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What Is Happening?

The Regional Water Quality Control Board (“Regional Board”) is developing a new set of requirements for vineyards. To improve water quality in the Napa River and Sonoma Creek, the Regional Board plans to require vineyards in these watersheds to create and implement an extensive “farm plan” to, among other things, reduce sediment in storm runoff from their properties by as much as 80%. All vineyards will be subject to these new requirements, whether big or small, new or established, on the river or in the distant upper reaches of the watershed.

What Does This Mean For Vineyards?

Once the new requirements are adopted, vineyards will be required to enroll in the Regional Board’s program, pay a fee and implement numerous new requirements that will impact a wide range of normal farming activities, including cultivation, irrigation, drainage, fertilization, pest control, stream crossing maintenance, road building, and site design. Vineyards must prepare and implement a “farm plan,” employ appropriate practices to control runoff and prevent erosion, monitor compliance, take action to correct problems, and report their compliance to the Regional Board each year.

Vineyards Are Raising Concerns

Although draft requirements have not been released for public review, vineyards following these developments already have big concerns:

- The new requirements will apply to all vineyards regardless of their actual impact on water quality. Could a “tiered” program be developed with requirements appropriate to water quality risk?
- The new requirements will, to some degree, duplicate, and may even be inconsistent with, the existing Fish Friendly Farming program and the Sonoma County Vineyard Erosion and Sediment Control Ordinance. Could these programs satisfy the farm plan requirement?
- Will vineyards get credit for voluntary actions already implemented?
- Will vineyards be required to redesign and retrofit their irrigation and drainage systems?
- What will it cost? Will the Regional Board analyze and take into account the substantial commitment of time, money and vineyard resources needed to comply before adopting the new requirements?
- Could a phased approach be implemented to reduce the financial impact of this new program?
- What level of technical expertise will be required to write a farm plan?
- Can vineyards comply more cost effectively by joining together in a local farm plan?

Why Is This Happening?

The Regional Board determined that the beneficial uses of Sonoma Creek and the Napa River are impaired by sediment, pathogens and nutrients. In other words, the pollutant levels in these water bodies adversely impact their beneficial use. For example, high pathogen levels impair recreational and municipal water supply uses. Sediment degrades freshwater habitat and impairs fish spawning, recreation (fishing), and preservation of rare and endangered species. Excess nutrients similarly impair freshwater and marine habitats, spawning, migration habitats, preservation of rare or endangered species and recreation.

As a consequence of determining the Napa River and Sonoma Creek impaired, the Regional Board is required to establish a maximum load of the impairing pollutants that can be discharged into each water body without impairing its beneficial uses. The Total Maximum Daily Load (TMDL) of sediment for each water body has been set at 125% of background. To reach that level, sediment discharges from human activities must be reduced by half in the Napa River watershed, and by 81% in the Sonoma Creek watershed. Vineyards and livestock grazing are significant anthropogenic sources of sediment, and so are targeted to play a major role in the reduction of sediment reaching the impaired water bodies.

The regulatory mechanism the Regional Board proposes to use is a “conditional waiver.” Dischargers that comply with the conditions of the waiver need not obtain an individual permit, which would contain more onerous requirements. The Regional Board recently adopted a waiver for grazing operations in these watersheds. Owners of lands utilized by livestock must prepare a Ranch Water Quality Plan and Compliance Monitoring and Reporting Plan, implement measures to control discharges of sediment and pathogens, and enroll in the “grazing waiver” by November 2012. Ranchers face significant time and monetary costs to implement the new waiver, which requires appropriate management practices, numerous inspections, compliance documentation, record keeping, reporting and annual certification of compliance.

The Regulatory Process

It is much more difficult to unwind and untangle problematic requirements after they are established. It is therefore particularly important for stakeholders to participate in and contribute to the development of a new program such as this. The best prospect for reasonable and workable regulation is meaningful participation in the process.

The Regional Board has convened a technical advisory committee of stakeholders as part of the process of developing requirements for the vineyard waiver. When a draft waiver is released, vineyards and other members of the public will have an important opportunity to weigh in on the proposed requirements. The Regional Board will hold a least one public hearing to consider the proposed waiver before voting on its adoption. Any appeal must be pursued shortly thereafter. Waivers are good for five years. If their requirements don't result in anticipated water quality improvement, more stringent restrictions can be expected in subsequent waivers.

We are monitoring this important new regulatory development. Contact us for more information.