

EXECUTIVE OFFICER SUMMARY REPORT
May 9, 2012

- ITEM: 9
- SUBJECT: Waste Discharge Requirements: Tentative General Order for Closed, Abandoned, or Inactive Burn Sites within the San Diego Region (Tentative Order No. R9-2012-0003) (*Amy Grove*)
- PURPOSE: To consider adopting tentative waste discharge requirements General Order No. R9-2012-0003 (Supporting Document No. 1). The tentative General Order would supercede General Order No. 97-11 for Closed, Abandoned, or Inactive Burn Sites (CAI Burn Sites) within the San Diego Region.
- RECOMMENDATION: Adoption of the tentative General Order No. R9-2012-0003 is recommended.
- KEY ISSUES:
1. Who should be responsible for CAI Burn Sites enrolled in the tentative General Order. [Supporting Document No. 1 – Tentative General Order No. R9-2012-0001, Finding No. 1; Supporting Document No. 3 – Information Sheet, Part I, Section D (page 6); and Supporting Document No. 7 – Response to Comments, Comment No. 36 (page 30)]
 2. CAI Burn Sites are not required to monitor groundwater. [Supporting Document No. 2 – Information Sheet, Part V, Section C (page 16)]
- DISCUSSION: Background information regarding the regulation of CAI Burn Sites is included in the EOSR for agenda Item No. 8, and the Information Sheet found in Supporting Document No. 2.

Naming of Responsible Parties

As in Item No. 8, a key issue is assigning responsibility for CAI Burn Sites enrolled in the tentative General Order. All of the difficulties associated with identifying responsible dischargers for CAI Units apply to CAI Burn Sites. As with CAI Units, the San Diego Water Board's practice has been

to only enroll the primary owner or operator when one can be identified, or both. Secondly responsible parties such as a property owner would only be held responsible if the facility owner or operator could not be found.

The Dischargers requested that the San Diego Water Board abide by third party agreements between responsible parties. The San Diego Water Board acknowledges that legal agreements exist between owners and former operators at many CAI Burn Sites located within the region. The San Diego Water Board is not a party to these agreements, and though the agreements are considered when determining responsibility, the San Diego Water Board is not bound by the agreements. Each CAI Burn Site has been evaluated on a case-by-case basis to determine the appropriate responsible parties, and the San Diego Water Board has not modified the list of responsible parties as part of the issuance of the tentative General Order.

Basis for not Requiring Groundwater Monitoring

The results of the Solid Waste Assessment Test (SWAT) investigations conducted in the early 1980s indicated that CAI Burn Sites are mainly composed of residual ash and other materials that are not easily combustible (i.e. glass, porcelain, and some metals). Typically, the residual ash contains high concentrations of metals and dioxins, and may also contain other constituents of concern (such as pesticides and furans) in concentrations that may leach into groundwater or surface waters under certain conditions. Because the organic component of the waste was burned away during operation, CAI Burn Sites typically do not produce significant quantities of landfill gases and leachate.

Monitoring as part of the SWAT Investigations demonstrated that the CAI Burn Sites within the San Diego Region had not impacted water quality and do not pose a significant threat to the environment. Further, though high concentrations of constituents of concern exist in the residual ash, when CAI Burn Sites are well maintained, they pose a minimal threat to water quality and human health.

The CAI Burn Sites enrolled under General Order No. 97-11 are well maintained, and have not had significant violations of the maintenance requirements since at least 2005. For these reasons, requirements for groundwater monitoring are not included in the tentative General Order for CAI Burn

Sites. The Tentative General Order does however, continue the requirements for site maintenance.

Dischargers of CAI Burn Sites currently enrolled under General Order No. 97-11 will be automatically enrolled in the tentative General Order once adopted.

Comments

Written comments on the tentative General Order were received from the County of San Diego, Department of Public Works, Orange County Waste and Recycling, and the San Diego County Local Enforcement Agency (See Supporting Documents Nos. 4, 5, and 6 respectively for Agenda Item No. 8). The San Diego County Local Enforcement Agency's letter stated that their agency had no further comments regarding the tentative General Order. Responses to Comments can be found in Supporting Document No. 7 for Agenda Item No. 8. The tentative General Order was modified to incorporate some of the Discharger's comments as appropriate. The revised tentative General Order is included as Supporting Document No. 3 and is shown in underline strikeout version. The supporting documents for Item No. 8 also support this item.

LEGAL CONCERNS:

None.

SUPPORTING DOCUMENTS:

1. Tentative General Order No. R9-2012-0003
2. Information Sheet (this is the same Information Sheet as Item No. 8)
3. Tentative General Order No. R9-2012-0003 – underline strikeout version

SIGNIFICANT CHANGES:

1. The tentative General Order supersedes General Order No. 97-11, and provides performance-based requirements for maintenance of CAI Burn Sites.
2. The tentative General Order streamlines the enrollment process by delegating authority to the Executive Officer for enrollment or termination of enrollment.
3. The tentative General Order requires Dischargers to certify that each CAI Burn Site is well maintained and that appropriate best management practices have been implemented prior to the rainy season each year.

**COMPLIANCE
RECORD:**

The CAI Burn Sites currently regulated by General Order No. 97-11 were generally in compliance with the maintenance and monitoring specifications found within that Order. Since 2005, these sites did not have any significant violations noted during inspections by San Diego Water Board staff.

PUBLIC NOTICE:

Notification of this action was sent to known interested parties via e-mail and by mail on February 9, 2012 (see Supporting Document No. 10 of agenda Item No. 8). The tentative General Orders and M&RP were posted on the San Diego Water Board website on the same day. The tentative General Orders and M&RP were also noticed in the following newspapers on February 11, 2012: the San Diego Union Tribune, the Riverside Press Enterprise; and The Orange County Register. These actions satisfy the public notification requirements of California Water Code, Division 7, section 13167.5 and CCR Title 27, section 21730(b) "Notice Requirements."