

Regional Water Quality Control Board
North Coast Region

Executive Officer's Summary Report
Thursday, August 13, 2015
Regional Water Board Office
Santa Rosa, California

- ITEM: 7
- SUBJECT: Public Hearing on Proposed Order No. R1-2015-0023 General Waiver of Waste Discharge Requirements (Waiver) and General Water Quality Certification and Monitoring and Reporting Program for Discharges of Waste Resulting from Cannabis Cultivation and Associated Activities or Operations with Similar Environmental Effects in the North Coast Region (*Diana Henriouille, Kason Grady*)
- BOARD ACTION: Consider adoption of General Waiver of Waste Discharge Requirements Order No. R1-2015-0023.
- BACKGROUND: Increased statewide attention to the issue of environmental impacts from marijuana (aka cannabis) cultivation led to direction by the Governor's Office and legislature for the State and Regional Water Boards and the California Department of Fish and Wildlife (CDFW) to develop a coordinated strategy to address the issue. Accordingly, staff of the State Water Board's Office of Enforcement (OE), the North Coast Region, the Central Valley Region, and representatives from CDFW collaborated and developed a Strategy for Regulation and Enforcement of Unauthorized Diversions; Discharges of Waste to Surface and Groundwater Caused by Marijuana Cultivation (Strategy) dated July 2014. The Strategy focuses on Northern California as a pilot area over the coming years.
- The Strategy takes a four-pronged approach that includes: Enforcement; Development of a regulatory program to control discharges of waste from marijuana cultivation and related activities; Education and outreach; and Inter-agency coordination.
- In October 2014 and January 2015, staff from both the Regional and State Water Boards updated the Regional Water Board on the status of the Marijuana Cultivation Waste Discharge Regulatory and Enforcement Program in the region and statewide.
- The draft Order and Initial Study were made available for public comment from April 23 to June 8, 2015, with a comment period of 45 days. On May 7, 2015, the Regional Water Board conducted a public workshop. Staff received 47 written comments during the public comment period. Staff synthesized and responded to all of the comments, and made necessary revisions to the proposed Order.

DISCUSSION: North Coast Regional Water Board staff developed the proposed Order No. R1 2015-0023 Waiver of Waste Discharge Requirements and General Water Quality Certification for Discharges of Waste Resulting from Cannabis Cultivation and Associated Activities or Operations with Similar Environmental Effects and draft Mitigated Negative Declaration to comply with the California Environmental Quality Act (CEQA). The proposed Order supports the regulatory program component of the Strategy. The primary elements of the proposed Order include:

1. A tiered enrollment structure relative to the potential threat to water quality. Tier 1 is a low-threat tier based on compliance with defined standard conditions and site characteristics. Tier 2 is a management tier, which requires the development and implementation of a water resource protection plan. Tier 3 is a cleanup tier, which requires the development and implementation of a cleanup and restoration plan.
2. Standard conditions to protect water quality in conjunction with a Best Management Practice (BMP) Appendix provide a framework for cultivators to assess their sites for appropriate tiers and determine what management measures are necessary to protect water quality. All BMPs in Appendix B are considered enforceable conditions under the Order as applicable to a given site. The draft Order includes standard conditions regarding:
 - a. Site maintenance, erosion control and drainage features,
 - b. Stream crossing maintenance and improvement,
 - c. Stream and wetland buffers,
 - d. Spoils management,
 - e. Water storage and use,
 - f. Irrigation runoff,
 - g. Fertilizers and soil amendments,
 - h. Pesticides,
 - i. Petroleum products and other chemicals,
 - j. Cultivation-related wastes,
 - k. Refuse and human waste, and
 - l. Remediation, cleanup, and restoration activities.
3. Associated procedural forms including a notice of intent of enrollment, a monitoring and reporting form, and a checklist for remediation and restoration work in streams or wetlands.
4. General Prohibitions including discharges or threatened discharges to surface waters.

5. A framework for nongovernmental third party programs to assist cultivators with enrollment, compliance activities, and monitoring and reporting.
6. A framework for development and implementation of water resource protection and cleanup and restoration plans.
7. An Initial Study and proposed Mitigated Negative Declaration, which is a CEQA compliance document that describes potential environmental impacts associated with the implementation of this Order, along with explanations for how each potential impact is avoided, minimized or mitigated.

Concurrently with development of the Order, Regional Water Board staff has been disseminating information to the public regarding the Strategy and the elements of the draft Order. These efforts have been principally through the education and outreach element of the four-pronged approach.

Information has been made available to interested stakeholders through the following methods:

1. Distributing brochures with general information including Water Board staff contact information and the need for a permit, the potential for water quality impacts from cannabis cultivation and related activities, and enforcement in relation to discharges of waste and improper water diversions. The brochures were distributed to individuals, supply stores, partner agencies, and interested third party entities;
2. Attending and speaking at public outreach events relating to cannabis cultivation discharges;
3. Providing general information via presentations and informational meetings to specific interest groups, including environmental groups, governments, grower associations and third party entities; and
4. Being interviewed on public radio and in print media.

Staff received 47 comment letters within the public comment period and various other late comments on the draft Order and Initial Study. Comments related to a range of topics generally in favor of, or opposed to, these efforts to regulate discharges from cannabis cultivation. Staff reviewed and responded to the comments, and made necessary revisions to the draft Order. The comment letters, Staff response to comments, including proposed revisions, are included as supporting documents in this package.

Staff made the following major revisions to the draft Order in response to comments:

1. Changed the measure for permit coverage from number of plants to cultivated area and increased this threshold to 2,000 square feet.
2. Increased the upper limit for Tier 1 cultivation area from 2,000 to 5,000 square feet.
3. Created a low-threat classification (Tier 2*), within Tier 2 sites that have less than 10,000 square feet of cultivation area, are in compliance with standard conditions, and have fully implemented a water resource protection plan.
4. Clarified that enrollees participating in approved third party programs do not have to submit self-identifying sensitive information to the Regional Water Board in order to enroll.
5. Changed the enrollment deadline from November 15, 2015 to February 16, 2016, and extended the timeframe for developing and beginning to implement a water resource protection plan from 90 days to 180 days from submittal date of the Notice of Intent.

Staff split the draft Appendix A into Appendices A and C in order to distinguish that the NOI is only required to be submitted upon enrollment and if the tier determination changes, while the Monitoring and Reporting Program requirements apply annually. Staff also updated the Monitoring and Reporting Program to include more detailed compliance information and subwatershed scale reporting information.

Staff added Appendices D and E to the Order. Appendix D provides clarification of the submittal requirements for authorization of remediation, cleanup and restoration work in streams and wetlands and Appendices E1 and E2 are informational documents produced by the Department of Pesticide Regulation. Each of these appendices is considered a procedural document and changes to them are delegated to the Executive Officer.

RECOMMENDATION: Adopt Order No. R1-2015-0023, the Mitigated Negative Declaration and all accompanying documents as proposed.

SUPPORTING DOCUMENTS: (Available on the Regional Water Board's website at the following link:

http://www.waterboards.ca.gov/northcoast/board_decisions/tentative_orders/)

- 1) Proposed Order R1-2015-0023, Waiver of Waste Discharge Requirements and General Water Quality Certification for Discharges of Waste Resulting from Marijuana Cultivation and Associated Activities or Operations with Similar Environmental Effects in the North Coast Region (tracked changes and changes accepted versions)

- a. Appendix A – Enrollment form
 - b. Appendix B – Best Management Practices for Discharges of Waste Resulting from Marijuana Cultivation and Associated Activities or Operations with Similar Environmental Effects (tracked changes and changes accepted versions)
 - c. Appendix C – Monitoring and Reporting Program
 - d. Appendix D – Surface Water Correction Workplan Requirements
 - e. Appendix E1 – Department of Pesticide Regulation Document – Legal Pest Management Practices for Marijuana Growers in California
Appendix E2 – Department of Pesticide Regulation Informational Document – Pesticide Use on Marijuana
- 2) CEQA Initial Study and draft Mitigated Negative Declaration for Adoption of General Waiver of Waste Discharge Requirements and a General Water Quality Certification for Discharges of Waste Resulting from Marijuana Cultivation and Associated Activities or Operations with Similar Environmental Effects in the North Coast Region (tracked changes and changes accepted versions)
 - 3) Response to Comments and all comment letters
 - 4) Public Notice