

ITEM: 10

SUBJECT: Low Threat Waiver for Discharges of Waste to Land, Region Wide

BOARD ACTION: *Consideration of Resolution Approving Waiver of Reports of Waste Discharge and Waste Discharge Requirements for Specific Types of Discharge within the Central Valley Region*

BACKGROUND: Water Code section 13269 authorizes the Board to waive the requirement for a discharger to submit a report of waste discharge (RWDs) and/or obtain waste discharge requirements (WDRs). In order to waive these requirements, the Board must first determine that the proposed discharge will be consistent with the applicable Basin Plan, and must find that the waiver is in the public interest. In 1982, the Board waived requirements for numerous broad categories of discharges. Though this waiver was in effect for many years, when the Water Code was revised in 1999, all waivers became subject to an automatic 5-year termination schedule, which would apply unless the waiver was periodically renewed. In 2003, the Board renewed several of the discharge categories that were initially covered by the 1982 waiver. Resolution R5-2008-0182, adopted by the Board in 2008, again renewed waiver categories for 12 specific types of discharges, including the discharge of all types of drilling muds and boring wastes. The current waiver program expires on 4 December 2013.

The proposed Resolution would continue to waive the requirement for many dischargers to submit RWDs and/or obtain WDRs under certain conditions. Discharges covered by the waiver include: air conditioner, cooling, and elevated temperature water discharges; fresh water well drilling muds/boring wastes; disposal of dredge material to land; inert solid waste disposal; test pumping of fresh water wells; swimming pool discharges; construction dewatering discharges; hydrostatic testing; agricultural commodity wastes; disposal of residual waste to land as a soil amendment; water recycling for construction projects and road dust control; and small, short-term sand and gravel operations. As initially proposed, the waiver would cover oil and gas drilling muds/boring wastes, but these discharges have been removed from the proposed waiver for the reasons explained below.

ISSUES: On 4 November 2013, the Center for Biological Diversity (CBD) submitted written comments that caused Board staff to reconsider whether it was appropriate to propose a renewal of the waiver category that covered the discharge of drilling muds and boring wastes associated with oil and gas development. The CBD's comments cite studies that suggest that regulating oil and gas drilling muds/boring wastes under the waiver program as initially proposed could adversely impact water quality. Furthermore, the CBD

contends that the Board has not conducted a sufficient environmental analysis to evaluate the potential environmental impacts from regulating drilling muds and boring wastes associated with oil and gas development under a waiver program, because the Board's analysis dates back to 1981.

Board staff is proposing to remove drilling muds and boring wastes associated with oil and gas development from coverage under the proposed General Waiver, but to retain waiver coverage for the discharge of fresh water well drilling muds/boring wastes, since drilling techniques for fresh water supply wells have not changed since 1981, and because the Board has yet to discover a situation where these materials have caused water quality impacts.

Removing drilling muds and boring wastes associated with oil and gas development from coverage under the General Waiver will give Board staff time to investigate whether regulation should be done through a waiver or through another regulatory mechanism. In the meantime, these discharges may receive regulatory coverage under State Water Board Order 2003-0003-DWQ (if appropriate). A detailed response to comments from the CBD and three other commenters is included in the Board's agenda package.

RECOMMENDATION: Adopt the proposed Resolution.

Mgmt. Review \_\_\_\_\_  
Legal Review PEP

**5/6 December 2013**

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