
San Diego Regional Water Quality Control Board

March 14, 2016

Carlsbad Watershed Management Area City Managers:

Kevin Crawford, City of Carlsbad
Karen Brust, City of Encinitas
Graham Mitchell, City of Escondido
Michelle Skaggs Lawrence, City of Oceanside
Jack Griffin, City of San Marcos
Gregory Wade, City of Solana Beach
Patrick Johnson, City of Vista
Helen N. Robbins-Meyer, County of San Diego (Chief Administrative Officer)

Subject: San Diego Water Board Notice of Rejection and Second Notice of Noncompliance—Carlsbad Watershed Management Area Water Quality Improvement Plan

Messrs. Crawford, Mitchell, Griffin, Wade, Johnson, and
Meses. Brust, Skaggs Lawrence, and Robbins-Meyer:

The California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) received the revised final Carlsbad Watershed Management Area (WMA) Water Quality Improvement Plan (Carlsbad Plan) on September 29, 2015. The Carlsbad Plan was jointly submitted by the Cities of Carlsbad, Encinitas, Escondido, Oceanside, San Marcos, Solana Beach, Vista, and the County of San Diego (Copermittees). This letter provides notification that the San Diego Water Board is rejecting the Carlsbad Plan in its entirety on the basis that it fails to meet the minimum requirements of Provisions B and D of Order No. R9-2013-0001, as amended by Order Nos. R9-2015-0001 and R9-2015-0100, NPDES No. CAS0109266, *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* (Order). The San Diego Water Board remains committed to helping the Copermittees complete development of the Carlsbad Plan, as soon as possible. Board staff will continue to be available to meet weekly and provide guidance and direct feedback.

Under the terms and conditions of section F.1.b of the Order, the Copermittees were required to develop the Carlsbad Plan over a 24-month period and submit a compliant Plan to the San Diego Water Board by June 26, 2015. By letter dated August 5, 2015, the San Diego Water Board issued a notice of noncompliance to the Copermittees detailing general deficiencies in the Carlsbad Plan that needed to be addressed and pointedly indicating that the Plan, at that time, failed to comply with the minimum requirements of the Order. Subsequently, on September 29, 2015 the Copermittees submitted a revised Carlsbad Plan that also did not adequately address the Board's concerns. As a result, the Copermittees have been out of

compliance with the Order since June 26, 2015, and will continue to accrue days of violation until a compliant Plan is submitted and accepted.

The Water Quality Improvement Plan is the cornerstone of the Order's emphasis on measuring and achieving reductions in pollutant loading from MS4 discharges and improvements in receiving water quality to ensure that all applicable beneficial uses are fully attained. Instead of addressing all pollutants and adverse watershed water quality conditions simultaneously, the Water Quality Improvement Plan provides an alternative adaptive management pathway for the Copermittees to select and focus resources on addressing the highest priority water quality issues in a watershed. In addition to documenting the priority water quality issues in a watershed, the Water Quality Improvement Plan also describes numeric goals to be achieved, schedules for achieving the goals, and the strategies to be employed. Ideally, a robust fully implemented Water Quality Improvement Plan would be successful at achieving tangible improvements in water quality and protection of receiving water beneficial uses, thereby eliminating the need for regulatory action mandating stringent pollutant load reductions through Total Maximum Daily Loads (TMDLs) to restore impaired waters.

The Carlsbad Plan falls far short of a robust, credible, and durable Water Quality Improvement Plan as required by the Order. First, the Carlsbad Plan identifies indicator bacteria exceedances as the highest priority water quality condition for four of the five subwatersheds, without any supporting technical information demonstrating that indicator bacteria exceedances are the chief source of beneficial use impairments in the watershed. Other pollutants and adverse water quality conditions of concern in the watershed, such as high concentrations of sediment, nutrients, and elevated toxicity were disregarded in favor of prioritizing indicator bacteria exceedances without any supporting rationale. Second, the Carlsbad Plan does not establish any wet weather numeric goals or address wet weather discharges, a blatant key omission in a document required to address storm water pollution issues. Moreover, this omission cannot be reconciled with the Plan's focus on indicator bacteria exceedances since receiving water quality data throughout the region consistently shows that bacteria levels elevate during wet weather storm events and are likely associated with an increased risk of swimmer illness at beaches. Finally, the omission of a wet weather numeric goal(s) from the Carlsbad Plan indicates that the Copermittees are not working in good faith to achieve 1) compliance with the Order requirements for a robust and complete Water Quality Improvement Plan, 2) eventual compliance with the receiving water quality standards in a timely and meaningful fashion, or 3) the goals of California's Porter Cologne Water Quality Control Act and the federal Clean Water Act for protecting and restoring the water quality and beneficial uses of surface waters from the effects of storm water pollution.

In the absence of an acceptable Carlsbad Plan, the San Diego Water Board is considering invoking the rigid iterative process outlined in Provision A.4 of the Order, whereby an exceedance of any water quality standard triggers a process of best management practices (BMP) improvements: reporting of the violation, submission of a report describing proposed improvements to BMPs expected to better meet water quality standards, and implementation of these new BMPs.¹ The invocation of Provision A.4 of the Order is required under the Order when the Copermittees or the San Diego Water Board have determined that discharges from the MS4 are causing or contributing to violations of water quality standards in the receiving

¹ Provision A.4 of the Order is based on the precedential language set forth in State Water Resources Board (State Water Board) Order WQ 2001-15, and reaffirmed by State Water Board Order WQ 2015-0075, laying out an iterative process for improving BMP control measures to achieve compliance with water quality standards.

waters not addressed in a Water Quality Improvement Plan. If compelled to do so, the San Diego Water Board is prepared to move forward with that determination for the Carlsbad WMA immediately, setting aside the Water Quality Improvement Plan process until an acceptable plan is developed. Additionally, the San Diego Water Board is also considering exercising its discretion to prioritize development and implementation of TMDLs to address impaired waters in the Carlsbad WMA. The San Diego Water Board reserves the right to use these strategies as well as other enforcement options to compel compliance with the Order.

However, the preferred option is for the Copermittees to promptly complete development of a Carlsbad Plan that is not only fully compliant with the Order, but an example of the San Diego Water Board and Copermittees shared vision for the Water Quality Improvement Plan as the key platform for addressing water quality issues on a watershed scale and making progress towards achieving water quality standards. The San Diego Water Board understands that the Copermittees are now working to transform the Carlsbad Plan into a robust, credible, and durable Plan that is capable of achieving tangible improvements in water quality and beneficial use protection. To that end the San Diego Water Board urges the Copermittees to complete the work and submit a compliant Carlsbad Plan as quickly as possible to avoid the Board's pursuit of the other pathways to compliance described above. The San Diego Water Board is committed to continued weekly meetings with the Copermittees to assist with the expedited completion of the Carlsbad Plan development.

Please submit any written correspondence in response to this letter to SanDiego@waterboards.ca.gov. Electronic documents must be submitted as a single file, in Portable Document Format (PDF) format, and converted to text searchable format using Optical Character Recognition (OCR). All electronic documents must also include scanned copies of all signature pages; electronic signatures will not be accepted. Electronic documents submitted to the San Diego Water Board must include the following identification numbers in the header or subject line: **PIN: CW-794838:CArias**.

Should you have any questions or comments on this matter, please contact Christina Arias by phone at (619) 521-3361 or by e-mail at Christina.Arias@waterboards.ca.gov.

Respectfully,



David W. Gibson
Executive Officer
San Diego Regional Water Quality Control Board

DWG:js:dtb:law:ca
cc (via email):

Elaine Lukey, City of Carlsbad
Erik Steenblock, City of Encinitas
Helen Davies, City of Escondido
Mo Lahsaie, City of Oceanside
Reed Thornberry, City of San Marcos
Dan Goldberg, City of Solana Beach
Cheryl Filar, City of Vista
JoAnn Weber, County of San Diego

Tech Staff Info & Use	
Order No.	R9-2013-0001
NPDES No.	CAS0109266
PIN ID	794838
Regulatory Measure ID	387355