

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

RESOLUTION R5-2015-XXXX

APPROVING
WAIVER OF WASTE DISCHARGE REQUIREMENTS

FOR

SMALL FOOD PROCESSORS, WINERIES AND
RELATED AGRICULTURAL PROCESSORS
WITHIN THE CENTRAL VALLEY REGION

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

1. Water Code section 13260(a) requires that any person discharging waste or proposing to discharge waste within any region that could affect the quality of the waters of the State, other than into a community sewer system, shall file with the appropriate Regional Water Board a report of waste discharge (RWD) containing such information and data as may be required by that Regional Water Board.
2. Pursuant to Water Code section 13263, the Central Valley Water Board has a statutory obligation to prescribe waste discharge requirements (WDRs) for each discharge of waste, except where the Central Valley Water Board finds that a waiver of WDRs for a specific type of discharge is not against the public interest as described in Water Code section 13269.
3. Water Code sections 13260(b) and 13269 authorize the Central Valley Water Board to waive WDRs and RWDs, respectively, for specific types of discharge where such a waiver is not against the public interest, is conditional, and may be terminated by the Board at any time.
4. In 1999, Water Code section 13269 was amended by the California Legislature. Following this amendment, any waiver must automatically expire after five years, unless the Board that issued the waiver reviews the terms of the waiver at a public hearing and determines that the waiver is consistent with any applicable state or regional water quality control plan and is in the public interest.
5. On 26 March 1982, the Central Valley Water Board adopted Resolution 82-036, which waived WDRs for 23 categories of discharges, including "food processing wastes spread on land". The Central Valley Water Board acted as lead agency for this project under the California Environmental Quality Act (CEQA; Public Resources Code section 21000 et seq.), and determined that the adoption of Resolution 82-036 would not cause a significant environmental impact. Therefore, in accordance with CEQA, the Board approved a Negative Declaration dated 23 December 1981.

6. On 11 July 2003, the Central Valley Water Board adopted Resolution R5-2003-0106, *A Waiver of Waste Discharge Requirements for Small Food Processors, Including Wineries, Within the Central Valley Region* to provide a streamlined permitting process for its numerous small food processing facilities and wineries. As required by Water Code section 13269, Resolution R5-2003-0106 expired on 11 July 2008.
7. On 8 October 2009, the Central Valley Water Board adopted Resolution R5-2009-0097, *A Waiver of Waste Discharge Requirements for Small Food Processors, Including Wineries, Within the Central Valley Region* to renew the 2003 waiver. As required by Water Code section 13269, Resolution R5-2009-0097 expired on 8 October 2014.
8. The Central Valley Water Board, in compliance with the Water Code, has reviewed the previously-issued waiver set forth in Resolution R5-2009-0097 and has determined that a waiver for the discharges to land previously regulated under Resolution R5-2009-0097 poses a low threat to the quality of waters of the State and is consistent with all applicable state or regional water quality control plans, and thus should be renewed. Further, the Board has determined that expanding applicability of the waiver to discharges of greater annual volume than allowed under the previous waiver poses a low threat to the quality of waters of the State and is consistent with all applicable state or regional water quality control plans.
9. The activities subject to this Resolution are those that result in the generation and disposal of waste, which is defined in Water Code section 13050(d). Due to the nature of the waste, such discharges could affect the quality of waters of the state.
10. With the exception of pistachio hullers and a few walnut hullers whose cases were referred to the Board by local agencies, the nut hulling industry has not previously been regulated by the Board. In order to provide regulatory coverage for nut hullers, the Board began working with their representatives in early 2014 with the intent of making this Waiver available to them. However, though the Board recognizes that nut hulling operations generally pose a relatively minor threat to water quality, the Board does not have sufficient information at this time to conclude that the full range of waste management practices utilized by nut hullers is fully protective of water quality. This Waiver authorizes only those practices that are well understood not to cause water quality impacts. Although nut hullers whose practices meet the conditions of this Waiver can apply for coverage under this Waiver, it is not the Board's intent to mandate that all nut hullers conform to the conditions of discharge before Board staff have the opportunity to further characterize the wastes produced by nut hullers and evaluate the best management practices employed by this industry. Accordingly, nut hullers are not required to enroll under this Waiver. Nut hullers that choose to be regulated under an individual order may submit a Report of Waste Discharge.
11. The discharge of waste in compliance with the conditions of this Resolution poses a limited threat to waters of the state, but could affect the quality of the waters of the state. If not properly managed, waste constituents discharged to land may migrate to

groundwater or commingle with storm water runoff into surface water and affect water quality and its beneficial uses.

12. Salinity in discharges from facilities regulated by this Resolution has been occurring since before and after the initial 1982 waiver. This Resolution continues to regulate the salinity of those discharges. Waiver enrollees and industry representatives are encouraged to participate in the development and implementation of salinity and nutrient management plans through the Central Valley Salinity Alternatives for Long-Term Sustainability (CV-SALTS) initiative.
13. Because discharges of waste in the manner described in this Resolution could affect the quality of the waters of the state, such discharges are subject to Water Code sections 13260 and 13263.
14. The Board's waiver of WDRs for discharges that will cause no or insignificant impairment to water quality and that pose little risk of creating a nuisance condition is not against the public interest, because this action will reduce the operating cost of regulated facilities that produce innocuous or small amounts of waste, are protective of the environment, and allow Central Valley Water Board staff to direct resources towards addressing waste discharges that have significant potential to degrade water quality or create nuisance conditions.
15. Water Code section 13269 states:

Monitoring requirements shall be designed to support the development and implementation of the waiver program, including, but not limited to, verifying the adequacy and effectiveness of the waiver's conditions. In establishing monitoring requirements, the regional board may consider the volume, duration, frequency, and constituents of the discharge; the extent and type of existing monitoring activities, including, but not limited to, existing watershed-based, compliance, and effectiveness monitoring efforts; the size of the project area; and other relevant factors. Monitoring results shall be made available to the public. ... The state board or a regional board may waive the monitoring requirements described in this subdivision for discharges that it determines do not pose a significant threat to water quality.

Although waste discharges that comply with this Resolution do not pose a significant threat to water quality, the Central Valley Water Board is not waiving monitoring requirements for all discharges regulated under this Resolution. However, groundwater monitoring and analysis is not necessary due to the low volume of the discharges, the fact that waste character is well known, the nature and concentrations of the waste constituents, existing monitoring information from other regulated facilities, and information about salinity that will become available through the CV-SALTS initiative.

16. For purposes of this conditional waiver, the "Basin Plan" is one of the following:
 - a. The Water Quality Control Plan for the Sacramento River and San Joaquin River Basins, Fourth Edition, or
 - b. The Water Quality Control Plan for the Tulare Lake Basin, Second Edition.
17. The designated beneficial uses of groundwater in the Central Valley Region as specified in the Basin Plans are municipal and domestic water supply, agricultural supply, industrial service supply, and industrial process supply.
18. The beneficial uses of surface water in the Central Valley Region are specified in each Basin Plan for specific water bodies including major rivers, creeks, and lakes, and also apply to tributaries to these water bodies. These beneficial uses potentially include municipal and domestic supply; agricultural supply; industrial service supply; industrial process supply; groundwater recharge; freshwater replenishment; navigation; hydropower generation; water contact recreation; non-contact water recreation; commercial and sport fishing; aquaculture; warm freshwater habitat; cold freshwater habitat; estuarine habitat; wildlife habitat; preservation of biological habitats of special significance; preservation of rare, threatened, or endangered species; migration of aquatic organisms; spawning, reproduction, and/or early development; and shellfish harvesting.
19. State Water Resources Control Board Resolution 68-16 ("Policy with Respect to Maintaining High Quality Waters of the State") (hereafter Resolution 68-16) prohibits degradation of groundwater quality unless it has been shown that:
 - a. The degradation is consistent with the maximum benefit to the people of the State;
 - b. The degradation will not unreasonably affect present and anticipated future beneficial uses;
 - c. The degradation does not result in water quality less than that prescribed in state and regional policies, including violation of one or more water quality objectives; and
 - d. The discharger employs best practicable treatment or control (BPTC) to minimize degradation.
20. This Resolution allows an increase in the volume of wastewater discharged compared to the 2009 waiver, but is still consistent with the 1982 waiver, which did not impose volume limits on the discharges. Although the Board previously considered Resolution 68-16 with respect to regulation of small food processors, the Board makes the following findings regarding compliance with Resolution 68-16.
21. Because of the variability of soil and groundwater conditions throughout the Central Valley Region, it is not possible to state with certainty that no discharge regulated under, and in compliance with, this Resolution will degrade groundwater quality. However, even if it occurs, such degradation will not exceed applicable groundwater quality

objectives. In addition, this Resolution includes specific requirements and conditions which constitute BPTC for the type of discharges regulated by this Resolution. These requirements and conditions will minimize degradation, prevent exceedance of any water quality objectives, and prevent impacts to beneficial uses.

22. The economic prosperity of Central Valley communities benefits the people of the State. Dischargers that will be regulated under this Resolution are primarily very small facilities located in rural areas that do not have public sewer service. Small wineries and other small food processing businesses have become an important part of the local economy in several Central Valley Region counties because they employ people who work in the growing areas, processing facilities, and local tasting rooms and sales offices. In some areas, the proliferation of small wineries and other food processors has created a strong tourism-based economy that supports many other people who live and work in the area.

Prior to adoption of the 2003 waiver, most small food processors and wineries discharged all of their wastewater to septic systems regulated by the county environmental health departments. The level of treatment and control provided by septic systems is far less than is required by this Resolution, and discharges to septic systems pose a higher threat to groundwater quality than a well-managed land application and waste recycling program. Although treatment technology is available to reduce the mass of BOD and nitrify/denitrify the wastewater, the capital and operation/maintenance costs of such advanced treatment systems would likely be infeasible for the majority of small businesses that will be regulated by this Resolution. Experience with numerous larger food processors in the Central Valley Regional has shown that the threat to water quality posed by the BOD and nitrogen content of the waste can be adequately reduced by a well-managed land application/recycling program to prevent significant groundwater degradation, even in areas where groundwater is very shallow.

Therefore, the economic benefits derived from this low-cost, streamlined form of regulation support allowing limited, localized groundwater degradation as long as the terms of the Basin Plan are met.

23. Based on the above, this Resolution is consistent with Resolution 68-16 because it includes specific requirements and conditions of discharge that will minimize water quality degradation. Dischargers regulated under this Resolution are subject to enforcement action for any violations, and coverage under the conditional waiver can be terminated if the requirements and conditions are not met.
24. The Basin Plan's Antidegradation Implementation Policy states:

Pursuant to this policy, a Report of Waste Discharge, or any other similar technical report required by the Board pursuant to Water Code Section 13267, must include information regarding the nature and extent of the discharge and the potential for the discharge to affect surface or ground water quality in the region. This information must be presented as an analysis of the impacts and

potential impacts of the discharge on water quality, as measured by background concentrations and applicable water quality objectives. The extent of information necessary will depend on the specific conditions of the discharge. For example, use of best professional judgment and limited available information may be sufficient to determine that ground or surface water will not be degraded. In addition, the discharger must identify treatment or control measures to be taken to minimize or prevent water quality degradation.

Dischargers submitting a Report of Waste Discharge to apply for coverage under this Resolution are not required to include a detailed site-specific analysis of the waste, groundwater conditions, or potential water quality impacts. As noted above, the character of food processing wastes is well-documented in the literature and Central Valley Water Board records. However, the Report of Waste Discharge technical information form developed for this Resolution requires complete disclosure of sufficient information about the operations of the facilities that will generate the waste to allow Central Valley Water Board staff to determine whether additional information is needed to show that the proposed discharge will be consistent with the conditions of this Resolution, and to determine whether coverage should be granted.

25. The Central Valley Water Board adopted a Negative Declaration when it adopted Resolution 82-036. The 1982 waiver (Resolution 82-036) and the associated 1981 Negative Declaration covered all land discharges of food processing waste, regardless of waste volume. Resolution 82-036 only required that dischargers of food processing waste follow an approved operating/maintenance plan. The previous waiver, Order R5-2009-0097 was more protective of water quality than the 1982 waiver because:
 - a. It required the equivalent of an operating/maintenance plan within the application form;
 - b. It incorporated strict limits on the volume of waste that can be discharged to land, which in turn limits the size of facilities that may seek coverage; and
 - c. It required waste management practices as specific conditions of discharge.

A lead agency is only required to prepare a new or subsequent CEQA document if there is a substantial change in the project that could cause new significant environmental effects or a substantial increase in the severity of previously identified effects. (Pub. Resources Code § 21166; Cal. Code Regs., tit. 14, § 15162.)

Increasing the allowable annual wastewater discharge to 1,000,000 gallons per year and allowing the limited use of unlined ponds for temporary wastewater storage for certain industries constitutes a) an expansion of the discharge and b) a substantial change that triggers the CEQA environmental review process. The Central Valley Water Board, as lead agency, developed an Initial Study and Draft Mitigated Negative Declaration based on published information and data submitted by numerous regulated dischargers. The Board determined that the project would not cause any significant impacts to water

quality if discharges are conducted in compliance with this Order and adopted a Mitigated Negative Declaration on ___.

In accordance with the mitigation measures included in the Initial Study, this Resolution limits the land-applied waste volume of facilities that may enroll and includes specific prohibitions and conditions of discharge that will prevent exceedance of any applicable water quality objective. Any limited degradation that may occur at some facilities complies with applicable standards in Resolution 68-16 and does not exceed any threshold of significance. There is no evidence of new or different effects on water quality from the discharges regulated by the proposed Resolution.

In addition, the action to adopt this Resolution is exempt from CEQA pursuant to California Code of Regulations, title 14, section 15301 to the extent that it applies to existing food processing discharges at facilities that constitute "existing facilities" as that term is used in section 15301, whether or not such facilities obtained coverage under the previous waiver.

However, existing facilities that expand or new facilities that are constructed after adoption of the proposed Waiver are subject to local agency approvals, permits, and possibly a project-level CEQA review, at which time potential adverse impacts to other resources must be evaluated and appropriate mitigation measures implemented.

26. Federal regulations for storm water discharges have been promulgated by the U.S. Environmental Protection Agency (40 C.F.R. § 122, 123, 124) and require that specific categories of industrial facilities which discharge storm water obtain an NPDES permit. Most food processors that have uncovered outdoor processing areas are regulated under one of the specific categories. The State Water Board adopted Order 97-03-DWQ¹ (NPDES Permit No. CAS000001) specifying waste discharge requirements for discharges of storm water associated with industrial activities. Order 97-03-DWQ requires submittal of a Notice of Intent by all affected industrial storm water dischargers. Therefore, it is appropriate to require all parties applying for coverage under this waiver to show that the operation is already covered or specifically excluded from obtaining coverage under Order 97-03-DWQ or subsequent Order¹ by providing a copy one of the following:
- a. The Notice of Intent that has been submitted to apply for coverage under Order 97-03-DWQ or subsequent revision thereto; or
 - b. A Notice of Non-Applicability (NONA); or
 - c. A No Exposure Certification (NEC).
27. Section 13267(b) of the Water Code states:

¹ Order 97-03-DWQ expires on 30 June 2015 and its replacement, Order 2014-0057-DWQ, becomes effective on 1 July 2015.

In conducting an investigation specified in subdivision (a), the Regional Water Board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge, waste outside of its region that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the Regional Water Board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the Regional Water Board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.

The technical reports required by this Resolution and the attached Monitoring and Reporting Program R5-2015-XXXX are necessary to evaluate compliance with this waiver. Each individual discharger operates the facility that generates the waste whose discharge is subject to this Resolution.

28. This waiver of WDRs is in the public interest, provided that the dischargers subject to the waiver do all of the following:
 - a. Submit the required RWD or NOI and filing fee to the Central Valley Water Board as applicable;
 - b. Comply with the conditions of this Resolution, including the Monitoring and Reporting Program as applicable; and
 - c. Comply with applicable State Water Board and Central Valley Water Board plans and policies.
29. Pursuant to Water Code section 13263(g), discharge is a privilege, not a right, and adoption of this Resolution and the receipt of a formal notification of coverage under this Resolution from the Executive Officer, does not create a vested right to continue the discharge.
30. The dischargers and interested agencies and persons have been notified of the Central Valley Water Board's intent to conditionally waive waste discharge requirements for these discharges, and they have been provided an opportunity to submit written comments and an opportunity for a public hearing.
31. All comments pertaining to the discharges were heard and considered in a public hearing.

THEREFORE BE IT RESOLVED that in accordance with Water Code section 13269, the Central Valley Water Board adopts the “Waiver of Waste Discharge Requirements for Small Food Processors and Small Wineries” as set forth in Attachment A (hereafter informally referred to as “Small Food Processor Waiver” or “Waiver”), and it is hereby ordered that:

1. The Central Valley Water Board waives the requirement to obtain WDRs, and for some instances the requirement to submit fees, for discharge types that fulfill the conditions set forth in Attachment A of this Resolution.
2. Dischargers subject to the Waiver shall:
 - a. File a Report of Waste Discharge and submit fees (as required);
 - b. Comply with the conditions set forth in the Waiver, including its attachments; and
 - c. Comply with applicable State Water Board and Central Valley Water Board plans and policies.
3. This Waiver shall not create a vested right to discharge. All discharges authorized under this Waiver shall be considered a privilege, as provided for in Water Code section 13263.
4. Pursuant to Water Code section 13269, this action waiving the issuance of WDRs for certain specific types of discharges: (a) is conditional, (b) may be terminated at any time, (c) does not permit an illegal activity, (d) does not preclude the need for permits which may be required by other local or governmental agencies, and (e) does not preclude the Central Valley Water Board from administering enforcement remedies (including civil liability) pursuant to the Water Code.
5. The Executive Officer or the Central Valley Water Board may terminate the applicability of the Waiver described herein as to any type of discharge or individual discharger at any time when such termination is in the public interest or the activity could affect the quality or beneficial uses of the waters of the State.
6. The Central Valley Water Board may review this Waiver at any time and may modify or terminate the Waiver in its entirety, as applicable for a specific type of discharge, or for individual dischargers, as is appropriate.
7. This Waiver shall expire on ___, unless terminated or renewed by the Central Valley Water Board.

If any person discharging a waste that falls within the scope of the waiver fails to comply with the conditions of the waiver, the Executive Officer may refer this matter to the Attorney General for judicial enforcement, may issue a complaint for administrative civil

liability, or may take other enforcement actions. Failure to comply with the conditions of the waiver may result in the assessment of Administrative Civil Liability of up to \$10,000 per violation, per day, depending on the violation, pursuant to the Water Code, including sections 13268, 13350 and 13385. The Central Valley Water Board reserves its right to take any enforcement actions authorized by law.

Any person aggrieved by this action of the Central Valley Water Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00p.m., 30 days after the date of this Resolution, except that if the thirtieth day following the date of this Resolution falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at:

http://www.waterboards.ca.gov/public_notices/petitions/water_quality

or will be provided upon request.

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 ___.

PAMELA C. CREEDON, Executive Officer