

# CONSTRUCTOR

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## Voice of the Construction industry

Letter from the 2016 President

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*By Eddie Sprecco, AGC Chief Executive Officer*

*The Engineering and General Contractors Council (EGCC) is comprised of members from General Engineering Contractor AGC firms. The Council meets several times per year and presents the Board with policy recommendations, and the AGC Committees with program recommendations that meet the specific needs of the General Engineering Contractor Members.*

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## **WHAT YOU SHOULD KNOW BEFORE YOU EXPORT SOIL AND COMMONLY USED (AND MISUNDERSTOOD) WATER BOARD PERMITS FOR THE CONSTRUCTION INDUSTRY**

*By Dan Johnson, Former Appointed Member of  
the Regional Water Quality Control Board*



Did you know that if you are exporting fill material from a site that you may need the San Diego Regional Water Quality Control Board (RWQCB) approval or face possible fines? This question is two-fold. One, you may need approval to export the soil, as described below. Two, the receiving

facility may also need Regional Board approval. In our experience, the contractor could face liability under both scenarios.

For contractors who are excavating and exporting material from a site, some of the most commonly used permits are not really "permits" at all; rather they are conditional waivers of waste discharge requirements (WDRs). A waiver is a way of trying to streamline the regulatory process, as opposed to a full regulatory process that a landfill or other large import site would need to go through (WDRs).

The RWQCB uses the waivers to regulate low-threat "discharges" or placement of soil that may be classified as a waste to land from projects in the region. For example, any fill material from infill or a previously developed project that is to be exported is subject to a waiver.

The most common waiver for soil export (known as Waiver No. 10) was developed as the result of Petco Park and downtown infill development, and low levels of metals or lead contamination that were being variously exported as clean, sometimes with unintended consequences and liability. Since that time, the RWQCB has attempted to make these requirements consistent and easy to deal with.

The waiver forms are available on-line at [www.waterboards.ca.gov/sandiego/water\\_issues/programs/waivers/waivers\\_w.shtml](http://www.waterboards.ca.gov/sandiego/water_issues/programs/waivers/waivers_w.shtml).

Assuming fill material is being exported, a Notice of Intent (NOI) application containing available environmental information for a project must be submitted to the RWQCB. Following approval of the NOI, qualifying projects can be administratively enrolled so they do not require a board meeting agenda item. This process can take 30 to 60 days, so it should not be left to the last minute. The owner is responsible for signing a certification about the soil, under penalty of perjury. Waiver No. 10 is the relevant waiver for this type of soil export. The Waiver allows the reuse of contaminated soils qualifying as "inert soil wastes."

If soil subject to this waiver is being considered for transport from a construction site to another location for reuse, the waiver specifies that the soil must be evaluated for residual metals and other potential constituents of concern. The waiver provides risk-based groupings to help you determine if your waste soils qualify. If they do, you can reuse soils at off-site locations. If the soil is found to be clear of metal, there is no need to comply with the waiver. Only possible metals impacts are covered at this time, not other contaminants, such as pesticides.

In addition, the RWQCB does have a number of permits under the General Waste Discharge Requirements (Orders) that include requirements for managing and disposing of groundwater from dewatering wells at construction sites (NPDES), storm water management, treatment of contaminated groundwater in-situ, and reusing fuel contaminated soils. Permit forms and instructions can be found online at: <http://www.waterboards.ca.gov>.

Most local agencies are not well versed in the availability or applicability of the conditional waivers or permits and will not refer you to the San Diego Water Board. Don't be fooled into thinking that your city permit is all you need to move soil offsite.

Other general waste discharge orders include:

- Order No. R9-2015-0013 - NPDES Permit and General Waste Discharge Requirements for Groundwater Extraction Discharge to Surface Waters within the San Diego Region. This Order replaces Order No. R9- 2008-0002 and Order No. R9-2007-0034
- Order No. R9-2002-0342: Waste Discharge Requirements for the Disposal and/or Reuse of Petroleum Fuel Contaminated Soils (FCS) in the San Diego Region

Other waivers that may apply to your construction project include:

#### Waiver No. 3: Miscellaneous "Low Threat" Discharges to Land

- Discharges to Land from Construction and Test Pumping of Water Wells
- Discharges to Land from Short-Term Construction Dewatering Operations
- "Low Threat" Discharges to Land and/or Groundwater
- Discharges to Land from Flushing Water Lines
- Discharges to Land from Washing Vehicles, Pavement, Buildings, etc.

Lastly, contractors should conduct due diligence on possible disposal locations to confirm that necessary permits have been obtained, which may include grading, conditional use, as well as WDRs from the Regional Board.

