

SCOPING DOCUMENT

Proposed Amendment to the Water Quality Control Plan for the Central Coastal Basin to Improve and Clarify Waste Discharge Prohibition Language

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Central Coast Regional Water Quality Control Board
California Environmental Protection Agency

Introduction

The Central Coast Regional Water Quality Control Board (Central Coast Water Board) is considering amending the waste discharge prohibitions found in the *Water Quality Control Plan for the Central Coastal Basin* (Basin Plan). In general, discharge prohibitions in the Basin Plan identify waste discharges that are not permitted within the region, due to their potential impact to waters of the State. This informational scoping document describes options proposed by Central Coast Water Board staff to improve and clarify waste discharge prohibition language. This document also summarizes information that could be considered in a future analysis of potential significant environmental effects under the California Environmental Quality Act (CEQA).

Regulatory Background

Section 13240 of the California Water Code (CWC) requires each regional water board to formulate and adopt a water quality control plan for all areas within the region. The Basin Plan was first adopted by the Central Coast Water Board in 1975, and the most recent edition, 2017, is available on the Basin Planning website:

https://www.waterboards.ca.gov/centralcoast/publications_forms/publications/basin_plan

The Basin Plan lists various uses of surface and groundwater (beneficial uses) and the water quality which must be maintained to support those uses (water quality objectives). The Basin Plan describes the programs, projects, prohibitions, and other actions which are necessary to achieve water quality objectives (implementation) and summarizes State Water Resources Control Board (State Water Board) and Central Coast Water Board plans and policies to protect water quality. Lastly, the Basin Plan describes statewide and regional surveillance and monitoring assessment programs.

As part of the water quality planning process, the Basin Plan is periodically reviewed. Section 303(c) of the federal Clean Water Act (CWA) requires that Basin Plan water quality standards be reviewed at least once every three years in a “triennial review.” The Central Coast Water Board approved the most recent triennial review of the Basin Plan in 2017:

https://www.waterboards.ca.gov/centralcoast/publications_forms/publications/basin_plan/triennial_review/

The triennial review results in a prioritized list of amendments to the Basin Plan that can be undertaken to improve the Basin Plan's clarity and usefulness. In accordance with the Central Coast Water Board's direction in the 2017 Triennial Review Priority List, staff develops Basin Plan amendments to address higher priority issues. Most of the proposed Basin Plan amendments in this scoping document were previously outlined in the 2017 Triennial Review.

Section 3775.5 of the California Code of Regulations (CCC, Title 23) describes the purpose of a CEQA scoping meeting for exempt regulatory programs. The purpose of this scoping document and the public scoping process is to seek early input from public agencies and members of the public on the scope and content of the substitute environmental documentation that will later be prepared in support of proposed Basin Plan amendments. The goal of a scoping meeting is to "seek input from public agencies and members of the public on the range of project actions, alternatives, reasonably foreseeable methods of compliance, significant impacts to be analyzed, cumulative impacts if any, and mitigation measures that will reduce impacts to a less than significant level; and to eliminate from detailed study issues found not to be important. Scoping may also assist in resolving concerns of affected federal, state, and local agencies, the proponent of the action, and other interested persons."

Project Description

The project includes the future adoption of a proposed amendment to the Basin Plan to improve and clarify waste discharge prohibition language in four areas:

- Proposed Amendment 1: Establish Prohibitions on Unauthorized Discharges in All Waters
- Proposed Amendment 2: Amend the Land Disturbance Prohibition
- Proposed Amendment 3: Add Monterey Bay Prohibition Zone Map (editorial)
- Proposed Amendment 4: Consolidate Domestic Animal Waste Prohibitions (editorial)

Proposed Amendment 1: Establish Prohibitions on Unauthorized Discharges in All Waters

Discussion:

The principal means of regulating activities that affect water quality, and the principal means of implementing the Basin Plan, is through the issuance of waste discharge requirements (WDRs). Any person discharging waste or proposing to discharge waste that could affect the quality of waters of the state must submit to the regional water board a *report of waste discharge* containing information required by the regional water board, unless the regional water board waives the filing of a report (CWC section 13260). Similarly, no person shall initiate any new discharge of waste prior to filing that report, or after filing that report and before the regional water board issues WDRs or other qualifying action. (CWC section 13264.)

Furthermore, regional water boards have the authority to specify, in their basin plans, discharge prohibitions (i.e., conditions or areas where the discharge of waste is not permitted):

CWC section 13243. [Discharge of waste]

A regional board, in a water quality control plan or in waste discharge requirements, may specify certain conditions or areas where the discharge of waste, or certain types of waste, will not be permitted. (*Added by Stats. 1969, Ch. 482.*)

Discharge prohibitions may be adopted for direct point source discharges to surface waters or groundwater as well as for nonpoint sources, such as surface runoff or discharges of waste to land (See 58 Ops. Cal. Atty. Gen. section 531, 532 (1975).) Under this authority, the Central Coast Water Board has established discharge prohibitions in the Basin Plan to protect public health, achieve water quality objectives, and protect surface-water and groundwater beneficial uses.

Discharge prohibitions are currently specified in the following sections of the Basin Plan:

Prohibition Subject	Basin Plan Section
Solid Wastes	4.6.4.1
Mushroom Farm Discharges	4.8.3.5.6
Onsite Wastewater System Areas	4.8.4.2
Land Disturbances	4.8.5.1
Watsonville Slough Watershed Livestock Wastes	4.8.5.6
Discharge Prohibitions	5.4
All Waters	5.4.1
Toxic or Hazardous Pollutants	5.4.1.1
Inland Waters	5.4.2
Domestic Animal Wastes	5.4.2.1
Human Fecal Materials	5.4.2.2
Tidal Waters	5.4.3
Monterey Bay Prohibition Zone	5.4.3
Areas of Special Biological Significance	5.4.3.1
Groundwaters	5.4.4
Other Specific Prohibition Subjects	5.4.5

Sections 13301, 13350, and 13385(a)(4) of the CWC authorize the Central Coast Water Board to take formal enforcement actions in response to violations of Basin Plan prohibitions. Although the existing Basin Plan prohibitions cover various conditions or areas where the discharge of waste is prohibited, formal enforcement action is more difficult in some cases due to an absence of adequate prohibitions in the Basin Plan. Additional general prohibitions are therefore needed to fully implement the enforcement provisions of the CWC.

The following is an example of a case for which the absence of a prohibition limits enforcement authority of the Central Coast Water Board. If a person is found discharging waste to waters of the state without authorization via WDRs, the Central Coast Water Board is not able to take formal enforcement action immediately. In that circumstance, the Central Coast Water Board must first notify the discharger of applicable requirements and then defer formal enforcement action until the discharger subsequently violates those requirements. Specifically, the Central Coast Water Board can require a report of waste discharge pursuant to CWC section 13260. If the discharger violates that requirement and fails to submit a report of waste discharge, the Central Coast Water Board may then impose a penalty, though only for the failure to provide the report of waste discharge, and not for the original unauthorized discharge of waste.

In addition, pursuant to CWC section 13264, no person can initiate a waste discharge prior to filing the report of waste discharge pursuant to section 13260. While this appears more directly applicable to the unauthorized discharge, section 13265 states that the Central Coast Water Board must first notify the discharger of the violation and only then may impose formal enforcement action if the discharge continues *after* that notification. So, again, the enforcement authority of section 13265 only addresses violations of section 13264 after notification and does not address the original unauthorized waste discharge.

Another response option for the above example is the CWC section 13301 authority for regional water boards to issue *cease and desist orders*. However, that option is only available for violations of WDRs or discharge prohibitions, neither of which applies in the above example.

Finally, CWC section 13385(a)(4) provides regional water boards with the authority to impose liability for violations of prohibitions issued pursuant to CWC section 13243 that are related to waters of the United States, but again there is no prohibition in place applicable to the above example.

If the Basin Plan contained a prohibition against discharging waste to land, waters of the state, or waters of the United States without authorization via WDRs, the Central Coast Water Board could take formal enforcement action that accounts for the time the person was discharging without authorization. The Central Coast Water Board would have the discretion to impose time schedules for compliance, direct remedial or preventive action, or impose a liability.

The Basin Plan could be amended to add additional prohibitions to enhance the Central Coast Water Board's enforcement authority and ability to better protect against and mitigate for unauthorized waste discharges. Prohibitions in the San Diego Region Basin Plan may serve as an appropriate template for additional prohibitions in the Central Coastal Basin Plan. The San Diego Region Basin Plan prohibitions are located on page 4-16 of the following: http://www.waterboards.ca.gov/sandiego/water_issues/programs/basin_plan/docs/update082812/Chpt_4_2012.pdf. The proposed amendment would prohibit discharges of waste without WDRs.

Adding new and general prohibitions applicable to *all* waters of the Central Coast region will supersede existing, *specific* inland waters prohibitions in section 5.4.2 of the Basin Plan, which were originally established in the 1975 Basin Plan. The proposed new general prohibition will require all discharges of waste to comply with WDRs and/or CWC 13264. Therefore, discharges to the six inland water areas currently addressed by the prohibitions in Basin Plan section 5.4.2 will be protective of water quality, making those prohibitions redundant and unnecessary. As such, the prohibitions addressing specific inland water areas in Basin Plan section 5.4.2 can be deleted from the Basin Plan.

Proposed Basin Plan Amendment

This section shows the proposed Basin Plan amendment in **red** font. Removed text is shown in **strikeout**; new text is shown with an **underline**. Amend section 5.4.1 of the Basin Plan by adding the following prohibitions:

5.4.1 All Waters

- 1.** Waste discharges shall not contain materials in concentrations which are hazardous to human, plant, animal, or aquatic life.
- 2.** The discharge of oil or any residual products of petroleum to the waters of the State, except in accordance with waste discharge requirements or other provisions of Division 7 of the California Water Code, is prohibited.
- 3.** Discharge of elevated temperature wastes into COLD intrastate waters is prohibited where it may cause the natural temperature of the receiving water to exceed limits specified in Chapter Three, Water Quality Objectives.
- 4.** The discharge of waste to waters of the state in a manner causing, or threatening to cause, a condition of pollution, contamination, or nuisance as defined in California Water Code section 13050 is prohibited.
- 5.** The discharge of waste to land or waters of the state, except as authorized by waste discharge requirements or the terms described in California Water Code section 13264 or section 13376, is prohibited.
- 6.** The discharge of pollutants or dredged or fill material to waters of the United States, except as authorized by an NPDES permit or a dredged or fill material permit (subject to the exemption described in California Water Code Section 13376), is prohibited.
- 7.** Any discharge to a stormwater conveyance system that is not composed entirely of stormwater is prohibited unless authorized by the Regional Board. [Federal regulations, 40 CFR 122.26(b)(13), define stormwater as stormwater runoff, snow melt runoff, and surface runoff and drainage. 40 CFR 122.26(b)(2) defines an illicit discharge as any discharge to a stormwater conveyance system that is not composed entirely of stormwater except discharges pursuant to a NPDES permit and discharges resulting from fire fighting activities.]
- 8.** The unauthorized discharge of treated or untreated sewage to waters of the state or to a stormwater conveyance system is prohibited.

Delete specific inland waters prohibition areas in section 5.4.2:

5.4.2 Inland Waters

Wastes discharged to surface waters shall be essentially free of toxic substances, grease, oil, and phenolic compounds.

~~Waste discharges to the following inland waters are prohibited:~~

- ~~1. All surface fresh water impoundments and their immediate tributaries.~~
- ~~2. All surface waters within the San Lorenzo Hydrologic Subarea, the Aptos-Sequel Hydrologic Subarea, and the San Antonio Hydrologic Unit and all water contact recreation areas except where benefits can be realized from direct discharge of reclaimed water.~~
- ~~3. All deadend sloughs receiving little flushing action from land drainage or natural runoff.~~
- ~~4. All coastal surface streams and natural drainageways that flow directly to the ocean within the Big Basin, Santa Lucia, Estero Bay (from the Monterey County line to the northern boundary of San Luis Obispo Creek drainage), and the South Coast Hydrologic Units except where discharge is associated with an approved wastewater reclamation program.~~
- ~~5. The Santa Maria River downstream from the Highway One bridge.~~
- ~~6. The Santa Ynez River downstream from the saltwater barrier.~~

Proposed Amendment 2: Amend the Land Disturbance Prohibition

Discussion:

Section 4.8.5.1 of the Basin Plan contains *Land Disturbance Prohibitions*, and the first paragraph of this section reads as follows:

The discharge or threatened discharge of soil, silt, bark, slash, sawdust, or other organic and earthen materials into any stream in the basin in violation of best management practices for timber harvesting, construction, and other soil disturbance activities and in quantities deleterious to fish, wildlife, and other beneficial uses is prohibited.

To extend the applicability of the existing land disturbance prohibition, the word “stream” in the quoted section should be changed to “waters of the state.” This change is justified by CWC section 13243, which authorizes a regional board, in a water quality control plan, to specify certain conditions or areas where the discharge of waste, or certain types of waste, will not be permitted. This amendment would expand this land disturbance prohibition to many waterbody types including rivers, wetlands, lakes, estuaries, and the ocean – not just streams.

Proposed Basin Plan Amendment:

This section shows the proposed Basin Plan amendment in red font. Removed text is shown in ~~strikeout~~; new text is shown with an underline. Amend section 4.8.5.1 of the Basin Plan contains *Land Disturbance Prohibitions*:

The discharge or threatened discharge of soil, silt, bark, slash, sawdust, or other organic and earthen materials into any ~~stream~~ waters of the state in the basin in violation of best management practices for timber harvesting, construction, and other soil disturbance activities and in quantities deleterious to fish, wildlife, and other beneficial uses is prohibited.

Proposed Amendment 3: Add Monterey Bay Prohibition Zone Map (editorial)

Discussion:

Basin Plan section 5.4.3 describes the areal extent of the Monterey Bay Prohibition Zone, where waste discharges are prohibited. This prohibition zone is also mentioned in section 4.6.2.5, which describes the Salinas River Hydrologic Unit.

Basin Plan section 5.6.2. describes a 1979 petition to remove the Monterey Bay Prohibition Zone. Basin Plan Appendix A-20 contains Resolution No. R3-79-06, which resolved that the southern Monterey Bay Prohibition Zone in the Basin Plan is appropriate and should remain in the Basin Plan.

A map of this prohibition zone is needed to help visualize the areal extent of the described Monterey Bay Prohibition Zone.

Proposed Basin Plan Amendment:

This section shows the proposed Basin Plan amendment in red font. Removed text is shown in ~~strikeout~~; new text is shown with an underline. Add a citation to section 5.4.3 of the Basin Plan:

5.4.3 Waters Subject to Tidal Action

The discharge of any radiological, chemical, or biological warfare agent or high level radioactive waste into the ocean is prohibited.

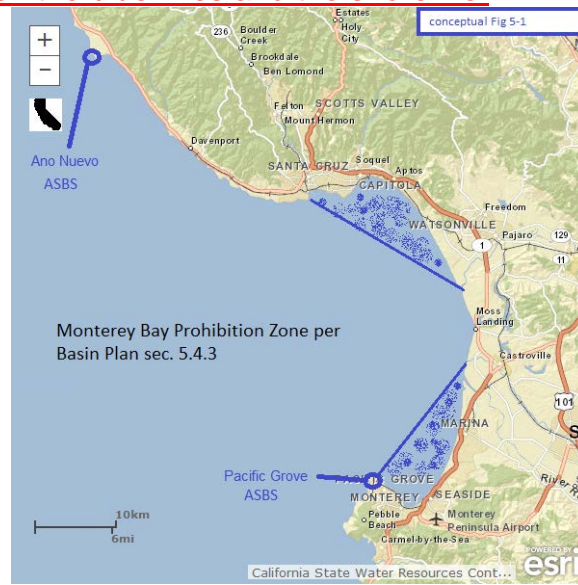
Waste discharges to the following Monterey Bay Prohibition Zone areas are prohibited. See Figure 5-1.

1. In the northern extreme of Monterey Bay, inshore from an imaginary line extending from Santa Cruz Point (36°-57.0'N, 122°-01.5'W) to the mouth of the Pajaro River (36°-51.0'N, 121°-48.6'W) and in ocean waters within a three (3) mile radius of Point Piñ~~os~~ (36°-38.3'N, 121°-56.0'W), excepting the area described in No. 2 below.
2. In the southern extreme of Monterey Bay, inshore from an imaginary line extending from Point Piñ~~os~~ (36°-38.3'N, 121°-56.0'W) to the mouth of the Salinas River (36°-44.9'N, 121°- 48.3'W).

Discharges to the Monterey Bay Prohibition Zone from desalinization units and circulating seawater system discharges may be permitted after each proposal satisfies California Environmental Quality Act requirements and completes the National Pollutant Discharge Elimination System process.

Add a new Figure 5-1 to Chapter 5 of the Basin Plan similar to the following:

Figure 5-1. Monterey Bay Prohibition Zone Areas. The prohibition zone is the area between the blue lines and the shoreline.



Proposed Amendment 4: Consolidate Domestic Animal Waste Prohibitions (editorial)

Discussion:

Currently, there are two areas in the Basin Plan that contain site-specific prohibitions on domestic animal waste or livestock waste discharges:

1. Section 4.8.5.6 Watsonville Slough Watershed Livestock Waste Discharge Prohibition
2. Section 5.4.2.1 Domestic Animal Waste Discharge Prohibition

Section 5.4.2.1 currently identifies seven watersheds having animal waste discharge prohibitions. These sections could be consolidated by deleting section 4.8.5.6 entirely and amending section 5.4.2.1 to include the Watsonville Slough livestock waste discharge prohibition.

Proposed Basin Plan Amendment:

This section shows the proposed Basin Plan amendment in **red** font. Removed text is shown in **strikeout**; new text is shown with an **underline**. Delete section 4.8.5.6:

~~4.8.5.6 Watsonville Slough Watershed Livestock Waste Discharge Prohibition~~

~~1.—The direct or indirect discharge of livestock animal waste from any grazing operations, non-sterile manure application, farm animal and livestock facilities including paddocks, pens, corrals, barns, sheds, or other activity of whatever nature into waters of the State within the Watsonville Slough Watershed is prohibited.~~

~~The above prohibition does not apply to any farm animal or livestock facility and/or any facility where non-sterile manure is applied if the owner or operator:~~

- ~~i.—Submits a Nonpoint Source Pollution Control Implementation Program, consistent with the Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program, that is approved by the Executive Officer, or~~
- ~~ii.—Demonstrates to the satisfaction of the Executive Officer that its activities do not cause livestock waste to pass into waters of the state within the Watsonville Slough Watershed, or~~
- ~~iii.—Is regulated under Waste Discharge Requirements or an NPDES permit, or a conditional waiver of waste discharge requirements that explicitly addresses compliance with the Watsonville Slough TMDL for Pathogens.~~

~~This Livestock Waste Discharge Prohibition takes effect two years following approval of the TMDL by the U.S. Environmental Protection Agency.~~

Amend section 5.4.2.1 to add the Watsonville Slough Watershed:

5.4.2.1 Domestic Animal Waste Discharge Prohibition

Discharges containing fecal material from domestic animals to the waters of the State that cause or contribute to exceedance of water quality objectives in the areas listed

below are prohibited. Examples of domestic animals include, but are not limited to, horses, cattle, goats, sheep, dogs, cats or any other animal(s) in the care of any person(s).

1. Pajaro River Watershed.
2. Soquel Lagoon Watershed.
3. Aptos Creek Watershed.
4. San Lorenzo River Watershed.
5. Corralitos/Salsipuedes Creek Watershed.
6. Lower Salinas River Watershed (the watershed area of the Salinas River from Gonzales Road downstream to its confluence with Moss Landing Harbor).
7. Santa Maria River Watershed (including Oso Flaco Creek subwatershed).
8. Watsonville Slough Watershed

Remove Watsonville from section 5.4.5:

5.4.5 Other Specific Prohibition Subjects

...

~~Watsonville Slough Watershed Livestock Waste Discharge Prohibition~~

Section 4.9.7 of the Basin Plan (TMDL for Pathogens in Watsonville Slough) should also be amended as to replace all instances of “Watsonville Slough Watershed Livestock Waste Discharge Prohibition” with “Watsonville Slough Domestic Animal Waste Discharge Prohibition” follows:

6.9.7 TMDL for Pathogens in Watsonville Slough

...

The Following Actions Will Reduce Fecal Coliform Bacteria Loading From Livestock And Land-Applied Non-Sterile Manure:

Livestock Sources

Operators or owners of livestock facilities and animals must comply with the ~~proposed~~ Watsonville Slough ~~Watershed Livestock~~ Domestic Animal Waste Discharge Prohibition (see Section 5.4.2.1 Domestic Animal Waste Discharge Prohibition) to implement their load allocations. Within one year following approval...