

April 12, 2021

General Permit for Winery Process Water Discharge Issued

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The State Water Resources Control Board ("SWRCB") approved the much-debated General Waste Discharge Requirements for Winery Process Water ("Winery Order") on January 20, 2021. Although the official version of the approved Winery Order has not been released, an uncertified copy has been posted on the SWRCB website. Based on that document, most of the elements of the draft Winery Order remain unchanged from the most-recent draft issued for public comment.

The SWRCB estimates that over 2,000 wineries will be subject to the Winery Order, a significant increase in the number of wineries that must comply with wastewater discharge conditions and obligations. Winery process water contains a number of constituents that could potentially impact groundwater, with the primary constituents of concern being nitrogen, biochemical oxygen demand ("BOD"), and salinity. Storm water discharge from wineries will continue to be subject to the General Permit for Storm Water Discharge from Industrial Facilities, not the Winery Order. The Winery Order is not a NPDES permit, so wineries that discharge to surface waters of the US and therefore have an NPDES permit cannot substitute coverage under the Winery Order.

The Winery Order establishes four tiers of dischargers, Tiers I - IV, based on gallons per year of winery process water. There is also a De Minimis category, which requires compliance with certain prohibitions and conditions but wineries fitting in this category need to enroll under the Winery Order only if required to do so by the SWRCB or a Regional Board. Permit conditions generally escalate for the higher-tier wineries, lessening the burden on smaller wineries. Dischargers subject to the Winery Order are also required to pay an annual fee, which has not been established yet but is anticipated will be adopted in the spring of 2021.

The Winery Order establishes discharge prohibitions, such as prohibitions on discharge to surface waters or discharge of untreated or partially treated wastewater. A variety of effluent limitations are also included, such as BOD loading to Land Application. There are specifications for new or expanding ponds, including size (to handle a 100-year, 24-hour storm event) and lining. The requirements for continued use of existing ponds vary by Tier. There are also specifications for Subsurface Discharge Systems and Land Application Areas. Monitoring and reporting requirements will vary greatly, dependent on Tier level and winery-specific factors.

Wineries that are already covered by discharge permits will be allowed to continue under those permits until they expire or terminate, but the SWRCB intends for the Winery Order to be the primary permitting mechanism for all wineries. Wineries that are subject to the Winery Order will be required to submit a Notice of Intent ("NOI") within three years of its effective date, along with a technical report as described in the Winery Order and a fee. Compliance with the Winery Order will be required within five years of the NOI. Despite this extended period for coming into compliance, there will be well over 1,000 wineries attempting to enroll and develop the necessary technical reports and implement new programs during that timeframe, stretching the available expertise qualified to assist severely. Wineries should not put off starting their compliance efforts just because the deadline is not imminent.

Wineries should review the Winery Order carefully, as it has the potential for substantial impact and cost to wineries. The SWRCB estimated monitoring costs as high as \$45,000 annually for Tier 4 wineries, and that does not include in-house labor or consultants. In addition, some wineries may be required to implement expensive changes, such as modifications to ponds or installing groundwater monitoring wells.

Buchalter has experienced environmental and winery attorneys who can assist clients with review and compliance with the Winery Order. If we can be of assistance, please feel free to contact any of the Buchalter attorneys below.



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