

**Third Draft Order No. R8-  
2015-0001:  
Orange County Municipal  
Separate Storm Sewer  
System Permit**

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# Topics:

- Timeline of the development process.
- Review overarching issues.
- Review areas of greatest attention to date.
- Key changes since last public release

# Development Timeline

October 2013	Report of Waste Discharge received
April 2014	Status report to Regional Board
May 2014	First Draft released to public
May 2014	First Public Workshop held
June 2014	Board Workshop held
June 2014	Public comment period closed
December 2014	Second Draft and Response to Comments released to public
January 30, 2015	Second Board Workshop held
February 13, 2015	Public comment period closed
June 17, 2015	State Board adopts Order 2015-0075

# Major Themes

- Compliance versus Performance
- Agility versus Control
- State Board Order No. 2015-0075: alternative compliance pathway

# Permit Writer's Dilemma

- Compliance
  - Conform with precedential Orders from State Board
    - State Board 2015-0075
  - Implement Federal Regulations
- Performance
  - Provisions that lead to achieving water quality standards

# Permittees' Dilemma

- Compliance
  - Comply with permit provisions.
- Performance
  - ???????
  - Limited to the extent that provisions achieve performance.

# Approach to ‘compliance versus performance’

- Compliance
  - Measurable and verifiable requirements
  - Minimize advisory language
  - Requirements that provide for an auditable program
- Performance
  - We know what BMPs could be implemented
  - We don't know what the optimum mix of BMPs is
  - Solution: Implement a learning process (“iterative process”)

# Define the “iterative process”

- Approach:

1. Create a working model of the “iterative process”
  - Formulate permit requirements to follow the process.
2. Motivate a program of continual improvement based on a combination of mandatory and voluntary performance metrics
3. Provide a method to justify program changes based on performance

# Agility versus Control

- Agility: Ability to quickly adapt programs to capitalize on new information, technologies, or opportunities.
- Control: the level of detail that the permit should control and the permittees need to document to demonstrate compliance
- Reduce control over program changes → high levels of agility

# 3 General approaches to balancing agility and control

FIRST: Minimize incorporation by reference

- ‘Co-permittees must implement Plan X.’

SECOND: Control content of plans that is enforceable

- Existing plans → Incorporate content into the Permit
- Future plans → Specify content that will be enforced during the approval process

# 3 General approaches to agility versus control

THIRD: Focus on required goals or desired outcomes

1. Establish goals
  - Permittees select mechanisms to achieve goals
2. Enforce process to measure achievement of goals
  - Permittees select performance measures
3. Enforce a continual improvement process
  - Requirements to support an auditable program

# Downside of Incorporation by Reference

- May be seen as an endorsement; following the plan achieves compliance
- Plans do not contain methods to achieve performance: only compliance
- Over-emphasizes compliance over performance
- Emphasizes flexibility to modify the plan (iterative process) to achieve performance

# Loosening controls

- Previous draft Permit contained requirements that were criticized as being overly-prescriptive or outside of bounds of authority
- Re-evaluation found these requirements are related to contributing factors for more serious violations
- State Enforcement Policy would not allow most to be enforced independently: did not add enforcement value
- Instead, treat as part of culpability and other factors considered in establishing civil liability amounts

# Areas of Greatest Attention

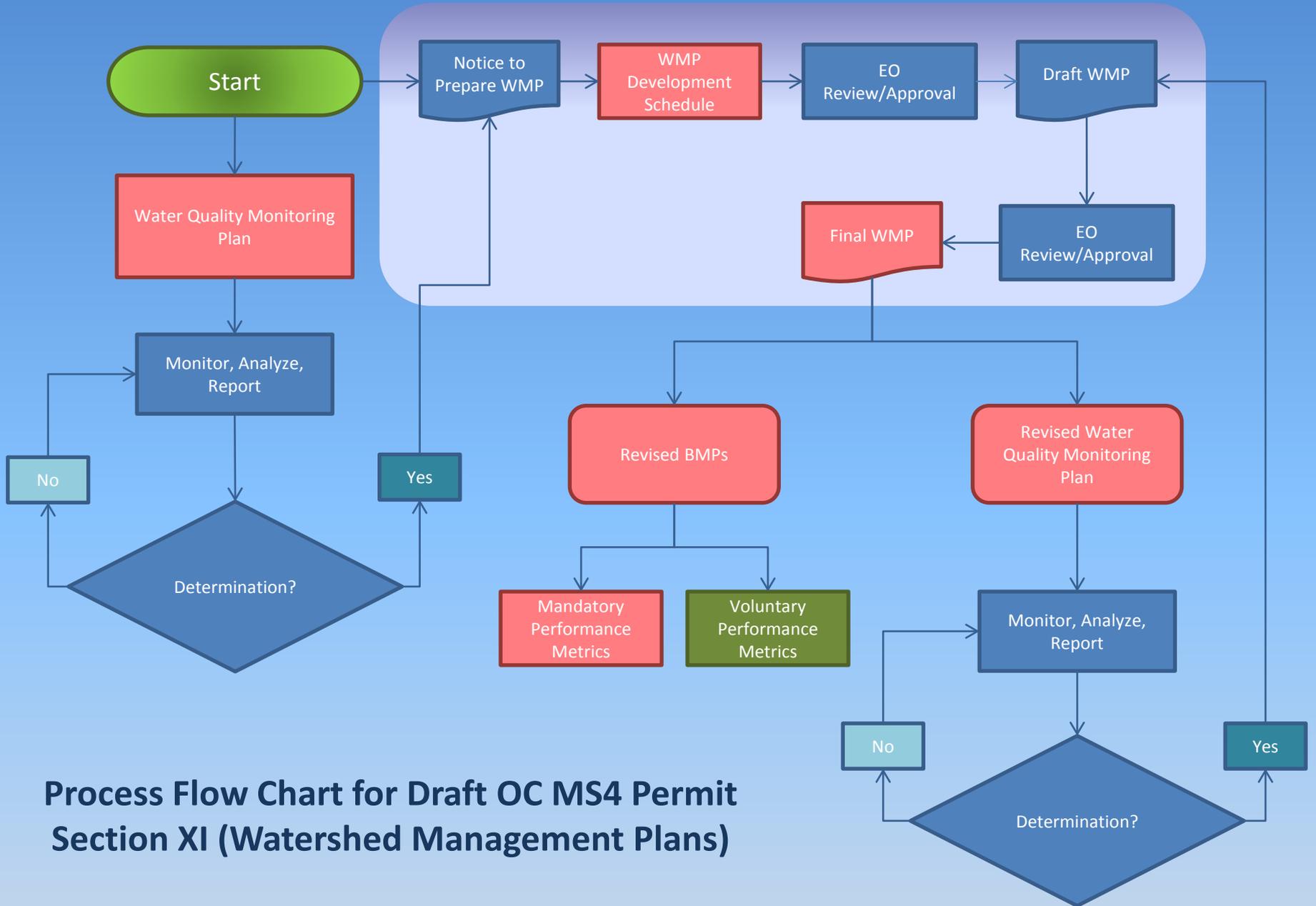
- Receiving Water Limitations Language (Section IV)
- TMDLs (Section XVIII and Appendices A-H)
- Municipal inspection programs (Sections VIII, IX, and X)
- New Development/Significant Redevelopment (Section XII)

# Summary of key changes

- Cities of Laguna Hills and Laguna Woods have been designated to the San Diego Regional Board for MS4 Permit compliance.
- The City of Lake Forest has been designated to the Santa Ana Region.
- Requirements for *de minimis* and drinking water system discharges are in a new Attachment A.
- Executive Officer is now authorized to approve alternative inspection schedules for industrial, commercial, and construction sites during term of Permit.

# Summary of key changes

- A credit program allows property owners to invest in LID BMPs for use on their own projects in the same common watershed
- The water quality-based effluent limitations for fecal coliform to protect water-contact recreation were removed
- Changes modeled after precedential Order 2015-0075
  - Compliance plans for WQBELs and receiving water limitations are now called Watershed Management Plans in new Section XI.
  - Designed to create alternative compliance pathway



**Process Flow Chart for Draft OC MS4 Permit Section XI (Watershed Management Plans)**

# Questions