

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTER VALLEY REGION

RESOLUTION R5-2020-0002
WAIVER OF WASTE DISCHARGE REQUIREMENTS

FOR

SMALL FOOD PROCESSORS, WINERIES AND
RELATED AGRICULTURAL PROCESSORS
WITHIN THE CENTRAL VALLEY REGION

The California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board) finds that:

1. Water Code section 13260(a) requires that any person discharging waste or proposing to discharge waste within any region that could affect the quality of the waters of the State, other than into a community sewer system, shall file with the appropriate Regional Water Board a report of waste discharge (RWD) containing such information and data as may be required by that Regional Water Board.
2. Pursuant to Water Code section 13263, the Central Valley Water Board has a statutory obligation to prescribe waste discharge requirements (WDRs) for each discharge of waste, except where the Central Valley Water Board finds that a waiver of WDRs for a specific type of discharge is not against the public interest as described in Water Code section 13269.
3. Water Code sections 13260(b) and 13269 authorize the Central Valley Water Board to waive WDRs and RWDs, respectively, for specific types of discharge where such a waiver is not against the public interest, is conditional, and may be terminated by the Board at any time.
4. In 1999, Water Code section 13269 was amended by the California Legislature. Following this amendment, any waiver must automatically expire after five years, unless the Board that issued the waiver reviews the terms of the waiver at a public hearing and determines that the waiver is consistent with any applicable state or regional water quality control plan and is in the public interest.
5. On 26 March 1982, the Central Valley Water Board adopted Resolution 82-036, which waived WDRs for 23 categories of discharges, including "food processing wastes spread on land." In adopting this waiver, the Central Valley Water Board acted as lead agency under the California Environmental Quality Act (CEQA), Public Resources Code section 21000 et seq. In accordance with CEQA, the Board adopted a Negative Declaration dated 23 December 1981, determining that the adoption of Resolution 82-036 would not result in a significant environmental impact.

6. On 11 July 2003, the Central Valley Water Board adopted Resolution R5-2003-0106 (*Waiver of WDRs for Small Food Processors, Including Wineries, Within the Central Valley Region*), which waived WDRs for certain small food processors and wineries. The 2003 Waiver established a streamlined permitting process for numerous small food processing facilities and wineries. Pursuant to Water Code section 13269, the 2003 Waiver expired on 11 July 2008.
7. On 8 October 2009, the Central Valley Water Board adopted the similarly-titled Resolution R5-2009-0097, which effectively renewed the prior waiver of WDRs for small food processors and wineries. Pursuant to Water Code section 13269, the 2009 Waiver expired on 8 October 2014.
8. On 5 February 2015, the Central Valley Water Board adopted the similarly-titled Resolution R5-2015-0005, which effectively renewed the prior waiver of WDRs for small food processors and wineries. The 2015 Waiver introduced a tiered regulatory approach that matches the fee, permit application complexity, discharge requirements, and monitoring requirements to the size and threat of the discharge. Pursuant to Water Code section 13269, the 2015 Waiver expired on 5 February 2020.
9. The Central Valley Water Board, in compliance with the Water Code, has reviewed the waiver previously issued under Resolution R5-2015-0005, and has determined that a renewed waiver for the same class of discharges to land: poses a low threat to the quality of waters of the State; is consistent with all applicable state or regional water quality control plans; and thus should be renewed.
10. The activities subject to this Resolution are those that result in the generation and disposal of waste, as defined in Water Code section 13050(d). Due to the nature of the waste, such discharges could affect the quality of waters of the state.
11. Apart from a limited number of pistachio and/or walnut hullers whose cases were referred to the Board by local agencies, the nut hulling industry has not previously been regulated by the Board under WDRs or waivers of WDRs. The Board recognizes that nut hulling operations generally pose a relatively minor threat to water quality, however the Board does not have sufficient information at this time to conclude that the full range of waste management practices utilized by nut hullers is fully protective of water quality. The Board will continue to work with the nut industry to evaluate the effectiveness of waste reduction efforts. Nut hullers whose practices meet the conditions of this Waiver may apply for coverage under this Waiver or submit a RWD for coverage under site-specific WDRs or applicable General WDRs if one becomes available.

12. The discharges of waste covered by this Resolution, when carried out in compliance with the conditions prescribed herein, poses a limited threat to waters of the state, but may nevertheless affect the quality of the waters of the state. If not properly managed, waste constituents discharged to land may migrate to groundwater or commingle with storm water runoff into surface water and affect water quality and its beneficial uses.
13. Salinity in discharges from facilities regulated by this Resolution has been occurring since before and after the initial 1982 waiver. This Resolution continues to regulate the salinity of those discharges.
14. On 31 May 2018, the Central Valley Water Board adopted amendments to both the Water Quality Control Plan for the Tulare Lake Basin, and the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins (collectively, Basin Plans). These amendments incorporated new programs for addressing ongoing salt and nitrate accumulation in the Central Valley. On 16 October 2019, the State Water Resources Control Board (State Water Board) adopted a resolution approving the Basin Plan amendments with directions for specific revisions within one year of Office of Administrative Law approval.

These programs once effective, could change how the Central Valley Water Board permits discharges of salt and nitrate. The Salinity Control Program currently being developed would subject dischargers that do not meet stringent salinity numeric values (to protect agricultural uses, a monthly average electrical conductivity [EC] of 700 $\mu\text{S}/\text{cm}$; to protect municipal and domestic uses, an annual average EC of 900 $\mu\text{S}/\text{cm}$) to performance-based salinity requirements, and would require these dischargers to participate in a basin-wide Prioritization and Optimization Study to develop a long-term strategy for addressing salinity accumulation in the Central Valley.

The level of participation required of dischargers whose discharges do not meet stringent salinity requirements will vary based on factors such as the amount of salinity in the discharge, local conditions, and type of discharge. The Central Valley Water Board anticipates that the Salt and Nitrate Control Program initiative will result in regulatory changes that will be implemented through conditional prohibitions and modifications to many WDRs region wide. More information regarding this regulatory planning process can be found on the Central Valley Water Board [CV-SALTS website](https://www.waterboards.ca.gov/centralvalley/water_issues/salinity/) (https://www.waterboards.ca.gov/centralvalley/water_issues/salinity/).

15. Because discharges of waste in the manner described in this Resolution could affect the quality of the waters of the state, such discharges are subject to Water Code sections 13260 and 13263.

16. The Board's waiver of WDRs for discharges that will cause no or insignificant impairment to water quality and that pose little risk of creating a nuisance condition is not against the public interest, because this action will reduce the operating cost of regulated facilities that produce innocuous or small amounts of waste, are protective of the environment, and allow Central Valley Water Board staff to direct resources towards addressing waste discharges that have significant potential to degrade water quality or create nuisance conditions.

17. Water Code section 13269, subdivisions (a)(2)-(3) provide in pertinent part as follows:

Monitoring requirements shall be designed to support the development and implementation of the waiver program, including, but not limited to, verifying the adequacy and effectiveness of the waiver's conditions. In establishing monitoring requirements, the regional board may consider the volume, duration, frequency, and constituents of the discharge; the extent and type of existing monitoring activities, including, but not limited to, existing watershed-based, compliance, and effectiveness monitoring efforts; the size of the project area; and other relevant factors. Monitoring results shall be made available to the public. The state board or a regional board may waive the monitoring requirements described in this subdivision for discharges that it determines do not pose a significant threat to water quality.

Although waste discharges that comply with this Resolution do not pose a significant threat to water quality, the Central Valley Water Board is not waiving monitoring requirements for all discharges regulated under this Resolution. However, groundwater monitoring and analysis is not necessary due to the low volume of the discharges, the fact that waste character is well known, the nature and concentrations of the waste constituents, existing monitoring information from other regulated facilities, and information about salinity that will become available through the CV-SALTS initiative.

18. For purposes of this conditional waiver, the "Basin Plan" is one of the following:

- a. Water Quality Control Plan for the Sacramento River and San Joaquin River Basins, Fifth Edition, or
- b. Water Quality Control Plan for the Tulare Lake Basin, Third Edition.

19. The designated beneficial uses of groundwater in the Central Valley Region as specified in the Basin Plans are municipal and domestic water supply (MUN), agricultural supply (AGR), industrial service supply (IND), and industrial process supply (PRO).

20. The beneficial uses of surface water in the Central Valley Region are specified in each Basin Plan for specific water bodies including major rivers, creeks, and lakes, and apply to tributaries to these water bodies. These beneficial uses potentially include municipal and domestic supply; agricultural supply; industrial service supply; industrial process supply; groundwater recharge; freshwater replenishment; navigation; hydropower generation; water contact recreation; non-contact water recreation; commercial and sport fishing; aquaculture; warm freshwater habitat; cold freshwater habitat; estuarine habitat; wildlife habitat; preservation of biological habitats of special significance; preservation of rare, threatened, or endangered species; migration of aquatic organisms; spawning, reproduction, and/or early development; and shellfish harvesting.
21. State Water Board Resolution 68-16 (*Statement of Policy with Respect to Maintaining High Quality Waters of the State*) (Antidegradation Policy) prohibits degradation of groundwater quality unless it has been shown that:
 - a. The degradation is consistent with the maximum benefit to the people of the State;
 - b. The degradation will not unreasonably affect present and anticipated future beneficial uses;
 - c. The degradation does not result in water quality less than that prescribed in state and regional policies, including violation of one or more water quality objectives; and
 - d. The discharger employs best practicable treatment or control (BPTC) to minimize degradation.
22. The instant waiver reflects a substantive continuation of the waiver previously issued in 2015, per Resolution R5-2015-0005, and does not authorize an increase in volume above what was authorized under the 2015 Waiver. Except as otherwise provided in this Resolution, all findings in Resolution R5-2015-0005 related to compliance with the Antidegradation Policy in the 2015 Waiver are incorporated herein. Regarding the Antidegradation Policy, the Central Valley Water Board makes the following findings (Findings 23 and 24):
23. Due to variations in soil and groundwater conditions throughout the Central Valley Region, it cannot be stated with certainty that discharges of waste regulated under this Resolution will not degrade groundwater quality to some extent—even when such discharges comply with the various conditions prescribed herein. It can, however, be stated that such degradation will not result in groundwater falling below established water quality objectives (WQOs) in the operative Basin Plan. Additionally, the requirements and conditions specified in this Resolution, are carefully designed to minimize degradation, prevent non-

exceedances of WQOs and impacts to beneficial uses, and constitute BPTC for the type of discharges to which they apply.

24. The economic prosperity of Central Valley communities benefits the people of the State. Dischargers that will be regulated under this Resolution are primarily very small facilities located in rural areas that do not have public sewer service. Small wineries and other small food processing businesses have become an important part of the local economy in several Central Valley Region counties because they employ people who work in the growing areas, processing facilities, and local tasting rooms and sales offices. In some areas, the proliferation of small wineries and other food processors has created a strong tourism-based economy that supports many other people who live and work in the area.

Prior to adoption of the 2003 Waiver (Resolution R5-2003-0106), most small food processors and wineries discharged all of their wastewater to septic systems regulated by county environmental health departments. The level of treatment and control provided by septic systems is far less than what is required by this Resolution, and discharges to septic systems pose a higher threat to groundwater quality than a well-managed land application and waste recycling program. Although treatment technology is available to reduce the mass of biochemical oxygen demand (BOD) and nitrify/denitrify the wastewater, the capital and operation/maintenance costs of such advanced treatment systems would likely be infeasible for the majority of small businesses that will be regulated by this Resolution. Experience with numerous larger food processors in the Central Valley Regional has shown that the threat to water quality posed by the BOD and nitrogen content of the waste can be adequately reduced by a well-managed land application/recycling program to prevent significant groundwater degradation, even in areas where groundwater is very shallow.

Therefore, the economic benefits derived from this low-cost, streamlined form of regulation support allowing limited, localized groundwater degradation if the terms of the Basin Plan are met.

25. Based on the above, this Resolution is consistent with Antidegradation Policy because it includes specific requirements and conditions of discharge that will minimize water quality degradation. Dischargers regulated under this Resolution are subject to enforcement action for any violations, and coverage under the conditional waiver can be terminated if the requirements and conditions are not met.

26. The Basin Plan's policy for implementing the State Water Board's Antidegradation Implementation Policy states:

Pursuant to this policy, a Report of Waste Discharge [RWD], or any other similar technical report required by the Board pursuant to Water Code Section 13267, must include information regarding the nature and extent of the discharge and the potential for the discharge to affect surface or ground water quality in the region. This information must be presented as an analysis of the impacts and potential impacts of the discharge on water quality, as measured by background concentrations and applicable water quality objectives. The extent of information necessary will depend on the specific conditions of the discharge. For example, use of best professional judgment and limited available information may be sufficient to determine that ground or surface water will not be degraded. In addition, the discharger must identify treatment or control measures to be taken to minimize or prevent water quality degradation.

Dischargers submitting a RWD to apply for coverage under this Resolution are not required to include a detailed site-specific analysis of the waste, groundwater conditions, or potential water quality impacts. As noted above, the character of food processing wastes is well-documented in the literature and Central Valley Water Board records. However, the RWD technical information form developed for the 2015 Waiver (Resolution R5-2015-0004), which remains the same in this Resolution, requires complete disclosure of sufficient information about the operations of the facilities that will generate the waste to allow Central Valley Water Board staff to determine whether additional information is needed to show that the proposed discharge will be consistent with the conditions of this Resolution, and to determine whether coverage should be granted.

27. On 5 February 2015, the Central Valley Water Board adopted Resolution R5-2015-0004, re-issuing a conditional waiver of WDRs for an expanded class of small food processors, wineries and related agricultural processors within the Central Valley Region. In accordance with CEQA, the Central Valley Water Board, as "lead agency," adopted an Initial Study (IS) and Mitigated Negative Declaration (MND) evaluating environmental impacts associated with, among other things, an expansion of the prior conditional waiver. In the MND, the Central Valley Water Board determined that, with the implantation of specified mitigation measures, the "project" of waiving WDRs for a particular class of operations would not result in any significant effects on the environment.
28. For purposes of CEQA, the adoption of this Resolution reflects a continuation of the same "project" undertaken in the adoption of Resolution R5-2015-0004, as all

waivers under Water Code section 13269 must be reissued every five years. The re-issued waiver under this Resolution applies to the same classes of discharges from small food processors, wineries and related agricultural processors within the Central Valley Region. Notably, the waiver under this Resolution continues to limit the volume and types of waste that enrollees may apply to land, and continues to impose specific prohibitions and discharge conditions to prevent exceedance of applicable water quality objectives. Moreover, to the extent that any degradation occurs as the result of operations authorized via coverage under this re-issued waiver, such degradation: (a) will be extremely limited; (b) comply with the State Water Board's Antidegradation Policy, and (c) will not otherwise result in a significant impact on the environment .

29. At this time, there are no substantial changes proposed in the "project," or the circumstances under which the "project" will be undertaken, that will require major revisions of the MND due to the involvement of new significant environmental effects. Nor is there any new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the MND was adopted, showing that the "project" will have any significant effects not discussed in MND. Consequently, no further environmental review is required under CEQA. (See Pub. Resources Code, § 21166; Cal. Code Regs., tit. 14, § 15162.)
30. Additionally, the adoption of this resolution is exempt from CEQA insofar as it continues to provide regulatory coverage, in the form of a conditional waiver per Water Code section 13269, for existing facilities and operations; there are no substantial expansions in operations authorized under this resolution and waiver. (See Cal. Code Regs., tit. 14, § 13301.) To the extent that existing facilities are expanded, or new facilities are constructed, such activities remain subject to local agency approval and permitting, which will allow for a site-specific environmental review wherein potential impacts to other resources may be evaluated and mitigated (if necessary).
31. Federal regulations for storm water discharges have been promulgated by the U.S. Environmental Protection Agency (40 C.F.R. § 122, 123, 124) and require that specific categories of industrial facilities which discharge storm water obtain an NPDES permit. Most food processors that have uncovered outdoor processing areas are regulated under one of the specific categories. The State Water Board adopted Order 2014-0057-DWQ¹ (NPDES Permit No. CAS000001) specifying waste discharge requirements for discharges of storm water associated with industrial activities. Order 2014-0057-DWQ requires submittal of

1 Order 2014-0057-DWQ, which became effective 1 July 2015, replaces Order 97-03-DWQ, which expired on 30 June 2015. Order 2014-0057-DWQ will expire on 30 June 2020.

a Notice of Intent by all affected industrial storm water dischargers. Therefore, it is appropriate to require all parties applying for coverage under this waiver to show that the operation is already covered or specifically excluded from obtaining coverage under Order 2014-0057-DWQ or subsequent order¹ by providing a copy of one of the following:

- a. The Notice of Intent that has been submitted to apply for coverage under Order 2014-0057-DWQ or subsequent revision thereto; or
- b. A Notice of Non-Applicability (NONA); or
- c. A No Exposure Certification (NEC).

32. Section 13267(b) of the Water Code states:

In conducting an investigation specified in subdivision (a), the Regional Water Board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge, waste outside of its region that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the Regional Water Board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the Regional Water Board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.

The technical reports required under this Resolution and the attached **Monitoring and Reporting Program R5-2020-0002** (MRP), are necessary to evaluate compliance with waiver conditions. Each individual discharger operates the facility that generates the waste whose discharge is subject to this Resolution.

33. This waiver of WDRs is in the public interest, provided that the dischargers subject to the waiver do all of the following:

- a. Submit the required RWD or Notice of Intent (NOI) and the required filing fee to the Central Valley Water Board, as applicable;
- b. Comply with the conditions of this Resolution, including the Monitoring and Reporting Program as applicable; and

- c. Comply with applicable State Water Board and Central Valley Water Board plans and policies.
34. Pursuant to Water Code section 13263(g), the ability to discharge waste is a privilege, not a right. Neither the adoption of this Resolution, nor the receipt of a formal notification of waiver coverage shall be construed as creating a vested right to continue in the discharge of such waste.
35. The dischargers and interested agencies and persons have been notified of the Central Valley Water Board's intent to conditionally waive WDRs for these discharges, and they have been provided an opportunity to submit written comments and an opportunity for a public hearing.
36. All comments pertaining to the discharges were heard and considered in a public hearing.

THEREFORE BE IT RESOLVED that, in accordance with Water Code section 13269, the Central Valley Water Board adopts the "Waiver of Waste Discharge Requirements for Small Food Processors and Small Wineries" as set forth in **Attachment A** (hereafter, "Small Food Processor Waiver" or "Waiver"). It is hereby ordered that:

1. The Central Valley Water Board waives the requirement to obtain WDRs, and in some instances, the requirement to submit fees, for discharge types that meet the conditions set forth in **Attachment A**.
2. Dischargers subject to the Waiver shall:
 - a. File a Report of Waste Discharge and submit fees (as required);
 - b. Comply with the conditions set forth in the Waiver, including its attachments; and
 - c. Comply with all applicable State Water Board and Central Valley Water Board plans and policies.
3. This Waiver shall not create a vested right to discharge. All discharges authorized under this Waiver shall be considered a privilege, as provided for in Water Code section 13263.
4. Pursuant to Water Code section 13269, this action waiving the issuance of WDRs for certain specific types of discharges: (a) is conditional, (b) may be terminated at any time, (c) does not permit an illegal activity, (d) does not preclude the need for permits which may be required by other local or governmental agencies, and (e) does not preclude the Central Valley Water Board from administering enforcement remedies (including civil liability) pursuant to the Water Code.

5. The Executive Officer or the Central Valley Water Board may terminate the applicability of the Waiver described herein as to any type of discharge or individual discharger at any time when such termination is in the public interest or the activity could affect the quality or beneficial uses of the waters of the State.
6. The Central Valley Water Board may review this Waiver at any time and may modify or terminate the Waiver in its entirety, as applicable for a specific type of discharge, or for individual dischargers, as is appropriate.
7. This Waiver shall expire on **20 February 2025**, unless terminated or renewed by the Central Valley Water Board.

If any person discharging a waste that falls within the scope of the waiver fails to comply with the conditions of the waiver, the Executive Officer may refer this matter to the Attorney General for judicial enforcement, may issue a complaint for administrative civil liability, or may take other enforcement actions. Failure to comply with the conditions of the waiver may result in the assessment of Administrative Civil Liability of up to \$10,000 per violation, per day, depending on the violation, pursuant to the Water Code, including sections 13268, 13350 and 13385. The Central Valley Water Board reserves its right to take any enforcement actions authorized by law.

Any person aggrieved by this action of the Central Valley Water Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, section 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Resolution, except that if the 30th day following the date of this Resolution falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the [law and regulations applicable to filing petitions](#) may be found on the State Water Board Water Quality Petitions.

(https://www.waterboards.ca.gov/public_notices/petitions/water_quality/)

or will be provided upon request.

I, PATRICK PULUPA, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of a Resolution adopted by the California Regional Water Quality Control Board, Central Valley Region, on 20 February 2020.

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PATRICK PULUPA, Executive Officer