

**Regional Water Quality Control Board
North Coast Region
Staff Summary Report
December 5, 2024**

ITEM: 7

SUBJECT: Informational item to seek input on staff's enforcement strategy for cannabis cultivation sites in the North Coast Region. (Kason Grady)

BOARD ACTION: This is an information item only; no action will be taken by the North Coast Regional Water Quality Control Board (North Coast Water Board).

BACKGROUND: The purpose of this item is to update the North Coast Water Board on the Cannabis Regulatory and Enforcement Program (Cannabis Cultivation Program) and seek input from the Board and the public on staff's proposed changes to its cannabis enforcement strategy. Staff has encountered various challenges with deterring cannabis cultivation activities that impact water quality. The primary enforcement challenges facing the program are the large number of illegal sites, and a resource-intensive compliance assistance and enforcement process that prolongs the achievement of desired water quality outcomes. To mitigate these challenges and improve the effectiveness and efficiency of enforcement actions in the Cannabis Cultivation Program, staff considered alternative enforcement tools and developed a program-specific enforcement strategy.

Staff's proposed strategy is summarized below and includes: (1) conducting expedited enforcement where cultivation is unregulated; (2) issuing Time Schedule Orders, if appropriate, when a cultivator has violated an existing enforcement order; (3) terminating enrollment for cause; and (4) continuing to conduct enrollment enforcement only in permissive counties.

To contextualize staff's proposed strategy, the following discussion includes some background of the Cannabis Cultivation Program, an overview of the scope of enrollments, illegal cultivators, staff resources; a review of the current progressive and formal enforcement process; a review of challenges facing the program; and, lastly, the proposed strategy.

Cannabis Cultivation Program Overview

The North Coast Water Board has been regulating cannabis cultivation sites through a permitting program since 2015 and has been enforcing the Water Code at illegal cannabis cultivation sites since prior to 2015. In 2017, the State Water Resources Control Board (State Water Board) created a statewide regulatory program for cannabis cultivation through its adoption of the Cannabis Cultivation Policy Principles and

Guidelines for Cannabis Cultivation and Order WQ 2023-0102-DWQ, General Waste Discharge Requirements and Waiver (the Cannabis General Order).

There are approximately 2,400 active Cannabis Cultivation Program enrollments and thousands more illegal cultivation sites in the North Coast Region. Currently, the Cannabis Cultivation Program has 12 staff positions and seven (7) of those positions are inspectors dedicated to ensuring regulatory compliance at enrolled and illegal cultivation sites, including drafting, issuing and managing formal enforcement actions and proposing monetary penalties. Cannabis Cultivation Program staff primarily focus on enforcing water quality laws and regulations at illegal cultivation sites by ensuring that cultivators comply with the Cannabis Cultivation Policy, the Water Code, and the Basin Plan, as well as requiring cultivators to correct violations, and cleanup and abate impacts of unauthorized pollutant discharges.

Furthermore, out of the approximately 2,400 active enrollments, only 76% have paid their enrollment fees.¹ This percentage of fee-paying enrollees is an improvement over prior years due to recent process changes made by the State Water Board to terminate enrollments for failure to pay fees. Nonetheless, this low rate of payment means that the revenue from fees is not sufficient to support the staff necessary to provide compliance assistance and other services to enrollees. The consistently low ratio of regulatory and enforcement staff to number of cultivation sites has resulted in significant challenges for program staff; the number of staff inspectors to enrolled sites alone is one (1) staff for over 300 enrollments and that ratio is much larger when also considering illegal sites. As such, North Coast Water Board management, in collaboration with the State Water Board Office of Enforcement, is proposing a new cannabis enforcement strategy for the North Coast Region. The proposed strategy is intended to improve the effectiveness of our limited staff resources.

Current Progressive and Formal Enforcement Process

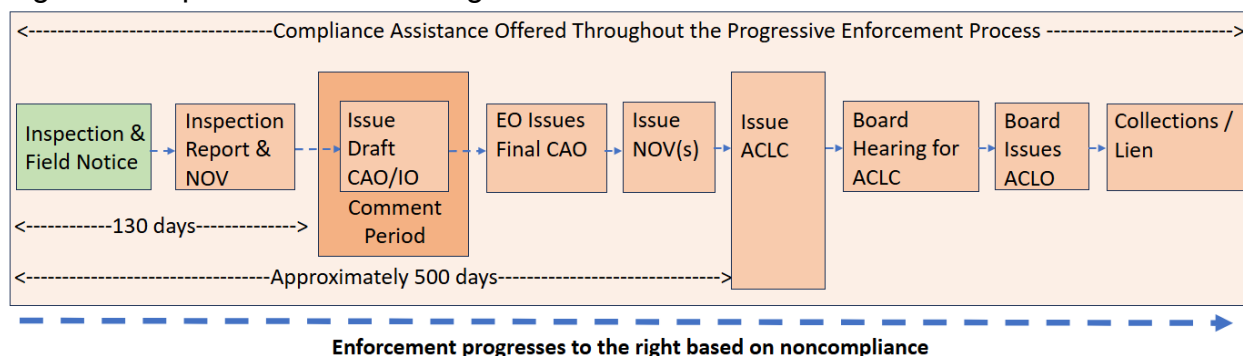
Currently, staff's approach to correcting water quality violations at cannabis cultivation sites includes site inspections, participating in criminal search warrants led by law enforcement, issuance of field notices followed by inspection reports and, where

¹ In 2023, the State Water Board began administratively terminating enrollments for failing to pay two annual invoices. This year, there are 265 pending terminations due to failure to pay invoices, which upon termination will increase the percent of enrollees that have paid their fees to 85%. The State Water Board is in the process of updating its termination procedures to enable termination for failure to pay fees on an annual basis.

appropriate, notices of violation². This initiates staff’s efforts to provide compliance assistance, where staff has notified responsible parties of the water quality violations observed onsite and requested that the cultivator contact staff to discuss the process for resolving the noncompliance. Although staff prioritize progressive and formal enforcement on illegal sites greater than enrolled sites, staff still provide nearly equal amounts of compliance assistance to illegal sites and enrolled sites.

When remedial action is required, but responsible parties fail to resolve the violations or when the threats to water quality are sufficiently egregious, staff escalates to formal enforcement such as issuing cleanup and abatement orders (CAOs) and, if necessary, concurrent investigative orders (IOs) to ensure the necessary investigation, monitoring, reporting and remedial action take place. When responsible parties fail to comply with these enforcement orders, staff works with the responsible parties to obtain compliance and, when not achieved, staff again escalates enforcement by issuing Administrative Civil Liability Complaints (ACLs) and subsequently scheduling a Board hearing to determine the appropriate penalty. A summary of this process is as follows:

Figure 1: Depiction of the Existing Enforcement Process



Enforcement Challenges

Staff reviewed its current enforcement approach and identified the following challenges to be addressed in this new enforcement strategy:

1. As noted above, the primary challenges for enforcement in the Cannabis Program are the large number of both legal and illegal sites and the resource and time intensive enforcement processes. We have limited staff to inspect and enforce on all cannabis cultivation sites. Also, once water quality impacts and violations are identified, the lengths of time to issue enforcement actions such as

² Generally, staff do not issue directives for illegal cultivation sites to enroll in the regulatory program and, therefore, do not enforce failure to enroll due to a variety of factors. This issue is discussed further in the challenges section below.

CAOs and ACLCs are lengthy (currently 130 days and 500 days, respectively). The issuance of ACLCs in particular can significantly consume limited staff resources. Delays in issuance of draft CAOs can impede timely site cleanup and abatement of identified water quality impacts. Additionally, delays in issuance of ACLCs, results in greater numbers of days of violation and larger penalties. Penalties pursuant to Water Code sections 13350 and 13385 are set after considering the statutorily required factors under the Enforcement Policy with the intent to deter similar, future violations while obtaining compliance through other enforcement tools such as CAOs. When mitigating water quality impacts and threats at cultivation sites, staff's primary goal is to ensure that sites are cleaned up and abated. The assessment of monetary penalties after long periods of non-compliance will usually result in substantial penalties and reduce the funds available for cleanup and abatement actions. Achieving the Water Board's mission of minimizing adverse impacts with current resources requires an expedited approach.

2. Staff has limited access to conduct inspections of illegal sites and follow-up because access to illegal cultivation sites requires warrants and law enforcement support to inspect or re-inspect. Furthermore, site inspections during law enforcement warrants are subject to the time constraints of law enforcement personnel and staff has limited ability to collect evidence during the initial inspection, which results in the need to issue Investigative Orders to gather additional information that will inform cleanup actions.
3. The North Coast Water Board does not have authority to issue citations in the field for unlicensed cultivation and seek immediate payment of those fines; however, the Department of Cannabis Control does have citation authority and can issue penalties for unlicensed cultivation in the field. Instead, staff must utilize existing Water Boards' authorities to issue IOs to gather information, CAOs to compel remedial action, or ACLCs to obtain monetary judgments and potential property liens for failure to pay.
4. Responsible parties are often highly transient and difficult to serve notice of staff's inspection or Board enforcement actions. These responsible parties often do not engage with staff voluntarily, which can result in enforcement against a nonresponsive party.
5. The Board is not generally engaged in making factual findings and establishing the required actions in a CAO because the issuance of CAOs can be, and has been, delegated to the Executive Officer for review and approval. The Board generally learns about the circumstances necessitating the CAO, for example egregious discharge violations, for the first time during a hearing to enforce violations of that CAO. The alternative of bringing CAOs to the Board for adoption would cause delays in establishing cleanup requirements and would require additional staff resources per CAO.

6. Enrollment Enforcement is the issuance of directives to illegal cultivators to enroll in the Water Boards' Cannabis Cultivation Program followed by subsequent monetary penalty assessment for failure to enroll. There are a variety of challenges with relying on enrollment enforcement to mitigate the water quality impacts associated with illegal cannabis cultivation including the following:
- Enrollment or issuance of penalties for failure to enroll alone do not guarantee that site cleanup or water quality compliance will occur.
 - The Water Boards cannot immediately issue a penalty against unenrolled cultivators for failure to enroll. Section 13261 of the Water Code requires notice to a discharger of the need to enroll prior to being able to enforce upon the failure to enroll. As a result, the process to require enrollment and enforce against nonenrollment includes 1) issuance of a 13260 directive notice, 2) issuance of a notice of violation for failure to comply with the directive, 3) issuance of an ACLC for failure to comply with the directive, and 4) an ACLC hearing before the North Coast Water Board to consider issuance of a penalty for failure to enroll.
 - Since cannabis plants are usually eradicated during criminal search warrants, the conditions for enrollment may not exist immediately after inspection.
 - Enrollment enforcement at sites where the applicable County is requiring abatement of cultivation or has no ability to authorize cultivation due to County caps could effectively create a gray market where some sites are enrolled with a subset of necessary agencies (e.g. Water Boards) but are not fully permitted or licensed to cultivate.
 - Transient and frequently changing responsible parties can disrupt the enrollment enforcement process.
 - Issuance of enrollment directives to owners/operators of illegal sites prior to obtaining site cleanup risks the perception that the North Coast Water Board is permitting an illegal activity in conflict with other agency requirements, which could impact interagency relationships and, because staff depend on law enforcement for site access, this could affect staff's ability to inspect other sites.

Proposed Cannabis Enforcement Strategy:

As a result of the variety of enforcement challenges at cannabis cultivation sites, staff has developed the following strategies to improve the effectiveness of enforcement in this program:

- 1. Strategy Element #1: Conduct expedited enforcement where cultivation is unregulated**

As part of strategy element #1, which has three key components outlined in a-c below, staff proposes to provide less compliance assistance to illegal cultivators and shorten the amount of time it takes to issue formal enforcement actions at unregulated sites. With this expedited approach, staff would standardize and compress the progressive enforcement process, reducing the staff resources dedicated to each enforcement case. This approach should also result in a larger number of small penalty actions being brought before the Regional Board earlier in the enforcement process.

- a. **Expedite strategic clean up and abatement orders** for unregulated sites that require simple remedial actions³. Conditions at unregulated cultivation sites often require simple remedial actions to protect water quality. These simple remedial actions do not require extensive planning and permitting and may be implemented in a short timeframe. For these types of remedial actions, staff would issue NOVs and an expedited CAO with shorter, but still reasonable, deadlines by which the responsible party would need to complete specific actions. These expedited CAOs should require fewer staff hours to draft and issue (about 5 staff hours over a 7-day period) than a CAO requiring a cultivator to implement more comprehensive remedial actions (which often takes over 40 hours of staff time over approximately 130 days).
- b. **Prioritize penalty assessments for discharge violations** that are egregious and pose a high threat to water quality. When these violations are observed during an inspection, staff will continue following the current practice of issuing an inspection report and accompanying notice of violation. The program would immediately divert staff resources to draft and issue an administrative civil liability complaint (ACLC) assessing a penalty for the discharge violation(s). If remedial action (cleanup and restoration) is needed, but not urgent, staff may also issue a draft CAO concurrently with the ACLC and both actions may be considered simultaneously at a future board meeting. This process differs from the program's current process where staff generally engages in extensive compliance assistance prior to issuing an ACLC. Focusing less on compliance assistance will allow staff to prioritize swifter enforcement of discharge violations within the same cultivation season, or shortly

³ Some examples of simple remedial actions include hydrologic disconnection of road surfaces, stabilization of exposed soils with sediment and erosion control BMPs, and removal and disposal of trash and other wastes.

thereafter, resulting in more formal enforcement for smaller penalty amounts.

- c. ***Prioritize penalty assessments when CAOs are violated.*** When a CAO is violated, staff proposes to issue penalties much earlier in the progressive enforcement process. Upon violation of a CAO requirement, staff would immediately issue a NOV and would proceed to develop and issue an ACLC within weeks of the missed deadline. As a result, staff would likely issue many more ACLCs with smaller penalties when enrollees fail to meet CAOs requirements.

2. Strategy Element #2: Issue Time Schedule Orders

This strategy involves the new use of existing authorities, where appropriate. In response to the Board's expressed desire to provide additional time for CAO compliance in certain circumstances, staff identified the possibility of utilizing Water Code section 13308 to issue Time Schedule Orders (TSOs). These TSOs can only be issued after a discharger has violated an existing enforcement order and are, by statute, designed to compel a discharger to take corrective action. Instead of punishing actors for prior noncompliance, these TSOs establish new time schedules with pre-determined penalties for future noncompliance with the newly established time schedule. The penalties established in these TSOs are set at the amount reasonably necessary to come into compliance with the underlying order and do not include any amount intended to redress previous violations. The message that these TSOs would send is that the cleanup requirements of the CAO have a fixed cost that must be complied with, so responsible parties can either use that money to clean up their sites or, if they fail to comply, then that same amount will be due as a penalty and the cleanup requirements would still be applicable. Use of this tool further sends the message that the North Coast Water Board's priority is site cleanup and restoration. The use of TSOs must be implemented prudently, because they inevitably extend compliance timeframes, increased risk that the property will be sold in an attempt to evade responsibility, and if used too extensively could send the message that people can violate CAO deadlines without being subject to penalties. Since CAOs already include enforceable time schedules, in most cases it would be most effective and efficient to proceed directly to ACLC to enforce existing deadlines. Nonetheless, a 13308 TSO may be an effective tool to elicit compliance, especially when an extension to a deadline is warranted or proceeding directly to an ACLC is undesirable based on case-specific facts. Such circumstances can include when responsible parties have mostly complied, but not entirely, with CAO requirements and additional time and potential future

penalties can incentivize completion; or to resolve stale cases (backlogs) where refreshing deadlines is appropriate.

3. Additional Supporting Strategy: Terminate enrollment for cause

The Cannabis General Order specifies that the Executive Officer may terminate enrollment for cause when such termination is needed to protect water quality (i.e., when violations are identified). The Water Boards have a general interest in maintaining enrollments and bringing violators into compliance whenever possible. There is a point, however, where violations at enrolled sites are so egregious or persistent that the enrollee is obtaining an unfair advantage over other enrollees at the cost of water quality; this is when staff would seek to terminate enrollment (usually after providing an opportunity to resolve the violations first). Since the Department of Cannabis Control (DCC), as the licensing agency authorizing the cultivation of cannabis, requires enrollment in the Water Boards' permit, termination of coverage could result in a subsequent license revocation by DCC. Enrollment termination and license revocation would send a strong message about the importance to comply with the Cannabis General Order and Policy and would hopefully incentivize legally licensed growers to prioritize cleanup actions as soon as possible. Water Boards staff is working with DCC to streamline this process of license revocation based on noncompliance with Water Boards permit requirements.

4. Additional Supporting Strategy: Support enrollment enforcement in permissive counties

Staff will continue notifying illegal cultivators that if they continue to grow, they must enroll in the Water Boards' Cannabis Cultivation Program and obtain other necessary authorizations (County Permits, CDFW Lake and Streambed Alteration Agreements, and DCC cultivation licenses). Staff will then conduct enrollment enforcement (i.e. advance to formal enforcement for non-enrollment) when conditions allow, however, such conditions are rare and do not lend themselves to broadscale application due to the challenges discussed above.

Proposed Strategy Implementation

Staff proposes to implement this strategy for a minimum of two (2) years starting in calendar year 2025 through the end of calendar year 2026 and provide a staff presentation to the Board in Spring 2027 to assess effectiveness of this strategy. Effectiveness of this strategy will be measured by the number of formal enforcement actions taken, the number of sites in compliance with formal enforcement actions, the

North Coast Water Board
December 2024 Board Meeting
Item No. 7 – Staff Summary Report

number of sites cleaned up or restored, and the number and amount of final actions achieved (penalties assessed, penalties paid, and property liens imposed), all relative to the prior decade of Cannabis Program implementation. Staff will adjust this proposed implementation strategy based on feedback received from the Board and the public during this information item.

RECOMMENDATION: N/A; this is an informational item.

SUPPORTING DOCUMENTS:

[Cannabis Cultivation General Order](https://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2023/wqo2023-0102-dwq.pdf)

(https://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2023/wqo2023-0102-dwq.pdf)

[Cannabis Cultivation Policy](https://www.waterboards.ca.gov/water_issues/programs/cannabis/docs/policy/final_cannabis_policy_with_attach_a.pdf)

(https://www.waterboards.ca.gov/water_issues/programs/cannabis/docs/policy/final_cannabis_policy_with_attach_a.pdf)

[2017 Water Quality Enforcement Policy](https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf)

(https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf)

[2023 Water Quality Enforcement Policy \(Draft Versions\)](https://www.waterboards.ca.gov/water_issues/programs/enforcement/proposed_amendments.html)

(https://www.waterboards.ca.gov/water_issues/programs/enforcement/proposed_amendments.html)

The final version has not yet been posted on the State Water Board website.