

**ATTACHMENT 3 TO STAFF REPORT
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION**

**DRAFT ORDER NO. R3-2005-005
(Revised July 8, 2005)**

**GENERAL CONDITIONAL WAIVER OF WASTE DISCHARGE REQUIREMENTS
FOR
THE REUSE OF NON-HAZARDOUS CRUDE OIL IMPACTED SOIL
AND NON-HAZARDOUS SPENT SANDBLASTING AGGREGATE
ON ACTIVE OIL LEASES AND FEE PROPERTIES
IN THE CENTRAL COAST REGION**

The California Regional Water Quality Control Board, Central Coast Region (hereafter Water Board), finds that:

1. Oil production results in large volumes of soils degraded by crude oil and non-hazardous spent sandblasting aggregates. This General Reuse Waiver conditionally authorizes the use of crude oil-impacted soils for road pavement and other uses on “active” oil leases and fee properties. If Management Practices are followed, reuse of non-hazardous crude oil-degraded soil will not pose a significant threat to water quality.
2. California Water Code (CWC) Section 13260(a) requires that any 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 Water Board a report of waste discharge (ROWD) containing such information and data as may be required by the Water Board.
3. Section 13263(a) of the California Water Code states that Water Boards shall prescribe requirements for existing and proposed waste discharges in their respective areas of jurisdiction that could affect water quality.
4. CWC Section § 13267 (Investigations; inspections) states:
 - (a) A regional board, in establishing or reviewing any water quality control plan or waste discharge requirements (WDRs), or in connection with any action relating to any plan or requirement authorized by this division, may investigate the quality of any waters of the state within its region.
 - (b)(1) In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge, waste outside of its region that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.

5. CWC Section 13269(a) states:

(1) On and after January 1, 2000, the provisions of subdivisions (a) and (c) of Section 13260, subdivision (a) of Section 13263, or subdivision (a) of Section 13264 may be waived by the state board or a regional board as to a specific discharge or type of discharge if the state board or a regional board determines, after any necessary state board or regional board meeting, that the waiver is consistent with any applicable state or regional water quality control plan and is in the public interest. The state board or a regional board shall give notice of any necessary meeting by publication pursuant to Section 11125 of the Government Code.

(2) A waiver may not exceed five years in duration, but may be renewed by the state board or a regional board. The waiver shall be conditional and may be terminated at any time by the state board or a regional board. The conditions of the waiver shall include, but need not be limited to, the performance of individual, group, or watershed-based, monitoring, except as provided in paragraph (3) below. Monitoring requirements shall be designed to support the development and implementation of the waiver program, including, but not limited to, verifying the adequacy and effectiveness of the waiver's conditions. In establishing monitoring requirements, the regional board may consider the volume, duration, frequency, and constituents of the discharge; the extent and type of existing monitoring activities, including, but not limited to, existing watershed-based, compliance, and effectiveness monitoring efforts; the size of the project area; and other relevant factors. Monitoring results shall be made available to the public.

(3) The state board or a regional board may waive the monitoring requirements described in this subdivision for discharges that it determines do not pose a significant threat to water quality.

6. Pursuant to CWC Section 13269, waivers may be granted for discharges to land and may not be granted for point source discharges to surface waters or conveyances thereto.

7. In accordance with CWC Section 13269, the Water Board shall regulate discharges of crude oil-impacted soils at reuse projects through the requirements of this general conditional waiver, or, for crude oil-impacted Reuse projects that are not eligible for this waiver, through individual waste discharge requirements or individual conditional waivers.

8. Relevant factors in determining whether a waiver is in the public interest include the following:

- a. Whether the Discharger will observe reasonable practices to minimize the deleterious effects of the discharge;
- b. Whether a feasible treatment method exists to control the pollutants in the discharge;
- c. Whether the waiver will have other positive environmental effects; and
- d. Whether conditionally waiving ROWDs and/or WDRs will adequately protect beneficial uses while allowing the Water Board to utilize more of its scarce resources to conduct field oversight, public outreach and, where necessary, enforcement.

9. **Basin Plan** - The Water Quality Control Plan, Central Coast Basin (Basin Plan), was adopted by the Water Board on September 8, 1994, and approved by the State Water Board on November 17, 1994. The Basin Plan incorporates statewide plans and policies by reference and contains a strategy for protecting beneficial uses of surface and groundwater throughout the Region. This General Waiver requires Dischargers to comply with all applicable provisions of the Basin Plan.

10. This General Waiver establishes minimum standards for maintenance and monitoring of Reuse projects. This Waiver requires each Discharger to comply with any more stringent relevant standards

in the Basin Plan. In the event of a conflict between the provisions of this Waiver and the Basin Plan, the more water quality protective provision will prevail.

11. **Beneficial Uses** -- The Basin Plan (1994) identifies the following present and anticipated beneficial uses of the groundwater underlying the oil field areas where the Reuse projects will be located:
 - a. Municipal and domestic supply,
 - b. Agricultural supply,
 - c. Industrial process and service supply.
12. Existing and potential beneficial uses of surface waters within the Central Coast region are specified by water body, in Table 2-1 of the Basin Plan. Surface waters that do not have beneficial uses designated in Table 2-1 of the Basin Plan have potential beneficial uses of municipal and domestic water supply, and recreation and aquatic life.
13. The Water Board, in establishing the requirements contained herein, considered factors including, but not limited to the following:
 - a. Past, present, and probable future beneficial uses of water.
 - b. Environmental characteristics of the hydrologic unit under consideration, including the quality of water available thereto.
 - c. Water quality conditions that could reasonably be achieved through the coordinated control of all factors, which affect water quality in the area.
 - d. Economic considerations.
 - e. Beneficial uses to be protected and water quality objectives reasonably required for that purpose.
 - f. Other waste discharges.
 - g. The need to prevent nuisance.
14. Monitoring and Reporting Program No. R3-2005-005 (hereafter "**MRP No. R3-2005-005**") is part of this General Waiver and is included as **Attachment 1**. MRP No. R3-2005-005 requires the Discharger to perform regular monitoring and reporting of the effectiveness of management practices and ongoing maintenance associated with approved Reuse projects. MRP No. R3-2005-005 may be modified by the Executive Officer to fit site-specific conditions. The monitoring and reporting requirements, including requirements to submit monitoring reports, are necessary to assess compliance with the conditions of the General Waiver and to determine whether and to what extent each reuse project is impacting waters of the State.
15. **Anti-Degradation** – This Order is consistent with the provisions of State Water Resources Control Board (State Water Board) Resolution No. 68-16, "Statement of Policy with Respect to Maintaining High Quality of Waters in California." Water Boards, in regulating the discharge of waste, must maintain high quality waters of the State unless it is demonstrated that any change in quality will be consistent with maximum benefit to the people of the State, will not unreasonably affect beneficial uses, and will not result in water quality less than that described in a Water Board's policies. This conditional Waiver will result in improved water quality throughout the region. Dischargers must comply with all applicable provisions of the Basin Plan, including water quality objectives, and implement Management Practices to prevent pollution or nuisance and to maintain the highest water quality consistent with the maximum benefit to the people of the State. The conditions of this Waiver will protect high quality waters.
16. **California Environmental Quality Act (CEQA) and Other Legal References** - The Water Board is initiating the project of issuing a general waiver of waste discharge requirements for oil field Reuse

projects. The action to adopt this General Waiver is intended to maintain or improve water quality. This General Waiver contains conditions (Attachment "A") intended to protect the environment by mitigating or avoiding impacts to water quality and the environment. This General Waiver is for existing and future oil field Reuse projects. Existing Reuse projects are exempt from provisions of the California Environmental Quality Act (Public Resources Code, Section 21000, et seq.) in accordance with Title 14, California Code of Regulations, Chapter 3, Section 15301. Future projects shall comply with the California Environmental Quality Act pursuant to direction from the local lead agency.

17. The Water Board followed appropriate procedures to satisfy the environmental documentation requirements of CEQA. In Resolution R3-2005-089, the Water Board conducted an Initial Study and adopted a Negative Declaration for this project in accordance with CEQA and the CEQA Guidelines (Title 14, California Code of Regulations, Section 15000 et seq.). The Negative Declaration concludes that the waiver of waste discharge requirements for the specific types of Reuse projects addressed by this Order will not have a significant impact on the environment. Copies of the Negative Declaration were transmitted to all agencies and persons known to be interested in this matter according to the applicable provisions of CEQA.
18. This Order requires the Discharger to implement practices to control water quality impacts, including erosion and sedimentation. Local ordinances also require various controls. The conditions of this Order protect beneficial uses by:
 - a. Prohibiting pollution, contamination or nuisance;
 - b. Requiring monitoring and compliance with applicable water quality control plans;
 - c. Requiring the Discharger to grant access to Water Board staff to perform inspections.
19. The Water Board finds that the adoption of "General Conditional Waiver of Waste Discharge Requirements for Reuse of Non-Hazardous Crude Oil Impacted Soil and Non-Hazardous Spent Sandblasting Aggregate on Active Oil Leases and Fee Properties in the Central Coast Region" will not have a significant impact on the environment and will be in the public interest provided that dischargers:
 - a. Comply with the conditions of this Order;
 - b. File with the Water Board the applicable eligibility documents as described herein, to demonstrate that compliance with the waiver conditions will be achieved; and
 - c. Comply with applicable State Water Board and Water Board plans and policies and as those plans and policies may be amended from time to time through the amendment process.
20. Pursuant to CWC Section 13269, the action of waiving the issuance of waste discharge requirements for certain specific types of discharges (a) is conditional, (b) may be terminated at any time, (c) does not permit an illegal activity, (d) does not preclude the need for permits which may be required by other local or governmental agencies, and (e) does not preclude the Water Board from administering enforcement remedies (including civil liability) pursuant to the CWC.
21. A waiver of waste discharge requirements for this type of discharge may be superseded by the adoption by the State Water Board or Water Board of specific waste discharge requirements or general waste discharge requirements for that type of discharge.
22. Requirements of this Waiver include Management Practices to minimize water quality impacts. Management Practices that control erosion and sedimentation are more feasible and more effective

than treatment methods and will be required. The waiver protects the environment in two ways: by encouraging recycling of oilfield waste rather than disposal in landfills or in place, and by ensuring that recycling occurs in a manner protective of water quality. The adoption of the waiver is also in the public interest because it includes conditions that will reduce and prevent pollution and nuisance and protect the beneficial uses of the waters of the state, and it contains more specific and more stringent conditions for protection of water quality compared to existing regulatory programs.

23. The issuance of this Order establishing a General Waiver of Waste Discharge Requirements is consistent with the goal to provide water resources protection, enhancement, and restoration, while balancing economic and environmental impacts, as stated in the Strategic Plan of the State Water Board and the Water Board.
24. **Attachment "A"** to this Order identifies the types and conditions of discharges for which a waiver of waste discharge requirements is granted by this Order. These discharges will not have a significant effect on the quality of waters of the state provided the corresponding criteria and conditions are met.
25. Waiving waste discharge requirements for the discharge of non-hazardous crude oil-impacted soils as part of authorized Reuse projects, as defined and conditioned in **Attachment "A"**, is in the public interest.
26. The adoption of General Waiver of WDRs for managing crude oil-impacted soils as part of authorized Reuse projects will assist in:
 - a. Protecting groundwater and surface waters of the state from pollution or contamination.
 - b. Simplifying and expediting the application process for the Discharger.
 - c. Reducing Water Board time preparing and considering individual waivers for individual reuse projects.
27. Issuance of this Waiver does not preempt or supersede the authority of municipalities, flood control agencies, or other Federal, State or local agencies to prohibit, restrict, or control discharges of waste subject to their jurisdiction.
28. On **May 3, 2005**, the Water Board notified the Discharger and interested agencies and persons of its intention to issue a general conditional waiver of waste discharge requirements for the discharge. All parties known to be interested in this matter were provided with a copy of the proposed General Order and an opportunity to submit written views and comments.
29. On September 9, 2005, the Water Board held a public hearing and considered all the evidence concerning this matter. Notice of this hearing was given to all interested parties in accordance with the California Code of Regulations, Title 14, Section 15072.

THEREFORE, IT IS HEREBY ORDERED:

1. In accordance with CWC Section 13269, the requirement to obtain waste discharge requirements is waived for reuse of soil containing crude oil and non-hazardous spent sandblasting aggregate pursuant to waiver conditions outlined in **Attachment "A"**. The Water Board will regulate discharges related to the reuse of non-hazardous crude oil-impacted soil and non-hazardous spent sandblasting aggregate by implementing the conditions of **Attachment "A"**.
2. Applicants seeking enrollment in this Waiver shall submit a report of waste discharge (ROWD) or other application form approved by the Executive Officer that provides sufficient information to

demonstrate that compliance with waiver conditions can and will be achieved. This Waiver shall not take effect as to a particular Reuse project until the Executive Officer approves the application. The application shall serve as the ROWD under CWC Section 13260.

3. Enrollment in the General Waiver shall terminate for cause, including, but not limited to, the following, upon written notice from the Executive Officer:
 - a. Violation of any terms or conditions of this General Waiver.
 - b. Obtaining enrollment in this General Waiver by misrepresentation or failure to fully disclose all relevant facts.
4. The Executive Officer may revoke or terminate the applicability of the general conditional waiver requirements to any Reuse project at any time when the Reuse project could adversely affect the quality or beneficial uses of the waters of the State. The Water Board may terminate this Waiver in its entirety or for any type of discharge or any specific discharge at any time.
5. The Discharger shall comply with all requirements of the Executive Officer pursuant to Monitoring and Reporting Program (MRP) No. R3-2005-005.
6. The Discharger shall comply with all requirements of applicable water quality control plans and these may be modified from time to time pursuant to amendments to water quality control plans adopted by the Water Board and approved by the State Water Board, and water quality control plans and policies adopted by the State Water Board.
7. It is not necessary at this time to adopt individual or general waste discharge requirements for waste discharges related to Reuse projects that meet the eligibility criteria specified in this General Waiver.
8. This Waiver shall terminate on September 10, 2010, unless this Waiver is extended by Water Board action. Dischargers who have gained eligibility under the general conditional waiver requirements prior to September 9, 2010 may continue the discharge until September 9, 2010, unless the Water Board terminates this Waiver before September 10, 2010, or its applicability to a specific discharge is terminated by the Executive Officer or the Water Board.
9. This Waiver shall not create a vested right and all such discharges shall be considered a privilege, as provided for in CWC Section 13263. Authorization to discharge waste is conditioned upon the Discharger complying with provisions of Division 7 of the California Water Code and with any more stringent limitations necessary to implement the Basin Plan, to protect beneficial uses, and to prevent nuisance. Compliance with this General Waiver should ensure conditions are met and mitigate any potential changes in water quality due to the project.
10. The discharge of any waste not specifically regulated by the general conditional waiver described herein is prohibited unless the Discharger complies with CWC Section 13260(a) and the Water Board either issues waste discharge requirements pursuant to CWC Section 13263 or an individual waiver pursuant to CWC Section 13269 or the time frames specified in CWC Section 13264(a) have elapsed.
11. As provided by CWC Section 13350(a), any person who, in violation of any waiver condition, discharges waste, or causes or permits waste to be deposited where it is discharged, into the waters of the state, is subject to administrative or civil liability for the violation.
12. Upon receipt of notice of termination of waiver applicability, the Discharger shall immediately cease all activities related to the discharge of crude oil-impacted soils at Reuse projects. Upon notice of

termination, the Discharger shall initiate site closure activities by filing a report of waste discharge and application fee.

13. "Discharger" means the landowner or operator of the Reuse Projects.
14. "Active Oil Field" refers to any lease or fee property located within an active oil field. An active oil field is a lease or fee property that has not received formal closure approval from the Regional Board, DOGGR, and the local regulatory agency with jurisdictional authority.
15. The term "Management Practices" means a practice, or combination of practices, that is the most effective and feasible means of controlling pollution generated by nonpoint sources for the attainment of water quality objectives.
16. The definition of all other undefined terms used in this Order shall be as set forth in the California Water Code.
17. The General Conditional Waiver shall become effective on September 9, 2005, and shall expire on September 9, 2010, unless terminated or renewed by the Water Board.

I, Roger W. Briggs, Executive Officer, do hereby certify that the foregoing is a full, true and correct copy of the General Order adopted by the California Regional Water Quality Control Board, Central Coast Region, on **September 9, 2005**.

Roger W. Briggs
Executive Officer

ATTACHMENTS:

- Attachment "A": Conditions for Reuse of Non-Hazardous Crude Oil Impacted Soil and Non-Hazardous Spent Sandblasting Aggregate on Active Oil Leases and Fee Properties in the Central Coast Region.
- Attachment 1: Monitoring and Reporting Program No. R3-2005-005.