

North Coast Regional Water Quality Control Board

Order No. R1-2016-0045

(Renewal of Order No. R1-2012-0003)

Conditional Waiver of Waste Discharge Requirements
For
Existing Cow Dairies
in the North Coast Region

The California Regional Water Quality Control Board, North Coast Region (hereinafter Regional Water Board) finds that:

1. On January 19, 2012, the Regional Water Board adopted General NPDES Permit (Order No. R1-2012-0001), General Waste Discharge Requirements (Order No. R1-2012-0002), and Conditional Waiver of Waste Discharge Requirements (Order No. R1-2012-0003) as a comprehensive regulatory program for waste discharges from existing dairies and concentrated animal feeding operations.
2. The Conditional Waiver of Waste Discharge Requirements (2012 Conditional Waiver) is scheduled to expire on January 18, 2017, unless rescinded or renewed. The General NPDES Permit is scheduled to expire on March 31, 2017. The General Waste Discharge Requirements (GWDRs) do not expire but the Regional Water Board can review, reissue, or rescind the GWDRs when necessary.
3. As of November, 2016, there are 120 enrollees under the Conditional Waiver, three enrollees under the GWDRs, and no enrollee under the General NPDES Permit.
4. A renewal of the 2012 Conditional Waiver is necessary and appropriate to continue the coverage of the existing dairies to provide additional time for the Regional Water Board staff to update the regulatory program for the Regional Water Board's consideration. The renewal of the 2012 Conditional Waiver and Monitoring and Reporting Program (MRP) retains all of the provisions of the 2012 Conditional Waiver, which include terms and conditions to protect water quality.
5. Pursuant to California Water Code (CWC) section 13269, waivers of waste discharge requirements shall not exceed five (5) years in duration. Renewal would maintain regulatory continuum and allow the Regional Water Board the time and the process to establish new waste discharge requirements. The renewal of the 2012 Conditional Waiver is also in the public interest because:
 - A. It complies with CWC section 13269 and other applicable laws;
 - B. It requires compliance with water quality standards for discharges to surface water and groundwater;
 - C. It includes conditions that are intended to reduce and prevent pollution and nuisance and protect the beneficial uses of waters of the state;

- D. It requires compliance with the 2012 Conditional Waiver MRP including visual inspections, annual surface water sampling, annual report submittal with photos of best management practices, and noncompliance reporting if discharge violations occur; and
- E. It requires a Water Quality Plan (MRP-Appendix 1) to help ensure that the dairy is designed, constructed, operated and maintained so that nutrients and wastes generated are managed to prevent conditions of nuisance or adverse impacts to groundwater and surface water.

For these reasons, a renewal of the 2012 Conditional Waiver is in the public interest and consistent with the Water Quality Control Plan for the North Coast Region (Basin Plan).

6. Order R1-2016-0045 serves as a renewal of Order No. R1-2012-0003 Conditional Waiver of Waste Discharge Requirements for Existing Cow Dairies in the North Coast Region (renewed Conditional Waiver) that meets the requirements established in the 2012 Conditional Waiver. For purposes of this renewed Conditional Waiver, "existing dairies" are defined as cow dairies that were constructed and operated as of the effective date of the 2012 Conditional Waiver, and which have subsequently undergone no expansion in size of their physical facilities. This renewed Conditional Waiver does not cover dairies that expand the size of their physical facilities beyond the dairy's maximum capacity at the time of adoption of the 2012 Conditional Waiver. Also, this renewed Conditional Waiver does not cover facilities that were not operating as dairies at the time of adoption of the 2012 Waiver. New or expanding dairies must apply for an individual waste discharge permit or individual waiver of waste discharge requirements from the Regional Water Board.
7. Consistent with CWC sections 13267 and 13269, this renewed Conditional Waiver requires compliance with the requirements set forth in MRP No. R1-2012-0003 included in the 2012 Conditional Waiver.
8. The MRP requirements included in this renewed Conditional Waiver are necessary to determine compliance with the conditions of the renewed Conditional Waiver and to determine the discharge impacts, if any, on groundwater and surface water. As such, the burden, including costs, of this monitoring bears a reasonable relationship to the need for that information and the benefits to be obtained from that information.
9. This renewed Conditional Waiver is consistent with the antidegradation provisions of State Water Board Resolution No. 68-16. Any degradation to water quality as a result of the renewal is not anticipated. The renewed Conditional Waiver requires the Discharger to manage waste in a manner that shall not cause surface water or groundwater to be degraded, to exceed water quality objectives, to unreasonably affect beneficial uses, or to cause a condition of pollution or nuisance. Compliance

with the terms of the renewed Conditional Waiver should result in an improvement in water quality. The required Water Quality Plan is intended to help ensure that the dairy is designed, constructed, operated and maintained so that nutrients and wastes generated are managed to prevent conditions of nuisance or adverse impacts to groundwater and surface water. The renewed Conditional Waiver is necessary to support economic and social needs of North Coast communities, provide continued water quality protections while the GWDR or another permit is developed, and is considered to be of maximum benefit to the people of the state.

10. In accordance with the California Environmental Quality Act (California Public Resources Code, section 21000 et seq.) (CEQA), the renewed Conditional Waiver is a “project” and the Regional Water Board is the lead agency responsible for approving that project. A project is exempt from CEQA if “*it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.*” (Cal. Code. Regs., tit.14, § 15061(b)(3)). The renewed Conditional Waiver will not have any effect on the environment because the environmental baseline, against which the Regional Water Board considers the environmental impacts of a project, includes the protections provided by the 2012 Conditional Waiver. There is no possibility that the project will have a significant effect on the environment, and it is, therefore, exempt from CEQA.
11. The project is categorically exempt from CEQA (Cal. Code. Regs, tit. 14, § 15301), since it involves no new facilities and no expansion of use of existing facilities. This renewed Conditional Waiver involves the continued permit coverage of existing dairy facilities, which are defined as cow dairies that were constructed and operated as of January 19, 2012, and which have subsequently undergone no expansion in size of their physical facilities. Pursuant to California Code of Regulations, title 14, section 15301, this action to adopt a waiver for existing dairies is exempt from the provisions of CEQA under Exemption 1 for “Existing Facilities.” California Code of Regulations, title 14, section 15301 applies to “*...the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency’s determination...*”
12. Two CEQA categorical exemptions are applicable to this action:
 - A. CEQA Guideline, Exemption 2 for Replacement of Existing Structures (Cal. Code. Regs., tit.14, § 15302) exempts “*replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced.*” Consistent with the categorical exemption for Replacement of Existing Structures, this renewed Conditional Waiver may require currently permitted dairy facilities to replace or reconstruct ponds or other structures on

the facility to ensure proper function in compliance with this renewed Conditional Waiver.

- B. CEQA Guideline, Exemption 4 for Minor Alterations (Cal. Code. Regs., tit. 14, § 15304) exempts “*minor public or private alterations in the condition of land, water, and/or vegetation which do not involve removal of healthy, mature, scenic trees except for forestry and agricultural purposes...*” Consistent with the categorical exemption for Minor Alterations, this renewed Conditional Waiver may require currently permitted dairy facilities to make improvements to their facilities that will result in minor alterations to land, water, and/or vegetation.
13. California Food and Agricultural Code, section 33487, exempts state agencies from any requirement to prepare a CEQA environmental impact report for CAFOs (Concentrated Animal Feeding Operation) under the following circumstances:
- A. When the CAFO will be constructed and operated in accordance with the minimum standards in Chapter 5 of the California Food and Agricultural Code;
 - B. Where the applicable local agencies have completed all necessary reviews and approvals including that required by CEQA; and
 - C. Where a permit for construction was issued by a local agency on or after the effective date of California Food and Agricultural Code, section 33487, and construction has begun.
14. The Regional Water Board has notified interested parties of its intent to provide a renewal of Order No. R1-2012-0003 until adoption of new waste discharge requirements. The Regional Water Board, in a public hearing on December 15, 2016, heard and considered comments pertaining to this renewed Conditional Waiver. Pursuant to CWC, section 13269, waivers of waste discharge requirements shall not exceed five (5) years in duration. This renewed Conditional Waiver expires on December 14, 2021, unless it is rescinded or superseded by new waste discharge requirements duly adopted by the Regional Water Board before the expiration date.

IT IS HEREBY ORDERED, that Order No. R1-2012-0003, *Conditional Waiver of Waste Discharge Requirements for Existing Dairies the North Coast Region* and the associated MRP (MRP No. R1-2012-0003) is renewed. The term of the renewed Conditional Waiver is for five years. This renewed Conditional Waiver (R1-2016-0045) expires on December 14, 2021, unless rescinded, renewed, or superseded by new waste discharge requirements duly adopted by the Regional Water Board before the expiration date.

I, Matthias St. John, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, North Coast Region, on December 15, 2016.

Matthias St. John
Executive Officer

APPENDICES:

1. Conditional Waiver of Waste Discharge Requirements for Existing Dairies in the North Coast Region, Order No. R1-2012-0003
2. Monitoring and Reporting Program Order No. R1-2012-0003