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## State Water Resources Control Board

### **NOTICE OF PROPOSED EMERGENCY RULEMAKING**

#### **Waste Discharge Permit Fees – Winery Process Water**

#### **Amendments to Division 3 of Title 23 of the California Code of Regulations**

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##### **Required Notice of Proposed Emergency Action**

Government Code section 11346.1, subdivision (a)(2) requires that, at least five working days prior to submission of a proposed emergency action to the Office of Administrative Law (OAL), the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency, OAL shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6.

The State Water Resources Control Board (State Water Board) sent out to interested parties via electronic mail on June 25, 2021 the proposed changes to Title 23, Division 3, Chapter 9, Article 1, Section 2200 of the California Code of Regulations. This notification satisfies the notification requirements of Government Code section 11346.1(a)(2).

##### **Proposed Emergency Action**

Water Code section 13260(f) requires the State Water Board to adopt emergency regulations revising and establishing fees to be deposited in the Waste Discharge Permit Fund in the State Treasury. At its July 6, 2021 meeting, the State Water Board adopted emergency regulations for waste discharge permit fees for persons issued waste discharge requirements for winery process water.

##### **Proposed Text of Emergency Regulations**

The proposed text of the emergency regulations is attached. The State Water Board is not required to provide any additional public notice prior to adopting revisions to the proposed emergency regulations.

**Finding of Emergency** (Gov. Code, § 11346.1, subd. (b))

The State Water Board has a mandatory legal duty to adopt emergency regulations revising the fees as necessary each fiscal year pursuant to Water Code section 13260(f). Water Code section 13260(f)(2) states that “[t]he adoption of these regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, safety, and general welfare. Notwithstanding Chapter 3.5 (commencing with section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, any emergency regulations . . . shall remain in effect until revised by the State Water Board.”

**Authority and Reference** (Gov. Code, § 11346.5, subd. (a)(2))

Water Code section 13260(f).

**Informative Digest** (Gov. Code, § 11346.5, subd. (a)(3))

Under Water Code section 13260(d)(1)(A), any person discharging waste, or proposing to discharge waste, that could affect the quality of the waters of the state must pay an annual fee in accordance with the fee schedule adopted by the State Water Board.

The proposed emergency regulations will implement fees for holders of waste discharge permits for winery process water as follows:

<b>Facility Process Water Flow (gal/yr)</b>	<b>Fee</b>
10,000 to 30,000	\$750
>30,000 to 100,000	\$1,000
>100,000 to 300,000	\$1,200
>300,000 to 600,000	\$2,000
>600,000 to 1 million	\$3,000
>1 million to 3 million	\$7,000
>3 million to 7 million	\$13,000
>7 million to 15 million	\$19,000

- Dischargers enrolled in an approved Local Agency Oversight program will receive a 50 percent fee reduction.
- Dischargers enrolled in an approved sustainability program will receive a 10 percent fee reduction.
- Dischargers enrolled in an approved Local Agency Oversight program and an approved sustainability program will receive a 50 percent reduction of the annual fee that results from the application of a 10 percent fee reduction.
- Dischargers with facility process water flows of less than 10,000 gallons per year that are directed by the state board or a regional board to enroll under the Statewide General WDRs for discharges of winery process water shall pay the fee applicable to dischargers with 10,000 to 30,000 gallons per year.

- Dischargers with facility process water flows of 10,000 to 30,000 gallons per year that are directed by the state board or a regional board to enroll as a Tier 2 facility under the Statewide General WDRs for discharges of winery process water shall pay the fee applicable to dischargers with >30,000 to 100,000 gallons per year.

**Other Matters Prescribed by Statute** (Gov. Code, § 11346.5, subd. (a)(4))

No other matters are prescribed by statute or regulation applicable to the State Water Board.

**Local Mandate** (Gov. Code, § 11346.5, subd. (a)(5))

The proposed emergency regulations do not impose a mandate on local agencies or school districts because they do not mandate a new program or a higher level of service of an existing program. The fee schedule applies equally to public and private entities and is not unique to local government. No state reimbursement is required by part 7 (commencing with section 17500) of division 4 of the Government Code.

**Estimate of Cost or Savings** (Gov. Code, § 11346.5, subd. (a)(6))

Under the proposed emergency regulations for this fiscal year, no local and state agencies will pay increased fees over last year. There is no cost to any local agency or school district for which reimbursement is required or other nondiscretionary cost of savings imposed on local agencies. There is no cost or savings in federal funding to the state.

October 1, 2021  
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Date

  
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Jeanine Townsend  
Clerk to the Board

**CALIFORNIA CODE OF REGULATIONS**  
**TITLE 23. Division 3. Chapter 9. Waste Discharge Reports and Requirements**  
**Article 1. Fees**

**Section 2200. Annual Fee Schedules.**

Each person for whom waste discharge requirements have been prescribed pursuant to Section 13263 of the Water Code shall submit, to the state board, an annual fee in accordance with the following schedules. The fee shall be submitted for each waste discharge requirement order issued to that person.<sup>1</sup>

(a) The annual fees for persons issued waste discharge requirements (WDRs), except as provided in subdivisions (a)(3), **(a)(4)**, (b), and (c), shall be based on the discharge's threat to water quality (TTWQ) and complexity (CPLX) rating according to the following fee schedule, plus applicable surcharge(s).

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<sup>1</sup> Federal facilities will generally not be invoiced for the portion of the annual fee that is attributable to the state board's ambient water monitoring programs. See *Massachusetts v. United States* (1978) 435 U.S. 444.

Threat to Water Quality (TTWQ)	Complexity (CPLX)	Discharge to Land or Surface Waters <sup>2</sup>	Land Disposal <sup>3</sup> – Not Paying a Tipping Fee <sup>4</sup>	Land Disposal <sup>3</sup> – Paying a Tipping Fee <sup>5</sup>
1	A	\$148,796	\$70,781 <sup>6</sup>	\$59,252 <sup>6</sup>
1	B	\$93,975	\$57,168	\$47,856
1	C	\$50,707	\$36,751	\$30,766
2	A	\$33,870	\$30,625	\$25,638
2	B	\$20,362	\$24,502	\$20,510
2	C	\$15,269	\$18,376	\$15,383
3	A	\$12,034	\$12,250	\$10,256
3	B	\$6,409	\$9,188	\$7,690
3	C	\$2,848	\$4,082	\$3,419

<sup>2</sup> For this table, discharges to land or surface waters are those discharges of waste to land or surface waters not covered by NPDES permits that are regulated pursuant to Water Code Section 13263 that do not implement the requirements of Title 27 of the California Code of Regulations (CCR). Examples include, but are not limited to, wastewater treatment plants, erosion control projects, and septic tank systems. It does not include discharge of dredge or fill material, discharges from agricultural lands, including irrigated lands, or discharge from animal feeding operations. Dischargers covered by a WDR for municipal and domestic discharges with permitted flows of less than 50,000 gallons per day in categories 2-B, 2-C, 3-B and 3-C will receive a 50 percent fee discount. The design flow shall be used where no permitted flow is present. Municipal and domestic discharges receiving the discount are defined as discharges from facilities that treat domestic wastewater or a mixture of wastewater that is predominately domestic wastewater. Domestic wastewater consists of wastes from bathroom toilets, showers, and sinks from residential kitchens and residential clothes washing. It does not include discharges from food preparation and dish washing in restaurants or from commercial laundromats. Dischargers covered by a Landscape Irrigation General Permit issued by the state board will be assessed a fee associated with TTWQ/CPLX rating of 3B.

<sup>3</sup> For this table, land disposal discharges are those discharges of waste to land that are regulated pursuant to Water Code Section 13263 that implement the requirements of CCR Title 27, Division 2, except Chapter 7, Subchapter 2, §22560-22565 (confined animal facilities). Examples include, but are not limited to, discharges associated with active and closed landfills, waste piles, surface impoundments, and mines.

<sup>4</sup> For this table, Not Paying a Tipping Fee are those land disposal dischargers not subject to Public Resources Code (PRC) § 48000 et seq.

<sup>5</sup> For this table, Paying a Tipping Fee are those land disposal dischargers subject to PRC § 48000 et seq.

<sup>6</sup> A surcharge of \$12,000 will be added for Class I landfills. Class I landfills are those that, during the time they are, or were, in operation, are so classified by the regional board under 23 CCR Chapter 15, have WDRs that allow (or, for closed units, allowed) them to receive hazardous waste, and have a permit issued by the Department of Toxic Substances Control under 22 CCR Chapter 10, § 66270.1 et seq.

Oil and gas produced water storage and disposal facilities regulated by waste discharge requirements are subject to a surcharge per barrels of waste water discharged in the prior 12 months according to the following schedule:

<b>TTWQ &amp; CPLX Rating</b>	<b>No Barrels</b>	<b>1 to 999,999 Barrels</b>	<b>1,000,000 or more Barrels</b>
<b>1A</b>	\$600	\$1,000	\$50,000
<b>1B</b>	\$600	\$1,000	\$50,000
<b>1C</b>	\$600	\$1,000	\$50,000
<b>2A</b>	\$600	\$1,000	\$40,000
<b>2B</b>	\$600	\$1,000	\$30,000
<b>2C</b>	\$600	\$1,000	\$10,000
<b>3A</b>	\$600	\$1,000	\$4,000
<b>3B</b>	\$600	\$1,000	\$2,000
<b>3C</b>	\$600	\$600	\$600

(1) Threat to water quality (TTWQ)<sup>7</sup> and complexity (CPLX) of the discharge is assigned by the regional board in accordance with the following definitions:

### **THREAT TO WATER QUALITY**

Category “1” – Those discharges of waste that could cause the long-term loss of a designated beneficial use of the receiving water. Examples of long-term loss of a beneficial use include the loss of drinking water supply, the closure of an area used for water contact recreation, or the posting of an area used for spawning or growth of aquatic resources, including shellfish and migratory fish.

Category “2” – Those discharges of waste that could impair the designated beneficial uses of the receiving water, cause short-term violations of water quality objectives, cause secondary drinking water standards to be violated, or cause a nuisance.

Category “3” – Those discharges of waste that could degrade water quality without violating water quality objectives, or could cause a minor impairment of designated beneficial uses as compared with Category 1 and Category 2.

### **COMPLEXITY**

Category “A” – Any discharge of toxic wastes; any small volume discharge containing toxic waste; any facility having numerous discharge points and groundwater monitoring; or any Class 1 waste management unit.

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<sup>7</sup> In assigning a category for TTWQ, a regional board should consider duration, frequency, seasonality, and other factors that might limit the impact of the discharge.

Category “B” – Any discharger not included in Category A that has physical, chemical, or biological treatment systems (except for septic systems with subsurface disposal), or any Class 2 or Class 3 waste management units.

Category “C” – Any discharger for which waste discharge requirements have been prescribed pursuant to Section 13263 of the Water Code not included in Category A or Category B as described above. Included are dischargers having no waste treatment systems or that must comply with best management practices, dischargers having passive treatment and disposal systems, or dischargers having waste storage systems with land disposal.

(2) For dischargers covered under Statewide General WDRs for Sanitary Sewer Systems, the TTWQ and CPLX designations are assigned based on the population served by the sanitary sewer system. The table below describes the correlation between population served and TTWQ and CPLX designations to determine the appropriate annual fee:

<b>Population Served<sup>8</sup></b>	<b>Threat and Complexity Designation</b>
Less than 50,000	3C
50,000 or more	2C

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<sup>8</sup> Assumes 2.5 persons per equivalent dwelling unit (EDU).

**(a)(3)(A) For dischargers covered under Statewide General WDRs for discharges of winery process water, the annual fees shall be based on the following schedule:**

<b><u>Facility Process Water Flow (gal/yr)</u></b>	<b><u>Fee</u></b>
<b><u>10,000 to 30,000</u></b>	<b><u>\$750</u></b>
<b><u>&gt;30,000 to 100,000</u></b>	<b><u>\$1,000</u></b>
<b><u>&gt;100,000 to 300,000</u></b>	<b><u>\$1,200</u></b>
<b><u>&gt;300,000 to 600,000</u></b>	<b><u>\$2,000</u></b>
<b><u>&gt;600,000 to 1 million</u></b>	<b><u>\$3,000</u></b>
<b><u>&gt;1 million to 3 million</u></b>	<b><u>\$7,000</u></b>
<b><u>&gt;3 million to 7 million</u></b>	<b><u>\$13,000</u></b>
<b><u>&gt;7 million to 15 million</u></b>	<b><u>\$19,000</u></b>

**(B) Dischargers enrolled in an approved Local Agency Oversight program will receive a 50 percent fee reduction.**

**(C) Dischargers enrolled in an approved sustainability program will receive a 10 percent fee reduction.**

**(D) Dischargers enrolled in an approved Local Agency Oversight program and an approved sustainability program will receive a 50 percent reduction of the annual fee that results from the application of a 10 percent fee reduction.**

**(E) Dischargers with facility process water flows of less than 10,000 gallons per year that are directed by the state board or a regional board to enroll under the Statewide General WDRs for discharges of winery process water shall pay the fee applicable to dischargers with 10,000 to 30,000 gallons per year.**

**(F) Dischargers with facility process water flows of 10,000 to 30,000 gallons per year that are directed by the state board or a regional board to enroll as a Tier 2 facility under the Statewide General WDRs for discharges of winery process water shall pay the fee applicable to dischargers with >30,000 to 100,000 gallons per year.**

**(34)** The fees for discharges of dredge and fill material shall be as follows.<sup>9</sup>

**Standard Fee:**<sup>10</sup>

<b>Discharge Category</b>	<b>Application Fee<sup>11</sup></b>	<b>Project Fee</b>	<b>Annual Fee<sup>12</sup></b>
<b>(A) Fill and Excavation<sup>13</sup> Discharges</b> Discharge area expressed in acres rounded to two decimal places (0.01 acre)	\$2,066	Impact area in acres x \$18,414, minus application fee, up to a maximum of \$179,245. If this amount is \$0 or less, then no project fee is required.	\$1,736 for first five fiscal years following the effective date of the order, then \$276 beginning with the sixth fiscal year until the Notice of Completion is issued to discharger.

<sup>9</sup> Fees shall be based on the sum of temporary and permanent impact amounts to be authorized by the order. Impacts include both the excavation and fill area and the dredging area. If water quality certification is issued in conjunction with dredge or fill WDRs or issued for a discharge regulated under preexisting WDRs for the same project, the project will be assessed a single fee derived from this dredge and fill fee schedule. Discharges requiring certification and regulated under a federal permit or license other than a US Army Corp of Engineers Clean Water Act Section 404 permit or a Federal Energy Regulatory Commission License shall be assessed a fee determined from Section 2200(a).

<sup>10</sup> Fees shall be based on the sum of project impacts. Projects that include both category (A) and category (B) discharges shall be subject to the category (A) application and project fees. A single annual fee shall be assessed based on the higher of the applicable annual fee categories.

<sup>11</sup> Dischargers shall pay a one-time application fee and the project fee, if a project fee is required, for each project at the time that the application or report of waste discharge is submitted. Application and project fees shall be determined according to the fee schedule in effect on the date of application submittal.

<sup>12</sup> Consistent with Section 2200.2, the sum of the application fee and the project fee shall serve as the first annual fee. If the submittal of this first annual fee does not coincide with the current fiscal year billing cycle, then the next, and only the next, fiscal year billing shall be adjusted to account for the payment of the application fee. The annual fee for category (B) dredging discharges will be calculated using the annual dredge volume authorized in the applicable Order. Annual fee invoices are based on the fee schedule in effect for the fiscal year in which the invoice is issued.

<sup>13</sup> "Excavation" refers to removing sediment or soil in shallow waters or under no-flow conditions, typically for purposes other than navigation. Examples include, but are not limited to, trenching for utility lines; other earthwork preliminary to discharge; removing sediment to increase channel capacity; and other flood control and drainage maintenance activities (e.g., debris removal, vegetation management and removal, detention basin maintenance and erosion control of slopes along open channels and other drainage facilities).

<b>Discharge Category</b>	<b>Application Fee<sup>11</sup></b>	<b>Project Fee</b>	<b>Annual Fee<sup>12</sup></b>
<b>(B) Dredging<sup>14</sup> Discharges</b> (except Category C activities see (C) below) Dredge volume expressed in cubic yards.	\$2,066	N/A	Annual dredge volume in cubic yards x \$0.452, up to a project maximum of \$179,245. The minimum annual fee is \$2,066.

**Special/Flat Fee:<sup>15</sup>**

<b>Discharge Category</b>	<b>Application Fee</b>	<b>Annual Fee</b>
<b>(C) Sand Mining, In-Stream Gravel Mining and Beach Nourishment Discharges</b> Aggregate extraction in surface waters where source material is free of pollutants and the dredging operation will not violate any basin plan provisions and beach nourishment projects.	\$2,066	\$689
<b>(D) Ecological Restoration and Enhancement Projects</b> The project meets the definition of an “Ecological Restoration and Enhancement Project” set forth in the State Wetland Definition and Procedures for Discharges of Dredged or Fill Materials to Waters of the State, adopted by the State Water Board on April 2, 2019. <sup>16</sup>	\$551	\$276

<sup>14</sup> “Dredging” refers to removing sediment or aquatic vegetation, typically in deeper water for navigation purposes. For fee purposes, this fee category includes aggregate extraction within stream channels, where the substrate is composed of coarse sediment (e.g., gravel) and is replenished by normal winter flows (e.g., point bars).

<sup>15</sup> To qualify for a special/flat fee category, the whole of a project must meet the fee category description (i.e., all project discharges are limited to those defined by the fee category).

<sup>16</sup> Ecological Restoration and Enhancement Project means the project is voluntarily undertaken for the purpose of assisting or controlling the recovery of an aquatic ecosystem that has been degraded, damaged or destroyed to restore some measure of its natural condition and to enhance the beneficial uses, including potential beneficial uses of water. Such projects are undertaken:

1) in accordance with the terms and conditions of a binding stream or wetland enhancement or restoration agreement, or a wetland establishment agreement, between the real property interest owner or the entity conducting the habitat restoration or enhancement work and:

a. a federal or state resource agency, including, but not limited to, the U.S. Fish and Wildlife Service, Natural Resources Conservation Service, Farm Service Agency, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Forest Service, U.S. Bureau of Land Management, California Department of Fish and Wildlife, California Wildlife Conservation Board, California Coastal Conservancy or the Delta Conservancy;

<p><b>(E) Low Impact Discharges</b>  Projects may be classified as low impact discharges if the project meets all of the following criteria:  1. The discharge size is less than all of the following: (a) for fill, 0.1 acre, and 300 linear feet, and (b) for dredging, 25 cubic yards.  2. The discharger demonstrates that: (a) all practicable measures will be taken to avoid impacts; (b) where unavoidable temporary impacts take place, waters and vegetation will be restored to pre-project conditions as quickly as practicable; and (c) where unavoidable permanent impacts take place, there will be no net loss of wetland, riparian area, or headwater functions, including onsite habitat, habitat connectivity, floodwater retention, and pollutant removal.  3. The discharge will not do any of the following: (a) directly or indirectly destabilize a bed of a receiving water; (b) contribute to significant cumulative effects; (c) cause pollution, contamination, or nuisance; (d) adversely affect candidate, threatened, or endangered species; (e) degrade water quality or beneficial uses; (f) be toxic; or (g) include “hazardous” or “designated” material.</p>	\$2,066	\$276
<p><b>(F) Emergency Projects Authorized by a Water Board General Order</b></p>	\$2,066	\$276
<p><b>(G) Amended Orders<sup>17</sup></b>  Amendments of WDRs or water quality certifications previously issued.  (1) All category (D) Ecological Restoration and Enhancement Projects, regardless of amendment type.</p>	(1) No fee required	Annual fee applicable per

b. a local agency with the primary function of managing land or water for wetland habitat purposes; or

c. a non-governmental conservation organization; or

2) by a state or federal agency that is statutorily tasked with natural resource management.

These projects do not include the conversion of a stream or natural wetland to uplands or stream channelization. It is recognized that Ecological Restoration and Enhancement Projects may require ongoing maintenance or management to maximize fish, wildlife, habitat, or other ecological benefits, or filling gullied stream channels and similar rehabilitative activities to re-establish stream and meadow hydrology. Changes in wetland plant communities that occur when wetland hydrology is more fully restored during rehabilitation activities are not considered a conversion to another aquatic habitat type. These projects also do not include actions required under a Water Board Order for mitigation, actions to service required mitigation, or actions undertaken for the primary purpose of land development.

<sup>17</sup> Dischargers that have met the project fee cap will be assessed the minimum fee for each amendment of previously-issued WDR or water quality certification.

<p>(2) Administrative amendments including, but not limited to, ownership changes, typographic edits, or time extensions that do not result in a temporal loss of resource function. Amendments in this category require no technical analysis or additional compensatory mitigation.</p> <p>(3) Amendment results in changes(s) in impact character, location, or volume of the discharge; or a time extension that results in a temporal loss of resource function, according to the following criteria:</p> <ul style="list-style-type: none"> <li>• Amendment increases the active certification’s impact quantity by less than 50 percent, and</li> <li>• Amendment does not require a change to the mitigated aquatic resource type.</li> </ul> <p>(4) Amendment requires a supplemental CEQA analysis, or Amendment results in a change(s) in impact character, location, or volume of the discharge, or a time extension that results in a temporal loss of resource function, according to the following criteria:</p> <ul style="list-style-type: none"> <li>• Amendment increases the active certification’s impact quantity by more than 50 percent, or</li> <li>• Amendment requires a change to the mitigated aquatic resource type.</li> </ul>	<p>(2) No fee required</p> <p>(3) Additional standard fee assessed per increased amount of discharge(s). The minimum fee is \$2,066.</p> <p>(4) New standard fee assessed per new project discharge total. The minimum fee is \$2,066.</p>	<p>discharge category</p>
<p><b>(H) Wildfire Mitigation by Electrical Corporations, Electrical Utilities, and Electrical Cooperatives</b></p> <p>Dredge or fill activities conducted by electrical corporations, electrical utilities, and electrical cooperatives pursuant to a wildfire mitigation plan prepared in accordance with Public Utilities Code, section 8386(b) or section 8287(b)(1). This annual fee covers all dredge or fill activities conducted by the electrical corporations, electrical utilities, and electrical cooperatives pursuant to a wildfire mitigation plan, and is in lieu of the project-specific dredge or fill fees in section(a)(3)(A)-(G) for dredge or fill activities conducted pursuant to a wildfire mitigation plan.</p>	<p>N/A</p>	<p>\$43.00 per mile of overhead electrical lines identified as high risk or high threat in the wildfire mitigation plan.</p>