

From: Bromley.Eugene@epamail.epa.gov
To: Chiu.Wayne@Waterboards
Cc: Smith.DavidW@epamail.epa.gov; Becker.Eric@Waterboards; Barker.David@Waterboards; Kemmerer.John@epamail.epa.gov; Lin.Cindy@epamail.epa.gov; Brown.Samuel@epamail.epa.gov; Marincola.JamesPaul@epamail.epa.gov
Subject: Re: Fw: San Diego Regional Permit Compliance Option for Prohibitions and Receiving Water Limitations
Date: Tuesday, February 12, 2013 1:31:00 PM
Attachments: [USEPA Review.pdf](#)

Wayne,

Here's a few comments on your new proposal:

1) Regarding compliance with receiving water limitations (RWLs), our first preference would be to just continue using the current RWLs language. However, if you choose to include the new B.3.c compliance option, the proposal should clarify when the potential "safe harbor" period would begin; we would recommend that any such "safe harbor" period begin only after approval of an appropriate WQIP by the Board. Providing "safe harbor" coverage based solely upon submittal by a jurisdiction of a notice of intent to develop a WQIP is legally questionable. This approach could be read to provide the functional equivalent of a compliance schedule without satisfying the requirements that must be met to grant a compliance schedule (e.g., provisions of 40 CFR 122.47 requiring that such schedules result in attainment as soon as possible and include specific interim milestones and schedules leading to attainment of effluent limitations). In reviewing and approving a proposed WQIP, the Board can ensure that the plan will be robust enough to result in attainment within a reasonable period of time.

2) to better ensure that permittees provide a robust demonstration that proposed strategies and activities in a WQIP would lead to compliance with WLAs/RWLs, we suggest revising the second sentence in B.3.c.(2) to the following:

"the results must be included in the water quality improvement plan to quantitatively demonstrate that the implementation of the water quality improvement strategies. . ."

3) in the new proposed B.3.c.(1)(c) the phrase "protect the physical and biological conditions of the receiving waters" is somewhat vague and should be clarified. We believe your overall intent is to require compliance with RWLs (provisions A.1.a, A.1.c and A.2.a of the permit) and B.3.c.(1)(c) would fill in any gaps not covered by B.3.c.(1)(a) and (b). We recommend the requirement to be revised to provide this clarification. The phrase "protect the physical and biological conditions of the receiving water" could be read to provide only for protection of existing conditions, not to require reduction of pollutant discharges necessary to result in attainment of applicable water quality standards. It would be much more defensible to simply revise the phrase to something like "protect and restore the physical and biological conditions of receiving waters and attain water quality objectives."

Eugene Bromley
NPDES Permits Office (WTR-5)
EPA Region 9
75 Hawthorne Street
San Francisco, CA 94105
bromley.eugene@epa.gov
(415) 972-3510
(415) 947-3549 (fax)

From: DavidW Smith/R9/USEPA/US
To: Eugene Bromley/R9/USEPA/US@EPA,
Date: 02/07/2013 03:26 PM
Subject: Fw: San Diego Regional Permit Compliance Option for Prohibitions and Receiving Water Limitations

David Smith
Manager
NPDES Permits Office (WTR-5)
EPA Region 9
75 Hawthorne Street
San Francisco, CA 94105
(415) 972-3464
(415) 947-3545 (fax)

----- Forwarded by DavidW Smith/R9/USEPA/US on 02/07/2013 03:26 PM -----

From: "Chiu, Wayne@Waterboards" <Wayne.Chiu@waterboards.ca.gov>
To: Cindy Lin/R9/USEPA/US@EPA, John Kemmerer/R9/USEPA/US@EPA, DavidW Smith/R9/USEPA/US@EPA
Cc: "Becker, Eric@Waterboards" <Eric.Becker@waterboards.ca.gov>, "Barker, David@Waterboards" <David.Barker@waterboards.ca.gov>, "Arias, Christina@Waterboards" <Christina.Arias@waterboards.ca.gov>, "Walsh, Laurie@Waterboards" <Laurie.Walsh@waterboards.ca.gov>
Date: 02/06/2013 01:45 PM
Subject: San Diego Regional Permit Compliance Option for Prohibitions and Receiving Water Limitations

Hi John, Cindy and Dave,

We have developed some language that we plan on including in our Regional MS4 Permit to lay out a pathway for demonstrating compliance with the discharge prohibitions and receiving water limitations. I've attached the pertinent sections of the permit to generally show where it would go into the permit.

The attachment begins with an excerpt of most of Provision A, which lays out the discharge prohibitions (A.1) and receiving water limitations (A.2), as well as the "iterative process" language (A.4). We do not plan on making any changes to this language other than Provision A.1.b.

Following the excerpt from Provision A is a new section we plan on putting into the Water Quality Improvement Goals, Strategies and Schedules section of the Water Quality Improvement Plan requirements under Provision B. Provision B.3.c is where we provide the option for each Copermittee to develop a robust set of goals, strategies and schedules that can demonstrate they will achieve the discharge prohibitions and receiving water limitations in Provision A. The review of the goals, strategies, and schedules for the compliance option will go through a rigorous public process, as well as review by a Water Quality Improvement Consultation Panel which is described in Provision F.1.a.(1)(b), before being reviewed for acceptance by the San Diego Water Board.

Provision F.1.a.(1) describes the public participation process that will be required for the development of each Water Quality Improvement Plan. You will find the details about the Water Quality Improvement Consultation Panel under this section.

Provision B.3.c is a fairly important piece of our response to the comments we've heard and received. We are currently trying to finalize the changes we want to make to the permit so we can start responding to all the comments we've received. Our current direction is to get the permit to our Board in April. In order for that to

happen, we need to finalize our changes and finish responding to comments by the end of this month.

We'd like to get your feedback on the language before we finalize it. We need your feedback by February 22 if we want to make sure we have enough time to get all our ducks in a row for the April Board meeting.

Let me know if you have any questions. Otherwise, hope to get your feedback on or before February 22.

Thanks,

Wayne Chiu, PE

Water Resource Control Engineer

Southern Watershed Unit

California Regional Water Quality Control Board

San Diego Region

9174 Sky Park Court

San Diego, California 92123

858-637-5558

858-571-6972 Fax