

California Regional Water Quality Control Board
North Coast Region

ORDER NO. R1-2002-0111

Waiver of Waste Discharge Requirements

For

SPECIFIC, CURRENTLY ACTIVE TIMBER HARVEST PLANS AS OF JANUARY 1, 2003,
ON PRIVATE AND STATE LANDS WITHIN THE NORTH COAST REGION

The California Regional Water Quality Control Board, North Coast Region, (hereinafter Regional Water Board) finds that:

1. California Water Code Section 13260(a) requires that any person discharging waste, or proposing to discharge waste within any region that could affect the quality of the waters of the state, other than into a community sewer system, shall file with the appropriate regional water board a report of the discharge ("report of waste discharge" or "ROWD") containing such information and data as may be required by the regional water board; and
2. The Regional Water Board has a statutory obligation to prescribe waste discharge requirements except where the Regional Water Board finds that a waiver of waste discharge requirements for a specific type of discharge is not against the public interest pursuant to California Water Code Section 13269; and
3. California Water Code Section 13269 provides that any such waiver of waste discharge requirements shall be conditional and may be terminated at any time by the Regional Water Board; and
4. The Regional Water Board, in accordance with California Water Code Section 13269 waived waste discharge requirements for certain categories of discharge, most of which are set forth in Regional Water Board Resolutions Nos. 87-113, 89-131 and 92-135 ("Waiver Resolutions"); and
5. One of the discharge categories in Resolution No. 87-113 for which reports of waste discharge and waste discharge requirements were waived is Timber Harvesting; and
6. The Regional Water Board has previously waived reports of waste discharge and waste discharge requirements for each of the timber harvest plans identified in Attachment A of this Order; and
7. Recent amendments to California Water Code Section 13269 (SB 390) provide that these waivers will expire effective January 1, 2003, and that new waivers of waste discharge requirements for specific types of discharges must be renewed every five years; and
8. The Regional Water Board is currently developing a policy for categorically waiving waste discharge requirements for timber harvest plans in the North Coast Region; and
9. On December 10, 2002, the Regional Water Board held a hearing to determine whether waste discharge requirements should be required for the timber harvest plans listed in Attachment A to this Order; and

10. The Regional Water Board has reviewed all previously issued timber harvest plan waivers and has determined that the waivers for those timber harvest plans listed in Attachment A of this Order should be renewed, as amended by this order, as they are not against the public interest pursuant to California Water Code Section 13269; and
11. The Regional Water Board finds that it is not in the public interest to renew the waiver for the following categories of active timber harvest plans: those upon which the Regional Water Board staff have filed “non-concurrence” letters, those which are in violation of the Water Quality Control Plan of the North Coast Region, and those upon which waste discharge requirements have already been issued.
12. This waiver shall not create a vested right and all authorized discharges shall be considered a privilege, as provided for in California Water Code Section 13263; and
13. The Regional Water Board Executive Officer or the Regional Water Board shall terminate the applicability of the waivers authorized herein for any timber operation, at any time, when such termination is in the public interest and/or the timber operation could affect the quality or beneficial uses of the waters of the state; and
14. Environmental analysis documents have been prepared pursuant to the California Environment Quality Act (Pub. Resources Code, Section 21000 et seq.) (CEQA) for the projects listed in Attachment A of this Order. The timber harvest plan review process enacted by the Z’berg-Nejedly Forest Practice Act of 1973 (Pub. Resources Code, Section 4511 et seq.) is a certified regulatory program pursuant to CEQA. (Title 14, California Code of Regulations, Section 15251(a).) The timber harvest plans prepared pursuant to the California Forest Practice Rules (Title 14, California Code of Regulations, Section 895 et seq.) serve as substitute environmental documents pursuant to CEQA (“functional equivalents”). Because the timber harvest plan review process meets the criteria set forth in Title 14, California Code of Regulations, Section 15253, and because the time to challenge these functional equivalent documents prepared by the California Department of Forestry on these timber harvest plans has run, they are conclusively presumed adequate and must be relied upon by the Regional Water Board in complying with CEQA to authorize activities addressed in the timber harvest plans. (Pub. Resources Code, Section 21167.2; Title 14, California Code of Regulations, Section 15231.) The Regional Water Board may require the preparation of supplemental environmental documentation only in the event of significant new information as specified in Title 14, California Code of Regulations, Sections 15162, 15096, and 15052. The Regional Water Board has considered the timber harvest plans as required by Title 14, California Code of Regulations, Section 15096(f), and finds that no grounds to require supplemental environmental documentation exist. The timber harvest plans therefore satisfy the Regional Water Board’s obligation to comply with CEQA before issuing this Order; and
15. The Regional Water Board conducted a public hearing on December 10, 2002, in Santa Rosa, California, and considered all evidence concerning this matter.

THEREFORE BE IT ORDERED that, in accordance with recent amendments to California Water Code Section 13269 (SB 390), waivers of reports of waste discharge and waste discharge

requirements for the timber harvest plans ongoing as of January 1, 2003, on private and Statelands within the North Coast Region, as identified in Attachment A of this Order, shall be renewed under the conditions described below:

- A. Dischargers whose waste discharge requirements are waived pursuant to this Order shall comply with the following general conditions:
 - 1. The project shall operate under an approved California Department of Forestry and Fire Protection timber harvest plan.
 - 2. The project shall comply with the terms and conditions of the discharger's timber harvest plan, and any modifications thereto, as approved by the California Department of Forestry and Fire Protection.
 - 3. The project shall comply with applicable local, state or federal laws and regulations.
- B. The Discharger shall allow Regional Water Board staff entry onto the affected property for the purpose of determining compliance with the waiver conditions.
- C. The project shall comply with all applicable provisions of the Water Quality Control Plan for the North Coast Region;
- D. The project shall not create a pollution, contamination, or nuisance, as defined by California Water Code Section 13050;
- E. The project shall comply with applicable State Water Resources Control Board policies including, but not limited to, Resolution 68-16 relating to maintaining high quality waters in California.
- F. Pursuant to California Water Code Section 13269, the waiver of waste discharge requirements for the categories of waste specified herein shall not exceed five years in duration.
- G. The following categories of active timber harvest plans are not covered by this waiver: those upon which the Regional Water Board staff have filed "non-concurrence" letters, those which are in violation of the Water Quality Control Plan of the North Coast Region, and those upon which waste discharge requirements have already been issued.
- H. In compliance with California Water Code Section 13269, the Regional Water Board Executive Officer will implement a program to require compliance with the conditions pursuant to which waste discharge requirements are waived by this Order.
- I. This action waiving the issuance of waste discharge requirements for certain specific types of discharges (a) is conditional, (b) may be terminated at any time, (c) does not permit an illegal activity, (d) does not preclude the need for permits which may be required by other local or governmental agencies, and (e) does not preclude the Regional Water Board from administering enforcement remedies (including civil penalties) pursuant to the California Water Code.

- J. As provided by California Water Code Section 13350(a), any person may be liable for civil penalties if that person in violation of a waiver condition or certification, intentionally or negligently discharges waste, or causes waste to be deposited where it is discharged, into the waters of the state and creates a condition of pollution or nuisance.

Certification

I, Susan Warner, Executive Officer, do hereby
Certify that the foregoing is a full, true, and correct
Copy of an Order adopted by the California
Regional Water Quality Control Board, North Coast
Region on December 10, 2002.

Susan Warner
Executive Officer