
North Coast Regional Water Quality Control Board

Agricultural Lands Discharge Program Frequently Asked Legal/Policy Questions:

This document is intended to provide answers to questions that have come up during the Stakeholder Advisory Work Group discussions regarding the Regional Water Board's jurisdiction, permitting authority, and policy concerning nonpoint source pollution. The answers to these questions are based on the Porter-Cologne Water Quality Control Act and the State Water Resources Control Board's policy direction and are not subject to change.

Program Coverage & Discharges of Waste to Waters of the State

1. What is the Regional Water Board's permitting jurisdiction?

Among other things, the Porter-Cologne Water Quality Control Act (Porter-Cologne) directs all persons discharging waste, or proposing to discharge waste to areas that could affect the quality of the waters of the state, other than into a community sewer system, to file a report of the discharge with the appropriate Regional Water Board. The Board then makes the determination on whether and how to regulate that discharge and what requirements may be necessary.

So, the Board's permitting jurisdiction is predicated on an existing or proposed discharge of waste to an area that could affect the quality of state waters. The terms 'discharge', 'waste', and 'waters of the state' are defined below. As Porter-Cologne makes clear, the Board's jurisdiction is not limited to only those discharges that have an adverse impact on water quality, or cause a water quality problem; it includes all discharges of waste that could have any effect on water quality.

2. What is waste?

Section 13050 of the Porter-Cologne Water Quality Control Act gives the following definition of waste:

'Waste' includes sewage and any and all other waste substances, liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or processing operation, including waste placed within containers of whatever nature prior to, and for the purposes of, disposal.

The definition of waste is very broad and includes almost any substance that might be discharged as a result of agricultural activities. Examples of wastes related to agriculture might include: sediment, nutrients, pesticides, hazardous materials, heat, manure, plant debris, and other organic material.

The definition of waste is limited to only those substances associated with human habitation. It does not include naturally occurring substances that are transported through stormwater in background amounts, or substances that are the result of naturally occurring processes without human influence. For example, the definition of waste does not include natural background sediment that might be eroded off a hillside, given that the hillside has not been influenced by human habitation such as road construction or other drainage alterations.

3. What are waters of the state?

Section 13050 of the Porter-Cologne Water Quality Control Act gives the following definition for waters of the state:

‘waters of the state’ means any surface water or groundwater, including saline waters, within the boundaries of the state.

Again, the definition is very broad and includes all groundwaters and surface waters such as natural streams, irrigation ditches or canals, ponds, agriculturally dominated waterways, and constructed agricultural drains.

4. What is a discharge of waste to waters of the state?

The definition of the term ‘discharge’ is the common definition found in the dictionary. Discharge means ‘to emit’. A discharge of waste to waters of the state occurs when any amount of waste enters surface waters or groundwaters of the state or is placed in an area where it could reach surface or ground waters. The discharge does not have to go directly into surface water; it may first flow over a neighbor’s property or through an agricultural drain. The concept of a discharge is that the waste is being placed in an area, or reaches an area, where it is no longer contained or being controlled by the operator, and has the potential to reach surface or ground waters.

Examples of discharges from agricultural lands include but are not limited to irrigation return flow, flows from tile drains, infiltration to groundwater, and stormwater runoff. These discharges can affect water quality by transporting pollutants including pesticides, sediment, nutrients, salts, pathogens, and heavy metals from agricultural lands into surface water and groundwater.

5. Is runoff from tailwater a discharge of waste to surface waters?

Yes, if it ultimately may reach a water of the state. However, if a grower recycles all tailwater, operates a closed irrigation/drainage system, or uses a high efficiency irrigation system, it may be possible to prevent tailwater runoff (discharges of waste) to surface waters.

6. Is an operation within the Regional Water Board's permitting jurisdiction if the Regional Water Board cannot show that it contributes to a water quality problem?

The Regional Water Board's jurisdiction is not contingent on the presence of a water quality problem and/or impaired beneficial uses in the receiving water. The Regional Water Board's permitting jurisdiction extends to any discharge of waste that could affect the quality of state waters. Discharges of waste in any amount or to any effect must be authorized under waste discharge requirements, or a waiver of waste discharge requirements.

Addressing nonpoint source pollution is challenging because it is the result of many diffuse and diverse sources occurring across the landscape. Each individual source may contribute only a small quantity of contaminants, but all the sources combined cumulatively result in water quality problems. The Nonpoint Source Program focuses on implementing management measures that are known to be effective in controlling nonpoint source pollution. The goal of the Agricultural Lands Discharge Program is to coordinate implementation of management measures (BMPs) to produce an overall system that adequately addresses all sources in a cost effective manner. For more information on the State's approach to regulating nonpoint sources of pollution, please see the Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program, 2004.

7. If an operation is not discharging waste to waters of the state or proposing to do so, does it fall within the Regional Water Board's permitting jurisdiction?

No. However, most agricultural operations within the proposed Program scope do discharge waste that can affect waters of the state. The Agricultural Lands Discharge Program is being developed as a general permit for operations with the same or similar types of discharges. There is an assumption that the majority agricultural operations within the scope of the Program discharge waste to waters of the state due to the nature of the activities taking place. There is no requirement of the Regional Water Board to make an individual determination upfront for each operation regarding the presence of a discharge when administering a general permit. The Program will include a way for the Regional Water Board to consider the specifics of an individual operation and whether it is in fact within its jurisdiction in order to account those few operations that don't discharge at any time of year or in any amount. However, it is recommended that operations that fall within the Program scope obtain permit coverage initially, since discharging without a permit can result in accelerated enforcement.

8. Why are unimpaired watersheds included in the Program?

The Agricultural Lands Discharge Program will address discharges of waste to both impaired and unimpaired/high quality waters. The Regional Water Board is required by law to control all discharges of waste to waters of the state, to restore water quality in impaired waters, and to maintain water quality in high quality waters that are already meeting water quality standards. In contrast to the Regional Water Board's TMDL programs, the basis for development of the Agricultural Lands Program is not a particular waterbody's status on the 303(d) list of impaired waters.

9. Are growers responsible for naturally occurring pollution, legacy pollution, or background levels of constituents that may have an adverse effect on water quality or beneficial uses?

In general, no. Landowners are responsible for discharges of waste to waters of the state associated with human habitation and controllable water quality factors associated with human habitation. One of the purposes of the individual water quality management plan, proposed as part one of the program requirements, is for the operator to have the ability to document the occurrence of naturally poor water quality or other natural features that are outside of the operator's control. Regional Water Board staff will account for natural sources of water quality impacts in onsite inspection and in evaluating individual compliance.

10. Are growers responsible for human-caused water pollution and discharges that pass through their land, but originate upstream of their property?

In general, no. Growers enrolled in the program are responsible for controlling the discharges of waste and/or other controllable water quality factors that are the result of, or can be associated with, their activities on lands covered within the scope of the program.

11. How is the Regional Water Board addressing discharges from rural roads, urban areas, and other land uses besides agriculture that may be contributing to water quality problems?

The Regional Water Board currently implements several programs to address nonpoint source pollution other than agricultural sources. Such programs include a timber harvest program, a dairy program, a county roads program, and municipal, construction, and industrial stormwater programs. In addition, the Regional Water Board is participating in a statewide effort to addressing grazing operations and plans to develop a program to address rural residential roads.

Temperature & Riparian Vegetation

12. What is the Regional Water Board's permitting jurisdiction regarding impacts to receiving water temperatures and controllable water quality factors?

There are two basic categories of potential impacts to water temperature that the Program will address: (1) those associated with a discharge of waste or elevated temperature water, and (2) other controllable factors that are not discharges but can also impact water quality. An example of a discharge that impacts water temperature is warm tailwater runoff that raises the receiving water temperature. An example of a controllable factor is the suppression or removal of riparian vegetation that provides shade to a stream. Both discharges and controllable water quality factors are within the permitting jurisdiction of the Regional Water Board and are proposed to be addressed by the Program; however, only discharges of waste trigger the Regional Water Board's permitting jurisdiction. Once jurisdiction is triggered by a discharge, it then extends to all other controllable factors. In addition, the Regional Water Board has jurisdiction regarding temperature

impacts in watersheds with temperature TMDL load allocations. Temperature TMDL load allocations for solar radiation are expressed in terms of site-potential effective shade, which is the shade provided by topography and full potential vegetation conditions at a site, with an allowance for natural disturbances.

Fees and Economics

13. Will there be a fee associated with this Program?

Yes. The State Water Resources Control Board has established a fee schedule for irrigated agricultural lands based on acreage. The Regional Water Board is working with the State Board to adapt the fee schedule to allow for regional flexibility.

14. Will economics be considered?

Yes. The Porter-Cologne Water Quality Control Act requires that the Regional Water Board perform an economic analysis on agricultural programs that are proposed for adoption. The staff report for the Program will contain an economic analysis that will consider the total cost of implementation of the Program. On an individual basis, Regional Water Board staff will work with operators to set up an implementation schedule that is reasonable and takes into consideration the threat to water quality, the feasibility of methods to address the issue, and resource availability.

Compliance Assurance

15. How will the Program assure compliance?

All operations in the program must adhere to the same set of water quality requirements. The Program will assure compliance with requirements as summarized by the following steps, which is the approach that the Regional Water Board uses in many of its other programs:

1. Require that management practices to be implemented onsite to address risks to water quality
2. Require monitoring to track water quality trends and practice effectiveness
3. Require reporting to gauge effectiveness of the Program and to assure compliance
4. Conduct periodic onsite inspections to ensure program requirements are being met
5. Enforce program requirements according to the State Enforcement Policy

16. What is the Regional Water Board's approach to enforcement?

In all its programs, the Regional Water Board follows the State Enforcement Policy and moves progressively through enforcement authorities. The approach to enforcement is proportional to the severity of the threat to water quality. In situations where the threat to water quality is relatively low and the operator is responsive, the Regional Water Board would work with the operator to come up with a reasonable schedule to address the issue. While the Regional Water Board prefers this approach, in cases of extreme negligence or an intentional discharge that violates water quality standards, the Regional Water Board has the ability to move more quickly through the progression of enforcement steps to address the problem.