

**STAFF REPORT FOR ORDER NO. R9-2024-0001
CONDITIONAL WAIVERS OF WASTE DISCHARGE REQUIREMENTS FOR
LOW THREAT DISCHARGES IN THE SAN DIEGO REGION**

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Introduction

The San Diego Water Board is charged with protecting the quality of groundwater and surface waters of the state within the jurisdictional boundaries of the San Diego Region. One of the primary ways the San Diego Water Board protects water quality is by prescribing “requirements as to the nature of any discharge of waste.”¹ These requirements are called “Waste Discharge Requirements” or “WDRs.” The Porter-Cologne Water Quality Control Act (Water Code) requires any person discharging or proposing to discharge waste within the Region to file a Report of Waste Discharge (ROWD) with the San Diego Water Board.² In general, a person may not initiate a discharge, or materially change a discharge, before the San Diego Water Board prescribes WDRs.³ The process for obtaining individual WDRs is prescribed in the Water Code and includes the following steps: 1) a person files a ROWD, 2) the San Diego Water Board prescribes WDRs after any necessary hearing, and 3) a person cannot initiate a discharge prior to the San Diego Water Board prescribing WDRs.⁴

The Water Code also authorizes the San Diego Water Board to waive one or more of these requirements for a specific discharge or type of discharge.⁵ The San Diego Water Board may grant a waiver of one or more of these requirements (waivers) if the waiver is consistent with any State or regional water quality control plan, the waiver is in the public interest,⁶ and the discharge complies with the conditions pursuant to which waivers are granted.⁷

The *Water Quality Control Plan for the San Diego Basin (9)* (Basin Plan) provides the foundation for regulatory activities of the San Diego Water Board. Basin Plan Chapter 4 (Implementation)⁸ was amended in September 2002 to “incorporate a waste discharge requirement policy for certain specific types of discharges.”⁹ The San Diego Water Board amended Chapter 4 of the Basin Plan in October 2007, to incorporate “revised conditional waivers of waste discharge requirements for specific types of discharge within the San Diego Region.”¹⁰ The San Diego Water Board adopted *Conditional*

¹ Water Code section 13263(a).

² Water Code sections 13260(a) and (c).

³ Water Code section 13264(a).

⁴ Water Code sections 13260(a) and (c), 13263(a), and 13264(a), respectively.

⁵ Water Code section 13269(a).

⁶ Water Code section 13269(a).

⁷ Water Code section 13269(e).

⁸ https://www.waterboards.ca.gov/sandiego/water_issues/programs/basin_plan/docs/chapter_4.pdf.

⁹ Resolution R9-2002-0186, *Amendment to the Water Quality Control Plan for the San Diego Region (9) to Incorporate a Waste Discharge Requirement Waiver Policy for Certain Specific Types of Discharges*, adopted in September 2002

http://www.waterboards.ca.gov/sandiego/board_decisions/waivers/docs/resolution2002_0186.pdf.

¹⁰ Resolution R9-2007-0104, *Amendment to the Water Quality Control Plan for the San Diego Region (9) to Incorporate the Revised Conditional Waivers of Waste Discharge Requirements for Specific Types of Discharge within the San Diego Region*, adopted in October 2007.

http://www.waterboards.ca.gov/sandiego/board_decisions/adopted_orders/2007/2007_0104.pdf.

Waivers of Waste Discharge Requirements for Low Threat Discharges in the San Diego Region (Order No. R9-2014-0041) on June 26, 2014, which requires the implementation of effective management measures and structural and non-structural best management practices to manage low-threat discharges of waste to land. The San Diego Water Board renewed these waivers in May of 2019 as Order No. R9-2019-0005, which expire in May of 2024.

The adoption of the conditional waivers will revise and renew ten classifications of waivers adopted by the San Diego Water Board in Order No. R9-2019-0005, remove the waiver for the *Discharges to and of recycled water*, revise *Miscellaneous “Low Threat” Discharges to Land*, revise the waiver for *Discharges/Disposal of Solid Wastes to Land*, and revise the waiver for *Discharges of Emergency/ Disaster Related Wastes*.

Role of Conditional Waivers

The San Diego Water Board may waive the requirement for a discharger to file a ROWD pursuant to Water Code sections 13260(a) and (c) and 13264(a), or the issuance of WDRs pursuant to Water Code sections 13263(a) and 13264(a), or both. Discharges that comply with waiver conditions are not expected to pose a threat to the quality of waters of the state. A discharge that is included in one of the low threat categories and complies with applicable waiver conditions is eligible for coverage by a conditional waiver.

However, even if a discharger can fully comply with all the conditions of a waiver, the San Diego Water Board may choose to regulate any specific discharge with WDRs. The existence of a waiver does not preclude the San Diego Water Board from deciding to regulate a specific discharge by issuing WDRs, nor does it preclude a discharger from requesting individual WDRs.

Nevertheless, there are several types or categories of waste discharges for which waivers are desirable. Conditional waivers allow the San Diego Water Board to utilize fewer resources to regulate discharges that pose only a low threat to water quality, allowing staff resources to focus on discharges that have a higher potential threat to water quality in the Region. Dischargers also benefit from fewer regulatory requirements when discharging in compliance with a waiver. Therefore, in a number of circumstances waivers are in the best interest of the San Diego Water Board, the dischargers, and the public.

A conditional waiver establishes the minimum requirements expected of a discharger to minimize or eliminate the discharge or potential discharge of pollutants to waters of the state. Compliance with waiver conditions may not ensure that water quality is protected in every situation. Therefore, a waiver for a specific discharge or specific type of discharge is conditional and *may be terminated at any time* if the San Diego Water

Board determines that a specific discharge or specific type of discharge is no longer consistent with the Basin Plan or is no longer in the public interest.

A waiver does not authorize any discharge that is otherwise prohibited or regulated. A waiver does not preclude the need for permits, licenses, or certificates that may be required from other local or governmental agencies and entities. If any regulations or ordinances have more restrictive requirements than the applicable waiver conditions, those requirements supersede the waiver conditions. However, if requirements of a waiver are more restrictive than the applicable regulations or ordinances, as they pertain to water quality protection, the discharger must comply with the conditions of the waiver or else file a ROWD seeking individual WDRs with the San Diego Water Board.

Finally, a waiver does not preclude the San Diego Water Board from taking enforcement actions for violation of waiver conditions, or for any discharges that cause or threaten to cause a violation of provisions in the Basin Plan, or that create or threaten to create a condition of nuisance or pollution.

Background

The Water Code defines “waste” as “*sewage and any and all other waste substances, liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or processing operation, including waste placed within containers of whatever nature prior to, and for purposes of disposal.*”¹¹

“Discharge of waste” occurs whenever a waste is placed upon the ground or enters any “*waters of the state.*” The Water Code defines “*waters of the state*” as “*any surface water or groundwater, including saline water, within the boundaries of the state.*”¹²

Water Code section 13264(a) states that “*no person shall initiate any new discharge of waste...prior to the filing of the reports required by section 13260 and no person shall take any of these actions after filing the report but before whichever of the following occurs first:*

- 1) *The issuance of waste discharge requirements pursuant to section 13263.*
- 2) *The expiration of 140 days after compliance with section 13260 if the waste to be discharged does not create or threaten to create a condition of pollution or nuisance.*
- 3) *The issuance of a waiver pursuant to section 13269.”*

¹¹ Defined in Water Code section 13050(d).

¹² Defined in Water Code section 13050(e).

Water Code section 13260(a)(1) requires that any person (including any city, county, district, State, and the United States to the extent authorized by Federal law)¹³ discharging, or proposing to discharge, wastes within any region that could affect the quality of waters of the state, other than into a community sewer system, must file a ROWD with the appropriate California Regional Water Quality Control Board (Regional Water Board).

Water Code section 13263(a) requires that each Regional Water Board prescribe discharge requirements for any existing or proposed waste discharges within its area of jurisdiction, except discharges into a community sewer system. The Regional Water Board is authorized to prescribe waste discharge requirements even if no ROWD has been filed.¹⁴

Finally, Water Code section 13269 gives each Regional Water Board the authority to conditionally waive the provisions of sections 13260(a) & (c), 13263(a), and 13264(a) for a specific discharge or type of discharge. In order to do so, a Regional Water Board must determine that a waiver for a specific discharge or type of discharge is consistent with the Basin Plan and is not against the public interest.

Because the resources available to the San Diego Water Board are significantly less than those needed to regulate all possible waste discharges in the Region, focusing staff resources on discharges according to their potential threat to water quality is necessary. Most types of discharges that have a higher threat to water quality are point sources. Discharges from point sources are readily amenable to regulation and shown to be effectively regulated through the adoption of general or individual WDRs.

However, there are several types of point source, as well as nonpoint source discharges that may not have an adverse effect on the quality of the waters of the state, and/or are not readily amenable to regulation through WDRs. For these types of discharges, issuing a conditional waiver may be appropriate. The types of discharges which may be eligible for a waiver include only discharges to land and groundwater, and discharges to surface waters that are not otherwise subject to National Pollutant Discharge Elimination System (NPDES) regulations.¹⁵ NPDES regulations are federal requirements and the State does not have the legal authority to waive NPDES regulations.

The San Diego Water Board first developed and formally issued conditional waivers for specific types of discharge in the San Diego Region in a resolution adopted in 1983.¹⁶

¹³ Defined in Water Code section 13050(c).

¹⁴ Water Code section 13263(d).

¹⁵ Defined in Code of Federal Regulations Title 40 section 122.3.

¹⁶ Resolution No. 83-21, *A Resolution Conditionally Waiving Adoption of Waste Discharge Requirements for Certain Specific Types of Discharges*, adopted in July 1983.

The conditional waivers were incorporated into the Basin Plan in 1994 to centralize the information in one location for the public.

Water Code sections 13269 (pertaining to waivers) and 13350 (pertaining to civil liability) were amended in 1999.¹⁷ The amendments to section 13269 require(d) the San Diego Water Board to do the following:

- For waivers in effect on January 1, 2000, review the terms, conditions and effectiveness of each waiver issued;
- Renew waivers for specific discharges or types of discharge by January 1, 2003 (failure to renew a waiver automatically results in termination of the waiver);
- Determine if general or individual WDRs should be issued for ongoing discharges where waivers have been terminated;
- Establish waiver conditions;
- Enforce waiver conditions; and
- Renew each waiver every five years (or each waiver will automatically expire).

The amendments to section 13350 specify that any person that discharges waste in violation of a waiver condition shall be liable civilly, and remedies may be proposed in accordance with Water Code section 13350(d) or (e). Therefore, waiver conditions are enforceable.

Waivers must be consistent with the Basin Plan and in the public interest. The consistency requirement means that a waiver cannot permit discharges that violate water quality objectives or Basin Plan prohibitions. For the waivers to be consistent with the Basin Plan, the following general conditions apply to each specific type of discharge for which a waiver of WDRs and/or the requirement to file ROWDs may be issued:

- The discharge shall not create a nuisance¹⁸ or pollution¹⁹ as defined in the Water Code;
- The discharge shall not cause a violation of any applicable water quality standard for receiving waters adopted by the San Diego Water Board, or the State Water Resources Control Board (State Water Board), as required by the Clean Water Act; and

¹⁷ On October 10, 1999, Senate Bill 390 was ratified and effectively amended Water Code sections 13269 and 13350.

¹⁸ "Nuisance" is defined by Water Code section 13050(m) as anything which meets all of the following requirements: (1) Is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property; (2) Affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal; and (3) Occurs during, or as a result of, the treatment or disposal of wastes.

¹⁹ "Pollution" is defined by Water Code section 13050(l)(1) as an alteration of the quality of the waters of the state by waste to a degree which unreasonably affects waters for beneficial uses or facilities which serve these beneficial uses. Pollution may include contamination.

- The discharge of any substance in concentrations toxic to animal or plant life is prohibited.

In addition to the general overall conditions listed above, issuing conditional waivers would not be against the public interest under one or more of the following circumstances:

- The type of discharge is effectively regulated by other public agencies; or
- The type of discharge does not adversely affect the quality or the beneficial uses of the waters of the state; or
- The type of discharge is not readily amenable to regulation through adoption of WDRs but warrants San Diego Water Board oversight to ensure compliance with the mandated conditions (e.g., Basin Plan water quality objectives).

The San Diego Water Board adopted waivers for low threat discharges in the San Diego Region in accordance with the amendments to Water Code section 13269 in September 2002, September 2007, June 2014, and May 2019.

Purpose of Order No. R9-2024-0001

The purpose of Order No. R9-2024-0001 (Order) is to:

- Revise and renew the waivers that are set to expire in May 2024;
- Remove waiver No. 2, *Discharges to Land of Recycled Water*;
- Revise waiver No. 3, *Miscellaneous "Low Threat" Discharges to Land*, adding a definition of "non-contact cooling discharge";
- Revise waiver No. 9, *Discharges/Disposal of Solid Wastes to Land* to clarify the definition of "Known Contaminated Sites," clarify that site soils are considered contaminated if hydrocarbon, chlorinated solvents, or other contaminate based odors are detected, modify Tables Nos. 2 and 3 to improve readability.
- Revise waiver No. 11, *Discharges of Emergency/ Disaster Related Wastes* to eliminate waste discharges regulated by the State Water Boards' Disaster-Related General Statewide Order (WQO 2020-0004-DWQ).

In addition, the Order also:

- Groups the specific types of discharge into discharge classifications;
- Provides general waiver conditions applicable to a discharge or discharge operations for all specific types of discharge within a discharge classification; and
- Provides specific waiver conditions for each specific type of discharge within a discharge classification, if applicable.

Before renewing a waiver, the conditions of each waiver must be reviewed for their effectiveness in minimizing or eliminating the discharge of pollutants and protecting water quality. Discharges that comply with both the general and specific waiver conditions must be expected not to pose a threat to water quality. In reviewing the effectiveness of a waiver and its conditions, the San Diego Water Board considered the volume, duration, frequency, and constituents in a type of discharge, as well as resources required and available for regulating the type of discharge. If waiver conditions are shown to be ineffective in minimizing or eliminating the discharge of pollutants for a type of discharge, the waiver conditions should be revised to improve effectiveness. Although none of the waivers proposed for renewal fall under this category, if the waiver conditions cannot be revised to improve effectiveness, the waiver should be terminated and the San Diego Water Board should adopt and issue conditional waivers for specific discharges, or issue WDRs for specific individual discharges, or issue general WDRs for a type or category of discharge in the Region.

In addition, new types of discharges may be identified, and conditional waivers issued if the San Diego Water Board determines that waiving WDRs and/or the requirement to file ROWDs for the newly proposed types of discharge is consistent with the Basin Plan and in the public interest.

The following sections of this report review the effectiveness of the waivers and waiver conditions. These sections discuss how conditionally waived requirements to obtain WDRs and/or file ROWDs can be grouped into discharge classifications.

Renewed Waivers

Table 1 of this report lists the types of discharges that are eligible for a waiver. Pursuant to the Water Code, the waivers to be renewed must be reviewed for effectiveness, and the conditions must be revised, if necessary, to provide additional requirements to minimize or eliminate discharges of pollutants to better protect water quality in the Region and collect monitoring data for discharges suspected to have an adverse impact on water quality.

Order No. R9-2024-0001 waives WDRs and/or the requirement to file ROWDs for the following 36 low threat discharges:

1. Discharges from on-site graywater disposal systems;
2. Discharges of air conditioner condensate and non-contact cooling water to land;
3. Discharges from swimming pools;
4. Discharges from construction and test pumping of water wells to land;
5. Discharges from short-term construction dewatering operations to land;
6. Discharges from flushing water lines to land;
7. Discharges from washing vehicles, pavement, buildings, etc. to land;

8. Discharges from irrigated lawns and landscaping using groundwater or municipal supply water to land;
9. Discharges from structural infiltration-based best management practices to land;
10. Discharges from foundation drains, crawl space pumps, and footing drains to land;
11. Discharges from utility vaults and underground structures to land;
12. Discharges of winery process water to lined evaporation ponds at small wineries;
13. Discharges of storm water runoff from silvicultural operations;
14. Discharges from timber harvesting projects;
15. Discharges from wildfire suppression and fuels management activities;
16. Discharges from small animal feeding operations;
17. Discharges from medium animal feeding operations;
18. Discharges of storm water runoff from animal operations;
19. Discharge/application of manure to soil as an amendment or mulch;
20. Discharges from grazing lands;
21. Discharges of wastewater from facilities producing less than 9,090 harvest weight kilograms per year of cold-water aquatic species;
22. Discharges of wastewater from facilities producing less than 45,454 harvest weight kilograms per year of warm water aquatic species;
23. Discharges of drilling muds to land;
24. Discharges of concrete grinding residues to land;
25. Discharges of slurries from sand and gravel mining operations to land;
26. Discharge/application of amendments and/or mulches to soil;
27. Discharges/disposal of inert waste to solid waste disposal facilities only accepting inert wastes;
28. Discharges of soils containing wastes to temporary waste piles;
29. Discharges/Disposal/Reuse of soils characterized as inert from contaminated sites to land;
30. Discharges of waste related to fireworks displays over land;
31. Other periodic aerial discharges of wastes over land;
32. Incidental discharges of oil and oily water within a response area during an oil spill response in marine waters;
33. Discharges of mass mortality wastes to emergency landfills;
34. Discharges of dredge or fill material into non-federal waters of the state;
35. Emergency repair and protection activities in non-federal waters of the state; and
36. Other discharges of emergency/disaster related wastes.

Revisions to the waiver conditions for four types of discharges were made as described below to better protect water quality.

Changes to Conditional Waivers

Proposed major revisions to the renewed waivers are identified and briefly discussed below.

- **Former Waiver No. 2 – Discharges to Land of Recycled Water (Recycled Water Waiver)**

The San Diego Water Board removed the Recycled Water Waiver as it is no longer used or needed. The review and approval of increased flow limitations for recycled water facilities has been, and continues to be, a top priority for the San Diego Water Board. Thus, recycled water expansions can be permitted in a timely manner through revisions of WDR orders or addendums allowing for the flow increase.

Additionally, the State Water Board adopted the statewide Water Reclamation Requirements for Recycled Water Use (Order WQ 2016-0068-DDW)²⁰ on June 7, 2016. Order WQ 2016-0068-DDW establishes standard conditions for recycled water use and conditionally delegates authority to an Administrator to manage a Water Recycling Program and issue Water Recycling Permits to recycled water users. Most recycled water producers in the San Diego Water Board's region are Administrators of their own Water Recycling Program and issue Water Recycling Permits to recycled water users. The Administrators are responsible for assuring that new reuse site plans are reviewed by either the County of San Diego's Department of Environmental Health and Quality and/or the Division of Drinking Water. This allows for the timely review and approval of new recycled water use sites.

As such, Waiver No. 2, for discharges to land of recycled water is removed as it is no longer needed for timely review and approval of recycled water production and use.

- **Former Waiver No. 3 (currently Waiver No.2) – Miscellaneous “Low Threat” Discharges to Land**

The San Diego Water Board revised the waiver for *Discharges to Land of Air Conditioner Condensate or Non-Contact Cooling Water to Land* by adding a definition of “non-contact cooling discharge” to improve consistency with the State Water Board's Water Quality Order No. 2003-0003-DWQ, *Statewide General Waste Discharge Requirements (WDRs) for Discharge to Land with a Low Threat to Water Quality (General WDRs)*.²¹

²⁰ Adopted by the State Water Board on June 7, 2016, at https://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2016/wqo2016_0068_ddw.pdf.

²¹ https://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2003/wqo/wqo2003-0003.pdf

- **Former Waiver No. 9 (currently Waiver No.8) – Discharges/Disposal to Land of Solid Wastes**

The San Diego Water Board revised the waiver for *Discharge/Disposal/Reuse of Soils Characterized as Inert from Contaminated Sites to Land* by:

- Clarifying the definition of a “known contaminated site.” The waiver specifies that a Discharger, prior to any excavation activities, may be unaware that soils at a site may be contaminated. If the Discharger encounters contaminated soils during the excavation process, then the site is known to be contaminated and the Discharger is required to apply for enrollment in the waiver.
- Clarifying that site soils are considered contaminated if hydrocarbon, chlorinated solvents, or other contaminate based odors are detected.
- Modifying Tables Nos. 2 and 3, to simplify the information presented and improve readability. The determination of final soil screening levels presented in the tables involves a comprehensive process that integrates multiple methodologies and data sources to ensure the protection of human health and the environment. Order Nos. R9-2014-0041 and R9-2019-0005 presented the methodologies and data in Tables Nos. 2 and 3. Staff determined that while informative, these robust tables are not intuitive, and frequently cause confusion amongst Dischargers. Staff decided to archive, for future reference, the original tables in this Staff Report as Appendix A; and to incorporate into Order No. R9-2024-0001, concise versions of the tables.

- **Former Waiver No. 11 (currently Waiver No.10) – Discharges of Emergency/Disaster Related Wastes**

The San Diego Water Board revised the waiver for *Discharges of Emergency/Disaster Related Wastes* to eliminate duplicative requirements found in State Water Resources Control Board's Order WQ 2020-0004-DWQ, *General Waste Discharge Requirements for Disaster-Related Wastes* by:

- Removing the requirements for *Dischargers of Disaster Related Wastes to Temporary Waste Piles and Surface Impoundments*.
- Revising the requirements for Discharges of Mass Mortality Waste to Temporary Waste Piles and Emergency Landfills.
- Removing the requirements for *Disposal of Disaster Related and Mass Morality Wastes at Regulated Waste Disposal Facilities*.

Classification of Waste Discharge Types for Proposed Conditional Waivers

Order No. R9-2024-0001 includes 36 specific types of discharges eligible for a conditional waiver. Several of the discharge types are similar and/or related in terms of discharge setting, discharge source, and/or proposed waiver conditions.

Therefore, Order No. R9-2024-0001 group types of discharges eligible for conditional waivers into discharge classifications. General Conditions were developed that are applicable to a discharger or discharge operation, or all discharge types within a discharge classification. Specific Conditions were developed for individual types of discharges, if additional or discharge-specific conditions were necessary.

The table below lists the proposed discharge classifications, and group types of discharges that were discussed in the previous sections according to those classifications.

Table 1. Proposed Conditional Waivers and Discharge Classifications

| Proposed Waiver No. | Proposed Discharge Classification | Types of Discharge Included in Conditional Waiver Discharge Classification |
|---------------------|---|---|
| 1 | Discharges from on-site graywater disposal systems | Discharges from on-site graywater disposal systems |
| 2 | Miscellaneous “low threat” discharges to land | <p>Discharges from construction and test pumping of water wells to land;</p> <p>Discharges of air conditioner condensate and non-contact cooling water to land;</p> <p>Swimming pool discharges to land;</p> <p>Discharges from short-term construction dewatering operations to land;</p> <p>Discharges to land from utility vaults and underground structures; and “Low Threat” discharges to land and/or groundwater including the following:</p> <ul style="list-style-type: none"> Groundwater pumped from drinking water wells; Groundwater from foundation drains, crawls space pumps, and footing drains; Discharges from flushing water lines; Discharges from washing vehicles, pavement, buildings, etc.; Infiltration from residential/commercial/industrial/recreational facility landscape and lawn irrigation using groundwater or municipal supply water; and Infiltration from structural infiltration based best management practices |
| 3 | Discharges of winery process water to lined evaporation ponds at small wineries | Discharges of winery process water to lined evaporation ponds at small wineries |
| 4 | Discharges from silvicultural operations | <p>Discharges of storm water runoff;</p> <p>Discharges from timber harvesting projects; and</p> <p>Discharges from wildfire suppression and fuels management activities</p> |

Table 1 (continued). Proposed Conditional Waivers and Discharge Classifications

| Proposed Waiver No. | Proposed Discharge Classification | Types of Discharge Included in Conditional Waiver Discharge Classification |
|---------------------|--|--|
| 5 | Discharges from animal operations | Discharges from small animal feeding operations (less than 300 animal units); Discharges from medium animal feeding operations (300-999 animal units, where 1 animal unit is equivalent to 1 cow or 1,000 animal pounds); Discharges of storm water runoff; Discharge/application of manure to soil as an amendment or mulch; and Discharges from grazing lands |
| 6 | Discharges from aquatic animal production facilities | Discharges from aquatic animal production facilities |
| 7 | Discharges of slurries to land | Discharges of drilling muds to land; Discharges of concrete grinding residues to land; and Discharges of slurries from sand and gravel mining operations to land |
| 8 | Discharges of solid wastes to land | Discharge/application of amendments and/or mulches to soil; Discharges/disposal of inert wastes to solids waste disposal facilities only accepting inert wastes; Discharges of soils containing wastes to temporary waste pile; and Discharge/disposal/reuse of soils characterized as inert from contaminated sites to land |
| 9 | Aerially discharged wastes over land | Discharges of waste related to fireworks displays over land Other periodic aerial discharges of wastes over land |
| 10 | Discharges of emergency/disaster related wastes | Incidental discharges of oil and oily water within a response area during an oil spill response in marine waters; Discharges of mass mortality wastes to emergency landfills; Discharges of dredge or fill material into non-federal waters of the state, under emergency conditions; Emergency repair and protection activities in non-federal waters of the state; and Other discharges of emergency/disaster related wastes |

Based on these conditional waiver discharge classifications, General Conditions and Specific Conditions, if applicable, have been developed and updated. The proposed conditional waivers and waiver conditions are discussed in the following section.

Enrollment Requirements for Conditional Waivers

Waiver enrollment requirements are based on the potential threat to water quality that a type of discharge may pose. For the types of discharges that are not expected to pose a threat to water quality, minimum requirements for enrollment were developed so a discharger can implement measures that will allow the discharge to be conditionally waived without filing a notice of intent to enroll. For the types of discharges that may pose a potential threat to water quality, the waiver conditions include a requirement to file a notice of intent to enroll in the waiver and minimum requirements that must be implemented to minimize or eliminate the discharge or potential discharge.

In accordance with Water Code section 13269(a)(4), Dischargers, as a condition of a waiver, may be required to pay an annual fee as determined by the San Diego Water Board. Pursuant to section 13260(d)(1)(A) of the Water Code, annual fee must be assessed in accordance with the current fee schedule promulgated by the State Water Board in Calif. Code Regs. title 23, section 2200. Discharges enrolled in Waiver No. 5 – Discharges from animal operations are required to pay an annual fee. Since the adoption of the waivers in June 2014, the fee schedule has been amended to specifically require fees for animal operations, including those regulated through a waiver. At this time, no other fees have been defined for other Waivers.

The annual fee for discharges enrolled in Waiver No. 5 is based on the number of animals onsite in accordance with Calif. Code Regs. title 23, section 2200(c), plus any applicable surcharges. Annual fees are subject to change by regulations adopted by the State Water Control Board.

Environmental Review

The San Diego Water Board prepared an Initial Study/Checklist and negative declaration in 2014 to assess potential environmental impacts associated with the conditional waivers, and to evaluate the environmental impacts of the reasonably foreseeable methods of compliance with the waivers. The project as described in the negative declaration entails the adoption of Conditional Waivers of Waste Discharge Requirements for Low Threat Discharges in the San Diego Region listed in Table 1 of this Staff Report.

Order No. R9-2024-0001 requires the implementation of effective management measures, and structural and non-structural best management practices to avoid potential impacts associated with storm water run on and runoff, wastes, and wastewaters discharged from facilities or operations located with the San Diego Region.

The San Diego Water Board is prohibited from specifying the manner of compliance with its orders, and accordingly the actual environmental impacts of the management measures and best management practices will necessarily depend upon the compliance strategy selected by the individual seeking enrollment in a waiver.

In preparing the environmental documents for this project, the San Diego Water Board has considered the pertinent requirements of State law. Order No. R9-2024-0001 does not significantly change the project or the anticipated and continued implementation of the project and therefore the negative declaration adopted in 2014 continues to apply for this project.

The San Diego Water Board is the lead agency for this project and has complied with the requirements specified in the California Environmental Quality Act (CEQA)²² by adopting the negative declaration for this project prior to issuing Order No. R9-2024-0001.

Public Participation

Public participation is an important component of developing the waivers. The San Diego Water Board notified interested parties and persons of its intent to adopt the waivers and has provided them with an opportunity to submit their written comments and recommendations. In addition, the following table identifies the stakeholder events associated with the adoption of the Order:

Table 2: Public Stakeholder Events

| Date | Event |
|--------------------|--|
| September 14, 2023 | Notice of Public Workshops |
| October 26, 2023 | Waiver Reissuance Public Workshop (Morning) |
| October 26, 2023 | Waiver Reissuance Public Workshop (Afternoon) |
| December 4, 2023 | Notice of Availability of Tentative Order No. R9-2024-0001 |
| March 13, 2024 | Public Adoption Hearing |

²² Public Resources Code (Pub. Resources Code) section 21000 et seq.

The San Diego Water Board will hold a public hearing on Order No. R9-2024-0001 during its regular Board meeting on the following date and time and at the following location:

**March 13, 2024, starting at 9:00 A.M.
San Diego Water Board, Board Meeting Room
2375 Northside Drive, Suite 100; San Diego, California 92108**

Interested parties and persons are invited to attend. At the public hearing, the San Diego Water Board will hear testimony, if any, pertinent to the conditional waivers. Oral testimony will be heard; however, consistent with State Water Resources Control Board regulations that apply to this proceeding, written comments received after the formal written comment period, will not be accepted, and will not be incorporated into the administrative record if doing so would prejudice any party.

Please be aware that dates and venues may change. Our Web address is http://www.waterboards.ca.gov/sandiego/board_info/agendas/ where you can access the current agenda for changes in dates and locations.

References

- California Plumbing Code. *Appendix G, Graywater Systems*. 2001. California Administrative Code, Title 24, Part 5.
- California Environmental Protection Agency. 2005. *Use of California Human Health Screening Levels (CHHSLs) in Evaluation of Contaminated Properties*. <http://www.calepa.ca.gov/Brownfields/documents/2005/CHHSLsGuide.pdf>
- Central Valley Water Board. 1989. *The Designated Level Methodology for Waste Classification and Cleanup Level Determination – Staff Report*. California Regional Water Quality Control Board, Central Valley Region, Sacramento, California. October 1986. Updated June 1989.
- Department of Toxic Substances Control. 2001. *Information Advisory Clean Imported Fill Material*. October 2001. http://www.dtsc.ca.gov/Schools/upload/SMP_FS_Cleanfill-Schools.pdf
- Efroymson, R.A., G.W. Suter II, B.E. Sample, and D.S. Jones. 1997. *Preliminary Remediation Goals for Ecological Endpoints*. Oak Ridge National Laboratory, Oak Ridge, TN. 50 pp. ES/ER/TM-162/R2.
- San Diego Water Board. 1983. *A Resolution Conditionally Waiving Adoption of Waste Discharge Requirements for Certain Specific Types of Discharges*. Resolution No. 83-21. California Regional Water Quality Control Board, San Diego Region, San Diego, California. July 1983.
- San Diego Water Board. 1994. *Water Quality Control Plan for the San Diego Basin (9)*. California Regional Water Quality Control Board, San Diego Region, San Diego, California. September 1994.
- San Diego Water Board. 2002. *Amendment to the Water Quality Control Plan for the San Diego Region (9) to Incorporate a Waste Discharge Requirement Waiver Policy for Certain Specific Types of Discharges*. Order No. R9-2002-0186. California Regional Water Quality Control Board, San Diego Region, San Diego, California. September 11, 2002.
- San Diego Water Board. 2007. *Amendment to the Water Quality Control Plan for the San Diego Region (9) to Incorporate the Revised Conditional Waivers of Waste Discharge Requirements for Specific Types of Discharge within the San Diego Region*. Order No. R9-2007-0104. California Regional Water Quality Control Board, San Diego Region, San Diego, California. October 2007.
- San Diego Water Board. 2014. *Conditional Waivers of Waste Discharge Requirements for Low Threat Discharges in the San Diego Region*. Order No. R9-2014-0041. California Regional Water Quality Control Board, San Diego Region, San Diego, California. June 2014.

San Francisco Bay Regional Water Quality Control Board. 2016. *Environmental Screening Levels* (Feb.2016 Rev.3).

https://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/esl.html

U.S. Environmental Protection Agency, Office of Solid Waste. 1986. *Test Methods for Evaluating Solid Waste, Physical/Chemical Methods*. SW-486.

<http://www.epa.gov/epaoswer/hazwaste/test/main.htm>

APPENDIX A
TIERS 1 AND 2 INERT WASTE SOILS
SOIL SCREENING LEVEL TABLES: DATA AND METHODOLOGY

Tier 1 Soil Screening Levels

| Calif. Code Regs Title 22 Metals | Inert Waste Target (mg/kg) ^a | Residential ESL ^b (mg/kg) | e-PRG ^c (mg/kg) | Background ^d Mean (mg/kg) | Tier 1 SSL ^{e,f} (mg/kg) |
|--|--|--|-------------------------------|---|---|
| Antimony | 6.0 | 31.29 | 5.0 | 0.60 | 5.0 |
| Arsenic | 50 | 0.07 | 9.9 | 3.5 | 3.5 |
| Barium | 1,000 | 15,305.24 | 283 | 509 | 509 |
| Beryllium | 4.0 | 154 | 10 | 1.28 | 4.0 |
| Cadmium | 5.0 | 39 | 4.0 | 0.36 | 4.0 |
| Chromium, Total | 50 | NA | 0.4 | 122 | 122 |
| Chromium, Hexavalent | 50 | 0.3 | NA | NA | 0.3 |
| Cobalt | NA | 23.4 | 20 | 14.9 | 20 |
| Copper | 1,300 | 3,128.57 | 60 | 28.7 | 60 |
| Lead | 15 | 80 | 40.5 | 23.9 | 23.9 |
| Mercury | 2.0 | 12.51 | 0.00051 | 0.26 | 0.26 |
| Molybdenum | NA | 391.07 | 2.0 | 1.3 | 2.0 |
| Nickel | 100 | 824.63 | 30 | 57 | 57 |
| Selenium | 50 | 391.07 | 0.21 | 0.058 | 0.21 |
| Silver | NA | 391.07 | 2.0 | 0.80 | 2.0 |
| Thallium | 2.0 | 0.78 | 1.0 | 0.56 | 0.78 |
| Vanadium | 50 | 393.11 | 2.0 | 112 | 112 |
| Zinc | NA | 23,464.29 | 8.5 | 149 | 149 |

- a. Calculated using Central Valley Water Board Designated Level Methodology, where the Water Quality Goal is the lower value of the federal or State drinking water primary maximum contaminant level, the Environmental Attenuation Factor is 10, and the Leachability Factor is 100.
- b. Values taken from the San Francisco Bay Regional Water Quality Control Board Environmental Screening Levels (ESLs). Based on Residential land use, sand scenario soil type, and shallow soil exposure depth (Feb.2016 Rev.3).

- c. Taken from Oak Ridge National Laboratory's Preliminary Remediation Goals for Ecological Endpoints (Efroymson, et al 1997).
- d. Taken from Kearney Foundation of Soil Science Division of Agriculture and Natural Resources, University of California Background Concentrations of Trace and Major Elements in California Soil – Special Report (Bradford, et al 1996).
- e. Tier 1 Soil Screening Level for inert waste soils that can be reused without restriction. Tier I SSLs selected based on the following steps: Step 1) Select lower value of Residential ESLs or e-PRG; Step 2) Select lower value of Step 1 or Inert Waste Target; and, Step 3) Select higher value of Step 2 and Arithmetic Mean Background.
- f. These values are not intended to provide cleanup levels for soil remaining on-site. Such values should be established based on the contaminants of concern, the site use, and in conjunction with the regulatory agency providing oversight for the remediation effort.

Tier 2 Soil Screening Levels

| Pollutant | Inert Waste Target ^a (mg/kg) | Commercial /Industrial Soil ESL ^b (mg/kg) | Background ^c | | TTLC ^d | Tier 2 SSL ^{e,f} (mg/kg) |
|--------------------|--|---|-------------------------|------------------|-------------------|--------------------------------------|
| | | | Max (mg.kg) | ½ Max (mg/kg) | | |
| Antimony | 6.0 | 467.2 | 1.95 | 0.98 | 500 | 6.0 |
| Arsenic | 50 | 0.0.305 | 11 | 5.5 | 500 | 5.5 |
| Barium | 1,000 | 216,610.9 | 1,400 | 700 | 10,000 | 1,000 |
| Beryllium | 4.0 | 2,212.07 | 2.7 | 1.4 | 75 | 4 |
| Cadmium | 5.0 | 578.28 | 1.70 | 0.85 | 100 | 5 |
| Chromium, Total | 50 | NA | 1,579 | 790 | 2,500 | 790 |
| Cobalt | NA | 347 | 46.9 | 23.5 | 8,000 | 347 |
| Copper | 1,300 | 46,720 | 96.4 | 48.2 | 2,500 | 1,300 |
| Lead | 15 | 320 | 97.1 | 48.6 | 1,000 | 49 |
| Mercury | 2.0 | 186.69 | 0.90 | 0.45 | 20 | 2 |
| Molybdenum | NA | 5,840 | 9.6 | 4.8 | 3,500 | 3,500* |
| Nickel | 100 | 11,132.85 | 509 | 255 | 2,000 | 255 |
| Selenium | 50 | 5,839.71 | 0.43 | 0.22 | 100 | 50 |
| Silver | NA | 5,839.71 | 8.30 | 4.2 | 500 | 500* |
| Thallium | 2.0 | 11.68 | 1.10 | 0.55 | 700 | 2 |
| Vanadium | 50 | 5,829.11 | 288 | 144 | 2,400 | 144 |
| Zinc | NA | 350,400 | 236 | 118 | 5,000 | 5,000* |

* None of the analytical results from any samples collected to characterize the waste soil can exceed the Tier 2 Soil Screening Level for this pollutant.

- a. Calculated using Central Valley Water Board Designated Level Methodology, where the Water Quality Goal is the lower value of the Federal or State drinking water primary maximum contaminant level, the Environmental Attenuation Factor is 10, and the Leachability Factor is 100.
- b. Values taken from the San Francisco Bay Regional Water Quality Control Board Environmental Screening Levels (ESLs). Based on Commercial/Industrial land use, sand scenario soil type, and shallow soil exposure depth (Feb.2016 Rev.3).
- c. Taken from Kearney Foundation of Soil Science Division of Agriculture and Natural Resources, University of California Background Concentrations of Trace and Major Elements in California Soil – Special Report (Bradford, et al 1996).

- d. Total Threshold Limit Concentration. Concentrations above the TTLC would be classified as hazardous waste.
- e. Tier 2 Soil Screening Level for inert waste soils that can be reused only for commercial or industrial land use designation. Tier II SSLs selected based on the following steps: Step 1) Select lower value of Commercial/Industrial Soil ESL or Inert Waste Target; Step 2) Select higher value of Step 1 or $\frac{1}{2}$ Maximum Background; and, Step 3) Select lower value of Step 2 and Total Threshold Limit Concentration.
- f. These values are not intended to provide clean up levels for soil remaining on-site. Such values should be established based on the contaminants of concern, the site use, and in conjunction with the regulatory agency providing oversight for the remediation effort.