

State of California
Regional Water Quality Control Board
San Diego Region

EXECUTIVE OFFICER SUMMARY REPORT
May 27, 2014

- ITEM: 2
- SUBJECT: Consideration of Adoption of a Conditional Waiver of Waste Discharge Requirements for the Management and Disposal of Disaster Related Wastes from the 2014 Wildfires in the San Diego Region (Tentative Order No. R9-2014-0059) *(Roger Mitchell)*
- PURPOSE: To consider adopting Tentative Order No. R9-2014-0059, which would require the implementation of effective management measures, and structural and non-structural best management practices to address potential impacts associated with storm water run on and runoff, wastes, and wastewater discharges to waste piles, surface impoundments, emergency landfills, and/or non-federal waters of the State.
- RECOMMENDATION: Adoption of Tentative Order No. R9-2014-0059 (Supporting Document No. 1) is recommended.
- KEY ISSUES:
1. The Tentative Order is an emergency project, exempt from the requirements of the California Environmental Quality Act (CEQA).
 2. The Tentative Order addresses discharge types that are expected to pose a low threat to water quality as long as the dischargers comply with waiver conditions.
- PRACTICAL VISION:
- San Diego Water Board staff, through the development and notification of, and adoption hearing for the Tentative Order, have continued to implement the goals of the San Diego Water Board's Practical Vision as follows.
1. Strategizing for Healthy Waters – The Tentative Order will provide protections for groundwater and surface water quality during the current emergency situation; and

2. Proactive Public Outreach and Communication – The Tentative Order timely responds to the needs of the regulated community.

DISCUSSION:

Governor Brown issued a proclamation declaring a state of emergency in San Diego County in response to the wildfires started on May 13, 2014. The proclamation directs all agencies of the State government to utilize and employ State personnel, equipment, and facilities for the performance of any and all activities consistent with the direction of the Governor's Office of Emergency Services and the State Emergency Plan.

The California Regional Water Quality Control Board, San Diego Region's (San Diego Water Board) conditional waiver of waste discharge requirements for discharges of emergency and disaster related wastes expired in February 2014, and is expected to be renewed by the Board at its June 2014 meeting. Unfortunately, that time frame will not facilitate the management and disposal of disaster-related waste streams from the San Diego County wildfires.

Water Code section 13269 subdivision (c)(1) establishes that the provisions of the Water Code requiring dischargers to submit reports of waste discharge (ROWDs),¹ obtain waste discharge requirements (WDRs), or both, for a discharge of waste to waters of the State, do not apply in emergency situations.² Specifically, these requirements do not apply to a discharge resulting from immediate emergency work necessary to protect life or property, or immediate emergency repairs to public service facilities necessary to maintain service as a result of a disaster in a disaster-stricken area in which a state of emergency has been proclaimed by the Governor.

As authorized by section 13269 subdivision (c)(1), Tentative Order No. R9-2014-0059 (Wildfire Waste Waiver) waives the requirement for dischargers to file ROWDs and obtain WDRs for the discharge of wastes resulting from the May 2014 San Diego County wildfires. The Wildfire Waste Waiver is an emergency project, consistent with California Code of Regulations title 14, section 15269 subdivision (a), and

¹ A report of waste discharge is an application submitted by the Discharger in order to obtain waste discharge requirements issued by the San Diego Water Board.

² Section 13269 subdivision (c)(1) allows the San Diego Water Board to specifically waive the requirements of Water Code section 13260 subdivisions (a) and (c), section 13263 subdivision (a), and section 13264 subdivision (a).

therefore is exempt from the requirements of the California Environmental Quality Act (CEQA).

The Wildfire Waste Waiver addresses discharge types that are expected to pose a low threat to water quality as long as the dischargers comply with waiver conditions. Discharges that comply with the general and specific waiver conditions are eligible for enrollment in a waiver.

The Wildfire Waste Waiver identifies 5 specific classes of discharges for which the requirements to file a ROWD and/or obtain WDRs are appropriately waived. Instead of developing waivers for each individual type of discharge, an integrated approach was developed to simplify the proposed waivers. Types of discharges that are similar in nature, or originate from a common setting or operation have been grouped together into a single "discharge classification." The discharge classifications in the Wildfire Waste Waiver are as follows:

1. Discharges of disaster related wastes to temporary waste piles and surface impoundments;
2. Discharges of mass mortality wastes, temporary waste piles and emergency landfills;
3. Discharges of dredge or fill materials into non-federal waters of the State;
4. Emergency repair and protection activities in non-federal waters of the State; and
5. Other discharges of emergency/disaster related wastes.

The Wildfire Waste Waiver includes general conditions that are applicable to all discharge classifications. Specific conditions were developed for individual types of discharge within a classification as necessary to ensure that the discharges remain a low threat to water quality.

The Wildfire Waste Waiver is essentially identical to the Emergency/Disaster Related Wastes Waiver for the Region scheduled to be considered by the San Diego Water Board at its June 2014 meeting. The San Diego Water Board staff convened an informal stakeholder meeting on April 22, 2014 (Supporting Document 2) to receive comments on the 12 conditional waivers to be considered by the Board in June, including the Emergency/Disaster Related Wastes Waiver. A notice of the Stakeholder meeting was posted on the San

Diego Water Board web site,³ and provided to the public via the State Water Board's LYRIS email system on April 17, 2014. The staff met with and heard verbal comments from eleven attendees representing private industry, water purveyance agencies, local municipal agencies, the Navy, and local non-governmental agencies. No comments on the Emergency/Disaster Related Waste Waiver were received.

In addition, the San Diego Water Board held a public workshop on May 14, 2014 (Supporting Document 3). A notice of the public workshop was posted on the San Diego Water website,⁴ and provided to the public via the State Water Board's LYRIS email systems on April 15, 2014. The staff provided information to the Board and the public on the Emergency/Disaster Related Waste Waiver as part of this public workshop. No comments on the Emergency/Disaster Related Waste Waiver were received.

The publically noticed version of Tentative Order No. R9-2014-0059 included a waiver for incidental discharges of oil and oily water within a response area during an oil spill response in marine waters. This waiver is not within the scope of the Governor's emergency proclamation and has been deleted from the Tentative Order. The changes resulting from the deletion of this waiver are shown in underline and strikeout text in Supporting Document No. 5. This waiver is included in Tentative Order No. R9-2014-0041 scheduled to be considered by the Board at its June 26, 2014 meeting.

A comment letter was received from San Diego Gas & Electric Company (SDG&E; Supporting Document No. 6). Changes made to the Wildfire Waste Waiver in response to these comments are shown in underline and strikeout text in Supporting Document No. 6. Staff will fully address SDG&E's comments orally at the May 27, 2014 hearing.

At its June 26, 2014 meeting, the San Diego Water Board is scheduled to consider adopting an Emergency/Disaster Related Waste Waiver as one of a package of 12 waivers in Tentative Order No. R9-2014-0041. If the San Diego Water Board adopts Tentative Order No. R9-2014-0041, it's Emergency/Disaster Related Waste Waiver will supercede the Wildfire Waste Waiver in Tentative Order No. R9-2014-0059. Any affected person enrolled in the Wildfire Waste Waiver will

³ http://www.waterboards.ca.gov/sandiego/water_issues/programs/waivers/waivers_mw.shtml

⁴ Ibid

automatically be enrolled in the Emergency/Disaster Related Waste Waiver upon adoption of Tentative Order No. R9-2014-0041.

LEGAL CONCERNS: None.

SUPPORTING DOCUMENTS:

1. Tentative Order No. R9-2014-0059, Conditional Waiver of Waste Discharge Requirements for the Management and Disposal of Disaster Related Wastes from the 2014 Wildfires in the San Diego Region
2. Agenda for Stakeholder Meeting on April 22, 2014
3. Notice of Public Workshop, May 14, 2014
4. Notice of Emergency Board Meeting, May 27, 2014
5. Underline/strikeout version of Tentative Order No. R9-2014-0059 showing deletion of waiver for discharges of oil and oily water in marine waters
6. SDG&E Comment Letter, May 22, 2014

PUBLIC NOTICE:

The Tentative Order No. R9-2014-0059 was issued for public comment through the *Conditional Waivers Email Subscription Service* and posted on the San Diego Water Board website⁵ on May 16, 2014 (Supporting Document 4). In addition, a public notice was published in the San Diego Union Tribune, the Orange County Register, and Riverside Press-Enterprise on May 23, 2014, in compliance with the Bagley-Keen Open Meeting Act.

⁵ <http://www.waterboards.ca.gov/sandiego/>; and http://www.waterboards.ca.gov/sandiego/press_room/announcements/firestorm/wildfires.shtml