

STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION

STAFF REPORT FOR REGULAR MEETING OF OCTOBER 19, 2023

Prepared on September 5, 2023

ITEM NUMBER: 9

SUBJECT: Consideration of Proposed Waste Discharge Requirements Order R3-2023-0013, National Pollutant Discharge Elimination System (NPDES) General Permit for Discharges from Aquaculture Facilities and Aquariums (NPDES No. CA993003)

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KEY INFORMATION:

Location: Locations throughout the Central Coast Region

Type of Discharge: Discharges from aquaculture facilities and aquariums— facilities that contain, grow, hold, or study aquatic species— including flow-through water which may contain pollutants related to feeding, residuals of drugs used for maintenance of animal health, and residuals of chemicals used for cleaning equipment and maintaining facility water quality conditions.

Estimated Volume: Varies

Existing Order: Order R3-2019-0001 (NPDES Permit CAG993003), General Permit for Discharges from Aquaculture Facilities and Aquariums

ACTION: Adopt Waste Discharge Requirements Order R3-2023-0013

SUMMARY

The purpose of proposed Order R3-2023-0013, National Pollutant Discharge Elimination System (NPDES) *General Permit for Discharges from Aquaculture Facilities and Aquariums*, (herein referred to as the proposed general permit), is to regulate

discharges from aquaculture facilities¹ and aquariums (hereafter Dischargers)—including facilities that contain, grow, hold, or study aquatic species—that discharge from point sources to waters of the United States within the Central Coast Region. The proposed general permit replaces the existing general permit, R3-2019-0001 (NPDES Permit CAG993003), *General Permit for Discharges from Aquaculture Facilities and Aquariums*.

The proposed general permit can be found as Attachment 1 to this staff report. The Fact Sheet, seen in Attachment F of the proposed general permit, includes the legal requirements and technical rationale that serve as a basis for the requirements of the proposed general permit.

DISCUSSION

The Central Coast Water Board is given authority by 40 CFR § 122.28(a)(2)(ii) to issue general permits to regulate point-source discharges when the discharges involve similar types of waste and require similar effluent limits and monitoring requirements. Regulating these discharge types through the proposed general permit enables the Central Coast Water Board to expedite the processing of permits, simplify the application process for dischargers, apply consistent requirements, better utilize limited staff resources, and avoid the expense and time involved in repetitive public permitting processes for similar types of limited-threat discharges.

Examples of discharges that may be authorized by the proposed general permit include, but are not limited to, discharges from abalone growing facilities, steelhead trout rearing facilities, salmon rearing facilities, marine mammal laboratories, and aquariums.

Changes from Existing Orders

The proposed general permit incorporates the State Water Resources Control Board's (State Water Board's) updated bacteria and toxicity provisions:

- **Updated Bacteria Provisions:** The State Water Resources Control Board adopted updated bacteria provisions² on February 4, 2019. The bacteria provisions apply to fresh, estuarine, and ocean waters for the protection of the primary contact recreation (REC-1) beneficial use. Although the bacteria provisions were released prior to the adoption of R3-2019-0001, they were not effective until after the adoption date, and as a result were not fully reflected in the previous permit. The bacteria provisions establish *Escherichia coli* (*E. coli*) as an indicator of pathogens

¹ Aquaculture facilities as defined in the Code of Federal Regulations (CFR) at Title 40, Part 122.

² The term "bacteria provisions" refer to the State Water Board's adoption of Part 3 of *Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California* (ISWEBE Plan) and through an amendment to *Water Quality Control Plan for Ocean Waters of California* (Ocean Plan). The ISWEBE Plan and Ocean Plan can be accessed from the State Water Board's bacteria objectives webpage at: <https://www.waterboards.ca.gov/bacterialobjectives/>

in freshwater and enterococci as an indicator for ocean waters, saline inland surface waters, enclosed bays, and estuaries. Additionally, the Ocean Plan bacteria provisions amendment retained the fecal coliform objective contained in the existing Ocean Plan.

The incorporation of the bacteria provisions resulted in changes to receiving water limitations:

- The ocean receiving water limitation for total coliform has been removed. Limits for fecal coliform and enterococci are retained from the previous permit.
 - Inland surface waters, enclosed bays, and estuaries where salinity is equal to or less than 1 part per thousand 95 percent or more of the time have a receiving water limitation for *E. coli*, in addition to the fecal coliform receiving water limitation, which is retained from the previous permit. Inland surface waters with salinity levels greater than 1 part per thousand more than 5 percent of the time have a receiving water limitation for enterococci as well as to the fecal coliform receiving water limitation, which is retained from the previous permit.³
- **Updated Toxicity Provisions:** The State Water Board's *State Policy for Water Quality Control: Toxicity Provisions* (Toxicity Provisions)⁴ includes statewide numeric water quality objectives for both acute and chronic toxicity for discharges to inland surface waters, enclosed bays, estuaries, and coastal lagoons. The main goal of the Toxicity Provisions is to implement consistent, statewide water quality objectives for chronic and acute toxicity and adopt a program of implementation to achieve those objectives. The Toxicity Provisions incorporate a statistical approach to analyze test results that provide a transparent determination of toxicity with high confidence in those results and provide an incentive for dischargers to generate valid, high-quality test data. The Toxicity Provisions were adopted by the State Water Board in October 2020 and became effective on May 1, 2023.

The proposed general permit will supersede Order R3-2019-0001. Dischargers currently enrolled in Order R3-2019-0001 will be automatically enrolled in Order R3-2023-0013. A list of dischargers currently enrolled in Orders R3-2019-0001 can be found in Attachment 2.

³ Note that permit provisions related to bacteria receiving water requirements for inland waters with salinity levels greater than 1 part per thousand more than 5 percent of the time were edited by staff after the close of public comment. These edits are found in sections 5.1.1.2 and 5.2.1.2, are non-substantive and serve to clarify which bacteria receiving water objective apply to inland, saline surface waters.

⁴ The Toxicity Provisions can be accessed online at:
https://www.waterboards.ca.gov/water_issues/programs/state_implementation_policy/docs/2021/2021-state-policy-toxicity-provisions.pdf

Human Right to Water

California Water Code section 106.3, subdivision (a) states that it is the policy of the State of California “that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitation purposes.” On January 26, 2017, the Central Coast Water Board adopted Resolution R3-2017-0004, which affirms the realization of the human right to water and the protection of human health as the Central Coast Water Board’s top priorities.

The proposed general permit implements the human right to water by protecting the municipal and domestic supply (MUN) beneficial use of applicable receiving waters within the Central Coast Region.

Environmental Justice

Environmental Justice principles call for the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income in the development, adoption, implementation, and enforcement of all environmental laws, regulations, and policies that affect every community’s natural resources and the places people live, work, play, and learn. The Central Coast Water Board implements regulatory activities and water quality projects in a manner that ensures the fair treatment of all people, including Underrepresented Communities. Underrepresented Communities include but are not limited to DACs, SDACs, Economically Distressed Areas (EDAs), Tribes, Environmentally Disadvantaged Communities (EnvDACs), and members of Fringe Communities.⁵ Furthermore, the Central Coast Water Board is committed to providing all stakeholders the opportunity to participate in the public process and provide meaningful input to decisions that affect their communities.

The proposed general permit will provide consistent and equitable permitting oversight for discharges regardless of project applicant or community status. The Central Coast Water Board is committed to providing all stakeholders the opportunity to participate in the public process and provide meaningful input to decisions that affect their

⁵ Disadvantaged Community: a community with an annual median household income that is less than 80% of the statewide annual median household income (Public Resources Code section 80002(e)); Severely Disadvantaged Community: a community with a median household income of less than 60% of the statewide average (Public Resources Code section 80002(n)); Economically Distressed Area: a municipality with a population of 20,000 persons or less, a rural county, or a reasonably isolated and divisible segment of a larger municipality where the segment of the population is 20,000 persons or less with an annual median household income that is less than 85% of the statewide median household income and with one or more of the following conditions as determined by the department: (1) financial hardship, (2) unemployment rate at least 2% higher than the statewide average, or (3) low population density (Water Code section 79702(k)); Tribes: federally recognized Indian Tribes and California State Indian Tribes listed on the Native American Heritage Commission’s California Tribal Consultation List; EnvDACs: CalEPA designates the top 25 percent scoring census tracts as DACs. Census tracts that score the highest five percent of pollution burden scores but do not have an overall CalEnviroScreen score because of unreliable socioeconomic or health data are also designated as DACs (refer to the CalEnviroScreen 3.0 Mapping Tool or Results Excel Sheet); Fringe Community: communities that do not meet the established DAC, SDAC, and EDA definitions but can show that they score in the top 25 percent of either the Pollution Burden or Population Characteristics score using the CalEnviroScreen 3.0.

communities. To that end, during the enrollment process for new discharges, staff will evaluate disadvantaged community status for any community potentially impacted by the discharge using the California Department of Water Resources Disadvantaged Community (DAC) Mapping Tool.⁶ Communities believed to be affected by proposed discharges will be notified of the discharge and given opportunity to comment. Additionally, the Central Coast Water Board satisfied the outreach requirements pursuant to Water Code sections 189.7 and 13149.2 by directly informing tribal communities throughout the region and organizations that represent disadvantaged communities and environmental justice groups of the opportunity to comment on the proposed general permit.

Climate Change

The Central Coast faces the threat and the effects of climate change for the foreseeable and distant future. To proactively prepare and respond, the Central Coast Water Board has launched the Central Coast Water Board's Climate Action Initiative, which identifies how the Central Coast Water Board's work relates to climate change and prioritizes actions that improve water supply resiliency through water conservation and wastewater reuse and recycling; mitigate for and adapt to sea level rise and increased flooding; improve energy efficiency; and reduce greenhouse gas production. The Climate Action Initiative is consistent with the Governor's Executive Order B-30-15 and the State Water Board's Climate Change Resolution 2017-0012.

The proposed general permit aligns with the Climate Action Initiative's objectives to mitigate risks to water quality associated with climate change. Regulating discharges from aquaculture facilities and aquariums through a general permit enables Central Coast Water Board staff to expedite and simplify the application process for dischargers and better utilize limited staff resources to support high priority projects that improve climate resiliency including water recycling, climate adaption planning and implementation.

COMMENTS

The Central Coast Water Board publicly noticed the proposed general permit from July 12, 2023, through August 14, 2023. The public notice was sent to all current enrollees in the general permit, tribal interests, environmental justice groups, and other persons known to be interested.

No public comments were received.

⁶ The DAC Mapping Tool is used to inform statewide Integrated Water Resources Management (IRWM), Sustainable Groundwater Monitoring Act (SGMA), and California Water Plan implementation efforts and can be found at the following website: <https://gis.water.ca.gov/app/dacs/>. The tool defines a disadvantaged community as a census block with an annual median household income that is less than 80% of the statewide annual median income.

CONCLUSION

Proposed Order R3-2023-0013 updates existing receiving water limitations and incorporates state and federal guidance and regulations, including new provisions associated with aquatic toxicity, and requires a monitoring and reporting program sufficient to demonstrate compliance with the proposed order. The proposed general permit complies with the California Water Code and the Clean Water Act.

RECOMMENDATION

Adopt Order R3-2023-0013 as proposed.

ATTACHMENTS

1. Proposed Waste Discharge Requirements Order R3-2023-0013, *General Permit for Discharges from Aquaculture Facilities and Aquariums* (NPDES CA993003)
2. List and Map of Dischargers currently enrolled in Order R3-2019-0001, *General Permit for Discharges from Aquaculture Facilities and Aquariums* (NPDES No. CA993003)