

EXECUTIVE OFFICER SUMMARY REPORT
June 26, 2014

- ITEM: 11
- SUBJECT: Public Hearing - Conditional Waiver Adoption: Conditional Waivers of Waste Discharge Requirements for Low Threat Discharges in the San Diego Region (Tentative Order No. R9-2014-0041) (*Roger Mitchell*)
- PURPOSE: To consider adopting Tentative Order No. R9-2014-0041, which would require the implementation of effective management measures, and structural and non-structural best management practices (BMPs) to manage low-threat discharges of waste to land. The required management measures, and BMPs are necessary to mitigate potential impacts associated with storm water run on and runoff, groundwater, wastes, and wastewater discharges to land.
- RECOMMENDATION: Adoption of Tentative Order No. R9-2014-0041 (Supporting Document No. 1) is recommended.
- KEY ISSUES:
1. Revises and renews nine waivers that expired in February 2014.
 2. Includes three new waivers for discharges from aquatic animal production facilities, discharges of winery process water to lined evaporation ponds at small wineries, and discharges of waste to land at composting facilities.
 3. Streamlines the process for enrollment of eligible discharges in the waivers (Supporting Document No. 1, Attachments A through E).
 4. Conserves staff resources otherwise required to develop individual WDRs or waivers for low threat discharges in the San Diego Region.
 5. Incorporates the Wildfire Waste Waiver in Order No. R9-2014-0059¹ into Waiver No. 12, the Emergency Waste Waiver. If adopted, Tentative

¹ http://www.waterboards.ca.gov/sandiego/board_decisions/adopted_orders/2014/R9-2014-0059.pdf

Order No. R9-2014-0041 will supersede Order No. R9-2014-0059.

- PRACTICAL VISION:** The Tentative Order implements the goals of the Practical Vision as follows.
1. **Strategizing for Healthy Waters –** The Tentative Order will provide protections for groundwater and surface water quality while unburdening the public from over-regulation of low-threat discharges.
 2. **Proactive Public Outreach and Communication –** Developing the Tentative Order included a proactive stakeholder outreach program. The San Diego Water Board staff performed a number of tasks to accomplish public outreach and communication, including:
 - developing a conditional waiver web page² to keep stakeholders and the public informed about the waiver development and adoption process;
 - convening an formal stakeholder meeting on April 22, 2014;
 - providing an extended written public comment period (Supporting Document No. 4), and responses to written comments (Supporting Document No. 2B); and
 - convening a formal public workshop at the Board meeting on May 14, 2014 (Supporting Document 5).
 3. **Sustainable Local Water Supply –**The Tentative Order will streamline the approval process for some recycled water projects and graywater projects, thereby reducing the Region’s use of potable imported water.

DISCUSSION: Section 13269 of the Water Code gives the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) the authority to waive certain requirements found in the Water Code. For specific waste discharges or specific types of discharges, the San Diego

² Available at: http://www.waterboards.ca.gov/sandiego/water_issues/programs/waivers/waivers.shtml

Water Board may issue a conditional waiver 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 requirements for a discharger to file a report of waste discharge³ (ROWD) or obtain waste discharge requirements (WDRs),⁴ or both.

The conditional waivers (waivers) in Tentative Order No. R9-2014-0041 address discharges expected to pose a low threat to water quality, as long as the dischargers comply with waiver conditions. The draft Technical Report provides the supporting rationale for the waivers (Supporting Document 2). Dischargers who comply with the general and specific waiver conditions may become eligible for enrollment in a waiver. The Executive Officer's Summary Report from the May 14, 2014 workshop⁵ on the waivers (Supporting Document No. 4) describes the specific discharge types and waiver categories, some of their important features, and the public process for review and comment. The rest of this discussion focuses on important changes made to the waivers in response to public comments. The comment letters are in Supporting Document No. 3, and the Response to Comments Report is Appendix B to the Technical Report (Supporting Document No. 2).

The noteworthy concerns raised in the public comments are discussed below.

1. Waiver No. 2 – Recycled Water Waiver. The State Water Resources Control Board (State Water Board) adopted a Statewide General WDR Order regulating discharges of recycled water on June 3, 2014. Upon adoption of the Tentative Order, recycled water projects eligible for the waiver will be evaluated to determine if they are better regulated by the Statewide General WDR Order. If so, those projects will be enrolled in the Statewide General WDR Order by the San Diego Water Board.
2. Waiver No. 3 – Low Threat Discharge Waiver. Changes made to this waiver provide additional

³ A report of waste discharge is an application submitted by the Discharger to receive waste discharge requirements (i.e., a permit) issued by the San Diego Water Board.

⁴ Water Code sections 13260(a) and (c), 13263(a), and 13264(a)

⁵ http://www.waterboards.ca.gov/sandiego/board_info/agendas/2014/May/May14.shtml

clarification for when dischargers are required to file a notice of intent (NOI); consistency with the municipal separate storm sewer systems (MS4) Order; and contingencies to prevent loss of essential public utility services.

3. Waiver No. 5 – Compost Facility Waiver. Changes made to this waiver provide additional clarification regarding which composting activities are exempt from filing an NOI; make the waiver consistent with the MS4 Order; and add waiver specific definitions for amendments, additives, and agricultural wastes.

Also, the waiver now clarifies that, if the State Water Board adopts a Statewide General WDR Order regulating discharges of waste to land at composting facilities, any facilities enrolled in the waiver will be evaluated to determine if they would be better regulated by the Statewide General WDR Order. The San Diego Water Board may terminate enrollment in the waiver for those qualifying facilities, and direct those qualifying facilities to enroll in the Statewide General WDR Order.

4. Waiver No. 10 – Solid Waste Waiver. Changes made to this waiver clarify that incidental and de minimis discharges of amendments and mulches to land are exempt from the specific waiver conditions and from the requirement to file an NOI; and add waiver specific definitions for amendments and mulches.
5. The San Diego Gas and Electric Company commented that the Tentative Order pointed to the wrong section of the California Code of Regulations (Calif. Code Regs.) as the authority for charging an annual fee for enrollment in a waiver. The Tentative Order has been corrected in this regard. Worth noting is the State Water Board has never promulgated a fee schedule under this section of the Regulations. Thus, enrollees in waivers with an annual fee will not be required to pay an annual fee until the State Water Board promulgates a fee schedule.

The environmental document for the project is a draft Negative Declaration, which includes an Initial Study and Environmental Checklist. The draft Negative Declaration was completed and made available to the public on April 1, 2014 (Item 10 on the

agenda).⁶ The draft Negative Declaration supports the conclusion the conditional waivers in the Tentative Order will not have a significant impact on the environment. The San Diego Water Board must approve the draft Negative Declaration by adopting Resolution No. R9-2014-0042 (Item No. 10 on the agenda), before adopting the Tentative Order.

LEGAL CONCERNS: None.

SUPPORTING DOCUMENTS:

1. Tentative Order No. R9-2004-0041, Conditional Waivers of Waste Discharge Requirements for Low Threat Discharges in the San Diego Region, and Attachments A through E
2. Draft Technical Report and Appendices
 - Appendix A. Tentative Order No. R9-2004-0041, Conditional Waivers of Waste Discharge Requirements for Low Threat Discharges in the San Diego Region, including Notification Forms, Attachments A through E (**Underline/Strikeout Format**)
 - Appendix B. Response to Comments Report
3. Public Comment Letters
4. Executive Officer Summary Report for May 14, 2014, Public Workshop (Item 10)
5. Public Notices

PUBLIC NOTICE:

The draft version of the Tentative Order, along with a Notice of Availability, was posted on the San Diego Water Board website⁷ on April 1, 2014. A Notice extending the public comment period to May 19, 2014 was posted on the website on April 28, 2014. Additionally, the two public notices were sent via the State Water Board's LYRIS email system to stakeholders subscribed to the Conditional Waiver and Board Meetings email subscription lists. Copies of the public notices are in Supporting Document No. 5.

⁶ Item 10, Supporting Documents Nos. 2 and 3.

⁷ http://www.waterboards.ca.gov/sandiego/board_decisions/tentative_orders/index.shtml