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File No. 82418

September 17, 2013



Via Email to: commentletters@waterboards.ca.gov

Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

Re: **Comments to A-2209(a)-(e) – September 24, 2013 Board Meeting**
Central Coast Agricultural Waiver

Dear Ms. Townsend:

Ocean Mist Farms and RC Farms, major vegetable growers and packers in the Salinas Valley and Watsonville areas hereby augment our previous comments in respect to recent proposed amendments to the Central Coast Agricultural Waiver. We address only five issues.

1. **Prohibition of Growers Causing or Contributing to Exceedances of Water Quality Objectives.** (Provisions 22-23, 82, 84-87, Pgs. 25, 26)

The Language:

- “22. Dischargers ~~must comply with~~ **shall not cause or contribute to exceedances of** applicable water quality standards, as defined in Attachment A, **shall** protect the beneficial uses of waters of the State and **shall** prevent nuisance as defined in Water Code section 13050. (Pg. 25)”

The Problem:

The use of the language “dischargers shall not cause or contribute” is problematic. This would subject a farmer to enforcement if he contributed 2 ppm of a contaminant in an agricultural discharge if it added to a water body that was at 99 ppms and the objective was 100 ppm. An even worse abuse would be if only a few molecules were discharged into an already exceeding water body. This language is therefore unreasonable. We can understand the Board’s reluctance to using only the word “cause” because a farmer discharging 90 ppm could defend his discharge saying he did not “cause” the exceedance; however, further qualifying language is necessary to appropriately condition against possible abuse of the term “contributing.”



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The Solution:

- a. We previously suggested adding the word “significantly” before the word “contribute.” This would be direct and appropriate.
- b. Alternatively, we would suggest in each place the Order uses the new cause or contribute language it references back to the new section 87.5, which contains clarifying regulatory context by stating:

87A87.5. To comply with Provisions 22, 23, and 84-87 of this Order, Dischargers must (1) implement management practices that prevent or reduce discharges of waste that are causing or contributing to exceedances of water quality standards; and (2) to the extent practice effectiveness evaluation or reporting, monitoring data, or inspections indicate that the implemented management practices have not been effective in preventing the discharges from causing or contributing to exceedances of water quality standards, the Discharger must implement modified management practices.

2. Containment Structures. (Provision 33, Pgs. 26, 27)

The Language:

33. Dischargers who utilize containment structures (such as retention ponds or reservoirs) to achieve treatment or control of the discharge of wastes must manage, construct, ~~or~~ **and** maintain such containment structures to avoid ~~percolation of waste to groundwater that causes or contributes to exceedances of water quality standards, and to minimize surface water overflows that have the potential to impair water quality~~ **the percolation of waste to groundwater, minimize surface water overflows, and avoid degrading groundwater or surface water quality. Dischargers may choose the method of compliance appropriate for the individual farm, which may include, but is not limited to:**

- implementing chemical treatment (e.g., enzymes);**
- implementing biological treatment (e.g., wood chips);**
- recycling or reusing contained water to minimize infiltration or discharge of waste;**
- minimizing volume of water in the containment structure to minimize percolation of waste;**
- minimizing percolation of waste via a synthetic, concrete, clay, or low permeability soil liner.”** (Pg. 26)



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The Problem:

The new language that a grower “avoid” any percolation from his ponds will likely be interpreted to be that he is “prohibited” from allowing any such percolation. This is the case notwithstanding the staff’s explanatory words, which appear only in text, not the regulation:

“We retain the word “avoid” in the provision because we disagree that requiring the avoidance of “percolation of waste” to groundwater constitutes a prohibition on all percolation of water to groundwater ...”

The Solution:

Because the explanatory words will be effectively “lost” after the Order’s adoption, this direct statement should be added to the Order itself, or be provided as a footnote to Provision 33.

3. *Notification of Nitrate Exceedances in Drinking Water.* (Groundwater Monitoring section, Provision 61.G.7; Pg. 34)

The Language:

If a discharger conducting individual groundwater monitoring or a third party conducting cooperative groundwater monitoring determines that water in a well that is used or may be used for drinking water exceeds or is projected to exceed any Primary or Secondary MCL, the discharger or third party must notify the Regional Board and users of that water of the exceedance within 30 days. Where the exceedance is of 45 mg/L of Nitrate as NO₃ or 10mg/L of Nitrate + Nitrite (as N), the discharger or third party must provide notice to the Regional Water Board and users within 24 hours of learning of the exceedance. (Pg. 34)

The Problem:

Clarification must be made in the Order in respect to 1) who notifies, 2) who gets informed, 3) how the record of notification is established, and 4) it must modify the 24-hour period, which is unreasonable.

The Solution:

- a. It is critical that the landowner/land operator also be notified of any such exceedances. If he is not the one making the notification to the resident (much preferred) he must be informed as to both the exceedance and as to the notification. Also, there needs to be some official record that such



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notification was made, perhaps either to the Regional Board or to the local public health agency.

- b. The 24-hour timeline must be stricken and revised to “be provided within 15 days or to a longer or shorter time period if a notification period is established by the local public health board in respect to their notification system.

4. **Nitrate Reporting.** (Total Nitrogen Applied Provision 70; Pg. 46)

The proposed order offers a new and rather complex “Method 2” for reporting nitrate use.

The Language:

“2. Tier 3 Dischargers may choose to subdivide the ranch/farm into "nitrate loading risk units," based on the variability of ranch/farm conditions for the purposes of complying with this Order. A nitrate loading risk unit is a subdivided unit of the ranch/farm with different farming conditions. Factors that a discharger may consider in subdividing the farm into nitrate loading risk units include but are not limited to (irrigation system type, crop type, nitrate concentration in the irrigation water, soil type, ease of monitoring and reporting, etc.). The nitrate loading risk unit may be the total ranch, a number of blocks, or an individual block. If a Discharger chooses to subdivide the ranch/farm into individual nitrate loading risk units, the Discharger must maintain individual record keeping, and conduct monitoring and reporting for each nitrate loading risk unit.” (Page 46)

The Problem:

The new provisions in respect to subdividing farms into “management blocks” must merely be an option. In many coastal operations separating out separate blocks would become unmanageable.

The Solution:

Growers should be allowed to have the option of reporting by field notwithstanding which reporting method they elect.



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5. **Tile Drains.** (Part 5 – Monitoring and Reporting, Pg. 39)

The Problem:

We had pointed out that Ocean Mist has an historic system of water re-use taking discharge from urban areas and filtering it through the fields, vegetation and soil, which greatly improves that water quality. If we were required to tap into those tile systems to monitor this water that would be unreasonable, and problematic from several perspectives. We further pointed out that this was unnecessary because the outflow of these tile systems discharge to surface waters of the state in the local surface drains, which are monitored as part of the existing water monitoring program.

The Solution:

The new language in Part 5 clarifies that the tile drains will be treated as other drain water outfall. We appreciate such clarification.

Monitoring and reporting requirements for individual surface water discharge identified in Part 5.A. and Part 5.B. apply to **all** Tier 3 **Dischargers with irrigation water or stormwater discharges to surface water from an outfall. Outfalls are locations where irrigation water and stormwater exit a farm/ranch, or otherwise leave the control of the discharger, after being conveyed by pipes, ditches, constructed swales, tile drains, containment structures, or other discrete structures or features that transport the water. Discharges that have commingled with discharges from another farm/ranch are considered to have left the control of the discharger.** Key monitoring and reporting requirements for individual surface water discharge are shown in Tables 5A and 5B. Time schedules are shown in Table 6.

Sincerely,

William J. Thomas
for BEST BEST & KRIEGER LLP
on behalf of Dale Huss of Ocean Mist Farms and
Dennis Sites of RC Farms

WJT:lmg