

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION**

STAFF REPORT FOR REGULAR MEETING OF DECEMBER 6-7, 2018
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ITEM NUMBER: 14

SUBJECT: Cannabis Regulatory Program Update

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ACTION: Informational/Discussion

SUMMARY

This staff report provides an update on the implementation activities of the Central Coast Water Board's Cannabis Regulatory Program. Enrollment information, a description of the structure of the statewide general order, and a summary of staff activities are included in this report. Since the last cannabis program update in January 2017, significant program changes have occurred at both the regional and state levels.

DISCUSSION

Background

In response to legislation, the State Water Resources Control Board (State Water Board) adopted the *Cannabis Cultivation Policy: Principles and Guidelines for Cannabis Cultivation*, known as the Cannabis Policy¹. The Cannabis Policy establishes principles and guidelines for the diversion and use of water, land disturbances, and the activities related to cannabis cultivation to protect water quantity and quality. The requirements help to minimize the effects of cannabis cultivation on fisheries, wildlife, and water quality, maintain healthy riparian corridors, and protect springs, wetlands, and aquatic habitat. To implement the policy, the State Water Board adopted a statewide general order. The order includes a description of required management practices that cannabis cultivators are required to comply with. Management practice areas include land development and maintenance, erosion control, drainage features, riparian and wetland protection and management, water storage and use, fertilizers, pesticides, and petroleum products, winterization, and several other areas.

Since adoption of the State Water Board's general order, the Central Coast Water Board has been implementing the order by enrolling cannabis cultivation sites, outreaching to unenrolled sites, hosting workshops, conducting site inspections, and reviewing technical reports. All other regional water boards have also been implementing the order. A summary of enrollments by region is included in Table 1.

¹ The statewide cannabis general order and Cannabis Policy can be found online at https://www.waterboards.ca.gov/centralcoast/water_issues/programs/cannabis_cultivation/

Region	Enrollments	Region	Enrollments
1	387	6	35
2	83	7	45
3	205	8	6
4	106	9	5
5	169	Statewide	1041

1. Regions 1 and 5 had regional general orders before the State Water Board adopted the statewide general order. Those regions are moving enrollments from the regional general order to the statewide general order. This table only shows enrollments in the statewide general order.

Structure of the Cannabis General Order

The State Water Board's order includes both waste discharge requirements (WDRs) and a waiver of WDRs. All cannabis cultivators are required to apply for coverage under the order except for personal-use cultivators. The personal-use exemption applies to very small, non-commercial cultivators. All other cultivators must apply for coverage under the WDRs or waiver.

Indoor commercial cultivation activities qualify for coverage under the waiver. The order defines indoor cultivation as activities performed within a structure with a permanent roof and a permanent, relatively impermeable floor (e.g., concrete or asphalt throughout the structure). Cultivation activities within temporary structures such as hoop houses or greenhouses with permeable floors (e.g., soil) are not classified as indoor cultivation and must apply for coverage as an outdoor facility.

Outdoor commercial cultivation activities qualify for coverage under the waiver if the total disturbed area is less than 2,000 square feet. The disturbed area includes both the cultivation area and any areas within the parcel where cultivation-related activities occur, including the storage of materials used for cultivation.

Outdoor commercial cultivation activities that have a disturbed area equal to or greater than 2,000 square feet and less than one acre (43,560 square feet) must enroll in the WDRs and are classified as Tier 1. Outdoor sites with a disturbed area greater than or equal to one acre must also enroll under the WDRs and are classified as Tier 2.

Sites enrolled in the WDRs are further prioritized into risk to water quality categories. Low risk is assigned to sites where no portion of the disturbed area is located on a slope greater than 30 percent and all of the disturbed area complies with the setback requirements. Moderate risk is assigned to sites where any portion of the disturbed area is located on a slope greater than 30 percent and all of the disturbed area complies with the setback requirements. High risk is assigned to sites where any portion of the disturbed area is located within the setback.

Sites where any portion of the disturbed area is located on a slope greater than 50 percent are not covered by the order and must apply for individual WDRs.

Table 2 provides a summary of the Central Coast Water Board's current enrollments.

Table 2: Enrollments by Category			
	Tier 1	Tier 2	Waiver
Low Risk	41	80	79
Moderate Risk	0	1	
High Risk	1	3	
Totals	42	84	
	205		

Setbacks

The order specifies that no cannabis cultivation or land disturbance activities may occur within certain minimum riparian setback distances, except as authorized by another permission mechanism such as a California Department of Fish and Wildlife Lake and Streambed Alteration Agreement. The setback distances are based on a stream classification system as summarized in Table 3 below. The setback distances are measured from the waterbody's small-storm high-flow water levels or from the top edge of the waterbody bank in incised channels, whichever is more conservative.

Table 3: Minimum Riparian Setbacks		
Common Name	Watercourse Class	Distance
Perennial watercourses, waterbodies (e.g., lakes, ponds), or springs	I	150 ft.
Intermittent watercourses or wetlands	II	100 ft.
Ephemeral watercourses	III	50 ft.
Man-made irrigation canals, water supply reservoirs, or hydroelectric canals that support native aquatic species	IV	Established riparian vegetation zone
All other man-made irrigation canals, water supply reservoirs, or hydroelectric canals	IV	N/A

Reporting Requirements

Reporting requirements are established for cannabis cultivators based on their tier and risk designation. All Tier 1 and Tier 2 sites are required to develop, submit, and implement a site management plan that describes how they are implementing the management practices identified in the order.

Tier 2 sites with a cultivation area greater than one acre are required to develop, submit, and implement a nitrogen management plan that describes how nitrogen is stored, used, and applied to crops in a way that is protective of water quality. The order includes narrative and numeric nitrogen application limits that prohibit cultivators from applying nitrogen at a rate that may result in a discharge to surface water or groundwater that causes or contributes to an exceedance of water quality objectives, with an upper limit of 319 pounds/acre-year unless a plant tissue analysis performed by a qualified individual demonstrates the need for additional nitrogen application.

Moderate risk sites are required to develop, submit, and implement a site erosion and sediment control plan describing how the order's management practices will be implemented to achieve the goal of minimizing the discharge of sediment from the site.

High risk sites are required to develop, submit, and implement a disturbed area stabilization plan describing how the order's management practices will be implemented to achieve the goal of stabilizing the disturbed area to minimize the discharge of sediment and comply with the riparian setback requirements, i.e., no longer perform any cultivation-related activities within the riparian setback distance.

Annual reports are due by March 1 of each year and include information on the facility status, nitrogen application information, site maintenance status, and stormwater runoff monitoring. Stormwater monitoring is required of sites that have stormwater runoff from any event that exceeds 0.25 in/day rainfall. Turbidity and pH measurements are required to be taken once per calendar month during all months until winterization procedures are completed.

Guidance documents for all of the required reports have been developed by the State Water Board; however, Central Coast Water Board staff is also in the process of developing template report forms to improve the quality of submitted reports and to facilitate compliance.

Water Quality Certification

The order also includes a general section 401 water quality certification for activities performed in compliance with the conditions of the cannabis policy and general order. Cultivators seeking coverage for activities in surface waters are required to notify the Executive Officer prior to commencement of the activity and must submit information regarding the construction schedule and other relevant information. Discharge monitoring and reporting may be required by the Executive Officer. Staff expects to begin working with one discharger on a water quality certification in the coming weeks.

Water Rights and Instream Flow Requirements

The policy and order also contain requirements related to water diversion and use, including narrative and numeric instream flow requirements. Cannabis cultivators who divert surface water for irrigation purposes are required to register for a water right known as a small irrigation use registration. Only one of these rights has been issued in our region. Central Coast Water Board staff coordinate closely with the State Water Board's Division of Water Rights to ensure compliance with the water rights-related aspects of the order.

Implementation Strategies and Activities

As part of the statewide cannabis program implementation strategy and in consultation with the California Department of Fish and Wildlife, each regional board has identified priority watersheds to focus annual enrollment and inspection efforts. The Central Coast Water Board's 2018 top three priority watersheds for cannabis cultivation are Carpinteria Creek in Santa Barbara County and Alisal Creek and Quail Creek in Monterey County. Staff has a 100% enrollment goal and 50% inspection goal for sites in these watersheds.

The first step taken in a priority watershed is to send a pre-inspection notification letter to all landowners in the watershed (not only to sites where cannabis cultivation is or may be occurring). Staff has sent approximately 2,260 pre-inspection notification letters in total: about 100 in the Quail Creek watershed, 1400 in Carpinteria Creek watershed, and 760 in the Alisal Creek watershed.

Staff held enrollment workshops following the pre-inspection letter mailouts. Outreach events were held on September 18 and 20, 2018, in Carpinteria and Salinas, respectively. The workshops were held in collaboration with the State Water Board's Division of Water Quality and Division of Drinking Water, Department of Fish and Wildlife, California Department of Food and Agriculture, California Department of Pesticide Regulation, Santa Barbara Channelkeeper, California Association of Resource Conservation Districts, Monterey County, Santa Barbara County, Ventura County, the City of Carpinteria, Monterey Bay Air Resources District, Monterey County Cannabis Industry Association, and other industry groups to provide information to cultivators and interested parties.

Staff has also performed a number of inspections throughout the region with a focus on the three priority watershed areas. Staff has conducted a total of 58 inspections. Forty-eight of those inspections have been compliance inspections of enrolled sites. Ten of those inspections were performed on unenrolled sites, seven of which were warrant-based inspections performed with law enforcement.

To increase enrollment, staff has also sent 100 letters requiring enrollment to sites in Monterey and Santa Cruz counties based on aerial imagery analyses. In the coming weeks staff expects to send notices of violation to sites that have not enrolled or responded to the initial directive.

Updates to the Order

The general order is currently being reviewed by the State Water Board. The proposed updates have been posted for public comment. The public comment period is scheduled to end on November 27 and the expected adoption date is in February 2019.

The updates focus on three major areas: tribal buffers, requirements for indoor cultivators enrolled in the waiver, and onstream reservoirs. More information can be found on the State Water Board's Cannabis Cultivation website at the link below https://www.waterboards.ca.gov/water_issues/programs/cannabis/.

CONCLUSION

Staff is continuing to implement the general order through actions including enrolling sites, outreaching to unenrolled sites, hosting workshops, conducting site inspections, reviewing technical reports, and assisting enrolled sites with determining the best path forward to achieve compliance with all the requirements of the policy and order. Staff is also coordinating with the State Water Board regarding the proposed updates to the order and will continue to update the board going forward.