

Response to Written Comments
on
Proposed Order No. R1-2019-0008

Short-Term Renewal of Order No. R1-2014-0011

Categorical Waiver of Waste Discharge Requirements
for
Discharges Related to Timber Harvest Activities on Non-Federal Lands
in the North Coast Region

Prepared by:
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I. Procedure

On January 4, 2019, the North Coast Regional Water Quality Control Board (Regional Water Board) issued a Notice of Public Hearing and Comment Period (Notice) for proposed Order No. R1-2019-0008 (Proposed Order) which provides a short-term renewal of Order No. R1-2014-0011, *Categorical Waiver of Waste Discharge Requirements for Discharges Related to Timber Harvest Activities on Non-Federal Lands in the North Coast Region* (2014 Categorical Waiver). The Notice initiated the Regional Water Board's 30-day comment period, which ended at 5:00 p.m. on February 4, 2019. The Notice was distributed to the Regional Water Board's interested parties list, three newspapers in the North Coast Region (The Press Democrat, Eureka Times Standard, and Ukiah Daily Journal) and was posted on the Regional Water Board's website.

The Notice stated that the Regional Water Board will conduct a public hearing to consider adoption of the Proposed Order on April 17 or 18, 2019, at 8:00 a.m., in the Regional Water Board Hearing Room, 5550 Skylane Boulevard, Suite A, Santa Rosa, California, or at the location to be announced in the Regional Water Board's agenda and on its website: <http://www.waterboards.ca.gov/northcoast/>.

II. Background

The 2014 Categorical Waiver applies to discharges of waste resulting from certain types of timber harvest activities that were previously identified as posing a low or insignificant threat to water quality. The intent of the Proposed Order is to allow continued use of the 2014 Categorical Waiver while providing Regional Water Board staff (staff) additional time to evaluate the current eligibility criteria and specific conditions, and to consider several new and ongoing developments within the North Coast Region and statewide that may warrant modifications to the 2014 Categorical Waiver. Important developments that may require additional modifications to the 2014 Categorical Waiver include: former California Governor Brown's issuance of Executive Order on Forests (Executive Order B-52-18) which seeks to increase the pace and scale of prescribed fire, fuel reduction and forest thinning to improve forest resilience; California Governor Newsom's Executive Order (Executive Order N-05-19) which further focuses the state's efforts on wildfire prevention and community protections; large-scale wildfires that are increasing the number of post-fire salvage projects; and, the creation of new or modification of existing timber harvesting projects as a result of new statutory or regulatory requirements pursuant to Senate Bill 901 (SB 901).

The 2014 Categorical Waiver applies to five categories of timber harvest activities as defined in the Forest Practice Rules (FPRs) (Cal. Code Regs., tit. 14, §§ 895-1115.3)¹, and establishes general and specific conditions and eligibility criteria for each category for which WDRs can be waived. The five categories of timber harvest activities include: 1) emergency and exempt operations (e.g., treatment of isolated infestation of Sudden Oak Death; harvesting Christmas trees; reduction of high fuel hazard; removal of fallen, damaged, dead, dying, or diseased trees); 2) conversion exemptions (e.g., conversion of less than three acres, construction or maintenance of right-of-way by a public agency on public property); 3) timber harvest plans (THPs) subject to the requirements of a Sediment Total Maximum Daily Load Action Plan; 4) modified THPs; and, 5) “other” THPs that are determined on a case-by-case basis to pose a low or insignificant threat to water quality and are in compliance with California Environmental Quality Act (CEQA) requirements.

The 2014 Categorical Waiver contains specific conditions that restrict or prohibit log hauling, ground-based yarding, and road construction and reconstruction during the wet weather period for emergency and exempt operations, modified THPs, and “other” THPs. As a result, the majority of timber harvest projects covered by the 2014 Categorical Waiver do not operate during the wet weather period. However, the short-term renewal of the 2014 Categorical Waiver will allow staff to evaluate the level of water quality protection provided for the categories of activities, including wet weather period operations, and to propose changes to the future permit, as necessary.

Staff recently developed a workplan to inspect and evaluate a sample population of recent post-fire salvage projects conducted under the rules for Emergency Notices pursuant to the FPRs. The purpose of the workplan is to investigate whether post-fire salvage projects conducted under Emergency Notices are sufficiently protective of water quality. Concurrently, as part of recently approved SB 901², Public Resources Code section 4589 was amended to require the California Department of Forestry and Fire Protection (CAL FIRE), in consultation with the State Water Resources Control Board and California Department of Fish and Wildlife, to conduct investigations and report annually to the Legislature on the trends in the use of, compliance with, and effectiveness of forest management and associated activities conducted through CAL FIRE’s Exemptions and Emergency Notices.

As a result of these parallel efforts, CAL FIRE and the Regional Water Board began collaborating to conduct inspections of Emergency Notices as part of the workplan and SB 901 requirements. These inspections will inform staff of the effectiveness of the 2014 Categorical Waiver in protecting water quality from post-fire salvage projects and inform potential future revisions to the 2014 Categorical Waiver associated with these projects.

Discharges of waste resulting from timber harvest activities that are not eligible for coverage under the 2014 Categorical Waiver must seek enrollment under and comply with

¹ The FPRs can be found at the following website:

http://calfire.ca.gov/resource_mgt/downloads/2019%20Forest%20Practice%20Rules%20and%20Act_FIN_AL_1-28-18.pdf

² SB 901 can be found at the following website:

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB901

all general and specific conditions of the appropriate Waste Discharge Requirements (WDR). Staff participate in the CEQA functionally equivalent THP review process to ensure that timber harvest projects are enrolled in the appropriate permitting mechanism and that adequate site-specific mitigations are proposed and implemented to protect water quality.

The Proposed Order serves as a short-term renewal of the 2014 Categorical Waiver and retains all the provisions of the 2014 Categorical Waiver. The Proposed Order does not contain any new or revised language or conditions that affect the implementation of the 2014 Categorical Waiver. Staff will be evaluating the current permitting process and whether a revised 2014 Categorical Waiver or a new WDR is warranted in the future. A separate public comment period will be provided prior to proposing revisions to the 2014 Categorical Waiver or WDR for the Regional Water Board's consideration. Substantive comments on the revised draft 2014 Categorical Waiver or WDR will be accepted and considered at that time.

III. Comments Received

During the January 4 to February 4, 2019, comment period, the Regional Water Board received comment letters from 16 individuals representing environmental groups, residents, and other interested parties. The comment letters are included as Attachment A to this *Response to Written Comments* document. Timely comment letters were received by the following individuals:

1. Ms. Corrina Munger
2. Mr. Rob DiPerna, Environmental Protection Information Center (EPIC)
3. Mr. Stephen Rae
4. Ms. Robin Applegarth
5. Ms. Linda McVarish
6. Ms. Carmen Ferraz
7. Mr. Matthew Reid
8. Ms. Anna Narbutovskih
9. Ms. Laura Morgan
10. Mr. Hal Childs
11. Ms. Lynne Mowry
12. Ms. Beverly Alexander
13. Mr. Paul Alexander
14. Mr. Ivan Anderson
15. Ms. Diane Virdee
16. Mr. Cedric Twilight, Sierra Pacific Industries (SPI)

A summary of the received comment letters, followed by staff's response to the comment, is below. Where commenters have made similar comments, those comments are summarized in a single response (i.e. Summary of Comment Letter Nos. 5 through 15). The assigned comment letter numbers correspond to the numbered list of individuals above.

A. Comment Letters in Support of Adoption of the Proposed Order

1. Summary of Comment Letter No. 1

Comment: Ms. Munger supports adoption of the Proposed Order. Ms. Munger states that the 2014 Categorical Waiver is an important mechanism in allowing much of the state's fuel reduction activities to occur. Ms. Munger states that the 2014 Categorical Waiver also reduces the regulatory burden for small and medium-sized landowners and allows them to more actively and more frequently manage their lands. Ms. Munger believes this is important work to both reduce fire hazard and to improve forest health.

Staff Response: Thank you for your comment. We appreciate your support of adoption of the Proposed Order.

2. Summary of Comment Letter No. 2

Comment: EPIC supports adoption of the Proposed Order on the basis that staff evaluate the water quality implications of SB 901 to inform possible revisions to the development of future revisions to the 2014 Categorical Waiver. EPIC states that given the need for the California Board of Forestry and Fire Protection (Board of Forestry) to sort out, and then promulgate regulations to fulfill the mandates of SB 901 and the associated changes to the Public Resources Code that pertain to and may affect timber operations on non-federal lands in multiple permitting frameworks and categories, EPIC supports adoption of the Proposed Order.

Staff Response: Thank you for your comment. We appreciate your support of adoption of the Proposed Order.

Comment: EPIC encourages the Regional Water Board to revisit the 2014 Categorical Waiver. EPIC states that the Regional Water Board must consider not only new Public Resources Code and Board of Forestry regulations, but also must revisit the 2014 Categorical Waiver as a concept and to revisit the question of whether a Waiver is the appropriate permitting mechanism.

Staff Response: Please refer to the *Background* section above for staff considerations of a future revised 2014 Categorical Waiver.

B. Comment Letters in Opposition of Adoption of the Proposed Order

1. Summary of Comment Letter No. 3

Comment: Mr. Rae opposes adoption of the Proposed Order primarily due to concerns regarding potential sediment discharges during the wet weather period.

Staff response: Thank you for your comment. Due to the potential harm to public and private safety and resources that could occur if fuel hazard reduction projects and projects to remove fallen, damaged, dead, dying, or diseased trees

are not implemented in a timely manner when necessary, it is in the public interest to waive WDRs for emergency timber operations. Accordingly, staff are recommending adoption of the Proposed Order.

Comment: Mr. Rae recommends banning timber harvest operations during the wet weather period until a dry period of at least one week has occurred.

Staff response: As summarized in the *Background* section above, the 2014 Categorical Waiver contains specific conditions that restrict or prohibit log hauling, ground-based yarding, and road construction and reconstruction during the wet weather period for emergency and exempt operations, modified THPs, and “other” THPs.

2. Summary of Comment Letter No. 4

Comment: Ms. Applegarth opposes adoption of the Proposed Order primarily due to concerns regarding potential sediment discharges during the wet weather period.

Staff response: Thank you for your comment. Due to the potential harm to public and private safety and resources that could occur if fuel hazard reduction projects and projects to remove fallen, damaged, dead, dying, or diseased trees are not implemented in a timely manner when necessary, it is in the public interest to waive WDRs for emergency timber operations. Accordingly, staff are recommending adoption of the Proposed Order.

Comment: Ms. Applegarth encourages the Regional Water Board to ban logging during the wet weather period to protect water quality.

Staff response: As summarized in the *Background* section above, the 2014 Categorical Waiver contains specific conditions that restrict or prohibit log hauling, ground-based yarding, and road construction and reconstruction during the wet weather period for emergency and exempt operations, modified THPs, and “other” THPs.

C. Comment Letters Related to Future Revisions to the 2014 Categorical Waiver

1. Summary of Comment Letter Nos. 5 through 15

Comment: Individuals of Comment Letter Nos. 5 through 15 state that current Regional Water Board requirements for private and public land timber harvest activities are not adequately protecting water quality and that logging and hauling during the wet weather period cannot be done without unacceptable risks to water quality. The commenters stated that the Proposed Order should prohibit log hauling between October 30 to April 1 and only allow logging operations when there is an extended dry period lasting at least one week.

Staff Response: Thank you for your comments. Please refer to the *Background* section above for wet weather period restrictions and prohibitions of timber

harvest activities conducted pursuant to the 2014 Categorical Waiver and FPRs, and for the opportunity to provide comments on future draft revisions of the 2014 Categorical Waiver.

D. Comment Letter Related to Staff's Post-Fire Salvage Inspection Workplan

1. Summary of Comment Letter No. 16

Comment: Mr. Twight of SPI states that SPI encourages the Regional Water Board to pursue permit streamlining that supports Executive Order B-52-18 and SB 901.

Staff Response: Thank you for your comment. Please refer to the *Background* section above for staff's efforts to address water quality and associated permitting mechanisms as a result of Executive Order B-52-18, Executive Order N-05-19, and SB 901.

Comment: SPI is interested in the workplan being developed to inspect and evaluate a sample population of recent post-fire salvage projects conducted under the rules for Emergency Notices pursuant to the FPRs, including the following:

a. **Comment:** Who is the lead scientist?

Staff response: Implementation of the workplan is not a scientific study that will yield a peer-reviewed paper, and a lead scientist is not warranted. Staff members from the Regional Water Board's Northern and Southern Nonpoint Source and Forestry Units will be involved in conducting inspections pursuant to the workplan.

As summarized in the *Background* section, the purpose of the Regional Water Board's workplan is to evaluate the degree to which post-fire salvage projects conducted under Emergency Notices are protective of water quality. Staff will be conducting post-fire salvage project inspections as part of the workplan along with CAL FIRE and concurrent with investigations conducted to address monitoring and reporting requirements that were amended into the Public Resources Code as a result of SB 901. Observations from these concurrent inspections will be used to inform staff about the effectiveness of the 2014 Categorical Waiver requirements related to these projects, and to inform whether future revisions to the 2014 Categorical Waiver may be warranted as a result.

b. **Comment:** What criteria was established for determining the sample population?

Staff response: Staff will be participating with CAL FIRE to investigate post-fire salvage projects pursuant to SB 901 requirements. CAL FIRE has generated a random probabilistic sample draw of Emergency Notice projects throughout the state, which will be relied upon in part as inspections are conducted pursuant to the Regional Water Board's workplan and SB 901

requirements. Staff will prioritize inspections of post-fire salvage projects based on consideration of several factors including, but not limited to, project size, project timing, proximity to watercourses, potential impacts to shade on watercourses, watercourse classification, watercourse crossings, topography, geology, and proposed activities that may pose a significant threat to water quality.

- c. **Comment:** Are adjacent public lands included in the study?

Staff response: No. The scope of the workplan is limited to timber harvest activities conducted under Emergency Notices as required by the FPRs, which do not apply to public lands.

- d. **Comment:** Is a quality assurance/quality control plan going to be included for guiding data collection?

Staff response: Qualitative data collected during the inspections conducted pursuant to the workplan will be collected in the same manner as other timber harvest inspections conducted by staff. The inspections will not include water quality monitoring components, but rather, will include qualitative assessments of post-fire salvage activities and any conditions that pose a threat to water quality. These observations will be collected using standardized procedures specified in the workplan and documented in an accompanying Emergency Notice Inspection Form. Conducted in conjunction with CAL FIRE's monitoring efforts, staff expect that the investigations conducted pursuant to the workplan and SB 901 will yield a representative view of post-fire salvage activities sufficient to inform future permit development.

- e. **Comment:** Will the workplan be peer reviewed prior to implementation?

Staff response: No. As previously mentioned, the workplan is not a scientific study, so it does not warrant peer review. The workplan is being developed and reviewed by Regional Water Board technical staff and management, including Environmental Scientists, Engineering Geologists, and Water Resource Control Engineers, across both the Northern and Southern Nonpoint Source and Forestry Units.