



Central Coast Regional Water Quality Control Board

Via Electronic Mail
commentletters@waterboards.ca.gov



DATE: September 13, 2012

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

FROM: Michael Thomas
Assistant Executive Officer
CENTRAL COAST REGIONAL WATER QUALITY CONTROL BOARD

SUBJECT: COMMENTS TO SWRCB/OCC FILE A-2209(a)-(e) – SEPTEMBER 19, 2012 BOARD MEETING

The Central Coast Regional Water Quality Control Board (Central Coast Water Board) greatly appreciates the time and effort of the State Water Resources Control Board (State Water Board) to address the critically important water quality issues in our Region. Clearly, the State Water Board takes these issues seriously and gave them due consideration, as evidenced by your draft Stay Order regarding the Central Coast Water Board's 2012 Agricultural Order (2012 Agricultural Order). We greatly appreciate the State Water Board's affirmation regarding the importance of water quality standards, drinking water, protection of public health, groundwater, riparian habitat, and reporting requirements. We also appreciate your concern for the reasonable interpretation and implementation of Central Coast Water Board orders. We respectfully offer the following comments and recommendations on your draft Stay Order.

GENERAL COMMENTS

With the exception of the three provisions discussed below, the Central Coast Water Board supports the draft Stay Order with respect to all other provisions. We especially agree with the State Water Board's draft language that supports groundwater monitoring and reporting of total nitrogen applied. Objective experts strongly recommended that total nitrogen applied be reported to the Central Coast Water Board. We also agree with the draft Stay Order language determining that the Annual Compliance Form is necessary to evaluate: (1) general compliance with the Agricultural Order; (2) the effectiveness of management practices, treatment or control measures; and, (3) any changes in farming practices. While we believe the items being stayed (nitrate loading risk determination; and photo monitoring results until June 1, 2013) are important for these evaluations, we agree that these items should not be reported in the Annual Compliance Form at this time. The Central Coast Water Board has no objection to the temporary stay of Provision 31 (Backflow Prevention Devices); Tiers 2 and 3 MRPs, Part 3,

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Section A.1.m (Annual Compliance Form: Nitrate Loading Risk Factors); and Provision 69 and Tiers 2 and 3 MRPs, Part 4 (Photo Monitoring).

Additionally, we request that the State Water Board consider staying the submittal of the Annual Compliance Form until December 1, 2012, as further discussed below.

SPECIFIC COMMENTS AND REQUESTS FOR CLARIFICATION

The Central Coast Water Board requests that the State Water Board consider our recommendations for the following four provisions.

Maintenance of Containment Structures (Provision 33):

The draft Stay Order would stay the requirement to “manage, construct, or maintain” containment structures “to avoid percolation of waste to groundwater” and to “minimize surface water overflows.” As noted at the stay hearing, this provision is quite similar to a provision that was contained in the 2004 Agricultural Order. In addition, like the 2004 Agricultural Order, the 2012 Agricultural Order requires dischargers to implement management practices through an iterative process to protect ground and surface water quality. The draft Stay Order implies that dischargers no longer are required to implement management practices for containment structures. The Central Coast Water Board requests clarification on whether the State Water Board expects that discharges must continue to implement management practices through an iterative process as required in the 2012 and 2004 Agricultural Orders. As an alternative, the Central Coast Water Board suggests that this provision could be stayed temporarily to allow the Central Coast Water Board staff to provide clarification on the provision to growers. As noted at the hearing, the Natural Resources Conservation Service has provided guidance on proper containment structure management for many years and such information is readily available.

Practice Effectiveness and Compliance Reporting (Provision 44.g.):

The draft Stay Order recognizes the need for practice effectiveness and compliance determination:

“Even if the Petitioners were able to show substantial harm, we recognize that practice effectiveness and compliance determination is an essential component of improving water quality management practices in the iterative manner described in the Agricultural Order and that it significantly advances the interest of the environment and public.”

With this context in mind, we acknowledge that additional clarification is necessary. Given the acknowledged importance of the need to conduct practice effectiveness and compliance determinations, we recommend that the State Water Board (on p. 16 of the draft Stay Order) consider staying Provision 44.g. to the extent it requires dischargers to “verify” practices, as discussed by Dr. Marc Los Huertos, until the State Water Board acts on the petition. In addition, consistent with the discussion at the stay hearing, the Central Coast Water Board recommends that the State Water Board include clarifying language in the draft Stay Order to clearly state that Provision 44.g. does not dictate how a discharger must evaluate practice effectiveness and that standard farming practices (such as evaluating irrigation efficiency to determine water use and nutrient budgeting to determine fertilizer applications), combined with visual inspection and record keeping is among several methods that can be used to evaluate practice effectiveness.

The above language serves to provide additional clarification and reduce confusion among growers. In addition, this language addresses Water Code Section 13269 and is consistent with the State Water Board's Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program, which specifically requires that any nonpoint source control program include "sufficient feedback mechanisms so that the Regional Water Quality Control Board, the dischargers and the public can determine whether the program is achieving its stated purpose(s), or whether additional or different MPs [management practices] or other actions are required."

Determination of Nitrate Loading Risk (Provision 68; Tiers 2 and 3 MRP Part 2, Section C):

The draft Stay Order states:

"As stated under the discussion of groundwater monitoring, we believe that addressing nitrates in the groundwater is an extremely high priority and recognize the need to act decisively on that priority. Precisely for that reason, we also recognize that the methodologies for calculation of nitrate loading risk factors must provide meaningful and reliable information..."

Despite our strong support for the Central Coast Water Board's efforts to address groundwater pollution, we do not believe that a stay will significantly harm the public interest and the environment in the short term. Nitrogen impacts on groundwater from fertilizer applications generally take years to accumulate to such a level as to impact a drinking water supply. Any nitrogen application during this very brief time period will not by itself significantly impact groundwater and therefore not, in the short term, exacerbate public health concerns. Short term public health concerns will be adequately addressed by the groundwater monitoring provisions that we have declined to stay."

The Central Coast Water Board greatly appreciates the State Water Board's acknowledgement of the importance of addressing groundwater pollution in our Region. In many areas of our Region, nitrate loading is contaminating drinking water in the short-term (San Lucas, Morro Bay, etc.), and growers have taken immediate steps to reduce their nitrate loading and report the results. Further, the nitrate loading in our Region can be extreme on a short-term, seasonal, crop rotation basis, continually adding to already existing impairments. Thus, we wish to underscore the importance and urgency of the State Water Board addressing these issues.

We also agree with the State Water Board's statement that "methodologies for calculation of nitrate loading risk factors must provide meaningful and reliable information." The Central Coast Water Board spent many months working with objective experts discussing requirements related to nitrate loading to determine the methodology and parameters to use, and considered a wide range of options based on expert recommendations. After consideration of the information from experts, growers, and the public, the Central Coast Water Board chose the methodology and requirements contained in the 2012 Agricultural Order. Other methods could also be used, and in some cases are already implemented by growers, that are more costly and involved than those included in the 2012 Agricultural Order.

As the State Water Board considers the provisions related to nitrate loading in agricultural areas to protect water quality, the Central Coast Water Board recommends that the State Water Board convene an expert, objective, scientific panel to recommend the best approach.

Annual Compliance Form (Provision 67)

Although not addressed in the draft Stay Order, we request that the State Water Board consider staying the submittal of the Annual Compliance Form until December 1, 2012. This time extension is reasonable and will allow growers additional time to comply with this requirement, considering the date and status of the stay hearing and draft Stay Order. Otherwise, the Annual Compliance Form will be due on October 1, 2012 for Tier 2 and Tier 3 growers, about 10 days after the Stay Order is likely to be adopted at the State Water Board Hearing on September 19, 2012.

In addition, we request that the State Water Board allow the Central Coast Water Board to continue to include questions related to Nitrate Loading Risk Factors as clearly marked "optional" reporting fields in the Annual Compliance Form (see Exhibit 23, Section C). The Central Coast Water Board made the Annual Compliance Form available to growers on September 7, 2012, in response to requests from growers and agricultural representatives that it be provided to growers as early as possible. Many growers have already submitted this information to the Central Coast Water Board. Growers would continue to have the ability to submit the Annual Compliance Form without including this information. Similarly, we request that the State Board allow the Central Coast Water Board to continue to include the photo monitoring question on the Annual Compliance Form, clearly marked "Due June 1, 2013" (see Exhibit 23, Section K). As instructed in the draft Stay Order, the Central Coast Water Board will update the photo monitoring protocols pending the adoption of the order at the September 19, 2012 Board Meeting.

CONCLUSION

As described above, the Central Coast Water Board greatly appreciates the time and effort of the State Water Board to address the critically important water quality issues in our Region, and respectfully requests that you consider our suggestions to clarify the provisions regarding maintenance of containment structures and practice effectiveness and reporting; and to extend the deadline for the submittal of the Annual Compliance Form.

Thank you for your thoughtful and comprehensive consideration of these issues. If you have any questions, please contact Frances McChesney by phone at (916) 341-5174 or by email at fmcchesney@waterboards.ca.gov , or Michael Thomas by phone at (805) 542-4623 or by email at mthomas@waterboards.ca.gov .

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