
North Coast Regional Water Quality Control Board

Frequently Asked Questions

Order R1-2015-0023: *General Waiver of Waste Discharge Requirements 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*

Document Purpose

This document is intended to address some of the most common questions related to Order R1-2015-0023 (the Order). The document will be updated periodically to address additional topics. Additional information can be found at

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

Frequently Asked Questions

1. Who is required to enroll for coverage under Order R1-2015-0023?

The owner/operator/tenant/lessee of any property where there is 2,000 square feet or more of cannabis cultivation is required to enroll for coverage. Additionally, smaller operations or operations with similar environmental effects, where there is a threat to water quality, may be directed to enroll under the Order.

2. What are operations with similar environmental effects under Order R1-2015-0023?

Operations with similar environmental effects include cultivated crops, other than cannabis. This often includes annual vegetable, flower, or herb cultivation in open areas upon which there is irrigation and addition of amendments and fertilizers to soil. Generally this does not include well-vegetated areas of mature fruit trees or established vines which require minimal inputs and ground disturbance.

3. When should I enroll under Order R1-2015-0023

At present, any sites with conditions and operations that fall within the purview of the Order are required to enroll prior to the commencement of operations. Additionally, existing operations are required to enroll.

4. What if I am required to enroll for coverage under Order R1-2015-002, but have not yet enrolled?

Failure to obtain coverage for a site that is required to be enrolled under Order R1-2015-0023 can result in enforcement action including accrual of penalties. The Regional Water Board takes enforcement for failure to enroll (enrollment enforcement), and owners of properties that appear to require coverage under the Order may receive a letter directing

action within 30 days. Failure to respond can trigger enforcement including penalties of up to \$1000 per day of violation.

5. Does enrollment in Order R1-2015-0023 provide regulatory coverage for new site development?

Order R1-2015-0023 does not cover new site development but rather requires water quality protection and covers water quality-related improvements and maintenance of developed sites with cannabis cultivation or operations with similar environmental effects. Prior to new site development, an owner or operator may be required to comply with additional requirements and obtain other permits including: county land use and grading permits, California Department of Forestry and Fire Protection (http://calfire.ca.gov/resource_mgt/resource_mgt_forestpractice) permitting for timber harvest, coverage under the State Water Resources Control Board Construction General Permit (http://www.waterboards.ca.gov/water_issues/programs/stormwater/construction.shtml) for land disturbance of an acre or more, U.S. Army Corps of Engineers (<http://www.spn.usace.army.mil/Missions/Regulatory/JurisdictionDeterminations.aspx>) and/or North Coast Regional Water Quality Control Board (http://waterboards.ca.gov/northcoast/water_issues/programs/water_quality_certification.shtml) permitting for any proposed disturbance in streams and wetlands, California Department of Fish and Wildlife Lake and Streambed Alteration Agreements (<https://www.wildlife.ca.gov/Conservation/LSA>), and SWRCB Division of Water Rights (<http://www.waterboards.ca.gov/waterrights/>) permitting for diversion, storage, and use of surface waters.

6. What does the Order require?

The Order describes performance standards for site conditions. If a site meets these standards, the Regional Water Board has a reasonable expectation that water quality and beneficial uses will be protected. The Order establishes a process by which properties will be brought into conformance with these performance standards, referred to in the Order as standard conditions, through development and implementation of best management practices. There are twelve categories of standard conditions provided in the Order (Section I, A.) on pages 15-21. The standard conditions address:

- 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

If a site does not presently meet the standard conditions, the Order requires the development of a plan and schedule and implementation of corrective actions to achieve the standard conditions.

7. How do I know what tier I should enroll in?

Current site conditions relative to the standard conditions and threat to water quality posed by the site and operations and features on the site determine the appropriate tier for enrollment. Tier thresholds/criteria, requirements, and fees are as follows:

- a. Tier 1 is a low-threat tier based on compliance with standard conditions and site characteristics (less than 5000 ft² of total cultivated area, no cultivation on slopes greater than 35%, no cultivation areas, or associated facilities are located within 200 feet of a surface water (i.e., wetland, Class I, II, or III streams), and no surface water diversion from May 15 – October 31. The annual fee is \$1000.
- b. Tier 2 is a management tier for operations that do not meet the standard conditions or otherwise do not qualify for Tier 1. Within 180 days of enrollment, Tier 2 enrollees shall develop and implement a site-specific water resource protection plan that includes management measures to be implemented to meet the standard conditions. The annual fee is \$2500.
- c. Tier 2* is a tier for operations with less than 10,000 ft² of total cultivated area, where enrollees have fully implemented a water resource protection plan, meet the standard conditions, and are determined by Regional Water Board staff or an approved third party to pose a low threat to water quality. The annual fee is \$1000.
- d. Tier 3 is a cleanup tier, which requires the development and implementation of a cleanup and restoration plan. A Tier 3 enrollee has 45 days to develop and submit a cleanup and restoration plan for Regional Water Board approval. Tier 3 is not eligible for enrollment via a third party program. Tier 3 Dischargers who are cultivating cannabis concurrent with or following site cleanup activities must also enroll in and conform with Tier 2 requirements. The annual fee is \$10,000.

8. What is a Third Party Program?

For the purposes of the Regional Water Board's cannabis program, a third party program is an individual or group approved by the Regional Water Board to assist in implementing the cannabis regulatory program on behalf of the Regional Water Board. They may help dischargers enroll and/or develop compliance plans and/or monitoring reports.

Dischargers may choose to work with a third party program or may enroll directly with the Regional Water Board. There are many qualified and experienced professionals available to assist dischargers with environmental/water resource protection efforts, and dischargers are not precluded from using the professional(s) of their choice.

Third party programs, upon approval, will be listed on the cannabis regulatory program webpage; the webpage is updated regularly:

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

9. Does the Order cover areas other than my cultivated area?

The Order applies to an entire property and addresses all sources of potential pollution from the property, including roads, developed areas, human waste facilities, storage and use of nutrients, chemical and petroleum products. Additionally, because water quality and beneficial uses can be impacted by reduced streamflow, the Order addresses water use and storage.

10. How is the square footage of cultivation area determined?

The definition of cultivation area in the Order is: "The sum of the area(s) of cannabis cultivation and/or operations with similar environmental effects as measured around the perimeter of each discrete cultivation area on a single parcel of land."

For the purposes of evaluating if there is 2000 square feet or more of cannabis (a threshold for enrollment), staff look at the cumulative footprint of the cannabis cultivation area(s) (rather than canopy), primarily the cultivated and irrigated and amended soil, and paths around those. It should be noted that smaller operations with water quality impacts are also required to enroll.

Once a determination is made that enrollment is required, then the total cultivated area is evaluated as that associated with the cannabis and operations with similar environmental effects. Generally vegetable gardens are included in the total cultivated area. While the layout of sites vary, staff look at factors including areas cleared of native vegetation and trees, the outside perimeter of the garden space, and the outside perimeter of a greenhouse. Staff take into consideration the density (or spread) of cultivation within the disturbed area.

It should be noted that once a property is required to enroll (2,000 square feet or more of cannabis or smaller operations with a threat to water quality), then the size of the total cultivated area is only relevant in terms of tiers at the top end of Tier 1 (5,000 square feet) and the top end of tier 2* (10,000 square feet). The total cultivated area is reported annually and may change from year to year.

For practical application in the field, staff recommends that if the cannabis is interplanted with other annual and perennial crops—for the purpose of evaluating the need to enroll, count only the footprint of the cannabis. When plants are spread out in a garden with other plants, measurement should be around individual cannabis plants to assess whether area of cannabis cultivation meets the size threshold requiring enrollment in the program. Similarly, if the plants are in pots that are spread far apart, add up the area of the pot plus a path around it (1-2 feet around perimeter). Add up the cumulative footprint of the cannabis.

Finally, even if the cannabis cultivated area is below the 2000 square foot enrollment threshold, persons cultivating or allowing cultivation of cannabis on their properties should be mindful of the standard conditions in the Order, and threats the site/property/operation may represent to water quality or water resources. In inspecting sites with cannabis cultivation, staff will first evaluate compliance with standard conditions in general to ensure that there are no impacts or threatened impacts to water quality

associated with site development and operations, and may direct enrollment under Tier 2 or Tier 3, as appropriate, in the event that water resource concerns or violations are identified.

11. What if my neighbors don't help to maintain the road we all use?

Shared use roads are among the most significant sources of chronic sediment discharges to surface waters across populated rural landscapes. These roads were often built initially for timber harvesting activities and are not located or built in accordance with contemporary standards or uses. It is important to ensure adequate maintenance and retrofitting of these roads to control and prevent both chronic and episodic sediment delivery to streams, especially at crossings and unstable features. Road associations, whether they are legal organizations or based on informal agreements, are critical to ensure that adequate and equitable resources are invested in shared road systems. Private roads that cross multiple parcels are the responsibility of the landowners. If the users of the roads do not maintain the road in a condition that protects water quality, then the Regional Water Board can hold the individual owner(s) responsible for the required cleanup.