

EXECUTIVE OFFICER SUMMARY REPORT
March 11, 2009

ITEM: 12

SUBJECT: Status report: Conditional Waiver for Agriculture and Nursery Operations -The Regional Board staff will provide an overview of the Agriculture and Nursery Operations Waiver that was adopted on October 10, 2007 as part of Order No. R9-2007-0104. The overview will include a discussion of the requirements and implications of the waiver, Regional Board implementation efforts to date, and projections of efforts to come. Public comments are encouraged. The Regional Board will not be taking action on this item. (Peter Peuron)

PURPOSE: To provide an understanding of the current state of the implementation of the Conditional Waiver for Agriculture and Nursery Operations, including what the waiver requires, the schedule for waiver implementation and where we are in terms of achieving compliance with the waiver.

PUBLIC NOTICE: Information about the update was provided in the agenda mailing and posted on-line.

DISCUSSION: Ton October 10, 2007, the San Diego Regional Water Quality Control Board adopted Resolution No. R9-2007-0104 which includes a total of 11 categories of facilities that are eligible for a waiver of waste discharge requirements (WDRs). Conditional Waiver No. 4 applies to waste discharges related to irrigated agriculture and nurseries in the San Diego Region. On November 4, 2008, the State Water Resources Control Board adopted Resolution No. 2008-0081 which slightly amended the version of Resolution No. R9-2007-0104 adopted by the Regional Board. On February 3, 2009, the State Office of Administrative Law approved Resolution No. R9-2007-0104. The amendment focused on eliminating specific prescriptive management practices for production and storage of compost. On February 3, 2009, the State Office of Administrative Law approved Resolution No. R9-2007-0104.

Regional boards in California regulate waste discharges using three mechanisms – Waste Discharge Requirements

[that may include National Pollutant Discharge Elimination System (NPDES) requirements], Conditional Waivers of WDRs, and Basin Plan Prohibitions. Basin Plan Prohibitions are not an appropriate means of regulating agricultural wastes because they are intended to categorically disallow discharges as opposed to controlling or limiting discharges. WDRs are the primary permitting tool used to control waste discharges in California. Many point sources of pollution, including municipal, industrial and construction-related storm water discharges are regulated as WDRs which implement NPDES requirements. However, irrigated agriculture is exempted from point source regulation.

Under the California Water Code, regional boards can waive the requirement for WDRs that are not subject to NPDES requirements. As the result of legislation passed in 1999 (Senate Bill 390) all waivers must now specify conditions which may include conditions for enrollment. Conditional waivers allow dischargers to enroll under a waiver instead of having to file a Report of Waste Discharge application (RoWD) and dischargers subject to conditional waivers can carry on with their business practices (i.e., and their discharge practices) without having to apply for and obtain a permit (i.e., WDRs) so long as the conditions of the waiver are satisfied. By enrolling in the waiver, dischargers certify that they are employing management practices to reduce pollutant loads to minimize or eliminate pollution associated with growing/irrigation operations. Conditional waivers therefore, are intended to complement existing efforts to clean up impaired surface waters, including State and local storm water programs and TMDL programs. In the San Diego Region, there are nearly 100 impaired water body segments, many of them with impairment with pollutants associated with agriculture such as nitrogen, phosphorus, pesticides and Total Dissolved Solids (salts).

Conditional Waiver No. 4 requires growing operations that utilize irrigation to implement Best Management Practices (BMPs) to reduce or eliminate discharges of agricultural waste which typically include fertilizers, pesticides, salts (Total Dissolved Solids), and sediment. Other major requirements of the waiver include:

1. Enrollment under the waiver by January 1, 2011
2. Submittal of a plan to perform water quality monitoring by January 1, 2012.
3. Submittal of a monitoring report by December 31, 2012.

To enroll, growers must submit a Notice of Intent. Any commercial growing operation that does not enroll is subject to enforcement action including monetary penalties and requirements to file a RoWD and obtain WDRs. Growers may enroll as members of a monitoring group. By enrolling in a monitoring group, the costs of preparing monitoring plans, conducting sampling, analyzing samples and preparing monitoring reports are shared among group members (which can number in the thousands) resulting in significant cost savings over enrollment as an individual.

According to the San Diego Agriculture Commission there are about 6,000 agricultural operations in San Diego County. The number of operations subject to the waiver is even larger because this number does not include growers in the southern sections of Orange and Riverside Counties that are part of the San Diego Region. There is, therefore, a critical need to create awareness of the requirements of the waiver among the many growers.

Since the waiver was adopted by the Regional Board, staff have given presentations regarding waiver requirements at four workshops and one municipal water district hearing. Regional Board staff have developed a list of growers who are subject to the waiver (based on databases which we obtained from other agencies such as the County Agriculture Commission and the California Department of Food and Agriculture). Recently, we began mailing out a notification letter which informs growers of their obligations under the waiver. Given the large numbers of operators that must be contacted, the process of sending out these notifications will be a protracted one. The notification document has been posted on the Regional Board website. Staff also continue to provide guidance to numerous growers who have been calling in with questions and we continue to work with the San Diego Farm Bureau and other organizations who are currently forming monitoring groups.

LEGAL CONCERNS:

No legal concerns.

SUPPORTING DOCUMENTS:

- 1: Resolution R9-2007-0104
- 2: Resolution 2008-0081
- 3: Ag Waiver Notification Letter

RECOMMENDATION:

The Board will not be taking action on this item.