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Roger N. Mitchell, P.G.
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Groundwater Protection Branch
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VIA E-Mail: Roger.Mitchell@waterboards.ca.gov

RE: **Order R9-2014-0059: RMitchell: Comments and Recommendations Regarding Tentative Order No. R9-2014-0059: "Emergency Conditional Waiver of Waste Discharge Requirements for the Management and Disposal of Disaster Related Wastes from the 2014 Wildfires in the San Diego Region" ("Waivers")**

Dear Mr. Mitchell:

San Diego Gas & Electric Company (SDG&E) provides essential public services to over 3.4 million consumers in San Diego and southern Orange counties in a service area of over 4,100 square miles. Services are provided to the region's communities, businesses, government and other entities, including fire protection, law enforcement, and emergency care.

In emergencies, such as the May fires, SDG&E needs to respond quickly to repair its gas and electric systems for safety purposes and to restore service to its customers. SDG&E appreciates the Regional Board's efforts to expedite adoption of an emergency waiver of waste discharge requirements for the purposes of managing disaster related wastes, and dredge or fill activities and emergency repair and protection activities in non-federal waters of the State (the "Waivers"). The Waivers are an important regulatory vehicle for facilitating authorization of urgent responses to the fires that have occurred in the San Diego Region during May 2014 while also providing for the protection of state-only waters. The Waivers should provide a balance between water quality protection and regulatory oversight and expedite the application of practical protective measures, staff involvement, waiver application requirements and minimizing the time required to obtain coverage.

Following in this letter are recommendations for revisions to this draft Order to improve its clarity, and usability, and to minimize the administrative burdens in the application process for both staff and the dischargers.

Tentative Order 2014-0059-DWQ vs. Tentative Order 2014-0041-DWQ

Tentative Order 2014-0041-DWQ (Conditional Waivers of Waste Discharge Requirements for Low Threat Discharges in the San Diego Region) contains almost identical waivers to those proposed in this Order (See Waiver No. 12 in Tentative Order 2014-0041-DWQ). The deadline for comments on Tentative Order 2014-0041-DWQ just closed on May 19, 2014.

Because Part I.B. (p. 2) in this Order identifies the sole purpose for adopting this Order to be the fires that have occurred this month, it is unclear whether the waivers contained in this Order will be limited in applicability to the fires that have occurred in the San Diego Region during May, 2014 or if they would also be applicable to future emergencies during the next five years. If the intent is for this Order to also be applicable to future emergencies, this section should be revised to make that intent clear.

We recommend that this confusion be clarified in these Tentative Orders and to the public.

Wastes Subject to the Order

In Part I.E. (p. 3) the Waivers specify the specific types of discharges that are subject to the Order. It includes E.4. – “Discharges of dredge or fill material into non-federal waters of the state” and E.5. – “Emergency repair and protection activities in non-federal waters of the state”. These categories are also repeated in Part II.O.2. (p. 6) and discussed in Part II.O.6. and 7 (p. 7). However, reference to “Emergency repair and protection activities in non-federal waters of the state” is omitted in other sections of the waiver.

We recommend that Section E.5. be incorporated into other locations in the waivers, as follows:

Part II.O.3. (pp. 6-7)

“These types of discharges are generated during emergency and disaster related situations, requiring expedited handling and disposal of wastes, or emergency discharges of dredge or fill material into or emergency repair and protection activities in non-federal waters of the State. Therefore, emergency/disaster related waste discharges were grouped into one discharge classification. Emergency/disaster related waste discharges, or discharges of dredge or fill material into or emergency repair and protection activities in non-federal waters of the State that comply with the waiver conditions should minimize the potential impact and should not pose a significant threat to the quality of waters of the State.”

Part II.O.9. (p. 8)

“h. Emergency repair and protection activities in non-federal waters of the State.”

Part II.A.4. (p. 11)

“Discharges of Dredge or Fill Material into or Emergency Repair and Protection in Non-Federal Waters of the State, under Emergency Conditions.”

Part II.B.6.g. (p. 27)

“Discharges of Dredge or Fill Material into or Emergency Repair and Protection in Non-Federal Waters of the State, under Emergency Conditions.”

NOI Approval

These Waivers specify that a NOI must be submitted to obtain coverage. However, the Waivers do not identify the process that is used to confirm the NOI has been accepted and that coverage under the Waiver is in force. It appears that coverage is immediate once the applicant has submitted the NOI. We support this approach since the Waivers are for “low threat” discharges and one of the intents of the

Waivers is to facilitate prompt initiation of the covered activities. Providing this streamlined process addresses this intent and ensures quick coverage.

We recommend that the Waivers address this facilitated approval approach by incorporating the following language into the Waivers in a new section “O” in Part I (p. 6):

“Coverage under the Waivers begins upon submittal of the NOI unless otherwise specified in the waiver’s conditions.”

Authorized Dredge and Fill Activities are Conditioned upon Not Being Eligible Under SWRCB Order 2004-0004-DWQ

Part II.O.8. (p. 8) could be read to exclude authorization of discharges pursuant to this waiver if they could be eligible for authorization pursuant to SWRCB Order 2004-0004-DWQ (Statewide General Waste Discharge Requirements for Dredged or Fill Discharges to Waters Deemed by the U.S. Army Corps of Engineers to be Outside of Federal Jurisdiction). Order 2004-0004-DWQ was adopted to address projects that were being applied for and conducted in the ordinary course of business and does not contain any provisions for its use in emergencies. In fact, it could take up to 45 days or more after submittal of a NOI to obtain a Notice of Applicability under Order 2004-0004-DWQ. For utilities that need to restore the essential public services (e.g., gas, electric, telecommunications, etc.) they provide, this is too long of a time period to delay work. Coverage needs to be available quickly under this waiver so that work can be initiated promptly to facilitate restoration of services.

We recommend that Part II.O.8. be revised to allow use of this waiver even though the type of work being conducted may be eligible under normal circumstances to obtain coverage under Order 2004-0004-DWQ.

“Eligible discharges to non-federal waters of the State, associated with emergency repair and protection activities, ~~in normal circumstances may be able to be permitted pursuant to~~ ~~subject~~ to Water Quality Order No. 2004-0004-DWQ, Statewide General Waste Discharge Requirements for Dredged or Fill Discharges To Waters Deemed by The U.S. Army Corps of Engineers To Be Outside of Federal Jurisdiction.⁸ ~~Notwithstanding, T~~~~his~~ Emergency Waste Waiver can ~~be used to~~ expedite projects **required by emergency situations even though they may otherwise be that are not** eligible for enrollment in Order No. 2004-0004-DWQ ~~but are conducted in response to emergency situations.”~~

Expiration Conditions (Part II.A.2.)

Part II.A.2. (p. 9) states that it must expire under the following conditions:

- a. The state of emergency declared by the Governor expires, or
- b. The San Diego Water Board takes action to terminate enrollment of individual or all dischargers/Units temporarily enrolled in the waiver, or
- c. Six (6) months has elapsed since the Governor issued a declaration of the state of emergency for any portion of the San Diego Region, or the oil spill incident occurred, or emergency activities began, unless otherwise directed by the San Diego Water Board.

Conditions “b” and “c” are situations under which the discharger should have adequate prior notice that coverage under the waiver would expire prior to its actual expiration. This would provide for an orderly process, if needed, to transition to another waiver or waste discharge requirements, thus ensuring that permit coverage does not lapse. However, under Condition “a”, it is unclear whether dischargers would receive adequate notice of when the Governor’s state of emergency declaration would expire making it difficult to plan for it. If this occurred suddenly, it could result in a lapse of permit coverage prior to the conclusion of the activities covered by these waivers.

Consequently, we recommend that Condition “a” be deleted.

Placement of Disaster Derived Wastes (pp. 15, 18, 21)

In three locations (Part II.B.3.c.; Part II.B.4.b.i.; Part II.B.5.b.i.), it states:

“... and more than 100 feet from, and at an elevation that is higher than, any surface water of the State.”

As written, the wastes could only be placed in a location, the elevation of which, is higher than any water of the State. For clarification we recommend the following revision be made to these sections:

“... and more than 100 feet from, and at an elevation that is higher than, any immediately adjacent surface water of the State.”

Missing Conditions

This draft waiver incorporates most but not all of the language from San Diego Regional Board Order R9-2007-0211 (A Conditional Waiver of Statutory Requirements to File a Report of Waste Discharge and for Adoption of Waste Discharge Requirements for Discharges to Non-Federal Waters of the State Associated with Repair and Protection Activities in Emergency Situations in the San Diego Region). Order R9-2007-0211 established requirements for conducting dredge and fill activities within waters of the State during a declared state of emergency. The draft Order omits Sections B (Mitigation Conditions) and C (Notification Conditions) and several key findings (i.e., Finding Nos. 4 and 11), that are referenced within Sections B and C.

We request that Sections B (Mitigation Conditions) and C (Notification Conditions) and Finding Nos. 4 and 11 from Order 2007-0211 be incorporated into the draft Waiver.

Please feel free to contact me if you have any questions regarding these comments.

Sincerely,



Fredrik J. Jacobsen