

California Regional Water Quality Control Board
North Coast Region

Resolution No. R1-2017-0012

Resolution Clarifying the North Coast Regional Water Quality Control Board's Position on the Public Nature of Documents Held or Maintained by Approved Third Party Programs Associated with 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 (Order No. R1-2015-0023)

WHEREAS, the California Water Quality Control Board, North Coast Region, (Regional Water Board) finds that:

1. The Regional Water Board adopted *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* (Order No. R1-2015-0023 or "Order") on August 13, 2015, as California's first regional water quality regulatory order to prevent and address poor water quality conditions and adverse impacts to water resources associated with cannabis cultivation on private land; and
2. The Order applies to any person engaged in cultivating cannabis and associated activities or operations with similar environmental effects, on private land, that discharge waste to any area that could affect waters of the state including landowners, operators, lessees, tenants and occupiers (hereinafter referred to as "Dischargers"); and
3. The Order requires any Discharger on private property where there is 2,000 square feet or more of cannabis cultivation to enroll for coverage under the Order. Dischargers cultivating cannabis that results in a discharge of waste to an area that could affect waters of the state (including groundwater) will fall within one of three enrollment tiers depending on the nature of their operations and risks to water quality; and
4. The Order provides that Tier 1 and Tier 2 Dischargers have the option to enroll, participate and comply with this Order through an approved third party program. Third party programs can be approved by the Regional Water Board's Executive Officer to help implement the Order through tracking enrolled Dischargers, assisting Dischargers in determining enrollment tier, collecting enrollment fees, and developing and implementing Water Resource Protection Plans and Monitoring and Reporting Plans; and
5. The Regional Water Board currently has four approved third party programs with approximately 650 Dischargers enrolled through these third party programs; and

6. The Order leaves undefined whether relevant documents developed, received, or maintained by third parties as part of enrolling a Discharger under the Order or tracking and assessing compliance with the Order are considered public documents available for public review and disclosure. Relevant documents include: Notices of Intent to Enroll (NOI), Water Resource Protection Plans (WRPP), Monitoring and Reporting Plans (MRP), Tier 2 Surface Water Correction Workplans, annual reports, and inspection reports developed for the purpose of enrollment and compliance assurance with the Order (hereinafter referred to as “Relevant Documents”); and
7. WRPPs for all Dischargers (both direct and third party enrollees) are required to be maintained on the cultivation site and are not automatically required to be submitted to the Regional Water Board. MRPs, Tier 2 Surface Water Correction Workplans, and annual reports are all required to be submitted to the Regional Water Board. NOIs for Dischargers enrolling through an approved third party program are not automatically submitted to the Regional Water Board. The Order requires third party programs to submit all Relevant Documents upon Regional Water Board request; and
8. The Regional Water Board initially approved third party programs without requiring those programs to regularly and automatically provide to the Regional Water Board each Discharger’s NOI or individually identifiable information listed on their NOI, such as Discharger name or parcel number. Instead, the Discharger is enrolled under the Order via the third party program using a unique identifier submitted by the third party. This unique identifier is used by the Regional Water Board to track and verify enrollment, and is provided to the public upon request. The third party programs must provide Relevant Documents only upon Regional Water Board request; and
9. The regulatory landscape for cannabis cultivation in California has changed rapidly since the Regional Water Board’s adoption of the Order. The passing of the Medical Cannabis Regulation and Safety Act in 2015 and the Adult Use of Marijuana Act in 2016 have clarified the legality of cannabis cultivation in California and have initiated a rapid rulemaking process leading to public licensing of cannabis cultivations by January 1, 2018. As part of this public licensing process, cannabis cultivators will need to provide documentation of compliance with Order No. R1-2015-0023 and associated requirements; and
10. Recent legal developments involving the State Water Board and other Regional Water Quality Control Boards support the need for the Regional Water Board to require public disclosure of Relevant Documents. Public disclosure of Relevant Documents, among other things, furthers Regional Water Board transparency and accountability in its administration of the Order, and allows for public feedback on the effectiveness of the Order.

THEREFORE, BE IT RESOLVED that the North Coast Regional Water Quality Control Board,

1. Considers all Relevant Documents required by Order R1-2015-0023 that are held by approved third party programs as public documents. These documents shall be held to the same standard of public availability as documents prepared, owned, used, or retained by the Regional Water Board; and
2. All third party programs approved after March 8, 2017 shall be required to provide to the Regional Water Board a copy of each Discharger's signed NOI as part of that Discharger's enrollment under the Order; and
3. Third party programs approved prior to March 8, 2017 may continue to follow their currently approved procedures for submitting enrollment information to the Regional Water Board until May 31, 2017. For these third party programs, the Discharger's signed NOI must be produced, and will be subject to public disclosure and review upon request. Other Relevant Documents must also be produced upon request. By June 1, 2017, all currently approved third party programs must also meet the requirement of providing the Regional Water Board with a copy of each Discharger's signed NOI upon enrollment.

Certification

I, Matthias St. John, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a Resolution adopted by the California Regional Water Quality Control Board, North Coast Region, on March 8, 2017.

Matthias St. John
Executive Officer