



California Regional Water Quality Control Board

Los Angeles Region



Linda S. Adams
Agency Secretary

Recipient of the 2001 *Environmental Leadership Award* from Keep California Beautiful

320 W. 4th Street, Suite 200, Los Angeles, California 90013
Phone (213) 576-6600 FAX (213) 576-6640 - Internet Address: <http://www.waterboards.ca.gov/losangeles>

Arnold Schwarzenegger
Governor

DETERMINATION OF AGRICULTURE vs GARDENING/HOBBY GROWING ACTIVITIES AND THE REGULATORY STATUS OF NURSERIES

The Los Angeles Regional Water Quality Control Board (Regional Board) adopted a Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands (Order No. R4-2005-0080) on November 3, 2005. The objective of the program is to monitor runoff from irrigated agriculture facilities in the coastal watersheds of Los Angeles and Ventura Counties. Agricultural activities can generate pollutants such as sediment, pesticides, and nutrients that upon discharge to receiving water bodies can degrade water quality. The intent of the Conditional Waiver program is to attain water quality objectives in receiving waters by regulating the discharges from irrigated lands within the Los Angeles Region.

The irrigated lands regulated under this program are those lands engaged in commercial/production agricultural activities. Having one or more of the following characteristics and activities identifies properties and/or operations engaged in commercial/production agriculture as opposed to gardening/hobby growing:

- The property owner/operator holds a current Operator Identification Number – An Operator ID Number is required to buy or use pesticides for production agriculture.
- The property owner/operator holds a Restricted Materials Permit – The use and possession of certain pesticides requires a restricted materials permit from the County Agricultural Commissioners office.
- Controlled/restricted pesticides are applied to the property.
- The appropriate Pesticide Use Reporting forms are submitted to the County Agricultural Commissioners office.
- The property owner/operator holds a Certified Producers Certificate from the State of California Department of Food and Agriculture.
- The crop that is grown is sold through an industry cooperative or through direct marketing at locations such as Certified Farmers Markets.
- The federal Department of Treasury Internal Revenue Service form 1040 Schedule F Profit or Loss from Farming is used to file federal taxes.

California Environmental Protection Agency



Our mission is to preserve and enhance the quality of California's water resources for the benefit of present and future generations

Lands irrigated for the purpose of gardening and/or hobby growing are not intended to be regulated by the Conditional Waiver for Irrigated Lands. The following characteristics and activities identify properties and/or operations engaged in gardening and/or hobby growing.

- The crops are grown with the intent of being used for personal use or consumption only.
- Surplus crop is given away to family and friends or donated to an organization such as a food bank.
- The crop is not sold to an industry cooperative or at a direct marketing location.
- The property owner/operator does not hold a current Operator Identification Number.
- The property owner/operator does not hold a current Certified Producers Certificate.
- Restricted or controlled pesticides are not applied to the property.
- The federal Department of Treasury Internal Revenue Service form 1040 Schedule F Profit or Loss from Farming is not used to file federal taxes.

REGULATORY STATUS OF NURSERIES

Nursery crop production is a large industry in the Los Angeles Region. There is a wide range of both nursery operations and activities that may take place as part of the operation. Indeed, some nurseries are engaged in the agricultural production of nursery crop/stock and would be subject to the Conditional Waiver program; however many nurseries may be more accurately described as a wholesale distributor/broker of nursery goods. Nursery operations who act as wholesale distributors/brokers would be able to meet water quality regulations through coverage under the MS4 permitting system. Nursery operations engaged in nursery crop production would meet water quality regulations through participation in the Conditional Waiver program.

The North American Industry Classification System (NAICS) will be used to classify nursery operations and determine the type of operations covered by the MS4 permitting system and those covered by the Conditional Waiver. NAICS is a coding system developed by the US Census Bureau to classify enterprises in the United States. The NAICS code system is also used by the Internal Revenue Service (IRS). However, the IRS refers to the code as the Principle Business Activity Code. There are three broad classifications available for nurseries: 111xxx Crop Production, 424xxx Merchant Wholesalers, and 44xxxx Retail Trade and Markets. Nursery operations meeting the definition of Merchant Wholesaler or Retail Trade Market will be covered by the MS4 permit, those operations meeting the definition of Crop Production will participate in the Conditional Waiver.

PROCEDURES FOR IDENTIFYING GARDENING/HOBBY GROWERS AND WHOLESALE DISTRIBUTOR NURSERIES

Growers who have been notified by the Regional Board as subject to the Conditional Waiver program and who in fact are hobby growers or growers who will modify operation activities to meet the definition of a hobby grower should taking the following actions.

- Submit a completed Notice of Intent (NOI).
- Provide as an attachment to the NOI a descriptive letter outlining the evidence that they meet the definition of a gardener or hobby grower.
- Provide as an attachment to the NOI a detailed letter outlining the discontinuation of activities defining commercial/production agriculture.
- Provide the signed perjury statement as part of the completed NOI

Nursery owners/operators who have been notified by the Regional Board as subject to the Conditional Waiver and in fact have a NAICS code defining the operation as Merchant Wholesale or Retail Trade and Markets should take the following actions.

- Submit a completed Notice of Intent (NOI).
- Provide as an attachment to the NOI a letter informing the Regional Board of the NAICS code.
- Documentation of the enterprise's NAICS code. A copy of the operation's tax return may be supplied as documentation; any financial information should be blacked out.
- Provide the signed perjury statement as part of the completed NOI

ADDITIONAL INFORMATION

Please contact Regional Board staff.

Sam Unger at 213-576-6784 or sunger@waterboards.ca.gov

Rebecca Veiga Nascimento at 213-576-6661 or rveiga@waterboards.ca.gov

July 10, 2006

- 4 -

July 10, 2006

California Environmental Protection Agency



Recycled Paper

Our mission is to preserve and enhance the quality of California's water resources for the benefit of present and future generations