

# State Water Resources Control Board

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**Terry Tamminen**  
Secretary for Environmental  
Protection

## Executive Office

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**Arnold Schwarzenegger**  
Governor

**TO:** Gary Winters  
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*Original signed by Tom Howard for*

**FROM:** Celeste Cantú  
Executive Director  
**EXECUTIVE OFFICE**

**DATE:** October 18, 2004

**SUBJECT:** PROHIBITION OF WASTE DISCHARGES INTO THE AREAS OF SPECIAL BIOLOGICAL SIGNIFICANCE

The California Ocean Plan (Ocean Plan), adopted by the State Water Resources Control Board (State Board) and approved by the U.S. Environmental Protection Agency (U.S. EPA), lists 34 coastal marine waters which the State Board has designated as Areas of Special Biological Significance (ASBS). ASBS are defined as “those areas designated by the State Board requiring protection of species or biological communities to the extent that alteration of natural water quality is undesirable.”

The Ocean Plan, Section III.E.1., requires that: “Waste\* shall not be discharged to areas designated as being of special biological significance. Discharges shall be located a sufficient distance from such designated areas to assure maintenance of natural water quality conditions in these areas.” “Waste” is defined as the “total discharge, of whatever origin.” The Department of Transportation (Department) is responsible for storm water discharges (dry and wet weather runoff, inclusive) into the following ASBS subject to the prohibition against waste discharges:

- Ano Nuevo Point and Island ASBS
- Carmel Bay ASBS
- Irvine Coast Marine Life Refuge ASBS
- James V. Fitzgerald Marine Reserve ASBS
- Julia Pfeiffer Burns Underwater Park ASBS
- Kelp Beds at Saunders Reef ASBS
- Mugu Lagoon to Latigo Point ASBS
- Ocean Area Surrounding the Mouth of Salmon Creek ASBS
- Point Lobos Ecological Reserve ASBS
- Redwood National Park ASBS

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*California Environmental Protection Agency*

The Ocean Plan, Section III.I.1, allows the State Board to grant exceptions to this prohibition provided that the exception "will not compromise protection of ocean waters for beneficial uses, and, [t]he public interest will be served." Prior to granting an exception, the State Board must hold a public hearing, and there must be compliance with the California Environmental Quality Act (CEQA). The U.S. EPA also must concur.

Information regarding the Ocean Plan, ASBS, or existing exceptions to the Ocean Plan may be found at <http://www.swrcb.ca.gov/plnspols/oplans/index.html> .

Because the Department does not have an exception issued by the State Board for discharges to any of the listed ASBS, the Department is required to cease discharging to them. You may, however, request an exception to the prohibition. In order to request an exception, you must prepare and transmit an application package by February 1, 2005 to the State Board. The application package should be sent attention to Dominic Gregorio, Division of Water Quality, Ocean Standards Unit. The package must include a letter requesting an Ocean Plan exception from the State Board. The package must also include the following required items and, if necessary, a reasonable schedule for the delivery of specific items not completed by February 1, 2005:

1. Specific information about the discharge, including the organization name, address, telephone/fax number, and contact name and title;
2. Formal identification of the Ocean Plan provisions (i.e., Sections III.E.1 and III.H.2 for the ASBS discharge prohibition), for which the requested exception is applicable;
3. Rationale for the exception (i.e., explain why and how the public interest will be served if the exception is granted);
4. Documentation supporting that the requested exception will not compromise protection of ocean waters for beneficial uses;
5. Regarding discharges to ASBS, a description of historical compliance with the provisions of the Ocean Plan and the conditions in your current National Pollutant Discharge Elimination System permit.
6. Information for an environmental analysis under CEQA, including (but not limited to):
  - a. documentation of existing environmental conditions, including a recent quantitative intertidal and subtidal description of marine life near the discharges and at reference locations away from the discharge,
  - b. a determination of the potential environmental impacts stemming from the discharge if it is continued, including information on the volume, sources and seasonal characteristics, chemical constituents (at detection limits comparable to the Ocean Plan Table B concentrations), physical constituents, indicator bacteria concentrations, and toxicity of the discharge,
  - c. a description of pollution controls or management measures currently employed or planned, and
  - d. a description of alternatives to the current discharge and the impacts of those alternatives.

Upon receiving the initial application package, the State Board staff will review the package for compliance with federal and State laws and policies. A determination will be made as to who will be lead agency for CEQA. Following the publication of the CEQA documentation, State

Board staff will prepare a staff report, including recommendations, for the State Board. As mentioned above, should the State Board approve the exception it will also require U.S. EPA concurrence.

The State Board staff will hold a workshop, at a date and location as yet to be determined, for those parties interested in pursuing an exception. The purpose of this workshop will be to provide information on the procedures for applying for an exception and possible funding sources that may be available to address discharges into ASBS. You will receive an invitation to this workshop in the near future.

If you have any questions, please feel free to contact Stan Martinson, Chief, Division of Water Quality, at (916) 341-5458 ([marts@swrcb.ca.gov](mailto:marts@swrcb.ca.gov)) or Dominic Gregorio, Division of Water Quality, Ocean Standards Unit, at (916) 341-5488 ([gregd@swrcb.ca.gov](mailto:gregd@swrcb.ca.gov)) .

cc: Randell H. Iwasaki, Designated Interim Director  
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