

# Buchalter

## CLIENT ALERT

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## Draft General Permit for Winery Wastewater Discharge Released for Comment

The State Water Resources Control Board ("SWRCB") released a draft of its General Waste Discharge Requirements for Winery Process Water ("Draft WDR") on July 3, 2020 for public comment. Comments will be accepted by the SWRCB until August 5, 2020. California wineries should review the Draft Order carefully to determine whether they will be subject to its requirements and, if so, how it will impact their operations.

California does not currently have a statewide general permit for winery wastewater discharge. Approximately 570 wineries are covered by discharge permits of some sort, such as Regional Board general permits or individual permits. The SWRCB estimates that over 2,000 wineries will be subject to the new WDR when it is issued ("General Order"), a significant increase in the number of wineries that must comply with wastewater discharge conditions and obligations. Storm water discharge from wineries will continue to be subject to the General Permit for Storm Water Discharge from Industrial Facilities.

Local (county-level) agencies will be able to apply for oversight of wineries, enforcing the General Order within their jurisdiction, consistent with past practice with the Regional Boards. However, the Draft WDR states that it is not a NPDES Permit under the Clean Water Act, so it should not be subject to enforcement by citizens' suits, although that is likely to be tested by private plaintiffs.

The Draft WDR 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 only needs to seek coverage under the WDR 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.

The Draft WDR 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 included, such as BOD loading to Land Application Areas or flow rates to Subsurface Disposal Systems. 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 need to assess these proposed

requirements and prohibitions to determine what changes would be required to meet them if passed as currently drafted.

Wineries that are already covered by a discharge permit will be allowed to continue under those permits until they expire or terminate, but the SWRCB intends for the General Order to be primary permitting mechanism for all wineries. Wineries that are subject to the General Order will be required to submit a Notice of Intent ("NOI") within three years of its effective date. Compliance with the General Order will be required within five years of the NOI.

Wineries should review the Draft WDR carefully, as it has the potential for substantial impact and cost to wineries. Public comments can be submitted until August 5, 2020. The Draft WDR and related documents, including instructions for submitting comments, are available [online](#).

Buchalter has experienced environmental and winery attorneys who can assist clients with review and comments on the Draft WDR and, eventually, compliance with the General Order when it is issued. If we can be of assistance, please feel free to contact any of the Buchalter attorneys below.



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