

State Water Resources Control Board

EX PARTE DISCLOSURE REQUIREMENTS FOR PENDING GENERAL ORDERS

The prohibition against ex parte communications no longer applies to general waste discharge requirements (including NPDES permits), general waivers and general Clean Water Act section 401 water quality certifications. A “general order” does not name specific dischargers, but instead allows eligible dischargers to enroll. The following information will help the public comply with the requirement to meet statutory disclosure requirements. For more information, see Water Code section 13287 and http://www.waterboards.ca.gov/laws_regulations/docs/exparte.pdf.

Must I disclose ex parte communications with board members regarding pending general orders?

You must provide written disclosure if you are in one of these categories:

- Potential enrollees (including their representatives or employees)
- Persons with a financial interest (including their representatives or employees). For a definition of “financial interest,” consult the Political Reform Act (Gov. Code, § 87100 et seq.) and implementing regulations (Cal. Code of Regs., tit. 2, § 18700 et seq.), or the Fair Political Practices Commission website (<http://www.fppc.ca.gov/index.php?id=51>)
- Representatives acting on behalf of any formally organized civic, environmental, neighborhood, business, labor, trade, or similar association

What must I disclose?

The attached form lists the information that must be disclosed to document a meeting, telephone call or other conversation. For written communications, a complete copy of the letter or email with all attachments is adequate.

When is the disclosure due?

Water Board staff must receive the disclosure within seven (7) working days after the board member receives the communication (generally, the date of a phone call or meeting with a board member).

Who must receive my disclosure documents?

Unless the board member(s) provided you with a different contact person, please send your materials to: commentletters@waterboards.ca.gov

What will the Water Board do with my disclosure?

The Water Board is required to post the disclosure on its website and to distribute it via any electronic distribution list for the proposed order. There is no requirement to distribute the disclosure to board members or to prepare responses. If you want to submit written comments or evidence on a proposed general order, you must provide the comments or evidence following the procedure and timelines provided in the notice for the board’s proceeding.

May other interested persons respond to a disclosure notice?

The Water Code does not require that interested persons be allowed to respond to disclosure notices. Any such responses should be included in formal comments submitted during the order’s written comment period, included in oral comments at the hearing, or both.

**STATE WATER RESOURCES CONTROL BOARD
EX PARTE COMMUNICATIONS REGARDING PENDING GENERAL ORDERS
DISCLOSURE FORM**

Note: This form is intended to assist the public in providing the disclosure required by law. It is designed to document meetings and phone calls. Written communications may be disclosed by providing a complete copy of the written document, with attachments. Unless the board member(s) provided you with a different contact person, please send your materials to: commentletters@waterboards.ca.gov

Use of this form is not mandatory.

1. Pending General Order that the communication concerned:

2. Name, title and contact information of person completing this form:
Note: Contact information is not mandatory, but will allow the Water Board to assist you if additional information is required. If your contact information includes your personal residence address, personal telephone number or personal email address, please use a separate sheet of paper if you do not want that information posted on our website. However, this information may be provided to members of the public under the Public Records Act.

3. Date of meeting, phone call or other communication:

Time:

Location:

4. Type of communication (written, oral or both):

5. Names of all participants in the communication, including all board members who participated:

6. Name of person(s) who initiated the communication:

7. Describe the communication and the content of the communication. *Include a brief list or summary of topics discussed at the meeting, any legal or policy positions advocated at the meeting, any factual matters discussed, and any other disclosure you believe relevant. The Office of Chief Counsel recommends that any persons requesting an ex parte meeting prepare an agenda to make it easier to document the discussion properly. Attach additional pages, if necessary.*

8. **Attach a copy of handouts, PowerPoint presentations and other materials any person used or distributed at the meeting. If you have electronic copies, please email them to facilitate web posting.**



CERTIFIED
CROP ADVISER

memorandum

Western Region Certified Crop Advisers

To: DeeDee Dadamo
From: Fred Strauss, Chair Western Region Board of Certified Crop Advisers
Date: 3/28/2017
Re: Nitrogen Management Liabilities

CCAs have been training since 2014 under CDFA Nitrogen Management Certification on order to qualify to complete Nitrogen Management Plans for growers (ILRP), but some perceived liability issues still exist including insurance coverages and release of proprietary data.

Liability Issues (what kind of liability protection do we envision?)

1. Negligence Claims against CCA for either loss with reduced nitrogen and/or nitrogen issues including liability for the company a CCA works for. Without protection for the CCA and employer, many companies may not allow an employee a participate.
2. Error and Omissions
3. Grower not following the Written Recommendation
 - a. Can a procedure be developed to validate that a grower followed the recommended CCA Nutrient Mgt Plan provided that will help negate liability concerns?
 - b. Can a waiver stating grower will take responsibility if they do not follow the written plan be incorporated?
4. Grower consulting the CCA for information/accuracy of plan but signing off independently.
5. Anything that would show the separation between the recommendation and the actual application of nutrients
6. How will non-point source or legacy nitrate issues be addressed - will a base starting point be established?
7. Has it been confirmed that there is 100% participation – and if not how do you address the fairness issue?
8. Is department policy still considered in the early formation stage or will current policy and guidelines be the standard going forward?

9. Can Nitrogen specific CE give CCAs the standard of care piece we may be missing to gain insurance?
10. Can the recommendation only language in the paperwork provide a buffer between the recommendation and actual application?

Propriety Issues (will individual plans be made public?)

1. All Coalitions/Local Water Boards will receive the summary piece from growers
2. Only in the case of an issue, a full Plan plus back up documentation can be requested. Once received this plan would become public information. Who determines and how if a plan is wrong? With the plan being public, will a wrong application open up CCA and/or employer for liability regardless of the plan? With the plan being public, how will a wrong plan open up CCA and/or employer for liability?