Regional Water Quality Control Board
Central Valley Region
Board Meeting – 5/6 February 2015

Response to Written Comments

Initial Study and Mitigated Negative Declaration and Waiver of Waste Discharge Requirements

For

Small Food Processors, Wineries and Related Agricultural Processors Within the Central Valley Region

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At a public hearing scheduled for 5/6 February 2015, the Central Valley Water Board will consider adoption of a Mitigated Negative Declaration and a Waiver of Waste Discharge Requirements ("Waiver") for certain discharges of food processing waste to land. This document contains responses to written comments received from interested persons regarding the Initial Study/Draft Mitigated Negative Declaration and the tentative Waiver. Written comments from interested parties were required by public notice to be received by the Central Valley Water Board by 1 December 2014 to receive full consideration.

No comments were received on the Initial Study/Draft Mitigated Negative Declaration. The Board received comments on an administrative draft of the tentative Waiver from the Western Agricultural Processors Association (WAPA). Written comments are summarized below, followed by the responses of Central Valley Water Board staff. Minor changes to the tentative Waiver were made in response to the comments received.

WESTERN AGRICULTURAL PROCESSORS ASSOCIATION COMMENTS

Central Valley Water Board staff engaged in a limited industry stakeholder process prior to the issuance of the tentative Waiver. On 29 October 2014, the WAPA submitted written comments on an administrative draft of the tentative Waiver that was circulated to the stakeholder group.

WAPA is not contesting the tentative Waiver, but had particular concerns related to the Board's regulation of discharges from nut hulling operations, which have been largely unregulated in the past.

WAPA Comment No. 1: Some nut hullers will not be able to comply with the one million gallon per year wastewater flow limit. Larger operations will spread the greater volume of water across a greater land area, thereby posing no greater threat to groundwater than smaller hulling operations. WAPA requested that the maximum allowable wastewater volume be increased to 1.5 million gallons per year or eliminated altogether.

> **RESPONSE:** Although the tentative Waiver is intended to regulate a broad group of food processing wastes, the proposed scope of the Waiver was limited to small discharges. Based on a large body of data and published references regarding the land application of winery and food processing wastes, Board staff do not expect that

expanding the wastewater volume limit from 100,000 gallons per year to one million gallons per year would result in any significant environmental effects, as this would continue to provide regulatory coverage for discharges that are small enough to pose only a minimal threat to water quality when managed using standardized practices. However, Board staff have not evaluated whether an increase beyond the one million gallons per year volume limit proposed in the tentative Waiver would result in potentially significant environmental impacts, and are not proposing that the Board revise the volume limit upward to 1.5 million gallons at this time.

WAPA Comment No. 2: The tiered fee system does not seem to coincide with the level of staff work necessary to provide oversight of the discharges regulated under the Waiver. Tier 2 and Tier 3 facilities would submit the same information at the same frequency, but Tier 2 enrollees would only pay the fee once for 5 year of coverage, and Tier 3 enrollees would pay the same amount annually. WAPA requests that the Tier 3 fee be the same as the fee for Tier 2, which is a one-time fee for the five-year duration of the Waiver based on a threat and complexity rating of 3C. The 3C fee is currently $2,088.

RESPONSE: The Boards' regulatory programs are funded exclusively through permit fees. When adopting a waiver, the regional board may include as a condition of the waiver the payment of an annual fee set by the State Water Board. (Wat. Code § 13269.) Furthermore, while California Code of Regulations, title 23, section 2200.7 mandates the payment of certain fees set by the State Water Board for certain waivers, the regulations defers the imposition of other waiver fees to the Regional Water Boards. The Central Valley Water Board has limited discretion in imposing those fees and must balance the need to fund its work against the financial concerns of regulated dischargers.

Aside from the work to develop and renew the waiver every five years, the work that staff performs includes reviewing enrollment applications, writing Notices of Applicability, completing administrative records, making those records available for public review through a variety of media, reviewing monitoring reports, performing inspections, and taking enforcement action when needed. The fees charged must, on average, sustain those efforts.

In the case of the proposed Waiver, the proposed fee tiering system is based on the State Water Board's fee schedule, and uses the lowest possible threat and complexity rating of 3C. Using this rating, the tentative Waiver assigns a fee in accordance with the relative size of the business in order to minimize economic impacts, while still setting a fee that supports the work that Board staff will need to do. Specifically, the tentative Waiver proposes that:

a) The Board use its discretion to waive the fee for the Tier 1 dischargers, because these will typically be hobbyists or very small businesses.

b) The Board use its discretion to impose a one-time application fee over the five-year life of the Waiver, which would be $2,088 (as little as $425 per year of coverage) for Tier 2, which encompasses larger but still small businesses.

c) The Board impose an annual fee based on a threat and complexity rating of 3C (currently $2,088 per year) for Tier 3 dischargers. These will typically be larger businesses and will be allowed to discharge up to ten times as much wastewater as those in Tier 2. Because of the larger discharge, Tier 3 facilities will be a higher priority for inspection, increasing the requisite staff time for these facilities.

WAPA Comment No. 3: WAPA has several concerns about the requirements for wastewater storage ponds:

a) Nut huller's wastewater ponds are typically operated year round and often contain storm water as well as wastewater during the wet season. In many cases the combined wastewater and storm water are applied to the orchard when the next irrigation is being conducted. The requirement to drain the pond by December 31st each year would be a major change to current practices.

b) Although the requirement that the water table be at least 5 feet below the base of the pond may be feasible in most cases, some facilities have shallow groundwater that seeps into the walnut receiving pit.

c) The requirement that the pond have a depth no greater than 5 feet is not practical because the wash water must be stored until harvest is completed in each discharge area and/or until irrigation is needed.

RESPONSE: Previous waivers did not allow dischargers to utilize ponds for wastewater storage because the unrestricted use of unlined ponds can pose a significant threat to groundwater quality. Nevertheless, recognizing that nut huller wash water typically contains significantly less BOD, nitrogen, and salinity than other food processing wastewaters, the tentative Waiver would allow nut hullers to use ponds subject to certain conditions.

However, due to the highly varied soil and groundwater conditions in the Central Valley Region, it is appropriate for the Board to impose additional conditions on the use of unlined ponds to ensure adequate water quality protection at *all* nut hulling sites. These conditions, which include restrictions on year-round pond use and water table and maximum depth requirements, were developed using the best professional judgment of highly experienced staff. If subsequent waste characterization data show that these conditions may be relaxed without resulting in any water quality impacts, the Board may reopen the Waiver as appropriate.

Nut hullers that cannot comply with the conditions set forth in the tentative Waiver may apply for some other form of regulatory coverage, such as individual WDRs. However, although the Board is considering the development of a General Order for nut hullers that would allow for a more expansive use of unlined ponds, it is unlikely that the Board would ever permit the use of unlined wastewater ponds that are excavated below the water table, as this would be considered a direct discharge of waste to waters of the state.

WAPA Comment No. 4: WAPA has several concerns about land application requirements for both nut hulls and wash water:

a) The typical nitrogen content of walnut hulls is not known, so nut hullers may not be able to comply with the requirement that the hulls be applied to land at rates that do not exceed crop demand for plant nutrients.

b) Depending on the time of year, it may not be possible to ensure that all liquid is absorbed into the soil within 12 hours of application.

c) Walnut hullers are usually prohibited from storing the walnut hulls onsite due to vector concerns (flies), so they are taken to the field or orchard for spreading at the earliest possible time. However, the requirement to prevent residual solids from contacting the ground is not the current practice. Typically, the hulls are stored on the ground to allow for drainage and then loaded and delivered to the field or orchard where they will be applied.

RESPONSE: As discussed above, there is only a limited body of data available to support the development of waiver conditions for nut hulling operations, and it may be appropriate to revise some of these conditions when representative data are available. The requirements for the management of residuals solids in the tentative Waiver are the same as those in the previous Waiver, and are typical of those used in most individual WDRs for food processing waste discharges.

a) It is unlikely that null hulls spread evenly across the entire orchard that they came from would contain enough nitrogen to support the orchard, especially when nitrogen loading is evaluated as a yearly total rather than month-by-month demand. When representative nitrogen content data are available for null hulls, this information will be made available to interested parties and they may use it to calculate annual nitrogen loading rates as required by the Waiver.

b) Regarding the concern about ponding wastewater in the land application area, the Waiver requires at least one acre of land application for each 100,000 gallons of wastewater applied. If all of the wastewater generated during the entire processing season were land applied in compliance with that condition, the total depth of wastewater applied would be no more than 3.7 inches. The percolation rate associated with that depth of water over a 12-hour period is about 196 minutes per inch. While there may be some soils in the region that have lower percolation rates, such irrigation practices would be unusual, which means that it is highly unlikely that a discharge that is in compliance with the tentative Waiver conditions would result in standing water for more than 12 hours. Additionally, the fact that nut hulling wash water is typically generated over at least a 6-week period should result in ample opportunity for most growers to dispose of their wastewater in increments timed around rainfall.

c) Storage of free-draining residuals solids on bare ground can pose a significant threat to groundwater quality, especially when the same storage area is used year after year. Preferably, the nut hulls would be deposited in leak-proof bins, with the drainage liquid collected and handled as wastewater, and the hulls land applied

as soon as possible. This may necessitate some changes from current practices, which is appropriate unless and until it can be demonstrated that current practices are protective of water quality.