

**From:** "Gabriel Solmer" <gabe@sdcoastkeeper.org>  
**To:** <wchiu@waterboards.ca.gov>  
**Date:** 8/1/2007 4:33:52 PM  
**Subject:** San Diego Coastkeeper comments on proposed waiver policy

Mr. Chiu,

Please find the attached comments on the proposed waiver policy. Feel free to contact me with any questions or concerns.

Thank you,

Gabriel Solmer

Ms. Gabriel Solmer, Esq.

Legal Director

San Diego Coastkeeper

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August 1, 2007

Mr. Wayne Chiu  
California Regional Water Quality Control Board, San Diego Region  
9174 Sky Park Court, Suite 100  
San Diego, California, 92123



**Re: Revised Conditional Waivers of Waste Discharge Requirements for Specific Types of Discharge within the San Diego Region**

Dear Mr. Chiu,

I am writing to you on behalf of San Diego Coastkeeper (Coastkeeper), a non-profit organization dedicated to the preservation, protection, and defense of the environment, wildlife, and the natural resources of San Diego area waterways. Water quality plays a significant role on public health, quality of life and the local economy in the San Diego region. The importance of regional water quality is heightened as the number of impaired water bodies in the San Diego region continues to increase.

The Porter-Cologne Act requires all who discharge or propose to discharge waste "that could affect the quality of the waters of the state" (defined as including groundwater) to report the discharge to the local Regional Water Quality Control Board. Cal. Water Code § 13260. A Regional Board may regulate various discharges with WDRs or, if appropriate, with "waivers of WDRs, with conditions" to ensure that those discharges do not impact use of the state's waters. Water Code section 13269(a)(1) specifies, however, that waivers of WDRs should only be issued where the Regional Board has determined that a waiver would both be in the public interest and is "consistent with any applicable state or regional water quality control plan."

Coastkeeper commends the Regional Board for proposing three notable changes to the existing WDR waiver policy. First, we recognize that the Regional Board has increased and made more specific the conditional requirements of each waiver, particularly where the discharge has been identified as a potentially significant source of pollutants for waters bodies on the CWA 303(d) list. Second, the policy identifies nine additional types of discharges, including discharge from fireworks, that are not currently regulated in the region, which we feel is a necessary expansion of the WDR and WDR waiver program. And lastly, we acknowledge that the Regional Board has provided the necessary authority to increase regulation through MMs/BMPs, monitoring requirements, and WDRs, reserving the possibility of stricter requirements for dischargers.

While the proposed WDR waiver policy is a vast improvement over the one currently in place, Coastkeeper would like to voice a few brief concerns with the program. The first pertains to the waiver of WDRs for types of discharges that are listed as source of impairment of 303(d) listed water bodies. While increasing the conditional requirements for the waiver is an improvement over the existing policy, Coastkeeper does not feel that this is adequate or permissible under the Porter-Cologne Act. Since the Regional Board has identified that these waterways are impaired or threatened discharges subject to a waiver, it is a manifest failure of the Regional Board's duties under the Porter Cologne Act not to regulate these discharges by WDRs and to have instead issued WDR waivers for these discharges. Based on Water Code section 13269(a)(1), WDR waivers, which do not contain the necessary enforcement tools

found for WDRs, are inconsistent with the Basin Plan for such discharges. In addition, waivers for discharges causing or contributing to waters being listed as impaired are not in the public interest, thus also precluded by Water Code section 13269(a)(1).

Second, Coastkeeper requests that the Regional Board gather and analyze information about the extent of the adverse surface and/or groundwater quality impacts caused or exacerbated by the discharges. To the best of Coastkeeper's knowledge, the Regional Board has failed to gather, analyze and make publicly available information about the extent of the adverse surface and/or groundwater quality impacts caused or exacerbated by the discharges covered under conditional waivers, despite having a duty to ensure monitoring of state water quality, including polluted runoff discharges to the extent they are being addressed by WDRs or waivers, and make monitoring results publicly available. *See* CWA § 305(b), Cal. Water Code § 13269(a)(2).

Coastkeeper requests that monitoring be included as a condition of any WDR waiver, and not made optional. If the Regional Board's analysis concludes that these discharges could affect the quality of the waters of the state, (*see* Cal. Water Code § 13260(a)(1)) within the Regional Board's jurisdiction, Coastkeeper further requests that the Regional Board issue tentative WDRs that appropriately regulate such discharges. Should the Regional Board find there are adverse impacts associated with these discharge, Coastkeeper again requests the Regional Board consider whether amendments to the Basin Plan to include prohibitions or further conditions on polluted runoff discharges are needed.

Lastly, we would like to call attention to the Regional Board's failure to regulate marinas under either a WDR or WDR waiver. Marinas are listed as a source of impairment in Region 9, specifically impacting Dana Point Harbor and likely other areas. Marinas continue to cause and contribute to significant and lasting degradation to the waters in this Region, and must by law be regulated under the Porter-Cologne Act. Coastkeeper therefore requests that the Regional Board take immediate action in regulating marinas through WDRs.

Again, Coastkeeper would like to reiterate its support of the Regional Board in proposing a more comprehensive and protective waiver policy. While we recognize that this is a step in the right direction, we also feel that several improvements must be made in order to protect our region's waterways. The issues addressed above highlight a few of our broader concerns which we will clarify further at the Regional Board public hearing on August 8. Thank you for your time and cooperation in this matter.

Sincerely,

Jacque Gruber  
Legal Intern  
San Diego Coastkeeper

Gabriel Solmer  
*Legal Director*  
San Diego Coastkeeper