

Regulation of Food Processing Waste Discharges to Land

Informational Item



Good morning Mr. Chair and members of the Board. My name is Wendy Wyels and I'm an Environmental Program Manager with the Sacramento office. This information item was developed by the staff from the Fresno, Redding, and Sacramento offices, and is in response to requests from Board members that we revisit our policies regarding the land disposal of food processing wastes, especially in relation to the discharge of salt.

Presentation Topics

- Past regulatory focus
- Water quality impacts
- Existing policies and regulations
- Long-term vision
- Proposed approach toward regulation
- Staffing needs

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Our presentation will cover a number of topics including: our past focus in regulating discharges of food processing waste; water quality impacts; the existing policies and regulations; our long-term vision for discharges of food processing waste; our proposed approach to better regulate the sites, and finally, a discussion of our staffing needs.

I'd like to emphasize that we are not proposing any new policy, but instead are looking to consistently and effectively implement existing regulations and policies.

Jo Anne Kipps, from our Fresno office, will begin staff's presentation.

Central Valley Food Processing Industry

- Major component in economy
- Largest food processing facilities in the nation
- Reliance on groundwater

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The food production and processing sector is a major component of the Central Valley Region's economy and employs up to 35 percent of the workforce in some counties. This sector generates about 20 billion dollars annually, most of it from the San Joaquin Valley. Due to its agricultural wealth, the Region contains some of the largest food processing plants in the nation. While some discharge to publicly owned treatment works, most discharge to "land application sites." The source water for many farms and food processing plants is the Region's groundwater. California relies on the Regional Board to protect the Region's groundwater for domestic, agricultural and industrial supply.

Salt & Nitrate

- Greatest threat to groundwater quality
- Limited control over irrigated agriculture
- Regulate point sources via WDRs or waivers of WDRs

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Groundwater degradation from nitrate and salt threatens the beneficial uses of the Region's groundwater. Nitrate in drinking water can be toxic to humans, especially to infants. Salinity affects the palatability of drinking water and use of water for irrigation supply. While the overall goal of the Regional Board's agricultural regulatory activities has been to minimize the rate of salt impact, the effects of irrigated agriculture on groundwater quality are largely beyond Regional Board control. The Regional Board, however, directly regulates waste discharges by point sources, such as food processing plants, either through the adoption of waste discharge requirements (WDRs) or a conditional waiver of WDRs. Historically, small discharges were regulated under waivers, and the larger operations, by individual WDRs.

Land Treatment

- Apply like irrigation supply or soil amendment
- Crops uptake nitrogen and some salts
- Soil microorganisms degrade organics & remaining nitrogen

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Solid and liquid waste from food processing plants contains significant quantities of organic matter, nutrients and salts. In a land application site, food processing wastes are applied to fields like an irrigation supply or soil amendment. Crops grown on the fields take up nutrients and some salts. Soil microorganisms degrade organic matter and convert nitrate to nitrogen gas, which escapes to the atmosphere.

Land Treatment, cont.

- Organic matter degrades to weak acids and ultimately CO₂
- CO₂ dissolves in soil solution and forms weak acid
- Acids dissolve soil minerals and produce alkalinity

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The decomposition of organic matter forms organic acids and ultimately, carbon dioxide, which dissolves in soil solution and becomes carbonic acid. This, in turn, dissolves calcium and magnesium carbonates and also produces alkalinity.

Groundwater Impacts from Overloading

- Salts
- Nitrate
- Excessive Calcium, Magnesium,
and Alkalinity
- Iron, Manganese, Arsenic

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Over-application of waste can lead to nuisance conditions and groundwater impacts. Salts not taken up by crops are not degraded within the soil and can leach to groundwater. Nitrate not converted by bacteria can leach to groundwater. Acids formed during decomposition dissolve more calcium and magnesium and produce more alkalinity. Prolonged periods of oxygen depletion cause conditions that tend to mobilize iron, manganese, arsenic and other soil minerals, which leach to groundwater.

Historical Context

- Nuisance drives improvements
- Improvements prescribed in WDRs (e.g., stillage guidelines)
- Dischargers trusted to manage waste properly

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In the 1970s, excessive organic loadings by many dischargers created recurring nuisance conditions which, in turn, drove changes in management practices that were later incorporated in WDRs or waiver conditions. For the next three decades, the Regional Board trusted dischargers to properly operate their land application sites and adhere to waste management plans. Requirements to monitor the waste itself, as well as soil and underlying groundwater, have generally been minimal because water quality impacts from these discharges were then believed to be negligible.

Title 27

- 1985 regulations for wastes discharged to land
- Establishes prescriptive standards for discharges that can pollute groundwater

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In 1985, State Board adopted regulations in Title 27 for wastes discharged to land. Title 27 requires wastes that have significant potential to cause groundwater pollution be fully contained if they are discharged to land for treatment, storage or disposal. Title 27 establishes prescriptive standards for liners and leachate collection systems, as well as requirements for monitoring and closure.

Title 27 Exemption

- **Assumptions:**
 - conformance to basin plan
 - land treatment BMPs prevented or minimized degradation
- **Assumptions not realized in practice**

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In authorizing land application sites through issuance of WDRs, the Regional Board has historically exempted these sites from Title 27 because it was then assumed they conformed to the applicable basin plan. Where a discharge might degrade groundwater, it was assumed that best management practices would minimize degradation and prevent pollution. The Title 27 exemption led to dischargers disposing of their waste at the lowest costs, rather than optimizing conditions for reuse or implementing feasible treatment and control practices to minimize degradation.

March 2000 Info Item

- *Effective Regulation of Food Processing Waste*
- Described groundwater impacts
- Recommended WDRs increase discharger accountability
- Questioned Title 27 exemption

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In March 2000, staff alerted the Board that many land application sites had created pockets of pollution over and above impacts caused by irrigated agriculture. Staff recommended adoptions of WDRs that increased discharger accountability and expanded monitoring to periodically assess the effectiveness of land treatment in protecting groundwater. Staff further recommended that the Regional Board's exemption from Title 27 for these discharges be made on a rational scientific basis.

Industry Response

- California League of Food Processors manual of best practices
- Wine Institute field study and proposed discharge guidelines

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The information item prompted industry to re-evaluate its waste discharge practices. In 2001, the California League of Food Processors began working on its manual of good practices, and Wine Institute began working separately on a field study of discharge practices and their potential to impact groundwater quality. The League's manual provides, among other things, good advice on how to prepare a report of waste discharge. Wine Institute's report represents a significant contribution to the technical literature on soil treatment. However, neither document seriously addresses feasible treatment and control measures for salts that ensure compliance with water quality objectives. In 2004, Wine Institute requested that the Regional Board amend the Region's basin plans to incorporate its proposed discharge guidelines if a panel of independent scientists determines that the guidelines are scientifically sound for ensuring the effective protection of groundwater. Staff is developing questions for the panel.

Consistency Initiative

- Discharges not consistent with Antidegradation Policy
- Dischargers with pollution not required to investigate or cleanup per Cleanup Policy

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Through the Regional Board staff Consistency Initiative launched in 2001, staff concluded that the evaluation of factors in WDRs to allow groundwater degradation (required by the State Board Antidegradation Policy) were inadequate. For example, the WDRs required little or no monitoring to demonstrate that groundwater degradation has not occurred or, where it has, that the requirements of the policy have been satisfied. Further, where groundwater degradation was authorized, the WDRs did not require food processing dischargers to implement “best practicable treatment and control” to ensure that any affect on groundwater quality was the minimum that could be reasonably achieved. Additionally, while dischargers have been required to modify their waste management practices where groundwater pollution was found, investigation and cleanup of polluted groundwater, in accordance with the State Board Cleanup Policy, has not been required.

Sunset of Waivers

- All waivers expired 1/1/03
- Requires Regional Board review waiver conditions for effective groundwater protection
- Revised General Waiver and new Small Food Processor Waiver

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Legislation caused all regional board waivers to expire 1 January 2003. The legislation required all regional boards to review how wastes are being managed under waivers and whether the waiver conditions effectively protect water quality. The Regional Board revised the General Waiver conditions in January 2003 and in July 2003 adopted the Small Food Processor Waiver. The land application sites considered in this presentation do not include those eligible for coverage under these two waivers.

Current Situation

- Many sites creating groundwater degradation and pollution
- Nuisance complaints continue
- Industry guidelines rely on theoretical assumptions

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Since March 2000, little progress has been made to ensure an effective program for regulating land discharges of food processing waste. Many land application sites continue to unreasonably degrade and pollute groundwater. Many dischargers continue to be skeptical of the pervasiveness and severity of this impact. Nuisance complaints continue to be reported. Industry's proposed waste management strategies continue to rely on theoretical assumptions of waste attenuation that have not been demonstrated protective of groundwater. Staff attempts to increase discharger accountability continue to be met with resistance. Dischargers individually and collectively contest:

Contested Issues

- Food process waste is subject to classification under California Water Code
- Waste classification is determined relative to water quality objectives

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- that food process waste is subject to classification under the California Water Code,
 - that waste classification is determined relative to water quality objectives,

Contested Issues, cont.

- Title 27 exemption requires scientific evidence
- Land treatment requires accountability

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- that exemption from Title 27 requires scientific evidence that the discharge is consistent with the basin plan,
- that land treatment requires accountability,

Contested Issues, cont.

- Salt must be minimized and meet finite limits
- Discharger bears burden of proof

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- that salt must be minimized and meet finite limits, and
 - that it is the discharger's burden to prove its discharge is protective of groundwater.

This situation has significantly increased the time required of by staff to review and respond to inadequate technical reports, and to repeatedly explain to dischargers and their consultants the scientific evidence required to demonstrate a discharge is protective of groundwater. That is why we are here today, to tell the Board that staff must move forward in this regulatory program to implement the changes necessary to ensure the goals and objectives of the basin plan and State Board regulations and policies are met. I will now turn over the presentation to Wendy Wyels.

Data Summary

- Over 300 unregulated sites
- Of the 360 regulated sites:
 - 1/3 to treatment plants (POTWs)
 - 2/3 to land under WDRs or waiver
- POTWs charge fees and require pretreatment

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In preparation for this presentation, we asked staff to develop a list of all our regulated food processors, and to gather a little data about each site. That information is presented in Appendix B of the staff report, and I'd like to summarize it to give the Board an idea of the magnitude of the problem we face in regulating food processors.

First, there are over 300 operating food processors that are unregulated; I'll talk about these sites more later.

Of the approximately 360 regulated food processors in the Central Valley, about 1/3 of the sites discharge directly to a publicly owned treatment works (a POTW), and 2/3 discharge to land under individual WDRs or under the Small Food Processor Waiver. It is noted that POTWs typically charge fees based on the organic load and flow rate, and require that the discharger pre-treat the waste. These fees and pretreatment requirements can represent a significant cost, which food processors discharging to land may not bear.

Data Summary, continued

- 225 processors discharge to land
- Enforcement action taken at 64% of these sites
 - Enforcement ranges from simple letters to Board Orders
 - Violations include lack of reports, nuisance odors, groundwater pollution

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Of the 225 food processors under individual WDRs, we found that some type of enforcement action has already been taken at 64% of these facilities. Enforcement actions range from simple staff letters to Board-adopted orders, and the violations have included items ranging from not submitting monitoring reports, to nuisance odors that have affected an entire community, to groundwater pollution.

Data Summary, continued

- 225 food processors to land
 - 47%: monitor groundwater
 - 19%: confirmed degrade/pollute
 - 56%: suspected degrade/pollute
- Confirmed or suspected
groundwater impacts at 168 sites**

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Our review found some surprising information related to groundwater degradation. Of the 225 food processors under individual WDRs, about 47% are already required to monitor groundwater. 19% of the total number of sites have confirmed groundwater degradation or pollution. These sites have already been formally notified by staff of our determination that groundwater has been impacted. Staff suspects that another 56% of the sites have also degraded groundwater. While we have not formally notified the majority of these sites, we have made this determination based on our professional judgement, and our assessment of site-specific characteristics such as the type of waste discharged, the method of discharge, and quality of the underlying groundwater. This listing of suspected sites is not intended to be a list of sites for which we will do enforcement actions, but a method of prioritizing our work, a topic which I'll discuss later. To summarize our data, of the 224 food processors, groundwater degradation is either confirmed or suspected at 168 sites. This information by itself is enough to show that our previous regulatory efforts were not sufficient to protect water quality, and that we need to change our approach.

Principles

- Reuse of food processing waste can be beneficial but cannot cause unreasonable impacts
- Will require changes by both Regional Board staff and regulated community

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The recycling of food processing waste onto land can be beneficial to both soil and crops, but it must be done correctly in order to realize that benefit without unreasonable cost to the environment. Correcting the problems in our regulation of food processing waste will require changes by both the Regional Board and the regulated community, and it will require those food processors discharging to land to spend money to identify and correct water quality problems.

Existing Policies

- Basin Plan
- State Board's Antidegradation Policy
- State Board's Cleanup Policy
- Title 27

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When regulating sites that discharge to land, whether it be a municipal wastewater treatment plant or a food processor, staff must implement the Board's existing plans and policies. These include the Basin Plan, the State Board's Anti-Degradation Policy, the State Board's Cleanup Policy, and Title 27 of the California Code of Regulations. I'll discuss each of these briefly.

Basin Plan

- Discharge to land instead of surface water unless economically infeasible
 - Majority of food processors to land
 - Preventing groundwater impacts is overriding concern
- Beneficial uses
- Process to determine if groundwater has been degraded

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The Basin Plan states that wastes must be discharged to land, instead of to surface water, unless a discharger can show that it is economically infeasible to discharge to land. This is why the vast majority of food processors discharge either to land or to a POTW, and why preventing groundwater impacts becomes the overriding concern in regulating the discharge of food processing waste.

The Basin Plan describes the beneficial uses of groundwaters, and states that we must protect these uses. It also lays out the process we must use to determine if groundwater has been polluted.

Antidegradation Policy

- Can degrade groundwater only if:
 - Maximum benefit to people
 - No groundwater pollution
 - Implement Best Practicable Treatment and Control (BPTC)
 - Minimize degradation

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The State Board's Antidegradation Policy states that the discharge of waste may degrade the groundwater only under certain conditions: when it is to the maximum benefit of the people of the State, when groundwater pollution does not occur, and probably the most important concept at least in this setting, when Best Practicable Treatment and Control (or BPTC) measures have been implemented to minimize the groundwater degradation to the extent possible. Until recently, there was little emphasis in making sure that food processors discharged waste in conformance with this policy.

Other Policies

- State Board Cleanup Policy
 - Investigate and cleanup soil and groundwater
- Title 27 of the CCR
 - Classifies waste; manage to prevent groundwater degradation
 - Food processing wastes not exempted

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The State Board's Cleanup Policy describes the steps necessary to investigate and cleanup soil and groundwater that have been impacted by a discharge of waste. Requiring cleanup of polluted sites will help ensure that dischargers comply with their waste discharge requirements.

And finally, Title 27 of the California Code of Regulations classifies wastes, and requires that wastes which threaten water quality be managed in a way, usually through containment, such that they will not degrade the groundwater. The basis of Title 27 is to isolate wastes that pose a threat of pollution. It should be noted that food processing wastes are not specifically exempted in Title 27, and therefore, if a food processing waste threatens water quality, then it is subject to these regulations.

Proposed Approach

- Consistent and effective interpretation of these policies
- Not proposing any new policy
- Same approach as for municipal wastewater treatment plants

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Our proposed approach to regulating food processors relies on a consistent and effective interpretation and application of these four policies and regulations. I need to emphasize again that staff are not proposing any type of new policy, instead we are proposing that all three offices consistently apply the State's existing policies and that the Dischargers be required to submit the information necessary for us to implement these policies. Our proposal for food processors is no different than how we currently regulate municipal wastewater treatment plants.

Long-Term Vision

- **Wastes are either clean enough for release/reuse, or are isolated from the environment**
 - Release/reuse: will not cause unreasonable groundwater degradation (no more degradation than irrigating with clean water)
 - Isolated: Title 27 containment

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The staff report describes our long-term vision for regulating food processors. It can be summarized as ensuring that food processing wastes are either clean enough for release or reuse, and if not, then they are isolated from the environment.

When we say “clean enough for release and reuse” we mean clean enough that wastes can percolate from unlined ponds, can be used as an irrigation supply, or can be applied to land treatment units without causing unreasonable groundwater degradation. We propose that unreasonable degradation be defined as a water quality impact greater than that caused by irrigating the same land with clean water.

The second part of the vision states that if any portion of the waste is not clean enough for reuse, then it must be isolated from the environment. In that case, we would regulate the waste under Title 27 and the containment provisions described in those regulations.

Implement Vision

- Determine potential for groundwater degradation from the discharge
 - Site specific analysis
 - Sound science, conservative estimates
 - Waste strength at all release points
 - Baseline groundwater quality

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There are two main steps that must be taken to implement the vision. First, the discharger must determine the potential for groundwater degradation or pollution from the discharge of his waste. This is a site-specific analysis, and must rely on sound science and a conservative estimate of the impacts. The discharger must evaluate the strength of the waste at all points of release, including storage ponds and land application areas. The discharger must also determine the baseline quality of the underlying groundwater.

Implement Vision, cont.

- Determine appropriate regulatory approach for each release point
 - May regulate release points differently
 - Not all sites will be under Title 27
 - If waste initially threatens pollution, can implement BPTC measures to eliminate threat and exempt from Title 27
 - “Success stories” in staff report

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Second, staff and the discharger must work together to determine the appropriate regulatory approach for each point of release. It may be that different release points are regulated under different programs. For example, it may be necessary to regulate a pond containing high strength waste under Title 27, while the treated wastewater used to irrigate cropland would be regulated under the WDR program.

I'd like to point out that staff does not believe that all, or even most, of our food processors will be regulated under Title 27. If a waste is strong enough that it could pollute groundwater, the discharger will be given the opportunity to demonstrate that the waste can be managed in a manner so that it becomes exempt from Title 27. A waste may qualify for an exemption without any special treatment, or it may qualify after the discharger has undertaken some BPTC measure such as source control, waste segregation, waste minimization, or pretreatment.

The staff report contains four “success stories” in which we highlight the actions taken by four food processors to manage their waste so that it does not degrade water quality. Staff is of the opinion that if those four dischargers can implement BPTC measures to protect water quality, then other food processors can too.

Existing Dischargers

- Priority: groundwater degradation, high strength waste, large volume waste, or complaints
- Update Monitoring and Reporting Programs: define waste and groundwater quality
- Review data: is groundwater degraded or polluted?

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Staff has developed a phased approach to implement our long-term vision. Due to our extreme workload and lack of staffing, for the existing facilities, our highest priority will be those sites with known groundwater degradation or suspected groundwater degradation. Within these two groups, we will focus on sites with high strength waste, a large volume of waste, or for which we've received complaints.

The first step in implementing our long-term vision is to determine the potential for groundwater degradation. Many of our existing facilities are regulated under waste discharge requirements that were written some time ago, and this analysis was never completed. In addition, these facilities' Monitoring and Reporting Programs are outdated, and don't include the level of detail that's in the MRPs which the Board has recently adopted. To collect the data needed to determine the potential impact to water quality, staff proposes to review the individual Monitoring and Reporting Programs and update them as needed. Each update will be specific for that facility, but in general will require the discharger to fully define and monitor all of its waste streams and discharge locations, and to monitor the groundwater.

Once this data is collected, staff will review it to determine whether a food processor already has, or has the potential to, degrade or pollute the groundwater. We'll be able to make this determination fairly soon for some dischargers, because they're already collecting data under recently adopted Monitoring and Reporting Programs. But it may take 3-4 years for other dischargers to obtain the information, as they'll need to install groundwater monitoring wells and then collect data over several processing seasons.

No Groundwater Degradation

- Monitor facility for compliance with WDRs
- Review groundwater monitoring summary and wastewater management plans annually

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Our review of the data submitted through the MRP process will show that some facilities are not degrading, and do not have the potential to degrade, the groundwater. In that case, staff will simply continue to monitor the facility for compliance with its WDRs, and will continue to review the discharger's monitoring reports.

Groundwater Polluted

- Cleanup and Abatement Order
 - Characterize waste
 - Define impacts to soil and groundwater
 - Evaluate and select BPTC methods
 - Design and construct improvements
 - Submit a RWD
 - Implement groundwater remediation

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On the other hand, our review of the data will probably find that a significant number of food processors have impacted groundwater. In this case the Discharger will be in violation of its Waste Discharge Requirements and staff will prepare a Cleanup and Abatement Order for the Executive Officer's signature. While each C&A would be tailored to site-specific conditions, in general they would require that a discharger characterize the waste, define the impacts to soil and groundwater, evaluate and select best practicable treatment and control methods, design and construct improvements (which may then be regulated under either the WDR program or the Title 27 program), submit a Report of Waste Discharge, and finally, where groundwater pollution has been identified, investigate the feasibility of cleanup, and remediate the groundwater in accordance with the State Board's Cleanup Policy.

New and Expanding Dischargers

- Report of Waste Discharge must:
 - Characterize waste and groundwater
 - Propose BPTC measures
 - Propose monitoring, effluent limits, groundwater limits
 - Demonstrate reasonable potential to comply with Antidegradation Policy

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Any proposed new food facility, or any expanding existing facility, is required under the Water Code to submit a Report of Waste Discharge. The Report of Waste Discharge should completely characterize the waste and the groundwater, propose BPTC measures to protect the groundwater, propose a monitoring program to show whether the BPTC measures are effective, propose effluent and groundwater limits, and demonstrate that the discharge has a reasonable potential of complying with the Antidegradation policy.

Unregulated Dischargers

- As time permits, will request RWDs
- Smaller sites will qualify for coverage under Small Food Processor waiver or Low Threat waiver
 - Proposed change in regulatory approach does not apply to Small Food Processor waiver

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As I've stated earlier, there are over 300 food processors, mainly wineries, that began discharging waste without first submitting a Report of Waste Discharge and are therefore operating in violation of the California Water Code. As time permits, staff has been requesting Reports of Waste Discharge from these sites. We anticipate that a fair number of them will be able to qualify for a waiver of WDRs, under either the Small Food Processor Waiver (which was adopted by the Board in 2003) or under the Board's general low-threat waiver.

I should point out that our proposed changes to better regulate food processors does not apply to those sites enrolled under the Small Food Processors waiver. Their compliance history, and their potential for water quality impacts, will be evaluated when the waiver expires in 2008.

Industry Groups

- Will continue to work with industry
- Industry could provide guidance:
 - Salinity reduction studies
 - Compile existing BPTC methods
 - Waste load guidelines, adapt to site-specific conditions
 - Test plot demonstrations

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Throughout the years, staff has worked with the various industry groups and we intend to continue working with these organizations. We would like to point out to the Board, however, that during our discussions with the regulated community, there tends to be much skepticism about the documented cases of groundwater pollution at food processing sites, and about the applicability of State plans and policies to food processing waste.

We believe that the industry groups could provide guidance to their members in several areas. For example, salinity reduction studies are now routinely required when a food processor's WDRs are updated. An industry group could develop general guidance for these types of studies. They could also compile existing information regarding the various BPTC methods for treating food processing waste.

The industry could also help their members to determine appropriate waste loading rates by developing guidelines that could be adjusted to the site-specific conditions at each facility. An industry group could also conduct test plot demonstrations at representative sites to evaluate the success of their guidelines, as was done by the Wine Institute.

Lack of Staff Resources

- Currently at 15% of that needed
- Request State Board to adequately fund the WDR program
- Reclassifying threat/complexity to reflect true water quality threat and true cost of regulation
- Include cost recovery in C&A Orders
- Affirm staff's proposed approach

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The WDR program is currently staffed at less than 15% of what State Board estimates is needed to adequately sustain the program. The current multi-month delays in reviewing reports and preparing waste discharge requirements will only get worse if we regulate the food processors as proposed. To change course and effectively protect water quality, we must have enough resources.

The staff report contains a number of detailed suggestions, including requesting State Board to adequately fund the WDR program; reclassifying each food processing site to the correct threat and complexity rating so that they reflect the true threat to water quality and the true cost of regulating these sites; including a cost recovery provision in Cleanup and Abatement Orders so that a facility reimburses the staff time to oversee it returning to compliance; and affirming staff's approach to regulating food processing sites. This last suggestion is included because staff spends a considerable amount of time with individual dischargers trying to communicate the Board's policies and regulations. If the Board agrees with staff's proposals today, then dischargers will have less reason to delay matters and argue points, and staff should be able to work on a greater number of sites in the same period of time.

Public Comments

- Notified almost 350 parties
- Lack of time to comment
 - This is an informational item
 - No new regulations
- Comply with Admin Procedures Act
 - No new regulations
- Need for change unsupported
 - Known cases of groundwater pollution

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Staff realized that there would be wide-spread interest in this informational item, so we notified all the interested parties that we were aware of, which amounted to almost 350 dischargers, industry groups, consultants, and environmental groups.

We sent the notification out as soon as we had finished writing the staff report, and gave as long a public comment period as possible, which was approximately 9 days. We've received 25 written comment letters, which were forwarded to the Board members. In addition to the comments that we already addressed during this presentation, there's a few other comments we'd like to address.

First, people are upset at the lack of time to provide written comments. We understand the concern, but remind the Board that this is just an informational item and that the Board has scheduled substantial time for verbal input today. Also, we are not proposing any new regulations or asking that the Board adopt an order today, we are simply informing the Board as to our proposal on how to more efficiently and consistently implement existing regulations.

Next, some parties believe that this hearing and staff's proposal needs to comply with the Administrative Procedures Act as they interpret our action as a "rule making". We disagree. We are not proposing new regulations, we are just talking about how to better implement the existing regulations. The process we're going through today is exactly the same as we went through a few years ago, when staff prepared an informational item for the Board to explain how we proposed to better regulate municipal wastewater dischargers. We were not required to go through the Administrative Procedures Act for that exercise, and there is no reason to go through it for this exercise.

A number of comments state that the need for change is unsupported. The purpose of the written staff report and our testimony today was to describe for the Board the lack of water quality protection we've found with our past regulatory methods. Staff believe that the known cases of groundwater pollution from food processors provides a compelling basis for us to better implement our existing policies and regulations, especially the Antidegradation Policy and Title 27, in our regulation of food processors.

Public Comments

- Food processors not the same
 - Sites evaluated on case-by-case basis
- Severe economic impact
 - Analysis completed when regulations adopted
 - Time schedules in enforcement orders

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Several commenters state that not all food processors are the same, and that they should not all be regulated in the same manner. Staff agrees that the waste strength can be quite different within segments of the industry, for example, between fresh fruit packers and wineries. A waste disposal method that may be protective of groundwater at a fresh fruit packer may pollute the groundwater at a winery. We want to remind the Board that we always regulate sites on a case-by-case basis, and that what we're proposing today is simply a framework for our review of individual sites.

Finally, the industry states that staff's proposal will result in severe economic impact. Staff is aware that there is an economic impact on any industry or individual facility which must comply with existing regulations to protect water quality. However, that analysis was already completed when these existing regulations were adopted. In addition, the economic impact on an individual discharger is considered when the Executive Officer or the Board adopts a time schedule in an enforcement order. If a discharger presents a compelling rationale, then a time schedule may be extended.

Summary

- Regional Board charged with protecting water quality
- Amount of protection described in Antidegradation Policy
- Discharge of waste is a privilege and is contingent upon complying with policies
- Know that some food process waste has impacted groundwater

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The Regional Board is charged with protecting water quality. Almost 40 years ago, back in 1968, the State Board told us how much water quality protection was necessary when they adopted Resolution No. 68-16, the Antidegradation Policy. The California Water Code says that the ability to discharge waste is a privilege, not a right. The Regional Board allows each food processor the privilege to discharge waste when it adopts waste discharge requirements. That privilege is contingent upon complying with existing policies, including the Antidegradation Policy. Staff is proposing nothing new today, other than to make sure that we – the staff and the Board – implement existing policies.

We know that some food processing discharges have degraded or polluted groundwater, in violation of the Antidegradation Policy and our Basin Plan. Therefore, we need to refine our method of regulating these sites.

Summary

- Appropriate to:
 - Require detailed information
 - Update MRPs
 - If degradation, implement BPTC
 - Title 27 necessary in some cases
 - C&A Order; remediate groundwater
- Critical lack of staff resources

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Staff believes it is appropriate and necessary to require that a food processor submit detailed information regarding its waste discharge. It is also appropriate to update existing Monitoring and Reporting Programs to provide this information.

If a site has degraded, or has the potential to degrade, groundwater, it is appropriate to require that BPTC measures be implemented.

If a discharge cannot be treated in a manner to prevent groundwater pollution, then it should be regulated under Title 27.

If a discharge causes groundwater pollution, then it is appropriate prepare a Cleanup and Abatement Order requiring facility changes and groundwater remediation.

And finally, the WDR Program has already has a critical lack of staff resources, and staff's proposal for regulating food processors will only exacerbate the problem unless additional funding sources are found.

This ends staff's presentation. We welcome your comments and guidance, and I'd be happy to answer any of your questions.