

Regional Water Quality Control Board, Santa Ana Region

March 29, 2017

CWAD Program: Conditional Waiver of Waste Discharge Requirements

The Conditional Waiver for Agricultural Discharges (CWAD) is the program that the Santa Ana Regional Water Quality Control Board (Regional Board) adopted on July 29, 2016 under Order No. R8-2016-003, officially titled the *Conditional Waiver of Waste Discharge Requirements for Discharges from Agricultural Operations in the San Jacinto Watershed*.

The following is a summary of the CWAD – the entire Order is available at the Santa Ana Regional Board’s website:

http://www.waterboards.ca.gov/santaana/board_decisions/adopted_orders/orders/2016/R8-2016-0003.pdf

What are Waste Discharge Requirements?

Generally, the term “waste” can refer to a byproduct of human or animal activity in liquid, solid, or gas form (see Water Code § 13050). Common types of waste include sewage, byproducts of manufacturing and processing operations, runoff from irrigation (e.g. tailwater), and fertilizers and pesticides that can reach groundwater or surface water. This includes discharges to groundwater and surface water resulting from irrigated and non-irrigated agricultural operations.

The California Water Code requires regulation of all discharges of waste to waters of the State¹:

“A person discharging waste, or proposing to discharge waste, within any region that could affect the quality of the waters of the state, other than into a community sewer system ... shall file with the appropriate regional board a report of the discharge...”

The Regional Board then issues Waste Discharge Requirements (WDRs) for the proposed or existing discharge, in compliance with State laws and the Regional Water Quality Control Plan for the Santa Ana River Basin (Basin Plan). WDRs are, in effect, permits to discharge waste, and contain specific water quality monitoring and reporting requirements to demonstrate compliance with the applicable laws and regulations. Permitted dischargers are often required to collect samples and report laboratory analyses on a regular basis to show that the permitted discharge is not causing or contributing to an adverse effect on groundwater or surface water quality.

What is a Conditional Waiver of Waste Discharge Requirements?

The Regional Board recognizes that obtaining and complying with WDRs can sometimes be burdensome for individual dischargers, particularly for small operations with limited staff and budget. The California Water Code (§ 13269) allows the State and Regional Boards to issue a waiver of waste discharge requirements for specific discharges or types of discharges. The

¹ Waters of the state” is defined by the California Water Code section 13050(e), as any surface water or groundwater, including saline waters, within boundaries of the State.

Conditional Waiver of Waste Discharge Requirements for Discharges from Agricultural Operations in the Watersheds of the San Jacinto River and Its Tributaries, and Canyon Lake and Lake Elsinore and Their Tributaries, Collectively, "The San Jacinto River Watershed", Riverside County (Order R8-2016-0003; herein referred to as the "**CWAD**") is such a waiver.

The CWAD applies to dischargers who conduct: 1), agricultural or livestock operations on 20 or more acres, or 2), livestock operations on less than 20 acres with an animal density of more than three (3) animal units per acre, or 3), agricultural operations on multiple parcels where the cumulative acreage equals or exceeds 20 acres that includes any portion that is irrigated, dry farmed and/or fallow. The Order also covers any owner and/or operator of other agricultural operations that Regional Board staff finds to be a high risk for discharging animal wastes, or other wastes that could affect water quality.

What the CWAD does for you:

- The CWAD allows farmers an alternative to waste discharge requirements (WDRs), which have significantly higher fees and more stringent compliance requirements.
- The CWAD allows individual agricultural operations to work cooperatively to manage their collective discharges as a Coalition Group. Sampling and reporting requirements can be shared, saving individual operators significant money.
- A Coalition Group is any group of dischargers and/or organization(s) that forms to ease compliance with the CWAD. A Coalition Group can be formed on a geographical basis or formed with other factors in common, such as cultivating commodities. A Coalition Group consists of the discharger membership who form, apply and are accepted into a Group. Individual discharger members remain responsible for compliance with the CWAD, however, per-farm fees can be far less costly than individual compliance.
- Coalition Groups can also propose a representative sampling and analysis program, reducing the number of samples collected.
- The CWAD allows agricultural operators to propose their own methods of limiting discharges and protecting water quality.
- The CWAD allows for the formation of Water Quality Trading Plans to facilitate salt and nutrient offsets.

How do I enroll in the CWAD?

A Notice of Intent (NOI) form is available on the Regional Board website. The NOI form must be completed by all owners/operators of parcels over 20 cumulative acres, under 20 acres under specific circumstances, and/or are considered 'high risk'. The form can be completed and as of March 29, 2017, should be printed out and sent directly to the Regional Board office at the following address: Conditional Waiver of Agricultural Discharges, Santa Ana Regional Water Quality Control Board, 3737 Main Street, Ste. 500, Riverside, CA, 92501. The Regional Board website will notify dischargers when the e-NOI form should be submitted electronically, rather than mailing to the Santa Ana Regional Board. The website is:

http://www.waterboards.ca.gov/santaana/water_issues/programs/planning/ag_waiver.shtml

What are the deadlines for enrolling in the CWAD?

Enrollment: April 28, 2017
Coalition Formation: April 28, 2017

What are the consequences for dischargers that do not enroll in the CWAD program or apply for individual waste discharge requirements? Dischargers who are required to comply with the CWAD program and do not enroll, or do not apply for individual waste discharge requirements, will be guilty of a misdemeanor and may be subject to civil liability of up to \$1,000 per day of violation² in addition to the required fees.

Who is responsible for compliance if I own parcels of land used for agriculture, but the operators are my lessees/tenants? According to the Order, both of you are responsible for compliance. “Discharger” means the owner, owner-operator, or operator of agricultural operations. Both owners and operators of agricultural operations have responsibility for compliance with the conditions of the CWAD.

What are the CWAD requirements for dischargers?

As described above and in the adopted Order, all owners, owner/operators and/or operators of agricultural or livestock operations that have 20 or more cumulative acres in area are considered dischargers for the purposes of the CWAD. Enrollees to the CWAD, as either individual farms or as members of a Coalition Group, may be required to comply with some or all of the following activities:

- 1) evaluate the effects of ongoing agricultural operations on ground and surface waters, and then take steps to minimize impacts using Best Management Practices (BMPs).
- 2) sample and collect monitoring data in surface water and groundwater that may be affected by discharges from their operations. Pollutants to be sampled include nitrogen (nitrate and nitrite), salinity (total dissolved solids and electric conductivity), phosphate, orthophosphate, and pH.
- 3) implement an approved agricultural nutrient management plan in conjunction with the Lake Elsinore/Canyon Lake TMDL Task Force.
- 4) Prepare annual reports on BMPs and surface water and groundwater quality sampling results.
- 5) attend educational events related to nonpoint source pollution control, development and use of BMPs, and water quality management on agricultural operations. This may include sediment transport management, irrigation practices, fertilizer and pesticide management, nutrient and manure management, and other pertinent topics.

Again, note that dischargers can fulfill monitoring and reporting requirements through the participation in a cooperative (coalition) monitoring and reporting program, or through individual programs.

What changes are proposed to the current CWAD compliance schedule?

The table on the next page lists the requirements, their current deadlines or due dates as specified in the CWAD, and proposed new deadlines. The due date to enroll in the CWAD is proposed to be extended from April 28, 2017 to October 28, 2017. Additional changes to the schedules for the submittal of plans and reporting are also proposed.

² California Water Code §13261

Proposed Changes to the CWAD Implementation Dates			
Specific CWAD Requirements	Order Date	Proposed Date	Notes
Enrollment (eNOI)	4/28/2017	10/28/2017	6 month extension beyond the original Order.
Coalition formation	4/28/2017	1/28/2018	90 extra days to create a Coalition beyond the enrollment deadline.
Fees Due	Submittal of the e-NOI generates a fee bill from the State Board.	No change	A summary table of current (FY16/17) fees and examples is included in this letter. Note that dischargers who enroll as individuals, and join a Coalition later will have to request a fee refund from the State.
Notice Of Authorization (NOA) issued by the Regional Board Executive Officer	No specific date.	No change	Regional Board staff issue the NOAs after NOI is received.
Submit Best Management Practices (BMP) reporting program	7/28/2017	90 Days from NOA	Best Management Practices (BMPs). Farmers will propose what BMPs their operations will employ. An example might be using overhead irrigation instead of flood irrigation.
Propose Agricultural Nutrient Management Plan (AgNMP) or Water Quality Trading Program (WQTP)	7/31/2017	6 mos after Draft Rev. TMDL	Ag. Nutrient Management Plan (AgNMP) is part of TMDL process. Nutrient WQTP may be implemented by the TMDL Task Force.
Submit Annual BMP report	9/15/2017	One year after approval of BMP reporting program, annually on Sept. 15 thereafter.	See above. Once a BMP reporting program is approved, dischargers are required to submit annual reports documenting what BMPs were used, successes and failures, and whether any changes will be made for the next season.
Site-specific characterization of discharge report	180 days from issuance of NOA, or 60 days after a specific discharge (e.g. a storm event that caused runoff).	No change	A report describing the nature of discharge, approximate volume, and chemistry (analytical results for Total Kjeldahl Nitrogen, Nitrate [as nitrogen], Nitrite [as nitrogen], Total Phosphorus, Orthophosphate, Electric Conductivity, Total Suspended Solids, Total Dissolved Solids, and pH.
Groundwater/Surface Water Water Quality Monitoring Program Plan (WQMPP) proposal	180 days from issuance of NOA.	No change	Groundwater/Surface Water Water Quality Monitoring Program (WQMPP) - required of individual enrollees.
Coalition group: Compliance Program proposal	180 days from formation	No change	Same as WQMPP, but for Coalitions, the monitoring and reporting are under 1 plan.
Indiv/Coalition WQMPP annual reports	Sept. 15 annually	After submittal of WQMPP, annually on Sept. 15 thereafter.	First report delayed 1 yr. Reported Sep 15 annually. Can be combined with BMP report.
Water Quality Improvement Plan (WQIP)	Upon request	No change	BMP improvement request from Regional Board to address BMP deficiencies, if needed.
Education Requirements	Annually	No change	Annually for the first 3 years of each discharger's enrollment in this Order, dischargers shall participate in not less than six (6) hours of educational training on nonpoint source pollution control, development and use of BMPs and water quality management on agricultural operations. This may include sediment transport management, irrigation practices, fertilizer and pesticide management, nutrient and manure management, and other pertinent topics. Thereafter, the annual educational requirement shall be four (4) hours.
Expiration	7/28/2021	No change	CWAD expires in 5 years, then is renewed.

Is there a fee for the CWAD program? Yes – the California Code of Regulations Title 23 (23 CCR) section 2200.6 “Annual Agricultural and Irrigated Lands Fee Schedule” requires an annual fee for WDRs and for waivers of WDRs for discharges from agricultural lands.

The fee schedule is a tiered structure consisting of three fee levels. Under this structure, the lowest fees are paid by dischargers who are members of a Coalition Group approved by the Regional Board, where the group manages fee collection and payment. The next level are fees paid by members of a Regional Board approved group that does not manage fee collection and payment. The highest fees are paid by dischargers who do not participate in a Regional Board approved group.

An explanation of the California State Fiscal Year (FY) 2016/17 fee structure, along with a table of fee examples is below.

Fee Structure for fiscal year 2016/17:

(1) Tier I: If a discharger is a member of a group that has been approved by the Regional Board to manage fee collection and payment, then the fee shall be **\$100 per group plus \$0.75 per acre of land.**

(2) Tier II: If a discharger is a member of a group that has been approved by the Regional Board but that does not manage fee collection and payment, then the fee shall be **\$100 per farm plus \$1.27 per acre of land.**

(3) Tier III: If a discharger is **NOT** a member of a group that has been approved by the Regional Board, the following fee schedule applies:

FY16/17 Ag/Irrigated Land Fee Schedule			
Acres	Fee Rate	Min Fee	Max Fee
0-10	\$404 plus \$13.50/acre	\$404	\$539
11-100	\$1,010 plus \$6.70/acre	\$1,084	\$1,680
101-500	\$2,692 plus \$3.40/acre	\$3,035	\$4,392
501 or more	\$5,384 plus \$2.70/acre	\$6,737	no max

Here are some *hypothetical examples* of the annual fees a farmer might pay, based on the size of the operation and whether the farmer is enrolling as a member of a Coalition Group or as an individual discharger:

Hypothetical Annual Fees - 100 Member Coalition (50% Participation)					
Farmer 1					
CWAD Compliance?	Tier	Farmer's Acreage	One-Time Application Fee	Annual Fees	First Year Total
Yes - in group of 100 farms (group managed fees)	1	20	\$ 50.00	\$ 16.00	\$ 66.00
Yes - in group of 100 farms (indiv fees)	2	20	\$ 50.00	\$ 125.40	\$ 175.40
Yes - Indiv CWAD or WDR (not a member of group)	3	20	\$ 50.00	\$ 1,144.00	\$ 1,194.00
No - (WDR letter sent)*	3	20	\$ 200.00	\$ 1,144.00	\$ 1,344 plus penalties*
Farmer 2					
CWAD Compliance?	Tier	Farmer's Acreage	One-Time Application Fee	Annual Fees	Total
Yes - in group of 100 farms (group managed fees)	1	60	\$ 50.00	\$ 46.00	\$ 96.00
Yes - in group of 100 farms (indiv fees)	2	60	\$ 50.00	\$ 176.20	\$ 226.20
Yes - Indiv CWAD or WDR (not a member of group)	3	60	\$ 50.00	\$ 1,412.00	\$ 1,462.00
No - (WDR letter sent)*	3	60	\$ 200.00	\$ 1,412.00	\$ 1,612 plus penalties*
Farmer 3					
CWAD Compliance?	Tier	Farmer's Acreage	One-Time Application Fee	Annual Fees	Total
Yes - in group of 100 farms (group managed fees)	1	500	\$ 50.00	\$ 376.00	\$ 426.00
Yes - in group of 100 farms (indiv fees)	2	500	\$ 50.00	\$ 735.00	\$ 785.00
Yes - Indiv CWAD or WDR (not a member of group)	3	500	\$ 50.00	\$ 4,392.00	\$ 4,442.00
No - (WDR letter sent)*	3	500	\$ 200.00	\$ 4,392.00	\$ 4,592 plus penalties*
Farmer 4					
CWAD Compliance?	Tier	Farmer's Acreage	One-Time Application Fee	Annual Fees	Total
Yes - in group of 100 farms (group managed fees)	1	4,000	\$ 50.00	\$ 3,001.00	\$ 3,051.00
Yes - in group of 100 farms (indiv fees)	2	4,000	\$ 50.00	\$ 5,180.00	\$ 5,230.00
Yes - Indiv CWAD or WDR (not a member of group)	3	4,000	\$ 50.00	\$ 16,184.00	\$ 16,234.00
No - (WDR letter sent)*	3	4,000	\$ 200.00	\$ 16,184.00	\$ 16,384 plus penalties*

* Additional Civil Liability Penalties of up to \$1,000 per day may be applied if non-compliant (California Water Code § 13261)

For more information:

<http://www.waterboards.ca.gov/santaana/>

http://www.waterboards.ca.gov/santaana/water_issues/programs/planning/ag_waiver.shtml

If you have questions regarding the CWAD or WDRs for Agricultural Operations, please contact:

Eric Lindberg, PG, CHG

Engineering Geologist

Santa Ana Regional Water Quality Control Board

3737 Main Street Ste. 500

Riverside, CA 92501

951-782-3219

eric.lindberg@waterboards.ca.gov