



Everybody Loves Talking About Process!

How we got from there to here.

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Porter-Cologne

- * In California, the Porter-Cologne Water Quality Control Act interacts with the federal Clean Water Act to regulate the discharge of pollutants to waters of the state.
- * Under Porter-Cologne, “any person discharging waste, or proposing to discharge waste, within any region that could affect the quality of the waters of the state” must file a report with the appropriate Regional Water Quality Control Board.

Waste Discharge Requirements

- * The Regional Board must then “prescribe requirements as to the nature of any proposed discharge [or] existing discharge.”
- * In the absence of a Waste Discharge Requirement (WDR), the discharge of pollutants is generally prohibited.

Conditional Waivers

- * State or Regional Boards may conditionally waive WDRs, but a waiver must be “consistent with any applicable state or regional water quality control plan and . . . **in the public interest.**”
- * A conditional waiver may not exceed five years in duration, but may be renewed by the State Board or the Regional Board.

Monitoring Requirements

- * The conditions of a waiver must include water quality monitoring requirements.
- * “Monitoring results shall be made available to the public.”

Central Coast Ag Waiver Program

- * The first Central Coast “Ag Waiver” was adopted on July 9, 2004 (2004 Order).
- * By law, the 2004 Order expired in July 2009.
- * The 2004 Order has been subsequently “renewed” four (4) times.

1983 – 2003 (Prehistory)

- * For twenty (20) years, agriculture on the central coast operated under an “implied” conditional waiver.
- * In 1999, the California Water Code was amended, causing all conditional waivers that existed on January 1, 2000, to expire on January 1, 2003.
- * Prior to 2003, water quality in the Central Coast’s agricultural areas was “shown to be impaired by such constituents as pesticides and nutrients, lending further urgency to the need to adopt additional requirements for irrigated operations.” (Staff Report for July 8, 2004, p. 1.)

2003 – 2004 (Initial Development)

- * In 2003, the Regional Board convened an Agricultural Advisory Panel (AAP) comprised of stakeholder representatives from agricultural interests and environmental organizations. The AAP agreed on a general framework, and the first Central Coast Ag Waiver was adopted on July 9, 2004.
- * Regional Board staff forecast that “at the end of the first [five-year] waiver cycle, the program [would] be evaluated and revised as necessary as part of the waiver review process.” (Staff Report for July 8, 2004, p. 17.)
- * The 2004 Order itself states that in time “increased reporting and monitoring may be required in order to ensure that water quality is improving.”

2004-2008 (Initial Implementation)

- * During the five-year (5-year) term of the 2004 Order, many growers were able to demonstrate compliance with the conditional Ag Waiver, including compliance with requirements for continuing education.
- * Staff noted in 2008, however, that water quality conditions were generally unimproved; in some areas conditions were getting worse.

2008 – 2009 (The Second AAP)

- * When the Regional Board convened a second AAP in December 2008, staff stated that “new requirements” are “necessary to directly address and resolve the major water quality issues associated with irrigated agriculture.” (Letter from Regional Board Staff to AAP, Dec. 12, 2008, at p. 1.)
- * Staff stated that the 2004 Order would be revised to:
 - * Eliminate toxic discharges of agricultural pesticides to surface waters and groundwater
 - * Reduce nutrient discharges to surface waters to meet nutrient standards
 - * Reduce nutrient discharges to groundwater to meet groundwater standards
 - * Minimize sediment discharges from agricultural lands
 - * Protect aquatic habitat (riparian areas and wetlands) and their buffer zones

2009 (2004 Order Renewed)

- * Initially, the AAP was convened to meet five times between December 2008 and April 2009. The AAP actually met on a monthly basis from December 2008 to September 2009.
- * On July 10, 2009, the Regional Board renewed the 2004 Order in its extant form for one additional year.
- * Members of the AAP were unable to reach consensus, and the AAP dissolved at the conclusion of its September 22, 2009, meeting.

February 2010 (Draft Order)

- * Regional Board staff released a Draft Order for public comment on February 1, 2010. The Draft Order included components that are necessary for the waiver to be consistent with Water Code Section 13269, including enumerated water quality standards, explicit and liberal timelines for compliance, riparian setbacks and vegetated buffers, individual discharge monitoring and protections for drinking water. These provisions were also consistent with the proposed updates to the 2004 Order that staff described to the second AAP.

February 2010 (Draft Order)

- * In a staff report accompanying the February 2010 Draft Order, Regional Board staff set forth overwhelming evidence that the 2004 Order is inconsistent with water quality plans and standards, and is not in the public interest.
- * The 2004 Order was intended to “regulate discharges from irrigated lands to ensure that such dischargers are not causing or contributing to exceedances of any Regional, State, or Federal numeric or narrative water quality standard.” Six years after it was adopted, however, there is “no direct evidence that water quality is improving due to the 2004 Conditional Waiver.”
- * In fact, many water segments throughout the region are listed as impaired under Clean Water Act section 303(d), nearly all beneficial uses are impacted by agricultural pollution, and these impairments remain “well documented, severe, and widespread” despite the fact that a number of dischargers have enrolled under the 2004 Order.
- * For this reason, Regional Board staff concluded that “[i]mmediate and effective action is necessary to improve water quality protection and resolve the widespread and serious impacts on people and aquatic life.” (*Id.*)

July 2010 (Order Renewed Again)

- * Despite staff’s recommendations and an overwhelming preponderance of evidence, the Regional Board declined to adopt the February 2010 Draft Order and instead renewed the 2004 Order for a second (2nd) time on July 8, 2010.

November 2010 (Second Draft Order)

- * In November 2010, Regional Board staff released a second Draft Order.
- * The November 2010 Draft Order implemented some improvements to the 2004 Order, but would have been less effective than the February 2010 Draft Order.

March 2011 (Third Draft Order)

- * On March 2, 2011, staff released a third Draft Order.
- * The March 2011 Draft Order implements minimal improvements to the 2004 Order and can just barely be considered “in the public interest.”
- * The March 2011 Draft Order does not compare favorably to the February 2010 Draft Order or the November 2010 Draft Order.

March 2010 (Order Renewed Again)

- * The Regional Board met on March 17 to consider the third Draft Order but was not able to constitute a quorum for the purpose of decision-making.
- * On March 29, 2011, the Regional Board's Executive Officer renewed the 2004 Order for a third (3rd) time.

May 2010

- * The Regional Board continued its March hearing on May 4, 2011, but was still not able to constitute a quorum for the purpose of decision-making.

Sept. 2011 (Order Renewed Again)

- * The Regional Board was scheduled to consider the Ag Waiver on September 1, 2011, but was yet again unable to constitute a quorum for purposes of decision-making.
- * On September 30, the Regional Board's Executive Officer renewed the 2004 Order for a fourth (4th) time.

February 2012 (Workshop No. 3)

- * Since 2008, the Regional Board has:
 - * Convened a stakeholder panel (the second AAP);
 - * Hosted at least three (3) public workshops;
 - * Held at least three (3) public hearings;
 - * Accepted thousands (> 1,999) of pages of comment on the proposed Ag Waiver revisions;
 - * Granted time extensions, accepted "new" evidence, allowed time for consultation and negotiation; and

March 2012

- * The 2004 Order will be almost eight (8) years old in March 2012.
- * We will have been discussing/debating the contours of a new order for more than three (3) years.
- * Staff has presented evidence which necessitates the adoption of a revised Ag Waiver immediately.
- * We get to do this all again in less than five (5) years.