

Regional Water Quality Control Board
North Coast Region

Staff Summary Report
February 8, 2024
Regional Water Board Office
Santa Rosa, California

ITEM: 6

SUBJECT: Public Hearing on Order No. R1-2024-0001 to consider the adoption of proposed Waste Discharge Requirements for Specific Types of Forest Management Activities on Non-Federal Lands in the North Coast Region (**Justin Fitt**).

BOARD ACTION: The North Coast Regional Water Quality Control Board (Regional Water Board) will consider adoption of Proposed Order No. R1-2024-0001 (the Proposed Order).

BACKGROUND: The Proposed Order would replace the expiring Categorical Waiver of Waste Discharge Requirements for Discharges Related to Timber Harvest Activities on Non-Federal Lands in the North Coast Region, Order No. R1-2014-0011, renewed by Order No. R1-2019-0008 (Categorical Waiver).

Since 2004, the Regional Water Board has had two general permits available to regulate the majority of timber harvest plans: the General WDR, Order No. R1-2004-0030, and the Categorical Waiver, which expires in April 2024. In 2004, Regional Water Board staff developed the two-permit system; the Categorical Waiver which regulates timber harvesting projects that pose a low or insignificant risk of waste discharge, and the General WDR for all other timber harvest projects. The Categorical Waiver applies to the specific categories of timber harvest activities listed below as defined in the California Forest Practice Rules and established general and specific conditions and eligibility criteria for each category that were considered to result in low impact timber harvesting projects that pose no significant threat to water quality. Those timber harvesting projects include the following:

- Exemptions conducted pursuant to 14CCR 1038
- Emergencies conducted pursuant to 14CCR 1052
- Less than 3-acre conversion exemptions pursuant to 14CCR 1104.1
- Sediment TMDL Action Plan Compliant Timber Harvest Plans
- Modified Timber Harvest Plans pursuant to 14CCR 1051
- Other projects (Timber Harvest Plans and other CEQA compliant timber harvesting projects)

The Categorical Waiver is only infrequently used for standard timber harvest plans (over 90% of landowners seek coverage under the General WDR) and the additional documentation by landowners and review by staff required for each enrollment make it somewhat cumbersome and inefficient to use. Regional Water Board staff believe that it is no longer necessary to retain a second general permit for enrolling timber harvest plans. However, the need remains for a permitting mechanism for Emergencies and

Exemptions as well as sediment TMDL compliant timber harvest plans, modified timber harvest plans, and other forest management projects.

Timber Salvage conducted under Emergency Notices of Timber Operations

Since 2017, the Regional Water Board has increased its oversight and investigation of post-fire timber salvage operations in the North Coast Region. Before that time, post-fire timber salvage operations received less review or oversight by the Regional Water Board due to their infrequent use or perceived low threat to water quality. Regional Water Board staff initiated a post-fire timber salvage monitoring effort to review these activities and their authorization process, as well as to contemplate the adequacy of the Regional Water Board's own permitting mechanism to protect water quality during post-fire timber salvage operations.

In 2018, the California Department of Forestry and Fire Protection (CAL FIRE) and other forest practice review team agencies, including the Regional Water Board, initiated monitoring of Emergency Notices to evaluate project performance as required following the passage of Senate Bill 901. The resulting 2019 Monitoring Report identified that performance on 40% of the Emergency Notices surveyed was identified as either "substandard" or "unacceptable" as that relates to water quality protections. These results have become the catalyst for increased scrutiny of these project activities as the monitoring revealed that the existing authorization processes for Emergency Notices should be reevaluated.

Since that time, CAL FIRE, the Board of Forestry, and the review team agencies have taken multiple actions to address these shortcomings and to improve project performance, including but not limited to: increased inspections; dissemination of information to registered professional foresters, licensed timber operators and landowners; new regulatory informational flyers that are distributed with each Emergency Notice authorization; increased enforcement for regulatory violations; and changes to the Forest Practice Rules.

Regional Water Board staff have identified several areas of concern that remain, including clarification of which Forest Practice Rules are considered to be "operational provisions", and improving agency oversight of construction and reconstruction of road and watercourse crossings, which we believe would improve the Emergency Notice authorization and project performance. The Board of Forestry and CAL FIRE staff, in collaboration with the Water Boards and California Department of Fish and Wildlife, are currently working on potential rule changes and guidance to address these concerns.

In 2023, CAL FIRE staff, with support from the other review team agencies (including the Water Boards), conducted another round of Emergency Notice monitoring to determine whether performance of these projects improved as a result of the proactive outreach and education efforts. The results of the 2023 monitoring will be made available for public review in early 2024 and may influence the eventual changes to the Forest Practice Rules being contemplated by the Board of Forestry, CAL FIRE, and ultimately the Regional Water Board.

Given the improvements to the Emergency Notice process since 2017, potential changes to the Forest Practice Rules and guidance, existing water quality protections offered under the Regional Water Board's permitting framework, and the impending expiration of the Categorical Waiver, Regional Water Board staff recommend adoption of the Proposed Order at this time. The Regional Water Board may deem it necessary to revise the Proposed Order at a later date depending on the outcome of the Board of Forestry's rulemaking efforts and the results of the 2023 monitoring.

Proposed Order

Proposed Order No. R1-2024-0001 includes very few changes to the existing Categorical Waiver and seeks to maintain the ministerial authorization and administration process to regulate these activities. The Proposed Order includes revised findings; minor reorganization and editing to improve clarity; revisions to general requirements applicable to all categories (Section I); revisions to specific requirements of Category E (previously F), including eligible projects (Section II); and revised application and termination procedures for Categories C, D, and E (Section III).

Notable changes to the existing Categorical Waiver included in Proposed Order R1-2024-0001 include the following:

- The Proposed Order replaces the Categorical Waiver with General Waste Discharge Requirements, which do not expire every five years. This will reduce the administrative burden on Regional Water Board staff but carry forward necessary water quality protections and requirements.
- Former Conditional Waiver Category F, "Other Projects", is now Category E in the Proposed Order. Category E was eliminated several years ago as that related to "Non-Industrial Timber Management Plans", which the Regional Water Board regulates through a different permit (Order No. R1-2013-0005). The new Category E within the Proposed Order removes "standard timber harvest plans" from eligibility because they are primarily authorized through the existing Timber General Waste Discharge Requirements Order (Order No. R1-2004-0030). The Eligibility Requirement in the new Category E is now written as follows:

"Any other forest management Project that Regional Water Board staff have determined is in compliance with CEQA and implements management practices designed to protect water quality. Timber Harvesting Plans as described in 14CCR 1032 are not eligible for coverage under Category E."

- Seven of the eleven Specific Conditions of the Category F of the Categorical Waiver have been eliminated from Category E of the Proposed Order, as these conditions were specifically targeted towards timber operations conducted under timber harvest plans. The remaining four Specific Requirements are well suited to forest management projects that would be eligible for coverage under Category E and include:

- Identification and treatment for sites that have the potential to adversely impact beneficial uses of water;
 - Restrictions of specific operations between November 15 and April 1;
 - Restrictions on use of heavy equipment or log hauling during saturated soil conditions; and
 - A requirement that roads in the project area be hydrologically disconnected from watercourses to the extent feasible and practicable.
- The Proposed Order clarifies the full scope of exemptions covered under Category A. This Category includes timber operations exempted from timber harvest plan preparation and submission requirements under California Forest Practice Rules 1038, including all revisions to section 1038 made by the Board of Forestry subsequent to the adoption of the previous Categorical Waiver.
 - A new General Requirement clarifies monitoring requirements, consistent with California Forest Practice Rules 1050 and the Nonpoint Source Policy. Monitoring inspections are required for all project categories when access is feasible during the prescribed maintenance period. Monitoring shall be conducted a sufficient number of times during the extended wet weather period, particularly after large winter storm events and at least once annually.
 - Section IV, Termination of Coverage, now clarifies that projects enrolled under Categories A through D will remain covered through the erosion control maintenance period, unless enrollment is terminated or rescinded for other specific reasons. Responsible Parties with projects enrolled under Category E must request unenrollment by submitting a Notice of Termination. Those projects will remain enrolled until the Responsible Party receives a letter signed by the Regional Water Board Executive Officer affirming that the project has been unenrolled.

DISCUSSION: On September 26, 2023, Regional Water Board staff sent out a Notice of Public Hearing and Opportunity to Comment to various entities and interested persons, including registered professional foresters, landowners, environmental groups, tribal governments, disadvantaged communities and posted the package on the Board's web page. The public comment period closed on October 26, 2023. The purpose of the public notice was to alert interested persons about the Forest Management GWDR and solicit input on from stakeholders as part of a public participation process. During the public comment period, Regional Water Board staff received one comment letter, from Matthew Simmons on behalf of the Environmental Protection Information Center (EPIC) on October 16, 2023. Regional Water Board staff's response to comments is included as supporting documentation for this Staff Summary Report. No substantive changes have been made to the draft Order that was released for public review on September 26, 2023. Minor editorial revisions have been made to the Proposed Order.

RECOMMENDATION: Adopt Proposed Order No. R1-2024-0001

SUPPORTING DOCUMENTS:

1. Proposed Order No. R1-2024-0001
Attachment A – Enrollment Form
Attachment B – Notice of Termination
2. Notice of Public Hearing, Draft Order No. R1-2024-0001
3. Regional Water Board staff response to comments on Draft Order No. R1-2024-0001
4. Public Comments on Draft Order No. R1-2024-0001
5. Addendum to the Mitigated Negative Declaration (SCH No. 2018012054)