

**California Regional Water Quality Control Board  
San Diego Region**

**Basin Plan Amendment to  
Renew and Issue Revised Conditional Waivers  
of Waste Discharge Requirements for  
Specific Types of Discharge within  
the San Diego Region**

**Technical Report  
September 27, 2007**

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Documents also are available at: <http://www.waterboards.ca.gov/sandiego>.

# **Basin Plan Amendment to Renew and Issue Revised Conditional Waivers of Waste Discharger Requirements for Specific Types of Discharge within the San Diego Region**

## **Technical Report**

Adopted by the  
California Regional Water Quality Control Board  
San Diego Region  
on [REDACTED], 200x

Approved by the  
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and the  
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## Acronyms and Abbreviations

ACOE	Army Corps of Engineers
ADC	alternative daily cover
AFO	animal feeding operation
BMP	best management practices
BOF	California Board of Forestry
CAFO	confined animal feeding operation
CalEPA	California Environmental Protection Agency
CDF	California Department of Forestry
CDFA	California Department of Food and Agriculture
CDFG	California Department of Fish and Game
CDPH	California Department of Public Health
CEQA	California Environmental Quality Act
CHHSL	California Human Health Screening Level
CI	confidence interval
CIWMB	California Integrated Waste Management Board
cm/sec	centimeters per second
CPC	California Plumbing Code
cy	cubic yard
DWR	California Department of Water Resources
eFOTG	electronic Field Office Technical Guide
EIR	environmental impact report
e-PRG	ecological preliminary remediation goal
EQIP	Environmental Quality Incentives Program
END	Exotic Newcastle Disease
FPR	California Forest Practice Rules
GIS	geographical information system
LEA	local enforcement agency
LOP	local oversight program
mg/kg	milligrams per kilogram
MAA	Management Agency Agreement
MADEP	Massachusetts Department of Environmental Protection
MM	management measure
MMs/BMPs	management measures and/or best management practices
MOU	memorandum of understanding
MPR	Monitoring Program Report
MRP	Master Reclamation Permit
MRPP	Monitoring and Reporting Program Plan

## Acronyms and Abbreviations (Cont'd)

MS4	municipal separate storm sewer system
MSW	municipal solid waste
NEPA	National Environmental Policy Act
NFS	National Forest Service
NPDES	National Pollutant Discharge Elimination System
NPS	nonpoint source
NRCS	Natural Resources Conservation Service
NTMP	Non-industrial Timber Management Plan
OAL	Office of Administrative Law
OEHHA	Office of Environmental Health Hazard Assessment
ORNL	U.S. Department of Energy Oak Ridge National Laboratory
OSPR	Office of Spill Prevention and Response
OWTS	on-site wastewater treatment system
PCB	polychlorinated biphenyl
POTW	publicly owned treatment works
QAPP	Quality Assurance Project Plan
RCD	resource conservation district
RoWD	report of waste discharge
SMARA	Surface Mining and Reclamation Act
SSL	Soil Screening Level
THP	Timber Harvest Plan
TMDL	Total Maximum Daily Load
TTLC	total threshold limit concentration
UCCE	University of California Cooperative Extension
UCL	upper confidence limit
USEPA	U.S. Environmental Protection Agency
USFS	U.S. Forest Service
USFWS	U.S. Fish and Wildlife Service
WDR	waste discharge requirement
WQMA	Water Quality Management Agency
WRR	water reclamation requirement



## Executive Summary

Section 13269 of the Porter-Cologne Water Quality Control Act (Water Code) gives the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) the authority to waive the requirements of Water Code sections 13260(a) and (c), 13263(a), and 13264(a) for specific discharges or specific types of discharge, provided the waiver is consistent with the *Water Quality Control Plan for the San Diego Basin (9)* (Basin Plan) and is in the public interest. The San Diego Water Board may waive the requirement for a discharger to file a report of waste discharge (RoWD) pursuant to Water Code sections 13260(a) and (c) and 13264(a), or the issuance of waste discharge requirements (WDRs) pursuant to Water Code sections 13263(a) and 13264(a), or both. Discharges that comply with waiver conditions are expected to pose a low threat to the quality of waters of the state. When a discharge complies with waiver conditions, it becomes eligible for a waiver. .

The existing conditional waivers became effective January 1, 2003 and are set to expire on December 31, 2007. The existing conditional waivers must be renewed or allowed to expire. Since the existing conditional waivers were issued in 2002, several types of discharge eligible for the existing conditional waivers have been identified as potentially significant sources of pollutants to waters of the state. In addition to the types of discharge eligible for the existing conditional waivers, several new types of discharge have been identified that are not currently regulated in the San Diego Region, but could also be allowed to be eligible for conditional waivers.

The purpose of this Basin Plan amendment is to revise the conditional waivers in the Basin Plan to include waiver conditions that will minimize or eliminate the discharge or potential discharge of pollutants to waters of the state, as well as allow additional types of discharge to be eligible for conditional waivers.

There are 35 (26 existing and 9 new) types of discharge for which the San Diego Water Board has proposed to conditionally waive the requirement to file a RoWD and/or regulate under WDRs. Instead of developing conditional waivers for each specific type of discharge, an integrated approach was developed to simplify the proposed conditional waivers. Types of discharge that are similar in nature or originate from a common setting or operation have been grouped together into a “discharge classification.”

Conditional waivers for the following discharge classifications have been proposed for adoption by the San Diego Water Board to amend the Basin Plan:

1. Discharges from on-site disposal systems
2. “Low threat” discharges to land
3. Discharges from animal operations
4. Discharges from agricultural and nursery operations
5. Discharges from silvicultural operations
6. Discharges of dredged or fill materials nearby or within surface waters
7. Discharges of recycled water to land

8. Discharges/disposal of solid wastes to land
9. Discharges of slurries to land
10. Discharges of emergency/disaster related wastes
11. Aerially discharged wastes over land

General Conditions were developed that are applicable to all specific types of discharge within a discharge classification, and Specific Conditions were developed for individual types of discharge if additional or discharge-specific conditions were necessary.

## 1 Introduction

The California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) is charged with protection of the quality of groundwater and surface waters of the state within the Region. One of the primary ways the San Diego Water Board protects water quality is by prescribing “requirements as to the nature of any discharge of waste.”<sup>1</sup> These requirements are called “Waste Discharge Requirements” or “WDRs.” The Porter-Cologne Water Quality Control Act (Water Code) requires any person discharging or proposing to discharge waste within the Region to file with the San Diego Water Board a Report of Waste Discharge (RoWD).<sup>2</sup> In general, a person may not initiate a discharge, or materially change a discharge before the San Diego Water Board prescribes WDRs.<sup>3</sup> The requirements that 1) a person file a RoWD, 2) the San Diego Water Board prescribe WDRs, and 3) a person not initiate a discharge prior to the San Diego Water Board prescribing WDRs are found in the Water Code.<sup>4</sup>

The Water Code also authorizes the San Diego Water Board to waive one or more of these three requirements as to a specific discharge or type of discharge.<sup>5</sup> The San Diego Water Board may grant a waiver of one or more of these three requirements (waivers) if the waiver is consistent with any state or regional water quality control plan and the waiver is in the public interest<sup>6</sup> and the discharge complies with the conditions pursuant to which waivers are granted.<sup>7</sup>

The *Water Quality Control Plan for the San Diego Basin (9)* (Basin Plan) provides the foundation for regulatory activities of the San Diego Water Board. Chapter 4 (Implementation) of the Basin Plan was amended in September 2002 to incorporate the “existing conditional waivers.”<sup>8</sup> The existing conditional waivers currently waive WDRs and/or the requirement to file RoWDs for 26 specific types of discharge.

The existing conditional waivers became effective January 1, 2003 and are set to expire on December 31, 2007. The existing conditional waivers must be renewed or allowed to expire. The purpose of this Basin Plan amendment is to renew the existing conditional waivers with some modifications to the associated waiver conditions, as well as allow several additional types of discharge to be eligible for a conditional waiver.

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<sup>1</sup> Water Code section 13263(a)

<sup>2</sup> Water Code sections 13260(a) and (c)

<sup>3</sup> Water Code section 13264(a)

<sup>4</sup> Water Code sections 13260(a) and (c), 13263(a), and 13264(a), respectively.

<sup>5</sup> Water Code section 13269(a)

<sup>6</sup> Ibid

<sup>7</sup> Water Code section 13269(e)

<sup>8</sup> Resolution R9-2002-0186, *Amendment to the Water Quality Control Plan for the San Diego Region (9) to Incorporate a Waste Discharge Requirement Waiver Policy for Certain Specific Types of Discharges*, adopted in September 2002

## 1.1 Role of Conditional Waivers

The San Diego Water Board may waive the requirement for a discharger to file a report of waste discharge (RoWD) pursuant to Water Code sections 13260(a) and (c) and 13264(a), or the issuance of waste discharge requirements (WDRs) pursuant to Water Code sections 13263(a) and 13264(a), or both. Discharges that comply with waiver conditions are not expected to pose a threat to the quality of waters of the state. When a discharge complies with waiver conditions, it becomes eligible for a waiver.

However, even if a discharger fully complies with all the conditions of a conditional waiver, the San Diego Water Board may choose to regulate any specific discharge with WDRs. The existence of a conditional waiver does not preclude regulation under WDRs.

Nevertheless, there are several types or categories of discharge for which waivers are desirable. Conditional waivers allow the San Diego Water Board to utilize fewer resources, allowing it to focus on discharges that have a higher potential threat to water quality in the Region. Dischargers also benefit from fewer resource requirements when discharging in compliance with a conditional waiver. Therefore, conditional waivers are in the best interest of the San Diego Water Board, the dischargers, and the public whenever possible.

A conditional waiver provides the minimum requirements that are expected of a discharger to minimize or eliminate the discharge or potential discharge of pollutants to waters of the state. Compliance with waiver conditions may not ensure that water quality is protected in every situation. Therefore, a waiver for a specific discharge or specific type of discharge is conditional and *may be terminated at any time* if the San Diego Water Board determines that a specific discharge or specific type of discharge is no longer consistent with the Basin Plan or no longer in the public interest.

A conditional waiver does not authorize any discharge that is otherwise prohibited or regulated. A conditional waiver does not preclude the need for permits, licenses, or certificates that may be required from other local or governmental agencies and entities. If any regulations or ordinances have more restrictive requirements than the applicable waiver conditions, those requirements supersede the waiver conditions. However, if requirements of a conditional waiver are more restrictive than the applicable regulations or ordinances, as they pertain to water quality protection, the discharger must comply with the conditions of the waiver or else file a RoWD with the San Diego Water Board.

Finally, a conditional waiver does not preclude the San Diego Water Board from taking enforcement actions for violation of waiver conditions, or for any discharges that cause or threaten to cause violation of provisions in the Basin Plan, or that create or threaten to create a condition of nuisance or pollution.

## 2 Background

The Water Code defines “waste” as “sewage and any and all other waste substances, liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or processing operation, including waste placed within containers of whatever nature prior to, and for purposes of disposal.”<sup>9</sup>

“Discharge of waste” is any waste that enters “waters of the state,” which is “any surface water or groundwater, including saline water, within the boundaries of the state.”<sup>10</sup>

Section 13264(a) of the Water Code states that “no person shall initiate any new discharge of waste...prior to the filing of the reports required by section 13260 and no person shall take any of these actions after filing the report but before whichever of the following occurs first:

- (1) *The issuance of waste discharge requirements pursuant to section 13263.*
- (2) *The expiration of 140 days after compliance with section 13260 if the waste to be discharged does not create or threaten to create a condition of pollution or nuisance.*
- (3) *The issuance of a waiver pursuant to Section 13269.”*

Section 13260(a)(1) of the Water Code requires that any person (including any city, county, district, or other entity) discharging, or proposing to discharge, wastes within any region that could affect the quality of waters of the state, other than into a community sewer system, must file a RoWD with the appropriate California Regional Water Quality Control Board (Regional Water Board).

Water Code section 13263(a) requires that each Regional Water Board prescribe discharge requirements for any existing or proposed waste discharges within its area of jurisdiction, except discharges into a community sewer system, even if no RoWD has been filed.

Finally, Water Code section 13269 gives each Regional Water Board the authority to conditionally waive the provisions of sections 13260(a)(1), 13263(a), and 13264(a) for a specific discharge or type of discharge. In order to do so, a Regional Water Board must determine that a waiver for a specific discharge or type of discharge is consistent with the Basin Plan and is not against the public interest.

Because the resources available to the San Diego Water Board are significantly less than those needed to regulate all possible waste discharges in the Region, focusing on discharges based on their potential threat to water quality is necessary. Most types of discharge that have a higher threat to water quality are typically point sources.

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<sup>9</sup> Defined in Water Code section 13050(d)

<sup>10</sup> Defined in Water Code section 13050(e)

Discharges from point sources are readily amenable to regulation and shown to be effectively regulated through the adoption of general or individual WDRs.

However, there are several types of point source, as well as nonpoint source discharges that may not have an adverse affect on the quality of the waters of the state, and/or are not readily amenable to regulation through WDRs. For these types of discharge, issuing a conditional waiver may be appropriate. The types of discharge which may be eligible for a waiver only include discharges to land and groundwater, and discharges to surface waters that are not otherwise subject to National Pollutant Discharge Elimination System (NPDES) regulations.<sup>11</sup> NPDES regulations are federal regulations. There are no federal or state regulations that allow NPDES regulations to be waived.

The San Diego Water Board developed and formally issued the conditional waivers for specific types of discharge in the San Diego Region with a resolution adopted in 1983.<sup>12</sup> The conditional waivers were incorporated into the Basin Plan in 1994 to centralize the information in one location for the public. The conditional waivers are described in Chapter 4 (Implementation) of the Basin Plan.

Water Code sections 13269 (pertaining to waivers) and 13350 (pertaining to civil liability) were amended in 1999.<sup>13</sup> The amendments to section 13269 require the following:

- For waivers in effect on January 1, 2000, review the terms, conditions and effectiveness of each waiver issued;
- Renew waivers for specific discharges or types of discharge by January 1, 2003 (failure to renew a waiver automatically results in termination of the waiver);
- Determine if general or individual WDRs should be issued for ongoing discharges where waivers have been terminated;
- Establish waiver conditions;
- Enforce waiver conditions; and,
- Renew each waiver every five years (or each waiver will expire automatically).

The amendments to section 13350 specify that any person that discharges waste in violation of a waiver condition shall be liable civilly, and remedies may be proposed, in accordance with Water Code section 13350(d) or (e). Therefore, waiver conditions are enforceable.

Conditional waivers must be consistent with the Basin Plan and in the public interest. The consistency requirement means that a waiver cannot permit dischargers to violate water quality objectives or Basin Plan prohibitions. In order for the conditional waivers to be consistent with the Basin Plan, the following general overall conditions apply to

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<sup>11</sup> Defined in Code of Federal Regulations Title 40 section 122.3

<sup>12</sup> Resolution No. 83-21, *A Resolution Conditionally Waiving Adoption of Waste Discharge Requirements for Certain Specific Types of Discharges*, adopted in July 1983

<sup>13</sup> On October 10, 1999, Senate Bill 390 was ratified and effectively amended Water Code sections 13269 and 13350.

each specific type of discharge for which a conditional waiver of WDRs and/or the requirement to file RoWDs may be issued:

- The discharge shall not create a nuisance<sup>14</sup> or pollution<sup>15</sup> as defined in the Water Code;
- The discharge shall not cause a violation of any applicable water quality standard for receiving waters adopted by the San Diego Water Board, or the State Water Resources Control Board (State Water Board), as required by the Clean Water Act; and
- The discharge of any substance in concentrations toxic to animal or plant life is prohibited.

In addition to the general overall conditions listed above, issuing conditional waivers would not be against the public interest under one or more of the following circumstances:

- The type of discharge is effectively regulated by other public agencies; or
- The type of discharge does not adversely affect the quality or the beneficial uses of the waters of the state; or
- The type of discharge is not readily amenable to regulation through adoption of WDRs, but warrants San Diego Water Board oversight to ensure compliance with the mandated conditions (e.g., Basin Plan water quality objectives).

The San Diego Water Board re-issued the conditional waivers for the San Diego Region in accordance with the amendments to Water Code section 13269 on September 11, 2002.<sup>16</sup> The existing conditional waivers became effective January 1, 2003 and are set to expire on December 31, 2007.

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<sup>14</sup> "Nuisance" is defined by Water Code section 13050(m) as anything which meets all of the following requirements: (1) Is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property; (2) Affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal; and (3) Occurs during, or as a result of, the treatment or disposal of wastes.

<sup>15</sup> "Pollution" is defined by Water Code section 13050(l)(1) as an alteration of the quality of the waters of the state by waste to a degree which unreasonably affects waters for beneficial uses or facilities which serve these beneficial uses. Pollution may include contamination.

<sup>16</sup> Resolution No. R9-2002-0186, *Amendment to the Water Quality Control Plan for the San Diego Region (9) to Incorporate a Waste Discharge Requirement Waiver Policy for Certain Specific Types of Discharges*, adopted September 11, 2002

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### 3 Purpose of the Proposed Basin Plan Amendment

The existing conditional waivers<sup>17</sup> are set to expire on December 31, 2007. The existing conditional waivers must be renewed or allowed to expire. Because the existing conditional waivers are part of the Basin Plan, renewal and any revisions to the conditional waivers and waiver conditions require a Basin Plan amendment. Therefore, the purpose of this Basin Plan amendment is to renew and revise the existing conditional waivers and waiver conditions, as well as allow additional types of discharge to be eligible for a conditional waiver.

The conditions of each existing conditional waiver must be reviewed for effectiveness in minimizing or eliminating the discharge of pollutants and protecting water quality. Discharges that comply with waiver conditions are not expected to pose a threat to water quality. In reviewing the effectiveness of a waiver and its conditions, the San Diego Water Board considered the volume, duration, frequency, and constituents of a type of discharge, as well as resources required and available for regulating the type of discharge. If waiver conditions are shown to be ineffective in minimizing or eliminating the discharge of pollutants for a type of discharge, the waiver conditions should be revised to improve effectiveness. If the waiver conditions cannot be revised to improve effectiveness, the conditional waiver should be terminated and the San Diego Water Board should adopt and issue conditional waivers for specific discharges, or issue WDRs for specific individual discharges, or issue general WDRs for a type or category of discharge in the Region.

For each existing conditional waiver that is allowed to expire, the San Diego Water Board must determine whether the type of discharge should be subject to general or individual WDRs. For each existing conditional waiver that is renewed, the conditions of the waiver must be reviewed for effectiveness and revised, as needed, to ensure these types of discharge will not pose a threat to water quality if they comply with the waiver conditions. In addition, new types of discharge may be identified and issued conditional waivers and waiver conditions if the San Diego Water Board determines that waiving WDRs and/or the requirement to file RoWDs for the newly proposed types of discharge is consistent with the Basin Plan and in the public interest.

Available evidence and water quality monitoring data collected within the Region since 2002 indicate that the waiver conditions for the types of discharge that are eligible for the existing conditional waivers may not be effective enough to minimize or eliminate the discharge of pollutants for the protection of water quality. The waiver conditions for each existing conditional waiver were reviewed, and revised, as needed, to require discharges to be consistent with the Basin Plan, and require dischargers to submit sufficient information, as required in the waiver conditions or when requested by the

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<sup>17</sup> Issued with Resolution No. R9-2002-0186, ***Amendment to the Water Quality Control Plan for the San Diego Region (9) to Incorporate a Waste Discharge Requirement Waiver Policy for Certain Specific Types of Discharges***, adopted September 11, 2002

San Diego Water Board, to verify the effectiveness of the waiver in minimizing or eliminating the discharge of pollutants for the protection of water quality.

This following sections of this technical report review the effectiveness of the existing conditional waivers and waiver conditions; describe and discuss the new types of discharge proposed to be allowed to be eligible for a conditional waiver; discuss how the types of discharge to be conditionally waived of WDRs and/or the requirement to file RoWDs can be grouped into discharge classifications; and, describe and discuss the conditional waivers proposed to replace the existing conditional waivers.

## 4 Existing Conditional Waivers

Table 4-4 in Chapter 4 of the Basin Plan lists the types of discharge that are eligible for a conditional waiver. Since the existing conditional waivers were adopted in 2002, several types of discharge have been identified as potential sources of pollutants in the development of Total Maximum Daily Loads (TMDLs) for several water bodies on the Clean Water Act section 303(d) List of Water Quality Limited Segments (303(d) List) for the San Diego Region. However, no data have been collected to confirm that the sources of these pollutants originate from discharges covered under conditional waivers.

The existing conditional waivers for the discharge types of potential concern identified by the TMDL projects do not include waiver conditions that provide the San Diego Water Board the information or data necessary to identify specific discharges occurring within the Region, the ability to verify compliance with waiver conditions, or the ability to assess the effectiveness of the waiver conditions. Therefore, the existing conditional waivers need to be reviewed for effectiveness, and the conditions should be revised, if necessary, to provide additional requirements to minimize or eliminate discharges of pollutants to better protect water quality in the Region, and collect data for discharges suspected to have an adverse impact on water quality,.

The existing conditional waivers currently waive WDRs and/or the requirement to file RoWDs for the following 26 discharging operations (or specific types of discharge):

1. Conventional septic tank/subsurface disposal systems for residential units.
2. Conventional septic tank/subsurface disposal systems for commercial/industrial establishments.
3. Alternative individual sewerage systems.
4. Conventional septic tank/subsurface disposal systems for campgrounds.
5. Construction and test pumping of water wells.
6. Air conditioner condensate.
7. Animal feeding operations (300 to 999 animal units).
8. Animal feeding operations (less than 300 animal units).
9. Plant crop residues.
10. Storm water runoff.
11. Sand and gravel mining operations.
12. Intermittent swimming pool discharges.
13. Dredging project wastes.
14. Short-term construction dewatering operations.
15. Manure composting and soil amendment operations.
16. Solid waste disposal facilities accepting only inert wastes.
17. Stream channel alterations.
18. Agricultural irrigation return water.
19. Nursery irrigation return water.
20. Short-term use of reclaimed wastewater.
21. On-site drilling mud discharge.

- 22. Timber harvesting.
- 23. Temporary discharge of specified contaminated soils.
- 24. Green waste composting facilities.
- 25. Incidental discharges within a response area during a spill response.
- 26. Permanent reclaimed water projects.

The existing conditional waivers for these types of discharge are reviewed in detail in Appendix A.

The existing conditional waivers for all 26 types of discharge are recommended for renewal. However, in order for the existing conditional waivers to be renewed, revisions to the waiver conditions for several types of discharge are required. The proposed revisions to the waiver conditions for each type of discharge are also provided in Appendix A.

## 5 Conditional Waivers for New Types of Discharge

In addition to the types of discharge eligible for the existing conditional waivers, several new types of discharge were identified that are not currently regulated in the Region. These new types of discharge were included in this Basin Plan amendment to allow them to be eligible for a conditional waiver. These new types of discharge include the following:

1. "Low threat" discharges to land.
2. Discharges from on-site graywater systems.
3. Discharges from grazing lands.
4. Wildfire suppression and fuels management activities.
5. Discharge/reuse of soils characterized as inert from known contaminated sites.
6. Concrete grinding residues.
7. Temporary waste piles and surface impoundments for disaster-related wastes.
8. Temporary waste piles and emergency landfills for mass mortality wastes.
9. Discharges of wastes related to fireworks displays.

These new types of discharge are reviewed and discussed in Appendix B. The waiver conditions proposed for the each new type of discharge are also provided in Appendix B.

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## 6 Classification of Waste Discharge Types for Proposed Conditional Waivers

Appendices A and B review and discuss the existing and new types of discharge for which the San Diego Water Board has proposed to be eligible for conditional waivers. In this Basin Plan amendment, there are 35 (26 existing and 9 new) specific types of discharge that the San Diego Water Board has proposed to be eligible for a conditional waiver.

If there are conditional waivers developed for each of the 35 different types of discharge, a discharger may be required to identify several types of discharge that may be applicable to their operation. However, in examining the existing and new types of discharge proposed to be eligible for conditional waivers, several of the discharge types are similar and/or related in terms of discharge setting, discharge source, and/or proposed waiver conditions.

Instead of developing conditional waivers for each individual type of discharge, an integrated approach can simplify the proposed conditional waivers. Types of discharge that are similar in nature or originate from a common setting or operation could be grouped together into a “discharge classification.”

For example, discharge types that could be classified as similar are discharges that typically require a Clean Water Act section 404 permit (404 Permit) and section 401 water quality certification (401 Certification). A type of discharge that typically requires a 401 Certification is one where dredged and/or fill material may be discharged to land and/or surface waters. These types of discharge include sand and gravel mining operations (existing Conditional Waiver No. 11), dredging project wastes (existing Conditional Waiver No. 13), and stream channel alterations (existing Conditional Waiver No. 17). All of these types of discharge have similar proposed waiver conditions.

Another example is the several types of discharge that could be classified as discharges from agricultural and/or nursery operations. Discharges of plant crop residues (existing Conditional Waiver No. 9), storm water runoff from agricultural lands (existing Conditional Waiver No. 10), manure compost applied to soil as mulch and/or soil amendment (existing Conditional Waiver No. 15), agricultural return water (existing Conditional Waiver No. 18) or nursery irrigation return water (existing Conditional Waiver No 19), and green waste for composting (existing Conditional Waiver No 24) can all occur on the same site. Many of the proposed waiver conditions are similar, and many, if not all, of these types of discharge are found on nursery or agricultural operations.

Therefore, we grouped the types of discharge for which the San Diego Water Board has proposed to be eligible for conditional waivers into discharge classifications. General Conditions were developed that are applicable to a discharger or discharge operation, or all discharge types within a discharge classification. Specific Conditions were

developed for individual types of discharge, if additional or discharge-specific conditions are necessary.

The table below lists the proposed discharge classifications, and groups the existing and new types of discharge that were discussed in the previous sections according to those classifications.

**Table 6-1. Proposed Conditional Waivers and Discharge Classifications**

Proposed Waiver No.	Proposed Discharge Classification	Types of Discharge Included in Conditional Waiver Discharge Classification
1	Discharges from on-site disposal systems	Discharges from conventional septic tank/subsurface disposal systems for residential units (1*) Discharges from conventional septic tank/subsurface disposal systems for commercial/industrial establishments (2*) Discharges from alternative individual sewerage systems (3*) Discharges from conventional septic tank/subsurface disposal systems for campgrounds (4*) Discharges from on-site graywater disposal systems (NEW**)
2	"Low threat" discharges to land	Discharges from construction and test pumping of water wells to land (5*) Discharges of air conditioner condensate and non-contact cooling water to land (6*) Swimming pool discharges to land (12*) Discharges from short-term construction dewatering operations to land (14*) "Low Threat" discharges to land and/or groundwater (NEW**), including the following: -Groundwater pumped from drinking water wells -Groundwater from foundation drains, crawl space pumps, and footing drains -Discharges from flushing water lines -Discharges from washing vehicles, pavement, buildings, etc. -Infiltration from residential/commercial/industrial/recreational facility landscape and lawn irrigation using groundwater or municipal supply water -Infiltration from structural infiltration-based BMPs
3	Discharges from animal operations	Discharges from medium (300-999 animal units, where 1 animal unit is equivalent to 1 cow or 1,000 animal pounds) animal feeding operations (7*) Discharges from small (less than 300 animal units) animal feeding operations (8*) Discharges of storm water runoff (10*) Discharges of manure to operations (15*) Discharge/application of manure to soil as an amendment or mulch (15*) Discharges from grazing lands (NEW**)
4	Discharges from agricultural and nursery operations	Discharges of plant crop residues to land (9*) Discharges of storm water runoff (10*) Discharge/application of amendments or mulches to soil (15*) Discharges of agricultural irrigation return water (18*) Discharges of nursery irrigation return water (19*) Discharges of green wastes to composting operations (24*)
5	Discharges from silvicultural operations	Discharges of storm water runoff (10*) Discharges from timber harvesting projects (22*) Discharges of green wastes to composting operations (24*) Discharges from wildfire suppression and fuels management activities (NEW**)
6	Discharges of dredged or fill materials nearby or within surface waters	Discharges from sand and gravel mining operations (11*) Discharges from dredging projects (13*) Discharges from stream channel alternation projects (17*) Other projects proposing to discharge dredged or fill material nearby or within surface waters of the state



**Table 6-1. Proposed Conditional Waivers and Discharge Classifications (Cont'd)**

Proposed Waiver No.	Proposed Discharge Classification	Discharge Types Included in Conditional Waiver Discharge Classification
7	Discharges of recycled water to land	Discharges to land from short-term recycled water projects (without permanent recycled water delivery and/or distribution systems, not to exceed 365 days) (20*) Discharges to land from permanent recycled water projects (with permanent recycled water delivery and/or distribution systems, limited to the period prior to the discharge being authorized and regulated under WDRs, WRRs, and/or MRP, not to exceed 365 days) (26*)
8	Discharges/disposal of solid wastes to land	Discharges of plant crop residues to land (9*) Discharges of manure and green wastes to composting operations (15* and 24*) Discharge/application of amendments and mulches to soil (15*) Discharge/disposal of inert wastes to solid waste disposal facilities only accepting inert wastes (16*) Discharges of contaminated soils to temporary waste piles (23*) Discharge/disposal/reuse of soils characterized as inert from contaminated sites to land (NEW**)
9	Discharges of slurries to land	Discharges of on-site drilling mud to land (21*) Discharges of concrete grinding residues to land (NEW**)
10	Discharges of emergency/disaster-related wastes	Incidental discharges of oil and oily water within a response area during an oil spill response in marine waters (25*) Discharges of disaster-related wastes to temporary waste piles and surface impoundments (NEW**) Discharges of mass mortality wastes to temporary waste piles and emergency landfills (NEW**) Other discharges of emergency/disaster related wastes
11	Aerially discharged wastes over land	Discharges of wastes related to fireworks displays over land (NEW**) Other wastes discharged aerially over land that may adversely affect the quality of the groundwaters of the state, but determined to be "low threat" by the San Diego Water Board

\* Waiver number provided based on the existing conditional waivers, effective January 1, 2003. Review and discussion of discharge types eligible for an existing conditional waiver are provided in Appendix A.

\*\* NEW is used for waste discharge types or "facilities" that were not included in the existing conditional waivers. Review and discussion of new discharge types proposed to be eligible for a conditional waiver are provided in Appendix B.

There are a several types of discharge that are included in more than one discharge classification. Storm water runoff that is not subject to federal National Pollution Discharge Elimination System (NPDES) regulations is a type of discharge that is applicable to both agricultural and silvicultural operations. Manure composting may occur at animal feeding operations (AFO) facilities, disposal facilities or compost manufacturers, and composted manure may be used as a soil amendment on agricultural and nursery operations. Green waste composting is an activity that may occur at agricultural or silvicultural operations, disposal facilities, or other facilities that may discharge or dispose of green wastes on land. Therefore, these types of discharge were included in more than one discharge classification.

Based on these conditional waiver discharge classifications, General Conditions and Specific Conditions, if applicable, were developed. The proposed conditional waivers and waiver conditions are discussed in the following section.

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## 7 Conditional Waivers Proposed for Adoption

### 7.1 Proposed Conditional Waiver No. 1 – Discharges from On-site Disposal Systems

Proposed Conditional Waiver No. 1 is for discharges of effluent from on-site disposal systems which is a source of pollutants that can infiltrate to groundwater. Discharges of effluent from on-site disposal systems include domestic wastewater (sewage) and graywater, but not industrial wastewater, which is discharged to the subsurface located, within the property that generated the waste stream.

The following types of discharge may be eligible for Proposed Conditional Waiver No. 1:

- Discharges from conventional septic tank/subsurface disposal systems for residential units (discussed in Appendix A, section A.3.1)
- Discharges from conventional septic tank/subsurface disposal systems for commercial/industrial establishments (discussed in Appendix A, section A.3.1)
- Discharges from alternative individual sewerage systems (discussed in Appendix A, section A.3.1)
- Discharges from conventional septic tank/subsurface disposal systems for campgrounds (discussed in Appendix A, section A.3.1)
- Discharges from on-site graywater disposal systems (discussed in Appendix B, section B.1.2)

These types of discharge have similar system design and installation requirements and proposed waiver conditions. Therefore, these types of discharge were grouped together into one discharge classification.

Conventional septic tank/subsurface disposal systems and alternative individual sewerage systems, or on-site wastewater treatment systems (OWTSs), collect and treat domestic wastewater and sewage, or “black water,” and discharge effluent to the subsurface on land. Natural processes in the soil of the disposal area are usually an integral component of OWTSs and provide further treatment of the effluent as it percolates through the ground.

Graywater systems collect graywater and also discharge effluent to the subsurface on land. Graywater includes wash water originating from showers, bathtubs, clothes washing machines, and hand washing sinks that are not used for disposal of chemicals or chemical-biological ingredients and generally subject to very little treatment or no treatment at all. Natural processes in the soil of the disposal area can provide treatment of the effluent as it percolates through the ground.

The discharge of effluent from on-site disposal systems can infiltrate to groundwater and may pose a potential threat to water quality. Due to all the human fecal matter that is collected and treated by OWTSs, effluent that is discharged can contain high levels of pathogens (e.g., bacteria, viruses, protozoa), nutrients (i.e., phosphorus and nitrogen

compounds), and other chemicals. Graywater systems can discharge effluent that has potentially come in contact with human fecal matter (e.g., soiled diapers washed in clothes washing machines), nitrogen compounds (e.g., urine from children and adults in bathtubs and showers), phosphorus (e.g., laundry detergents used in clothes washing machines), or other chemicals (e.g., cleaning chemicals washed down bathroom washbasins). Therefore, on-site disposal systems can potentially transport and leach pathogens, nutrients, and other pollutants to underlying groundwaters, or to surface waters if the effluent surfaces and runs off the property. Effluent that comes into contact with groundwater or surface water can adversely affect water quality.

However, the use of OWTs where no community sewerage system is available is in the public interest to protect human health. Additionally, the use of on-site graywater systems will reduce the use of potable water for irrigation purposes, which is in the public interest to conserve water resources. On-site disposal systems that are properly designed, installed and maintained can minimize the potential impacts to water quality.

The design, construction, and installation requirements for on-site disposal systems are provided in regulations adopted by state agencies and/or local authorized agencies. Land owners must obtain the appropriate permits prior to the installation and operation of an on-site disposal system to ensure site conditions are appropriate for construction. Depending on the location, cities, counties, and/or other local authorized agencies may have more stringent design and installation requirements.

As of the writing of this report, the State Water Board is still in the process of developing the new OWTs regulations, which would be applicable to conventional septic tank/subsurface systems and alternative individual sewerage systems. The OWTs regulations that will be adopted by the State Water Board may have requirements that are more protective of water quality than those currently enforced by authorized local agencies. The authorized local agencies will be responsible for bringing OWTs in compliance with the new regulations.

The Graywater Standards, developed by the California Department of Water Resources (DWR) and adopted by the California Building Standards Commission, pertaining to the construction, installation, or alteration of graywater systems, can be found in the California Plumbing Code (CPC).<sup>18</sup> The Water Code states that a graywater system may be installed if the authorized local agencies having jurisdiction over the installation determines that the system complies with the CPC Graywater Standards.<sup>19</sup>

The design, construction, and installation of on-site wastewater systems are regulated and permitted by the city, county, and/or other authorized local agency. However, the discharge of effluent from on-site disposal systems is subject to regulation by the State and Regional Water Boards in order to protect the waters of the state. The San Diego Water Board determined that it is consistent with the Basin Plan and in the public

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<sup>18</sup> California Code of Regulations Title 24 (also known as the California Building Standards Administrative Code) Part 5 (also known as the California Plumbing Code) Appendix G

<sup>19</sup> Water Code section 14877.2

interest to delegate regulation of specific types of discharge to another public agency. In this case, owners/operators of on-site disposal systems must obtain the appropriate permits from a city, county, and/or other authorized local agencies. As long as the effluent that is discharged from these properly permitted on-site disposal systems do not have an adverse impact on surface water or groundwater quality, the San Diego Water Board will waive the requirements to file a RoWD and adopting WDRs for these systems.

However, waiver conditions should be developed in order for members of the public, cities, counties, local agencies and organizations, and/or the San Diego Water Board to determine if discharges from on-site disposal systems are having an adverse effect on the quality of the waters of the state. If owners/operators of on-site disposal systems are not in compliance with waiver conditions, they can be issued a Notice of Violation and required to correct deficiencies in order to be eligible for Proposed Conditional Waiver No. 1. However, if the owner/operator of an on-site disposal system violates any waiver conditions, the San Diego Water Board has the option to terminate the conditional waiver for the discharge and begin regulating the discharge with individual WDRs and/or take other enforcement actions.

In order to be eligible for Proposed Conditional Waiver No. 1, discharges must comply with certain conditions to be protective of water quality. The proposed waiver conditions applicable to discharges from on-site disposal systems include the following:

- 1.I.A. General Waiver Conditions for On-site Disposal Systems
- 1.II.A. Specific Waiver Conditions for On-site Septic and Sewerage Systems
- 1.II.B. Specific Waiver Conditions for On-site Graywater Systems

Discharges from on-site disposal systems that comply with the general and specific waiver conditions in Proposed Conditional Waiver No. 1 are not expected to pose a significant threat to the quality of waters of the state.

**1.I.A. General Waiver Conditions for On-site Disposal Systems**

1. Prevent the direct or indirect discharge of effluent from on-site disposal systems to any surface waters of the state (including ephemeral streams and vernal pools).
2. Effluent from on-site disposal systems must be discharged to the subsurface and cannot surface or pond.
3. Effluent from on-site disposal systems must not adversely affect the quality or beneficial uses of underlying groundwater.
4. Effluent from on-site disposal systems must not cause or threaten to cause a condition of contamination, pollution, or nuisance.
5. Effluent from on-site disposal systems must be discharged at least 5 feet above highest known historical or anticipated groundwater level.
6. Effluent from on-site disposal systems must be discharged at least 100 feet away from any surface water body.

7. Effluent from on-site disposal systems must not adversely impact the quality or beneficial uses of groundwater in any water wells.
8. On-site disposal systems must be designed and operated in accordance with applicable regulatory requirements and/or standards as provided in the Specific Conditions.
9. The owner/operator of an on-site disposal system must comply with local, state, and federal ordinances and regulations and obtain any required approvals, permits, certifications, and/or licenses from authorized local agencies. Copies of any approvals, permits, certifications, and/or licenses must be available on site for inspection.
10. The owner/operator of an on-site disposal system must maintain and operate the system in accordance with the design approved by the authorized local agencies.
11. The San Diego Water Board and/or other local regulatory agencies must be allowed reasonable access to the site in order to perform inspections and conduct monitoring.
12. On-site disposal systems can only accept domestic wastes and/or wastewater.

In addition to the General Conditions above, compliance with the following Specific Conditions is required:

**1.II.A. Specific Waiver Conditions for On-site Septic and Sewerage Systems**

1. For existing on-site septic or sewerage systems, the following conditions apply:
  - a) Owners/operators of existing on-site septic or sewerage systems that cause a condition of contamination, pollution, or nuisance must cease the use of the system and repair or replace it with a compliant system, or permanently remove the system from operation.
  - b) After adoption of State Water Board OWTS regulations, any existing on-site septic or sewerage systems that is replaced, requires major repair, pools or discharges to the surface of the ground, or has the reasonable potential to cause a violation of water quality objectives, to impair present or future beneficial uses of water, to cause pollution, nuisance, or contamination of waters of the state must be brought into compliance with new OWTS regulations. Owners/operators of on-site septic or sewerage systems that cannot bring their system into compliance must cease the use of the system and replace it with a complaint system, or permanently remove the system from operation.
2. For new on-site septic or sewerage systems, the following conditions apply:
  - a) New on-site septic or sewerage systems installed at campgrounds must not allow connections from recreational vehicles.
  - b) New on-site septic or sewerage systems must comply with the conditions set forth in section entitled *Guidelines for New Community and Individual Sewerage Facilities* in Chapter 4 (Implementation) of the Basin Plan.

- c) New on-site septic or sewerage systems proposed to be constructed in areas where groundwater water quality objectives have been exceeded must be evaluated for potential adverse effects on groundwater quality and beneficial uses to determine if regulating the system with individual WDRs is more appropriate.
- d) New on-site septic or sewerage systems proposed to be constructed within areas designated as Zone A, as defined by the California Department of Public Health's (CDPH's) *Drinking Water Source Assessment and Protection Program*, must be constructed with an adequate setback from the drinking water supply source that will be protective of drinking water quality.
- e) Six (6) months after adoption of State Water Board OWTS regulations, applications received by the authorized local authority for the construction of new on-site septic or sewerage systems must be in compliance with new OWTS regulations for design and installation.

### **1.II.B Specific Waiver Conditions for On-site Graywater Systems**

1. An on-site graywater system must be permitted by the city, county, or other authorized local agency that has jurisdiction over the installation. The on-site graywater system must be designed and installed, at a minimum, according to the CPC Graywater Standards.<sup>20</sup> If the city, county, and/or other authorized local agencies have additional requirements, the graywater system must be designed and installed to comply with those requirements.
2. On-site graywater systems proposed to be constructed in areas where groundwater water quality objectives have been exceeded must be evaluated for potential adverse effects on groundwater quality and beneficial uses to determine if regulating the system with individual WDRs is more appropriate.
3. New on-site graywater systems proposed to be constructed within areas designated as Zone A, as defined by the California Department of Public Health's Drinking Water Source Assessment and Protection Program, must be constructed with an adequate setback from the drinking water supply source that will be protective of drinking water quality.

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<sup>20</sup> California Code of Regulations Title 24 (also known as the California Building Standards Administrative Code) Part 5 (also known as the California Plumbing Code) Appendix G

## 7.2 Proposed Conditional Waiver No. 2 – “Low Threat” Discharges to Land

Proposed Conditional Waiver No. 2 is for “low threat” discharges to land, which can percolate to groundwater. “Low threat” discharges include liquid wastes containing pollutant concentrations that are not expected to adversely impact the quality of waters of the state under ambient conditions. “Low threat” discharges may include potable water or uncontaminated groundwater. Potable water and uncontaminated groundwater are not considered waste when initially discharged. However, when it comes into contact with pollutants and transports those pollutants in surface runoff or leaches those pollutants into the soil and groundwater, it becomes a waste. “Low threat” discharges to land are not expected to contain significant concentrations of pollutants that can adversely affect the quality of underlying groundwater.

The following types of discharge may be eligible for Proposed Conditional Waiver No. 2:

- Discharges from the construction and test pumping of water wells to land (discussed in Appendix A, section A.3.2)
- Discharges of air conditioner condensate or non-contact cooling water to land (discussed in Appendix A, section A.3.3)
- Swimming pool discharges to land (discussed in Appendix A, section A.3.8)
- Discharges from short-term construction dewatering operations to land (discussed in Appendix A, section A.3.10)
- “Low Threat” discharges to land and/or groundwater (discussed in Appendix B, section B.1.1), which may including the following:
  - Groundwater pumped from drinking water wells
  - Groundwater from foundation drains, crawl space pumps, and footing drains
  - Discharges from flushing water lines
  - Discharges from washing vehicles, pavement, buildings, etc.
  - Infiltration from residential/commercial/industrial/recreational facility landscape and lawn irrigation using groundwater or municipal supply water
  - Infiltration from structural infiltration-based best management practices (BMPs)

“Low threat” discharges are not expected to adversely affect the quality of groundwater. These types of discharge have similar properties, threat to water quality, and proposed waiver conditions. Therefore, these types of “low threat” discharges to land were grouped together into one discharge classification. Discharges that comply with the proposed waiver conditions are not expected to pose a threat to the quality of waters of the state.

Low volumes and infrequent “low threat” discharges are not expected to adversely affect the quality of groundwater because the water would likely evapotranspire before infiltrating to the underlying groundwater. However, excessive volumes or frequent “low threat” discharges could potentially infiltrate to underlying groundwater and adversely affect the quality of groundwater over time. With proper management, “low threat” discharges to land are not expected to pose a threat to the quality of waters of the state.



Therefore, waiver conditions must require proper management of “low threat” discharges to land to minimize or eliminate the discharge of pollutants to waters of the state.

Waiver conditions should be developed in order for members of the public, cities, counties, local agencies and organizations, and/or the San Diego Water Board to determine if any “low threat” discharges to land pose a threat to the quality of the waters of the state. If owners/operators with “low threat” discharges are not in compliance with waiver conditions, they can be issued a Notice of Violation and required to correct deficiencies in order to be eligible for Proposed Conditional Waiver No. 2. However, if the owner/operator of a “low threat” discharge violates any waiver conditions, the San Diego Water Board has the option to terminate the conditional waiver for the discharge and begin regulating with individual WDRs and/or take other enforcement actions.

In order to be eligible for Proposed Conditional Waiver No. 2, discharges must comply with certain conditions to be protective of water quality. The proposed waiver conditions applicable to “low threat” discharges to land include the following:

- 2.I.A. General Waiver Conditions for “Low Threat” Discharges of Water to Land
- 2.II.A. Specific Waiver Conditions for Air Conditioner Condensate and Non-contact Cooling Water Discharges to Land
- 2.II.B. Specific Waiver Conditions for Swimming Pool Discharges to Land
- 2.II.C. Specific Waiver Conditions for Pumping of Groundwater from Wells to Land
- 2.II.D. Specific Waiver Conditions for Dewatering Operations Discharged to Land
- 2.II.E. Specific Waiver Conditions for Discharges from Washing Vehicles, Pavement, Buildings, etc. to Land
- 2.II.F. Specific Waiver Conditions for Discharges from Irrigated Lawns and Landscaping Using Groundwater or Municipal Supply Water
- 2.II.G. Specific Waiver Conditions for Discharges from Structural BMPs that Require Infiltration

“Low threat” discharges to land that comply with the general and specific waiver conditions in Proposed Conditional Waiver No. 2 are not expected to pose a threat to the quality of waters of the state.

**2.I.A. General Waiver Conditions for “Low Threat” Discharges of Water to Land**

1. Prevent the direct or indirect discharge of “low threat” discharges to any surface waters of the state (including ephemeral streams and vernal pools).
2. “Low threat” discharges must not cause the migration of contaminants such as chlorinated solvents, hydrocarbons, or other toxic or hazardous substances to groundwater.
3. “Low threat” discharges must not come in contact with any material that consists of or is contaminated with chlorinated solvents, hydrocarbons, or other toxic or hazardous substances prior to discharge to land.
4. Any products used to condition or treat “low threat” discharges prior to discharging to land must be in accordance with manufacturer’s instructions

- and guidelines, and must reliably attenuate before infiltrating to underlying groundwater.
5. "Low threat" discharges to land must not adversely affect the quality or beneficial uses of underlying groundwater.
  6. "Low threat" discharges to land must not cause or threaten to cause a condition of contamination, pollution, or nuisance.
  7. "Low threat" discharges to land must not adversely impact the quality or beneficial uses of groundwater in any water wells.
  8. The San Diego Water Board and/or other local regulatory agencies must be allowed reasonable access to the site in order to perform inspections and conduct monitoring.
  9. Discharger must submit a Notice of Intent or technical and/or monitoring program reports when directed by the San Diego Water Board.

In addition to the General Conditions above, compliance with the following Specific Conditions is required:

**2.II.A Specific Waiver Conditions for Air Conditioner Condensate and Non-contact Cooling Water Discharges to Land**

1. Discharges must not contain contact cooling water.
2. Discharges of air conditioner condensate and non-contact cooling water to land must not exceed an average of 1,200 gallons per day for any continuous 365-day period, unless the discharger has filed a Notice of Intent containing information about the operator, location, and planned period of and average daily volume of discharge.

**2.II.B. Specific Waiver Conditions for Swimming Pool Discharges to Land**

1. Discharges of water from each swimming pool to land must not exceed 50,000 gallons during any continuous 365-day period, unless the discharger has filed a Notice of Intent containing information about the swimming pool location and volume, planned period of and frequency of discharge.

**2.II.C. Specific Waiver Conditions for Pumping of Groundwater from Wells to Land**

1. The discharge of groundwater pumped from any well that is used in a soil and/or groundwater contamination investigation or corrective action may not be discharged to land, unless the discharger has filed a Notice of Intent containing monitoring data demonstrating that the quality of the proposed discharge would not cause the groundwater at the disposal site to exceed water quality objectives.
2. For multiple applications of groundwater from wells pumped to land over a 365-day period, or a continuous 24-hour (or longer) application of groundwater from wells pumped to land within a 365-day period, the discharger must file a Notice of Intent containing information about the operator, location, planned period of and frequency of discharge, and measures that will be taken to minimize or eliminate the discharge of

- pollutants that might affect surface water and groundwater quality. Sufficient information demonstrating compliance with waiver conditions must be submitted before the discharge may begin.
3. Groundwater cannot originate from an area that contains any contaminated soil or groundwater

**2.II.D. Specific Waiver Conditions for Dewatering Operations Discharged to Land**

1. The discharge of groundwater pumped from any well or excavation that is used in a soil and/or groundwater contamination investigation or corrective action may not be discharged to land, unless the discharger has filed a Notice of Intent containing monitoring data demonstrating that the quality of the proposed discharge would not cause the groundwater at the disposal site to exceed water quality objectives.
2. For dewatering operations that discharge an average of 5,000 gallons per day for any continuous 180-day period, the discharger must file a Notice of Intent containing information about the operator, location, planned period and rate of discharge, and measures that will be taken to minimize or eliminate the discharge of pollutants that might affect groundwater quality. Sufficient information demonstrating compliance with waiver conditions must be submitted before the discharge may begin.
3. Groundwater cannot originate from an area that contains any contaminated soil or groundwater.

**2.II.E. Specific Waiver Conditions for Discharges from Washing Vehicles, Pavement, Buildings, etc. to Land**

1. Discharges of wash water and similar intermittent discharges must not exceed an average of 1,200 gallons per day for any continuous 30-day period, unless the discharger has filed a Notice of Intent containing information about the operator, location, and planned period of and average daily volume of discharge.

**2.II.F. Specific Waiver Conditions for Discharges from Irrigated Lawns and Landscaping Using Groundwater or Municipal Supply Water**

1. Products applied to lawns and landscaping must be in accordance with manufacturer's instructions and guidelines, and must reliably attenuate before infiltrating to underlying groundwater.

**2.II.G. Specific Waiver Conditions for Discharges from Structural BMPs that Require Infiltration.**

1. Installation of structural BMP that utilizes infiltration must comply with the design criteria of the municipality regulated by MS4 WDRs (conforming to NPDES storm water regulations), **or** for any discharge that exceeds an average of 1,200 gallons per day for any continuous 365-day period, the discharger must file a Notice of Intent containing documentation demonstrating that the quality of the proposed discharge from infiltration will

- not cause the groundwater at the disposal site to exceed water quality objectives.
2. Installation of structural BMPs that require infiltration must comply with local, state, and federal ordinances and regulations and obtain any required approvals, permits, certifications, and/or licenses from authorized local agencies.

### 7.3 Proposed Conditional Waiver No. 3 – Discharges from Animal Operations

Proposed Conditional Waiver No. 3 is for discharges from animal operations, which contain pollutants that can percolate to groundwater or runoff to surface waters. Discharges from animal operations include discharges resulting from animal activities and wastes, and storm water runoff which can also transport pollutants from animal operations to surface waters and groundwater.

The following types of discharge may be eligible for Proposed Conditional Waiver No. 3:

- Discharges from small (less than 300 animal units, where 1 animal unit is equivalent to 1 cow or 1,000 animal pounds) animal feeding operations (discussed in Appendix A, section A.3.4)
- Discharges from medium (300 to 999 animal units) animal feeding operations (discussed in Appendix A, section A.3.4)
- Discharges of storm water runoff (discussed in Appendix A, section A.3.6)
- Discharges of manure to composting operations (discussed in Appendix A, section A.3.11)
- Discharge/application of manure to soil as an amendment or mulch (discussed in Appendix A, section A.3.11)
- Discharges from grazing lands (discussed in Appendix B, section B.1.3)

Discharges from animal operations can be significant sources of sediment, nutrients, and pathogens (i.e., bacteria, viruses, protozoa), which can adversely affect the quality of waters of the state if the animals, animal activities, and animal wastes are not properly managed. Discharges from these types of operations can originate from one land owner/operator, and have similar discharge sources, environmental settings, and proposed waiver conditions. Therefore, these types of discharge were grouped together into one discharge classification. Animal operations that comply with the proposed waiver conditions are not expected to pose a threat to the quality of waters of the state.

Animals maintained at any of these operations generate wastes (i.e., manure, urine, soiled bedding) and may cause erosion. Wastes generated by the animals may be disposed of off site, or stockpiled and/or composted on site by the property/facility owner/operator. Animal wastes may also be allowed to decompose on site at the point of discharge by an animal. Fresh, uncomposted manure and/or dried, processed or composted manure may be used as a fertilizer, soil amendment, or mulch.

Animal wastes that remain on site can be a significant source for several pollutants that can adversely affect water quality. Animals that are allowed to roam and/or graze freely may cause significant erosion, which can result in destruction of wildlife habitat, increased runoff, in addition to adversely affecting water quality.

Animal activities and wastes, if not properly managed, can have a significant adverse impact on the quality of waters of the state. Additionally, storm water and surface runoff

that is allowed to come in contact with these wastes can leach pollutants to underlying groundwater, or transport pollutants to surface waters. Storm water runoff from pastures and range lands on animal operations not designated as concentrated animal feeding operations (CAFOs) is exempt from federal NPDES regulations.<sup>21</sup> However, storm water runoff from pasture and range lands is subject to regulations in the state Water Code and may be regulated with WDRs, unless a waiver is issued. Animal operations that properly manage their animal activities and wastes are not expected to pose a threat to the quality of waters of the state. Therefore, waiver conditions must require proper management and other measures to minimize or eliminate discharges of pollutants from animal operations to waters of the state.

The number of facilities and/or properties that may be eligible for a conditional waiver for discharges from animal operations is not known. According to the United States Department of Agriculture, there are over 700 horse farms in San Diego County. If animal operations with other types of animals are included, the number is likely to be in the thousands. Current San Diego Water Board resources would not be sufficient to issue WDRs to all the animal operations in the Region. However, cumulative discharges from these types of facilities can potentially have a significant impact on the quality of the waters in the Region. This, in turn, can increase the efforts required by cities and counties to comply with NPDES storm water and/or TMDL requirements.

A medium sized animal feeding operation (AFO), which manages 300 to 999 animal units (where 1 animal unit is equivalent to 1 cow or approximately 1,000 animal pounds), could, by itself, potentially be a significant source of pollutants due to the number of animals maintained. Depending on the design and management of a medium AFO, the facility may be designated as a CAFO. If an animal operation is designated as a CAFO, it is subject to NPDES regulations and would require regulation under WDRs that conform to NPDES requirements. Knowledge of the design and operation of a medium AFO is required to ensure MMs/BMPs are implemented and effective, and determine whether or not the facility should be designated as a CAFO. Therefore, medium AFOs should require enrollment as required in the existing conditional waivers.

Small AFOs and grazing lands, on the other hand, may only potentially be significant sources of pollutants if MMs/BMPs for animal wastes and activities are not properly implemented. Small AFOs and grazing lands should be eligible for a conditional waiver without enrollment as long as animal wastes and activities are properly managed. However, owners/operators of small AFOs and grazing lands that violate waiver conditions by not implementing MMs/BMPs and allow the degradation of water quality should be notified of their responsibilities and required to comply with waiver conditions. Enforcement actions can be taken against facilities that fail to comply with waiver conditions. Additionally, a small AFO may also be designated as a CAFO and be subject to NPDES regulations, requiring regulation under WDRs that conform to NPDES requirements.

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<sup>21</sup> Code of Federal Regulations Title 40 section 122.3(e)

Because the San Diego Water Board resources are limited, enforcing waiver conditions for animal operations that do not require enrollment is often limited to violators that are brought to the attention San Diego Water Board. Therefore, the San Diego Water Board must rely upon the assistance of the municipalities, government agencies, non-governmental organizations, and members of the public to identify animal operations that are not in compliance with waiver conditions.

Waiver conditions should be developed in order for members of the public, cities, counties, local agencies and organizations, as well as the San Diego Water Board to determine if an animal operation is adequately managing its discharges and meeting its responsibilities. If owners/operators of animal operations are not in compliance with waiver conditions, they can be issued a Notice of Violation, be required to file Notice of Intent with the San Diego Water Board, and required to comply with waiver conditions in order to be eligible for Proposed Conditional Waiver No. 3. Sufficient information demonstrating compliance with the waiver conditions would have to be submitted to avoid regulating an animal operation with WDRs. However, if the owner/operator of an animal operation violates any waiver conditions, the San Diego Water Board has the option to terminate the conditional waiver for the operation and begin regulating the animal operation with individual WDRs and/or take other enforcement actions.

Or, depending on the seriousness of the violation, small and medium AFOs could also be designated as CAFOs and be subject to NPDES regulations, which requires regulation by WDRs that conform with NPDES requirements. Other enforcement actions could also be taken against facilities that fail to comply with waiver conditions, including issuing Notices of Violation, Cease and Desist Orders, or Cleanup and Abatement Orders.

In order to be eligible for Proposed Conditional Waiver No. 3, discharges must comply with certain conditions to be protective of water quality. The proposed waiver conditions applicable to discharges from animal operations include the following:

- 3.I.A. General Facility Design and Management Waiver Conditions
- 3.I.B. General Manure Management Waiver Conditions
- 3.I.C. General Waiver Conditions for Composting Manure from Animal Operations
- 3.I.D. General Waiver Conditions for Application of Manure from Animal Operations as a Fertilizer, Amendment, or Mulch to Soil
- 3.I.E. General Inspection and Reporting Waiver Conditions
- 3.II.A. Specific Waiver Conditions for Small Animal Feeding Operations
- 3.II.B. Specific Waiver Conditions for Medium Animal Feeding Operations
- 3.II.C. Specific Waiver Conditions for Grazing Operations

Discharges from animal operations that comply with the general and specific waiver conditions in Proposed Conditional Waiver No. 3 are not expected to pose a threat to the quality of waters of the state.

**3.1.A. General Facility Design and Management Waiver Conditions**

1. Animal operations must comply with any local, state, and federal ordinances and regulations, and obtain any required approvals, permits, certifications, and/or licenses from authorized local agencies.
2. Animal operations must implement management measures (MMs) and/or best management practices (BMPs) to minimize or eliminate the discharge of pollutants that may adversely impact the quality or beneficial uses of waters of the state. Recommended MMs/BMPs are provided in *Equestrian-Related Waste Quality Best Management Practices* available from the County of San Diego Department of Agriculture, Weights and Measures, and/or the *Field Office Technical Guide* available from the Natural Resources Conservation Service (NRCS). Additional references may be available from other sources.
3. Animal operations must prevent direct contact of animals with surface water bodies. Animals should not be allowed to graze directly adjacent to or within stream banks. Animal operations should maintain a buffer zone or riparian filter strip between the animals and any surface waters of the state. The buffer zone must adequately minimize the discharge of pollutants from an animal operation. There should be no direct exposure of a surface water body to an animal.

**3.1.B. General Manure Management Waiver Conditions**

1. Animal operations must prevent the direct or indirect discharge of animal wastes (manure, urine, soiled bedding) to any surface waters of the state (including ephemeral streams and vernal pools).
2. Animal operations must properly manage the wastes (i.e., manure, urine, soiled bedding) generated by the animals at the facility in accordance with the following guidelines:
  - a) Animal wastes should be collected and disposed of regularly (at least once every two weeks).
  - b) Animal wastes can be stored temporarily (no longer than two weeks) on site until disposal, unless animal wastes are composted on site. The amount of animal wastes stored in temporary storage area must not exceed the capacity of the storage area. If animal wastes exceed, or threaten to exceed the capacity of the temporary storage area, the animal wastes should be disposed of immediately.
  - c) Areas adjacent to temporary storage area for animal wastes should be graded to prevent storm water and surface runoff from reaching the storage area.
  - d) Temporary storage area should be on an impervious surface (e.g., concrete pad or plastic tarp) to prevent leaching of pollutants to groundwater.
  - e) Temporary storage area should be protected with a roof or cover, or at a minimum be covered with plastic sheeting if precipitation is forecast within the next 24 hours, to prevent direct contact between precipitation and animal wastes.



- f) A buffer zone of at least 100 feet should be maintained between the temporary storage area for animal wastes and any surface water body, unless sufficient information is provided to demonstrate that a proposed alternative is protective of water quality.
- g) If animal wastes are composted on site, composting activities must comply with the conditions in 3.I.C.
- h) If animal wastes are used as a fertilizer, soil amendment, or mulch on grazing lands, application of animal wastes to soil must comply with the conditions in 3.I.D.

### **3.I.C. General Waiver Conditions for Composting Manure from Animal Operations**

1. Prevent the direct or indirect discharge of compost and compost feedstocks to any surface waters of the state (including ephemeral streams and vernal pools).
2. Compost pile(s) must not cause or threaten to cause a condition of contamination, pollution, or nuisance.
3. Compost pile(s) should be protected with a roof or cover, or at a minimum be covered with plastic sheeting if precipitation is forecast within the next 24 hours, to prevent direct contact between precipitation and compost.
4. Precipitation and surface drainage should be diverted away from compost pile(s).
5. A buffer zone of at least 100 feet should be maintained between the compost pile(s) and any surface waters of the state, unless sufficient information is provided to demonstrate that a proposed alternative is protective of water quality.
6. Leachate from compost pile(s) must not adversely impact the quality or beneficial uses of groundwater in any water wells.
7. The following wastes cannot be added to compost pile(s) unless sufficient information is provided to demonstrate that the waste does not pose a potential threat to water quality: (a) municipal solid wastes; (b) sludges, including sewage sludge, water treatment sludge, and industrial sludge; (c) septage; (d) liquid wastes; (e) oil and grease; and (f) hazardous, designated, and any other wastes determined by the San Diego Water Board to pose a potential threat to water quality.

### **3.I.D. General Waiver Conditions for Application of Manure from Animal Operations as a Fertilizer, Amendment, or Mulch to Soil**

1. If fresh and/or uncomposted manure is applied as a fertilizer, amendment, or mulch to soil, manure must be applied to the same property where the manure was generated.
2. Dried, processed, or composted manure may be applied as a fertilizer, amendment, or mulch to soil on sites other than the property where the manure was generated. Dried, processed, or composted manure may also be applied as a fertilizer, amendment, or mulch to soil on the same property where the manure was generated. Use of dried, processed, or composted

- manure on or off the property where the manure was generated must comply with the waiver conditions in 3.I.D.
3. A buffer zone of at least 100 feet should be maintained between the manure applied to soil and any surface waters of the state, unless sufficient information is provided to demonstrate that a proposed alternative is protective of water quality.
  4. The amount of soil amendment or mulch materials that can be applied to soil must be reasonable for the crop or plant, soil, climate, special local situations, management system, and type of soil amendment or mulch. Application rates must take into account storm events during the rainy season (October-May). Application rates must not allow soil amendment or mulch materials to be transported off the property in storm water runoff during the rainy season. Resources are available from the NRCS, University of California Cooperative Extension (UCCE), and other organizations. A copy of the calculations and/or estimate of the application rate must be available on site for inspection.
  5. Apply amendment or mulch materials to soil at site-specific rates appropriate to the season (i.e., dry vs. rainy).
  6. Implement MMs/BMPs in areas with soil amendment or mulch materials to minimize or eliminate runoff and leachate to surface waters and groundwater.

### **3.I.E. General Inspection and Reporting Waiver Conditions**

1. The San Diego Water Board and/or other local regulatory agencies must be allowed reasonable access to the site in order to perform inspections and conduct monitoring.
2. Animal operations must submit a Notice of Intent or technical and/or monitoring program reports when directed by the San Diego Water Board.

In addition to the General Conditions above, compliance with the following Specific Conditions is required:

### **3.II.A. Specific Waiver Conditions for Small Animal Feeding Operations**

1. Small AFOs must not discharge any pollutants to waters of the United States through any man-made conveyance, or directly to waters of the United States which originate outside of and pass over, across or through the facility or otherwise come into direct contact with the animals confined in the operation.
2. Small AFOs must be operated and maintained in accordance with the regulations cited in California Code of Regulations Title 27 sections 22562 through 22565.

### **3.II.B. Specific Waiver Conditions for Medium Animal Feeding Operations**

1. Medium AFOs must not discharge any pollutants to waters of the United States through any man-made conveyance, or directly to waters of the United States which originate outside of and pass over, across or through the facility or otherwise come into direct contact with the animals confined in the operation.

2. Medium AFOs must be operated and maintained in accordance with the regulations cited in California Code of Regulations Title 27 sections 22562 through 22565.
3. Medium AFO facility owners or operators must file a Notice of Intent with the San Diego Water Board containing, at a minimum, the following information:
  - a) Property owner name and address.
  - b) AFO owner/operator name and address.
  - c) Number and types of animals.
  - d) Map of the AFO facility showing the locations of manure stockpiles, nearby surface water bodies, and/or water wells.
  - e) Description of existing and planned MMs/BMPs for the prevention of erosion and discharges of animal wastes that could affect the quality of waters of the state.

Sufficient information demonstrating compliance with general and specific waiver conditions must be submitted in order for the medium AFO facility to be eligible for a conditional waiver.

### ***3.II.C. Specific Waiver Conditions for Grazing Lands***

1. Grazing operations must manage grazing fields to allow lands to revegetate and minimize topsoil erosion.
2. Owners of pasture and range lands used for grazing, must implement MMs/BMPs to minimize or eliminate any discharge that could adversely affect the quality or beneficial uses of waters of the state

The following list of references provides additional information that is available regarding appropriate MMs/BMPs for minimizing pollutants in runoff and other discharges from animal operations.

1. Equestrian-Related Waste Quality Best Management Practices, County of San Diego Department of Agriculture, Weights and Measures  
[http://www.sdcounty.ca.gov/awm/docs/equestrian\\_bmp.pdf](http://www.sdcounty.ca.gov/awm/docs/equestrian_bmp.pdf)
2. Electronic Field Office Technical Guide (eFOTG), United States Department of Agriculture, Natural Resources Conservation Service  
<http://www.nrcs.usda.gov/technical/efotg/>
3. Agricultural Management Measures, State Water Resources Control Board  
<http://www.swrcb.ca.gov/nps/docs/guidance/agricmms.pdf>
4. California Nonpoint Source Encyclopedia, State Water Resource Control Board  
<http://www.swrcb.ca.gov/nps/docs/encyclopedia/agriculture.pdf>

#### **7.4 Proposed Conditional Waiver No. 4 – Discharges from Agricultural and Nursery Operations**

Proposed Conditional Waiver No. 4 is for discharges from agricultural and nursery operations, which contain pollutants that can percolate to groundwater or runoff to surface waters. Discharges from agricultural and nursery operations include discharges resulting from growing operations, irrigation return flows, and storm water runoff which can transport pollutants from agricultural and nursery operations to surface waters and groundwater.

The following types of discharge may be eligible for Proposed Conditional Waiver No. 4:

- Discharges of plant crop residues to land (discussed in Appendix A, section A.3.5)
- Discharges of storm water runoff (discussed in Appendix A, section A.3.6)
- Discharges of green wastes to compost operations (discussed in Appendix A, section A.3.11)
- Discharge/application of amendments or mulches to soil (discussed in Appendix A, section A.3.11)
- Discharges of agricultural irrigation return water (discussed in Appendix A, section A.3.14)
- Discharges of nursery irrigation return water (discussed in Appendix A, section A.3.15)

Discharges from lands used for agricultural or nursery operations can be significant sources of sediment, dissolved solids, nutrients, pesticides, hydrocarbons, pathogens (i.e., bacteria, viruses, protozoa), and other pollutants which can adversely affect the quality of waters of the state if growing operations, irrigation return flows, and storm water runoff are not properly managed. Discharge from these types of operations can all originate from one land owner/operator, and have similar discharge sources, environmental settings, and/or proposed waiver conditions. Therefore, these types of discharge were grouped together into one discharge classification. Agricultural and nursery operations that comply with the proposed waiver conditions are not expected to pose a threat to the quality of waters of the state.

Agricultural and nursery operations can utilize composted materials and/or plant crop residues as soil amendments or mulches, as well as compost green wastes on site to be used later as a mulch or soil amendment. Agricultural and nursery irrigation return flows can produce surface runoff that may transport pollutants from soil (e.g., sediment, hydrocarbons, dissolved solids, pesticides) and soil amendments or mulches (e.g., nutrients, organics, pesticides, pathogens) to surface waters and can also leach pollutants into underlying groundwater.

Storm water and surface runoff that is allowed to come in contact with these wastes can leach pollutants to underlying groundwater, or transport pollutants to surface waters. Storm water runoff from agricultural activities and return flows from irrigated agriculture

are exempt from federal NPDES regulations.<sup>22</sup> However, storm water runoff from agricultural activities and return flows from irrigated agriculture are subject to regulations in the state Water Code and may be regulated with WDRs, unless a waiver is issued. Agricultural and nursery operations that properly manage their growing operations, irrigation return flows, and storm water runoff are not expected to pose a threat to the quality of waters of the state. Therefore, waiver conditions must require proper management and other measures to minimize or eliminate discharges of pollutants from agricultural and nursery operations to waters of the state.

Current San Diego Water Board resources would not be sufficient to issue general or individual WDRs and to enroll and regulate each agricultural or nursery operation in the Region. Additionally, the costs associated with annual fees and monitoring requirements for WDRs can require significant resources from agricultural and nursery operations, which would likely be a significant expense for smaller growing facilities. However, collective discharges from these smaller facilities can potentially have a significant impact on the quality of the waters in the Region. This, in turn, can increase the efforts required by cities and counties to comply with NPDES storm water requirements and/or TMDL compliance.

For discharges of irrigation return flows and storm water runoff from agricultural or nursery operations, the existing conditional waivers require implementation of MMs/BMPs, but no enrollment, monitoring, or reporting requirements. The San Diego Water Board has assumed that agricultural and nursery operations are complying with the existing waiver conditions. However, the existing waiver conditions for agricultural and nursery operations do not include any requirements that would compel the owner or operator of an agricultural or nursery operation to comply with waiver conditions. Also, because there are no requirements to compel compliance with waiver conditions, many of the agricultural and nursery operations are very likely unaware of their responsibilities under the existing conditional waivers, or the consequences of their actions on water quality and the environment. Educating these operators of their responsibilities is necessary to ensure that their practices do not adversely affect water quality.

The Central Coast, Central Valley, and Los Angeles Regional Water Boards have implemented waiver programs to control NPS runoff from irrigated lands (including agricultural and nursery operations) with conditions that require enrollment, implementation of MMs/BMPs, monitoring, reporting, and preparation of water quality management plans. The irrigated lands waiver programs from these other Regional Water Boards provide the option of enrolling as an individual discharger, or joining a group or coalition to share the cost of a monitoring and reporting program. Joining a monitoring group is a much more cost effective and affordable option, because the cost of monitoring and reporting is shared among the group members. Monitoring groups also require fewer resources and less oversight than individual dischargers for the other Regional Water Boards. Therefore, the irrigated lands waiver programs from other Regional Water Boards also include incentives to join a monitoring group in the form of

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<sup>22</sup> Code of Federal Regulations Title 40 sections 122.3(e) and (f)

reduced monitoring and/or reporting requirements for early enrollment, and discounted annual fees for group members.

The San Diego Water Board is also proposing to implement a waiver program that includes enrollment, monitoring, and reporting. In the other regions most of the agricultural and nursery operations are on large 100-acre and greater size parcels that can be easily located, have easily identified owners and/or operators, and operate on a full-time and/or year-round schedule. Thus, the Regional Water Boards from these other regions can easily identify and contact owners and/or operators that are not enrolled in their irrigated lands conditional waiver programs. Identifying larger operations such as these in the San Diego Region and enrolling them in a similar waiver program should not be very difficult.

However, many of the growers in the San Diego Region are very small (10 acres or less) operations. There are thousands of these small growing operations in the San Diego Region. The small operations have owners and/or operators that do not occupy the parcels or are present only part of the year, and/or operate on a seasonal, part-time, or sporadic schedule. Contacting and convincing them to join a monitoring group or enrolling them as individual dischargers may be difficult and will likely require significant time and resources. Available data suggest that the collective discharges from these smaller facilities may be impacting the quality of the waters in the Region, and therefore need to be identified and brought into compliance with the waiver conditions.

The owners/operators of agricultural or nursery operations will be given an opportunity to form and/or join a monitoring group. Owners/operators of agricultural and nursery operations that form and/or join a monitoring group and file a Notice of Intent with the San Diego Water Board will be allowed to divide the cost of a monitoring and reporting program among the group members. A monitoring group that has good spatial coverage will likely require fewer sampling locations on a per operation basis than if an individual operations were to conduct a monitoring and reporting program on its own..

Owners/operators of agricultural and nursery operations that choose not to be a member of a monitoring group/coalition will also be required to file a Notice of Intent and perform monitoring. Responsibility for implementing the requirements of the monitoring program would be the sole responsibility of each individual operation that has not joined a monitoring group, which would likely be a significant expense for an individual operation. Enrolling as part of a monitoring group would reduce the enrollment, monitoring, and reporting requirements, as well as divide the financial responsibility among the members in the monitoring group. For these reasons, enrollment in a monitoring group is in the best interest of all agricultural and nursery operators, and is encouraged by the San Diego Water Board. Owners/operators of agricultural or nursery operations that do not comply with the conditional waivers may be issued individual WDRs and/or have other enforcement actions taken against them, which will likely require their participation in a monitoring group, as well as additional fees and/or fines.

Reaching out and informing all the agricultural and nursery operations about the conditional waiver in the Region would exceed the resources currently available to the San Diego Water Board. Additionally, contact from a regulatory agency is often met with an ambivalent or negative response by agricultural and/or nursery owners/operators. Therefore, assistance from non-regulatory agencies and organizations is required to reach out and educate these owner/operators about the conditional waiver and steps needed to comply with the waiver conditions.

The San Diego Water Board has already contacted the San Diego County Farm Bureau (Farm Bureau), UCCE, NRCS, and regional resource conservation districts (RCDs) about reaching out to owners/operators of agricultural and nursery operations. These organizations, and others, can help the San Diego Water Board educate the owners/operators of agricultural and nursery operations about the conditional waiver and waiver conditions, and prepare them for the enrollment, monitoring and reporting requirements of this conditional waiver. These organizations can also provide guidance to agricultural and nursery operators to help them form and/or join monitoring groups.

In addition to the outreach efforts from the Farm Bureau, UCCE, NRCS, and regional RCDs, the municipalities (i.e., cities and counties), government agencies, and San Diego Water Board can encourage agricultural and nursery operators to implement MMs/BMPs and join a monitoring group. When municipalities, government agencies, and/or the San Diego Water Board perform a compliance inspection, as authorized by state, county or local ordinances, or in response to a complaint or a reported violation of waiver conditions, during the inspection they can inform owner/operator of the agricultural and nursery operation of their responsibilities to be included in the conditional waiver program. Agricultural and nursery operators can be issued Notices of Violation, or other enforcement actions for not implementing waiver-required MMs/BMPs and can be encouraged to form and/or join a monitoring group.

Agricultural or nursery operators that violate waiver conditions by not implementing MMs/BMPs and that allow the degradation of water quality should be notified of their responsibilities and required to comply with waiver conditions. Agricultural or nursery operations that repeatedly violate waiver conditions should be required to file a RoWD and be regulated with WDRs. Enforcement actions could also be taken against facilities that fail to comply with waiver conditions.

Therefore, waiver conditions should be developed to encourage the education of agricultural and nursery operators, and encourage agricultural and nursery operators to form and/or join monitoring groups. The waiver conditions should also provide explicit requirements that the owners/operators of agricultural and nursery operations are expected to meet in order to be eligible for this conditional waiver. However, if the owner/operator of an agricultural or nursery operation violates any waiver conditions, the San Diego Water Board has the option to terminate the conditional waiver for the operation and begin regulating the agricultural or nursery operation with individual WDRs and/or take other enforcement actions.

In order to be eligible for Proposed Conditional Waiver No. 4, discharges must comply with certain conditions to be protective of water quality. The proposed waiver conditions applicable to discharges from agricultural and nursery operations include the following:

- 4.I.A. General Facility Design and Management Waiver Conditions
- 4.I.B. General Enrollment and Education Waiver Conditions
- 4.I.C. General Waiver Conditions for Composting Green Wastes from Agricultural and Nursery Operations
- 4.I.D. General Waiver Conditions for Application of Compost as a Fertilizer, Amendment, or Mulch to Soil
- 4.I.E. General Waiver Conditions for Application of Products Used in Agricultural and Nursery Operations
- 4.I.F. General Inspection and Reporting Requirements
- 4.II.A. Specific Waiver Conditions for Agricultural Operations
- 4.II.B. Specific Waiver Conditions for Nursery Operations

Discharges from agricultural and nursery operations that comply with the general and specific waiver conditions in Proposed Conditional Waiver No. 4 are not expected to pose a threat to the quality of waters of the state.

**4.I.A. General Facility Design and Management Waiver Conditions**

1. Agricultural and nursery operations must comply with any local, state, and federal ordinances and regulations and obtain any required approvals, permits, certifications, and/or licenses.
2. Agricultural and nursery operations must implement MMs/BMPs to minimize or eliminate the discharge of pollutants that may adversely impact the quality or beneficial uses of waters of the state. Recommended MMs/BMPs are available in the State Water Board's NPS Program Plan and/or available from UCCE, NRCS, and/or regional RCDs. Additional references may be available from other sources.

**4.I.B. General Enrollment and Education Waiver Conditions**

1. Agricultural and nursery operators must perform a self assessment to identify the pollutants present on the site and assess the potential for runoff and/or infiltration to adversely affect the quality or beneficial uses of the waters of the state. Annual self assessments must be available on site for inspection. If an agricultural or nursery operator does not have proof available during an inspection, the operator must submit proof to the inspecting agency and the San Diego Water Board within 45 days from the date of inspection. Self assessment questionnaires are available from the UCCE.
2. Agricultural and nursery operators must complete at least 2 hours of water quality management related training annually. Training may include formal classroom training or meetings with a training component. Proof of training must be available on site for inspection. Agricultural and nursery operators who do not have proof available during an inspection must submit proof to the



- inspecting agency and the San Diego Water Board within 45 days from the date of inspection.
3. Agricultural and nursery operators must be in regular contact with the local Farm Bureau, UCCE, NRCS, and/or regional RCDs so they can be informed of the latest MMs/BMPs and developments with water quality issues. Proof of contact (e.g., newsletter addressed to facility, NRCS conservation plan, UCCE self assessment) must be available on site for inspection. Agricultural and nursery operators who do not have proof available during an inspection must submit proof to the inspecting agency and the San Diego Water Board within 45 days from the date of inspection.
  4. Agricultural and nursery operations must implement MMs/BMPs to minimize or eliminate the discharge of pollutants that may adversely impact the quality or beneficial uses of waters of the state. Recommended MMs/BMPs are available in the State Water Board's NPS Program Plan and/or available from UCCE, NRCS, and/or regional RCDs. Additional references may be available from other sources.
  5. Agricultural and nursery operators shall maintain records pertaining to the water quality management efforts for the operation. The records shall include the following information:
    - a) Site map showing locations of MMs/BMPs and nearby surface water bodies and/or water wells.
    - b) List of hazardous materials kept on the property.
    - c) Location and amount of waste materials (e.g., green wastes, trash) generated and composted and/or reused on site, or disposed of off site.
    - d) Pesticide use reports and records.
    - e) Fertilizer, soil amendment, and mulch use records.
    - f) Irrigation management records (i.e., water use, irrigation system, irrigation schedule, etc.).
    - g) Equipment maintenance records.
    - h) List of MMs/BMPs implemented to minimize and/or eliminate runoff to surface waters and/or infiltration to groundwater.
    - i) Owner, operator, and employee education and training records.
    - j) Inspection reports.
    - k) Self assessments.
    - l) Contacts with Farm Bureau, UCCE, NRCS, regional RCDs, and/or other organizations.
    - m) Copies of any permits, licenses, and certifications required for the operation.
    - n) Water quality monitoring data (if any).

Recommended water quality record keeping documentation is available from the UCCE. Water quality management records must be available on site for inspection.
  6. **No later than December 31, 2010**, agricultural and nursery operations must form or join a monitoring group. The function of the monitoring group is to perform water quality monitoring and report the results to the San Diego Water Board. Monitoring groups will be allowed to divide the costs

- associated with the water quality monitoring and reporting requirements in 4.I.F among its members. Individual operations not in a monitoring group will be solely responsible for the costs associated with the water quality monitoring and reporting requirements in 4.I.F.
7. **No later than January 1, 2011**, owners/operators of agricultural and nursery operations must file a Notice of Intent, as either an individual operation or as part of a monitoring group, with the San Diego Water Board.
  8. A Notice of Intent submitted by a monitoring group on behalf of its members must contain the following information:
    - a) Identify the representative(s) authorized to sign reports submitted on behalf of the group.
    - b) An electronic list of landowners and/or operators participating in the monitoring group including: (a) assessor parcel number(s), (b) parcel size, (c) parcel owner or operator name, (d) types of crops grown on each parcel, (e) number of irrigated acres on each parcel, and (f) parcel owner or operator mailing address.
    - c) A detailed map of the area included within the monitoring group, preferably in GIS format, identifying individual parcels and/or districts that are participating in the monitoring group.
    - d) A detailed description of irrigation, storm water runoff, nutrient, pesticide, erosion control, composting, and other site-specific MMs/BMPs that have been implemented by each participant in the monitoring group, which must be provided as a written description, on a map, and/or using pictures.

Monitoring group members are not eligible for this waiver until a complete Notice of Intent is filed. The monitoring group must inform the San Diego Water Board when any member ceases to participate in the monitoring group within 30 days of the cessation of participation. Any member who ceases to participate in a monitoring group must file a Notice of Intent as an individual agricultural or nursery operation, in accordance with waiver condition 4.I.B.9, within 30 days of ceasing to participate in the monitoring group.
  9. A Notice of Intent filed by an individual agricultural or nursery operation must contain the following information:
    - a) Information about the agricultural or nursery operation including: (a) assessor parcel number(s), (b) parcel size, (c) parcel owner and operator name(s), (d) types of crops grown on each parcel, (e) number of irrigated acres, and (f) parcel owner and operator mailing address(es).
    - b) A detailed map of the operation, preferably in GIS format, with locations of operation boundaries, nearby surface waters and water wells.
    - c) A detailed description of irrigation, storm water runoff, nutrient, pesticide, erosion control, composting, and other site-specific MMs/BMPs that have been implemented by the operation, which must be provided as a written description, on a map, and/or using pictures.

An individual agricultural or nursery operation is not eligible for this waiver until a complete Notice of Intent is filed.

**4.I.C. General Waiver Conditions for Composting Green Wastes from Agricultural and Nursery Operations**

1. Prevent the direct or indirect discharge of compost and compost feedstocks to any surface waters of the state (including ephemeral streams and vernal pools).
2. Plant crop residues may be composted as green waste.
3. Compost pile(s) must not cause or threaten to cause a condition of contamination, pollution, or nuisance.
4. Compost pile(s) should be protected with a roof or cover, or at a minimum be covered with plastic sheeting if precipitation is forecast within the next 24 hours, to prevent direct contact between precipitation and compost.
5. Precipitation and surface drainage must be diverted away from compost pile(s).
6. A buffer zone of at least 100 feet should be maintained between the compost pile(s) and any surface waters of the state, unless sufficient information is provided to demonstrate that a proposed alternative is protective of water quality.
7. Leachate from compost pile(s) must not adversely impact the quality or beneficial uses of groundwater in any water wells.
8. The following wastes cannot be added to compost pile(s) unless sufficient information is provided to demonstrate that the waste does not pose a potential threat to water quality: (a) municipal solid wastes; (b) sludges, including sewage sludge, water treatment sludge, and industrial sludge; (c) septage; (d) liquid wastes; (e) oil and grease; and (f) hazardous, designated, and any other wastes determined by the San Diego Water Board to pose a potential threat to water quality.

**4.I.D. General Waiver Conditions for Application of Compost as a Fertilizer, Amendment, or Mulch to Soil**

1. Prevent the direct or indirect discharge of amendments or mulches to any surface waters of the state (including ephemeral streams and vernal pools).
2. Plant crop residues may be utilized as soil amendment or mulch.
3. Amendments or mulches applied to soil cannot include any of the following additives, unless sufficient information is provided to demonstrate that the additive does not pose a potential threat to water quality: (a) municipal solid wastes; (b) sludges, including sewage sludge, water treatment sludge, and industrial sludge; (c) septage; (d) liquid wastes; (e) oil and grease; and (f) hazardous, designated, and any other wastes determined by the San Diego Water Board to pose a potential threat to water quality.
4. The amount of soil amendment or mulch materials that can be applied to soil must be reasonable for the crop or plant, soil, climate, special local situations, management system, and type of soil amendment or mulch. Application rates must take into account storm events during the rainy season (October-May). Application rates must not allow soil amendment or mulch materials to be transported off the property in storm water runoff during the rainy season. Resources are available from the NRCS, UCCE, and other organizations. A

copy of the calculations and/or estimate of the application rates must be available on site for inspection.

5. Apply amendment or mulch materials to soil at site-specific rates appropriate to the season (i.e., dry vs. rainy).
6. Implement MMs/BMPs in areas with soil amendment or mulch materials to minimize or eliminate runoff and leachate to surface waters and groundwater.

#### **4.I.E. General Waiver Conditions for Application of Products Used in Agricultural and Nursery Operations**

1. Prevent the direct or indirect discharge of products used in agricultural or nursery operations to any surface waters of the state (including ephemeral streams and vernal pools).
2. The application of any products used in agricultural or nursery operations that contain pollutants that may be transported in surface runoff to surface waters or may infiltrate to groundwater must be applied in accordance with manufacturer instructions and guidelines, and must not have an adverse effect on the quality of any waters of the state.
3. Excessive amounts of any products used in agricultural or nursery operations spilled to land must be contained and properly disposed.
4. Any products used in agricultural or nursery operations applied to land must not adversely impact the quality or beneficial uses of groundwater in any water wells.

#### **4.I.F. General Inspection and Reporting Waiver Conditions**

1. The San Diego Water Board and/or other local regulatory agencies must be allowed reasonable access to the site in order to perform inspections and conduct monitoring.
2. Owners/operators must submit a Notice of Intent or technical and/or monitoring program reports when directed by the San Diego Water Board.
3. **By March 31, 2011**, each monitoring group and each individual operation not participating in a monitoring group must contact the San Diego Water Board to begin developing a Monitoring and Reporting Program Plan (MRPP) and a Quality Assurance Project Plan (QAPP).
4. **By January 1, 2012**, each monitoring group and each individual operation not in a monitoring group must submit one MRPP/QAPP to the San Diego Water Board. The MRPP/QAPP must include the monitoring locations, frequency of monitoring, constituents of concern to be monitored, documentation of monitoring protocols, and sufficient information about the agricultural and/or nursery operations to demonstrate that the proposed MRPP/QAPP will adequately document water quality and pollutant loadings, and demonstrate compliance with waiver conditions.
5. **By December 31, 2012**, each monitoring group and each individual operation not participating in a monitoring group must submit one Monitoring Program Report (MRP) to the San Diego Water Board consistent with the MRPP/QAPP.

In addition to the General Conditions above, compliance with the following Specific Conditions is required:

**4.II.A. Specific Waiver Conditions for Agricultural Operations**

1. Minimize or eliminate the discharge of any pollutants that could adversely affect the quality or beneficial uses of any waters of the state.
2. Agricultural operators cannot alter surface waters of the state on or off the property, unless the proposed alteration has received a Clean Water Act section 401 Water Quality Certification, individual WDRs, or individual waiver from the San Diego Water Board.

**4.II.B. Specific Waiver Conditions for Nursery Operations**

1. Prevent the direct or indirect discharge of nursery irrigation return water to any surface waters of the United States.
2. Nursery operations must minimize or eliminate the discharge of any pollutants that could adversely affect the quality or beneficial uses of any waters of the state.
3. Nursery operators cannot alter surface waters of the state on or off the property, unless the proposed alteration has received a Clean Water Act section 401 Water Quality Certification, individual WDRs, or individual waiver from the San Diego Water Board.

The following list of references provides additional information that is available regarding appropriate MMs/BMPs for minimizing pollutants in runoff and other discharges from agricultural and nursery operations.

1. Industrial Storm Water Program, State Water Resources Control Board  
<http://www.swrcb.ca.gov/stormwtr/industrial.html>
2. Construction Storm Water Permit, State Water Resources Control Board  
[http://www.swrcb.ca.gov/stormwtr/gen\\_const.html](http://www.swrcb.ca.gov/stormwtr/gen_const.html)
3. Agricultural Management Measures, State Water Resources Control Board  
<http://www.swrcb.ca.gov/nps/docs/guidance/agricmms.pdf>
4. California Nonpoint Source Encyclopedia, State Water Resource Control Board  
<http://www.swrcb.ca.gov/nps/docs/encyclopedia/agriculture.pdf>
5. Developing a Management Plan for Irrigation Runoff, Dept. of Horticultural Sciences, Texas A&M University <http://aggie-horticulture.tamu.edu/greenhouse/nursery/environ/wmpln1.html>
6. Management Options for Nonpoint Source Pollution for Greenhouse and Container Crops, UC Cooperative Extension, San Diego  
<http://commserv.ucdavis.edu/CESanDiego/Stormwater/index.htm>
7. BMPs Nurseries And Greenhouses, County of Orange  
[http://www.ocwatershed.com/StormWater/documents\\_bmp\\_existing\\_development.asp#ind](http://www.ocwatershed.com/StormWater/documents_bmp_existing_development.asp#ind)
8. Electronic Field Office Technical Guide (eFOTG), Natural Resources Conservation Service <http://www.nrcs.usda.gov/technical/efotg/>

9. Grower Resources (including self assessment questionnaires and water quality record keeping notebook), San Diego County University of California Cooperative Extension [http://cesandiego.ucdavis.edu/Clean%5FWater/Grower\\_Resources.htm](http://cesandiego.ucdavis.edu/Clean%5FWater/Grower_Resources.htm)

## 7.5 Proposed Conditional Waiver No. 5 – Discharges from Silvicultural Operations

Proposed Conditional Waiver No. 5 is for discharges that originate from forest lands, which contain pollutants that can percolate to groundwater or runoff to surface waters. Discharges from forest lands include discharges resulting from timber operations and forest land management activities, and storm water runoff which can also transport pollutants from forest lands to surface waters and groundwater.

The following types of discharge may be eligible for Proposed Conditional Waiver No. 5:

- Discharges of storm water runoff (discussed in Appendix A, section A.3.6)
- Discharges of green wastes to compost operations (discussed in Appendix A, section A.3.11)
- Discharges from timber harvesting projects (discussed in Appendix A, section A.3.18)
- Discharges from wildfire suppression and fuels management activities (discussed in Appendix B, section B.1.4)

These types of discharge can originate from one land owner/operator and have similar environmental settings and proposed waiver conditions. Therefore, timber-related, or silvicultural, discharges were grouped together into one discharge classification. Silvicultural operations that comply with the proposed waiver conditions are not expected to pose a threat to the quality of waters of the state.

Silvicultural operations can be significant sources of sediment, dissolved solids, nutrients, pesticides, hydrocarbons, and pathogens, which can adversely affect the quality of the waters of the state. Timber operations, such as timber harvesting and wildfire suppression and fuels management activities, may generate sediment and solids during harvesting and clearing activities and/or may include the composting of green wastes.

Storm water runoff can produce surface runoff that may transport pollutants from soil (e.g., sediment, dissolved solids, pesticides) and green wastes (e.g., nutrients, organics, pesticides) to surface waters. Storm water can also percolate and leach pollutants into underlying groundwater. Storm water runoff from forest lands is not subject to federal NPDES regulations.<sup>23</sup> However, storm water runoff from forest lands is subject to regulations in the state Water Code and may be regulated with WDRs, unless a waiver is issued. Silvicultural operations that properly manage their activities and wastes are not expected to pose a threat to the quality of waters of the state. Therefore, waiver conditions must require proper management and other measures to minimize or eliminate discharges of pollutants from silvicultural operations to waters of the state.

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<sup>23</sup> Code of Federal Regulations Title 40 sections 122.3(e)

Timber operations on National Forest Service (NFS) lands in California are regulated by the U.S. Forest Service (USFS). The USFS is designated as the Water Quality Management Agency (WQMA) for silvicultural operations (including timber harvesting, timber management, vegetative manipulation, fuels management, road construction, and watershed management) on NFS lands.<sup>24</sup> The Regional Water Boards have agreed to waive the issuance of WDRs and the requirement to file RoWDs for USFS timber operations that may result in NPS discharges, provided that the USFS designs and implements its projects in accordance with the MMs/BMPs certified by the State Water Board and USEPA.<sup>25</sup> Silvicultural operations on NFS lands must prepare environmental and decision documents pursuant to the National Environmental Policy Act (NEPA).

Timber operations on private and state lands in California are regulated by the California Board of Forestry (BOF) and California Department of Forestry (CDF). The BOF/CDF are jointly designated as the WQMA for timber operations (including timber harvesting, timber management, vegetative manipulation, fuels management, road construction, and watershed management) on state and private forest lands.<sup>26</sup> The State Water Board conditionally certified the *Water Quality Management Plan for Timber Operations on Nonfederal Lands*. This plan has not been certified by the USEPA. Timber operations on nonfederal lands must submit a Notice of Exemption, Notice of Emergency, Timber Harvest Plan (THP), or Non-industrial Timber Management Plan (NTMP) to the CDF for approval in accordance with the State-certified plan. The CDF is supposed to circulate THPs and NTMPs to the Regional Water Boards for comment on potential water quality impacts.

The Water Quality Management Plans that are administered by the USFS and BOF/CDF for timber operations include measures for the protection of water quality. However, in the event water quality protection measures are not fully implemented, the San Diego Water Board may still regulate silvicultural discharges by issuing individual or general WDRs to ensure water quality is protected.

The San Diego Water Board determined that delegating regulation of specific types of discharge to another public agency is consistent with the Basin Plan and in the public interest. In this case, owners/operators of silvicultural operations must obtain the appropriate approvals from the USFS or BOF/CDF to perform timber harvest or wildfire suppression and fuels management projects. As long as the discharges from forest lands do not have an adverse impact on surface water or groundwater quality, the San Diego Water Board will waive the requirements to file a RoWD and WDRs for these operations.

However, waiver conditions should be developed in order for members of the public, cities, counties, local agencies and organizations, and/or the San Diego Water Board to

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<sup>24</sup> In accordance with the 1981 MAA between the USFS and State Water Board

<sup>25</sup> Certified MMs/BMPs can be found in the USFS's document entitled *Water Quality Management Plan for National Forest System Lands in California*.

<sup>26</sup> In accordance with the 1988 MAA between the BOF/CDF and State Water Board



determine if discharges from silvicultural operations pose a threat to the quality of the waters of the state. If owners/operators of silvicultural operations are not in compliance with waiver conditions, they can be issued a Notice of Violation, and required to correct deficiencies and comply with waiver conditions in order to be waived under Proposed Conditional Waiver No. 5. If the owner/operator of a silvicultural operation violates waiver conditions, the San Diego Water Board can terminate the conditional waiver for the discharge and regulate the discharge with individual WDRs and/or take other enforcement actions.

In order to be eligible for Proposed Conditional Waiver No. 5, discharges must comply with certain conditions to be protective of water quality. The proposed waiver conditions applicable to discharges from silvicultural operations include the following:

- 5.I.A. General Waiver Conditions for Silvicultural Operations
- 5.I.B. General Waiver Conditions for Composting Green Wastes During/From Silvicultural Operations
- 5.II.A. Specific Waiver Conditions for Timber Operations on Federal Lands
- 5.II.B. Specific Waiver Conditions for Timber Operations on Non-Federal Lands

Discharges from silvicultural operations that comply with the general and specific waiver conditions in Proposed Conditional Waiver No. 5 are not expected to pose a threat to the quality of waters of the state.

**5.I.A. General Waiver Conditions for Silvicultural Operations**

1. Silvicultural operations (including timber harvesting, timber management, vegetative manipulation, fuels management, road construction, and watershed management) must minimize or eliminate the discharge of any pollutants that could adversely affect the quality or beneficial uses of waters of the state.
2. Silvicultural operations (including timber harvesting, timber management, vegetative manipulation, fuels management, road construction, and watershed management) must comply with any federal, state, or local permitting, licensing, or certification requirements and applicable local, state, and federal regulations and ordinances.
3. The San Diego Water Board and/or other local regulatory agencies must be allowed reasonable access to the site in order to perform inspections and conduct monitoring.

**5.I.B. General Waiver Conditions for Composting Green Wastes During/From Silvicultural Operations**

1. Prevent the direct or indirect discharge of compost and compost feedstocks to any surface waters of the state (including ephemeral streams and vernal pools).
2. Compost pile(s) must not cause or threaten to cause a condition of contamination, pollution, or nuisance.

3. Compost pile(s) should be protected with a roof or cover, or at a minimum be covered with plastic sheeting if precipitation is forecast within the next 24 hours, to prevent direct contact between precipitation and compost.
4. Precipitation and surface drainage should be diverted away from compost pile(s).
5. A buffer zone of at least 100 feet should be maintained between the compost pile(s) and any surface waters of the state, unless sufficient information is provided to demonstrate that a proposed alternative is protective of water quality.
6. Leachate from compost pile(s) must not adversely impact the quality or beneficial uses of groundwater in any water wells.
7. The following wastes cannot be added to compost pile(s), unless sufficient information is provided to demonstrate that the waste does not pose a potential threat to water quality: (a) municipal solid wastes; (b) sludges, including sewage sludge, water treatment sludge, and industrial sludge; (c) septage; (d) liquid wastes; (e) oil and grease; and (f) hazardous, designated, and any other wastes determined by the San Diego Water Board to pose a potential threat to water quality.

In addition to the General Conditions above, compliance with the following Specific Conditions is required:

**5.II.A. Specific Waiver Conditions for Timber Operations on Federal Lands**

1. The State Water Board and USEPA must continue to certify the *Water Quality Management Plan for National Forest System Lands in California*.
2. The USFS must maintain: (a) a water quality program consistent with the Basin Plan, and (b) a program to monitor the implementation and effectiveness of MMs/BMPs.
3. The USFS must provide the San Diego Water Board copies of the environmental and decision documents containing information documenting that a multi-disciplinary review of the timber harvest proposal has been conducted, and the proposed MMs/BMPs and additional control measures that will be implemented to protect water quality.
4. The USFS must submit a Notice of Intent or technical and/or monitoring program reports when directed by the San Diego Water Board.

**5.II.B. Specific Waiver Conditions for Timber Operations on Non-Federal Lands**

1. The State Water Board must continue to certify the *Water Quality Management Plan for Timber Operations on Nonfederal Lands*.
2. Timber operations within 150 feet of existing structures (i.e., "FireSafe" treatments) that are conducted pursuant to a Notice of Exemption approved by the CDF are not required to provide notice to the San Diego Water Board, but must keep a copy of the approved Notice of Exemption for at least one year (from the approval date) on site for inspection.

3. For timber operations approved by the CDF pursuant to a Notice of Exemption or Notice of Emergency, a copy of the notice must be provided to the San Diego Water Board.
4. For timber operations with a THP or NTMP approved by the CDF, a copy of the Plan must be provided to the San Diego Water Board.
5. Owners/operators of non-federal forest lands must submit a Notice of Intent or technical and/or monitoring program reports when directed by the San Diego Water Board.

## 7.6 Proposed Conditional Waiver No. 6 – Discharges of Dredged or Fill Materials Nearby or Within Surface Waters

Proposed Conditional Waiver No. 6 is for discharges of dredged or fill materials nearby or within surface waters of the state. Dredged or fill materials are sources of pollutants that can adversely affect the quality of waters of the state.

The following types of discharge may be eligible for Proposed Conditional Waiver No. 6:

- Discharges from sand and gravel mining operations (discussed in Appendix A, section A.3.7)
- Discharges from dredging projects (discussed in Appendix A, section A.3.9)
- Discharges from stream channel alteration projects (discussed in Appendix A, section A.3.13)
- Other projects proposing to discharge dredged or fill materials nearby or within surface waters of the state.

Discharges from these types of projects have similar properties, enrollment requirements, and proposed waiver conditions. Therefore, discharges from all these types of projects were grouped together into one discharge classification. These types of projects that comply with the proposed waiver conditions are not expected to pose a threat to the quality of waters of the state.

Obstruction, alteration, excavation, and/or discharges of dredged or fill material into or nearby waters of the United States are subject to regulation under section 10 of the River and Harbors Act and/or section 404 of the Clean Water Act. Projects regulated under Clean Water Act section 404 are not subject to federal NPDES regulations.<sup>27</sup> In any case, discharges of dredged or fill materials that can affect the quality of waters of the state (which include waters of the United States) are subject to regulations in the state Water Code and may be regulated with WDRs, unless a waiver is issued.

Sand and gravel mining, dredging, stream channel alteration projects, as well as other projects that may discharge dredged or fill materials nearby or within surface waters of the state, typically must apply for a permit under section 10 of the River and Harbors Act and/or section 404 of the Clean Water Act (collectively referred to herein as “Federal Permits”) from the United States Army Corps of Engineers (ACOE). In order for the project to obtain a Federal Permit, the project must first obtain a Clean Water Act section 401 water quality certification (401 Certification) from the appropriate Regional Water Board.

However, these types of projects may not always need a 401 Certification. There are water bodies that are considered “*waters of the state*” but not “*waters of the United States*.” These waters include nonnavigable, isolated, and intrastate waters that do not have interstate commerce ties, which may include ephemeral streams and vernal pools.

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<sup>27</sup> Code of Federal Regulations Title 40 section 122.3(b)

In such cases, the ACOE may determine that a Federal Permit is not required, which means a 401 Certification may not be required.

In addition to obtaining a Federal Permit and 401 Certification, mining of sand and gravel within or nearby waters of the United States is subject also to the Surface Mining and Reclamation Act (SMARA) regulations.<sup>28</sup> SMARA includes water quality protection and management requirements. Sand and gravel mining operations are required to obtain a Surface Mining Permit from the city or county "lead agency" (typically the local planning or building department). There may be situations where a sand and gravel mining operation may not be located in an area requiring a Federal Permit and 401 Certification. However, a Surface Mining Permit requires the applicant to include performance standards for the protection of water quality.

Under the existing conditional waivers, enrollment for a conditional waiver for these projects is fulfilled with a 401 Certification. Regulation by a Surface Mining Permit and/or Federal Permit and 401 Certification would effectively regulate discharges of dredged or fill materials nearby or within surface waters. Obtaining the required Surface Mining Permits and/or Federal Permits and 401 Certifications should be included as waiver conditions that can serve as the method of enrollment for a conditional waiver for discharges from these types of projects. For San Diego Water Board to delegate regulation of specific types of discharge to another public agency is consistent with the Basin Plan and in the public interest. In this case, completed and approved documentation for these types of projects from the city or county "lead agency" and/or ACOE, as well as 401 Certification applications submitted to the San Diego Water Board, can provide sufficient information and data to the San Diego Water Board to determine compliance with the conditions of the conditional waivers. However, in cases where a Surface Mining Permit and/or Federal Permit and 401 Certification is not required, the discharger must submit a RoWD to the San Diego Water Board to determine if issuing an individual conditional waiver, or if regulation by individual WDRs is appropriate.

In addition, waiver conditions should be developed in order for members of the public, cities, counties, local agencies and organizations, and/or the San Diego Water Board to determine if discharges of dredged or fill materials nearby or with surface waters pose a threat to the quality of the waters of the state. If dischargers are not in compliance with waiver conditions, they can be issued a Notice of Violation and required to correct deficiencies in order to be eligible for Proposed Conditional Waiver No. 6. If dischargers violate any waiver conditions, the San Diego Water Board has the option to terminate the conditional waiver for the discharge and begin regulating the discharge with individual WDRs and/or take other enforcement actions.

In order to be eligible for Proposed Conditional Waiver No. 6, discharges must comply with certain conditions to be protective of water quality. The proposed waiver conditions

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<sup>28</sup> Public Resources Code section 2710 et seq. and California Code of Regulations Title 14 section 3500 et seq.

applicable to discharges of dredged or fill material within or nearby surface waters of the state include the following:

- 6.I.A. General Waiver Conditions for Projects that Discharge Dredged or Fill Material Nearby or Within Surface Waters Required to Obtain a Surface Mining Permit and/or Federal Permit (River and Harbors Act Section 10 or Clean Water Act Section 404 Permit) and Clean Water Act Section 401 Water Quality Certification
- 6.II.A. Specific Waiver Conditions for Sand and Gravel Mining Operations

Discharges of dredged or fill materials nearby or within surface waters that comply with the general and specific waiver conditions in Proposed Conditional Waiver No. 6 are not expected to pose a threat to the quality of waters of the state.

**6.I.A. General Waiver Conditions for Projects that Discharge Dredged or Fill Material Nearby or Within Surface Waters Required to Obtain a Surface Mining Permit and/or Federal Permit (River and Harbors Act Section 10 or Clean Water Act Section 404 Permit) and Clean Water Act Section 401 Water Quality Certification**<sup>29</sup>

1. Operators must comply with measures included in the Surface Mining Permit and/or Federal Permit and Clean Water Act section 401 Water Quality Certification to protect surface water and groundwater quality.
2. The San Diego Water Board and/or other local regulatory agencies must be allowed reasonable access to the site in order to perform inspections and conduct monitoring.
3. At least one copy of any permits, licenses, and certifications must be available on site for inspection.
4. Operators must minimize or eliminate the discharge of any pollutants that could adversely affect the quality or beneficial uses of waters of the state.

In addition to the General Conditions above, compliance with the following Specific Conditions is required:

**6.II.A. Specific Waiver Conditions for Sand and Gravel Mining Operations**

1. Sand and gravel mining operations cannot be conducted in flowing streams or other water bodies.

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<sup>29</sup> For projects that discharge dredged or fill material nearby or within surface waters NOT required to obtain a Surface Mining Permit or Federal Permit (River and Harbors Act section 10 or Clean Water Act section 404 Permit) and Clean Water Act section 401 Water Quality Certification, the discharger must file a Report of Waste Discharge (RoWD) with the San Diego Water Board.

## 7.7 Proposed Conditional Waiver No. 7 – Discharges of Recycled Water to Land

Proposed Conditional Waiver No. 7 is for discharges of recycled water to land. Discharges of recycled water may contain pollutants that can adversely affect the quality of waters of the state. The application of recycled water to land may result in pollutants being concentrated in soils, which may adversely impact the quality of the waters of the state when those concentrated pollutants are leached out during rainfall events and/or overuse of irrigation water. This proposed waiver would not be available or applicable to recycled water projects and users subject to rules and regulations established by master reclamation permits (MRPs), issued pursuant to Water Code section 13523.1, or otherwise regulated under waste discharge requirements (WDRs) or water reclamation requirements (WRRs), issued pursuant to Water Code sections 13260 and 13523, respectively.

The following types of discharge may be eligible for Proposed Conditional Waiver No. 7:

- Discharges to land from short-term recycled water projects (without permanent recycled water delivery and/or distribution systems, not to exceed 365 days) (discussed in Appendix A, section A.3.16)
- Discharges to land from permanent recycled water projects (with permanent recycled water delivery and/or distribution systems, limited to the period prior to the discharge being authorized and regulated under WDRs, WRRs, and/or MRP, not to exceed 365 days) (see Appendix A, section A.3.16)

Discharges from these types of projects have similar properties, threat to water quality, and proposed waiver conditions. Therefore, these types of discharge were grouped together into one discharge classification. Recycled water projects that comply with the proposed waiver conditions are not expected to pose a threat to the quality of waters of the state.

Recycled water may only include sources that contain domestic waste, whole or in part.<sup>30</sup> Domestic wastewater reclamation is subject to the requirements of Water Code Articles 1 through 7 (commencing with section 13500) of Chapter 7, and the use of recycled water must not degrade water quality.<sup>31</sup> Recycled water cannot be discharged without authorization under WDRs, WRRs, or a MRP,<sup>32</sup> unless issued a waiver. A conditional waiver is not available or applicable to recycled water discharges authorized and regulated under WDRs, WRRs, and/or a MRP.

The California Department of Public Health (CDPH), formerly known as the California Department of Health Services, established statewide wastewater reclamation criteria for each type of recycled water use to protect public health.<sup>33</sup> Depending on the

<sup>30</sup> California Code of Regulations Title 22 section 60302

<sup>31</sup> Water Code section 13550(a)(4)

<sup>32</sup> Water Code section 13529.2(b)

<sup>33</sup> California Code of Regulations Title 22, Division 4, Chapter 3, Articles 1 through 10

planned use of the recycled water, the domestic wastewater must be treated to one of the following minimum standards:

- Undisinfected Secondary Recycled Water<sup>34</sup>
- Disinfected Secondary-23 Recycled Water<sup>35</sup>
- Disinfected Secondary-2.2 Recycled Water<sup>36</sup>
- Disinfected Tertiary Recycled Water<sup>37</sup>

Domestic wastewater that is treated to CDPH secondary recycled water standards contains more pollutants than domestic wastewater that is treated to CDPH tertiary recycled water standards. Domestic wastewater treated to CDPH secondary recycled water standards does not require filtering and will have higher concentrations of nutrients, suspended and dissolved solids, and possibly metals compared to domestic wastewater treated to CDPH tertiary recycled water standards. CDPH domestic wastewater reclamation criteria also require disinfection for most recycled water uses. However, for those uses that do not require disinfection, bacteria may be present in relatively high concentrations.

The different CDPH recycled water standards only include standards for bacteria to be protective of human health, not water quality. Pollutants that are typically present in domestic wastewater that can potentially have an adverse effect on receiving water quality include suspended and dissolved solids and nutrients, among others. Therefore,

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<sup>34</sup> Defined in California Code of Regulations Title 22 section 60301.900 as “oxidized wastewater” or “wastewater in which the organic matter has been stabilized, is nonputrescible, and contains dissolved oxygen.”

<sup>35</sup> Defined in California Code of Regulations Title 22 section 60301.225 as wastewater “that has been oxidized and disinfected so that the median concentration of total coliform bacteria in the disinfected effluent does not exceed a most probable number (MPN) of 23 per 100 milliliters utilizing the bacteriological results of the last seven days for which analyses have been completed, and the number of total coliform bacteria does not exceed an MPN of 240 per 100 milliliters in more than one sample in any 30 day period.”

<sup>36</sup> Defined in California Code of Regulations Title 22 section 60301.220 as wastewater “that has been oxidized and disinfected so that the median concentration of total coliform bacteria in the disinfected effluent does not exceed a MPN of 2.2 per 100 milliliters utilizing the bacteriological results of the last seven days for which analyses have been completed, and the number of total coliform bacteria does not exceed an MPN of 23 per 100 milliliters in more than one sample in any 30 day period.”

<sup>37</sup> Defined in California Code of Regulations Title 22 section 60301.230 as “a filtered and subsequently disinfected wastewater that meets the following criteria: (a) The filtered wastewater has been disinfected by either: (1) A chlorine disinfection process following filtration that provides a CT (the product of total chlorine residual and modal contact time measured at the same point) value of not less than 450 milligram-minutes per liter at all times with a modal contact time of at least 90 minutes, based on peak dry weather design flow; or (2) A disinfection process that, when combined with the filtration process, has been demonstrated to inactivate and/or remove 99.999 percent of the plaque-forming units of F-specific bacteriophage MS2, or polio virus in the wastewater. A virus that is at least as resistant to disinfection as polio virus may be used for purposes of the demonstration; (b) The median concentration of total coliform bacteria measured in the disinfected effluent does not exceed an MPN of 2.2 per 100 milliliters utilizing the bacteriological results of the last seven days for which analyses have been completed and the number of total coliform bacteria does not exceed an MPN of 23 per 100 milliliters in more than one sample in any 30 day period. No sample shall exceed an MPN of 240 total coliform bacteria per 100 milliliters.”



the discharge of recycled water to land can potentially contain bacteria, nutrients, dissolved and suspended solids, and other pollutants.

Recycled water is suitable for a direct beneficial use or a controlled use that would otherwise not occur. However, the pollutants remaining in the recycled water, and recycled water that comes into contact with pollutants and transports those pollutants in surface runoff or leaches those pollutants into the soil and groundwater, can potentially have an adverse effect on the quality of waters of the state.

Recycled water that is discharged directly to surface water would be subject to federal National Pollutant Discharge Elimination System (NPDES) regulations. Recycled water indirectly discharged to surface waters, through surface runoff or overspray, may also be subject to NPDES regulations, but is subject to the water quality standards in the Basin Plan and the regulations of the Water Code. In either case, discharges of recycled water to surface waters could exceed and cause the receiving waters to exceed the water quality objectives in the Basin Plan and would require regulation under WDRs.

Excessive use of recycled water discharged to land can result in a significant amount of infiltration and leaching of pollutants to underlying groundwaters. Over time, recycled water that percolates to groundwater can potentially have an adverse effect on water quality. The San Diego Water Board may not deny issuance of WRRs to a project that only violates a salinity standard in the Basin Plan.<sup>38</sup> However, discharges that are eligible for a conditional waiver are not expected to adversely affect or pose a threat to water quality. With proper planning, management, and application, the potential threat to groundwater quality from discharges of recycled water to land can be minimized or eliminated. Therefore, waiver conditions must require proper planning, management, and application of recycled water discharged to land to minimize or eliminate the discharge of pollutants to waters of the state.

Waiver conditions should be developed in order for members of the public, cities, counties, local agencies and organizations, and/or the San Diego Water Board to determine if any discharges of recycled water to lands pose a threat to the quality of the waters of the state. If recycled water dischargers are not in compliance with waiver conditions, they can be issued a Notice of Violation and required to correct deficiencies in order to be eligible for Proposed Conditional Waiver No. 7. If recycled water dischargers violate any waiver conditions, the San Diego Water Board has the option to terminate the conditional waiver for the discharge and begin regulating the discharge with individual WDRs and/or take other enforcement actions.

In order to be eligible for Proposed Conditional Waiver No. 7, discharges must comply with certain conditions to be protective of water quality. The proposed waiver conditions applicable to discharges of recycled water to land include the following:

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<sup>38</sup> Water Code section 13523.5

- 7.I.A. General Waiver Conditions for Recycled Water Projects
- 7.II.A. Specific Waiver Conditions for Short-term Recycled Water Projects
- 7.II.B. Specific Waiver Conditions for Permanent Recycled Water Projects

Discharges of recycled water to land that comply with the general and specific waiver conditions in Proposed Conditional Waiver No. 7 are not expected to pose a threat to the quality of waters of the state. .

**7.I.A. General Waiver Conditions for Recycled Water Projects**

1. Prevent all windblown spray and surface runoff of recycled water on to property not owned or controlled by the discharger by implementation of MMs/BMPs.
2. Recycled water discharged to land must not adversely affect the quality or beneficial uses of underlying groundwater.
3. The San Diego Water Board and/or other local regulatory agencies must be allowed reasonable access to the site in order to perform inspections and conduct monitoring.
4. The use of recycled water must comply with the requirements of California Code of Regulations Title 22 section 60310(a) through (i), unless sufficient information is provided to demonstrate that a proposed alternative is protective of water quality and human health.
5. Recycled water cannot be used for groundwater recharge unless sufficient information is provided to demonstrate that it will be protective of water quality and human health.

In addition to the General Conditions above, compliance with following Specific Conditions is required:

**7.II.A. Specific Waiver Conditions for Short-term Recycled Water Projects**

1. The operator of a short-term project proposing to discharge recycled water must file a Notice of Intent containing information about the operator, location of the project, source of the recycled water, planned period of and frequency of discharge of recycled water, and MMs/BMPs or other measures that will be taken to eliminate or minimize the discharge of pollutants that might affect surface water and groundwater quality.
2. The Notice of Intent must include a letter from the permitted recycled water agency supplying the recycled water stating that the project will comply with recycled water regulations in California Code of Regulations Title 22, Division 4, Chapter 3, Articles 1 through 10. The letter shall also specify any monitoring and/or reporting required by the recycled water agency to demonstrate compliance with California Code of Regulations Title 22, Division 4, Chapter 3, Reclamation Criteria, Articles 2, 3, 4, 5, and 5.1.
3. Sufficient information demonstrating that the operator will comply with waiver conditions and applicable recycled water regulations must be submitted before the discharge may begin.

4. The Notice of Intent is valid for 365 days after the submittal of a complete Notice of Intent. A new Notice of Intent must be filed with the San Diego Water Board if the short-term project will exceed 365 days. A new Notice of Intent must be received by the San Diego Water Board at least 60 days prior to the expiration of the previous Notice of Intent. If no new Notice of Intent is received 60 days prior to the expiration of the previous Notice of Intent, the short-term recycled water project must cease operation 365 days after a complete Notice of Intent has been submitted.

#### **7.II.B. Specific Waiver Conditions for Permanent Recycled Water Projects**

1. A recycled water agency proposing to supply and/or distribute recycled water through permanently installed facilities or structures before receiving WDRs must file a Report of Waste Discharge (RoWD) containing the following:
  - a) Sufficient information for the San Diego Water Board to determine that the project will be consistent with the Water quality Control Plan for the San Diego Basin and any State Water Resources Control Board recycled water policies, and will comply with applicable recycled water regulations.
  - b) A letter from the CDPH stating that the project will comply with recycled water regulations in California Code of Regulations Title 22, Division 4, Chapter 3, Articles 1 through 10. The letter shall also specify any provisions, monitoring, and/or reporting required by the CDPH to demonstrate compliance with California Code of Regulations Title 22, Division 4, Chapter 3, Reclamation Criteria, Articles 2, 3, 4, 5, and 5.1.
  - c) A list of recycled water end users that will be regulated by the recycled water agency, and the proposed monitoring and reporting program the recycled water agency will implement to demonstrate that the end users are complying with the waiver conditions and applicable recycled water regulations.
2. The recycled water agency must submit sufficient information demonstrating that the recycled water agency and its end users will comply with waiver conditions and applicable recycled water regulations before the discharge may begin.
3. The conditional waiver issued to the recycled water agency is valid for 365 days after a completed RoWD has been submitted, or until WDRs are adopted for the project, whichever occurs first. The San Diego Water Board will adopt WDRs at the earliest possible opportunity. If the WDRs cannot be adopted within 365 days after the completed RoWD has been submitted, the recycled water agency must request an extension of the conditional waiver at least 60 days prior to the expiration of the previous conditional waiver. If no request for an extension is received 60 days prior to the expiration of the previous conditional waiver, the permanent recycled water project must cease the discharge of recycled water 365 days after the completed RoWD was submitted.
4. If a recycled water agency that obtains a waiver in accordance with the waiver conditions in 7.II.B proposes to significantly add to or modify the treatment process (e.g., change the disinfection or filtration processes), then the

discharger shall submit a new RoWD containing the information listed in 7.II.B.1 above.

## 7.8 Proposed Conditional Waiver No. 8 – Discharges/Disposal of Solid Wastes to Land

Proposed Conditional Waiver No. 8 is for discharges of solid wastes to land, which may be a source of pollutants that can adversely affect the quality of waters of the state.

The following types of discharge may be eligible for Proposed Conditional Waiver No. 8:

- Discharges of plant crop residues to land (discussed in Appendix A, section A.3.5)
- Discharges of manure and/or green wastes to composting operations (discussed in Appendix A, section A.3.11)
- Discharge/application of amendments and/or mulches to soil (discussed in Appendix A, section A.3.11)
- Discharges/disposal of inert wastes to solid waste disposal facilities only accepting inert wastes (discussed in Appendix A, section A.3.12)
- Discharges of contaminated soils to temporary waste piles (discussed in Appendix A, section A.3.19)
- Discharges/disposal/reuse of soils characterized as inert from known contaminated sites to land (discussed in Appendix B, section B.1.5)

Discharges from these types of projects have similar properties, potential threat to water quality, and proposed waiver conditions. Therefore, discharges from all these types of projects were grouped into one discharge classification. Discharges that comply with the proposed waiver conditions are not expected to pose a threat to the quality of waters of the state.

Solid wastes that are discharged to land may contain bacteria, nutrients, pesticides, heavy metals, and other pollutants. Storm water and surface runoff that is allowed to come into contact with solid wastes can leach these pollutants into soil and underlying groundwater. Additionally, solid wastes are significant sources of sediment that may be transported to surface waters by wind or in storm water or surface runoff. However, with proper management, discharges of solid wastes to land are not expected to pose a threat to the quality of waters of the state. Therefore, waiver conditions must require proper management of solid wastes discharged to land to minimize or eliminate the discharge of pollutants to waters of the state.

Waiver conditions should be developed in order for members of the public, cities, counties, local agencies and organizations, and/or the San Diego Water Board to determine if any discharges or disposal of solid wastes to lands pose a threat to the quality of the waters of the state. If dischargers of solid wastes are not in compliance with waiver conditions, they can be issued a Notice of Violation and required to correct deficiencies in order to continue being waived under Proposed Conditional Waiver No. 8. If dischargers of solid wastes violate waiver conditions, the San Diego Water Board can terminate the conditional waiver for the discharge and begin regulating the discharge with individual WDRs and/or take other enforcement actions.

Proposed Conditional Waiver No. 8 only applies to discharges/disposal of solid wastes to land within the San Diego Region. Discharges/disposal of solid wastes to lands outside of the San Diego Region must comply with conditional waivers and/or WDRs issued by the appropriate Regional Water Board.

In order to be eligible for Proposed Conditional Waiver No. 8, discharges must comply with certain conditions to be protective of water quality. The proposed waiver conditions applicable to discharges of solid wastes to land include the following:

- 8.I.A. General Waiver Conditions for Discharges of Solid Wastes to Land
- 8.II.A. Specific Waiver Conditions for Discharges of Plant Crop Residues to Land
- 8.II.B. Specific Waiver Conditions for Discharges to Composting Operations
- 8.II.C. Specific Waiver Conditions for Application of Amendments and Mulches to Soil
- 8.II.D. Specific Waiver Conditions for the Discharge of Contaminated Soil to Temporary Waste Piles
- 8.II.E. Specific Waiver Conditions for Discharges of Inert Wastes to Solid Waste Disposal Facilities Only Accepting Inert Wastes
- 8.II.F. Specific Waiver Conditions for the Discharge/Disposal/Reuse of Inert Soils and Materials from Contaminated Sites to Land

Discharges of solid wastes to land that comply with the general and specific waiver conditions in Proposed Conditional Waiver No. 8 are not expected to pose a threat to the quality of waters of the state.

**8.I.A. General Waiver Conditions for Discharges of Solid Wastes to Land**

1. Prevent the direct or indirect discharge of solid wastes to any surface waters of the state (including ephemeral streams and vernal pools).
2. Operations or facilities that accept and/or discharge solid wastes to land must comply with local, state, and federal ordinances and regulations and obtain any required permits, certifications, and/or licenses.
3. Solid wastes must not cause or threaten to cause a condition of contamination, pollution, or nuisance.
4. The discharger must minimize or eliminate the discharge of any pollutants that could adversely affect the quality or beneficial uses of waters of the state.
5. The San Diego Water Board and/or other local regulatory agencies must be allowed reasonable access to the site in order to perform inspections and conduct monitoring.
6. Discharger must submit a Notice of Intent or technical and/or monitoring program reports when directed by the San Diego Water Board.

In addition to the General Conditions above, the following Specific Conditions are required:

**8.II.A. Specific Waiver Conditions for Discharges of Plant Crop Residues to Land**

1. Plant crop residues must be managed to prevent transport of pollutants to waters of the state.
2. Plant crop residues may be used as feedstock for composting.
3. Plant crop residues cannot be burned and applied to land.
4. Application of any products (e.g., fertilizers, pesticides) to plants or soil must be used in accordance with manufacturer's guidelines and must not have an adverse effect on the quality of any waters of the state.
5. Concentrations of pesticides and/or herbicides or any other pollutants associated with the plant crop residues must not adversely affect the quality or beneficial uses of underlying groundwater.
6. Implement MMs/BMPs around areas where plant crop residues have been discharged to land to minimize or eliminate runoff and leachate to surface waters and groundwater.

**8.II.B. Specific Waiver Conditions for Discharges to Composting Operations**

1. For composting operations or facilities that store 500 cubic yards or less on site at any one time, and the compostable materials are generated on-site and if no more than 1,000 cubic yards of materials are either sold or given away annually, or other California Integrated Waste Management Board (CIWMB) excluded composting activities,<sup>39</sup>, the following conditions apply to minimize or eliminate the discharge of pollutants to waters of the state:
  - a) Compost pile(s) should be protected with a roof or cover, or at a minimum be covered with plastic sheeting if precipitation is forecast within the next 24 hours, to prevent direct contact between precipitation and compost.
  - b) Precipitation and surface drainage should be diverted away from compost pile(s).
  - c) A buffer zone of at least 100 feet should be maintained between the compost pile(s) and any surface waters of the state, unless sufficient information is provided to demonstrate that a proposed alternative is protective of water quality.
  - d) Leachate from compost pile(s) must not adversely impact the quality or beneficial uses of groundwater in any water wells.
  - e) The following wastes cannot be added to compost pile(s) unless sufficient information is provided to demonstrate that the waste does not pose a potential threat to water quality: (a) municipal solid wastes; (b) sludges, including sewage sludge, water treatment sludge, and industrial sludge; (c) septage; (d) liquid wastes; (e) oil and grease; and (f) hazardous, designated, and any other wastes determined by the San Diego Water Board to pose a potential threat to water quality.
2. For composting operations or facilities that store more than 500 cubic yards on site at any one time, or other CIWMB-regulated composting activities, the following conditions apply to minimize or eliminate the discharge of pollutants to waters of the state:

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<sup>39</sup> California Code of Regulations Title 14 section 17855(a)(1) through (9)

- a) Composting operation or facility must be sited, designed and operated in accordance with the California Integrated Waste Management Board's (CIWMB) requirements in California Code of Regulations Title 14 sections 17865 through 17870. Records must be available on site for inspection.
- b) Compost pile(s) should be protected with a roof or cover, or at a minimum be covered with plastic sheeting if precipitation is forecast within the next 24 hours, to prevent direct contact between precipitation and compost.
- c) Precipitation and surface drainage should be diverted away from compost pile(s).
- d) A buffer zone of at least 100 feet should be maintained between the compost pile(s) and any surface waters of the state, unless sufficient information is provided to demonstrate that a proposed alternative is protective of water quality.
- e) Leachate from compost pile(s) must not adversely impact the quality or beneficial uses of groundwater in any water wells.
- f) The following wastes cannot be added to compost pile(s) unless sufficient information is provided to demonstrate that the waste does not pose a potential threat to water quality: (a) municipal solid wastes; (b) sludges, including sewage sludge, water treatment sludge, and industrial sludge; (c) septage; (d) liquid wastes; (e) oil and grease; and (f) hazardous, designated, and any other wastes determined by the San Diego Water Board to pose a potential threat to water quality.
- g) Containment structures such as embankments, liners or surface impoundments must be maintained in order to ensure proper performance whenever compost feedstocks (e.g., manure and/or green wastes) are discharged.
- h) File a Notice of Intent containing information about the facility owner/operator, map of the facility showing the locations of compost pile(s) and nearby surface water bodies and/or water wells, and MMs/BMPs that will be taken to prevent discharges of compost that could affect surface water and groundwater quality. Sufficient information demonstrating compliance with waiver conditions must be submitted in order for the facility to be eligible for this conditional waiver.

### ***8.II.C. Specific Waiver Conditions for Application of Amendments and Mulches to Soil***

1. Amendments or mulches applied to soil cannot include any of the following additives, unless sufficient information is provided to demonstrate that the additive does not pose a potential threat to water quality: (a) municipal solid wastes; (b) sludges, including sewage sludge, water treatment sludge, and industrial sludge; (c) septage; (d) liquid wastes; (e) oil and grease; and (f) hazardous, designated, and any other wastes determined by the San Diego Water Board to pose a potential threat to water quality.
2. The amount of soil amendment or mulch materials that can be applied to soil must be reasonable for the crop or plant, soil, climate, special local situations, management system, and type of soil amendment or mulch. Application rates



- must take into account storm events during the rainy season (October-May). Application rates must not allow soil amendment or mulch materials to be transported off the property in storm water runoff during the rainy season. Resources are available from the NRCS, UCCE, and other organizations. A copy of the calculations and/or estimate of the application rate must be available on site for inspection.
3. Apply amendment or mulch materials to soil at site-specific rates appropriate to the season (i.e., dry vs. rainy).
  4. Implement MMs/BMPs in areas with soil amendment or mulch materials to minimize or eliminate runoff and leachate to surface waters and groundwater.

#### **8.II.D. Specific Waiver Conditions for the Discharge of Contaminated Soils to Temporary Waste Piles**

1. For **any contaminated soils** temporarily stored in waste piles, the following conditions apply:
  - a) The discharger must submit a signed/completed Section A of the Temporary Waste Pile Certification form within 30 days of the initial discharge of any waste piles to be eligible for this waiver. The property owner must approve and acknowledge the placement of the waste at the site.
  - b) The discharger must submit a signed/completed Section B of the Temporary Waste Pile Certification form within 10 working days of completing removal of all waste and restoring the site to its original condition.
  - c) Unless otherwise specified in the applicable conditions, no temporary waste piles may remain on a site for longer than 6 months or 180 days.
  - d) The temporary discharge of waste must not (a) cause the occurrence of coliform or pathogenic organisms in waters pumped from the basin; (b) cause the occurrence of objectionable tastes and odors in water pumped from basin; (c) cause waters pumped from the basin to foam; (d) cause the presence of toxic materials in waters pumped from the basin; (e) cause the pH of waters pumped from the basin to fall below 6.0 or rise above 9.0; (f) cause pollution, contamination or nuisance or adversely affect the quality or beneficial uses of groundwater or surface waters of the hydrologic subareas established in the Basin Plan; and/or, (g) cause a violation of any discharge prohibitions in the Basin Plan for the San Diego Region.
  - e) The discharger must conduct regular inspections of temporary waste piles and associated MMs/BMPs at least once per week. Corrective actions must be taken as necessary to ensure compliance with the conditions of this waiver.
  - f) Surface drainage must be diverted away from the temporary waste piles. For all temporary waste piles, the discharger must implement effective MMs/BMPs to prevent surface water runoff and runoff from contacting wastes and to prevent erosion and transport of wastes by surface runoff.

- g) Temporary waste piles must be placed at least 5 feet above the highest historically known or anticipated level of groundwater, and more than 100 feet from any surface water of the state, unless sufficient information is provided to demonstrate that a proposed alternative is protective of water quality.
  - h) Temporary waste piles must be protected against 100-year peak stream flows as defined by the County flood control agency.
  - i) Temporary waste piles must be covered by plastic sheeting (not less than 10 mils thick, unless otherwise specified under the applicable Special Conditions) to adequately prevent rainwater infiltration, control fugitive dust, and other nuisances.
  - j) Temporary waste piles must be underlain by either plastic sheeting (not less than 10 mils thick, unless otherwise specified under the applicable conditions) or a liner of low permeability that will prevent leachate from infiltrating to groundwater.
  - k) Solid wastes discharged to temporary waste piles, together with any containment materials used at the temporary waste pile, and any underlying geologic materials contaminated by the discharge, shall be removed within 180 days, unless otherwise specified under the applicable Special Conditions. Subsequently, the discharger must remove all wastes, treatment facilities, related equipment, and dispose of those items in accordance with applicable regulations. The site must be restored to its original state within 30 days after the temporary waste pile is removed, unless otherwise specified under the applicable Special Conditions.
  - l) The discharger must post at least one clearly visible sign listing the following minimum information: a) project name, b) name and address of discharger, c) brief project description, and d) 24-hour contact information – name, address, facsimile, and telephone number for the project for as long as the temporary waste pile remains on the site.
2. For **soils contaminated with petroleum hydrocarbons** temporarily stored in waste piles, the following conditions apply:
- a) Soils and associated solid waste contaminated by petroleum hydrocarbons discharged into temporary waste piles shall be limited to a maximum time period of 3 months or 90 days on a site.
  - b) Soils and associated solid waste contaminated by petroleum hydrocarbons discharged into temporary waste piles under an initial certification report must be derived from only one source (e.g., one unauthorized release site).
  - c) Temporary waste piles must be covered by plastic sheeting (not less than 10 mils thick) to adequately prevent rainwater infiltration, control fugitive dust, and other nuisances.
  - d) Temporary waste piles must be underlain by either plastic sheeting (not less than 10 mils thick) or a liner of low permeability that will prevent leachate from infiltrating to groundwater.

- e) In addition to the conditions stated herein, temporary waste piles must conform to applicable provisions in the state's local oversight program (LOP) for Orange, Riverside, or San Diego Counties.
- f) The site must be restored to its original state within 30 days after removal of the temporary waste pile from the site.
- 3. For ***dredged spoils contaminated with heavy metals*** temporarily stored in waste piles, the following conditions apply:
  - a) Dredged spoils and associated solid waste contaminated with heavy metals discharged into temporary waste piles shall be limited to a maximum time period of 9 months or 270 days on a site.
  - b) Temporary waste piles must be covered by either a plastic sheeting to adequately prevent rainwater infiltration, control fugitive dust, and other nuisances. Alternative control methods may be utilized if sufficient information is provided to demonstrate that the proposed alternative is protective of water quality and human health.
  - c) Temporary waste piles must be underlain by plastic sheeting (not less than 20 mils thick) or a liner of lower permeability that can prevent leachate from infiltrating to groundwater. Sufficient information must be provided to the San Diego Water Board demonstrating that the liner and containment facility has been designed to contain all solid wastes and fluids.
  - d) Materials used in containment structures must have the appropriate chemical and physical properties to ensure that such structures do not fail to contain waste because of: the stress of installation, pressure gradients, physical contact with the waste or leachate, or chemical reactions with soil and rock.
  - e) The site must be restored to its original state within 60 days after removal of the temporary waste pile from the site.

#### ***8.II.E. Specific Waiver Conditions for Solid Waste Disposal Facilities Accepting Only Inert Wastes<sup>40</sup>***

1. Inert solid waste must not contain hazardous waste, or soluble or decomposable constituents to be considered inert waste.
2. Inert waste cannot contain any "free liquids."<sup>41</sup>
3. Owner/operator of disposal facility must secure the disposal site and prevent unauthorized disposal by the public.
4. Inert wastes exclude any wastes determined by the San Diego Water Board to potentially have an adverse affect on the quality or beneficial uses of waters of the state, even if classified as inert waste.

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<sup>40</sup> According to California Code of Regulations Title 27 section 20230(a) "Inert waste" is defined as "that subset of solid waste that does not contain hazardous waste or soluble pollutants at concentrations in excess of applicable water quality objectives, and does not contain significant quantities of decomposable waste."

<sup>41</sup> "Free liquids" defined by California Code of Regulations Title 27 section 20164 as "liquid which readily separates from the solid portions of waste under ambient temperature and pressure"

**8.II.F. Specific Waiver Conditions for the Discharge/Reuse of Inert Soils and Materials from Contaminated Sites**

1. For **all waste soils characterized as inert (Tier 1 or Tier 2)**, the following conditions apply:
  - a) Inert waste soils from known contaminated sites cannot be transported off site and discharged/disposed/reused directly or indirectly to any surface waters of the state (including ephemeral streams and vernal pools).
  - b) Inert waste soils from known contaminated sites cannot contain significant quantities of decomposable waste.
  - c) Inert waste soils from known contaminated sites cannot contain any “free liquids.”<sup>42</sup>
  - d) Inert waste soils that are discharged/disposed/reused at any site cannot have any hydrocarbon, chlorinated solvent, or other contaminant-based odor.
  - e) Sites that export or import soils characterized as inert from known contaminated sites for use as fill material or any other purpose must comply with an applicable federal, state, or local permitting requirements, regulations, and/or ordinances pertaining to the use of imported soil.
  - f) Sites that export or import soils characterized as inert from known contaminated sites for use as fill material or any other purpose must implement MMs/BMPs to eliminate the potential for erosion and transport of sediment off the site.
  - g) This conditional waiver does not authorize the discharge/disposal/reuse of soil characterized as inert from known contaminated sites outside the boundaries of the San Diego Region
  - h) Prior to exporting soil characterized as inert from a known contaminated site, the owner/operator of the export site must file a Notice of Intent with the San Diego Water Board. The Notice of Intent must be filed no less than 3 days prior to the beginning of export shipments. The Notice of Intent must include information about the site owner/operator, map of the site showing the locations of excavations, borings and/or stockpiles, MMs/BMPs that will be taken to prevent discharges of waste soil that could affect surface water and groundwater quality, estimated volumes (can be a range of volumes) of inert waste soil that will be generated for use off the site, estimated number (can be a range) and locations of samples that will be collected for characterization, and name of the certified environmental analytical laboratory that will perform the analysis.
  - i) Waste soils from a site with a known or discovered unauthorized release must be characterized and certified as inert in order for the soil to be reused off site. Characterization and certification must include the following minimum requirements:
    - i) All waste soils generated during remediation or corrective action must be stockpiled on the site in accordance with the waiver conditions for the temporary discharge of specified contaminated soil, or waste soils

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<sup>42</sup> Ibid

may be sampled and characterized in situ prior to transport and disposal or reuse off site.

- ii) Waste soil must be segregated into 2 categories:
  - (A) Soil that is impacted by the unauthorized release must be characterized as hazardous, designated, and/or non-hazardous waste and handled in accordance with regulatory requirements for the disposal of solid wastes. Waste soils that do not visually appear impacted, but smells impacted, must be treated as impacted soil and cannot be characterized as inert.
  - (B) Soil that does not appear to be impacted by the unauthorized release, by visual inspection and odor, must be sampled and analyzed to confirm the soil can be characterized as inert waste soil.
- iii) Samples must be collected from the waste soil suspected to be inert for laboratory analysis. The minimum number of samples required to characterize the soil is as follows:<sup>43</sup>

Volume of Soil	Required Number of Samples Analyzed
0 to <500 cy	4 samples per 100 cy (12 minimum)
500 to <5,000 cy	1 additional sample per additional 500 cy
5,000 cy or more	1 additional sample per additional 1,000 cy <sup>44</sup>

cy = cubic yards

- iv) Samples must be analyzed by a state-certified analytical laboratory using USEPA approved analytical methods for the following constituents:
  - (A) Total concentrations of those Title 22 metals identified as contaminants of concern for the export site. For sites identified with burn ash (i.e., a site where solid waste has been burned at low temperature and the residual burn ash pits and burn ash layers are present in soil), the site shall be investigated and the burn ash will be characterized for disposal purposes according to the protocol established by the lead regulatory agency (e.g., Department of Toxic Substances Control, California Integrated Waste Management Board, or others) to identify contaminants of concern at the site. The soil outside of the area of impact of the burn ash shall be tested for the total concentration of those metals identified as contaminants of concern based on the findings of the burn ash investigation technical study.

<sup>43</sup> Department of Toxic Substances Control, Information Advisory Clean Imported Fill Material, October 2001 [http://www.dtsc.ca.gov/Schools/upload/SMP\\_FS\\_Cleanfill-Schools.pdf](http://www.dtsc.ca.gov/Schools/upload/SMP_FS_Cleanfill-Schools.pdf)

<sup>44</sup> Volumes greater than 10,000 cubic yards may rely on fewer samples than 1 per each additional 1,000 cubic yards if characterization complies with SW846 methods for selecting appropriate numbers of samples for waste characterization and statistical analyses. The appropriate number of samples is the least number of samples required to generate a sufficiently representative estimate of the true mean concentration of a chemical contaminant of a waste.

- (B) Total petroleum hydrocarbons (by USEPA Method 8015<sup>45</sup> – full range if export site includes oil or fuel as potential or actual contaminants of concern).
  - (C) Polychlorinated biphenyls (if export site includes PCBs as potential or actual contaminants of concern).
  - (D) Volatile and semi-volatile organic compounds (if export site includes volatile and semi-volatile organic compounds as potential or actual contaminants of concern).
  - (E) Pesticides (if export site includes a known agricultural area, or pesticides as potential or actual contaminants of concern).
  - (F) Other constituents (if the contaminated portion of the export site is found to contain other pollutants or contaminants).
  - j) *If analytical results indicate detectable concentrations of constituents other than Title 22 metals, waste soil cannot be characterized as inert.*
2. For reuse of **Tier 1 inert waste soils (full unrestricted reuse within the San Diego Region)**, the following conditions apply:
- a) Soil cannot contain any detectable concentrations of contaminants other than Title 22 metals.
  - b) For those Title 22 metals that have been identified as contaminants of concern for the export site, samples shall be analyzed by an SW846 method using the reporting limits set forth in the Table provided in Attachment 1. From these data, the 90 percent upper confidence level (UCL) shall be determined. Prior to calculating the 90 percent UCL, one must determine whether the sample set is normally, lognormally or non-normally distributed. If lognormally distributed, one must determine the 90 percent UCL on the lognormal mean. If non-normally distributed, but sufficiently symmetrical, calculate the 90 percent UCL on the median (50<sup>th</sup> percentile), instead of the mean. See USEPA SW846 Chapter 9 and the USEPA Guidance for Data Quality Assessment for a discussion of waste characterization and statistical analysis; in particular the guidance on testing for normality, calculating a 90 percent UCL, and handling of non-detected values.<sup>46</sup>

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<sup>45</sup> Or latest version USEPA SW846 method.

<sup>46</sup> See U.S. Environmental Protection Agency, Office of Solid Waste. 1986. *Test Methods for Evaluating Solid Waste, Physical/Chemical Methods*; <http://www.epa.gov/epaoswer/hazwaste/test/pdfs/chap9.pdf>; and USEPA 2002, RCRA Waste Sampling Draft Technical Guidance, EPA 530-D-02-002 (Appendix F). Office of Solid Waste.

**Tier 1 Soil Screening Levels**

<b>Title 22 Metals</b>	<b>Inert Waste Target<sup>a</sup> (mg/kg)</b>	<b>Residential CHHSL<sup>b</sup> (mg/kg)</b>	<b>e-PRG<sup>c</sup> (mg/kg)</b>	<b>Background<sup>d</sup> Mean (mg/kg)</b>	<b>Tier 1 SSL<sup>e,f</sup> (mg/kg)</b>
Antimony	6.0	30	5.0	0.60	<b>5.0</b>
Arsenic	50	0.07	9.9	3.5	<b>3.5</b>
Barium	1,000	5,200	283	509	<b>509</b>
Beryllium	4.0	150	10	1.28	<b>4.0</b>
Cadmium	5.0	1.7	4.0	0.36	<b>1.7</b>
Chromium, Total	50	NA	0.4	122	<b>50</b>
Chromium, Hexavalent	50	17	NA	NA	<b>17</b>
Cobalt	NA	660	20	14.9	<b>20</b>
Copper	1,300	3,000	60	28.7	<b>60</b>
Lead	15	150	40.5	23.9	<b>15</b>
Mercury	2.0	18	0.00051	0.26	<b>0.26</b>
Molybdenum	NA	380	2.0	1.3	<b>2.0</b>
Nickel	100	1,600	30	57	<b>57</b>
Selenium	50	380	0.21	0.058	<b>0.21</b>
Silver	NA	380	2.0	0.80	<b>2.0</b>
Thallium	2.0	5.0	1.0	0.56	<b>1.0</b>
Vanadium	50	530	2.0	112	<b>50</b>
Zinc	NA	23,000	8.5	149	<b>149</b>

- a. Calculated using Central Valley Water Board Designated Level Methodology, where the Water Quality Goal is the lower value of the Federal or State drinking water primary maximum contaminant level, the Environmental Attenuation Factor is 10, and the Leachability Factor is 100.
- b. Values taken from the California Environmental Protection Agency's *Use of California Human Health Screening Levels (CHHSLs) in Evaluation of Contaminated Properties* (CalEPA 2005).
- c. Taken from Oak Ridge National Laboratory's *Preliminary Remediation Goals for Ecological Endpoints* (Efroymsen, et al 1997)
- d. Taken from Kearney Foundation of Soil Science Division of Agriculture and Natural Resources, University of California *Background Concentrations of Trace and Major Elements in California Soil – Special Report* (Bradford, et al 1996).
- e. Tier 1 Soil Screening Level for inert waste soils that can be reused without restriction. Tier I SSLs selected based on the following steps: Step 1) Select lower value of Residential CHHSL or e-PRG; Step 2) Select lower value of Step 1 or Inert Waste Target; and, Step 3) Select higher value of Step 2 and Arithmetic Mean Background.
- f. These values are not intended to provide clean up levels for soil remaining on-site. Such values should be established based on the contaminants of concern, the site use, and in conjunction with the regulatory agency providing oversight for the remediation effort.
- c) An Inert Waste Certification must be filed with the San Diego Water Board by the owner/operator of the export site within 30 days following completion of export activities. The Inert Waste Certification must include the following information:
- i) Generator name and contact information.
  - ii) Export site location, owner name and contact information.
  - iii) Map of the export site showing the location of the excavation, borings, stockpiles, and/or samples collected.
  - iv) Approximate volume of inert waste soil exported from the site.
  - v) Description of BMPs implemented to prevent discharge of waste soil off the export site during excavation and transport.

- vi) Laboratory analytical data, including number of samples collected, EPA approved analytical methods used, the 90 percent UCL of the data for the contaminants of concern, and name of certified environmental analytical laboratory that performed the analysis.
  - vii) The export site owner, principal executive officer, or authorized representative, and a California registered professional engineer or geologist must sign and certify the Inert Waste Certification. The Inert Waste Certification must include the statement, *“I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.”*
3. For reuse of **Tier 2 inert waste soils (only for commercial or industrial development purposes within the San Diego Region)**, the following conditions apply:
- a) Soil cannot contain any detectable concentrations of contaminants other than Title 22 metals.
  - b) Samples shall be analyzed by an SW846 method using the reporting limits set forth in the Table provided in Attachment 1. From these data, the 90 percent UCL shall be determined. Prior to calculating the 90 percent UCL, one must determine whether the sample set is normally, lognormally or non-normally distributed. If lognormally distributed, one must determine the 90 percent UCL on the lognormal mean. If non-normally distributed, but sufficiently symmetrical, calculate the 90 percent UCL on the median (50<sup>th</sup> percentile), instead of the mean. See USEPA SW846 Chapter 9 and the USEPA Guidance for Data Quality Assessment for a discussion of waste characterization and statistical analysis; in particular the guidance on testing for normality, calculating a 90 percent UCL, and handling of non-detected values.<sup>47</sup>

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<sup>47</sup> See U.S. Environmental Protection Agency, Office of Solid Waste. 1986. *Test Methods for Evaluating Solid Waste, Physical/Chemical Methods*; <http://www.epa.gov/epaoswer/hazwaste/test/pdfs/chap9.pdf>; and USEPA 2002, RCRA Waste Sampling Draft Technical Guidance, EPA 530-D-02-002 (Appendix F). Office of Solid Waste.



**Tier 2 Soil Screening Levels**

Pollutant	Inert Waste Target <sup>a</sup> (mg/kg)	Industrial CHHSL <sup>b</sup> (mg/kg)	Background <sup>d</sup>		TTLC <sup>e</sup> (mg/kg)	Tier 2 SSL <sup>f,g</sup> (mg/kg)
			Max (mg/kg)	½ Max (mg/kg)		
Antimony	6.0	380	1.95	0.98	500	6.0
Arsenic	50	0.24	11	5.5	500	5.5
Barium	1,000	63,000	1,400	700	10,000	1,000
Beryllium	4.0	1,700	2.7	1.4	75	4
Cadmium	5.0	7.5	1.70	0.85	100	5
Chromium, Total	50	100,000	1,579	790	2,500	790
Chromium, Hexavalent	50	37	NA	NA	500	37
Cobalt	NA	3,200	46.9	23.5	8,000	3,200
Copper	1,300	38,000	96.4	48.2	2,500	1,300
Lead	15	3,500	97.1	48.6	1,000	49
Mercury	2.0	180	0.90	0.45	20	2
Molybdenum	NA	4,800	9.6	4.8	3,500	3,500*
Nickel	100	16,000	509	255	2,000	255
Selenium	50	4,800	0.43	0.22	100	50
Silver	NA	4,800	8.30	4.2	500	500*
Thallium	2.0	63	1.10	0.55	700	2
Vanadium	50	6,700	288	144	2,400	144
Zinc	NA	100,000	236	118	5,000	5,000*

\*None of the analytical results from any samples collected to characterize the waste soil can exceed the Tier 2 Soil Screening Level for this pollutant.

- a. Calculated using Central Valley Water Board Designated Level Methodology, where the Water Quality Goal is the lower value of the Federal or State drinking water primary maximum contaminant level, the Environmental Attenuation Factor is 10, and the Leachability Factor is 100.
  - b. Values taken from the California Environmental Protection Agency's *Use of California Human Health Screening Levels (CHHSLs) in Evaluation of Contaminated Properties* (CalEPA 2005).
  - c. Taken from Oak Ridge National Laboratory's *Preliminary Remediation Goals for Ecological Endpoints* (Efroymsen, et al 1997)
  - d. Taken from Kearney Foundation of Soil Science Division of Agriculture and Natural Resources, University of California *Background Concentrations of Trace and Major Elements in California Soil – Special Report* (Bradford, et al 1996).
  - e. Total Threshold Limit Concentration. Concentrations above the TTLC would be classified as hazardous waste.
  - f. Tier 2 Soil Screening Level for inert waste soils that can be reused only for commercial or industrial land use designation. Tier II SSLs selected based on the following steps: Step 1) Select lower value of Industrial CHHSL or Inert Waste Target; Step 2) Select higher value of Step 1 or ½ Maximum Background; and, Step 3) Select lower value of Step 2 and Total Threshold Limit Concentration.
  - g. These values are not intended to provide clean up levels for soil remaining on-site. Such values should be established based on the contaminants of concern, the site use, and in conjunction with the regulatory agency providing oversight for the remediation effort.
- c) An Inert Waste Certification must be filed with the San Diego Water Board by the owner/operator of the export site within 30 days following export and placement of the soil. The Inert Waste Certification must include the following information:
- i) Generator name and contact information.
  - ii) Export site location, owner name and contact information.
  - iii) Approximate volume of inert waste soil exported from the site.
  - iv) Description of BMPs implemented to prevent discharge of waste soil off the export site during excavation and transport.

- v) Laboratory analytical data, including number of samples collected, EPA approved analytical methods used, the 90 percent UCL of the data for the contaminants of concern, and name of certified environmental analytical laboratory performing analysis.
  - vi) Import site owner name and contact information, with a map of the site location showing nearby surface water bodies, approximate depth to groundwater, and BMPs that will be implemented to eliminate the potential for discharge of inert waste soils to surface waters.
  - vii) The import site owner, principal executive officer, or authorized representative must provide a signature acknowledging the receipt or planned receipt of the inert waste soil.
  - viii) The export site owner, principal executive officer, or authorized representative, and a California registered professional engineer or geologist must sign and certify the Inert Waste Certification. The Inert Waste Certification must include the statement, *"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."*
- d) Tier 2 inert waste soil reused at commercial or industrial development sites must comply with the following conditions:
- i) Tier 2 inert waste soil may only be reused on commercial or industrial sites. It may not be reused at residential, school, or park sites.
  - ii) Tier 2 inert waste soil must be placed at least 5 feet above the highest historically known or anticipated level of groundwater. The soil that separates the inert waste soil from groundwater shall have a significant clay content (greater than 5 percent clay material) or an in situ permeability of less than  $10^{-5}$  cm/sec.
  - iii) Tier 2 inert waste shall be placed at least 100 feet from the nearest surface water body.
  - iv) Tier 2 inert waste shall be protected against 100-year peak stream flows as defined by the County flood control agency.
  - v) Tier 2 inert waste shall be covered by either: 1) engineered materials (e.g. used as road base, fill beneath buildings, bridge abutments), or 2) not less than 2 feet of noncontaminated, clean fill. The cover shall have a permeability of no more than  $10^{-5}$  cm/sec. Placement of a cover on the inert waste soils shall be completed within 30 days of revising/discharging the final load of inert waste soils at the import site.

## 7.9 Proposed Conditional Waiver No. 9 – Discharges of Slurries to Land

Proposed Conditional Waiver No. 9 is for discharges of slurries to land, which may be a source of pollutants that can adversely affect the quality of waters of the state. A slurry typically consists of water and some material to form a liquid mixture.

The following types of discharge may be eligible for Proposed Conditional Waiver No. 9:

- Discharges of drilling muds to land (discussed in Appendix A, section A.3.17)
- Discharges of concrete grinding residues to land (discussed in Appendix B, section B.1.6)

These types of discharge have similar properties, potential threat to water quality, and proposed waiver conditions. Therefore, these types of slurry discharges to land were grouped together into one discharge classification. Discharges of slurries to land that comply with the proposed waiver conditions are not expected to pose a threat to the quality of waters of the state.

Slurries typically consists of water mixed with very fine-grained solids. If these slurries are discharged to land in a sump or containment area for storage, proper management measures must be taken to prevent the degradation of surface water or groundwater quality. Slurries must be properly contained to prevent them from running off to surface waters. Slurries consist of high liquid content, which can potentially infiltrate to groundwater. However, the very fine-grained materials in these types of slurries would likely seal the sump or containment area surface, which will severely reduce or eliminate any leaching potential as the water content evaporates. Slurries discharged to land, with proper management and containment, are not expected to pose a threat to the quality of waters of the state and may be eligible for a conditional waiver. Therefore, waiver conditions must require proper management and containment of slurries discharged to land to minimize or eliminate the discharge of pollutants to waters of the state.

Waiver conditions should be developed in order for members of the public, cities, counties, local agencies and organizations, and/or the San Diego Water Board to determine if any discharges of slurries to land pose a threat to the quality of the waters of the state. If dischargers of slurries are not in compliance with waiver conditions, they can be issued a Notice of Violation and required to correct deficiencies in order to be eligible for Proposed Conditional Waiver No. 9. If dischargers of slurries violate any waiver conditions, the San Diego Water Board has the option to terminate the conditional waiver for the discharge and begin regulating the discharge with individual WDRs and/or take other enforcement actions.

In order to be eligible for Proposed Conditional Waiver No. 9, discharges must comply with certain conditions to be protective of water quality. The proposed waiver conditions applicable to discharges of slurries to land include the following:

**9.I.A. General Waiver Conditions for Slurries Discharged to Land****9.II.A. Specific Waiver Conditions for Discharges of Drilling Mud to Land**

Discharges of slurries to land that comply with the general and specific waiver conditions in Proposed Conditional Waiver No. 9 are not expected to pose a threat to the quality of waters of the state.

**9.I.A. General Waiver Conditions for Slurries Discharged to Land**

1. Prevent the direct or indirect discharge of slurries to any surface waters of the state (including ephemeral streams and vernal pools).
2. Slurries must be contained to eliminate the potential for runoff from the site.
3. If slurries are discharged to land for storage, the storage area or sump must be designed to be fully contained and ensure no overflow during discharge with at least 2 feet of freeboard.
4. The floor of the storage area or sump must be at least 5 feet above the highest known historical or anticipated groundwater level.
5. The walls of the storage area or sump must be at least 100 feet away from any surface water body or municipal water well.
6. Slurries cannot contain any toxic or hazardous constituents.
7. Slurries discharged to land must not adversely affect the quality or beneficial uses of underlying groundwater.
8. Slurries must be removed and disposed of at an appropriate disposal facility prior to restoring the storage area or sump to pre-discharge conditions.
9. The storage area or sump must be filled in and restored to pre-discharge conditions.
10. Discharger must submit a Notice of Intent or technical and/or monitoring program reports when directed by the San Diego Water Board.

In addition to the General Conditions above, compliance with the following Specific Conditions is required:

**9.II.A. Specific Waiver Conditions for Discharge of Drilling Muds**

1. Drilling mud cannot be from borings advanced for a soil or groundwater contamination investigation.

### **7.10 Proposed Conditional Waiver No. 10 – Discharges of Emergency/Disaster Related Wastes**

Proposed Conditional Waiver No. 10 is for discharges of wastes resulting from an emergency or disaster, which may be a source of pollutants that can adversely affect the quality of waters of the state.

The following types of discharge may be eligible for Proposed Conditional Waiver No. 10:

- Incidental discharges of oil and oily water within a response area during an oil spill response in marine waters (discussed in Appendix A, section A.3.21)
- Discharges of disaster-related wastes to temporary waste piles and surface impoundments (discussed in Appendix B, section B.1.7)
- Discharges of mass mortality wastes temporary waste piles and emergency landfills (discussed in Appendix B, section B.1.8)
- Other discharges of emergency/disaster related wastes

These types of discharge are generated during emergency and disaster-related situations, requiring expedited handling and disposal. Therefore, emergency/disaster-related waste discharges were grouped into one discharge classification.

Emergency/disaster-related waste discharges that comply with the proposed waiver conditions should minimize the potential impact and should not pose a significant threat to the quality of waters of the state.

In the event of an emergency or disaster, significant amounts of wastes may be generated. Cleanup, management and disposal of emergency/disaster-related waste can result in the discharge of multiple waste streams which can adversely affect the quality of surface water and/or groundwater. However, the issuance of WDRs would significantly impede the cleanup of emergency/disaster-related wastes, which would likely increase the threat to public health and the environment. Therefore, in the interest of expediting the cleanup of emergency/disaster-related wastes, issuing a waiver for these types of discharge would be in the public interest.

However, waiver conditions should be developed in order for members of the public, cities, counties, local agencies and organizations, and/or the San Diego Water Board to determine if dischargers of any emergency/disaster-related wastes are in conformance with the conditional waiver. If dischargers are not in compliance with waiver conditions, they can be issued a Notice of Violation and required to correct deficiencies in order to be eligible for Proposed Conditional Waiver No. 10. If dischargers of emergency/disaster-related wastes violate any waiver conditions, the San Diego Water Board has the option to terminate the conditional waiver for the discharge and begin regulating the discharge with individual WDRs and/or take other enforcement actions.

In order to be eligible for Proposed Conditional Waiver No. 10, discharges must comply with certain conditions to be protective of water quality. The proposed waiver conditions applicable to emergency/disaster-related waste discharges include the following:

- 10.I.A. General Waiver Conditions for Discharges of Emergency/Disaster-Related Wastes
- 10.II.A. Specific Waiver Conditions for Incidental Discharges During an Oil Spill Response
- 10.II.B. Specific Waiver Conditions for Disaster Related and Mass Mortality Wastes Disposed at Regulated Waste Disposal Facilities
- 10.II.C. Specific Waiver Conditions for Disaster Related and Mass Mortality Wastes Discharged to Temporary Waste Piles Located at Regulated Waste Disposal Facilities
- 10.II.D. Specific Waiver Conditions for Disaster Related Wastes Discharged to Temporary Waste Piles NOT Located at Regulated Waste Disposal Facilities
- 10.II.E. Specific Waiver Conditions for Disaster Related Wastes Discharged to Temporary Surface Impoundments NOT Located at Regulated Waste Disposal Facilities
- 10.II.F. Specific Waiver Conditions for Mass Mortality Wastes Discharged to Emergency Landfills NOT Located at Regulated Waste Disposal Facilities

Discharges of emergency/disaster-related wastes that comply with the general and specific waiver conditions in Proposed Conditional Waiver No. 10 should minimize the potential impact and should not pose a significant threat to the quality of waters of the state.

**10.I.A. General Waiver Conditions for Discharges of Emergency/Disaster-Related Wastes**

1. This conditional waiver does not become active and available until one of the following occurs:
  - a) The Governor of California issues a proclamation, pursuant to Government Code sections 8625 and 8558(b), identifying a portion of the San Diego Region as being in a state of emergency, and applies only to disaster-related waste streams from disaster-impacted areas; or
  - b) An oil spill incident occurs in the marine waters of the San Diego Region requiring a response authorized by the Administrator of the Office of Spill Prevention and Response; or
  - c) A discharge occurs resulting from emergency activities that are waived of the requirements of Water Code sections 13260(a) and (c), 13263(a), and 13264(a), which are described in Water Code section 13269(c)(1) and (2).
2. This conditional waiver is only in effect temporarily and shall expire under the following conditions:
  - a) The state of emergency declared by the Governor expires, or
  - b) The San Diego Water Board takes action to terminate enrollment of individual or all dischargers/Units temporarily granted a waiver, or

- c) Six (6) months have elapsed since the Governor issued a declaration of the state of emergency for any portion of the San Diego Region, or the oil spill incident occurred, or emergency activities began, unless otherwise directed by the San Diego Water Board.
- 3. Emergency/disaster-related waste management and cleanup activities must minimize or eliminate the discharge of any pollutants that could adversely affect the quality or beneficial uses of the waters of the state.
- 4. For all temporary waste piles and surface impoundments used to manage emergency/disaster-related waste, the following conditions apply:
  - a) Prevent the direct or indirect discharge of emergency/disaster-related wastes to any surface waters of the state (including ephemeral streams and vernal pools).
  - b) Emergency/disaster-related waste management operations shall not be performed in a manner that creates, or contributes to a condition of pollution or nuisance.
  - c) Emergency/disaster-related waste management operations shall not be performed in a manner that creates, or contributes to conditions which violate the waste discharge prohibitions promulgated in the Basin Plan.
  - d) Emergency/disaster-related wastes shall not be managed in a manner that causes corrosion, decay, or otherwise reduces or impairs the integrity of containment structures at any waste management unit.<sup>48</sup>
  - e) Emergency/disaster-related wastes shall not be managed in a manner that mixes or commingles other wastes that can produce a violent reaction (including heat, pressure, fire or explosion), that can produce toxic byproducts, or that can produce any reaction products requiring a higher level of containment, or results in the mixture being classified as a restricted waste.<sup>49</sup>
  - f) Liquid hazardous wastes or “restricted hazardous wastes”<sup>50</sup> cannot be discharged to municipal solid waste (MSW) landfills, temporary waste piles, or temporary surface impoundments.
  - g) Temporary waste piles must be covered to adequately prevent rainwater infiltration and runoff, and control fugitive dust, vectors, odors, blowing litter and scavenging. The cover shall not consist of or contain material classified as a designated waste.<sup>51</sup>
  - h) Inert wastes<sup>52</sup> that are suitable for reuse or recycling do not require permanent disposal at a classified waste management or disposal facility (i.e., permitted landfill).
  - i) Waste streams must only originate from disaster-impacted areas of the San Diego Region. These waste streams shall be discharged for treatment and permanent disposal **only** into:

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<sup>48</sup> Pursuant to California Code of Regulations Title 27 section 20200(b)(1)

<sup>49</sup> Pursuant to California Code of Regulations Title 27 section 20200(b)(2)

<sup>50</sup> Defined in California Health and Safety Code section 25122.7

<sup>51</sup> Defined in California Code of Regulations Title 27 section 20210

<sup>52</sup> Defined in California Code of Regulations Title 27 section 20230

- i) Waste management or treatment units (e.g., liquid wastes into wastewater treatment plants) as allowed by WDRs issued by the San Diego Water Board, or
- ii) Solid waste management units or disposal facilities (e.g., solid wastes into Class III MSW landfills underlain with engineered composite liners and leachate collection systems and that satisfy the requirements of State Water Board Resolution No. 93-62); or
- iii) Emergency landfills established in accordance with the conditions of this waiver; and
- iv) As allowed by valid WDRs issued by the San Diego Water Board for other categories of waste management units.

In addition to the General Conditions above, compliance with the following Specific Conditions is required:

**10.II.A. Specific Waiver Conditions for Incidental Discharges During an Oil Spill Response**

1. Incidental discharges<sup>53</sup> are confined to the response area which is defined by the daily work plan approved under the Incident Command System or Unified Command Structure by the Administrator, Federal On-Scene Coordinator, or State On-Scene Coordinator.
2. Oil spill response must be in marine waters.<sup>54</sup>

**10.II.B. Specific Waiver Conditions for Disaster-Related and Mass Mortality Wastes Disposed at Regulated Waste Disposal Facilities**

1. Waste (not otherwise suitable for recycling or reuse) derived from cleanup of emergency/disaster-impacted areas in the San Diego Region and managed under provisions of this waiver shall only be discharged *for permanent disposal into units that are underlain with an engineered composite liner system and a leachate collection meeting the requirements of State Water Board Resolution No. 93-62.*
2. Wastes derived from cleanup of disaster-impacted areas in the San Diego Region and discharged into regulated waste disposal facilities must be isolated, to the extent practicable, from areas of the facility that are not lined.
3. Food wastes, animal carcasses, and other putrescible wastes derived from cleanup of disaster-impacted areas in the San Diego Region shall be discharged for disposal in compliance with conditions of this waiver and covered expeditiously.

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<sup>53</sup> "incidental discharge" is defined as "the release of oil and/or oily water within the response area in or proximate to the area in which the oil recovery activities are taking place during and attendant to oil spill response activities. Incidental discharges include, but are not limited to, the decanting of oily water; in order to conserve oil storage capacity, and the wash down of vessels, facilities, and equipment used in the response."

<sup>54</sup> "Marine waters" defined in Government Code section 8670.3(i) as "those waters subject to tidal influence"



4. Inert wastes contained in mixed emergency wastes derived from cleanup of disaster-impacted areas in the San Diego Region, shall be separated and recycled when appropriate and practicable.
5. The discharger is responsible for accurately classifying disaster-related waste streams in accordance with the applicable regulatory requirements.<sup>55</sup>
6. The regulated waste disposal facility owner/operator is responsible for properly identifying disaster-related waste streams<sup>56</sup> and identifying wastes that may be suitable for use as alternative daily cover (ADC). Solid wastes that may be used as ADC at a regulated disposal facility are as follows:
  - a) Solid wastes that are classified as inert wastes.
  - b) Solid wastes that meet the criteria for ADC as prescribed in California Code of Regulations Title 27 sections 20690 to 20705, and.
  - c) Other solid wastes identified by the Local Enforcement Agency (LEA) as being suitable for use as ADC; so long as the waste could be accepted at a Class III MSW landfill without special permission from the San Diego Water Board.
7. Disposal of large numbers of animal carcasses, and other high moisture waste streams from mass mortality (e.g., natural disaster, agricultural disease, etc.), may cause wastes to exceed moisture holding capacity at regulated MSW landfills. To limit the impacts from such a large an additional moisture content associated with a mass mortality waste load, the owner/operator responsible for the regulated waste disposal facility should implement the following procedures:
  - a) Discharge high-moisture wastes (animal carcasses, animal related wastes, etc.) only in areas of the composite lined unit with a considerable thickness of other waste.
  - b) Owner/operator must limit the thickness of the high-moisture waste stream (e.g., animal carcasses, animal related wastes, etc.) to no more than 2 feet.
  - c) Owner/operator must cover each layer of high-moisture wastes (e.g., animal carcasses, animal related wastes, etc.) with an even thicker layer of absorbent wastes or soil.
  - d) For disaster related mass mortality wastes streams that are in a liquid form (e.g. raw eggs, etc.) reduce the moisture content prior to discharge by mixing with an absorbent material (e.g., saw dust, mulch, soil, etc.).
8. Within 60 days after the expiration of this waiver (see 10.1.A) the owner/operator of the a regulated waste disposal facility that accepted waste from disaster-impacted areas in the San Diego Region must submit an amendment to their RoWD (Joint Technical Document) describing the material change to their discharge, pertaining to the temporary acceptance, management, and disposal of waste derived from cleanup of disaster-impacted areas of the San Diego Region.

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<sup>55</sup> Requirements are provided in California Code of Regulations Title 27, Title 23, Chapter 15, and/or Title 22 Division 4.5.

<sup>56</sup> Pursuant to California Code of Regulations Title 27 section 20200(c)

**10.II.C. Specific Waiver Conditions for Disaster-Related and Mass Mortality Wastes Discharged to Temporary Waste Piles Located at Regulated Waste Disposal Facilities**

1. Owners/operators of regulated waste management or disposal facilities proposing to accept discharges of waste from disaster-impacted areas in the San Diego Region to a temporary waste staging area located at a regulated facility must submit a Notice of Intent to the San Diego Water Board within 30 days of the initial discharge of any disaster-related wastes. The Notice of Intent must contain the name and contact information of the owner/operator of the regulated waste management or disposal facility property, facility address and contact information, description of temporary waste management unit, certification, and signature of the owner, operator, and/or authorized representative. The certification must include the statement, *“I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.”*
2. Owners/operators of regulated waste management or disposal facilities must prevent surface runoff/runon from contacting wastes derived from cleanup of disaster-impacted areas in the San Diego Region and shall prevent erosion and transport of soils containing disaster-related wastes or waste constituents by surface runoff from all temporary waste piles. The facility owner/operator must implement MMs/BMPs for storm water conveyance and control.
3. All wastes derived from disaster-impacted areas in the San Diego Region must be placed at least 5 feet above the highest historically known or anticipated level of groundwater, and more than 100 feet from, and at an elevation that is higher than, any surface water of the state.
4. All waste derived from disaster-impacted areas in the San Diego Region must be protected from flooding and inundation, in compliance with the current WDRs for the affected unit, or units, at the regulated facility.
5. Owners/operators of regulated waste management or disposal facilities must manage temporary waste piles for disaster related mass mortality wastes as follows:
  - a) Temporary waste piles of mass mortality wastes can only be located in areas underlain by a composite liner system (or approved engineering alternative) and a significant thickness of other types of solid wastes.
  - b) Owner/operator must implement a plan to prevent wild animals (e.g., birds, mammals, reptiles, *etc.*) from coming into contact with mass mortality wastes (e.g., provide and maintain adequate cover for temporary waste piles).
  - c) Owner/operator must ensure that all temporary waste piles containing mass mortality wastes are discharged into landfill prior to the end of the

- working day, unless sufficient information is provided to demonstrate that a proposed alternative is protective of water quality and human health for a given temporary waste pile.
- d) Owner/operator must ensure that all mass mortality wastes are covered with soil or other waste immediately after it is discharged into the landfill.
  - e) Owner/operator must ensure that any storm water runoff that comes into contact with the disaster related wastes or containing waste constituents is managed as leachate.
6. Disaster related and mass mortality wastes discharged to temporary waste piles at regulated waste management or disposal facilities temporarily granted a waiver, together with any materials used to contain the temporary waste piles, shall be removed from the site. The site shall be restored to its original state no later than the 60 days after expiration of this waiver (see 10.I.A), or as required by the San Diego Water Board. Alternatively, the facility owner/operator must file an amended RoWD (Joint Technical Document) and obtain amended WDRs from the San Diego Water Board for any waste piles that will continue to exist past the expiration date of this waiver.
  7. Owners/operators of regulated waste management or disposal facilities must submit a Notice of Termination to the San Diego Water Board within 10 working days of completing removal of all disaster-related wastes and restoring the site to its original condition. The Notice of Termination must contain the name and contact information of the owner/operator of the regulated facility property, facility address and contact information, description of waste that was temporarily stored/staged in the temporary waste management unit, the final waste disposal location, certification, and signature of the owner, operator, and/or authorized representative. The certification must include the statement, *"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."*

**10.II.D. Specific Waiver Conditions for Disaster-Related Wastes Discharged to Temporary Waste Piles NOT Located at Regulated Waste Disposal Facilities**

1. Any agency, jurisdiction or person proposing to establish a temporary waste pile not located at a regulated facility must submit a Notice of Intent to the San Diego Water Board within 30 days of the initial discharge of any disaster-related wastes. The Notice of Intent must contain the name and contact information of the owner/operator the property where the temporary waste pile facility is located, facility address and contact information, description of temporary waste management unit, certification, and signature of the owner, operator, and/or authorized representative. The

certification must include the statement, *“I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.”*

2. Owners/operators of temporary waste piles not on regulated facilities must ensure that they are sited, designed, constructed, operated, and maintained to ensure compliance the following minimum prescriptive and performance standards:
  - a) The bottom of a temporary waste pile must be placed at least 5 feet above the highest historically known or anticipated level of groundwater, and more than 100 feet from, and at an elevation that is higher than, any surface water of the state.
  - b) Temporary waste piles must be protected from inundation of washout due of floods with a 100-year return period.
  - c) Temporary waste piles cannot be located on a known Holocene fault.
  - d) Temporary waste piles cannot be located in areas of potential rapid geologic change (*e.g.*, landslides, debris flows, flashflood areas, *etc.*).
  - e) Temporary waste piles must be underlain by a temporary impermeable barrier (*e.g.*, heavy gauge plastic) or located in an area covered by a relatively impermeable surface (*e.g.*, asphalt, concrete, *etc.*). The liner must be installed prior to establishing a temporary waste pile to protect all natural geological materials from contact with the waste and from contact with leachate.
  - f) Temporary waste piles must be covered daily with either a heavy gage plastic or material that meets the classification criteria for inert wastes. A material that would be classified as a designated waste cannot be utilized for daily cover at a temporary waste staging area. Cover on the temporary waste piles must be designed, installed and maintained to prevent rainwater infiltration and runoff, and control of fugitive dust, vectors, odors, blowing litter and scavenging.
  - g) Temporary waste management operations that include wastes with a liquid content exceeding its moisture-holding capacity and/or containing free liquids, shall comply with requirements for temporary surface impoundments (see 10.II.E).
  - h) Temporary waste piles must be designed, constructed and operated to limit, to the greatest extent possible, ponding, infiltration, inundation, erosion, slope failure, and washout. Surface drainage from outside of the temporary waste pile shall be diverted from the location of the temporary waste pile through implementation of MMs/BMPs for storm water control and conveyance.
3. Owners/operators of temporary waste piles not on regulated facilities must submit written notification to the San Diego Board at least 30 days prior to initiating the discharge of return water or ponded water contained within the

temporary waste pile if the discharge is to a location other than a sanitary sewer system. Based on the San Diego Water Board determination, the discharger may receive: 1) WDRs; 2) a waiver of WDRs, or 3) written determination that the disposal of the return water or ponded water is not subject to regulation by the San Diego Water Board.

4. Owners/operators of temporary waste piles not on regulated facilities must post at least one clearly visible sign (in English) listing the following minimum information: a) project name, b) brief project description, and c) operator name and phone number. The discharger must post additional signs as necessary (in languages other than English) to more effectively communicate the minimum contact information (listed above) to the local community. The sign(s) shall be maintained as required to keep them legible and shall remain in place while temporary waste piles remain on site.
5. Solid wastes discharged to temporary waste piles not at regulated waste management or disposal facilities temporarily granted a waiver, together with any materials used to contain the temporary waste piles, shall be removed from the site. The site shall be restored to its original state no later than the 60 days after expiration of this waiver (see 10.I.A), or as required by the San Diego Water Board.
6. Owners/operators of temporary waste piles not on regulated facilities must submit a Notice of Termination to the San Diego Water Board within 10 working days of completing removal of all disaster-related wastes and restoring the site to its original condition. The Notice of Termination must contain the name and contact information of the owner/operator the property where the temporary waste pile facility was located, facility address and contact information, description of waste that was temporarily stored/staged in the temporary waste management unit, the final waste disposal location, certification, and signature of the owner, operator, and/or authorized representative. The certification must include the statement, *"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."*

**10.II.E. Specific Waiver Conditions for Disaster-Related Wastes Discharged to Temporary Surface Impoundments NOT Located at Regulated Waste Disposal Facilities**

1. Any agency, jurisdiction or person proposing to establish a temporary surface impoundment not located at a regulated facility must submit a Notice of Intent to the San Diego Water Board within 30 days of the initial discharge of any disaster-related wastes. The Notice of Intent must contain the name and contact information of the owner/operator the property where the temporary surface impoundment facility is located, facility address and contact information, description of temporary waste management unit,

certification, and signature of the owner, operator, and/or authorized representative. The certification must include the statement, "*I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.*"

2. Owners/operators of temporary surface impoundments not on regulated facilities must ensure that they are sited, designed, constructed, operated, and maintained to ensure compliance the following minimum prescriptive and performance standards:
  - a) The bottom of a temporary surface impoundment must be placed at least 5 feet above the highest historically known or anticipated level of groundwater, and more than 100 feet from, and at an elevation that is higher than, any surface water of the state.
  - b) Temporary surface impoundments must be protected from inundation of washout due of floods with a 100-year return period.
  - c) Temporary surface impoundments cannot be located on a known Holocene fault.
  - d) Temporary surface impoundments cannot be located in areas of potential rapid geologic change (*e.g.*, landslides, debris flows, flashflood areas, *etc.*).
  - e) Temporary surface impoundments must be underlain by a temporary impermeable barrier (*e.g.*, heavy gauge plastic) or a relatively impermeable surface (*e.g.*, asphalt, concrete, *etc.*). The liner must be installed prior to establishing a temporary surface impoundment to protect all natural geological materials from contact with the waste.
  - f) Berms and containment structures of temporary surface impoundments must be composed of inert materials that will not cause adverse reactions (*e.g.*, corrosion, decay, or otherwise reduce or impair the integrity of the containment structure) when placed in contact with the liquid wastes stored within the temporary surface impoundment.
  - g) Temporary surface impoundments must be designed, operated and maintained to ensure that liquid wastes are at least 2 feet below the top of the impoundment (measured vertically from the surface of the liquid up to the point on the surrounding lined berm or dike having the lowest elevation), and must be designed and constructed to prevent overtopping as a results of wind conditions likely to accompany precipitation conditions.
  - h) Direct pipeline discharges of liquid can occur only into temporary surface impoundments with automatic or manually operated fail-safe systems to prevent overfilling.
  - i) Temporary surface impoundments must be designed and constructed to prevent scouring of containment structures at points of liquid discharge into the impoundments.

- j) Temporary surface impoundments must be designed, constructed and operated to limit, to the greatest extent possible, inundation, erosion, slope failure, and washout. Surface drainage from outside of the temporary surface impoundments shall be diverted from the location of the temporary waste pile through implementation of MMs/BMPs for storm water control and conveyance.
3. Owners/operators of temporary surface impoundments not on regulated facilities must submit written notification to the San Diego Board at least 30 days prior to initiating the discharge of return water or ponded water contained within the temporary waste pile if the discharge is to a location other than a sanitary sewer system. Based on the San Diego Water Board determination, the discharger may receive: 1) WDRs; 2) a waiver of WDRs, or 3) written determination that the disposal of the return water or ponded water is not subject to regulation by the San Diego Water Board.
  4. Owners/operators of temporary surface impoundments not on regulated facilities must ensure that only disaster related waste streams are discharged into temporary surface impoundments.
  5. All visible portions of synthetic liner systems in temporary surface impoundments must be inspected weekly, or daily as necessary, until all free liquid is removed from the surface impoundment as part of closure.<sup>57</sup> If, during the active life of the temporary surface impoundment, the wastes are removed and the bottom of the impoundment is cleaned down to the liner, an inspection shall be made of the bottom of the liner prior to refilling the impoundment.
  6. Owners/operators of temporary surface impoundments not on regulated facilities must post at least one clearly visible sign (in English) listing the following minimum information: a) project name, b) brief project description, and c) operator name and phone number. The facility owner/operator must post additional signs as necessary (in languages other than English) to more effectively communicate the minimum contact information (listed above) to the local community. The sign(s) shall be maintained as required to keep them legible and shall remain in place while temporary surface impoundments remain on site.
  7. Solid wastes discharged to temporary surface impoundments not at regulated waste management or disposal facilities, together with any materials used to contain the temporary surface impoundments, shall be removed from the site. The site shall be restored to its original state no later than the 60 days after expiration of this waiver (see 10.I.A), or as required by the San Diego Water Board.
  8. Owners/operators of temporary surface impoundments not on regulated facilities must submit a Notice of Termination to the San Diego Water Board within 10 working days of completing removal of all disaster-related wastes and restoring the site to its original condition. The Notice of Termination must contain the name and contact information of the owner/operator the property where the temporary surface impoundment facility was located,

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<sup>57</sup> Pursuant to California Code of Regulations Title 27 section 21400(a)

facility address and contact information, description of waste that was temporarily stored/staged in the temporary waste management unit, the final waste disposal location, certification, and signature of the owner, operator, and/or authorized representative. The certification must include the statement, *“I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.”*

**10.II.F. Specific Waiver Conditions for Mass Mortality Wastes Discharged to Emergency Landfills NOT Located at Regulated Waste Disposal Facilities**

1. Any agency, jurisdiction or person proposing to establish an emergency landfill not located at a regulated facility must submit a Notice of Intent to the San Diego Water Board within 30 days of the initial discharge of any disaster-related wastes. The Notice of Intent must contain the name and contact information of the owner/operator the property where the emergency landfill facility is located, facility address and contact information, description of emergency waste management unit, certification, and signature of the owner, operator, and/or authorized representative. The certification must include the statement, *“I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.”*
2. Owners/operators of emergency landfills not on regulated facilities must ensure that they are sited, designed, constructed, operated, and maintained to ensure compliance the following minimum prescriptive and performance standards:
  - a) The bottom of an emergency landfill must be placed at least 10 feet above the highest historically known or anticipated level of groundwater, and more than 500 feet from any surface water of the state.
  - b) Emergency landfills must be protected from inundation of washout due of floods with a 100-year return period.
  - c) Emergency landfills cannot be located on a known Holocene fault.
  - d) Emergency landfills cannot be located in areas of potential rapid geologic change (*e.g.*, landslides, debris flows, flashflood areas, *etc.*).
  - e) Emergency landfills cannot be located in areas underlain by fractured bedrock aquifer or highly permeable soils (*e.g.*, gravels, sands, and loamy sands) or in facilities that are characterized by such deposits (*e.g.*, gravel quarry).



- f) For disaster-related mass mortality wastes streams that are in a liquid form (*e.g.* raw eggs, *etc.*) reduce the moisture content prior to discharge by mixing with an absorbent material (*e.g.*, saw dust, mulch, soil, *etc.*).
  - g) The thickness of each layer of mass mortality wastes must be limited to less than 2 feet.
  - h) Lime (or another liquid abatement material) must be added to each layer to help reduce the generation of liquid by the mass mortality wastes.
  - i) Each layer of lime-covered mass mortality wastes must be covered by at least 3 feet of soil before adding another layer of mass mortality wastes.
  - j) Mass mortality wastes must be discharged for disposal in compliance with the conditions of this waiver and covered at the end of each working day
  - k) The final layer of disaster-related mass mortality wastes discharged into the emergency landfill must be overlain by a final layer of not less than 3 feet of soil; or alternatively the unit may be covered by a relatively impermeable engineered surface (*e.g.*, asphalt, concrete, *etc.*). The final soil layer shall be placed in a mound configuration so that the final soil layer: 1) Overlaps the mass mortality wastes by several feet on each edge of the emergency landfill; 2) is at least 3 feet thick over all portions of the mass mortality wastes; and 3) is sloped to provide good drainage that does not impair the integrity of the emergency landfill.
  - l) Owner/operator should also evaluate, implement, and document other effective waste isolation (and waste moisture reducing methods) in conjunction with the procedures identified above
3. The emergency landfill must be designed, constructed and operated to limit, to the greatest extent possible, ponding, infiltration, inundation, erosion, slope failure, and washout. The owner/operator must protect the integrity of the final cover from adverse impacts by erosion by installing and maintaining MMs/BMPs, including:
- a) Installation of runoff control features on the upgradient side of the emergency landfill to divert offsite storm water from the emergency landfill.
  - b) Installation of an effective runoff collection and conveyance ditch.
  - c) Grading and maintenance of the final cover to eliminate ponding of water over the emergency landfill.
  - d) Installation and maintenance of erosion control measures on the cover of the emergency landfill (*e.g.*, install straw mulch and/or a vegetative cover).
  - e) Installation of a deer fence around the perimeter of the emergency landfill to discourage access by digging of carnivores.
4. Owners/operators of emergency landfills not on regulated facilities must post at least one clearly visible sign (in English) listing the following minimum information: a) clearly identify the area as an emergency landfill for animal and agricultural wastes, b) a warning against trespass, c) a description of the reason for the emergency landfill (*e.g.*, Exotic Newcastle, Avian Flu, *etc.*), the type(s) of waste buried at the site (*e.g.*, types of

carcasses, egg wastes, manure, etc.), and d) the name and telephone number of the current property owner. The facility owner/operator must post additional signs as necessary (in languages other than English) to more effectively communicate the minimum contact information (listed above) to the local community. The sign(s) shall be maintained as required to keep them legible and shall remain in place while the emergency landfill remains on site.

5. Owners/operators of emergency landfills not on regulated facilities must submit Notice of Termination to the San Diego Water Board within 10 working days of completing removal of all disaster-related wastes and restoring the site to its original condition. The Notice of Termination must contain the name and contact information of the owner/operator the property where the temporary waste pile facility was located, facility address and contact information, description of waste that was temporarily stored/staged in the temporary waste management unit, the final waste disposal location, certification, and signature of the owner, operator, and/or authorized representative. The certification must include the statement, *“I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.”*
6. Owners/operators of emergency landfills not on regulated facilities must submit a RoWD to the San Diego Water Board and apply for WDRs (using Form 200). The RoWD and application for WDRs must be provided to the San Diego Water Board within 6 months of creating the emergency landfill for disposal of disaster-related mass mortality wastes. At a minimum, the RoWD shall include the following information:
  - a) A short description of the emergency conditions that made the emergency landfill necessary.
  - b) The identity, physical address, mailing address and telephone number of the current land owner.
  - c) Photographs taken to document the location of the emergency landfill, practices used for placement of wastes and soil layers, and the appearance of the emergency landfill after installation of the final cover.
  - d) A map showing the location and perimeter of the emergency landfill, its location relative to local topographical, geographical, biological, and cultural features (e.g. roads, streams, etc.), and provide Geographical Information System (GIS) data as available.
  - e) A simple cross section of the emergency landfill and a description of the construction (depth, thickness of layers and final cover).
  - f) An estimate of the amount of wastes (e.g., in pounds or tons) discharged into the emergency landfill.
  - g) A description of measures taken to ensure that wastes and waste constituents do not migrate outside the emergency landfill.

- h) Any other site-specific or discharger related information requested by the San Diego Water Board.

### **7.11 Proposed Conditional Waiver No. 11 – Aerially Discharged Wastes Over Land**

Proposed Conditional Waiver No. 11 is for wastes that have been discharged aerially over land, which may be a source of pollutants that can adversely affect the quality of waters of the state.

The following types of discharge may be eligible for Proposed Conditional Waiver No. 11:

- Discharges of wastes related to fireworks displays over land (discussed in Appendix B, section B.1.9)
- Other wastes discharged aerially over land that may adversely affect the quality of the groundwaters of the state, but determined to be “low threat” by the San Diego Water Board

These types of discharge can have similar environmental settings and potential threat to water quality. Therefore, wastes discharged aerially over land were grouped into one discharge classification. Wastes discharged aerially over land that comply with the proposed waiver conditions are not expected to pose a threat to the quality of waters of the state.

For waste discharges related to fireworks displays, available studies suggest annual or infrequent fireworks displays present a low threat to groundwater quality. However, there may be potential water quality impacts that are cumulative for shallow groundwaters used as drinking water sources with recurring fireworks displays. With proper planning and management, the potential threat to groundwater quality from wastes related to fireworks discharged over to land can be eliminated. Therefore, waiver conditions must require proper planning and management of fireworks displays over land to minimize or eliminate the discharge of pollutants to waters of the state.

There may be other aerially discharged wastes in the San Diego Region that are determined to pose a low threat to the quality of groundwaters of the state. These aerially discharged wastes would likely require the same minimum conditions to be protective of the quality of groundwaters of the state.

The permitting process and permits issued by other public agencies (e.g., air pollution control districts, municipalities, fire departments) can provide preliminary information and data to the San Diego Water Board to determine compliance with conditions of a waiver for aerially discharged wastes. Obtaining the proper permits, licenses, or certifications from appropriate public agencies can be a waiver condition that serves as the method of enrollment for a conditional waiver.

However, waiver conditions should be developed in order for members of the public, cities, counties, local agencies and organizations, and/or the San Diego Water Board to determine if aerially discharged wastes are in conformance with the conditional waiver,

or causing significant adverse effects on the waters of the state. Significant adverse effects include, but are not limited to, one-time observations of exceedences of drinking water maximum contaminant levels in reservoirs and groundwater source water wells, persistent pollutant concentrations in the water column that exceed water quality objectives for surface waters, and persistent pollutant concentrations in the sediments of surface water bodies that exceed sediment screening levels or sediment criteria.

If dischargers are not in compliance with waiver conditions, they can be issued a Notice of Violation and required to correct deficiencies in order to be eligible for Proposed Conditional Waiver No. 11. If dischargers violate any waiver conditions, the San Diego Water Board has the option to terminate the conditional waiver for the discharge and begin regulating the discharge with individual WDRs and/or take other enforcement actions.

In order to be eligible for Proposed Conditional Waiver No. 11, discharges must comply with certain conditions to be protective of water quality. The proposed waiver conditions applicable to wastes discharged aerially over land include the following:

- 11.I.A. General Waiver Conditions for Aerially Discharged Wastes Over Land
- 11.II.A. Specific Waiver Conditions for Discharges of Waste Related to Fireworks Displays Over Land

Wastes discharged aerially over land that comply with the general and specific waiver conditions in Proposed Conditional Waiver No. 11 are not expected to pose a threat to the quality of waters of the state.

**11.I.A. General Waiver Conditions for Aerially Discharged Wastes Over Land**

1. Aerially discharged wastes cannot be discharged directly over and/or into surface waters of the state (including ephemeral streams and vernal pools).
2. Aerially discharged wastes must not cause or threaten to cause a condition of contamination, pollution, or nuisance.
3. Aerially discharged wastes must not impact the quality of groundwater in any water wells or surface water in any drinking water reservoirs.
4. Dischargers must comply with any local, state, and federal ordinances and regulations and obtain any required approvals, permits, certifications, and/or licenses from authorized local agencies.
5. Discharger must submit a Notice of Intent or technical and/or monitoring program reports when directed by the San Diego Water Board.

In addition to the General Conditions above, compliance with the following Specific Conditions is required:

**11.II.A. Specific Waiver Conditions for Discharges of Waste Related to Fireworks Displays Over Land**

1. No more than one fireworks display may be conducted from a launch site or within 1.0 mile of another launch site within a 48-hour period.<sup>58</sup> If the organizer will have more than one fireworks display within a 48-hour period, the organizer must file a Notice of Intent containing information about the fireworks to be used, location of launch area and nearby water bodies and groundwater basins, surrounding land uses, planned period of and frequency of discharge, copies of any permits obtained from other public agencies, and measures that will be taken to minimize or eliminate the discharge of pollutants that might affect surface waters and groundwater quality. Sufficient information must be submitted before the discharge may begin.
2. All fireworks-related debris must be cleaned up from land surface areas.
3. Launch areas and deposition areas of fireworks displays may not be located within areas designated as Zone A for groundwater source area protection, as defined by the California Department of Public Health's Drinking Water Source Assessment Protection Program. This condition may be waived if the owner or operator of a groundwater drinking water source, through a permit, specifically allows the fireworks display launch area and/or deposition area within an area designated as Zone A for groundwater source area protection.
4. Launch areas and deposition areas of fireworks displays may not be located within areas designated as Zone A for surface water source protection, as defined by the California Department of Public Health's Drinking Water Source Assessment Protection Program. This condition may be waived if the owner or operator of a surface water source reservoir or intake structure, through a permit, specifically allows the fireworks display launch area and/or deposition area within an area designated as Zone A for surface water protection.
5. The fireworks display must be permitted by all relevant public agencies that require permits for fireworks displays (e.g., fire departments, municipal governments, law enforcement, water supply agencies). Copies of any permits must be available on site for inspection.
6. The San Diego Water Board and/or other local regulatory agencies must be allowed reasonable access to the site in order to perform inspections and conduct monitoring.

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<sup>58</sup> This condition is intended to alleviate spatial and temporal accumulation of fireworks-related chemical contaminants.

## 8 Environmental Review

This section presents the environmental analysis for the proposed Basin Plan amendment. The San Diego Water Board must comply with the California Environmental Quality Act (CEQA) when amending the Basin Plan.<sup>59</sup> The CEQA process requires the San Diego Water Board to analyze and disclose the potential adverse environmental impacts of a Basin Plan amendment it is initiating or approving. The San Diego Water Board process must consider alternatives, develop proposals to mitigate or avoid impacts to the extent feasible, and involve the public and other public agencies in the evaluation process.

The San Diego Water Board is the Lead Agency for evaluating the environmental impacts of Basin Plan amendments pursuant to CEQA. Although subject to CEQA, the San Diego Water Board's basin planning process is certified by the Secretary for Resources as "functionally equivalent to" and therefore exempt from CEQA's requirement for preparation of an environmental impact report or negative declaration and initial study.<sup>60</sup> The State Water Board's CEQA implementation regulations describe the environmental documents required for any Regional Water Board basin planning actions.<sup>61</sup> These documents include a written report, an initial draft of the Basin Plan amendment, and a completed Environmental Checklist Form.<sup>62</sup> This technical report serves as the required written report. The proposed Basin Plan amendment is described in the previous section and in Appendix C (Attachment A to Tentative Resolution No. R9-2007-0104). The completed Environmental Checklist Form is provided in Appendix D.

The written report must also include the following:<sup>63</sup>

- A brief description of the proposed action (provided in the sections above and in Appendix D);
- Reasonable alternatives to the proposed action;
- Mitigation measures to minimize any significant adverse environmental impacts of the proposed action.

The reasonable alternatives and mitigation measures are discussed in the following subsections.

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<sup>59</sup> Public Resources Code section 21080

<sup>60</sup> California Code of Regulations Title 14 section 15251(g)

<sup>61</sup> California Code of Regulations Title 23 section 3720 *et seq.*

<sup>62</sup> California Code of Regulations Title 23 section 3777

<sup>63</sup> California Code of Regulations Title 23 section 3777(a)

## 8.1 Reasonable Alternatives for Proposed Basin Plan Amendment

### 8.1.1 Alternative 1: No Action (Allow Existing Conditional Waivers to Expire)

Under this alternative, no action would be taken to renew the existing conditional waivers in the Basin Plan. This would cause all the existing waivers to expire on January 1, 2008.

If this alternative were to occur, all the types of discharge that were previously eligible for an expired conditional waiver would become subject to the regulatory requirements of Water Code sections 13260, 13263, and 13264. Therefore, dischargers would be required to file RoWDs for any discharge previously waived by the expired conditional waivers, and issued an individual conditional waiver or regulated under individual WDRs. In addition, the new types of discharge identified during the development of this Basin Plan amendment would also be required to file RoWDs and issued an individual conditional waiver or regulated under individual WDRs.

Under this alternative, significant San Diego Water Board resources would likely have to be diverted from discharges that have a higher threat to water quality to process the documentation required to regulate discharges that are typically considered a lower threat to water quality. If the San Diego Water Board diverts resources away from discharges that have a higher threat to water quality, water quality in the Region would likely degrade.

### 8.1.2 Alternative 2: Re-adopt the Existing Conditional Waivers without Revisions

Under this alternative, the existing conditional waivers in the Basin Plan would be renewed without revising the waiver conditions. The existing conditional waivers and waiver conditions would be available for another 5 years. Conditional waivers would not be available for any additional types of discharge identified during the development of this Basin Plan amendment.

If this alternative were to occur, deficiencies in the waiver conditions that were identified would continue to exist. In many cases, the existing waiver conditions do not provide the San Diego Water Board, or members of the public, the information or data necessary to identify discharges occurring within the Region under a conditional waiver, the ability to verify compliance with waiver conditions, or the ability to assess the effectiveness of the waiver conditions. Available evidence and water quality monitoring data collected within the Region since 2002 indicates that several types of discharge that are allowed to occur under an existing conditional waiver may not be effective enough to minimize or eliminate the discharge of pollutants for the protection of water quality.

Conditional waivers also would not be available for the new types of discharge that have been identified during the development of this Basin Plan amendment. Therefore, these new types of discharge would be required to file RoWDs and issued an individual conditional waiver or regulated under individual WDRs for each specific discharge. San Diego Water Board resources may have to be diverted from discharges that have a



higher threat to water quality to investigate and/or process the documentation required to regulate discharges that may be considered a lower threat to water quality. If the San Diego Water Board diverts resources away from discharges that have a higher threat to water quality, water quality in the Region would likely degrade.

Additionally, the existing waiver conditions, as written, are vague, overly generalized, and difficult to understand. The existing waiver conditions need to be revised to ensure that the conditions minimize or eliminate the potential threat to waters of the state, and to eliminate the ambiguity for gauging compliance with waiver conditions by members of the public and the San Diego Water Board. Therefore, renewing the existing conditional waivers and waiver conditions without any revisions would continue to make it difficult for the San Diego Water Board to identify discharges that may be a potential or significant threat to water quality of the water in the Region and to gauge compliance with waiver conditions.

This alternative would continue the status quo. Since available evidence indicates that existing waiver conditions may not be effective enough to minimize or eliminate the discharge of pollutants for the protection of water quality, water quality in the Region may degrade.

#### 8.1.3 Alternative 3: Adopt Conditional Waivers with Revisions (Proposed Alternative)

Under this alternative, the existing conditional waivers in the Basin Plan would be revised as proposed in section 7. The revisions proposed in section 7 also include waiver conditions for several new types of discharge that have been identified during the development of this Basin Plan amendment.

In reviewing the effectiveness of the existing conditional waivers, available evidence and water quality monitoring data collected within the Region since 2002 indicate that the waiver conditions for several types of discharge may not be effective enough to minimize or eliminate the discharge of pollutants for the protection of water quality. Revisions to the waiver conditions for several types of discharge were proposed to provide the San Diego Water Board the information or data necessary to identify discharges allowed to occur within the Region under a conditional waiver, the ability to verify compliance with waiver conditions, and the ability to assess the effectiveness of the waiver conditions.

Moreover, the proposed revisions to the waiver conditions would allow members of the public and/or the San Diego Water Board to identify specific discharges that may be a threat to the quality of the waters in the Region. If dischargers are identified as not complying with waiver conditions, they can be issued a Notice of Violation and required to correct deficiencies in order to continue being eligible for a conditional waiver. If dischargers violate any waiver conditions and the violation is brought to the attention of the San Diego Water Board, the San Diego Water Board has the option to terminate the waiver for the specific discharge and begin regulating the discharge with individual WDRs and/or take other enforcement actions. Additionally, waivers can be terminated at any time by the San Diego Water Board if determined to be ineffective in protecting

water quality, and regulating with individual or general WDRs is deemed to be more appropriate.

This alternative provides the San Diego Water Board the most flexibility to regulate or waive regulation of discharge types that are typically considered a low threat to water quality under certain conditions. This alternative also allows to San Diego Water Board to focus its resources on discharges that are known to be a higher threat to water quality, and discharges that are identified by members of the public or the San Diego Water Board as a potential threat to water quality.

#### 8.1.4 Alternative 4: Adopt General Waste Discharge Requirements for Specific Types of Discharge

Under this alternative, the existing conditional waivers in the Basin Plan would be allowed to expire and the San Diego Water Board would develop and adopt general WDRs to regulate the specific types of discharge that were previously eligible for the existing conditional waivers, as well as the new types of discharge identified during the development of this Basin Plan amendment.

If this alternative were to occur, all the types of discharge that were previously eligible for an expired conditional waiver would have to file a RoWD to enroll for regulation under general WDRs. Enrollment for regulation under general WDRs would require an annual fee as well as monitoring and reporting requirements. The potential effects and/or benefits to the environment would likely be the similar to a conditional waiver because these types of discharge are expected to pose a low threat to water quality and the discharge requirements in the general WDRs would likely be similar to the revised waiver conditions in section 7.

However, under this alternative significant San Diego Water Board resources and time would be required to develop and adopt general WDRs to regulate the specific types of discharge discussed in Appendices A and B. Resources and time would also be required by the dischargers to prepare RoWDs and enroll for regulation under general WDRs. Additionally, significant San Diego Water Board resources would likely have to be diverted from discharges that have a higher threat to water quality to process the documentation required to regulate discharges that are typically considered a lower threat to water quality. If the San Diego Water Board diverts resources away from discharges that have a higher threat to water quality, water quality in the Region would likely degrade.

## 8.2 Recommended Basin Plan Amendment Alternative

The recommended Basin Plan amendment alternative is Alternative 3, which is to revise the waiver conditions of the existing conditional waivers and issue waivers and waiver conditions for several new types of discharge. The revised waiver conditions for the existing conditional waivers provide more explicit requirements that can be used to determine compliance. In addition, revising the conditional waivers would also allow several new types of discharge that have gone unregulated in the past to be eligible for conditional waivers.

The types of discharge that may be eligible for a conditional waiver should pose a low threat to the quality of waters of the state provided they comply with certain conditions. A type of discharge that is expected to pose a low threat to water quality can be waived of the regulatory requirements of Water Code section 13260, 13263, and 13264 until the public or the San Diego Water Board can develop enough evidence to identify it as a potentially significant threat to water quality. At that time, the waiver conditions for that type of discharge can be revised to include more monitoring and/or management requirements, or the conditional waiver can be terminated and the San Diego Water Board can begin regulating the discharge type with individual or general WDRs.

For dischargers identified by members of the public or the San Diego Water Board that do not comply with waiver conditions, they can be issued a Notice of Violation and required to correct deficiencies if the discharger would like to continue being eligible for a conditional waiver. However, if dischargers violate any waiver conditions, the San Diego Water Board has the option to terminate the conditional waiver for the discharge and begin regulating the discharge with individual WDRs and/or take other enforcement actions.

Also, if a conditional waiver and its waiver conditions for a type of discharge do not appear to be effective in protecting water quality, the San Diego Water Board has the option to terminate the conditional waiver for a specific type of discharge or specific discharge at any time. If the San Diego Water Board decides to terminate a conditional waiver, individual conditional waivers or individual WDRs can be issued on a case-by-case basis, or general WDRs can be issued for the Region.

Alternative 3 is recommended because this alternative provides the San Diego Water Board the most flexibility to regulate or waive regulation of discharge types that are typically considered a low threat to water quality under certain conditions. Alternative 3 provides members of the public and/or San Diego Water Board more guidance to identify dischargers that are not providing adequate protection for the quality of the waters of the state. Finally, Alternative 3 will also allow the San Diego Water Board to efficiently utilize its limited resources by focusing on the discharges that are known to be the highest threat to the quality of the waters in the Region. Therefore, water quality in the Region will likely improve and beneficial uses of the waters of the state in the Region will be supported.

### **8.3 Mitigation Measures for Recommended Basin Plan Amendment Alternative**

Amending the Basin Plan to renew and issue conditional waivers will not directly impact the environment, but compliance with waiver conditions may potentially have an impact on the environment if the implementation of non-structural and/or structural MMs/BMPs is required. However, as the Environmental Checklist in Appendix D indicates, the proposed Basin Plan amendment is not expected to result in any significant adverse environmental impacts.

Proposed Conditional Waiver No. 10, for discharges of emergency/disaster-related wastes, could potentially have significant adverse environmental impacts. However, without Proposed Conditional Waiver No. 10, WDRs would be required to allow the discharge and disposal of emergency/disaster-related wastes. The issuance of WDRs would significantly impede the cleanup of emergency/disaster-related wastes. Impeding the cleanup of emergency/disaster-related wastes would likely have a more significant impact on the environment and would not be in the public interest. Additionally, emergency projects are exempt from the requirements of CEQA.<sup>64</sup>

Other proposed conditional waivers may require the implementation of specific non-structural and/or structural MMs/BMPs which could impact the environment. However, once MMs/BMPs are installed or implemented to comply with waiver conditions, the long term effects on the environment are not expected to be adverse. Therefore, any potential impacts to the environment are expected to be less than significant. In most cases, proper management of the pollutant sources, rather than implementing specific structural MMs/BMPs, would fulfill waiver conditions and protect water quality. Proper management of pollutant sources would typically have less than significant or no adverse impact on the environment. If specific MMs/BMPs that could adversely impact the environment are required, those potential adverse impacts to the environment are expected to be short term, and implementation should be performed in the most environmentally sensitive manner to minimize adverse impacts on the environment.

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<sup>64</sup> California Code of Regulations Title 14 section 15269

## 9 Necessity of Regulatory Provisions

The Office of Administrative Law (OAL) is responsible for reviewing administrative regulations proposed by State agencies for compliance with standards set forth in California's Administrative Procedure Act<sup>65</sup> for transmitting these regulations to the Secretary of State, and for publishing regulations in the California Code of Regulations. Following State Water Board approval of this Basin Plan amendment, any regulatory portions of the amendment must be approved by the OAL.<sup>66</sup> The State Water Board must include in its submittal to the OAL a summary of the necessity for the regulatory provision.

This Basin Plan amendment meets the “necessity standard” of Government Code section 11353(b). Amendment of the Basin Plan to renew and issue conditional waivers of WDRs and/or the requirement to file RoWDs is necessary to continue waiving the regulation of specific types of discharge that are not expected to pose a threat to water quality with conditional waivers. Renewal and issuance of the conditional waivers also provides the conditions under which specific types of discharge would not be a threat to water quality and remain consistent with the Basin Plan.

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<sup>65</sup> Government Code section 11340 *et seq.*

<sup>66</sup> Government Code section 11352

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## 10 Public Participation

Public participation is an important component of Basin Plan planning projects. The federal regulations require that Basin Planning projects be subject to public review. Public participation was provided through the San Diego Water Board's Basin Plan amendment process, which included a CEQA scoping meeting and public workshop, a public hearing, and a formal public comment period. These public hearings and meetings have been conducted as stipulated in the regulations,<sup>67</sup> for all programs under the Clean Water Act.

### Public Participation Milestones

Date	Event
March 2, 2007	Notice for Public Workshop and CEQA Scoping Meeting
April 5, 2007	Public Workshop and CEQA Scoping Meeting
June 22, 2007	Notice of Filing and Notice of Public Hearing
July 6, 2007	Release Basin Plan amendment and Technical Report with Environmental Checklist for public review
August 8, 2007	Public Hearing
October 10, 2007	Adoption Hearing

<sup>67</sup> Code of Federal Regulations Title 40 sections 25.5 and 25.6

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