

**REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

EXECUTIVE OFFICER SUMMARY REPORT

May 8, 2019

ITEM NO. 4

SUBJECT

Consideration of Tentative Order No. R9-2019-0005 *Conditional Waivers of Waste Discharge Requirements for Low Threat Discharges in the San Diego Region* (Tentative Order No. R9-2019-0005) (Sherrie Komeilyan)

STAFF RECOMMENDATION

Adoption of Tentative Order No. R9-2019-0005 (**Supporting Document 1**) is recommended.

KEY ISSUES

Tentative Order No. R9-2019-0005, if adopted, will (1) re-issue and revise eleven existing waivers that will expire in June 2019, (2) streamline the waiver enrollment process, (3) specify animal feeding operation size definitions that are consistent with federal regulations, and (4) conserve staff resources that would otherwise be required to develop individual waste discharge requirements (WDRs) or individual waivers of WDRs for low threat discharges in the San Diego Region.

PRACTICAL VISION

The Tentative Order implements the goals of the Practical Vision as follows:

- Strategizing for Healthy Waters - Tentative Order No. R9-2019-0005 will continue to provide protections for groundwater and surface water quality while unburdening the public from over-regulation of low threat discharges.
- Proactive Public Outreach and Communication - During the development of Tentative Order No. R9-2019-0005, San Diego Water Board staff engaged in proactive stakeholder outreach and communication efforts including: updating and maintenance of conditional waivers web page to keep stakeholders and the public informed about the waiver development process; hosting an informal stakeholder meeting, initiating a 30 day public comment period (**Supporting Document 2**), and developing responses to written comments (**Supporting Document 3**).
- Sustainable Local Water Supply - Tentative Order No. R9-2019-0005 will continue to streamline the approval process for permanent recycled water projects and gray-water projects, thereby reducing the Region's use of potable imported water.

DISCUSSION

Section 13269 of the California Water Code (Water Code) authorizes the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) to waive certain discharge requirements found in the Water Code. For specific waste discharges or specific types of discharges, the San Diego Water Board may issue a conditional waiver provided the waiver is consistent with the *Water Quality Control Plan for the San Diego Basin (9)* (Basin Plan) and is in the public interest. The San Diego Water Board may waive the requirements for a discharger to file a report of waste discharge (ROWD)¹ or obtain WDRs,² or both.

In June 2014, the San Diego Water Board approved a Negative Declaration supporting the conclusion that the conditional waivers in Order No. R9-2014-0041 would not have a significant impact on the environment. The proposed revisions and changes in Tentative Order No. R9-2019-0005 do not significantly modify the impacts associated with the project as previously considered, and therefore the environmental documents for the project (Negative Declaration and Initial Study and Environmental Checklist) remain applicable.

The conditional waivers (waivers) in Tentative Order No. R9-2019-0005 address discharges expected to pose a low threat to water quality, provided eligible dischargers comply with waiver conditions. The Technical Report provides the supporting rationale for the implementation of the waivers (**Supporting Document 4**).

Changes were made to the existing waivers (Order No. R9-2014-0041) in response to the public/stakeholder process. One comment letter was received regarding Tentative Order No. R9-2019-0005 from CalTrans (**Supporting Document 5**) and the Response to Comments Report is provided in Appendix C to the Technical Report (**Supporting Document 3**).

Noteworthy public comments concerning Waiver No. 9 - *Discharge/Disposal to Land of Solid Wastes* included the following:

- *A request for a regional background arsenic concentration higher than current Waiver No. 9 Tier 1 and 2 Soil Screening Levels to be consistent with California Department of Toxic Substances Control levels.* While the San Diego Water Board understands this concern, the Tier 1 and 2 soil screening levels were not modified, because these levels are intended to address discharges expected to pose a low threat to water quality. The use of the screening levels is appropriate to characterize metals in soil and to determine whether pollutant concentrations in the soil will result in impacts to human health and the environment. The use of Tier 1 and 2 soil screening levels is intended to be conservative and allow only low threat discharges when enrolled in the waivers.
- *Concerns that the Tier 2 Soil Screening Level for arsenic is well below the level needed to protect human health, and therefore site cleanups and disposal of affected soil will be more costly and time-consuming.* In developing the soil screening levels, the San Diego Water Board, considered various environmental screening levels, background concentrations, and preliminary remediation goals that consider human health and water quality impacts. The San Diego Water Board believes that the screening levels are

¹ A report of waste discharge is an application submitted by the Discharger to receive waste discharge requirements (i.e., a permit) issued by the San Diego Water Board.

² Water Code sections 13260(a) and (c), 13263(a), and 13264(a).

appropriate and use of these screening levels to evaluate the pollutants in the soil will not result in additional costs for the discharger.

- *A request for a new Tier 3 threshold for transportation facilities with access-controlled environments.* The purpose of the conditional waivers is to provide regulatory oversight in an efficient manner while effectively minimizing or eliminating the discharge of pollutants for a specific type of discharge, not a specific type of facility. The conditional waivers are applied to low threat discharges and are not intended to be site-specific. If the discharger determines that site-specific background values are more appropriate, the San Diego Water Board can develop and adopt individual Waste Discharge Requirements for each site.

SIGNIFICANT CHANGES

The following are the significant differences between the Tentative Order (**Supporting Document 1**) and the existing waivers in Order No. R9-2014-0041:

1. The Tentative Order removes duplicative requirements for discharges to land of recycled water from short-term projects currently regulated under the statewide General Order WQ 2016-0068-DDW, *Water Reclamation Requirements for Recycled Water Use (Order WQ 2016-0068-DDW)*.
2. The Tentative Order removes former Waiver No. 5 *Discharges of Waste to Land at Composting Facilities*. These sites are now regulated under the statewide General Order WQ-2015-0121-DWQ, *General Waste Discharge Requirements for Composting Operations (Order WQ-2015-0121-DWQ)*.
3. The Tentative Order revises the Animal Operations Waiver (Waiver No. 6, formerly Waiver No. 7) to provide consistency with federal regulations in defining large, medium, and small animal feeding operations.
4. The Tentative Order revises the Solid Waste Waiver (Waiver No. 9, formerly Waiver No. 10) to allow for the reuse of soils containing non-leachable concentrations of contaminants, provided the discharge complies with the general and specific conditions specified in the waiver for Discharges/Disposal of Solid Wastes to Land. Waiver No. 9 has also been revised to allow the reuse of soils containing non-soluble concentrations of California Code of Regulations (Calif. Code Regs.) title 22 metals, provided the discharge complies with the general and specific conditions specified in the waiver for Discharges/Disposal of Solid Wastes to Land.
5. In addition, the Tentative Order revises Table Nos. 2 and 3 in Waiver No. 9 to include the use of values from the San Francisco Bay Regional Water Quality Control Board Environmental Screening Levels (ESLs) in the development of the Tier 1 and Tier 2 Soil Screening Levels. Direct exposure ESLs were used as guidance in the development of the Tier 1 and Tier 2 Soil Screening Levels.

PUBLIC NOTICE

A copy of the Tentative Order, along with a Notice of Availability and Notice of Public Hearing and Opportunity to Comment, were posted on the San Diego Water Board website³ on August 28, 2018. Additionally, the Notice of Public Hearing was sent via the State Board's e-mail subscription system (LYRIS) to stakeholders subscribed to the Conditional Waiver and Board Meetings LYRIS lists. Copies of the public notices are in **Supporting Document 2**. These actions satisfy the public notification requirements of Water Code, division 7, section 13167.5 for a 30-day notice, and Calif. Code Regs. title 27, section 21730(b) for a 30-day public notice.

SUPPORTING DOCUMENTS

1. Tentative Order No. R9-2019-0005, *Conditional Waivers of Waste Discharge Requirements for Low Threat Discharges in the San Diego Region*
2. Notice of Public Hearing
3. Response to Comments Report
4. Technical Report and Appendices
5. Public Comment Letter

³ https://www.waterboards.ca.gov/sandiego/board_decisions/tentative_orders/