

August 29, 2017

State Water Resources Control Board
Clerk to the Board
Attn: Jeanine Townsend
P.O. Box 100
Sacramento, CA 95812-0100



Subject: Comments regarding Draft General Waste Discharge Requirements for discharges of waste associated with cannabis cultivation activities.

Dear Ms. Townsend:

I am submitting comments regarding the State Water Resource Control Board's proposed cannabis cultivation regulations.

General Comments

On October 6th, 2015 on the steps of the Humboldt County Courthouse, Assemblymen Jim Wood said in regards to the Medical Marijuana Regulatory and Safety Act (MMRSA) "It essentially classifies cannabis as an agricultural product," he said. ***"Which requires cultivators to abide by the same regulations as other existing agricultural products which include all environmental laws."*** The proposed regulations are absolutely contrary to this statement. No other agricultural activity in the State is subject to a permit process as proposed by the Draft Regulations. If in fact the intent is to ensure that all agricultural operations are regulated the same, then the dairy, cattle, poultry, viticulture, flower, fruit and vegetable, etc. operations within the State would require the same process. Obviously this would generate a rebellion.

Public Outreach: Other than emails, if you happen to be on the CalCannabis or DWR's email list, I truly believe the stakeholder outreach was poorly advertised, if at all. The attendance at the recent July 20th meeting in Eureka is a prime example. It's estimated that Humboldt County alone has close to 12,000 grows, with probably at least 25,000 residents either directly or indirectly involved in the industry. These numbers are likely similar in Mendocino County. I would be surprised if there were 40 people, excluding public agency staff members, public officials and consultants that attended each of the meetings.

I personally did not see any advertisements in the local papers, including the Times-Standard, Redwood Times, the Humboldt Independent, the North Coast Journal or Emerald Magazine.

Nor did I see any television advertisements or hear any radio advertisements. In any event, I was very disappointed in the public outreach and turnout.

DWR's Purpose Statement:

The purpose of the Cannabis Cultivation Policy (Policy) is to ensure that the diversion of water and discharge of waste associated with cannabis cultivation does not have a negative impact on water quality, aquatic habitat, riparian habitat, wetlands, and springs. This Policy applies to the following cannabis cultivation activities throughout California:

- *Commercial Recreational*
- *Commercial Medical*
- *Personal Use Medical*

Following are comments regarding the proposed definitions;

1. Cannabis Cultivation – *any activity involving or necessary for the planting, growing, pruning, harvesting, drying, curing, or trimming of cannabis. This term includes, but is not limited to: (1) water diversions for cannabis cultivation, and (2) activities that prepare or develop a cannabis cultivation site or otherwise support cannabis cultivation and which discharge or threaten to discharge waste to Waters of the State.*

Comment: The “trimming of cannabis” should not be included in the definition. This activity should be considered “cannabis processing”. The CDFA and many rural jurisdictions are strongly encouraging off-site “trimming or processing” to minimize vehicular impacts to rural roads, watercourses and water quality in general.

2. Cannabis Cultivation Area – *is defined by the following:*

a. For in-ground plants, the cultivation area is defined by the perimeter of the area planted, including any immediately adjacent surrounding access pathways.

b. For plants grown outdoors in containers (e.g., pots, grow bags, etc.) the cultivation area is defined by the perimeter of the area that contains the containers, including any immediately adjacent surrounding access pathways. The area is not limited to the sum of the area of each individual container.

c. For plants grown indoors, that do not qualify for the conditional exemption under the Cannabis General Order, the cultivation area is defined by the entire area contained in the structure where cultivation occurs, excluding any area used solely for activities that are not cultivation activities (e.g., office space). Areas used for storage of materials, equipment, or items related to cannabis cultivation shall be included in the cultivation area calculation.

Comment: It could be argued, based on the definition of “Cannabis Cultivation” (see above), drying and trimming/processing could be included as part of the “Cannabis Cultivation Area”. Apparently DWR chose not to define canopy, which of course is different than the cannabis cultivation area. Not sure where this definition would be applied, but if it’s used to quantify actual cannabis cultivation areas, it will be very misleading. See below:

In-ground plants: If a farmer had a fenced 250’ x 200’ area (50,000 square feet) with access pathways, including access for vehicles and trailers between the rows, the true or actual cultivation area would be much less than 50,000 square feet. Many farmers on the northcoast utilize 10’ wide raised-beds with 6’ to 10’ wide travelways between the beds and at the ends of the beds. For example, a farmer utilizing 10’ wide raised-beds by 230’ long, the ***cultivation area*** of the raised bed 2,300 square feet. If the farmer had a 10’ wide travelway between the beds in a fenced 250’ x 200’ area, the fenced area could accommodate nine raised beds or 20,700 square feet of actual cultivation area, not even close to the 50,000 square feet as currently proposed to be defined. ***This is very misleading.***

Outdoor containers: Cannabis plants at maturity could range in size from 9 square feet (3’ x 3’) up to 100 square feet (10’ x 10’) for giant plants. However, due to pest, fungicide and general maintenance of cannabis plants most farmers tend to grow smaller plants, anywhere from 9 to 25 square feet. Using the same example above, a fenced 250’ x 200’ area with containers and grow bags spaced 10’ on-center and providing a 10’ travel way inside the perimeter of the fence and assuming 25 square feet per plant, the actual plant canopy is approximately 10,500 square feet. ***Again this definition is very misleading.***

Indoor plants: Based on the proposed definition, the cultivation area would include areas where materials, equipment are stored and items related to cannabis cultivation, but not include office space. As such, this definition would include garages, storage sheds, drying sheds, etc. If an indoor grow area is 60’ x 40’ (2,400 square feet) and the drying area is 20’ x 40’ (800 square feet) and the trimming/processing area is 20’ x 40’ (800 square feet), under the proposed definition the “Cultivation Area” would be 4,000 square feet. Once again this definition is very misleading in terms of actual cultivation area. Typical indoor farmers utilize 4’ wide beds, 3’ between the beds for ADA access and 4’ from the walls. In this scenario the true or actual “Cultivation Area” is 1,040 square feet, not even close to the 2,400 or even 4,000 square feet as proposed in the definition. ***Again this definition is very misleading.***

3. Land Disturbance – land areas where natural conditions have been modified in a way that may result in an increase in turbidity in water discharged from the site. Disturbed land includes areas where natural plant growth has been removed whether by physical, animal, or chemical means, or natural grade has been modified for any purpose. Land disturbance includes all activities whatsoever associated with developing or modifying land for cannabis cultivation related activities or access. Land disturbance activities include, but are not limited to, construction of roads, buildings, water storage areas; excavation, grading, and site clearing. Disturbed land includes cultivation areas, storage areas where soil or soil amendments (e.g., potting soil, compost, or biosolids) are located.

Comment: Section 11362.777 of the Health and Safety Code, the Medical Marijuana Regulations and Safety Act and Section 19300 et. seq. of the Business and Professions Code recognize cannabis as an agricultural product, which it is. Again, on October 6th, 2015 on the Humboldt County Courthouse steps, Assemblymen Jim Wood said in regards to Assembly Bills 243 and 266: “It essentially classifies cannabis as an agricultural product,” he said. **“Which requires cultivators to abide by the same regulations as other existing agricultural products which include all environmental laws.”** The proposed regulations apply specifically to cannabis.

DWR is responsible to regulate all activities that have a negative impact on water quality, aquatic habitat, riparian habitat, wetlands, and springs. Not just cannabis related activities. I have seen significant alterations to natural landforms, cuts, fills and terraces associated with grape and olive cultivation/growing activities. In addition, timber harvesting activities have had and continue to have significant adverse impacts on water quality, aquatic habitat, riparian habitat, wetlands, and springs. I truly believe the proposed regulations, including legacy condition requirements should apply to all agricultural and timber related activities that have a negative impact on water quality, aquatic habitat, riparian habitat, wetlands, and springs.

SECTION 1 – GENERAL REQUIREMENTS AND PROHIBITIONS

Item No. 8: *Prior to commencing any cannabis land development or site expansion activities the cannabis cultivator shall secure a qualified biologist. The cannabis cultivator and the Qualified Biologist shall consult with CDFW and CAL FIRE and designate and mark a no-disturbance buffer to protect identified sensitive plant and wildlife species and communities.*

Comment: This is a very broad statement and requirement. Does this regulation apply to personal recreation cannabis cultivation of six plants or less, cannabis activities on historical, traditional prime agricultural lands where it can be seen with certainty that no adverse environmental impacts would occur and, indoor cultivation within existing buildings?

Suggested Language: Prior to commencing any cannabis land development or site expansion activities that may result in a direct or indirect impact to sensitive plant and wildlife species and communities, the cannabis cultivator shall secure a qualified biologist. The cannabis cultivator and the Qualified Biologist shall consult with CDFW and CAL FIRE and designate and mark a no-disturbance buffer to protect identified sensitive plant and wildlife species and communities.

Item No. 18: *No cannabis cultivation activities shall occur within 600 feet of an identified tribal cultural resource site. The cannabis cultivator is solely responsible for identifying any tribal cultural resource sites within the cannabis cultivation area.*

Comment: First of all DWR is not a responsible or trustee agency with regards to cultural resources. Again, “*The purpose of the Cannabis Cultivation Policy (Policy) is to ensure that the diversion of water and discharge of waste associated with cannabis cultivation does not have a*

negative impact on water quality, aquatic habitat, riparian habitat, wetlands, and springs.” Secondly, to prohibit any cultivation activities within 600 feet of an identified tribal cultural resource may not be necessary or even recommended by a qualified archaeologist or local Tribal Historic Preservation Officer (THPO). Finally, the cultivator should not be solely responsible for identifying any tribal cultural resource sites within the cannabis cultivation area. Again, the identification and preservation of cultural resources is not a responsibility of DWR. The regulation should be removed from DWR’s proposed regulations.

Item No. 19: *Prior to land disturbance activities for new or expanded cannabis cultivation activities, the cannabis cultivator shall perform a records search of potential Native American archeological or cultural resources (CHRIS potential discovery) at a California Historical Resources Information System (CHRIS) information center. A CHRIS qualified archaeologist shall perform the records search and document the results.*

Comment: Again, the identification and preservation of cultural resources is not a responsibility of DWR. This regulation should also be removed from DWR’s proposed regulations. In addition, there are situations where a records search may not be necessary for the following reasons:

- One may have been previously done for another project or as part of a Timber Harvest Plan (THP);
- The area may have historically utilized for crop production where previous tilling/farming activities occurred;
- The cultivation area is not located in an area where prehistoric cultural resources would be likely because of its location, physical and topographic features;
- There are a number of other proximate, more desirable locations.

The recommended regulation should be incorporated into Section 8313 of the California Code of Regulations, “Environmental Protection Measures”.

Item No. 20: *Discovery of human remains.*

Comment: Once again, this is not a responsibility of DWR. This regulation should also be removed from DWR’s proposed regulations. Section 8313 of the California Code of Regulations, “Environmental Protection Measures” already contains the recommended language regarding Section 7050.5 of the Health and Safety Code.

Item No. 23: *To minimize the risk of ensnaring and strangling wildlife, cannabis cultivators shall not use synthetic (e.g., plastic or nylon) monofilament netting materials for erosion control or any cannabis cultivation activities. This prohibition includes photo- or bio-degradable plastic netting.*

Comment: Once again polices and regulations regarding the ensnaring and strangling of wildlife is not the responsibility of DWR. The Department of Fish and Wildlife is the responsible agency for such things. Seems strange to propose that photo or biodegradable materials be banned. If anything, such materials should be encouraged. I personally have seen wildlife, including dead wildlife entangled in field fencing. Again, this is another example of how cannabis cultivators are singled out and treated differently than other agricultural producers. For example, Karah Estate Vineyards out of Cotati and many other vineyards and grape growers utilize synthetic netting to protect the grapes.

SECTION 2 – REQUIREMENTS RELATED TO WATER DIVERSIONS AND WASTE DISCHARGE FOR CANNABIS CULTIVATION

General Comments: Once again, it appears that the cannabis industry is being treated different than any other industry, including agriculture, timber, mining, manufacturing, etc. Regardless of the industry, the Department is responsible to develop regulations to ensure that the diversion of water and discharge of waste associated with any land disturbance does not have a negative impact on water quality, aquatic habitat, riparian habitat, wetlands, and springs. As such, the proposed regulations should apply to all ground disturbing activities in the State of California.

Item No. 1: *All grading and earthwork shall be done by a state-licensed C-12 Earthwork and Paving contractor, as applicable.*

Comment: There needs to be a definition of grading and earthwork. Typically any cuts and fills greater than 2 feet or the displacement of more than 50 cubic yards requires a Building Permit. Many farmers routinely grade their access roads. **Does existing road grading/maintenance need to be done by a Class C-12 contractor?** Class “A” General Engineering Contractors are allowed to conduct land leveling, earthmoving, excavating, trenching and grading activities pursuant to Section 7056 of the Business and Professions Code.

Item No. 5: *Cannabis cultivation land development and road construction shall be designed by a qualified professional. Cannabis cultivators shall conduct all construction or land development activities to minimize grading, soil disturbance, and disturbance to aquatic and terrestrial habitat. Cannabis cultivators shall conduct all road design, land development, and construction activities in compliance with the California Forest Practices Act and any state, county, city, or local requirements, as applicable.*

Comment: This is a one size fits all, blanket approach. Most of the time a “qualified professional” is not needed to design the cultivation sites and roads. Most cultivation sites occur on slopes less than 15%, many occur on flat 1% - 2% slopes. Why would a farmer placing containers or raised beds on undisturbed land have to retain a “qualified professional” (engineer)? The determination of requiring a “qualified professional” should be made by the local Building Department/Official based on site conditions. At a minimum there needs to be

exceptions to the “qualified professional” based on site conditions. Once again, are grape, olive, green onion and carrot growers subject to the same regulations?

Item No. 24: *Cannabis cultivators shall ensure that road surfacing, especially within a segment leading to a wetland or waterbody, is sufficient to minimize sediment delivery to the wetland or waterbody and maximize road integrity. Road surfacing may include pavement, chip-seal, lignin, rock, or other material appropriate for timing and nature of use. All roads that will be used for winter or wet weather hauling/traffic shall be surfaced. Steeper road grades require higher quality rock (e.g., crushed angular versus river-run) to remain in place. **The use of asphalt grindings is prohibited.***

Comment: The County of Humboldt and many other jurisdictions have historically used asphalt grindings to top dress roads. Do the rules apply just to cannabis cultivators? If one is growing grapes or other agricultural commodity will they be allowed to use asphalt grindings? Will the County be required to stop using asphalt grindings?

Item No. 27: *Cannabis cultivators shall ensure that neither in-sloped nor out-sloped roads are allowed to develop or show evidence of significant surface rutting or gullyng. Cannabis cultivators shall use water bars and rolling dips as designed by a qualified professional to minimize road surface erosion and dissipate runoff.*

Comment: Why does a water bar or rolling dip need to be “designed” by a qualified professional? Why not provide an option to either have the water bar or rolling dip “designed” by a qualified professional or installed by either a LTO, a licensed Class “A” or C-12 contractor or refer to the “Handbook for Forest, Ranch and Rural Roads” for the design, location of a water bar or rolling dip”? Many LTO’s and Class “A” and Class C-12 contractors have many years of experience in installing water bars and rolling dips.

Item No. 30: *Cannabis cultivators shall regularly inspect ditch-relief culverts and clear them of any debris or sediment. To reduce culvert plugging by debris, cannabis cultivators shall use 15- to 24-inch diameter pipes, at minimum, for ditch relief culverts. Ditch relief culverts shall be designed by a qualified professional based on site-specific conditions. In forested areas with a potential for woody debris, a minimum 18-inch diameter pipe shall be used to reduce clogging.*

Comment: The Department of Fish and Wildlife who is responsible for Stream Alteration Permits (1600’s) does not require that a qualified professional design a culvert. Most folk’s oversize culverts to reduce or avoid clogging. Again, the “Handbook for Forest, Ranch and Rural Roads” contains formulas for appropriate sizing of culverts and diagrams for proper installation. By requiring the use of costly qualified professionals for almost any activity discourages folks from obtaining required permits.

SECTION 3 – NUMERIC AND NARRATIVE INSTREAM FLOW REQUIREMENTS (INCLUDING GAGING)

This section outlines the numeric and narrative instream flow Requirements established in this Policy.

The narrative instream flow Requirements apply to all diversions of surface water and groundwater for cannabis cultivation throughout California, in all 14 Regions. Numeric instream flow requirements are developed at compliance gages for the 14 Regions.

Narrative Instream Flow Requirements Instream Flow Requirements for Surface Water Diversions

3. Surface Water Dry Season Forbearance Period: Cannabis cultivators shall not divert surface water for cannabis cultivation activities at any time from April 1 through October 31 of each calendar year, unless the water diverted is delivered from storage in compliance with Narrative Flow Requirement 4.

Comment: It is not responsible to identify restrict diversion based solely on dates. The diversion dates should be based on stream flow rate conditions, precipitation rates and expected weather conditions.

Conclusion:

I truly believe that cannabis cultivators are being singled out and regulated differently than any other agricultural industry in the State of California. As a responsible and trustee agency, the Department has a responsibility to ensure that the diversion of water and discharge of waste associated with any agricultural or development activities does not have a negative impact on water quality, aquatic habitat, riparian habitat, wetlands, and springs.

Thank you for the opportunity to comment. I look forward to the Department's responses to all comments received. If you have any questions or need additional information please feel free to contact me.

Regards,



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