

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.

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

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**

Note: This form is intended to assist the public in providing the disclosure required by law. It is designed to document meetings and phone calls. Written communications may be disclosed by providing a complete copy of the written document, with attachments. Unless the board member(s) provided you with a different contact person, please send your materials to: commentletters@waterboards.ca.gov

Use of this form is not mandatory.

1. Pending General Order that the communication concerned:

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.

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

Time:

Location:

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

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

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

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.*

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.**

12/15/2017 Ex Parte Communication

Attendees

1 Dorene D'Adamo	State Water Resources Control Board
2 Darrin Polhemus	State Water Resources Control Board
3 Phil Wyels	State Water Resources Control Board
4 Ruth Dahlquist-Willard	UC Cooperative Extension
5 Daniel Munk	UC Cooperative Extension
6 Michael Yang	UC Cooperative Extension

By Phone

1 Jenny Moffitt	California Department of Food and Agriculture
2 Casey Creamer	Kings River Water Quality Coalition
3 Mark Cady	California Department of Food and Agriculture
4 Doug Parker	UC Agriculture and Natural Resources, California Institute for Water f
5 Aparna Gazula	UC Cooperative Extension

Resources

**Addressing the needs of diversified, socially disadvantaged farmers:
Proposal for an alternate self-certification for Irrigated Lands Regulatory Program reporting**

Ruth Dahlquist-Willard and Aparna Gazula, University of California Cooperative Extension

Small-scale farms with a high diversity of crops face particular challenges in complying with the Irrigated Lands Regulatory Program (ILRP). These challenges are especially difficult for socially disadvantaged, immigrant, and refugee farmers, who may be monolingual or have limited English and educational backgrounds as well as cultural barriers to understanding regulatory requirements. The University of California Cooperative Extension (UCCE) small farms programs in Fresno County and Santa Clara County have been assisting small-scale Southeast Asian and Chinese farmers with enrollment as members in water quality coalitions and completing the farm evaluations and the nitrogen management plans. Based on our experiences, we have identified several difficulties in completion of the required reporting for ILRP compliance for these farmers. We strongly recommend that these issues be addressed in the current proposed order, so that small-scale, diversified, and socially disadvantaged farmers can participate in protecting water quality in a way that engages them meaningfully, is feasible for them, and provides accurate information to water quality coalitions and water boards¹.

Certification of the Nitrogen Management Plan. There are currently three options for certification: 1) self-certification; 2) certification by a consultant; and 3) certification with a UC or USDA-NRCS recommendation. Self-certification is difficult because farmers must pass a closed-book test that is only available in English and requires proficiency in math and chemistry. Due to language barriers and lack of technical skills, many immigrant growers will not be able to self-certify their plans. Paying a consultant is possible, but it places an additional financial burden on small, limited-resource farmers. Additionally, commercial consultants are unlikely to be familiar with the diversity of ethnic specialty crops on these farms or to be able to provide accurate recommendations for nitrogen use. The third option of a UC or NRCS recommendation is also difficult, because recommendations do not exist for the wide variety of Asian and other ethnic specialty vegetables, herbs, and tropical and subtropical fruits grown on these farms, either individually or for categories such as “mixed vegetables” or “truck crops”.

Reporting of Yield. Accurate reporting of yield from small-scale, diversified farms is much more difficult and complex than for a large farm with a single crop. Highly diversified farms could have 50 to 80 crops rotated through several cropping seasons on 20-30 acres over a year, and these crops are sold to a variety of markets and also used for home consumption by the farmer’s extended family. Units of yield differ by the crop and market. For example, one farm could sell boxes of eggplant to a packing house, bundles of sugar pea tips to a local grocery store, bunches of moringa at a farmers market, and pounds of green papaya to a restaurant, with extended family members also taking home a percentage of each crop. This makes estimation of annual yield for the whole farm extremely difficult. Another concern is that farmers may under-estimate overall yield, since not all crops are sold due to home consumption. This could result in reporting A/R ratios that are higher than the actual values.

Calculation of Nitrogen Uptake. Crop-specific coefficients to calculate nitrogen removal are not known for most of the culturally important crops grown by immigrant farmers. Also, a generic or average coefficient for truck crops or mixed vegetables is not available. Because each diverse farm has a

¹ The statements in this document are based on our personal experience in serving socially disadvantaged farmers through our extension programs and do not reflect the views of the Regents of the University of California.

different combination of crops, one average or generic value for mixed vegetables is unlikely to give accurate information on nitrogen removed. We believe it is important to communicate the importance of accurate reporting to all growers. Research-based information on nitrogen uptake for specialty vegetables and averages for diversified farms that can be weighted based on crop mixtures is needed before yield data can be converted into nitrogen removed with enough accuracy to be meaningful for reporting.

Cultural and Linguistic Barriers. A large investment of time for one-on-one assistance is needed for small-scale, immigrant growers to understand program requirements and complete the calculations for the nitrogen management plan and summary. Bilingual workshops can be helpful to give an overview of ILRP requirements, but many immigrant and refugee farmers have language and educational barriers to completing the required forms on their own. The proposed order would require coalitions to provide outreach in multiple languages. In regions such as Fresno County that contain multiple language groups (for example Spanish, Punjabi, Russian, Hmong, Mien, Lao, Cambodian, Thai, and Vietnamese), effective and personalized bilingual outreach and technical assistance may be beyond the scope of what coalitions can reasonably provide.

Another barrier can be fear and mistrust of regulatory agencies based on past experiences. Starting in 2004, Hmong farmers began receiving citations in the thousands of dollars from the California Division of Labor Standards Enforcement for not providing workers compensation to extended family members exchanging farm labor for produce (Sowerwine and Getz 2013, Sustainable Economies Law Center). Because these and other immigrant farmers have difficulty trusting that regulatory enforcement will be equitable and fair, it is essential to communicate clear expectations to them that they can understand, have the ability to comply with, and that are connected to logical enforcement outcomes.

Costs of compliance for small-scale farms. The burden of reporting for small-scale, diversified, and socially disadvantaged farms is disproportionate to that of large farms, both in terms of time and financial cost. Costs for membership in coalitions and for testing well water are substantially higher for smaller farms than for larger farms. Currently, farmers in Santa Clara County are required to submit data from well water tests twice a year in 2017 and twice a year in 2019 to the regional water board. The samples must be collected and analyzed by the approved testing facilities as specified by the water board. Including labor costs for sample collection by the third party, water sampling costs around \$310 for the initial composite analysis and \$220 for subsequent nitrate analysis per well. These prices are applicable to farmers within the Central Coast Groundwater Coalition, and annual membership fees are \$350 for less than 700 acres (<http://www.centralcoastgc.org>). Most of the Asian growers in Santa Clara County farm on less than 10 acres and have just one well for irrigation water needs. On a per acre basis, compared to the larger growers the costs for monitoring groundwater quality are very high for these small scale growers, where 82% of farmers have less than \$100,000 in farm sales.

Proposal for alternate self-certification option for diversified, socially disadvantaged farmers. The complexity of cropping systems added to the challenges of cross-cultural communication make accurate and meaningful reporting difficult for the farms described above. These challenges also exist for other regulatory programs, including the Food Safety Modernization Act (FSMA) and the soon to be implemented Sustainable Groundwater Management Act (SGMA). The financial and labor costs for compliance with multiple regulatory programs are substantial for small-scale farms, and additional support and educational efforts are needed for these farms to continue to be economically viable. In order to address the challenges listed above, we propose an additional option for self-certification of nitrogen management plans, accompanied by simplified reporting on the INMP form and N summary.

Definition of farmers who qualify. We suggest the following characteristics for farms that could qualify for the alternate self-certification:

- Farm size of less than 45 irrigated acres
- Farm income of less than \$350,000 gross annual sales (USDA definition of a small farm)
- One or both of the following:
 - a) Crop diversity greater than or equal to 0.5 crops per acre (1 crop for every 2 acres)
 - b) 30 acres or less of a specialty crop for which the N coefficient/uptake is not known
- Socially disadvantaged farmer as defined by the Farmer Equity Act (AB 1348)

This category could be made more or less restrictive by modifying farm size and income, or by requiring a subset of characteristics (for example, three out of the four required characteristics). If all four of the above characteristics are required, the alternate self-certification option would not be available for socially disadvantaged farmers with small-scale farms having only one crop (for example, peri-urban Southeast Asian farmers specializing in only strawberries or Latino farmers with small acreage of one or a few vegetable crops).

Farmers could indicate that they qualify for the alternate self-certification by checking a box for “diversified, socially disadvantaged farmer” on the membership registration form for their water quality coalition. Qualification for this category could be verified with site inspection if needed, or by the farmer submitting documents such as their list of crops registered for sale at farmers markets. The alternate self-certification could use one of the existing lines on the nitrogen management plan (either self-certification or UC/NRCS recommendation), or another line could be added.

Mandatory Annual Training. The proposed alternate self-certification would require attendance at an annual training event. The training would be a minimum of four hours long and modeled after the existing grower certification training, but adapted to be hands-on and culturally relevant to the farmers attending. It would include training on best management practices for irrigation and nutrient management, with a focus on farms with mixed vegetables and specialty ethnic crops. Training would be coordinated by local water quality coalitions and UCCE, with other potential partners such as USDA-NRCS, Resource Conservation Districts, or industry representatives. It may be possible to coordinate trainings regionally, so that farmers have more than one option if they cannot make one of the trainings. Coalitions could provide financial support for components such as translation services, printing materials, or other related expenses. Data on farmer attendance would be reported to the appropriate coalition. Evaluations would also be conducted to assess the effectiveness of the training and track changes in knowledge and management practices over time.

Simplified Reporting of Nitrogen Applied. The goal of the simplified reporting is to assist farmers in learning how to calculate total nitrogen applied as a first step in compliance with ILRP reporting requirements, and to gather data that would be useful in understanding the relationship between nitrogen applied, acreage, and typical crop mixtures. Farmers would be required to complete all sections of the Irrigation Nitrogen Management Plan (INMP) and INMP Summary Report, except for the following:

- Crop production units
- Crop evapotranspiration
- Projected yield
- Primary and secondary crop harvest yield
- Yield on INMP Summary Report

These sections are excluded based on the difficulty of calculating yield from highly diversified farms, and the technical difficulty in calculating crop evapotranspiration for this group of farmers. Reporting applied nitrogen alone would require substantial one-on-one technical assistance, particularly for the calculations of nitrogen present in different types of fertilizers and converting nitrogen in soil and irrigation water to the appropriate units to use in calculating total nitrogen applied. To substitute for these sections, farmers would be required to report the following additional information:

- Number of rotations per year
- Number of crops per year
- Summary of crops most representative of the diversified farm (based on highest acreage and/or most frequently rotated)

These data would allow identification of outliers based on nitrogen applied per acre for small-scale diversified farms. Data reported on nitrogen applied, acreage, and crop mixtures could be used to better understand typical nitrogen application practices and to generate recommendations for future reporting requirements.

Periodic Evaluation. The alternate self-certification option would be approved for a period of five years, with a re-evaluation and option to extend and modify the alternate requirements every five years. This could coincide with evaluation of data reported on the Farm Evaluations every five years. Evaluation data collected during the trainings would also be included. Extension and modification of the alternate certification option could be based on feedback from UC Cooperative Extension and other groups providing training, as well as data collected from training evaluations and reporting of management practices and applied nitrogen. Additionally, the five-year evaluation could take into account any new information on nitrogen removal coefficients or methods for estimating yield for diversified farms that may be developed over time with further research.

Reduced Frequency of Sampling. The higher costs for small-scale farms in proportion to income and acreage could be addressed by reducing the required frequency of well testing for farms below a specified income level. We do not have specific recommendations for individual water quality coalitions, but recommend language in addition to that currently in the proposed order to require coalitions to adjust the frequency of sampling to be proportional to farm income.

Appendix: Characteristics of small-scale, diversified, and socially disadvantaged farms

Below we present characteristics of small-scale, diversified, and socially disadvantaged farms that are relevant to the challenges they face with regulatory compliance. This information is based on our experience working with Southeast Asian and Chinese growers in Fresno and Santa Clara Counties, and illustrates broader issues that are applicable for diversified farms and socially disadvantaged farmers throughout the state: for example, diversified Latino and African-American farms selling traditional ethnic crops at farmers markets, and diversified urban farms.

A. Southeast Asian farms in Fresno and the wider Central Valley

Demographics. The USDA National Agricultural Statistics Service reported 919 farms with Asian operators in Fresno County in 2007, and 1,036 farms in 2012. However, the number of Southeast Asian farmers is greater than the national census numbers due to low participation in mail-in surveys. A comprehensive survey conducted by Richard Molinar and Michael Yang in 2007 found over 1300 Southeast Asian farmers in Fresno County (Molinar et al. 2007). Approximately 900 of these were Hmong, with around 400 Lao and smaller numbers of Mien, Cambodian, Chinese, Vietnamese, and Thai farmers. While most of the statistics available on Southeast Asian farms are from Fresno County, there are similar farms in many areas of the larger Central Valley, especially around Visalia, Merced, Stockton, and Sacramento. These include small-scale diversified vegetable farms and strawberry farms with roadside stands. In the 2012 census, 908 of the 1036 Asian farms in Fresno County (87.6%) had \$250,000 or less in gross annual sales.

Crop Diversity. Southeast Asian farms typically are highly diversified and cultivate a large variety of specialty vegetables, herbs, and tropical and subtropical fruits (Table 3) for a variety of different markets as well as home consumption by family members. Many of these crops are classified as “oriental vegetables” in county and state crop reports, and they can include traditional crops for Filipino, Indian, Latino, and other ethnic specialty markets. They are sold to farmers markets, roadside stands, ethnic grocery stores, restaurants, and wholesale packing houses that ship to markets for Asian immigrant communities across the country. In addition to specialty crops for ethnic markets, these farms can also include crops for mainstream customers such as broccoli, cauliflower, Swiss chard, bell peppers, parsley, cilantro, lettuce, spinach, Italian eggplant, cabbage, cucumber, and others. Many farms also include a patch of strawberries. Mien farmers in particular have specialized in strawberries, and many have strawberry stands for urban consumers in Visalia, Fresno, Sacramento, Stockton, and Merced. Because crops are rotated through 3-4 cropping seasons annually, especially for year-round farmers market sales, these diversified farms can produce 50-80 different crops over a year.

Table 3. Specialty ethnic vegetables commonly grown on Southeast Asian farms (not all-inclusive).

Squashes	Luffa gourd, Winter melon, Bittermelon, Wax gourd, Hairy melon, Bottle gourd, Snake gourd, Hmong pumpkin, Kabocha squash, Hmong cucumber, Chayote, Korean melon, Ivy gourd
Brassicas	Bok choy, Yu choy, Gai lan, Chinese (Napa) cabbage, Mustard greens, Tat soi, Daikon, Lo bok, Thai broccoli, Kale
Legumes	Chinese long bean (asparagus or yardlong bean), Edible pod peas (snow, snap, and sugar), Sugar pea tips, Peanuts, Lablab (hyacinth) bean, Pigeon pea, Guar bean, Faba bean
Nightshades	Eggplant (Chinese, Japanese, Thai, and Indian), bunching eggplant, Hmong bitter eggplant, Thai chili pepper, Cherry tomatoes, Black nightshade
Root crops	Taro root, Japanese yam, Sweet potato, Jicama, Jerusalem artichoke, Burdock, Mountain potato (yama imo)
Monocots	Sugarcane, Lemongrass, Japanese bunching onions (multiplier onions), Water chestnut, Hmong sticky corn
Fruits	Guava, Passionfruit, Papaya, Jujube, Prickly pear cactus, Strawberries
Greens	Malabar (Ceylon) spinach, Water spinach (ong choy), Okra leaf, Cassava leaf, Yam leaf, Amaranth, Moringa, Celtuce, Chayote tips, Pumpkin tips, Pumpkin flowers, Watercress
Herbs	Ginger, Sour leaf, Chrysanthemum leaves (tong ho), Turmeric, Tears of the virgin, Jewels of Opar, Sichuan pepper, Basil (holy basil, lemon basil, Thai basil), Fenugreek, Mint, Vietnamese mint, Lime leaf, Culantro, Cilantro, Dill

A video from the University of Hawaii Cooperative Extension showing some of these crops is available at: <https://www.youtube.com/watch?v=gDQqSvwEXZg&feature=youtu.be>

Markets and Income. Southeast Asian farms vary in size and marketing strategies. A survey of 83 Southeast Asian farmers in 2013 found that the median farm size was 8.8 acres, with a range of 0.5 to 60 acres (Sowerwine and Getz 2013). Nearly half of the farms surveyed were five acres or less, and only one farmer reported 60 acres. Previous surveys had found an average farm size of 5.8 acres for Hmong farms and 7.8 acres for Lao farms in 2007, which had both increased from averages of 3.25 acres for Hmong farms and 5 acres for Lao farms in 1992 (Molinar et al. 2007). Smaller farms (0.5 - 10 acres) tend to focus more on home consumption and local direct sales to grocery stores or restaurants, while larger farms (10 - 40 acres) may have more sales to farmers markets and wholesale buyers. One previous survey estimated that the majority of these farms had annual gross revenues between \$5,000 and \$50,000 (Sowerwine and Getz 2013). While these estimates may seem low, they probably reflect the large number of farms that are smaller in size and the common practice of providing fresh produce to the farmer's household and extended family members for home consumption and use in traditional herbal medicine.

Land Tenure. Many Southeast Asian farmers are tenants on rented land, often in peri-urban areas. In a 2015 survey of 48 Hmong farmers, 80% were farming on rented land (average farm size of 7.42 acres), and 20% owned their farms (average farm size of 17.78 acres) (Dahlquist-Willard et al. unpublished data). Relationships between tenant farmers and landowners can vary widely. Landowners who live in the area may be more involved with the farming operation, while those who live farther away may contact the farmer only once or twice per year. Some Hmong landowners subdivide their 30-40 acre parcels for leases to 5-6 different farmers and maintain close communication with their tenants.

Irrigation and Fertilization Practices. Fertilizers commonly applied include triple-15, UN-32, or CAN-17. Application of micronutrients is less common, and there is a need for education on micronutrient deficiencies and appropriate application. Very few Southeast Asian farms use compost or manure, although they frequently till the residue of harvested crops into the soil as part of their crop rotations through different sections of a field.

B. Chinese farmers in Santa Clara County

Demographics. The median farm size of Asian minority farmers in Santa Clara County is 4 acres. Farm size ranges from 0.25 acre to 60 acres, with 72% of farms under 5 acres in size. There are 280 Asian farmers in Santa Clara County, a large majority of whom are Cantonese speaking Chinese immigrants. According to the 2012 USDA Agricultural census, of the 205 Asian farms that reported the information, 82% of the Asian farms (168) had farm sales less than \$100,000 per year and 67% (137 farms) had farm sales less than \$50,000 per year. Based on farmer interviews, the major farming challenges they face are: 1) competition from Mexico that drives low product prices; 2) cultural and language barriers to complying with county, region, state, and federal regulations; and 3) lack of access to farm labor and challenges with providing adequate farm worker housing.

Crop Diversity. Asian farmers in Santa Clara county primarily grow Asian vegetables and herbs such as Bok choy, A choy, edible amaranth, Chinese celery, Chinese spinach, garlic chives, daikon radish, Gai choy, Gai lan, green garlic, Malabar spinach, On choy, Shanghai Bok choy, snow pea tips, Tong ho, yam leaves, and Yu choy. These vegetables are grown in several rotations per year under protected structures. Many of these crops are harvested once while others such as garlic chives, Tong ho, edible amaranth, and yam leaves are harvested multiple times. These crops are grown in multiple rotations during the year and marketed primarily through wholesale channels.

References:

Molinar, R., M. Yang, and C. Cha. 2007. Update: The Southeast Asian farmers in Fresno County status report for 1992 and 2007. University of California Cooperative Extension, Fresno County. Unpublished.

Sowerwine, J. & Getz, C. 2013. The Changing Face of California Agriculture: Identifying challenges and providing opportunities for Southeast Asian and other minority farmers. Rural Connections.

Sustainable Economies Law Center. The Refugee Farmer Project. Available online at http://www.theselc.org/work_in_the_new_economy_projects_advocacy_refugee_farmers. Accessed 12/14/2017.

USDA Census of Agriculture. 2012. Available online at https://www.agcensus.usda.gov/Publications/2012/Online_Resources/Race,_Ethnicity_and_Gender_Prfiles/California/