fire salvage operations.

SIGNIFICANT
CHANGES: NA

RECOMMENDATION: NA

SUPPORTING
DOCUMENTS:

1. Emergency Notice of Timber Operations Monitoring and Report (2019 Monitoring Report) on Exemption Usage (Available upon request)
2. January 2022 Regional Water Board Staff Comment Letter to the Board of Forestry Regarding Emergency Notices