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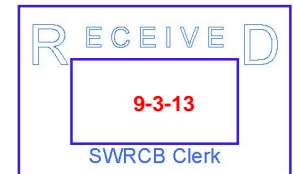
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Central Coast Regional Water Quality Control Board

Via Electronic Mail
commentletters@waterboards.ca.gov

DATE: September 3, 2013

TO: Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board



FROM: 
Kenneth A. Harris Jr.
Executive Officer
CENTRAL COAST REGIONAL WATER QUALITY CONTROL BOARD

**SUBJECT: COMMENTS TO SWRCB/OCC FILE A-2209(a)-(e) – SEPTEMBER 10, 2013
BOARD MEETING**

The Central Coast Regional Water Quality Control Board (Central Coast Water Board) appreciates the careful review by the State Water Resources Control Board (State Water Board) of the Central Coast Water Board's Order No. R3-2012-0011(Agricultural Order) and its associated Monitoring and Reporting Program.

We have a few comments on the Draft Order issued on August 20, 2013 related specifically to the revisions made since June 6, 2013.

Compliance with Water Quality Standards

We appreciate and agree with some of the changes regarding defining compliance, but the Draft Order seems to have two competing definitions.

We agree with the following statement in the Draft Order, page 15:

As stated in the NPS Policy, management practice implementation is not a substitute for compliance with water quality requirements. If the project is not effective in achieving water quality standards, additional management practices by individual Dischargers or the third party group will be necessary.

JEFFREY S. YOUNG, CHAIR | KENNETH A. HARRIS JR., EXECUTIVE OFFICER

However, the above seems to conflict with the following statement on page 24:

We will add a new provision to the Order to make explicit the Central Coast Water Board's intent that implementation of increasingly more effective management practices in an iterative manner constitutes compliance with Provisions 22 -23 and Provisions 84 - 87 of the Agricultural Order... in this permit term, it is appropriate to attribute compliance where a discharger is engaged in a conscientious effort to implement appropriate controls.

We disagree that compliance can be defined as a conscientious effort or a good faith effort. It is appropriate and reasonable to consider conscientious and good faith efforts in determining what follow-up action, if any, the Central Coast Water Board may take. Considering such efforts is consistent with how the Water Boards implement all programs, and is consistent with the Enforcement Policy. However, taking a discharger's efforts into consideration is different than predetermining that such efforts are the same as compliance. The bar here would be so low that almost any effort could be considered good faith, and therefore in compliance. We know of no other situation within the Water Boards' jurisdiction where such a standard is applied. And as stated in the NPS Policy, "management practice implementation is not a substitute for compliance with water quality standards," yet the proposed language would say just that; in fact it would go even further. It would allow "conscientious efforts to implement" management practices to be a substitute for compliance. In contrast, the NPS Policy does not even allow implementation of management practices, without limitation, to be a substitute for compliance. This approach is especially not appropriate considering the documented severity of water quality degradation and threat to human health caused by irrigated agricultural discharges. With the other revisions and clarifications provided by the State Water Board in its Draft Order, dischargers are clearly protected from unreasonable enforcement of water quality standards.

Page 24 of the Draft Order states the following:

We will add a new provision to the Order to make explicit the Central Coast Water Board's intent that implementation of increasingly more effective management practices in an iterative manner constitutes compliance with Provisions 22-23 and Provisions 84-87 of the Agricultural Order. While agricultural regulatory programs must in the long-term achieve actual quantifiable reductions in pollutant discharges in order to protect and restore water quality, in this permit term, it is appropriate to attribute compliance where a discharger is engaged in a conscientious effort to implement appropriate controls.

We request that you revise this text as follows:

We will add a new provision to the Order to make explicit the Central Coast Water Board's intent that implementation of increasingly more effective management practices in an iterative manner as necessary constitutes compliance with Provisions 22-23 and Provisions 84-87 of the Agricultural Order. While agricultural regulatory programs must in the long-term achieve actual quantifiable reductions in pollutant discharges in order to protect and restore water quality, in this permit term, it is appropriate to attribute determine compliance where a discharger is engaged in a ~~conscientious effort~~ process to implement ~~appropriate~~ effective controls.

Page 24 goes on to state the following, which we agree with:

We will also edit Provision 22 to clarify that the appropriate requirement is for dischargers to not "cause or contribute to exceedances of water quality standards," rather than "comply with water quality standards."

Footnotes 64 and 65 on page 24 state, which we also agree with:

⁶⁴ *The approach taken in the Agricultural Order to achieving compliance with the Central Coast Basin Plan requirements over time through management practice implementation is consistent with the State Water Board's Non -Point Source Policy (pp. 12 -13) and consistent with the public interest in addressing a water quality issue that has few immediate and easy solutions.*

⁶⁵ *Although we have not revised every reference to compliance with water quality standards in the Agricultural Order, in all appropriate places, we interpret the requirement to "comply" with water quality standards to mean "not cause or contribute to exceedances of" water quality standards.*

The first footnote acknowledges the iterative process but does not equate it to compliance; rather, the iterative process is appropriately defined as an approach to achieve compliance. The second footnote properly defines compliance in terms of water quality standards.

Pages 24 and 25 state the following, which we agree with:

We shall amend Provision 22 as follows:

22. Dischargers shall not cause or contribute to exceedances of applicable water quality standards, as defined in Attachment A, shall protect the beneficial uses of waters of the State and shall prevent nuisance as defined in Water Code section 13050.

We shall add Provision 87A as follows:

87A. To comply with Provisions 22, 23, and 84 -87 of this Order, Dischargers must (1) implement management practices that prevent or reduce discharges of waste that are causing or contributing to exceedances of water quality standards; and (2) to the extent practice effectiveness evaluation or reporting, monitoring data, or inspections indicate that the implemented management practices have not been effective in preventing the discharges from causing or contributing to exceedances of water quality standards, the Discharger must implement modified management practices.

Finally, page 68, #5, states:

5. A new provision is added to the Agricultural Order to make clear the Central Coast Water Board's intent that implementation of increasingly more effective management practices in an iterative manner constitutes compliance with the provisions requiring compliance with water quality standards and Central Coast Basin Plan provisions, as

well as the provisions requiring dischargers to effectively control certain pollutant discharges.

We disagree with this statement. This statement is not consistent with the new Provision 87A, quoted above. This statement should be replaced with the actual language of the new Provision 87A.

Individual Surface Water Discharge Monitoring

We recommend that the State Water Board modify Condition 72 (on page 29 of Order No. R3-2012-0011 in Part F. Additional Conditions that Apply to Tier 3 Dischargers) as follows:

72. By ~~October 1, 2013~~ December 1, 2013, Tier 3 Dischargers must initiate individual surface water discharge monitoring and reporting programs

This modification will provide additional time for Tier 3 growers to amend Sampling and Analysis Plans and Quality Assurance Project Plans for consistency with proposed revisions in the State Water Board's Draft Order to Part 5, Section A, of the Tier 3 MRP related to individual surface water discharge monitoring. This change will also provide additional time for the Central Coast Water Board Executive Officer to approve the revised plans.

For consistency throughout the Order and MRP, this change should also be made at:

1. Tier 3 MRP, Part 5, Section A, 9.
2. Order, Part M, Table 3. Additional Time Schedule for Compliance with Conditions Tier 2 and Tier 3 Dischargers, under bold heading, "**only Tier 3;**" in first row.
3. Order, Part M, Table 6. Tier 3 – time Schedule for Key Monitoring and Reporting Requirements, seventh row.

Conclusion

Protecting water quality in agricultural areas is among the highest priorities of the Central Coast Water Board. Many growers are already successfully implementing the requirements in the Agricultural Order. The results of required monitoring and reporting are already providing the Board and growers with information necessary to identify water quality issues and prioritize follow-up actions. These efforts are significant and will result in real water quality improvement.

The Central Coast Water Board and staff have worked cooperatively with growers and their industry representatives to implement the Agricultural Order and its associated Monitoring and Reporting Program. The Central Coast Water Board and staff will continue to work cooperatively with growers and their industry representatives, as well as with other stakeholders, to implement any revisions to the Agricultural Order adopted by the State Water Board to resolve the petitions to the Agricultural Order.

In summary, we offer these recommendations with the intent that the final State Water Board Order will allow the Central Coast Water Board to adequately define compliance, require sufficient monitoring and reporting to respond to the severity of water quality conditions in the Central Coast region, and ensure the efficient and effective implementation of the Agricultural Order to protect beneficial uses.

The Central Coast Water Board sincerely appreciates the priority the State Water Board has given to the critically important water quality issues in the Central Coast region, and respectfully requests that you consider these recommendations.

cc: **[Via Email Only]**

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