

TENTATIVE ORDER NO. R8-2013-000
GENERAL WASTE DISCHARGE REQUIREMENTS FOR CONCENTRATED ANIMAL
FEEDING OPERATIONS (DAIRIES AND RELATED FACILITIES) WITHIN THE SANTA
ANA REGION, NPDES No. CAG018001

RESPONSE TO COMMENTS ON DRAFT PERMIT RELEASED DECEMBER 4, 2012

Comments received from the following:

Inland Empire Waterkeeper (IEW) January 15, 2013
USEPA (EPA) January 17, 2013
Western Riverside County Agriculture Coalition (WRCAC) January 18, 2013
Western United Dairymen (WUD) January 18, 2013
Milk Producers Council (MPC) January 21, 2013
Roger Turner & Associates (RTA) January 19, 2013
Tetra Tech (TT) February 6, 2013

Comment 1 The tentative Order violates California's antidegradation policy because it provides for the continued discharge of pollutants that cause or contribute to an exceedance of water quality objectives and fails to provide a mechanism to determine compliance. (IEW)

Response: The tentative Order and the Fact Sheet have been revised. The Fact Sheet provides a detailed discussion of how the tentative Order is consistent with the federal and state antidegradation regulations and policies.

Comment 2 The tentative Order does not provide an adequate mechanism to determine compliance with the Order's directive. (IEW)

Response: The Order requires monitoring of for any discharge of wastes to surface waters (M&RP, Attachment B, Section II). There are comprehensive monitoring programs for all groundwater management zones within the region. The monitoring results are evaluated by the Regional Board to determine trends. The salt and nutrient management programs that are being implemented by various stakeholders are designed to protect water quality.

Comment 3 The Regional Board should require the Dischargers to use the best practicable treatment or control. (IEW)

Response: Regional Board staff believes that the Engineered Waste Management Plans and the Nutrient Management Plans are developed to meet the best practicable treatment or control technology.

TENTATIVE ORDER NO. R8-2013-000
GENERAL WASTE DISCHARGE REQUIREMENTS FOR CONCENTRATED ANIMAL
FEEDING OPERATIONS (DAIRIES AND RELATED FACILITIES) WITHIN THE SANTA
ANA REGION, NPDES No. CAG018001

RESPONSE TO COMMENTS ON DRAFT PERMIT RELEASED DECEMBER 4, 2012

- Comment 4 The tentative Order violates the federal prohibition against backsliding by adopting a compliance schedule that is less stringent than the previous permit. (IEW)
- Response: The tentative Order and the Fact Sheet have been revised to address the issue of anti-backsliding. The revisions in the Fact Sheet provide a detailed discussion of the actions taken by the CAFOs that were consistent with the requirements in the 2007 Order. The tentative Order has been revised to reflect this and to ensure that the effluent limitations in the tentative Order are at least as stringent as the 2007 Order.
- Comment 5 The tentative Order violates the State antidegradation policy by allowing a discharger to retain contaminated soil after they submit a Notice of Termination. (IEW)
- Response: The tentative Order addresses the issue by requiring the removal of wastes from the site, including removal of manure from corrals prior to granting termination of permit coverage. In addition, the permit has been revised to require the removal of manure solids from containment ponds prior to filling them with clean dirt.
- Comment 6 The dairy permit must protect surface and groundwater quality from pollutants known to impact water quality. Recommend the addition of hormones and antibiotic testing. (IEW)
- Response: There are extensive monitoring programs in place to determine the impacts of hormones and antibiotics on surface and groundwaters in the region. Considering the cost for these analyses, the benefit from the added monitoring may not be justifiable.
- Comment 7 The Regional Board should require all dischargers to electronically submit all annual reports and electronic data. (IEW)
- Response: The Water Boards electronic reporting system that is equipped to receive electronic data is only being used by the major individual permittees. Once the system is fully developed, we need to provide training to the Dischargers before fully implementing the program.
- Comment 8 The compliance schedules in sections II.B.2, III.F.1 and III.F.2 of the tentative Order do not contain an enforceable sequence of actions that will lead to compliance with final limits, and the time between some interim

TENTATIVE ORDER NO. R8-2013-000
GENERAL WASTE DISCHARGE REQUIREMENTS FOR CONCENTRATED ANIMAL
FEEDING OPERATIONS (DAIRIES AND RELATED FACILITIES) WITHIN THE SANTA
ANA REGION, NPDES No. CAG018001

RESPONSE TO COMMENTS ON DRAFT PERMIT RELEASED DECEMBER 4, 2012

dates exceed one year. The interim milestones should consist of concrete actions that demonstrate measurable progress toward achieving the final limits or requirements. (EPA)

Response: The tentative Order has been revised to address the TMDL requirements in Section II.B.2. The Order has also been revised to address the above concerns with respect to Sections III. F. 1 and 2.

Comment 9 The permit should include a specific list of all implementation actions required for compliance with the Middle Santa Ana River Bacterial TMDL and the Lake Elsinore and Canton Lake Watershed Nutrient TMDL. (EPA)

Response: Some of these requirements were not included in the tentative Order because of the extensive research work that is ongoing with respect to practicable control mechanisms for the control of some of these TMDL constituents. Even though the uncertainty regarding the appropriate control mechanisms still persists, we have revised the TMDL requirements in the tentative Order to be consistent with the federal regulations.

Comment 10 The schedules for nutrient management plan (NMP) development, submission, and implementation in the tentative Order do not appear to meet all requirements of the Clean Water Act (CWA) and its implementing regulations. Specifically, the enrollment process described in section III.E.5 that deals with development, submission and implementation of NMPs should reflect the enrollment process described in section I.C. The permit should not allow a 90-day implementation period after approval of the NMP since the authorization letter from the EO means the requirements of the NMP are enforceable as of the date of the authorization. (EPA)

Response: The tentative Order has been revised to clarify the relationship of development of a new NMP and the submittal of an NOI. In addition, the requirements for development of the NMP and record keeping during its implementation have been also addressed.

Comment 11 The Permit must require application rates for manure, litter, or other process wastewater applied to land owned or under operational control of a CAFO to be in compliance with technical standards for nutrient management, as required by 40 CFR 412.4(c)(2). (EPA)

TENTATIVE ORDER NO. R8-2013-000
GENERAL WASTE DISCHARGE REQUIREMENTS FOR CONCENTRATED ANIMAL
FEEDING OPERATIONS (DAIRIES AND RELATED FACILITIES) WITHIN THE SANTA
ANA REGION, NPDES No. CAG018001

RESPONSE TO COMMENTS ON DRAFT PERMIT RELEASED DECEMBER 4, 2012

Response: The tentative Order has been revised to include clarifying language incorporating technical standards for nutrient management in accordance with federal regulations.

Comment 12 The terms of the monitoring and reporting program, contained in Attachment B of the tentative Order, do not meet all the requirements of the CWA and its implementing regulations. Specifically:

Comment 12a Require most current manure nutrient analysis be provided to recipients of transferred manure, and maintain transfer records for 5 years. (EPA)

Response: The tentative Order has been revised to include these requirements.

Comment 12b The Annual Report should include: the total number of acres of land covered by the nutrient management plan (NMP); the ability to record an estimated volume of each discharge from the facility; the ability to report that the NMP is certified; and the ability to record crop yields, manure nutrient content, calculations of manure application rate, and amount of manure spread on each field (EPA)

Response: The tentative Order requires the discharger to provide all of this information either in the Annual Report or in other required documentation.

Comment 12c Permit should require periodic inspections of land application equipment for wastewater distribution system leaks. (EPA)

Response: The tentative Order has been revised to include this requirement.

Comment 12d Permit should require the retention for 5 years of records for mortality management and practices, documentation of current design of any manure storage structures, and NMP and supporting information in accordance with 40 CFR 412.37 (c)(1) – (10) (EPA)

Response: The tentative Order has been revised to include this requirement.

Comment 13 The Notice of Intent (NOI) of the tentative Order should contain the following additional information (EPA):

- a) Latitude and longitude of the production area;
- b) A topographic map of the CAFO;

TENTATIVE ORDER NO. R8-2013-000
GENERAL WASTE DISCHARGE REQUIREMENTS FOR CONCENTRATED ANIMAL
FEEDING OPERATIONS (DAIRIES AND RELATED FACILITIES) WITHIN THE SANTA
ANA REGION, NPDES No. CAG018001

RESPONSE TO COMMENTS ON DRAFT PERMIT RELEASED DECEMBER 4, 2012

- c) Type of wastewater containment structures used and the associated volume(s);
- d) Total acres under control of applicant available for land application of manure and process wastewater;
- e) Estimated amounts manure, litter and process wastewater generated and transferred each year; and
- f) A nutrient management plan that satisfies all the requisite requirements.

Response: The tentative Order requires the discharger to provide all of this information either in the NOI or in the EWMP or NMP (if one is necessary). Since all CAFOs within the Region have developed an EWMP, the information not already requested on the NOI is available for review in these other documents.

Comment 14 The current practice of reporting the information and documents for public notification should remain in place because addresses for dairy operations mostly correspond with personal residence addresses. (WRCAC)

Response: The tentative Order Section I.C.9 now states that the availability of a permit application package (NOI, EWMP, and NMP) will be posted for a minimum of 30 days for public review.

Comment 15 Requested some wording modifications to the General Provisions, Section D.2 of the tentative Order. (WRCAC)

Response: The text of General Provisions, Section D.2, has been modified to clarify the information provided.

Comment 16 The permit should contain a list of acronyms used and include their definitions. (WUD)

Response: Attachment E of the tentative Order lists all acronyms used, along with some explanation.

Comment 17 Do not include digital copies of the engineered waste management plans (EWMPs) or NMPs on the Regional Board web site for public review. The current practice of advertising the availability of these documents for public review at the Regional Board offices for 30 days provides ample access to the general public. (MPC)

TENTATIVE ORDER NO. R8-2013-000
GENERAL WASTE DISCHARGE REQUIREMENTS FOR CONCENTRATED ANIMAL
FEEDING OPERATIONS (DAIRIES AND RELATED FACILITIES) WITHIN THE SANTA
ANA REGION, NPDES No. CAG018001

RESPONSE TO COMMENTS ON DRAFT PERMIT RELEASED DECEMBER 4, 2012

Response: The tentative Order Section I.C.9 now states that the availability of a permit application package (NOI, EWMP, and NMP) will be posted for a minimum of 30 days for public review.

Comment 18 Do not include the requirement to submit sampling and analytical results of any surface discharge of wastewater from the facility and manure nutrient analysis with the Annual Report. (MPC)

Response: The annual reporting of sampling and analytical results of wastewater that discharges from the facility will assist the Regional Board in the assessment of impacts to receiving waters, and will insure timely receipt of that information. Submittal of a nutrient analysis with the Annual Report is a requirement of the federal regulations (40 CFR 122.42(e)(3)).

Comment 19 Do not include the requirement to provide a GPS coordinate on the Manure Tracking Manifest form since manure-hauling companies are not equipped with these devices. (MPC)

Response: The provision of a GPS coordinate for the location of the destination of land-applied manure will assist Regional Board staff in tracking manure land application sites. There are many areas within the Santa Ana Region that land application of manure is prohibited. Devices for determining a GPS coordinate are readily available and affordable.

Comment 20 The Regional Board should recognize that the requirement for the EWMP to be designed for a 25-year, 24-hour storm event would provide more protection than the requirement to provide for protection from a 20-year peak stream flow. (RT)

Response: Please note that the design for flood protection of the facility is different than the design for a waste containment facility and these two requirements serve different purposes. The waste containment facilities are designed to contain process wastewater and storm water from a 25-year, 24-hour storm, whereas, the flood protection requirement is for protecting the facility from inundation.

Comment 21 Section I.C of the tentative Order states that (in subsection 6) only dischargers covered by R8-2007-0001 are eligible and they are automatically enrolled. However, subsection 8 directs dischargers to submit a NOI, EWMP, and NMP for coverage. Is subsection 8 for new dischargers? If so, how does that work with subsection 6? (TT)

TENTATIVE ORDER NO. R8-2013-000
GENERAL WASTE DISCHARGE REQUIREMENTS FOR CONCENTRATED ANIMAL
FEEDING OPERATIONS (DAIRIES AND RELATED FACILITIES) WITHIN THE SANTA
ANA REGION, NPDES No. CAG018001

RESPONSE TO COMMENTS ON DRAFT PERMIT RELEASED DECEMBER 4, 2012

Response: Clarifying language has been added to indicate that existing facilities need not submit NOI, EWMP and NMP unless there are significant changes to their operations or change in ownership or location.

Comment 22 Based on language in section III.E of the tentative Order, is submittal of a revised NMP a condition for coverage under the reissued permit? (TT)

Response: Please see response to Comment 21.