

State of California
Regional Water Quality Control Board
San Diego Region

EXECUTIVE OFFICER SUMMARY REPORT
May 9, 2010

- ITEM: 8
- SUBJECT: Waste Discharge Requirements: Tentative General Order for Closed, Abandoned, or Inactive Nonhazardous Solid Waste Units within the San Diego Region (Tentative Orders Nos. R9-2012-0001, and Tentative Monitoring and Reporting Program No. R9-2012-0002) (*Amy Grove*)
- PURPOSE: To consider adopting tentative waste discharge requirements General Order No. R9-2012-0001, and tentative monitoring and reporting program (M&RP) No. R9-0012-0002 (Supporting Documents Nos. 1 and 2 respectively). The tentative General Order and M&RP would supercede General Order No. 97-11 for Closed, Abandoned, or Inactive solid waste units (CAI Units) within the San Diego Region.
- RECOMMENDATION: Adoption of the tentative General Order No. R9-2012-0001 and M&RP is recommended.
- KEY ISSUES:
1. Who should be responsible for CAI Units enrolled in the tentative General Order. [Supporting Document No. 1 – Tentative General Order No. R9-2012-0001, Finding No. 1; Supporting Document No. 3 – Information Sheet, Part I, Section D (page 6); and Supporting Document No. 7 – Response to Comments, Comment No. 36 (page 30)]
 2. The Dischargers proposed less stringent monitoring requirements, however, the M&RP is constrained by the regulatory requirements found in California Code of Regulations (CCR) Title 27. [Supporting Document No. 2 – Tentative M&RP No. R9-2012-0002; Supporting Document No. 3 – Information Sheet, Part IV, Sections A – H (pages 11-14); Supporting Document No. 7 – Response to Comments, Comments Nos. 1-8 (pages 2–11)]

DISCUSSION:**Background Information:**

CAI Units have been regulated in the State of California since the 1960s. In the 1970s, regulations were promulgated and later revised to provide regulatory oversight for waste management units.

In 1997, the San Diego Water Board adopted General Order No. 97-11, providing monitoring and maintenance specifications in accordance with these regulations for CAI Units and Burn Sites within the San Diego Region. General Order No. 97-11 has been amended six times, most recently in 2007. In accordance with the Water Code and the State Water Resources Control Board's Administrative Procedures Manual (Manual), Water Boards are required to review and update, as necessary, waste discharge requirements every five, ten, or fifteen years depending on the threat to water quality and complexity. General Order No. 97-11 is due for a review and update pursuant to the Manual.

Development of the Tentative Orders

In late 1997, new landfill regulations were promulgated. The new regulations, found in CCR Title 27, largely focus on solid waste facilities which continued to operate, or began operations, after November 27, 1984. Though CCR Title 27 mainly focuses on the design and operation of landfills, it does contain regulatory requirements pertaining to site maintenance, monitoring, and reporting at solid waste facilities which were closed, abandoned, or inactive on or before November 27, 1984. Although General Order No. 97-11 was amended six times since the promulgation of CCR Title 27, these amendments did not comprehensively incorporate the Title 27 regulations.

In early 2011, the San Diego Water Board Land Discharge Unit reviewed General Order No. 97-11 and decided to issue updated waste discharge requirements for CAI Units and Burn Sites rather than amend General Order No. 97-11 for the seventh time. Furthermore, separate tentative General Orders are proposed for CAI Units and Burn Sites, rather than regulating these sites together in one General Order as was done in the past. The Water Code allows general waste discharge requirements to be issued when the discharges are produced by the same or similar operations, the same or similar types of waste are involved, the same or similar treatment standards are required, and it is more appropriate to regulate the discharges under general orders than

individual orders. CAI Units and Burn Sites contain wastes that are produced through different processes, wastes that are different in nature, and wastes that require different treatment standards. Thus, separate General Orders are appropriate.

Public Outreach

In November and December of 2011 the San Diego Water Board held informal Discharger workshops to assist in the development of the tentative General Order and M&RP. The purpose of the workshops was to provide an open forum for the Dischargers to discuss the proposed requirements and specifications, as well as provide feedback and informal comments to staff. The comments and feedback generated during this informal process were considered in the development of the tentative General Order and M&RP. An Information Sheet (Supporting Document No. 4) has been prepared to provide the technical and legal basis for the requirements.

Naming of Responsible Parties

A key issue is who should be responsible for CAI Units enrolled in the tentative General Order. This is a difficult task because some CAI Units were unregulated facilities, operated on privately owned property. Often times a property was parceled out and sold to numerous individuals who were unaware that the property was once used as a landfill. Because of this, there exists the potential for several individuals or parties to be identified as responsible parties. This situation also occurs at regulated CAI Units; those operated by a city or county, where the property was leased for landfill operations and subsequently returned to the owner. Again there exists the potential that the property has been parceled out or sold to multiple parties.

The definition of a discharger provided in CCR Title 27 is broad and provides the Regional Water Boards with the flexibility to hold at least one party responsible for compliance with WDRs for CAI Units. In the past, the San Diego Water Board's practice has been to only enroll the primary owner or operator when one can be identified, or both. Secondarily responsible parties such as a property owner would only be held responsible if the facility owner or operator could not be found.

The Dischargers requested that the San Diego Water Board abide by third party agreements between responsible parties. The San Diego Water Board acknowledges that legal agreements exist between owners and former operators at many CAI Units located within the region. The San Diego Water Board is not a party to these agreements, and though the agreements are considered when determining responsibility, the San Diego Water Board is not bound by the agreements. Each CAI Unit has been evaluated on a case-by-case basis to determine the appropriate responsible parties, and the San Diego Water Board has not modified the list of responsible parties as part of the issuance of the tentative General Order.

Dischargers of CAI Units currently enrolled under General Order No. 97-11 will be automatically enrolled in the tentative General Order and M&RP once adopted, unless a site-specific M&RP has already been issued for a CAI Unit.

Comments

Written comments on the Tentative Order and M&RP were received from the County of San Diego Department of Public Works, Orange County Waste and Recycling, and the San Diego County Local Enforcement Agency (Supporting Documents Nos. 4, 5, and 6 respectively). The San Diego County Local Enforcement Agency's letter stated that the agency had no further comments regarding the tentative General Order and M&RP. Responses to Comments are included as Supporting Document No. 7. The Tentative Order and M&RP were modified to incorporate some of the Discharger's comments as appropriate. The revised tentative Order and M&RP are included as Supporting Documents Nos. 8, and 9, and are shown in underline strikeout versions.

The Dischargers have also requested that the San Diego Water Board allow Dischargers to scale back their monitoring and reporting frequency at CAI Units, and have proposed implementing a "risk-based" approach to monitoring instead. CCR Title 27 does not provide an option for implementing a risk-based approach to groundwater monitoring however, it does provide flexibility for the reporting frequency. The CAI Units enrolled in the tentative M&RP have had historical releases, though groundwater data shows that waste constituent concentrations appear to be stable or decreasing. Therefore, the San Diego Water

Board does not plan to require the more burdensome evaluation/corrective action monitoring at CAI Units for these historical releases but rather, will require Dischargers to implement the minimum prescriptive standards provided in CCR Title 27 and report the results to the San Diego Water Board on an annual basis.

LEGAL CONCERNS:

None.

SUPPORTING DOCUMENTS:

1. Tentative General Order No. R9-2012-0001
2. Tentative M&RP No. R9-2012-0002
3. Information Sheet
4. Comments received from the County of San Diego Department of Public Works
5. Comments received from Orange County Waste and Recycling
6. Comments received from the San Diego County Local Enforcement Agency
7. Response to Comments
8. Tentative General Order No. R9-2012-0001 – underline strikeout version
9. Tentative M&RP No. R9-2012-0002 – underline strikeout version
10. Notification Letter, email, and newspaper proof of publication

SIGNIFICANT CHANGES:

1. The Tentative General Order updates and replaces existing General Order No. 97-11 and the associated M&RP, provides performance-based requirements, and incorporates current landfill regulations found in CCR Title 27.
2. The tentative General Order streamlines the enrollment process by delegating authority to the Executive Officer for enrollment or termination of enrollment.
3. The tentative General Order requires Dischargers to certify that each CAI Unit is well maintained and that appropriate best management practices have been implemented prior to the rainy season each year.
4. The tentative M&RP requires Dischargers to implement a detection monitoring program in accordance with the minimum standards found in CCR Title 27. These regulations require Dischargers

to perform semi-annual groundwater monitoring and provide a more in-depth evaluation of monitoring data through the utilization of statistical analyses. The tentative M&RP also reduces the reporting frequency from semi-annual to annual reporting.

The tentative M&RP is included as a separate investigative Order issued pursuant to Water Code section 13267 to allow the Executive Officer to approve minor changes to the tentative M&RP, when appropriate.

**COMPLIANCE
RECORD:**

The CAI Units currently regulated by General Order No. 97-11 were generally in compliance with the maintenance and monitoring specifications found within that Order. Since 2005, these sites did not have any significant violations noted during inspections by Water Board staff.

PUBLIC NOTICE:

Notification of this action was sent to known interested parties via e-mail and by mail on February 9, 2012 (Supporting Document No. 13). The tentative General Orders and M&RP were posted on the San Diego Water Board website on the same day. The tentative General Orders and M&RP were also noticed in the following newspapers on February 11, 2012: the San Diego Union Tribune, the Riverside Press Enterprise; and The Orange County Register. These actions satisfy the public notification requirements of California Water Code, Division 7, section 13167.5 and CCR Title 27, section 21730(b) "Notice Requirements."