

DRAFT TECHNICAL REPORT FOR ORDER NO. R9-2014-0041, CONDITIONAL WAIVERS OF WASTE DISCHARGE REQUIREMENTS FOR LOW THREAT DISCHARGES IN THE SAN DIEGO REGION

APPENDIX B - RESPONSE TO COMMENTS REPORT

The San Diego Water Board received verbal¹ and written public comments (Supporting Document No. 3) on Tentative Order No. R9-2014-0041, “*Conditional Waivers of Waste Discharge Requirements for Low Threat Discharges in the San Diego Region*” (Tentative Order) during the April 1, 2014 to May 19, 2014 comment period. The vast majority of the comments received, were “accepted,” or “accepted with minor modifications”² to be consistent with format and language in the Tentative Order or governing regulatory document language. Proposed revisions to the Tentative Order not accepted by the San Diego Water Board are addressed in Part I of this document. For brevity, comments providing the same, or similar content, were consolidated, and summarized into a single comment.

Part I: Proposed Revisions not accepted by the San Diego Water Board

Comment No.	Tentative Order Section	Comment	San Diego Water Board Response
1 ³	Part II. Waiver No. 8	The waivers should address how documents are to be submitted (i.e., GeoTracker).	<p>After review, Staff did not accept this recommendation. Under the authority of Water Code section 13196(a) the State Water Board may require persons submitting a report to the San Diego Water Board, to submit the report in an electronic format.</p> <p>However electronic submittals to GeoTracker are limited⁴ to cleanup sites and waste discharges to land, regulated under Calif. Code Regs. titles 23 and 27, and the Health</p>

¹ Verbal public comments were received during the April 22, 2014 Stakeholder Meeting, and the May 14, 2014 Public Workshop.

² Minor modifications to the accepted revisions are shown as underline/strikeout text in Supporting Document No. 2, Appendix A.

³ Verbal comment provided by Ms. Toby Roy, San Diego County Water Authority, received during the April 22, 2014 Stakeholder Meeting.

⁴ As specified in Calif. Code Regs. title 23, section 3892 et seq.

2 ⁵	Part II, Waiver No. 10.C.2.e	<p>Regarding the Tier 1 (Table No. 2) and Tier 2 (Table No. 3) Soil Screening Levels, I recommend using soluble metal concentrations (i.e., SPLP) rather than total metals concentrations. This would be consistent with other sections of Waiver 10 concerning analysis of other constituents of concern (e.g., TPH, PCBs, VOCs, SVOCs, pesticides).</p> <p>If total metals concentrations are used, I would recommend revisiting background arsenic concentration studies such as the attached DTSC document. You may also want to consider reviewing the DTSC rationale for using 80 mg/kg for total lead as their cleanup level for school sites, which can be found at their website.</p>	<p>and Safety Code.</p> <p>After review, Staff did not accept this recommendation. Using total concentrations for metals in soil is standard, straight-forward, and easier to interpret and compare. This approach worked well in the previous version of this waiver that recently expired. Therefore, total concentrations compared to CalEPA California Human Health Screening Levels (CHHSLs), USEPA Preliminary Remediation Goals (PRGs), and background concentrations, are appropriate for the characterization of metals in soil.</p> <p>The revised waiver does use the Synthetic Precipitation Leaching Procedure (SPLP), but for characterizing pollutants other than metals. These pollutants are generally synthetic, and therefore have no “background” concentrations. In addition the waiver uses the SPLP in order to determine if concentrations of these pollutants can leach from waste soils at levels that can cause impacts to water quality. The use of published PRGs, and CHHSLs, and background concentrations are more conservative than using leachable concentrations of metals in soils.</p> <p>Furthermore, the use of CHHSLs, PRGs, and</p>
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⁵ Supporting Document No. 3, comment letter nos. 804775.03 (Mr. Stephan Beck, Ninyo and Moore Geotechnical & Environmental Sciences Consultants) and 804775.07 (Mr. Jack Monger, Industrial Environmental Association).

			<p>background concentrations to evaluate the pollutants in the soil will not result in additional costs to conduct leachability tests.</p> <p>Finally, from information available to the San Diego Water Board staff, it appears that the DTSC concluded through purely statistical methods a background concentration of 12 mg/kg. Their evaluation did not appear to consider geochemical methods in this study which may be critical under natural conditions. Most trace elements in soil and groundwater have a skewed distribution of concentrations so that soil concentrations of metals are not normally distributed, and may have biased the interpretation of the data by DTSC's statistical approach. Staff concluded that DTSC's background concentration for arsenic may be biased and too high for soil, but may be appropriate for sediment.</p>
3 ⁶	Part II, Waiver No. 2.D.3	<p>Where the Regional Water Board fails to adopt WDRs within 365 days after submittal of the ROWD, the burden should not fall to the recycled water agency to renew the waiver. Where the recycled water agency is in compliance with waiver conditions, coverage under the waiver should be administratively extended by the Regional Water Board until the WDRs can be adopted. Recommendation: Amend D.3 to read: The conditional waiver issued to the recycled</p>	<p>After review, Staff did not accept this recommendation. The purpose of the Recycled Water Waiver is to provide temporary regulatory coverage, while Staff develops WDRs, water reclamation requirements, or master reclamation permits for these types of facilities. Furthermore, authority to administratively extend coverage under the Recycled Water Waiver has not been delegated to Staff.</p>

⁶ Supporting Document No. 3, comment letter no. 804775.04 (Mr. Gene Matter, City of San Diego).

		<p>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 Regional 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 <u>and the recycled water agency is in compliance with all conditional waiver provisions, the Regional Water Board will administratively extend coverage under the waiver until such time that the WDRs are adopted.</u> 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.</p>	<p>Staff will continue to make every effort to timely develop recycled water permits to bring to the Board for consideration. Recycled Water projects are assigned high priorities in conformance with the State Recycled Water Policy. The recently adopted Statewide General WDR for Recycled Water Use provides another tool for timely permitting of some of these types of projects.</p>
4 ⁷	Part II, Waiver No. 12.A.8	<p>A waiver needs to clarify that it can be used even if the discharge could be eligible for coverage under SWRCB order 2004-004-DWQ.</p>	<p>After review, Staff did not accept this recommendation. The Statewide general Order No. 2004-004-DWQ is intended to provide regulatory coverage for the execution of pre-planned development projects, not emergency discharge scenarios.</p> <p>The Emergency Waste Waiver is intended to provide regulatory coverage <u>only</u> under extraordinary conditions within any waters of</p>

⁷ Supporting Document No. 3, comment letter no. 804775.07 (Mr. Jack Monger, Industrial Environmental Association).

			<p>the State posing imminent threats to life, health, property, the delivery of public services, and beneficial uses of waters of the State. The Emergency Waste Waiver only becomes active when a state of emergency is proclaimed by the Governor.</p> <p>Under CEQA,⁸ an “emergency” is defined to be:</p> <p><i>“a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services.</i></p> <p><i>“Emergency” includes such occurrences as fire, flood, earthquake, or other soil or geologic movements, as well as such occurrences as riot, accident, or sabotage.”</i></p>
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⁸ Public Resources Code, section 21060.3.

Additionally, at the stakeholder meeting, public workshop, and submitted written comments, the San Diego Water Board received questions and statements seeking additional clarification. For brevity, questions and statements of the same or similar nature, were consolidated and summarized into a single question and/or statement. Part II of this document addresses those questions and/or statements.

Part II: Clarification Questions

Question/ Statement No.	Tentative Order Section	Statement	San Diego Water Board Response
1 ⁹	General	<p>Response time woefully insufficient: We were invited to attend a workshop on this Tentative Order that occurred last week, May 14, 2014. The agenda item was to occur at 1:00pm on the agenda, it was not heard until 3:50 pm, and the Water Board was scheduled to go into a “Closed Session” at 4:00 pm. Then the public stakeholders were asked to respond, in writing to this order by 5:00 pm on Monday, May 19, 2014 (today!). This is an insufficient amount of time for a response on such an important issue, especially given that the Regional Board and its staff have not collaborated at all directly with any of the stakeholders, both within and beyond the compost production industry.</p>	<p>After review, the San Diego Water Board staff (Staff) does not concur with the statement. Water Code section 13167.5, requires the San Diego Water Board to provide notice and a period of at least 30 days for public comments prior to the adoption of Orders¹⁰ issued by the San Diego Water Board. Waivers of waste discharge requirements (WDRs) are not included in the statutory requirements for the Orders referenced above.</p> <p>However in an effort to implement the San Diego Water Boards Practical Visions for proactive public participation, the San Diego Water Board staff (Staff) provided notice¹¹ and a public comment period between</p>

⁹ Supporting Document No. 3, comment letter no. 804775.11 (Mr. Dan Noble, Association of Compost Producers).

¹⁰ Orders only include waste discharge requirements, water reclamation requirements, enforcement orders pursuant to Water Code section 13320, and time schedule orders pursuant to Water Code section 13300.

¹¹ Notice of Availability was released to the public on April 1, 2014, via the San Diego Water Board website and email subscription system for the Conditional Waivers and Board Meeting(http://www.waterboards.ca.gov/sandiego/water_issues/programs/waivers/docs/w/NOA_R920140041.pdf), and published in the Riverside Press Enterprise (April 3, 2014), Orange County Register (April 4, 2014), and San Diego Union Tribune (April 5, 2014).

			<p>April 1, 2014 and May 19, 2014 (49 days). In addition, Staff held public stakeholder meetings on April 22, 2014, and May 14, 2014.</p> <p>Note that the agenda said that the workshop would start no sooner than 1 PM.</p>
2 ¹²	Part II. Waiver No. 8	Aquaponic activities require the discharge of wastewater as part of maintaining the system. Does this waiver apply to aquaponic activities?	Aquaponic operations which meet the conditions for enrollment in Waiver No. 8 will be considered for enrollment.
3 ¹³	Part II, Waiver No. 5 and Waiver No. 10	No data on impact of reducing water quality degradation: Staff did not present any evidence that these draconian measures directed explicitly at compost producers would provide any improvement of the Regions water quality. Is it the Regional Boards understanding that degradation is occurring already from the use of soil amendments, compost or mulch? What is the evidence that the implementation of this Tentative Order will stop any perceived “degradation” that compost is believed to impart to surface or groundwaters of the region?	After review, the Staff does not concur with the statement. Water Code section 13260 et seq. requires that any person, discharging, or proposing to discharge waste, within any region that <u>could affect</u> the quality of the waters of the State, must file with the Regional Water Boards a report of waste discharge, describing the character, location, or volume of the discharge. Therefore the obligation to characterize the waste, or the potential impacts associated with the discharge, or proposed discharge is the responsibility of the discharger, and not the Regional Water Boards.
4 ¹⁴	Part II, Waiver No. 5 and Waiver No.	Relationship to current Statewide General Order not defined: There is a current Statewide General Order being applied to compost facilities throughout the state	At present, there is no Statewide General Order to enroll composting facilities operating within the San Diego Region. With no waiver in place, or Statewide General Order to enroll

¹² Verbal comment provided by Mr. Roger Bütow, Clean Water Now!, received during the April 22, 2014 Stakeholder Meeting.

¹³ Supporting Document No. 3, comment letter no. 804775.11 (Mr. Dan Noble, Association of Compost Producers).

¹⁴ Ibid.

	10	<p>(http://www.waterboards.ca.gov/water_issues/programs/compost/). How does this Tentative Order relate to that order? This needs to be further clarified prior to any acceptance and/or implementation of the Tentative Order.</p>	<p>in, composting facilities in the San Diego Region may be in violation of Water Code section 13260 et seq. Adoption of the Tentative Order will waive the Water Code requirement for these facilities to file Reports of Waste Discharge, pay an annual fees, and be regulated under WDRs by the San Diego Water Board. In other words, adoption of the waiver will provide a mechanism for composting facilities to achieve compliance with the Water Code.</p> <p>In the event a Statewide General Order, regulating the discharge of wastes at compost facilities is adopted by the State Water Board; the San Diego Water Board will consider the merits of enrolling eligible facilities in the Statewide Order, or allowing them to operate under the composting waiver.</p>
5 ¹⁵	Part II, Waiver No. 5 and Waiver No. 10	<p>The promulgation of this Tentative Order could also frustrate many ongoing legislative, policy and regulatory initiatives that are actively being pursued in California, which will apply to the San Diego Region, as well. For example, just to name a few of the ongoing initiatives:</p> <p>Legislation: There are two bills, AB 1594 (Williams) and AB 1826 (Chesbro), moving through the legislative process this month that are intended to expand the production</p>	<p>After review, the Staff does not concur with the statement. It is Staff's understanding both Assembly Bill (AB) 1594 (Williams), and AB 1826 (Chesbro), as currently written, will not become active until January 1, 2020, and January 1, 2016, respectively. Further, these bills do not appear to apply to compost facilities, or to the application of compost to land.</p> <p>Comments provided by the Department of</p>

¹⁵ Ibid.

		<p>and use of compost throughout California. This Tentative Order will run cross purposes with the intent of this legislation.</p> <ul style="list-style-type: none"> • Policy: CalRecycle is working diligently with the compost industry and other stakeholders to expand organics recycling throughout California, the AB 341 75% Recycling Goal, www.calrecycle.ca.gov/75percent/. One of their representatives was present at last weeks “Workshop” and voiced their concerns as to how this Tentative Order could possibly frustrate the efforts of implementing that policy goal. • Regulations: CalRecycle is leading a multi-year Title 14/27 regulatory revision of key compost regulations that includes some of the issues raised above, e.g. waste vs. product definitions, site water management, etc. This Tentative Order isn’t acknowledging any of the work that is currently going in with this, in addition to the State Water Board General Order on Compost Facilities, mentioned above. 	<p>Resource Recycling and Recovery (CalRecycle), on the discharge of amendments/mulches to land, have been incorporated into the Solid Waste Waiver. CalRecycle received a copy of the tentative Order via the LYRIS email subscription service, and did not provide written comments on, or notify the San Diego Water Board of conflicts between developing policies/ regulations, and the Compost Facility Waiver.</p>
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