

REVISED RESPONSE TO COMMENTS
09/19/2012 Board Meeting – Item #9
GENERAL WASTE DISCHARGE REQUIREMENTS FOR
AQUIFER STORAGE AND RECOVERY PROJECTS
THAT INJECT DRINKING WATER INTO GROUNDWATER

A. Comments were received from 13 parties:

- Association of California Water Agencies (ACWA)
- Alameda County Water District
- Calleguas Municipal Water District
- Cucamonga Valley Water District
- Groundwater Resources Association (GRA)
- Los Angeles Department of Water and Power
- Monterey Peninsula Water Management District
- Sacramento Suburban Water District/City of Roseville
- Sacramento Groundwater Authority
- Sacramento Water Forum
- WaterReuse California
- Woodland-Davis Clean Water Agency

B. Several Commenters requested minor editorial revisions and clarifications, which are presented in the Revised Draft Order in bold/strikeout format:

- Alameda County Water District
- Calleguas Municipal Water District
- Monterey Peninsula Water Management District
- Sacramento Groundwater Authority
- WaterReuse California
- Woodland-Davis Clean Water Agency

C. The following is a summary of comments that we did not address by revising the General WDRs and responses to those comments. Responses to Comments 1 and 3 have been revised to address concerns expressed by the Board when it adopted the General WDRs on September 19, 2012.

Comment 1 – “Experience at numerous ASR sites has shown that there is commonly a temporary period of additional DBP [disinfection byproduct] formation (or ‘ingrowth’) during initial aquifer storage, followed by a period of DBP degradation... DBP ingrowth occurs as residual disinfectant in the injectate continues to react with organic matter during aquifer storage. The duration of the ingrowth period is dependent upon a variety of site-specific factors, but is typically not greater than a few months. During this ingrowth period, DBPs may temporarily increase to levels approaching (or even exceeding) established MCLs; however, experience has shown that subsequent degradation of DBPs occurs during subsurface storage once the residual disinfectant has been consumed. [The General WDRs do]... not allow for the temporary exceedence of DBP MCLs during the ingrowth period. In order to allow for foreseeable, but short-term, exceedence of DBP MCLs without triggering the various non-compliance provisions of the General Order, we suggest this provision be rewritten as follows:

‘Operation of an ASR project shall not cause groundwater to exceed any of the following: a. Primary or Secondary MCLs; except that operation of an ASR project shall not be prohibited due to temporary exceedence of DBP MCLs within the aquifer storage zone, so long as such exceedence does not impact the beneficial use of groundwater, in particular the primary beneficial use for municipal and domestic supply.’”

– Monterey Peninsula Water District and Groundwater Resources Association

Response – State Water Board Resolution 68-16 (the Antidegradation Policy) states, in part:

- “1. Whenever the existing quality of water is better than the quality established in policies as of the date on which such policies become effective, such existing high quality will be maintained until it has been demonstrated to the State that any change will be consistent with maximum benefit to the people of the State, will not unreasonably affect present and anticipated beneficial use of such water and **will not result in water quality less than that prescribed in the policies.**
2. Any activity which produces or may produce a waste or increased volume or concentration of waste and which discharges or proposes to discharge to existing high quality waters **will be required to meet waste discharge requirements which will result in the best practicable treatment or control of the discharge necessary to assure that (a) a pollution or nuisance will not occur** and (b) the highest water quality consistent with maximum benefit to the people of the State will be maintained.”
[Emphasis added]

All of the state’s Basin Plans incorporate primary and secondary MCLs as water quality objectives to protect the beneficial uses of groundwater. For projects where the potential for temporary exceedance of one or more MCLs is identified in the Notice of Intent, a Regional Water Board could adopt individual WDRs that incorporate a time schedule to address such temporary exceedances should they occur. In cases where an exceedance was not expected but occurs after issuance of a Notice of Applicability, the General WDRs contain a Provision (F.1.c) that requires that the Permittee submit a Non-Compliance Response Plan within 90 days of discovering non-compliance with the Order. The plan must discuss corrective measures that have been, or will be, implemented to achieve compliance and prevent recurrence. The plan could include a proposed time schedule to achieve compliance with the water quality objective in the aquifer. Therefore, no changes were made to address this comment.

Comment 2 – “The Draft Permit does not specify any deadline for a Regional Board's Executive Officer to issue a Notice of Applicability after he or she determines that a particular ASR project will comply with the general permit. The permit should specify a 30-day deadline:

‘For a pilot test technical addendum, or an ASR project without a pilot test, if the Executive Officer determines the NOI is complete and the project is consistent with the requirements of the Order, the Executive Officer, **as soon as practicable and within 30 days**, will issue an NOA that will, at a minimum...’ “

– Sacramento Suburban Water District/City of Roseville

Response – Depending on the workload and priorities of a Regional Water Board, it may not always be possible for the Executive Officer to issue a Notice of Applicability within 30 days. The California Water Code provides a remedy for delays in the permitting process at section 13264, which states in part:

- (a) No person shall initiate any new discharge of waste or make any material changes in any discharge, or initiate a discharge to, make any material changes in a discharge to, or construct, an injection well, prior to the filing of the report required by Section 13260 and no person shall take any of these actions after filing the report but before whichever of the following occurs first:
 - (1) The issuance of waste discharge requirements pursuant to Section 13263.

- (2) The expiration of 140 days after compliance with Section 13260 if the waste to be discharged does not create or threaten to create a condition of pollution or nuisance and any of the following applies:
- (A) The project is not subject to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).
 - (B) The regional board is the lead agency for purposes of the California Environmental Quality Act, a negative declaration is required, and at least 105 days have expired since the regional board assumed lead agency responsibility.
 - (C) The regional board is the lead agency for the purposes of the California Environmental Quality Act, and environmental impact report or written documentation prepared to meet the requirements of Section 21080.5 of the Public Resources Code is required, and at least one year has expired since the regional board assumed lead agency responsibility.
 - (D) The regional board is a responsible agency for purposes of the California Environmental Quality Act, and at least 90 days have expired since certification or approval of environmental documentation by the lead agency.

Applicants affected by a permitting delay may implement an ASR project prior to issuance of a Notice of Applicability if all of the applicable conditions of Water Code section 13264 are met. Therefore, no revisions were made to address this comment.

Comment 3 – “A permittee's injections should be required to comply with the maximum contaminant limits (MCLs) in effect at the time of injection. A permittee should not face enforcement action if water that it has injected under a prior MCL is still in groundwater storage when a new [more stringent] MCL takes effect.”

– Calleguas Municipal Water District and Sacramento Suburban Water District/City of Roseville

Response – Injected Water and Groundwater Limitation E.1 was revised to clarify that the injected water must comply with any new MCL on the date that MCL becomes effective. It is not appropriate to allow a temporary exceedance of an MCL in groundwater in the General WDRs. The process for promulgating MCLs is long and complicated. As participants in the MCL promulgation process, drinking water suppliers will have ample notice to ensure that both the injectate and groundwater comply with the Injected Water and Groundwater Limitations of the General Order on the effective date of a new MCL. However, in cases where the Permittee cannot comply on the effective date of a new MCL, the Regional Water Boards have significant enforcement discretion to determine whether or not to take enforcement action. If a Regional Water Board determines that enforcement is appropriate, the Regional Water Board has substantial flexibility in selecting an enforcement action that takes into consideration various factors, including the culpability of the Permittee. Additionally, the General WDRs contain a Provision (F.1.c) that requires that the Permittee submit a Non-Compliance Response Plan within 90 days of discovering non-compliance with the Order which discusses corrective measures that have been, or will be, implemented to achieve compliance and prevent recurrence. This plan could include a proposed time schedule to achieve compliance with the water quality objective in the aquifer. Therefore, no revisions were made to address this comment

Comment 4 – “Permittees of ASR projects that have been operating for at least one year should be allowed to submit historical data with the Technical Report in lieu of the first year quarterly monitoring requirement. Accordingly, the following sentences should be added to Section A:

‘Permittees of existing ASR facilities that have been operational for at least one year prior to filing a NOI may utilize historical monitoring data to satisfy the first year quarterly monitoring requirement. Permittees electing to use historical data in lieu of performing the first year quarterly monitoring and reporting should incorporate the required quarterly report elements into the Technical Report.’”

– Calleguas Municipal Water District

Response – There may be cases where previous monitoring data from an existing ASR project demonstrates that limited monitoring is appropriate. The Executive Officer of the Regional Water Board can modify the monitoring and reporting program included in the General WDRs as he or she deems appropriate for the circumstances. No revisions were made to address this comment.

Comment 5 – “This portion of the Draft Monitoring and Reporting Program would require submittal of an Annual Monitoring Report due on February 1 of each year. A required element of the Annual Monitoring Report is the ‘annual water quality and public health goal reports’ submitted to CDPH. Because these CDPH reports are not due until July 1, the proposed annual monitoring report deadline should be no earlier than July 1”.

– Calleguas Municipal Water District

Response – It is the longstanding practice of the Water Boards to require that annual monitoring reports be submitted by February 1st of the following year in order to allow determination of compliance for all regulated facilities prior to the end of the state’s fiscal year, which is June 30th. The annual monitoring report for a particular calendar year would include the annual water quality and public health goal report that was submitted to CDPH during that calendar year. No revisions were made to address this comment.