



County of San Diego

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July 29, 2016

Barry Pulver
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San Diego Regional Water Quality Control Board
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Electronic submission: sandiego@waterboards.ca.gov

Dear Mr. Pulver:

COMMENTS ON TENTATIVE GENERAL ORDERS - NOS. R9-2016-0004/R9-2016-0005,
AND TENTATIVE RESOLUTION NO. R9-2016-0136

The County of San Diego (County) appreciates the opportunity to provide comments on the General Waste Discharge Requirements for Discharges from Commercial Agricultural Operations within the San Diego Region (Tentative Orders No. R9-2016-0004 and R9-2016-0005 [Orders]). The County strongly supports the proposed approach of regulating the commercial agricultural community through a general waste discharge permit instead of the now expired agricultural waiver. The Tentative Orders provide a solid framework for regulating the agricultural industry that will ultimately contribute to improved water quality in our region. In particular, the County is encouraged to see that agricultural operations will have the option to enroll either as a member of a third-party group or individually. We also support the use of these Orders to serve as a non-TMDL solution to addressing water quality impairments where agriculture has been identified as a contributing source.

The following are comments we feel will improve the Orders and support achievement of meaningful environmental outcomes.

Discharges Covered Under General Order (Tentative Order No. R9-2016-0004, I.G.3; Tentative Order No. R9-2016-0005, I.F.3)

Discharges Covered

The Tentative Orders regulate discharges from Agricultural Operations that have intent to make a profit. One of the criteria the Regional Board uses for this determination is whether the owner or operator of an Agricultural Operation holds a current Operator Identification Number/Permit Number from a local County Agricultural Commissioner for pesticide use reporting.

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The County requests this criterion be clarified to state:

“The owner or operator of an Agricultural Operation *required* to obtain an Operator Identification Number/Restricted Materials Permit Number for reporting pesticide use to the respective County Agricultural Commissioner.”

The suggested language more accurately describes the Agricultural Operations that would be required to enroll. As currently written, the criterion is contingent upon compliance with applicable pesticide laws and regulations.

Additionally, to ensure all Agricultural Operations within the San Diego Region with intent to make a profit are covered under the Tentative Orders, the County recommends the inclusion of the following additional criteria be included:

- The owner or operator of the Agricultural Operation is registered with the California Department of Food and Agriculture Organic Program.
- The owner or operator of the Agricultural Operation holds a Certified Producer's Certificate from the respective County Agricultural Commissioner.
- The owner or operator of the Agricultural Operation holds a nursery license (Type 1, 2, or 4) with the California Department of Food and Agriculture.

Discharges Not Covered Under General Order (Tentative Order No. R9-2016-0004, I.H.11, III.E.1; Tentative Order No. R9-2016-0005, I.G.11, II.E.1)

Discharges Not Covered

The Tentative Orders do not provide coverage for discharges from Agricultural Operations where all growing operations are conducted within buildings or in completely enclosed areas with no potential to discharge waste to Waters of the State. The County supports this important exemption for Agricultural Operations meeting these criteria. As currently written, the Tentative Orders require Agricultural Operations to file a Notice of Intent (NOI) in order to receive a Notice of Exclusion (NOEX). The County requests the Tentative Orders provide a simplified parallel process for eligible Agricultural Operations to obtain a NOEX without submitting an NOI. Additionally, we request clarification about whether businesses such as greenhouses, which may have roof runoff, but all growing operations are conducted within enclosed areas, would qualify for this exemption.

Total Maximum Daily Loads

The linkage between the Total Maximum Daily Load (TMDL) requirements, Water Quality Protection Plan (WQPP) and Water Quality Restoration Program Plan (WQRP) are unclear. Further, it is not clear how compliance with TMDL requirements will be determined. For example, for the Rainbow Creek Nutrient TMDL, growers are required to implement the Rainbow Creek Nutrient Reduction Management Plan (NRMP), but it is not clearly stated that the control measures in the NRMP should be incorporated into the WQPP and/or WQRP.

As a result, agricultural dischargers in TMDL waterbodies may end up implementing multiple plans for the same constituents (e.g. if benchmark exceedances occur for constituents covered by a TMDL). It would be clearer if the WQPP and WQRP were required to incorporate any applicable TMDL requirements so that all control measures growers must implement are in a single place, and it is clear that implementing the WQPP and WQRP constitute compliance with the TMDL requirements.

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In addition, the County requests that the Orders contain an explicit reopener provision to incorporate TMDL amendments, new TMDLs, or TMDL alternatives that are approved in the future. Since the Orders do not currently include an expiration date, it is important that they contain a mechanism to incorporate amendments to existing TMDLs as well as future TMDLs or TMDL alternatives. The incorporation of newly adopted TMDLs should also be required to be considered in the WQPP and WQRP modifications.

WQPP Clarifications

As currently written, the WQPP due upon Notice of Intent (NOI) submittal must include a schedule for operations and maintenance of control measures to meet all receiving water limitations regardless of whether or not exceedances of the limitations have occurred (Section VII.C.6.m). It may not be appropriate to ask agricultural dischargers to determine future practices and a schedule for their implementation until it is deemed that additional management is necessary to meet water quality standards. The County requests that specific control measures and a schedule for implementation only be required to be provided in the WQRP after a benchmark exceedance is triggered by monitoring results.

The scaled operation map submittal requirements outlined in Section VII.C.6.k are excessive as compared to other regions. The County requests that the operation map requirements be reduced to the minimum required to assess compliance with Order requirements. For example, only operations on site should be required to be mapped, not off-site areas where the operator/land owner likely does not have control of the activities.

The detailed visual monitoring program and schedule for evaluating management practices provided in Section VII.C.6.n appear duplicative when farmers are required to perform both quarterly self-inspections and annual self-assessments. Please remove the requirement for the visual monitoring program as part of the WQPP.

WQRP Clarifications

The schedule for development of the WQRP is too short (90 days). The County recommends it be made longer to allow growers sufficient time to complete the following steps: (1) obtain and evaluate the laboratory results; (2) determine if agriculture is the source of the exceedance; and (3) identify appropriate management measures, if needed.

WQRPs should also be allowed to group pollutants with similar management practices into one plan and/or add additional pollutants exceeding benchmarks into an existing WQRP if they have similar management practices. The County requests modifications to the language regarding the development of WQRPs to allow flexibility to incorporate new control measures into existing plans and develop one plan to cover all similar benchmark exceedances.

Quarterly Assessment

The County requests the following clarifications to the quarterly assessment requirements. In the Monitoring and Reporting section (Attachment A, Section III.B.2.c) of the Third Party Group Order there are specifications about when dry weather monitoring should occur that are problematic in operating a regional monitoring program. When those that have control over timing of irrigation are doing the assessment, it is more appropriate for the requirement that quarterly assessments be done during irrigation events.

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Annual Self-Assessment

The requirement in Section VII.E.4 for the listing of non-compliance and specific information about each incident is not clearly stated and references to compliance are scattered throughout the Order and not explained in Attachment J: Annual Self-Assessment Report, or the instructions that accompany the report template. The County requests the Order be modified to clarify the compliance requirements and consolidate them into one place for clarity on what is required to be assessed and reported. This will make the requirements more understandable and easier to access for Agricultural Operations.

Overly Prescriptive Elements of the Order

A number of the specific requirements in the Tentative Order are excessive compared to other agricultural waivers and/or waste discharge requirements in California. Some of these may be challenging for agricultural dischargers to develop and implement and they are unlikely to provide measureable improvements in water quality.

Education

The Order requires four hours of education per year, which is more than some other regions. The education requirements should be reduced to two hours per year for consistency with other regions.

Annual Self-Assessment Part F – Association Communication Requirement

Tracking and managing multiple proofs of contact with various agencies (the same ones that are likely to provide education opportunities and will be documented under the training requirements) is an unnecessary burden for both Agricultural Operators and the third-party group. If a third-party group produces newsletters or other communications or passes along information from other agencies, a single copy of these communications included in the third-party group's annual report should be sufficient. On-farm meetings or consultations that are specific to a particular operation should be required to be documented, but any additional documentation is unnecessary.

Monitoring and Reporting Attachment A

Section III.B.2.b&c are overly prescriptive in regards to the timing of monitoring events. Part b lists specifications for wet weather monitoring and since samples shall be collected within the first 24 hours of a storm with a minimum of 0.5" of rainfall, the added requirement that a "no runoff" determination also include evidence that irrigation was occurring should be removed. The purpose of wet weather sampling is to evaluate the impacts of storm water runoff and farmers are not going to be irrigating within such close proximity to a significant rain event. Part c requirements for dry weather monitoring are only appropriate for on-farm/edge-of-field monitoring. When assessing contributions from a number of farms at numerous monitoring sites, timing of sample collection to ensure pesticide and fertilizer application and during irrigation is a logistical impossibility to coordinate for a group monitoring program. An alternative approach is recommended under the quarterly assessment comments of this letter; where the timing of the assessment is based on these specifications.

Monitoring Requirements

The United States Environmental Protection Agency has recommended a change to the preferred bacterial indicators for inland surface waters from enterococcus to both enterococcus and E. coli. Consider using both enterococcus and E. coli as the bacterial indicators for freshwater and enterococcus as the bacterial indicator for saline waters.

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There is an extensive list of required analyses in Table A-3 as part of the bioassessment monitoring requirements. Please clarify how bioassessment monitoring data will be used by Agricultural Operations to improve their management decisions to protect water quality.

If a property exceeds the MCL for nitrate, the Order calls for notification and annual sampling. Annual sampling may be insufficient to capture seasonal variation in the impacted aquifer. Please consider requiring more frequent sampling if necessary, while allowing for sampling frequencies to be reduced based on results.

If agricultural operations are shown to be impacting drinking water wells, it is unclear whether or how an Agricultural Operation would be required to respond and/or change practices. Please clarify.

Provisions

To increase transparency with stakeholders, the County requests that the potential enforcement actions implied in section VII.F of the Orders be listed. Clarification of these potential enforcement actions will provide a level playing field for all potential dischargers and a higher level of assurance that appropriate follow up actions will be implemented in the event of non-compliance.

Thank you for the opportunity to comment on the draft Waste Discharge Requirements for Agricultural Operations. If you have any questions, please contact Todd Snyder, Watershed Protection Program Manager, at (858) 694-3672, or via e-mail at Todd.Snyder@sdcounty.ca.gov.

Sincerely,



RICHARD E. CROMPTON, Director
Department of Public Works

cc: Ha Dang, Director - Department of Agriculture, Weights and Measures
Todd Snyder – Department of Public Works