California Regional Water Quality Control Board
Santa Ana Region

March 4, 2005

STAFF REPORT

ITEM: 12

SUBJECT: Amendment to Order No. R8-2003-0061, NPDES No. CAG998001, General Waste Discharge Requirements for Discharges to Surface Waters That Pose An Insignificant (*De Minimus*) Threat to Water Quality Within the Santa Ana Region – Order No. R8-2005-0041

DISCUSSION:

On August 22, 2003, the Board adopted Order No. R8-2003-0061, NPDES No. CAG998001, a general permit that prescribes requirements for a number of types of discharges that pose an insignificant threat to water quality (*de minimus* discharges). Order No. R8-2003-0061 specifically excludes groundwater-related discharges (i.e., those associated with well installation, development, test pumping and purging, aquifer testing wastes, construction dewatering and wastes from subterranean seepage) within the San Diego Creek/Newport Bay watershed This exclusion was based on the concern that the groundwater-related discharges in the San Diego Creek/Newport Bay watershed have the potential to adversely affect surface waters within the watershed and would likely not comply with established TMDLs. Due principally to the presence of nitrogen and selenium, and potentially other pollutants of TMDL concern, the Board found that it would be inappropriate to regulate these groundwater-related wastewater discharges within the San Diego Creek/Newport Bay watershed under Order No. R8-2003-0061.

To provide appropriate regulation of a subset of these groundwater-related discharges, on December 20, 2004, the Board adopted Order No. R8-2004-0021, NPDES No. CAG998002. Order No. R8-2004-0021 regulates short-term groundwater-related discharges that are expected to last one year or less. (Additional Orders will be required to assure appropriate regulation of other types of groundwater-related discharges in the watershed.) As a matter of streamlining, Order No. R8-2004-0021 also regulates *de minimus* discharges within the watershed that would otherwise have been regulated under Order No. R8-2003-0061. Primarily because Order No. R8-2004-0021 regulates selenium, the annual fee for coverage under this permit is $5,688. In contrast, the annual fee for coverage under Order No. 2003-0061 is $1,185. After the adoption of Order No. R8-2004-0021, it was pointed out that *de minimus* dischargers within the Newport Bay watershed would be subject to the higher annual fee, even though their discharges would have an insignificant effect on water quality. Furthermore, there are instances in which short-term groundwater related discharges in the Newport watershed do not contain selenium, nitrogen or other pollutants at levels that pose a threat to water quality. [Investigation of selenium and nitrogen in the watershed has shown that the distribution of these constituents in the groundwater is not homogeneous and their concentrations can vary widely depending on specific location

within the watershed.[1]] Nevertheless, coverage under Order No. 2004-0021 would be necessary under the present regulatory structure, requiring payment of the higher annual fee.

To address this inequitable situation, Board staff recommends the amendment of Order No. 2003-0061 to allow authorization under its terms and conditions for *de minimus* discharges and groundwater-related discharges that do not pose a threat to water quality within the Newport Bay watershed. Coverage under Order No. R8-2004-0021 would continue to be required for short-term groundwater related discharges that are not considered *de minimus.*

It is logical to inquire whether if Order No. 2003-0061 is amended to allow authorization of *de minimus* discharges in the Newport Bay watershed, it would be appropriate to amend also Order No. R8-2004-0021 to exclude these discharges. Staff does not propose this course of action because of the expectation that there are or will be dischargers within the Newport Bay watershed who require regulatory coverage for more than one discharge, which may include both short-term groundwater related discharges containing selenium and/or nitrogen and *de minimis* discharges. In such situations, it would be advantageous to the discharger to obtain coverage for both types of discharges under one permit (Order No. 2004-0021), with payment of one annual fee.

The following are the recommended changes to Order No. R8-2003-0061. (Deleted text is struck out and added text is bold and highlighted.)

1. Order No. R8-2003-0061, revise Finding 11. as follows: (additions are highlighted and bold, deletions are struck out)

    11. On June 14, 2002, the US Environmental Protection Agency Region IX promulgated Total Maximum Daily Loads (TMDL) for Toxic Pollutants for San Diego Creek and Newport Bay. In 1998, the Regional Board adopted Basin Plan amendments (Resolutions No. 98-9 and 98-69), incorporating nutrient and sediment TMDLs for the San Diego Creek/Newport Bay Watershed. These TMDLs were subsequently amended (Resolutions No. 98-100 and 98-101). These TMDLs specify certain load allocations for discharges of nutrients, sediments and toxic pollutants in the Newport Bay watershed. Monitoring data indicate that certain types of discharges regulated under Order No. 98-67 have the potential to affect surface waters within the watershed and would not likely comply with the TMDLs. Therefore, it is appropriate to regulate these discharges under a separate general permit or individual permits. Accordingly, this Order does not regulate discharges to the Newport Bay watershed from well installation, well development, well test pumping and purging, aquifer testing, construction dewatering, and subterranean seepage within the watershed**, unless it is demonstrated that these discharges do not contain nitrogen, selenium or other pollutants of concern at levels that pose a threat to water quality,** Order No. 98-67 remains in full force and effect for these discharges until

[1] *Meixner et al., 2004. Sources of Selenium, Arsenic and Nutrients in the Newport Bay Watershed. (Contract Report to the Santa Ana Regional Board)*

appropriate waste discharge requirements are adopted. However, it is appropriate to review the nature of these discharges to determine whether they can be reasonably required to cease until such time as appropriate waste discharge requirements are adopted. The Executive Officer can withdraw authorization to discharge under Order No. 98-67 where it is found appropriate.

2. Order No. R8-2003-0061, revise Excluded Discharges D.1.a. as follows:

   a. Wastewater discharges to the Newport Bay watershed from well installation, well development, well test pumping and purging, aquifer testing, construction dewatering and subterranean seepage in the Watershed, **unless it is demonstrated that such wastewater discharges do not contain nutrients, selenium or TMDL pollutants of concern at levels that pose a threat to water quality.**

3. Order No. R8-2003-0061, revise Provision E.7. as follows:

   7. **The discharger shall comply with all requirements of this Order and the terms, conditions and limitations of the discharge authorization letter.** The discharge authorization letter from the Executive Officer shall specify any conditions necessary to protect the beneficial uses of the receiving waters and shall specify the Self-Monitoring Program for the proposed discharge in accordance with this Order. **The discharge authorization letter shall identify the discharge location(s). The authorization letter is incorporated by reference into this Order.** The discharge authorization letter may be terminated or revised by the Executive Officer at any time.

4. Order No. R8-2003-0061, add Provision E.20. as follows:

   20. Proposed wastewater (*de minimus*) discharges as defined in Finding 1. (1.e. thru 1.n.), within the San Diego Creek/Newport Bay watershed that do not contain nutrients, selenium and other TMDL pollutants of concern at levels that pose a threat to water quality may apply for coverage under this general permit.

Order No. R8-2005-0041 amends Order No. R8-2003-0061, NPDES No. CAG998001 to incorporate these changes.

RECOMMENDATION:

Adopt Order No. R8-2005-0041, amending Order No. R8-2003-0061, NPDES No. CAG998001, as presented.

Comments were solicited from the following agencies:

U.S. Environmental Protection Agency, Permits Issuance Section (WTR-5) – Doug Eberhardt
U.S. Army District, Los Angeles, Corps of Engineers - Regulatory Branch
U.S. Fish and Wildlife Service, Carlsbad
State Water Resources Control Board, Office of the Chief Counsel - Jorge Leon
State Water Resources Control Board, Division of Water Quality - James Maughan
State Department of Water Resources, Glendale
State Department of Fish and Game, Long Beach
California Department of Health Services, San Bernardino
California Department of Health Services, Santa Ana - Cor Shaeffer
Orange County Health Care Agency - Seth Daugherty
Orange County Resources and Development Management Department - Chris Crompton
Orange County Planning & Development Services Department – Tim Neely
Orange County Water District - Nira Yamachika
Riverside County Environmental Health Department - Sandy Bunchek
Riverside County Flood Control and Water Conservation
San Bernardino County Department of Public Works, Env. Management Div. - Naresh Varma
San Bernardino County Environmental Health Department – Daniel Avera
South Coast Air Quality Management District - – Dr. Barry R. Wallerstein
Orange County Coastkeeper - Garry Brown
Lawyers for Clean Water C/c San Francisco Baykeeper
Current *De minimus* enrollees

California Regional Water Quality Control Board
Santa Ana Region

Order No. R8-2005-0041

Amending Order No. R8-2003-0061, NPDES No. CAG998001
General Waste Discharge Requirements for Discharges to Surface Waters That Pose An Insignificant (De Minimus) Threat to Water Quality

The California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), finds that:

1. On August 22, 2003, the Board adopted Order No. R8-2003-0061, NPDES No. CAG998001. Order No. R8-2003-0061 specifically excluded groundwater-related discharges (1.a. - 1.d., below) in the San Diego Creek/Newport Bay watershed from coverage under its terms and conditions. This exclusion was based on the concern that the groundwater-related discharges in the San Diego Creek/Newport Bay watershed have the potential to adversely affect surface waters within the watershed, due principally to the presence of nitrogen and selenium, and potentially other pollutants of TMDL concern. The types of groundwater-related discharges that were excluded from regulation under Order No. R8-2003-0061 are as follows:

   a. Construction dewatering wastes; (except storm water dewatering at construction sites)[1];
   b. Wastes associated with well installation, development, test pumping and purging;
   c. Aquifer testing wastes;
   d. Dewatering wastes from subterranean seepage, except for discharges from utility company vaults;

   To provide appropriate regulatory coverage for a subset of these groundwater-related discharges, on December 20, 2004, the Board adopted Order No. R8-2004-0021 NPDES No. CAG998002. This general permit regulates short-term groundwater-related discharges, that is, those that are expected to last one year or less. As a matter of permit streamlining, this Order also regulates de minimus discharges within the Newport Bay watershed that would otherwise have been regulated under Order. No. 2003-0061.

2. Primarily because Order No. R8-2004-0021 regulates selenium, the annual fee for coverage under this permit is $5,688. In contrast, the annual fee for coverage under Order No. 2003-0061 is $1,185. De minimus dischargers within the Newport Bay watershed would be required to obtain coverage under Order No. R8-2004-0021 and to pay the higher annual fee, despite the fact that their discharges would have an insignificant effect on water quality. Furthermore, there are instances in which short-term groundwater related discharges in the Newport watershed do not contain selenium, nitrogen or other pollutants at levels that pose a threat to water quality. [Investigation of selenium and nitrogen in the watershed has shown that the distribution of these

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[1] *Storm water discharges are covered under separate permit.*

constituents in the groundwater is not homogeneous and their concentrations can vary widely depending on specific location within the watershed.[2]] Nevertheless, coverage under Order No. 2004-0021 would be necessary under the present regulatory structure, requiring payment of the higher annual fee.

3. It is appropriate to correct the inequity caused inadvertently by the present permit framework. To do so, it is appropriate and practical to amend Order No. R8-2003-0061, NPDES No. CAG998001, to allow proposed groundwater related discharges and/or de minimis discharges within the San Diego Creek/Newport Bay watershed that do not contain nutrients, selenium and other pollutants of TMDL concern at levels that pose a threat to water quality to be regulated under Order No. R8-2003-0061.

4. In accordance with California Water Code Section 13389, the issuance of these waste discharge requirements is exempt from those provisions of the California Environmental Quality Act contained in Chapter 3 (Commencing with Section 21100), Division 13 of the Public Resources Code.

5. The Board has notified the dischargers and other interested agencies and persons of its intent to amend Order No. R8-2003-0061 and has provided them with an opportunity to submit their written views and recommendations.

6. The Regional Board, in a public meeting, heard and considered all comments pertaining to the amendment of general waste discharge requirements for de minimus discharges.

IT IS HEREBY ORDERED that Order No. R8-2003-0061 shall be amended as follows:

1. Order No. R8-2003-0061, revise Finding 11. as follows:

    11. On June 14, 2002, the US Environmental Protection Agency Region IX promulgated Total Maximum Daily Loads (TMDL) for Toxic Pollutants for San Diego Creek and Newport Bay. In 1998, the Regional Board adopted Basin Plan amendments (Resolutions No. 98-9 and 98-69), incorporating nutrient and sediment TMDLs for the San Diego Creek/Newport Bay Watershed. These TMDLs were subsequently amended (Resolutions No. 98-100 and 98-101). These TMDLs specify certain load allocations for discharges of nutrients, sediments and toxic pollutants in the Newport Bay watershed. Monitoring data indicate that certain types of discharges regulated under Order No. 98-67 have the potential to affect surface waters within the watershed and would not likely comply with the TMDLs. Therefore, it is appropriate to regulate these discharges under a separate general permit or individual permits. Accordingly, this Order does not regulate discharges to the Newport Bay watershed from well installation, well

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[2] *Meixner et al., 2004. Sources of Selenium, Arsenic and Nutrients in the Newport Bay Watershed. (Contract Report to the Santa Ana Regional Board)*

development, well test pumping and purging, aquifer testing, construction dewatering, and subterranean seepage within the watershed, unless it is demonstrated that these discharges do not contain nutrients, selenium or TMDL pollutants of concern at levels that pose a threat to water quality. Order No. 98-67 remains in full force and effect for these discharges until appropriate waste discharge requirements are adopted. However, it is appropriate to review the nature of these discharges to determine whether they can be reasonably required to cease until such time as appropriate waste discharge requirements are adopted. The Executive Officer can withdraw authorization to discharge under Order No. 98-67 where it is found appropriate.

2. Order No. R8-2003-0061, revise Excluded Discharges D.1.a. as follows:

   a. Wastewater discharges to the Newport Bay watershed from well installation, well development, well test pumping and purging, aquifer testing, construction dewatering and subterranean seepage in the Watershed, unless it is demonstrated that such wastewater discharges do not contain any nutrients, selenium or TMDL pollutants of concern at levels that pose a threat to water quality.

3. Order No. R8-2003-0061, revise Provision E.7. as follows:

   7. The discharger shall comply with all requirements of this Order and the terms, conditions and limitations of the discharge authorization letter. The discharge authorization letter from the Executive Officer shall specify any conditions necessary to protect the beneficial uses of the receiving waters and shall specify the Self-Monitoring Program for the proposed discharge in accordance with this Order. The discharge authorization letter shall identify the discharge location(s). The authorization letter is incorporated by reference into this Order. The discharge authorization letter may be terminated or revised by the Executive Officer at any time.

4. Order No. R8-2003-0061, add Provision E.20. as follows:

   20. Proposed wastewater (de minimus) discharges as defined in Finding 1. (1.e. thru 1.n.), within the San Diego Creek/Newport Bay watershed that do not contain nutrients, selenium and other TMDL pollutants of concern at levels that pose a threat to water quality may apply for coverage under this general permit.

5. All other conditions and requirements of Order No. R8-2003-0061 shall remain unchanged.

I, Gerard J. Thibeault, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an order adopted by the California Regional Water Quality Control Board, Santa Ana Region, on March 4, 2005.

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Gerard J. Thibeault
Executive Officer