

Ag Lands Conditional Waiver Overview

What is a conditional waiver order?

Staff of the North Coast Regional Water Quality Control Board (Regional Board) are proposing that a general conditional waiver of waste discharge requirements be the primary regulatory mechanism for the North Coast Agricultural Lands Discharge Program (Ag Lands Program). The waiver will establish the regulatory requirements for the Program, but the Program includes other elements such as technical assistance, grants, implementation, and education. Waivers are conditional. In order for the Regional Board to waive waste discharge requirements, they must make certain findings and include conditions in the waiver to ensure water quality is protected.

Conditional waivers, which are a type of permit, are adopted by the Regional Board as orders during official Board hearings. Orders are documents that formalize regulatory actions taken by the Regional Board. A typical order includes a list of findings followed by a list of required actions. The findings are declarations by the Board establishing the authority and the need for requiring the actions. The actions, which direct the conduct of both the Board staff and affected permittees, can include (among others): water quality performance standards, discharge prohibitions, planning requirements, monitoring and reporting requirements, fees, and other procedural details.

The following links provide some examples of existing conditional waivers:

1. [North Coast Regional Board Conditional Waiver for Existing Cow Dairies](#)
2. [North Coast Regional Board Categorical Waiver for Timber Activities on Non-Federal Lands](#)
3. [North Coast Regional Board Conditional Waiver for Federal Land Management Activities on National Forest Lands](#)
4. [San Francisco Bay Regional Board Conditional Waiver for Grazing Operations in the Tomales Bay Watershed](#)

What will the Ag Lands Program conditional waiver look like?

The following draft outline contains list of typical conditional waiver sections to provide some context to the upcoming Advisory Group discussions regarding Ag Lands waiver requirements. Please note this outline is not necessarily complete, and sections may be added or removed as the draft waiver becomes more fully developed over time.

Findings

- Waiver Purpose and Need
- State Law, Policies, and Regional Board Authorities
- Waiver Scope (language from Scope and Framework document)
- Explanation of Required Actions

Actions

- Waiver Administration
- Waiver Tiers (language from Scope and Framework document)
- Water Quality Performance Standards
- Discharge Prohibitions
- Water Quality Management Plan requirements
- Enrollment & Other Procedures
- Standard Provisions

What will be discussed at the October 2012 Advisory Group meetings?

The October 2012 Advisory Group meetings will focus on the conditions in the waiver that are specific to agricultural water quality management. The majority of the other conditions are standard findings and conditions common to most Regional Board orders. These conditions will be drafted and presented to the Advisory Group for discussion and comment at future meetings, before the draft waiver order is released for public review.

The Water Quality Performance Standards and Discharge Prohibitions (highlighted in the outline above) are the waiver sections that are most relevant to the management of a farm or ranch. They form the basis for compliance with the waiver conditions that must be met through the implementation of site-specific management practices. Regional Board staff are making available draft language for these sections to help facilitate productive Advisory Group discussions.

Introduction to Portions of Draft Conditional Waiver Language

Portions of two sections of draft waiver language are presented below along with a brief introduction. The introduction describes the Regional Board's typical approach to nonpoint source regulation as defined in statewide policy. As drafted, it explains that operators will have flexibility to select management practices that are appropriate for their specific operations, as long as the conditions of the waiver are met. The conditional waiver does not specify the manner of compliance, nor will it prescribe management practices using a 'one size fits all' approach.

The two draft waiver sections describe water quality performance standards and discharge prohibitions, respectively, which operators will meet through the implementation of practices. The waiver will allow for a reasonable amount of time to achieve compliance with these standards and prohibitions, and operators may work with Regional Board staff or with a third party as needed to develop a suitable timeline.

Portions of Draft Conditional Waiver Language

Introduction

The Regional Board recognizes that the most appropriate and effective management practices for a particular agricultural operation vary depending upon the nature of the operation and site-specific conditions. This Order therefore requires operators to select practices as appropriate to meet the following water quality performance standards and discharge prohibitions. If a Water Quality Management Plan is required by this order, then the management practices shall be specified therein.

Water Quality Performance Standards

Specific to this Waiver

1. Minimize the presence of bare soils vulnerable to erosion and runoff to surface waters;
2. Prevent erosion through source control and treatment, reduce stormwater runoff quantity and velocity, and hold fine soil particles in place. If erosion cannot be prevented, it shall be minimized to the extent practicable;
3. Stabilize unstable areas including gullies, mass wasting features (landslides, rock falls, mudflows, etc.), and areas of bank erosion that are the result of past or current agricultural operations. Stabilization actions shall promote natural recovery or active stabilization of these erosional features to prevent additional erosion and/or to minimize sediment delivery to surface waters;
4. Construct and maintain drainage ditches, roads, and other associated facilities in a manner that prevents sediments and other wastes from reaching surface waters. If the delivery of wastes cannot be prevented, it shall be minimized to the extent practicable;
5. Manage riparian areas in a manner that maintains their essential functions to support beneficial uses, such as: effective streambank stabilization and erosion control, stream shading and temperature control, sediment and chemical filtration, woody debris recruitment, and aquatic life support. This provision does not require operators to take any restorative action, although operators may choose to include restorative work as part of a suite of agricultural management practices;
6. Prevent livestock from disturbing or creating areas of bare soil, and from disturbing or creating other unstable or erodible features adjacent to waterbodies;
7. Prevent livestock from entering surface waters except when crossing;
8. Store, mix, and apply fertilizers and other soil nutrients, including compost, in a manner that is consistent with all applicable federal and state regulations, and that prevents excess nutrients from reaching groundwaters and surface waters;
9. Handle, store, and dispose of pesticides and other chemicals in a manner that prevents them from reaching groundwaters and surface waters;
10. Minimize concentrations of fertilizers, nutrients, pesticides and other wastes in agricultural runoff and/or minimize the quantity of waste-containing runoff that reaches surface waters. Types of runoff include tailwater, stormwater, infiltration to groundwater, subsurface drainage water, tile drainwater, and frost protection water.

Discharge Prohibitions

Specific to this Waiver

1. Operators shall not discharge any wastes unless those wastes are regulated by this or another order. Wastes specifically qualifying for coverage under this order include: earthen materials, including soil, silt, sand, clay, rock, inorganic materials; pathogens; fertilizers; livestock wastes; and pesticides or other chemicals that may enter or threaten to enter waters of the state. Examples of waste not qualifying for coverage under this Order include hazardous waste and human waste;
2. Operators shall not stockpile soil, plant waste, and/or other debris in areas where they could be washed or eroded into surface waters;
3. Operators shall not discharge chemicals such as fertilizers, fumigants, and/or pesticides down a groundwater well casing, or place such chemicals in locations where they may reach groundwaters or surface waters;
4. Operators shall not discharge chemicals used to control wildlife (such as bait traps or poisons) directly into surface waters, or place such chemicals in locations where they may reach groundwaters or surface waters;
5. Operators shall not discharge agricultural rubbish, refuse, or other solid waste into surface waters, or place such materials where they may contact or may eventually reach surface waters.

Standard

6. Operations shall not cause or contribute to a violation or exceedance of applicable water quality standards. This order allows operators sufficient time to meet water quality standards through the implementation of scheduled management practices pursuant to Water Quality Management Plans, which may include plans developed for an individual operator, for a group of operators, or as part of an approved third party certification program.
7. Operations shall not adversely impact human health or the environment or the beneficial uses of water identified in the Basin Plan;
8. Operators shall not cause or threaten to cause pollution, contamination, or nuisance as defined in Water Code section 13050;
9. Discharges of waste are not authorized unless they are controlled through implementation of management practices.