



March 1, 2021

Ms. Laurie Walsh, P.E.
Senior Engineer
San Diego Regional Water Quality Control Board
2375 Northside Drive, Suite 100
San Diego CA, 92108
Laurie.walsh@waterboards.ca.gov

By US Mail and E-mail

RE: Regulatory requirements for storm water associated with equestrian activities at Horse Park

Dear Ms. Walsh:

The 22nd District Agricultural Association Board of Directors (22nd DAA) has temporarily paused equestrian operations at Horse Park while it considers how to address its water quality obligations pursuant to the federal Clean Water Act and Porter Cologne. The 22nd DAA Board is working diligently with its counsel, consultants, and the equestrian community to find a way to renew equestrian operations at Horse Park while assuring compliance with all relevant water quality regulations and statutes and reducing potential third-party citizen suit litigation. However, as a public agency, and in order to avoid enforcement for any perceived violations by the RWQCB or through a citizen enforcement action, the 22nd DAA requires clarification regarding regulatory requirements for storm water discharges associated with any contemplated equestrian activities at Horse Park. Specifically, the 22nd DAA seeks responses to the following two questions:

1. Will Horse Park be deemed in compliance with Order No. R902019-0005 (Waiver 6) if it is unable to implement the Best Management Practices (ex. Manure management BMP's, drainage improvements) set forth in its enrollment application and if so, for how long?
2. Must Horse Park enroll in the Industrial General Permit (IGP) if it stables or confines between 150 and 499 horses pursuant to the time frames defined for Animal Feeding Operations (AFO); and Discharges pollutants (including manure or process wastewater) into waters of the United States through a man-made ditch, pipe, or similar device. (40 C.F.R. § 122.23, subd. (b)(6)?

In in order to assist you in providing a response to these questions, I have provided the following chronology for your consideration.

- September of 2019, the 22nd DAA submitted a Notice of Intent (NOI) for coverage under the conditional waiver Order No. R9-2019-0005. The NOI proposed the implementation of several structural BMPs regarding manure management, barn improvements, treatment BMPs for stormwater from various CAFO areas and a schedule for implementation of the improvements.
- On March 27, 2020 the RWQCB enrolled the Horse Park facility in Order No. R902019-0005. The enrollment letter stipulated that: "The NOI and Technical Information Report contain the operation plan for implementing best management practices for the management of storm water and waste discharges associated with the Del Mar Horse Park. . . The Discharger must ensure the discharge complies with the waiver conditions specified in sections B, C.2, and C.3 of the Animal Operations Waiver."

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- On April 10, 2020 the RWQCB wrote to Rancho HHO Land Corporation (Rancho) and Equestrian Services II, Inc. (Equestrian), two equestrian facilities similar in size and confined horse populations to those being conducted at that time at Horse Park. In that letter you wrote “The San Diego Water Board intends to regulate Sycamore Trails Stables and Rancho SVEC as medium CAFOs under the National Pollutant Discharge Elimination System (NPDES) regulatory program, unless each facility can demonstrate that it does not discharge pollutants to a water of the United States.” That is, Rancho and Equestrian were required to file for coverage under the Industrial General Permit unless they could demonstrate that there was no discharge of a pollutant to a water of the United States.
- On May 22, 2020 the 22nd DAA notified the RWQCB that as a result of the COVID-19 pandemic, the 22nd DAA would be unable to meet the waiver conditions by building the storm water improvements described in its NOI due to a lack of funds.
- On August 27, 2020 the RWQCB responded to the 22nd DAA’s notice of inability to meet the requirements of the waiver. In his response, Mr. Gibson, the RWQCB Executive Officer stated in part “Based on its review, San Diego Water Board staff found that neither Waiver No. 6, the March 27, 2020 Notice of Enrollment, or the Phase II MS4 Permit specify a compliance schedule or require the discharger to submit an implementation schedule for storm water and manure BMPs. As such, the schedule to improve onsite storm water and manure BMPs was voluntarily submitted to the San Diego Water Board, and not in response to a Water Board order or requirement. As the 22nd DAA’s improvement schedule is self-imposed, there is no required regulatory action to be taken by the San Diego Water Board in response to the 22nd DAA’s request for regulatory relief during the COVID-19 emergency.” However, Mr. Gibson’s response did not address the question of whether Horse Park would be deemed in compliance with the Waiver if the 22nd DAA failed to build the BMPs described in the NOI.
- On December 17, 2020, due to a lack of clarity regarding its regulatory obligations associated with storm water discharges from a medium CAFO, and in an abundance of caution as a public agency, the 22nd DAA announced its temporary pause of equestrian operations at Horse Park.
- On January 12 and 29, and February 9, 2021, the 22nd DAA and its Horse Park subcommittee held public hearings to discuss how to proceed. However, neither the 22nd DAA Board or the subcommittee have been able to reach any specific conclusions and now recognize that additional feedback is needed from the RWQCB to move the process along.

Your response to these questions above will assist the 22nd DAA in addressing questions and comments from the equestrian community at its next public meeting on March 9, 2021, as it attempts to fashion a reopening plan for Horse Park. In addition to your written clarifications to these questions, you are invited to attend this meeting via Zoom, where you will have an opportunity to provide verbal comments or explanations to board members and the public. We look forward to your written response to this inquiry and please let me know if you will be able to attend the board meeting on March 9 so a participant link can be provided to you.

Sincerely,



Carlene F. Moore
Chief Executive Officer

CC: David Gibson, Ian Adam, S. Wayne Rosenbaum, Dustin Fuller