

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

RESOLUTION NO. R5-2008-0052

AMENDING
ORDER NO. R5-2006-0053
COALITION GROUP CONDITIONAL WAIVER
OF WASTE DISCHARGE REQUIREMENTS
FOR DISCHARGES FROM IRRIGATED LANDS
ATTACHMENT B

WHEREAS, the California Regional Water Quality Control Board, Central Valley Region (hereafter Central Valley Water Board) finds that:

1. On 22 June 2006, the Central Valley Water Board adopted Order No. R5-2006-0053, *Coalition Group Conditional Waiver of Waste Discharge Requirements for Discharges From Irrigated Lands* (Coalition Group Conditional Waiver).
2. On 23 June 2006, the Central Valley Water Board further discussed Condition A.9 in Attachment B of the Conditional Waiver. Condition A.9 stated: "After 31 December 2006, no additional Dischargers may join a Coalition Group to obtain coverage under this Order."
3. On 3 August 2006, the Central Valley Water Board in Resolution R5-2006-0077 amended Condition A.9 in Attachment B of the Conditional Waiver to state:

"After **31 December 2006** no additional participants may join any Coalition Group unless one or more of the following conditions exists:

- a. The subject owner and/or property were not a "discharger" qualifying for coverage under the Coalition Group Conditional Waiver prior to 31 December 2006, but management or physical changes on the subject property, or on properties between the subject property and receiving surface waters to which the wastewater drains, have been modified such that the subject owner and property are now a "discharger" and qualify for Coalition Group membership.
- b. The owner/property were participants in one Coalition Group or covered under the Individual Discharger Conditional Waiver Order prior to 31 December 2006, but are transferring their participation to another Coalition Group.
- c. Coalition Group boundaries change or a new Coalition Group is formed, such that an area not previously covered by any Coalition Group now is covered, so growers in those areas should be able to join the new or revised Coalition Group.
- d. The property was transferred to a new owner after 31 December 2006.

- e. Water Board staff determines that an owner or operator is a discharger where the owner or operator reasonably asserts that he/she is not a discharger as defined by the Conditional Waiver.
- f. Other situations reviewed and approved by the Executive Officer on a case-by-case basis.

All additions of participants to a Coalition Group after **31 December 2006** must be approved by the Executive Officer.”

- 4. When Condition A. 9. f. was adopted, the Central Valley Water Board did not identify the types of situations where it intended this condition could apply and did not provide specific direction to the Executive Officer regarding the use of this condition, including direction regarding whether the reason for missing the deadline should be the primary consideration in approving such applications.
- 5. The deadline created greater accountability in the Irrigated Lands Regulatory Program and resulted in an approximate 30% increase in irrigated lands enrolled in the program.
- 6. Since the 31 December 2006 and as of 28 March 2008, 249 applications for Executive Officer approval to join a Coalition Group have been submitted to the Central Valley Water Board, encompassing about 58,000 acres.
- 7. Based upon current evaluation and available information, over 100 applicants have not demonstrated an acceptable reason for missing the December 31, 2006 deadline. Staff therefore has not recommended these dischargers for approval under Condition A. 9. f.
- 8. Based upon current evaluation and available information, many of these growers could be effectively and efficiently regulated under the Coalition Group Conditional Waiver. The Executive Officer will not approve those that cannot be effectively and efficiently regulated under the Coalition Group Waiver (for example, recalcitrant dischargers and those not working cooperatively with Coalition Groups).
- 9. Based upon current evaluation and available information, time estimates for oversight of a discharger under the Individual Discharger Conditional Waiver may range from 50 to 100 staff hours annually. This correlates to \$4,000 to \$8,000 annually in staff costs, respectively.
- 10. Under current fee schedules in Title 23, section 2200.6, California Code of Regulations, fees for the Individual Discharger Conditional Waiver are \$100 plus \$0.30 per acre.

11. More than half of the applicants that may not be approved to join a Coalition Group except on a case-by-case basis own or operate 100 acres or less. Annual waiver fees for these operations under the Coalition Group Conditional Waiver would be \$130 or less, which is 3% or less of the cost to oversee such operations under the Individual Discharger Conditional Waiver.
12. On 27 March 2008 the Central Valley Water Board started issuing a second round of California Water Code section 13267 Orders to owners of irrigated lands not yet participating in the Irrigated Lands Regulatory Program. This will increase the number of applications from owners and operators seeking approval to join Coalition Groups. Under the current conditions for approval, many of these applications would be rejected due to a lack of specific guidance under Condition A. 9. f and may cause the Central Valley Water Board to regulate potentially hundreds or thousands of growers individually.
13. This resolution clarifies prior Condition A.9.f so that the Executive Officer need not determine on a case-by-case basis whether an applicant's reason for missing the deadline warrants approval to join a Coalition Group. Rather, the Executive Officer will consider the applicant's prior compliance with requirements of the Irrigated Lands Regulatory Program and Coalition Group participation, as applicable, and whether the Coalition Group agrees to accept the applicant as a member. This resolution also provides a structure to charge fees for this type of application, due to the increased workload to process applications in this category.
14. Regulation under the Coalition Group Conditional Waiver would also be more cost effective for most, if not all, of the current applicants seeking to join Coalition Groups, and many growers that will seek regulatory coverage in the future, but would not reduce the level of surface water protection afforded by the Irrigated Lands Regulatory Program. Although the Individual Waiver or WDRs have much higher costs and a steeper learning curve for a discharger, these growers do not pose a higher threat to water quality than growers in a Coalition Group merely because they missed the deadline to enroll.
15. Central Valley Water Board staff is coordinating with State Water Resources Control Board (State Water Board) staff regarding potential modifications to the fee schedules contained in Title 23 California Code of Regulations that would create a fee applicable to applications for Central Valley Water Board approval to join Coalition Groups. Such a fee would cover the costs of processing applications to join Coalition Groups.
16. State Water Board staff engages stakeholders in the development of proposed modifications to the fee schedules contained in Title 23 California Code of Regulations. Any proposed modifications are currently scheduled to go to the State Water Board for consideration in September 2008.

17. Any fee adopted that is applicable to applications for Central Valley Water Board approval to join Coalition Groups should be separate from, and in addition to, annual fees currently required under Title 23, section 2200.6, California Code of Regulations.
18. Any changes adopted by the State Water Board in September 2008 to the fee schedules contained in Title 23 California Code of Regulations would be applicable to the 2008/2009 fiscal year, which begins 1 July 2008.
19. Any new fee adopted that is applicable to applications for Central Valley Water Board approval to join Coalition Groups would likely apply to applicants that file their applications with the Central Valley Water Board after 30 June 2008. This fee would likely not apply to owners and operators that currently have applications pending with the Central Valley Water Board.
20. Unless otherwise specified in the State Water Board fee regulations, any fee adopted that is applicable to applications for Central Valley Water Board approval to join Coalition Groups will not apply to applicants meeting one of the first four conditions adopted by the Board on 3 August 2006 (Conditions A.9 .a through d. in the Amended Attachment B adopted 3 August 2006; these conditions will be renumbered to Conditions A.10. a. through d. in Amended Attachment B by this Resolution).
21. Approval by the Executive Officer to join a Coalition Group is not intended to impact or limit a Coalition Group's decision to admit or reject a discharger seeking to join. Coalition Groups retain their discretion in determining who will be admitted or rejected as a participant. Central Valley Water Board staff will consult with Coalition Groups prior to taking final action on the application.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

For purposes of adoption of this Resolution, the Central Valley Water Board is the lead agency pursuant to CEQA (Public Resources Code sections 21100 et seq.). On 11 July 2003, the Central Valley Water Board adopted Order No. R5-2003-0103, which approved the Initial Study and adopted a Negative Declaration for the Conditional Waiver. On 22 June 2006, the Central Valley Water Board found that no subsequent environmental document was required for adoption of Order No. R5-2006-0053. The revisions to Attachments B of the Conditional Waiver as set forth herein do not require the Central Valley Water Board to prepare a subsequent or supplemental EIR or negative declaration because the revisions do not constitute substantial changes to the project as specified in Title 14 California Code of Regulations sections 15162 or 15163.

THEREFORE BE IT RESOLVED:

1. Order No. R5-2006-0053, dated 22 June 2006, is hereby amended based on the above findings and amendments to Attachment B, Condition A.9 contained in Resolution No. R5-2006-0077 are, hereby, rescinded.
2. Amended Attachment B, Conditions A.10 through A.16 of Order No. R5-2006-0053, shall be renumbered to A. 12 through A. 18.
3. Amended Attachment B, Condition A.9 of Order No. R5-2006-0053, shall be amended to state:
 - “9. After **31 December 2006** no new participants may join a Coalition Group unless approved by the Executive Officer.”
4. Conditions 10 and 11 will be inserted in Amended Attachment B, Condition A. of Order No. R5-2006-0053, as follows:
 - “10. The Executive Officer may approve a new participant to join a Coalition Group, if one or more of the following conditions exists. Unless otherwise required by the fee schedules set forth in Title 23 California Code of Regulations, payment of a fee for the application to join a Coalition Group shall not be required:
 - a. The subject owner and/or property were not a “discharger” qualifying for coverage under the Coalition Group Conditional Waiver prior to 31 December 2006, but management or physical changes on the subject property, or on properties between the subject property and receiving surface waters to which the wastewater drains, have been modified such that the subject owner and property are now a “discharger” and qualify for Coalition Group membership.
 - b. The owner/property were participants in a Coalition Group under the Coalition Group Conditional Waiver, or covered under the Individual Discharger Conditional Waiver (Order No. R5-2006-0054), prior to 31 December 2006, but are transferring their participation to another Coalition Group.
 - c. Coalition Group boundaries change or a new Coalition Group is formed, such that an area not previously covered by any Coalition Group now is covered, so growers in those areas should be able to join the new or revised Coalition Group.
 - d. The property was transferred to a new owner after 31 December 2006.

“11. The Executive Officer may approve a new participant to join a Coalition Group if the participant requests to join a Coalition Group, but does not meet one of the four conditions in Condition A.10. After **30 June 2008**, the new participant shall submit the applicable fee (if any) with the application to join a Coalition Group, as set forth under the fee schedules contained in Title 23 California Code of Regulations.”

5. Amended Attachment B, Condition D. Time Schedule, of Order No. R5-2006-0053, shall be amended to insert the following after the task “Discharger Knowingly Elects to Join Coalition Group” in the time schedule:

“Discharger Must Apply for Executive Officer Approval to Join a Coalition Group” 1 January 2007”

6. The Central Valley Water Board recommends the State Water Board adopt modifications to the fee schedules in Title 23 California Code of Regulations creating a fee applicable to applications for Central Valley Water Board approval to join Coalition Groups. This fee should be separate from, and in addition to, any annual fees required under Title 23, section 2200.6, California Code of Regulations. The fee should only apply to applications described in Attachment B, Condition A.11, and only to those applications submitted after June 30, 2008.
7. The Central Valley Water Board recommends the State Water Board adopt annual fees for dischargers with an Individual Discharger Conditional Waiver that adequately cover the cost of Central Valley Water Board oversight of such dischargers.

I, PAMELA C. CREEDON, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of a Resolution adopted by the California Regional Water Quality Control Board, Central Valley Region, on 24 April 2008.

PAMELA C. CREEDON, Executive Officer