

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

Errata Sheet
November 4, 2015
Revised November 10, 2015

TENTATIVE ORDER NO. R9-2015-0100

AN ORDER AMENDING ORDER NO. R9-2013-0001, NPDES NO. CAS010266,
AS AMENDED BY ORDER NO. R9-2015-0001
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

The following changes are proposed to the revised version of Tentative Order No. R9-2015-0100 and its Attachments included as Supporting Document No. 1 for Item No. 11 on the San Diego Water Board November 18, 2015 Board Meeting Agenda.

1. Tentative Order No. R9-2015-0100 Errata

Revise the beginning of Finding 6 as follows:

- 6. Regional Water Board Agreement.** The San Diego Water Board and the Santa Ana Water Board entered into an agreement dated ~~[Month][Day]~~ [October 26](#), 2015 to:

2. Attachment No. 1 to Tentative Order No. R9-2015-0100 Errata

a) Revise Finding 29.b as follows:

- b. Pursuant to CWC section 13228, the Cities of Murrieta, Wildomar, and Menifee submitted written requests that one Regional Water Board be designated to regulate Phase I MS4 discharges for each of the Cities. The Santa Ana Water Board and the San Diego Water Board have entered into an agreement dated ~~[Month][Day]~~ [October 26](#), 2015, whereby the Cities of Murrieta and Wildomar are largely regulated by the San Diego Water Board under this Order, including those portions of the Cities of Murrieta and Wildomar not within the San Diego Water Board's jurisdiction, upon the effective date of this Order....

b) Revise Provision A.1.d as follows:

- d. Storm water discharges from the City of San Diego's MS4 to the San Diego Marine Life Refuge in La Jolla, and the City of Laguna Beach's MS4 to the Heisler Park ASBS are authorized under this Order subject to the Special Protections contained in Attachment B to State Water Board Resolution No. 2012-0012, [as amended by State Water Board Resolution No. 2012-0031](#), applicable to these discharges, included in Attachment A to this Order. All other discharges from the Copermittes' MS4s to ASBS are prohibited.

- c) Revise the beginning of Provision B.3.c as follows:

c. PROHIBITIONS AND LIMITATIONS COMPLIANCE OPTION

Each Copermittee has the option to utilize the implementation of the Water Quality Improvement Plan to demonstrate compliance with the requirements of Provisions A.1.a, A.1.c, A.1.d, A.2-~~a~~, and A.3.b within a Watershed Management Area subject to the following conditions:

- d) Revise Provision B.3.c.(1) as follows:

(1) A Copermittee is eligible to be deemed in compliance with Provisions A.1.a, A.1.c, A.1.d, A.2-~~a~~, and A.3.b within a Watershed Management Area when the Water Quality Improvement Plan for a Watershed Management Area incorporates the following:

- e) Revise Provision B.3.c.(1)(a)(vii) as follows:

(vii) For each final numeric goal developed pursuant to Provisions B.3.a and B.3.c.(1)(a)(i)-(v), ~~at least one~~ annual milestones⁹ and the dates for ~~its~~ their achievement must be included within each of the next five (5) Water Quality Improvement Plan Annual Report reporting periods, or until the final numeric goal is achieved. [Annual milestones and the dates for their achievement for the 5 Water Quality Improvement Plan Annual Report reporting periods of the next permit term, or until the final numeric goal is achieved, must be provided as part of the Report of Waste Discharge required pursuant to Provision F.5.](#)

- f) Revise Footnote 9 as follows:

⁹ Annual milestones for each final numeric goal must ~~build upon previous milestones and lead to be clearly and directly linked to, or demonstrate progress is being made toward,~~ the achievement of the final numeric goal. The annual milestones may consist of water quality improvement strategy implementation phases, interim numeric goals, and other acceptable metrics. The annual milestones may address multiple numeric goals and/or multiple water bodies, as applicable and appropriate.

- g) Revise Provision B.3.c.(2) as follows:

(2) Each Copermittee that voluntarily completes the requirements of Provision B.3.c.(1) is deemed in compliance with Provisions A.1.a, A.1.c, A.1.d, A.2-~~a~~, and A.3.b for the pollutants and conditions for which numeric goals are developed when the Water Quality Improvement Plan, incorporating the requirements of Provision B.3.c.(1), is accepted by the San Diego Water Board pursuant to Provision F.1.b or F.2.c. The Copermittee is deemed in compliance during the term of this Order as long as:

- h) Revise Provision B.3.c.(2)(d) as follows:

(d) Any proposed modifications to the numeric goals, strategies, schedules, and/or annual milestones are accepted by the San Diego Water Board as part of subsequent updates to the Water Quality Improvement Plan pursuant to Provision F.2.c;¹⁰ AND

- i) Add Provision B.5.d as follows:

d. ADAPTATION OF PROHIBITIONS AND LIMITATIONS COMPLIANCE OPTION

If a Copermittee has implemented the Prohibitions and Limitations Compliance Option allowed to be included in the Water Quality Improvement Plan pursuant to Provision B.3.c, the Copermittee must re-evaluate and adapt the numeric goals, water quality improvement strategies, schedules, and annual milestones required under Provision B.3.c.(1) when significant new information becomes available, or with the Report of Waste Discharge required pursuant to Provision F.5. Significant changes in the numeric goals, water quality improvement strategies, schedules, or annual milestones requires an update to the analysis required under Provision B.3.c.(2).

- j) Revise Provision E.3.d as follows:

(d) Each Copermittee must update its BMP Design Manual pursuant to Provision F.2.b. Until the Copermittee has updated its BMP Design Manual pursuant to Provision F.2.b.(1), the Copermittee must continue implementing its current BMP Design Manual. The Copermittee must implement the updated BMP Design Manual within 180 days following completion of the update pursuant to Provision F.2.b.(1), unless directed otherwise by the San Diego Water Board Executive Officer. The date the BMP Design Manual is implemented is the “effective date” of the BMP Design Manual.

- k) Revise Provision F.2.b.(4) as follows:

(4) If the San Diego Water Board amends Provisions E.3.a-d during the permit term but after the Copermittee has completed the update pursuant to Provision F.2.b.(1), the Copermittee must revise its BMP Design Manual to incorporate the amended Provision E.3.a-d requirements as soon as possible but not later than 90 days after the date the San Diego Water Board adopts the amendments to Provisions E.3.a-d, unless otherwise directed by the San Diego Water Board Executive Officer. Under these circumstances, the effective date of the BMP Design Manual is no later than 90 days after the date the San Diego Water Board adopts the amendments to Provisions E.3.a-d, unless otherwise directed by the San Diego Water Board Executive Officer.

- l) Revise the definition of Construction Activities in Attachment C as follows:

Construction Activities – Actions implemented during construction of development or redevelopment projects during the Preliminary **Tasks Phase** (including rough grading and/or disking, clearing and grubbing operations, or any soil disturbance prior to mass grading), Grading or Land Development **Phase** (including topography and slope reconfiguration, alluvium removals, canyon cleanouts, rock undercuts, keyway excavations, land form grading, and stockpiling of select material for capping operations), Streets and Utility **Installation Phase** (including excavation and street paving, lot grading, curbs, gutters and sidewalks, public utilities, public water facilities including fire hydrants, public sanitary sewer systems, storm sewer systems and/or other drainage improvements), or Vertical Construction **Phase** (including the build out of structures from foundations to roofing, including rough landscaping).

m) Revise the definition of Redevelopment in Attachment C as follows:

Redevelopment – The creation and/or replacement of impervious surface on an already developed site. Examples include the expansion of a building footprint, road widening, and the addition to or replacement of a structure, ~~and creation or addition of impervious surfaces~~. Replacement of impervious surfaces includes any activity ~~that is not part of a routine maintenance activity~~ where impervious material(s) are removed, exposing underlying soil during construction. Redevelopment does not include routine maintenance activities, such as trenching and resurfacing associated with utility work; pavement grinding; resurfacing existing roadways, ~~new~~ sidewalks construction, pedestrian ramps, or bike lanes on existing roads; and routine replacement of damaged pavement, such as pothole repair.

n) Revise Specific Provision 6.b.(2)(c)(i) in Attachment E as follows:

(i) The Water Quality Improvement Plans for the applicable Watershed Management Areas in Table 6.0 must incorporate the Bacteria Load Reduction Plans (BLRPs) or Comprehensive Load Reduction Plans (CLRPs) required to be developed pursuant to Resolution No. R9-2010-0001.

3. Attachment No. 2 to Tentative Order No. R9-2015-00100 Errata

a) Revise the text on page F-5 of the Fact Sheet as follows:

b. Continue designation of the San Diego Water Board to regulate Phase I MS4 discharges within the jurisdictions of the Cities of Murrieta and Wildomar, including areas within the Santa Ana Region; and, agree to continue designation of the Santa Ana Water Board to regulate all Phase I MS4 discharges within the jurisdiction of the City of Menifee, including areas within the San Diego Region, subject to the terms of the ~~[Month][Day]~~ October 26, 2015 agreement between San Diego Water Board and the Santa Ana Water Board described in Finding 29 of this Order;

c. Incorporate Provision B.3.c, which provides an option that allows a Copermittee to utilize the watershed-based Water Quality Improvement Plan to be deemed in compliance with the prohibitions and limitations of Provisions A.1.a, A.1.c, A.1.d, A.2.a, and A.3.b;

b) Revise the text on page F-7 of the Fact Sheet as follows:

** The City of Menifee is not regulated as a Copermittee under this Order because its Phase I MS4 discharges are regulated by Santa Ana Water Board Order No. R8-2010-0033 as it may be amended or issued pursuant to Water Code section 13228 designation. The requirements of this Order that apply to the City of Menifee for the duration of this Order, consistent with the Water Code section 13228 written agreement dated ~~[Month][Day]~~ October 26, 2015, are described in Finding 29 and Footnote 3 to Table B-1.

- c) Revise the text on page F-32 of the Fact Sheet as follows:

Anti-Backsliding Requirements

CWA sections 402(o) and 303(d)(4) and federal regulations at 40 CFR 122.44(l) prohibit backsliding in NPDES permits. These anti-backsliding provisions require effluent limitations in a reissued permit to be as stringent as those in the previous permit, with some exceptions where limitations or conditions may be relaxed. While this Order allows implementation of an alternative compliance pathway option in Provision B.3.c to constitute compliance with receiving water limitations under certain circumstances, the availability of that alternative and the corresponding availability of additional time to come into compliance with receiving water limitations does not violate the antibacksliding provisions. The receiving water limitations provisions of this Order are imposed under section 402(p)(3)(B) of the Clean Water Act rather than based on best professional judgment, or based on section 301(b)(1)(C) or sections 303(d) or (e), and are accordingly not subject to the anti-backsliding requirements of section 402(o). Although the non-applicability is less clear with respect to the regulatory anti-backsliding provisions in 40 CFR 122.44(l), the regulatory history suggests that USEPA's intent was to establish the anti-backsliding regulations with respect to evolving technology standards for traditional point sources. (See, e.g., 44 Fed.Reg. 32854, 32864 (Jun. 7, 1979)). It is unnecessary, however, to resolve the ultimate applicability of the regulatory anti-backsliding provisions, because the alternative compliance pathway option in Provision B.3.c qualifies for an exception to backsliding as based on new information.

The alternative compliance pathway option in Provision B.3.c of this Order was informed by new information available to the Board from experience and knowledge gained through [storm water permitting at the Regional Water Boards in the last ten years](#). [There has been a statewide paradigm shift in storm water management. State Water Board Order WQ 2015-0075 directed all of the Regional Water Boards to consider the Los Angeles Water Board's alternative compliance path to receiving water limitations in all Phase I MS4 permits going forward \(State Water Board Order WQ 2015-0075 at page 51\).](#) ~~It, and~~ the Los Angeles Water Board's process of developing over 30 watershed-based TMDLs and implementing several TMDLs since the adoption of the previous permits. In particular, the Los Angeles Water Board recognized the significance of allowing time to plan, design, fund, operate and maintain watershed-based BMPs necessary to attain water quality improvements and additionally recognized the potential for municipal storm water to benefit water supply. [Similarly, the San Diego Water Board's experience developing and implementing the Fourth Term MS4 Permits and TMDLs that apply on a region-wide scale \(e.g. TMDLs for Indicator Bacteria, Project I – Twenty Beaches and Creeks in the San Diego Region\) has resulted in a similar recognition of the need for a watershed-based approach that allows time to plan, design, fund, operate and maintain BMPs to address impaired waters that have been impacted by MS4 discharges.](#) Thus, even if the receiving water limitations are subject to anti-backsliding requirements, they were revised based on new information that would support an exception to the anti-backsliding provisions. (33 U.S.C. § 1342(o)(2)(B)(i); 40 C.F.R. § 122.44(l)(1); 40 C.F.R. § 122.44(l)(2)(i)(B)(1)).

d) Revise the text on page F-51 of the Fact Sheet as follows:

The San Diego Water Board and the Santa Ana Water Board entered into an agreement dated February 10, 2015 to designate the San Diego Water Board to regulate Phase I MS4 discharges within the jurisdictions of the Cities of Laguna Woods and Laguna Hills, including the portions of the jurisdictions within the Santa Ana Region, upon the later effective date of Order No. R9-2015-0001 or Santa Ana Water Board Tentative Order No. R8-2015-0001. The San Diego Water Board and the Santa Ana Water Board entered into an agreement dated ~~[Month][Day]~~ October 26, 2015 to designate the San Diego Water Board to regulate Phase I MS4 discharges within the jurisdictions of the Cities of Murrieta and Wildomar, including the portions of the jurisdictions within the Santa Ana Region upon the effective date of Order R9-2015-0100.

e) Revise the text on page F-52 of the Fact Sheet as follows:

The San Diego Water Board and the Santa Ana Water Board entered into an agreement dated February 10, 2015 to designate the San Ana Water Board to regulate Phase I MS4 discharges within the jurisdiction of the City of Lake Forest, including portions of the jurisdiction within the Santa Diego Region, upon the later date of Order No. R9-2015-0001 or Santa Ana Water Board Tentative Order No. R8-2015-0001. The San Diego Water Board and the Santa Ana Water Board entered into an agreement dated ~~[Month][Day]~~ October 26, 2015 to designate the San Ana Water Board to regulate Phase I MS4 discharges within the jurisdiction of the City of Menifee, including portions of the jurisdiction within the San Diego Region, under Order No. R8-2010-0033 (NPDES No. CAS618030) as it may be amended or reissued upon the effective date of Order No. R9-2015-0100.

f) Revise the text on pages F-60 through F-62 of the Fact Sheet as follows:

Replace the references to “Provisions A.1.a, A.1.c, A.1.d, A.2.a, and A.3.b” with “Provisions A.1.a, A.1.c, A.1.d, A.2-~~a~~, and A.3.b.”

g) Revise the text on page F-62 of the Fact Sheet as follows:

Compliance with the requirements of Provisions A.1.a, A.1.c, A.1.d, A.2-~~a~~, and A.3.b begins when the Water Quality Improvement Plan, incorporating the requirements of Provision B.3.c.(1), is accepted by the San Diego Water Board. Each Copermittee that chooses to implement and continues to implement this option will be deemed in compliance with the requirements of Provisions A.1.a, A.1.c, A.1.d, A.2-~~a~~, and A.3.b as long as the Copermittee continues to implement the strategies, monitoring and assessments as incorporated in the Water Quality Improvement Plan in accordance with Provision B.3.c.(1), and the Copermittee reports the achievement of the annual milestones each year, or provides acceptable rationale and recommends appropriate modifications to the interim numeric goals, and/or water quality improvement strategies, and/or schedules to improve the rate of progress toward achieving the final numeric goals. The Copermittee continues to be deemed in compliance with the requirements of Provisions A.1.a, A.1.c, A.1.d, A.2, and A.3.b during the time the San Diego Water Board reviews the rationale and recommended modifications to the interim numeric goals, and/or water quality improvement strategies, and/or schedules. If and when the San Diego Water Board determines that it does not accept the rationale or recommendations, the Copermittee will be notified they are no longer deemed in compliance with Provisions A.1.a, A.1.c, A.1.d, A.2, and A.3.b.

h) Revise the text on page F-81 of the Fact Sheet as follows:

Provision E.2.(Illicit Discharge Detection and Elimination) requires each Copermitttee to implement an illicit discharge detection and elimination program to effectively prohibit non-storm water discharges to the MS4 by actively detecting and eliminating illicit discharges and disposal into its MS4. If the San Diego Water Board finds that a Copermitttee is fully implementing the requirements of Provision E.2, then the Copermitttee is deemed in compliance with the effective prohibition of non-storm water discharges to the MS4 required under Provision A.1.b.