


California Regional Water Quality Control Board, San Diego Region

TO: Emel G. Wadhvani
Senior Staff Counsel
STATE WATER RESOURCES CONTROL BOARD

In reply refer to / attn:
Place ID:786088:wchiu

FROM: David W. Gibson 
Executive Officer
SAN DIEGO REGIONAL WATER QUALITY CONTROL BOARD

DATE: August 15, 2013

SUBJECT: SWRCB/OCC FILES A-2236(a) THROUGH (kk)
State Water Board Workshop on Receiving Water Limitations

As invited by the State Water Resources Control Board (State Water Board) letter dated July 8, 2013, the San Diego Regional Water Quality Control Board (San Diego Water Board) hereby submits these comments on the compliance alternative to the State Water Board precedential orders on receiving water limitations for MS4s¹ provided in Order No. R4-2012-0175, the Los Angeles Regional Water Quality Control Board (Los Angeles Water Board) National Pollutant Discharge Elimination System (NPDES) municipal separate storm sewer system (MS4) permit for Los Angeles County (Los Angeles MS4 Permit). We understand that the State Water Board anticipates scheduling a workshop in early fall of 2013 to receive comments on the particular approach to receiving water limitations established in the Los Angeles MS4 Permit and is interested in whether this approach constitutes appropriate revisions or additions to the receiving water limitations language in other MS4 permits throughout California. The San Diego Water Board recently affirmed support for maintaining the precedential language on receiving water limitations as currently exists in the San Diego Regional MS4 permit, but believes a compliance alternative method could be feasible.

The San Diego Water Board is concerned that in removing the requirement to achieve water quality standards (as contained in the Receiving Water Limitations provisions) in order to provide an incentive for developing and implementing enhanced storm water programs, California MS4 Permits would be significantly less protective and enforceable. The approach may not be entirely consistent with federal anti-backsliding regulations which require that "effluent limitations, standards or conditions must be at least as stringent as the final effluent limitations, standards, or conditions in the previous permit. . . ."² The San Diego Water Board

¹ See State Water Board Orders WQ 98-01 (*Environmental Health Coalition*) and WQ 99-05 (*Environmental Health Coalition*)

² See 40 CFR 122.44(l)(1).

is also concerned that any relaxing of the mandate to achieve water quality standards may not adequately ensure that Permittees would implement appropriate actions to address the numerous California waters impaired by urban runoff. The urban runoff problem clearly requires comprehensive, creative and effective storm water regulation, but not at the expense of constraining receiving water limitation enforcement when discharges from an MS4 causes or contributes to exceedances of water quality standards. Maintaining the current standard for maintaining compliance with Receiving Water Limitations appropriately places a priority on the desired environmental outcome.

On May 8, 2013, the San Diego Water Board adopted Order No. R9-2013-0001, *National Pollutant Discharge Elimination System (NPDES) Permit and Waste Discharge Requirements For Discharges From The Municipal Separate Storm Sewer Systems (MS4s) Draining The Watersheds Within The San Diego Region* (San Diego Regional MS4 Permit). In adopting the permit, the San Diego Water Board affirmed its position that MS4 permits should contain the strongest and clearest possible language to protect water quality and enforce water quality standards by requiring that Permittees 1) reduce the discharge of pollutants in storm water to the maximum extent practicable (MEP), and 2) not cause or contribute to exceedances of water quality standards by engaging in an iterative process of BMP improvements through planning, implementation, monitoring and assessment.

The San Diego Water Board noted that the current receiving water limitation language set forth in the State Water Board precedential orders³ encompasses these essential elements, was developed in concert with USEPA, and has successfully survived legal challenges. In adopting the precedential receiving water limitation language into the San Diego Regional MS4 Permit without modification, the San Diego Water Board also noted that the Copermitees named in the Permit had not provided any compelling rationale during the Board's permit adoption proceedings to change the State Water Board's current receiving water limitation language. The San Diego Water Board does not support weakening the State Water Board's precedential receiving water limitation language in any respect.

If, however, the State Water Board determines that a compliance alternative for receiving water limitations similar to the Los Angeles MS4 Permit approach is appropriate, the compliance alternative option should incorporate the following considerations:

1. The compliance alternative should only apply to precipitation-related storm water discharges. Non-storm water discharges should be specifically excluded from coverage under the compliance alternative.
2. Relief from strict compliance with the receiving water limitations should not be granted. Forbearance of enforcement against the Receiving Water Limitation provisions would be granted only upon prior approval of the selected compliance alternative option by the Regional Water Board and continued adherence to the conditions that follow.

³ State Water Board Orders WQ 98-01 and WQ 99-05

3. The Permittee must incorporate the following elements in the compliance alternative option:
 - a. Numeric goals or target thresholds applicable to a Permittee's MS4 discharges should be included for at least all pollutants listed on the Clean Water Act Section 303(d) List of Water Quality Impaired Segments as causing impairments in water bodies receiving discharges from the Permittee's MS4 outfalls. The numeric goals or target thresholds must be appropriate for demonstrating that the discharges from the Permittee's MS4 will not or cannot cause or contribute to exceedances of water quality objectives or criteria in the receiving waters;
 - b. Final and interim numeric goals or targets for receiving waters within a Permittee's jurisdiction should be included. The final numeric goals or target thresholds must be protective of downstream beneficial uses and be appropriate for demonstrating that the Permittee's MS4 discharges do not or will not adversely affect beneficial uses in the receiving waters within or downstream of the Permittee's jurisdiction. Interim milestone goals or targets must demonstrate progress toward the final numeric goals or target thresholds applicable to a Permittee's MS4 discharges and/or for receiving waters within a Permittee's jurisdiction;
 - c. Schedules for achieving the numeric goals or target thresholds, with dates for achieving the interim milestone and final numeric goals or target thresholds based on the shortest practicable time required to achieve compliance;
 - d. Control measures and water quality improvement strategies, along with schedules for implementation, to achieve the numeric goals or target thresholds;
 - e. The results of an analysis utilizing a watershed model or other watershed analytical tools that can quantitatively demonstrate that the implementation of the control measures and water quality improvement strategies proposed by the Permittee will achieve the numeric goals or target thresholds;
 - f. A description of monitoring and other assessments that will be conducted by the Permittee to demonstrate and confirm that the implementation of the control measures and water quality improvement strategies proposed by the Permittee in a compliance alternative option are making progress toward achieving the numeric goal or target thresholds in accordance with established schedules;
 - g. A public participation process that allows the public to provide input on proposed numeric goals or target thresholds, schedules for achieving the numeric goals or target thresholds, control measures and water quality improvement strategies, analysis, and monitoring and assessments prior to approval by the Regional Water Board; and
 - h. A reporting process that utilizes a watershed model or other watershed analytical tool to demonstrate, to the Regional Water Board and the public, the progress

toward achieving the numeric goals or target thresholds, and ultimately water quality standards and compliance with receiving water limitations, through the implementation of the compliance alternative option.

4. Forbearance of enforcement will continue to be granted only if the Permittee:
 - a. Has submitted a compliance alternative option that received approval from the Regional Water Board, and the Regional Water Board continues to agree that the Permittee is making adequate progress toward achieving the numeric goals or target thresholds;
 - b. Continues to implement the control measures and water quality improvement strategies within its jurisdiction in accordance with the implementation schedules established in the compliance alternative option;
 - c. Continues to conduct the monitoring and assessments specified in the compliance alternative option to demonstrate progress toward achieving the numeric goals or target thresholds; and
 - d. Continues to report on the progress toward achieving the numeric goals or target thresholds through implementation of the compliance alternative option.
5. The compliance alternative option should provide a mechanism that would allow a Permittee to propose modifications to the compliance alternative option based on monitoring and assessment results. Modifications or revisions to the compliance alternative option should be allowed as long as the Permittee provides adequate rationale that demonstrates the modifications or revisions will result in better or more demonstrable progress toward achieving the numeric goals or target thresholds.
6. The compliance alternative should provide relief from strict compliance with receiving water limitations where a specific constituent/water body combination is already addressed by a Board-approved TMDL.

A compliance alternative in conformance with the above considerations could be utilized to demonstrate that a Permittee will ultimately attain compliance with receiving water limitations. This compliance alternative option requires implementation of control measures and water quality improvement strategies with clear and quantifiable interim milestones leading towards compliance with receiving water limitations within an enforceable scheduled timeframe. Furthermore, such an approach would have an additional benefit of potentially achieving the same goals as one or more Total Maximum Daily Loads (TMDLs) that would otherwise have to be developed under a separate process.⁴

⁴ For water bodies where the MS4 is the only controllable source of pollutants causing impairments to receiving waters, the compliance alternative option would effectively be equivalent to developing and implementing a TMDL.

The San Diego Water Board appreciates this opportunity to provide its perspective on the compliance alternative to receiving water limitations issue. In the subject line of any response, please include the reference number Place ID 786088:wchiu. For questions or comments, please contact Wayne Chiu by phone at 858-637-5558, or by email at wchiu@waterboards.ca.gov.

cc [via email only]:

Mr. Samuel Unger
Executive Officer
Los Angeles Regional Water Quality
Control Board
320 West 4th Street, Suite 200
Los Angeles, CA 90013
sunger@waterboards.ca.gov

Ms. Deborah Smith
Assistant Executive Officer
Los Angeles Regional Water Quality
Control Board
320 West 4th Street, Suite 200
Los Angeles, CA 90013
dsmith@waterboards.ca.gov

Ms. Paula Rasmussen
Assistant Executive Officer
Los Angeles Regional Water Quality
Control Board
320 West 4th Street, Suite 200
Los Angeles, CA 90013
prasmussen@waterboards.ca.gov

Ms. Renee Purdy
Environmental Program Manager I
Los Angeles Regional Water Quality
Control Board
320 West 4th Street, Suite 200
Los Angeles, CA 90013
rpurdy@waterboards.ca.gov

Mr. Ivar Ridgeway
Environmental Scientist
Los Angeles Regional Water Quality
Control Board
320 West 4th Street, Suite 200
Los Angeles, CA 90013
iridgeway@waterboards.ca.gov

Lori T. Okun, Esq
Office of Chief Counsel
State Water Resources Control Board
1 001 I Street, 22nd Floor [95814]
P.O. Box 100
Sacramento, CA 95812-0100
lokun@waterboards.ca.gov

Frances L. McChesney, Esq.
Office of Chief Counsel
State Water Resources Control Board
1 001 I Street, 22nd Floor [95814]
P.O. Box 100
Sacramento, CA 95812-0100
FMcChesney@waterboards.ca.gov

Jennifer L. Fordyce, Esq.
Office of Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor [95814]
P.O. Box 100
Sacramento, CA 95812-0100
jfordyce@waterboards.ca.gov

Nicole L. Johnson, Esq.
Office of Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor [95814]
P.O. Box 100
Sacramento, CA 95812-0100
njohnson@waterboards.ca.gov

Michael Lauffer, Esq.
Office of Chief Counsel
State Water Resources Control Board
1 001 I Street, 22nd Floor [95814]
P.O. Box 100
Sacramento, CA 95812-0100
milauffer@waterboards.ca.gov

(Continued on next page)

cc [via email only]:
(cont'd)

Philip G. Wyels, Esq.
Office of Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor [95814]
P.O. Box 100
Sacramento, CA 95812-0100
pwuels@waterboards.ca.gov

Bethany A. Pane, Esq.
Office of Chief Counsel
State Water Resources Control Board
1 001 I Street, 22nd Floor [95814]
P.O. Box 100
Sacramento, CA 95812-0100
bpayne@waterboards.ca.gov

Mr. David W. Smith, Chief
Permits Office
U.S. EPA, Region 9
75 Hawthorne Street
San Francisco, CA 941 05
smith.davidw@epa.gov