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# California Water Quality Laws for Agriculture

Long Term Irrigated Lands Program

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## Federal Clean Water Act

- Adopted 1972
- Regulates the discharge of pollutants to waters of the U.S. (i.e. surface waters)
- Requires NPDES permits for the discharge of pollutants from point sources to waters of the U.S.
- Requires States to adopt and implement water quality standards

## NPDES Permit Requirements for Agriculture

- “Agricultural return flows. The Administrator shall not require a permit under this section for discharges composed entirely of return flows from agriculture, nor shall the Administrator directly or indirectly, require any State to require such a permit.” (33 USCS §1342(I).)
- “The term ‘point source’ means . . . . This term does not include agricultural stormwater discharges and return flows from irrigated agriculture.” (33 USCS §1362(14).)

## NPDES Permit Requirements for Dairies

- Must have actual point source discharge.  
(*Waterkeeper Alliance v. USEPA* (2005) 399 F3d 486.)
- New proposed options to certify no discharge.  
([www.epa.gov/npdes/afo/revisedrule](http://www.epa.gov/npdes/afo/revisedrule).)

## Porter-Cologne Water Quality Control Act

- Adopted in 1969
- Creates State Water Resources Control Board and 9 Regional Water Quality Control Boards
- State Water Board (& 9 Regional Boards) have delegated authority to implement federal Clean Water Act
- Regulates discharges of waste to waters of the state (i.e. surface & ground waters)

## Regional Board Authorities

- Issue federal NPDES permits
- Issue state waste discharge requirements
- Issue state waivers from waste discharge requirements
- Adopt Water Quality Standards (WQS)
  - Designate Beneficial Uses
  - Establish Water Quality Objectives to protect beneficial uses
  - Adopt Program of Implementation for achieving water quality objectives
- Adopt Water Quality Control Plans (Basin Plans)
- Enforce state and federal water quality laws and regulations

## Regional Board Issued Permits

- NPDES Permits
  - Surface water discharge of pollutant from point source
  - Discharge specific or General
  - May not exceed five years in duration
- Waste Discharge Requirements
  - Applies to any person discharging waste or proposing to discharge waste that could affect the quality of water of the state (point and non-point sources)
  - Discharge specific or General (e.g. existing milk cow dairies)
- Waivers from Waste Discharge Requirements
  - Discharge specific or General (e.g. waivers from WDRs for irrigated agriculture)
  - May not exceed five years in duration

## Brief History of Waivers for Irrigated Agriculture

- Used to be general waiver with no conditions
- Unlimited term
- Existing waivers in 1998 in existence for almost 20 years
- Legislation (SB 390) adopted – Created sunset for existing waivers and established new requirements



## Brief History (cont.)

- Additional new requirements added after SB 390
- Three regions with existing waivers for irrigated agriculture (Central Coast, Los Angeles & Central Valley)
- Implementation in various stages
- Strict compliance with water quality standards not yet in effect
- Regional Boards' bringing enforcement actions to ensure compliance with group sign-ups

## Conditional Waiver – R5-2006-0053

- Applies to discharges of waste from irrigated lands to surface waters
- Requires compliance with water quality standards through preparation and implementation of management plans
- Recognizes that immediate compliance with water quality standards is not required

# Surface Water Quality Standards & the CWA

- Water Quality Standards (“WQS”) to be developed by the states
- Standards shall consist of designated uses and the water quality criteria for waters to protect uses
- WQS in effect in 1972 serve as initial benchmarks
- WQS for surface waters must be approved by USEPA
- States required to revisit and revise if necessary every three years
- Total maximum daily loads (“TMDLs”) required when surface water bodies are impaired (i.e. not meeting WQS)
- WQS apply to point and nonpoint sources of pollution

## WQS for Surface Waters Defined

- Designation of uses (40 CFR §131.10)
  - Consider use and value of the water
  - Consider WQS of downstream waters
  - May adopt sub-categories

## Surface WQS Defined (cont'd)

- Criteria to protect uses (40 CFR §131.11)
  - Based on sound, scientific rationale
  - Set at level to protect designated uses
  - May be numeric (pollutant-pollutant)
  - May be narrative (general statement of applicability)

## Surface WQS Defined (cont'd)

- Anti-degradation policy (40 CFR §131.12)
  - Maintain uses
  - Maintain water quality to protect uses

## Water Quality Standards in State Law

- “Beneficial uses include but are not limited to domestic, municipal, agricultural, and industrial supply; . . . .” (Wat. Code, § 13050(f).)
- “Water quality objectives means the limits or levels of water quality constituents or characteristics which are established for the reasonable protection of beneficial uses of water or the prevention of nuisance within a specific area.” (Wat. Code § 13050(h).)

## Water Quality Control Plans (Basin Plans) (Wat. Code §§ 13050(j), 13240-13247.)

- Each Regional Board should formulate and adopt plans for all areas in the region.
- Must conform to state policies.
- Must be periodically reviewed and may be revised.
- Consists of:
  - Beneficial uses to be protected
  - Water quality objectives
  - Program of implementation to achieve objectives



## Adoption of Water Quality Objectives

- When adopting water quality objectives, Regional Board required to consider:
  - Past, Present and Probable future beneficial uses
  - Environmental characteristics of the hydrographic unit
  - Water quality conditions that could be reasonably achieved through coordinated control of all factors which affect water quality in the area
  - Economic considerations
  - Need for development of housing
  - Need for development and use of recycled water

## Program to Achieve Objectives

- Program of implementation for achieving objectives shall include:
  - Nature of actions necessary to achieve objectives include recommendations for appropriate action by any entity, public or private
  - Time schedule for the actions to be taken
  - Description of surveillance to be undertaken to determine compliance with the objectives

# Prohibition Against Discharge of Waste

(Wat. Code §§ 13243, 13244.)

- Regional Board may adopt certain conditions or areas where discharge of waste, or types of waste is prohibited.
- May adopt prohibitions in a Basin Plan or in waste discharge requirements.
- Additional notice provisions required when adopting a prohibition.

# State Water Board Resolution 68-16

- State's Nondegradation Policy
- Applies to surface and ground waters
- Protect high quality waters (e.g. waters that meet or exceed water quality objectives)
- Allows discharges to high quality waters under certain conditions:
  - Waste discharge requirements that require best practical treatment or control
  - Protects beneficial uses
  - Maximum benefit to people of the state

## Application of WQS in State Issued Permits

- Regional Board shall issue requirements that implement any relevant water quality control plans
- Regional Board shall consider beneficial uses to be protected
- Regional Board shall consider water quality objectives reasonably required to protect beneficial uses
- Waivers must be consistent with any applicable state or regional water quality control plan

## Effluent Limitations

- Restriction on quantities, discharge rates and concentration of pollutants discharged from point source to water of the U.S. (40 C.F.R. § 122.2.)
- Regional Board shall prescribe requirements to implement relevant water quality control plans. (Wat. Code § 13263.)
- Applied to the discharge itself.
- Can be calculated to allow for dilution.
- Compliance determined through monitoring of the discharge.

## Receiving Water Limitations

- Limitations based on water quality objectives contained in the applicable Basin Plan.
- Applies to the receiving water itself.
- Typically states that the discharge cannot cause or contribute to a violation of the water quality objective.
- Compliance determined by monitoring in the receiving water.

## Management Practices

- Conditions of waiver shall include performance of an individual, group or watershed-based monitoring. (Wat. Code § 13269(a)(2).)
- No waste discharge requirements or other order of the Regional Board shall specify design, location, type of construction, or particular manner in which compliance may be had that requirement. (Wat. Code § 13360(a).)



## Monitoring Requirements (Wat. Code, §§ 13267, 13269)

- Wat. Code § 13267
  - Regional Board may require a “discharger of waste” to submit technical and/or monitoring program reports.
  - Burden of the reports, including the cost, must bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports.
- Wat. Code § 13269
  - Requirements shall support development and implementation of waiver program.
  - Regional Board may consider volume, duration, frequency, and constituents of the discharge; extent and type of monitoring activities; size of project area; and other relevant factors.

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