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Landowner and Operator Responsibility

The Agricultural Order No. R3-2021-0040 (Ag Order) regulates both landowners and operators of commercial irrigated lands on or from which there are discharges of waste or activities that could impair the quality of any surface water or groundwater or result in the impairment of beneficial uses. The Central Coast Regional Water Quality Control Board (Water Board) will hold both the landowner and operator liable for noncompliance with the Ag Order, regardless of whether the landowner or the operator is the responsible party to enroll.¹

The landowner or operator must enroll in the Ag Order within 60 days of acquiring control or ownership of a new or existing operation or ranch, and prior to any discharge or commencement of activities that may cause a discharge, including land preparation prior to crop production.²

Enrollment

Enrollment in the Ag Order requires the submittal of the electronic Notice of Intent (eNOI) and a signed statement of understanding of the conditions of the Ag Order.³ In the case where an operator may be operating for a period of less than 12 months, the landowner must submit the eNOI. In all other cases, either the landowner or the operator must submit the eNOI.⁴ If the operator signs and submits the eNOI, they must provide a copy of the completed form to the landowner(s).⁵

Compliance

Landowners and operators must communicate with each other about Ag Order compliance. Although some operators may lease land for long periods of time, many operators are transient, short-term tenants. In some cases, landowners and operators

¹ Agricultural Order No. R3-2021-0040, page 7, paragraph 34.
² Agricultural Order No. R3-2021-0040, pages 11-12, paragraphs 7 and 10.
³ Agricultural Order No. R3-2021-0040, pages 11-12, paragraphs 3 and 13.
⁴ Agricultural Order No. R3-2021-0040, page11, paragraph 6.
⁵ Agricultural Order No. R3-2021-0040, page13, paragraph 13.

choose to document responsibility in lease agreements. In many cases the operator has more direct control of the farm and management practices implemented to protect water quality. Conversely, landowners may have more control over permanent infrastructure such as groundwater well construction. Issues can arise if the landowner is absent and/or takes little interest in ensuring that the tenants comply with the Ag Order. Issues can also arise if the tenant is not cooperative in providing the landowner with Ag Order compliance information.

In cases of noncompliance, both the landowner and operator are held accountable for resolving issues. Water Board staff primarily interacts with the enrolled responsible party, typically the operator, to resolve compliance issues. However, when an operation is in violation of the Ag Order, the landowner is included in related correspondence. Additionally, landowners and other interested parties can request information about an operation's compliance from the Water Board at any time using a Public Records Act (PRA) request.

Water Board Policy

State Water Board and Regional Water Boards have a long policy of naming both landowners and operators in waste discharge requirements. That policy was affirmed in a May 8, 1987 Memorandum from William R. Attwater, Chief Counsel, to Regional Board Executive Offices entitled "Inclusion of Landowners in Water Discharge Requirements and Enforcement Orders."

The memorandum noted that there were several basic principles for naming landowners: 1) anyone who owns land on which a discharge is occurring is a discharger under Porter-Cologne; 2) any discharger can be named in waste discharge requirements and made generally responsible for what goes on with regard to the property; and 3) enforcement orders can be issued to a landowner only if the cleanup involves something about which the landowner knew or should have known and over which he or she had some measure of control. In a petition of South California Edison Company, the State Water Board again affirmed the right of the Regional Water Boards to name landowners in waste discharge permits, noting that there are several instances that may serve as bases for imposing liability on the landowner and reason to justify inclusion of a landowner in waste discharge requirements.⁶ Reasons include the existence of nuisance conditions on the leased premises at the time the lease is made or renewed, or the creation by the operator of dangerous conditions on the premises of which the landowner has actual knowledge or the ability to abate. Additionally, inclusion of the landlord in requirements serves to put the landlord on notice of the operator's activities and will help to ensure access to the site.

Agricultural Consulting and Management Companies

Employees of agricultural consulting and management companies cannot enroll in the Ag Order on behalf of landowners and operators. However, they may gain access to

⁶ Southern California Edison Company, WQ 86-11, pg. 2-3; see also In the Matter of the Petition of Zoecon Corporation, WQ 86-2.

enrollments for reporting purposes through an Authorized Responsible Party Agent account. Please see the [Authorized Responsible Party Guide](#) for more information.

Stay Informed

Landowners and operators enrolled in the Ag Order must keep contact information in the eNOI current so that Water Board staff can contact the proper individuals regarding compliance.

To stay informed about the general status of the Ag Order, owners and operators can also subscribe to the Irrigated Lands Program email list, available on the program website at:

[Irrigated Lands Program \(ILP\) | Central Coast Regional Water Quality Control Board](#)

If additional assistance is needed, please contact the Irrigated Lands Program at (805) 549-3148 or AgNOI@waterboards.ca.gov.