

ITEM: 15 a

SUBJECT: Final Program Environmental Impact Report for Waste Discharge Regulatory Program for Dairy Manure Digester and Co-digester Facilities

BOARD ACTION: *Consideration of a Resolution to certify the Final Program Environmental Impact Report for Waste Discharge Regulatory Program for Dairy Manure Digester and Co-digester Facilities*

BACKGROUND: The Central Valley Water Board served as the lead agency under the California Environmental Quality Act (CEQA) for the preparation of the Final Program Environmental Impact Report for a Waste Discharge Regulatory Program for Dairy Manure Digester and Co-digester Facilities (Program EIR).

The goal of the Program EIR is to simplify permitting requirements for digester projects in the Central Valley Region by creating a CEQA document that supports a waste discharge regulatory program for dairy digester or co-digester facilities, and that other agencies can rely upon or tier off from. To assist Central Valley Water Board staff in achieving this goal, a Technical Advisory Group (TAG) was assembled to advise staff on technical issues related to development of digester facilities. TAG members included interested parties representing the dairy industry, digester developers, environmental groups, environmental justice groups, and state and local agencies, including the State Water Resources Control Board, the Air Resources Board, the Department of Food and Agriculture, the Energy Commission, the Public Utilities Commission, the San Joaquin Valley Air Pollution Control District, the California Environmental Protection Agency, and the Department of Resources Recycling and Recovery (CalRecycle).

A Notice of Preparation (NOP) was prepared and circulated to interested parties for a 45-day comment period (8 July 2010 through 23 August 2010). During the comment period Central Valley Water Board staff received written comments and held two public meeting at Board offices in Rancho Cordova and Fresno, to receive oral comments on the NOP.

In the Program EIR, the Central Valley Water Board has identified mitigation measures that reduce potentially significant effects of the program to a less than significant level. The Final Program EIR also identified significant unavoidable impacts for water quality and criteria air pollutants. Pursuant to Section 15093, of the CEQA Guidelines, a Statement of Overriding Considerations with regard to those unavoidable impacts will need to be made for each order or action taken pursuant to the program, including the General Waste Discharge Requirements Order for Dairies with Manure Anaerobic Digester or Co-digester Facilities.

A Mitigation Monitoring and Reporting Program (MMRP) is required by CEQA Guidelines Section 15097, and will be incorporated into each order or other action taken pursuant to the program, including the General Waste Discharge Requirements Order for Dairies with Manure Anaerobic Digester or Co-digester Facilities, scheduled for consideration at the December 2010 Board meeting.

COMMENTS: Eleven comment emails and letters were received on the draft Program EIR and a total of twenty-one comments were made by six commenters at the two public

meetings. Several comments focused on the following.

- Ensuring the mitigation measures for the Program EIR do not overly burden dairymen and digester developers as to limit the development of dairy digester projects.

One purpose of the Program EIR is to provide certainty to the CEQA environmental review process for dairy digester projects by, absent knowledge of site specific conditions, identifying feasible mitigation measures to address the potential significant impacts. The fact that the Program EIR contains more mitigation measures than might otherwise be required for a site specific project stems from the fact that this EIR is for a broad-based program meant to cover a variety of potential dairy digester configurations that could be proposed in the Central Valley. Because of this concern, many mitigation measures were structured as progressive steps that would be taken as warranted by site-specific conditions.

- The lack of tiering of mitigation measures for simple digester projects.

Proposed mitigation measures will be relatively straightforward to implement at the start of a project (e.g., initial biological, cultural assessments). If no potential impacts are identified in the initial studies further studies would not be required. For simple projects, the required assessment effort should be commiserate with the size and complexity of the project.

- Concern with CalRecycle's involvement in the review and permitting of dairy digester and dairy co-digester projects through existing transfer station and composting regulation.

This concern is acknowledged in the Program EIR's response to comments. The Central Valley Water Board is committed to working cooperatively with other state agencies to avoid duplication of regulatory efforts on an ongoing basis.

RECOMMENDATION Adopt the Resolution as proposed.

Mgmt. Review _____

Legal Review _____

10 December 2010
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