

## State Water Resources Control Board

### EX PARTE DISCLOSURE REQUIREMENTS FOR PENDING GENERAL ORDERS

The prohibition against ex parte communications no longer applies to general waste discharge requirements (including NPDES permits), general waivers and general Clean Water Act section 401 water quality certifications. A “general order” does not name specific dischargers, but instead allows eligible dischargers to enroll. The following information will help the public comply with the requirement to meet statutory disclosure requirements. For more information, see Water Code section 13287 and [http://www.waterboards.ca.gov/laws\\_regulations/docs/exparte.pdf](http://www.waterboards.ca.gov/laws_regulations/docs/exparte.pdf).

#### ***Must I disclose ex parte communications with board members regarding pending general orders?***

You must provide written disclosure if you are in one of these categories:

- Potential enrollees (including their representatives or employees)
- Persons with a financial interest (including their representatives or employees). For a definition of “financial interest,” consult the Political Reform Act (Gov. Code, § 87100 et seq.) and implementing regulations (Cal. Code of Regs., tit. 2, § 18700 et seq.), or the Fair Political Practices Commission website (<http://www.fppc.ca.gov/index.php?id=51>)
- Representatives acting on behalf of any formally organized civic, environmental, neighborhood, business, labor, trade, or similar association

#### ***What must I disclose?***

The attached form lists the information that must be disclosed to document a meeting, telephone call or other conversation. For written communications, a complete copy of the letter or email with all attachments is adequate.

#### ***When is the disclosure due?***

Water Board staff must receive the disclosure within seven (7) working days after the board member receives the communication (generally, the date of a phone call or meeting with a board member).

#### ***Who must receive my disclosure documents?***

Unless the board member(s) provided you with a different contact person, please send your materials to: [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)

#### ***What will the Water Board do with my disclosure?***

The Water Board is required to post the disclosure on its website and to distribute it via any electronic distribution list for the proposed order. There is no requirement to distribute the disclosure to board members or to prepare responses. If you want to submit written comments or evidence on a proposed general order, you must provide the comments or evidence following the procedure and timelines provided in the notice for the board’s proceeding.

#### ***May other interested persons respond to a disclosure notice?***

The Water Code does not require that interested persons be allowed to respond to disclosure notices. Any such responses should be included in formal comments submitted during the order’s written comment period, included in oral comments at the hearing, or both.

**STATE WATER RESOURCES CONTROL BOARD  
EX PARTE COMMUNICATIONS REGARDING PENDING GENERAL ORDERS  
DISCLOSURE FORM**

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**Use of this form is not mandatory.**

1. Pending General Order that the communication concerned:

Central Coast AG Order

2. Name, title and contact information of person completing this form:

*Note: Contact information is not mandatory, but will allow the Water Board to assist you if additional information is required. If your contact information includes your personal residence address, personal telephone number or personal email address, please use a separate sheet of paper if you do not want that information posted on our website. However, this information may be provided to members of the public under the Public Records Act.*

Michael Thomas  
Michael.Thomas@Waterboards.ca.gov

3. Date of meeting, phone call or other communication: June 24, 2013

Time: 10:00

Location: Teleconference

4. Type of communication (written, oral or both): Oral

5. Names of all participants in the communication, including all board members who participated:

Michael Thomas, Angela Schroeter, Frances Spivy-Weber, Dorene D'Adamo, Emel Wadhvani, Phil Wyels, Jessica Jahr, Lori Okun

6. Name of person(s) who initiated the communication:

Michael Thomas

7. Describe the communication and the content of the communication. *Include a brief list or summary of topics discussed at the meeting, any legal or policy positions advocated at the meeting, any factual matters discussed, and any other disclosure you believe relevant. The Office of Chief Counsel recommends that any persons requesting an ex parte meeting prepare an agenda to make it easier to document the discussion properly. Attach additional pages, if necessary.*

See attached outline

8. **Attach a copy of handouts, PowerPoint presentations and other materials any person used or distributed at the meeting. If you have electronic copies, please email them to facilitate web posting.**

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Michael Thomas  
Michael.Thomas@Waterboards.ca.gov

3. Date of meeting, phone call or other communication: June 24, 2013

Time: 2:00

Location: Teleconference

4. Type of communication (written, oral or both): Oral

5. Names of all participants in the communication, including all board members who participated:

Michael Thomas, Angela Schroeter, Steven Moore, Emel Wadhwani, Jessica Jahr, Jeff Young

6. Name of person(s) who initiated the communication:

Michael Thomas

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Michael Thomas  
Michael.Thomas@Waterboards.ca.gov

3. Date of meeting, phone call or other communication: July 2, 2013

Time: 3:00

Location: Teleconference

4. Type of communication (written, oral or both): Oral
5. Names of all participants in the communication, including all board members who participated:

Michael Thomas, Angela Schroeter, Felicia Marcus, Emel Wadhvani, Jessica Jahr, Lisa McCann, Darrin Polhemus, Jeff Young

6. Name of person(s) who initiated the communication:

Michael Thomas

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**BOARD MEMBER BRIEFING  
CENTRAL COAST - 2012 AGRICULTURAL ORDER  
SWRCB/OCC FILES A-2209(a)-(e)**

**Discussion Issue: Defining Compliance**

The State Board's Draft Order refers to "compliance" as "making good faith efforts" (page 45, Provision 82). This is too vague and would create a problem with implementation.

Developing specific time schedules is difficult. In some cases (e.g., nitrate in groundwater) even advanced management practices don't lead to immediate attainment of objectives in receiving groundwater. Multiple criteria are used to measure compliance, including water quality objectives, Irrigation and Nutrient Management Plans (INMPs), farm plan implementation, and long- and short-term numeric reductions.

**Discussion Issue: Ensuring Efficient and Effective Implementation**

The Draft Order eliminates some requirements to report nutrient balance ratios and information related to INMPs, and allows "self-evaluations" regarding effectiveness (pages 37-39). This approach is not practical when dealing with severe degradation and thousands of dischargers.

Staff is currently using this type of information, such as nutrient balance ratios, to prioritize water quality problems and follow up with farmers. Even though some information is an estimate, it helps identify problems that can be improved quickly. We have several cases where farmers used their nutrient balance ratios to greatly reduce their fertilizer application, leading to improved water quality. The Regional Board's requirements to submit specific information related to fertilizer use was based on recommendations from an expert panel. The information is used to assess whether changed management practices are necessary, and not for purposes of enforcement. Farmers have until 2015 to report INMP information to the board. This provides time for them to work with certified crop advisors and make changes to prior practices (such as using excess amounts of fertilizer) before reporting information to the board. In addition, the order requires providing this information in format that staff can input to a database that makes the information more useful for overall program purposes.

**Additional points:**

1. With thousands of dischargers, we must have regional requirements that implement the program efficiently and effectively. For example, we already know that severe groundwater problems exist in the Salinas Valley, and it is infeasible to rely on thousands of 13267 orders or site inspections to obtain critical information that will lead to reduced loading to groundwater.
2. The Regional Board must manage a database of basic, required information, designed to evaluate risk to water quality and human health, prioritize our follow up actions, evaluate compliance, and verify progress toward achieving water quality objectives, which is the stated purpose of the Ag Order. The Ag Order does not require immediate compliance with water quality objectives.

**BOARD MEMBER BRIEFING  
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However, the required information must indicate or show improvement in reducing pollutant load or improving water quality.

3. With respect to individual surface water monitoring, the Order should not limit sampling to direct discharges to “a natural water body.” This approach is easily interpreted as permitting unlimited pollutant discharge to non-natural water bodies. Also, streams that have been converted to Ag ditches are still waters of the state and may be waters of the United States. Non-natural or modified “conveyance” structures discharge to groundwater.
4. Many farmers are already successfully implementing the Regional Board requirements. The results of required monitoring and reporting are already providing the Water Board with critical information to identify water quality issues and prioritize follow-up actions, including action on contaminated drinking water cases.