San Diego County Copermittees

San Diego Regional Water Quality Control Board
Order R9-2013-0001
Adoption Hearing
April 10-11, 2013

Procedural Objections

Overview

1. **Water Quality Improvement Plan**
2. **TMDLs**
3. **Land Development**
4. **Monitoring**
5. **Action Levels**

Water Quality Improvement Plans (Provisions B and F)

Water Quality Improvement Plan Compliance Option

- **Issue:**
  - Permit language requires all Copermittees to implement strategies or else all Copermittees are out of compliance
  - Compliance for each Copermittee should be determined on an individual basis

- **Proposed Solution:**
  - Change the tense of "Copermittees" to singular instead of plural

- **Suggested Language:**

B.3.c.(3)(d): The Copermittee~~s~~ in the Watershed Management Area continue**s** to implement the requirements of Provision A.4.a.

Water Quality Improvement Plan Compliance Option

- **Issue:**
  - The phrase "continues to be accepted" by the Regional Board Executive Officer is arbitrary

- **Proposed Solution:**
  - Maintain the association of the term "accepted" with required submittals or updates

- **Suggested Language:**

The results of the analysis performed pursuant to Provision B.3.c.(1)(d) is accepted ~~**and continues to be accepted**~~ by the San Diego Water Board Executive Officer as part of the Water Quality Improvement Plan; AND

Approval of Water Quality Improvement Plan

- **Issue:**
  - Inconsistencies in terminology is confusing: (e.g., “approve” vs. “accept“ vs. “concur“ vs. “certification”)
  - Lack of explicit comments provided by the Regional Board on the WQIP “Priority Conditions” and “Numeric Goals” submittals

- **Proposed Solutions:**
  - Use “approved” throughout or if the use of synonyms are intentional, provide definitions for each term
  - In addition to public comments, explicitly state that the Regional Board will provide comments on Conditions and Goals to limit substantial changes late in WQIP development process

- **Suggested Language:**
  - See attached redline.

Multiple sections in Provision F. Pages 113-124

Timeline for WQIP and JRMP Updates

- **Issue:**

The Permit requires two types of updates with short timelines that don't match the iterative process:

1. The Permit allows for required "mid-course" corrections within 90 days
2. Jurisdictional Runoff Management Plan update schedule is not feasible given the time and resources required to complete JRMP updates

- **Proposed Solution:**
  - Align update timelines with the annual updates

F.1.b.(7) Page 116 and
F.2.a.(2) Page 117

Timeline for WQIP and JRMP Updates (cont'd)

- **Suggested Language:**

WQIP: "During implementation of the Water Quality Improvement Plan ~~**after implementation**~~ the Copermittees must correct any deficiencies in the Plan identified by the San Diego Water Board ~~**no later than 90 days**~~ **in the updates submitted with the Annual Report** following a request by the Board to do so."

JRMP: "Each Copermittee must update its jurisdictional runoff management program document to incorporate the requirements of Provision E ~~**no later than 3 months after**~~ **concurrent with submittal of** ~~**San Diego Water Board notification of concurrence with**~~ the Water Quality Improvement Plan. **Each Copermittee must provide updates based on comments received from the San Diego Water Board in the subsequent Annual Report.**"

F.1.b.(7) Page 116 and
F.2.a.(2) Page 117

Timeline for WQIP and JRMP Updates (cont'd)

- **Suggested Language:**

"Within 90 days of the San Diego Water Board determination that the ~~**update**~~ **modification** to the Water Quality Improvement Plan **pursuant to A.4.a.(3)** meets the requirements of this Order, the applicable Copermittees must revise the jurisdictional runoff management program documents to incorporate the updated water quality improvement strategies that have been and will be implemented, the implementation schedule, and any additional monitoring required; and"

Provision A.4.a.(4) page 16
(redline page 16)

Water Quality Improvement Plan Compliance Option

- **Issue:**
  - ASBS has been excluded from B.3.c, and thus ASBS discharges are not covered by the WQIP-based compliance option.

  - Critical to include ASBS in WQIP Compliance Option, and allow the WQIP to be used as the ASBS Compliance Plan.

- **Proposed Solution:**
  - Include Provision A.1.d and A.2.b in the compliance coverage under B.3.c for consistency with Attachment A.

Provisions B.3.c.(1-3) pages 30 to 32
(redline pages 31 to 33)

Water Quality Improvement Plan Compliance Option (cont'd)

- **Suggested Language:**

B.3.c (1) "The Copermittees may utilize implementation of the water quality improvement strategies in the Water Quality Improvement Plan to demonstrate compliance with the requirements of Provisions A.1.a, A.1.c**,** ~~**and**~~ **A.1.d,** A.2.a**, and A.2.b**. For each Copermittee in the Watershed Management Area that chooses to utilize this option, the Copermittee will be in compliance with Provisions A.1.a, A.1.c**,** ~~**and**~~ **A.1.d,** A.2.a**, and A.2.b** if…"

B.3.c (2) "Each Copermittee that chooses to utilize this option will, for the pollutant/water body combinations covered by the analysis, be in compliance with Provisions A.1.a, A.1.c**,** ~~**and**~~ **A.1.d,** A.2.a**, and A.2.b** when the Water Quality Improvement Plan, incorporating the requirements of Provision B.3.c.(1), is accepted by the San Diego Water Board."

B.3.c (3) "The Copermittee will, for the pollutant/water body combinations covered by the analysis, remain in compliance with Provisions A.1.a, A.1.c**,** ~~**and**~~ **A.1.d,** A.2.a**, and A.2.b** during the term of this Order as long as:"

Provisions B.3.c.(1-3) pages 30 to 32 (redline pages 31 to 33)

Receiving Water Limitations

- **Issue:**
  - Strict compliance with water quality standards is not required and that compliance may be achieved through the iterative process.
  - The Tentative Order provides an extremely rigorous compliance process as set forth in Provisions B and E and Attachment E.
  - Provision A should be directly linked to this compliance process.

- **Proposed Solution:**
  - Add the suggested language below after each provision of A.1 and A.2 to provide the important linkage.

- **Suggested Language:**

"unless such discharges are addressed by the Copermittees through Provision B.3.c."

Provision A pages 13 and 14 (redline pages 13 and 14)

Water Quality Improvement Consultation Panel

- **Issue:**
  - Provision B.3.c.(1)(d) requires majority concurrence of the Water Quality Improvement Consultation Panel before a Copermittee may use the compliance option.
  - Requiring majority concurrence by representatives of NGOs and the development community :
    - Creates conflict of interest issues as well as open meeting concerns
    - Improperly delegates Regional Board authority
    - Impermissibly impairs each Copermittees' local decision-making authority

- **Suggested Language:**

"The numeric goals proposed pursuant to Provision B.3.c.(1)(a), the analysis performed pursuant to Provision B.3.c.(1)(b) and the specific monitoring and assessments proposed pursuant to Provision B.3.c.(1)(c) have been reviewed ~~**and receive concurrence by a majority of**~~ **by** the Water Quality Improvement Consultation Panel (see Provision F.1.a.(1)(b)). Updates must also **be reviewed by** ~~**receive concurrence by a majority of**~~ the Water Quality Improvement Consultation Panel."

Provisions B.3.c.(1)(d) page 31
(redline page 32)

Total Maximum Daily Loads (Attachment E)

TMDL Effluent Limitations

- **Issue:**
  - Concentration-based limitations should be applied on a watershed-basis, not outfall-by-outfall.
  - The Copermittees should be able to target the highest polluting outfalls to protect receiving waters.

- **Proposed Solution:**
  - For each WQBEL table with concentration-based WQBELs, insert a footnote to allow Copermittees to manage stormwater quality on a watershed-basis.
  - The footnote for each concentration-based WQBEL table would read as follows:

- **Suggested Language:**

"Concentrations shall be determined on a flow-weighted basis across all outfalls within a jurisdiction, not outfall-by-outfall."

Shelter Island Copper TMDL

- **Issue:**
  - The Water Effect Ratio (WER) was incorporated into Table 2.1 but not Table 2.2
  - Could make effluent limitation inconsistent with receiving water limitation.
  - Basin Plan Amendment includes re-calculation language

- **Proposed Solution:**
  - Insert the re-calculation language from the TMDL

- **Suggested Language:**

Constituent	Effluent Limitation
Dissolved Copper	30 kg/yr *

*** If the water quality objectives for dissolved copper in SIYB are changed in the future, then the MOS, TMDL and allocations will be re-calculated using the method shown in Appendix D of Resolution NO. R9-2005-0019.**

Attachment E.2.b.(2)(b) page E-6 (redline page E-7)

TMDL Limitations

- **Issue:**
  - Language for the Concentration-based and Mass-based limitations implies that Copermittees may have to meet both to comply with the TMDL
  - The Compliance Determination options allow for mass-based or concentration based compliance options
  - An "or" statement is already used for the Baby Beach Bacteria TMDL interim effluent limitations (Attachment E-25)

- **Proposed Solution:**
  - Be consistent with Compliance Determination Provisions by inserting "or" statements in each Final Effluent Limitation provision.

Attachment E.3.b.(2)(b)(i) and (ii) Page E-9;
Attachment E.5.b.(2)(b)(i), (ii), and (iii); Pages E-20-21
Attachment E.6.b.(2)(b); Page 32

TMDL Limitations (cont'd)

- **Proposed Solution (Cont.):**
  - The following is a proposed revision to Attachment E.6.b on Page E-35 that could be utilized to revise all applicable TMDLs:

- **Suggested Language:**

Attachment E.6.b.(2)(b) Final Effluent Limitations

"**Discharges from the MS4s containing indicator bacteria densities that do not exceed those identified in 6.b.(2)(b)(i) or indicator bacteria percent load reductions from the Responsible Copermittees' MS4s that are greater than or equal to the effluent limitations identified in 6.b.(2)(b)(ii) will not cause or contribute to exceedances of the receiving water limitations.**"

Attachment E.3.b.(2)(b)(i) and (ii) page E-9 (redline page E-10);
Attachment E.5.b.(2)(b)(i), (ii), and (iii); pages E-20 to E-21 (redline pages E-21 to E-23)
Attachment E.6.b.(2)(b); page E-32 (redline page E-35)

Bacteria TMDL Waterbodies

- **Issue:**
  - Bacteria TMDL states “no further action is required” for delisted water bodies
  - If water bodies are meeting receiving water limitations, extensive TMDL monitoring is unwarranted
  - Can demonstrate waterbodies are continuing to meet receiving water limitations with targeted alternative monitoring program
  - Board Staff agreed in principal, requested proposed language

- **Proposed Solution:**
  - Add suggested text to Section 6 of Attachment E.

Attachment E.6.d pages E-47 to E-50 (redline pages E-52 to E-57)

Bacteria TMDL Waterbodies (Cont.)

- **Suggested Language to Attachment E:**

Add: 6.d.(1)(b)(iv): **"Where segments or areas have been delisted from the 303(d) list because waterbody receiving water limitations are already being met, the Responsible Copermittees may propose alternative monitoring procedures than required in 6.d.(1)(b) (i - iii) above. The alternative monitoring procedures must be submitted as a part of the Water Quality Improvement Plans or any future updates required under Provisions F.1. and F.2. of this Order."**

Add: E.6.d.(1)(c)(v): **"Where segments or areas have been delisted from the 303(d) list because waterbody receiving water limitations are already being met, the Responsible Copermittees may propose alternative assessment procedures than required in 6.d.(1)(c) (i - iii) above. The alternative assessment procedures must be submitted as a part of the Water Quality Improvement Plans or any future updates required under Provisions F.1. and F.2. of this Order."**

Attachment E.6.d pages E-47 to E-50 (redline pages E-52 to E-57)

Bacteria TMDL Waterbodies (Cont.)

- **Suggested Language to Attachment E (Cont.):**

Add: 6.d.(2)(b)(iv): **"Where segments or areas have been delisted from the 303(d) list because waterbody receiving water limitations are already being met, the Responsible Copermittees may propose alternative monitoring procedures than required in 6.d.(2)(b) (i - iii) above. The alternative monitoring procedures must be submitted as a part of the Water Quality Improvement Plans or any future updates required under Provisions F.1. and F.2. of this Order."**

Add: 6.d.(2)(c)(vi): **"Where segments or areas have been delisted from the 303(d) list because waterbody receiving water limitations are already being met, the Responsible Copermittees may propose alternative assessment procedures than required in 6.d.(2)(c) (i - iv) above. The alternative assessment procedures must be submitted as a part of the Water Quality Improvement Plans or any future updates required under Provisions F.1. and F.2. of this Order."**

Attachment E.6.d pages E-47 to E-50 (redline pages E-52 to E-57)

Bacteria TMDL Exceedance Frequency

- **Issue:**
  - Tables 6.2a and 6.2b include a "/ 0%" allowable exceedance frequency.
  - This appears to be a typo, leftover from the tables that were deleted.
    - The allowable exceedance frequency for wet weather days is always 22% and never 0%.

- **Proposed Solution:**
  - Remove the typo "/0%" from Tables 6.2a and 6.2b.

- **Suggested Language:**

- "~~/0%~~"

Attachment E.6.b.(2) pages E-31 to E-32 (redline pages E-33 to E-38)

Incorporation of New TMDLs into WQIPs

- **Issue:**
  - Permit requires update of WQIPs to incorporate wasteload allocations of newly adopted TMDLs.
    - TMDLs are not self-enforcing. (City of Arcadia v. U.S. Environmental Protection Agency (9th Cir. 2005) 411 F.3d 1103.)
  - Regional Board must use its permitting authority to make the WLAs of a newly-adopted TMDL enforceable
  - The Regional Board cannot compel Co-Permittees to incorporate new WLA into WQIP.
- **Proposed Solution:**
  - Strike this requirement.
  - At a minimum: Revise Provision F.2.c.(2) to require WQIPs to be updated in the next annual update following incorporation of the TMDL into the permit.

Provision F.2.c.(2) page 118 (redline page 132)

TMDL Compliance Language

- **Issue:**
  - The Permit language requires <u>all</u> Copermittees to implement strategies or <u>all</u> Copermittees are out of compliance
  - Compliance for each Copermittee should be determined on an <u>individual</u> basis

- **Proposed Solution:**
  - Change the tense to singular instead of plural

- **Suggested Language:**

Change Copermittees' to Copermittee's

TMDL Compliance Language

- **Issue:**
  - Minor grammatical clarification.

- **Proposed Solution:**
  - Revise "~~and/or~~" to "or".

- **Suggested Language:**

"…compliance with Specific Provisions 6.b.(3)(a), 6.b.(3)(b), 6.b.(3)(c), 6.b.(3)(d), and~~/or~~ 6.b.(3)(e)."

"…compliance with Specific Provisions 5.b.(3)(a), 6.b.(3)(b), 6.b.(3)(c), 6.b.(3)(d), 6.b.(3)(e) and~~/or~~ 6.b.(3)(f)."

TMDL Compliance Language

- **Issue:**
  - Attachment E suggests that Receiving Water Limitations are WQBELs.
    - WQBEL = restriction on quantity of pollutant that may be *discharged from a point source* into a receiving water. 40 C.F.R. § 122.44(d).
    - RWL = water quality standard applicable in *receiving water*. *Not* an end-of-pipe numeric effluent limitation.
    - Confusion occurs throughout Attachment E
- **Suggested Language:**

"b. Final TMDL Compliance Requirements

……

(2) Final Water ~~**Quality Based Effluent Limitations**~~ Receiving Water Limitations

~~**(a) Final Receiving Water Limitations**~~

Discharges from the MS4s must not cause or contribute to the exceedance of the following receiving water limitations:

……

(3)~~**(b)**~~ Final Effluent Limitations"

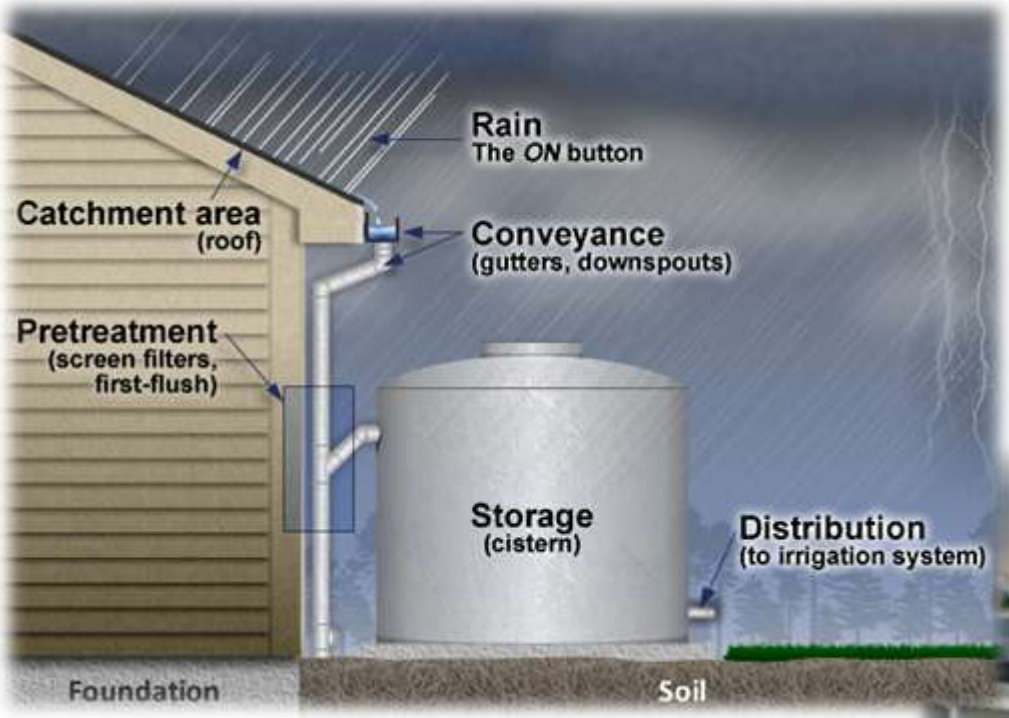
Land Development

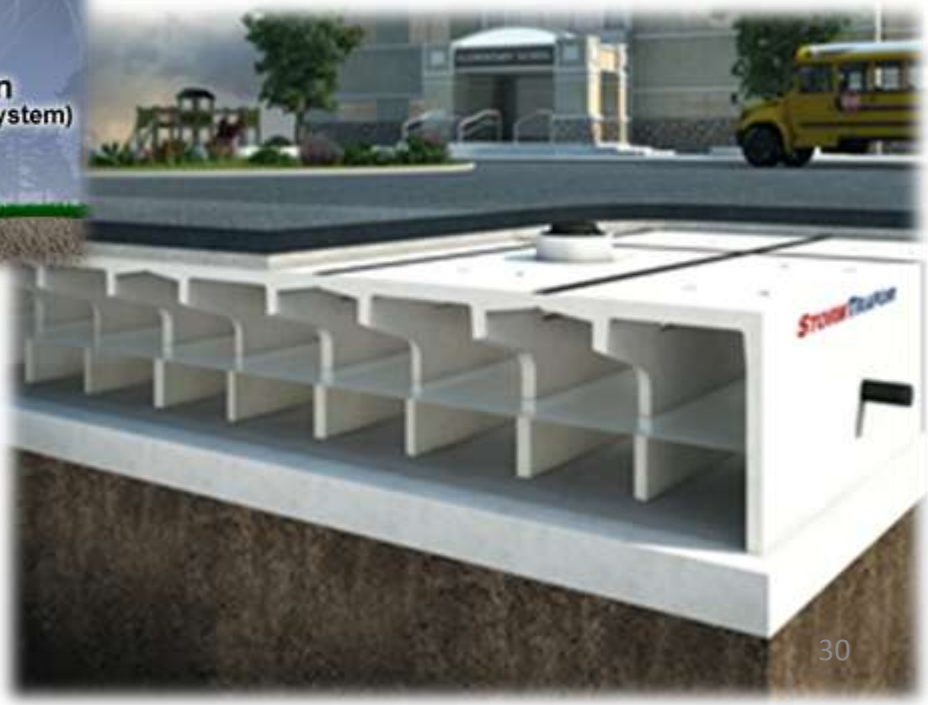
Retain On-site 100% of Pollutants

- New MEP = 100% pollutant removal
  - not attained on demonstration projects
  - drinking water treatment can't achieve
- Typical constraints (soils, space) will result in infeasibility for most development sites
- If 100% removal is not attainable on-site using retention or flow-thru, must use Alternative Compliance or deny development.

Provision E.3.c.(1)(a) and (b) page 87-88 (redline page 93)

Retention Examples





Effective BMPs but not 100%

Delete 100% and treat captured volume:

(1) Storm Water Pollutant Control BMP Requirements

Each Copermittee must require each Priority Development Project to implement onsite structural BMPs to control pollutants in storm water that may be discharged from a project as follows:

(a) Each Priority Development Project must be required to implement LID BMPs that are designed to retain (i.e. intercept, store, infiltrate, evaporate, and evapotranspire) onsite ~~100 percent of the~~ pollutants contained in the volume of storm water runoff produced from a 24-hour 85th percentile storm event (design capture volume);

(b) If a Copermittee determines that implementing BMPs to retain the full design capture volume onsite for a Priority Development Project is not technically feasible, then the Copermittee may allow the Priority Development Project to utilize flow-thru treatment control BMPs to treat the design capture volume ~~to achieve the equivalent pollutant load removal~~ described in Provision E.3.c.(1)(a). Biofiltration LID BMPs must be considered as a first option before other types of flow-thru treatment control BMPs may be considered.

(c) A Priority Development Project may be allowed to utilize alternative compliance under Provision E.3.c.(3) in lieu of complying with the storm water pollutant control BMP performance requirements of Provision E.3.c.(1)(a)...

Provision E.3.c.(1)(a) page 87 (redline page 93)

Alternative Compliance

- New change: Optional WQIP watershed analysis
- Disincentive for Jurisdictions
  - Too prescriptive, complex and costly for tax payers
  - Controversy complicates WQIP timeline
- For jurisdictions that opt-out:
  - No option for applicants
  - Prevents applicant found mitigation
- Allow WQIP to propose Alt.Comp. framework
- Allow applicant to propose mitigation

Provision B.3.b.(4) pages 29-30 (redline pages 30-31)
Provision E.3.c.(3)(b) page 91 (redline page 98)

Delete to allow WQIP process to define details:

(4) Optional Watershed Management Area Analysis

(a) For each Watershed Management Area, the Copermittees have the option to perform a Watershed Management Area Analysis for the purpose of developing watershed-specific requirements for structural BMP implementation, as described in Provision E.3.c.(3). The Watershed Management Area Analysis must include GIS layers (maps) as output. ~~The analysis must include the following information, to the extent it is available, in order to characterize the Watershed Management Areas:~~

- **~~A description of dominant hydrologic processes, such as areas where infiltration or overland flow likely dominates;~~**
- **~~A description of existing streams in the watershed, including bed material and composition, and if they are perennial or ephemeral;~~**
- **~~Current and anticipated future land uses;~~**
- **~~Potential coarse sediment yield areas; and~~**
- **~~Locations of existing flood control structures and channel structures, such as stream armoring, constrictions, grade control structures, and hydromodification or flood management basins.~~**

(b) The Copermittees must use the results of the Watershed Management Area Analysis performed pursuant to Provision B.3.b.(4)(a) to identify and compile a list of candidate projects that could potentially be used as alternative compliance options for Priority Development Projects, to be implemented in lieu of onsite structural BMP performance requirements described in Provisions E.3.c.(1) and E.3.c.(2). ~~Specifically, the Copermittees~~ must identify ~~in each Watershed Management Area:~~

- **~~Opportunities for stream or riparian area rehabilitation;~~**
- **~~Opportunities for retrofitting existing infrastructure to incorporate storm water retention or treatment;~~**
- **~~Opportunities for regional BMPs;~~**
- **~~Opportunities for groundwater recharge projects;~~**
- **~~Opportunities for water supply augmentation projects; and~~**
- **~~Opportunities for land purchases to preserve floodplain functions.~~**

Provision B.3.b.(4) pages 29-30 (redline pages 30-31)

Allow applicant identified mitigation:

(b) Project Applicant Proposed Alternative Compliance Projects

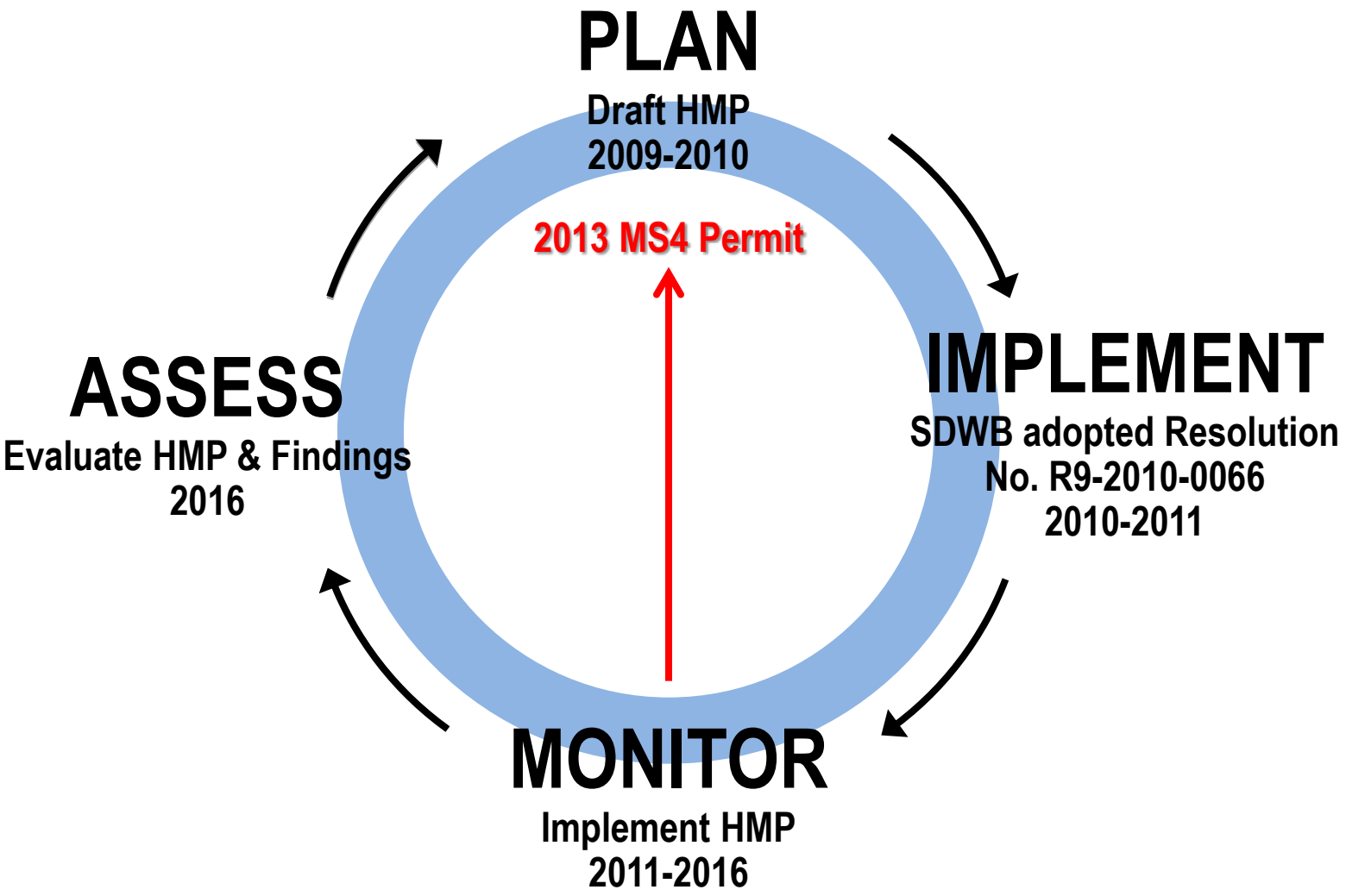
The Copermittee may allow a Priority Development Project applicant to propose and fund, contribute funds to, or implement an alternative compliance project not identified by the Watershed Management Area Analysis included in the Water Quality Improvement Plan pursuant to Provisions B.3.b.(4)**, or where one has not yet been created.** This option is allowed provided the Copermittee determines that implementation of the alternative compliance project will have a greater overall water quality benefit for the Watershed Management Area than fully complying with the performance requirements of Provisions E.3.c.(1) and E.3.c.(2) onsite, and is subject to the requirements described in Provisions E.3.c.(3)(a)(ii)-(ix).

Provision E.3.c.(3)(b) page 91 (redline page 98)

HMP Exemptions

- Retain current San Diego HMP exemptions
  - Vetted via technical and stakeholder process
  - Approved via Resolution R9-2010-0066
- Inappropriate to repeat within WQIP
  - Repeats costly tax-payer process
  - Inconsistent application and implementation
  - Modify HMP after completed assessment

Provision E.3.c.(2)(d) page 89 (redline page 95)
Provision B.3.b.(4) page 29-30 (redline pages 30-31)


PLAN
Draft HMP
2009-2010
2013 MS4 Permit
IMPLEMENT
SDWB adopted Resolution
No. R9-2010-0066
2010-2011
MONITOR
Implement HMP
2011-2016
ASSESS
Evaluate HMP & Findings
2016

Include previously approved exemptions:

(d) Exemptions

Each Copermittee has the discretion to exempt a Priority Development Project from the hydromodification management BMP performance requirements of Provisions E.3.c.(2)(a) where the project discharges storm water runoff to:

(i) Existing underground storm drains discharging directly to water storage reservoirs, lakes, enclosed embayments, or the Pacific Ocean;

(ii) Conveyance channels whose bed and bank are concrete lined all the way from the point of discharge to water storage reservoirs, lakes, enclosed embayments, or the Pacific Ocean; or

(iii) Exemptions previously approved via resolution by the San Diego Regional Water Quality Control Board or an area identified by the Copermittees as appropriate for an exemption by the Watershed Management Area Analysis incorporated into the Water Quality Improvement Plan pursuant to Provision B.3.b.(4).

Provision E.3.c.(2)(d)(iii) page 89 (redline page 95)

Prior Lawful Approval

- Inconsistent timing:
  - Prior lawful approval 18 months after adoption
  - WQIP is now 24+ months
  - BMP Design Manual is 3 months after WQIPs
- Not able to provide existing applicants with new direction without the BMP Design Manual.
- Align with BMP Design Manual

Provision E.3.e.(1)(a) page 94 (redline page 104)

Align timing with acceptance of BMP Design Manual:

(1) Structural BMP Approval and Verification Process

(a) Each Copermittee must require and confirm that for all Priority Development Project applications that have not received prior lawful approval by the Copermittee **on or before the acceptance date of the BMP Design Manual** ~~**18 months after the commencement of coverage under this Order,**~~ the requirements of Provision E.3 are implemented. For project applications that have received prior lawful approval ~~**by**~~ **on or before the acceptance date of the BMP Design Manual** ~~**18 months after the commencement of coverage under this Order**~~, the Copermittee may allow previous land development requirements to apply.

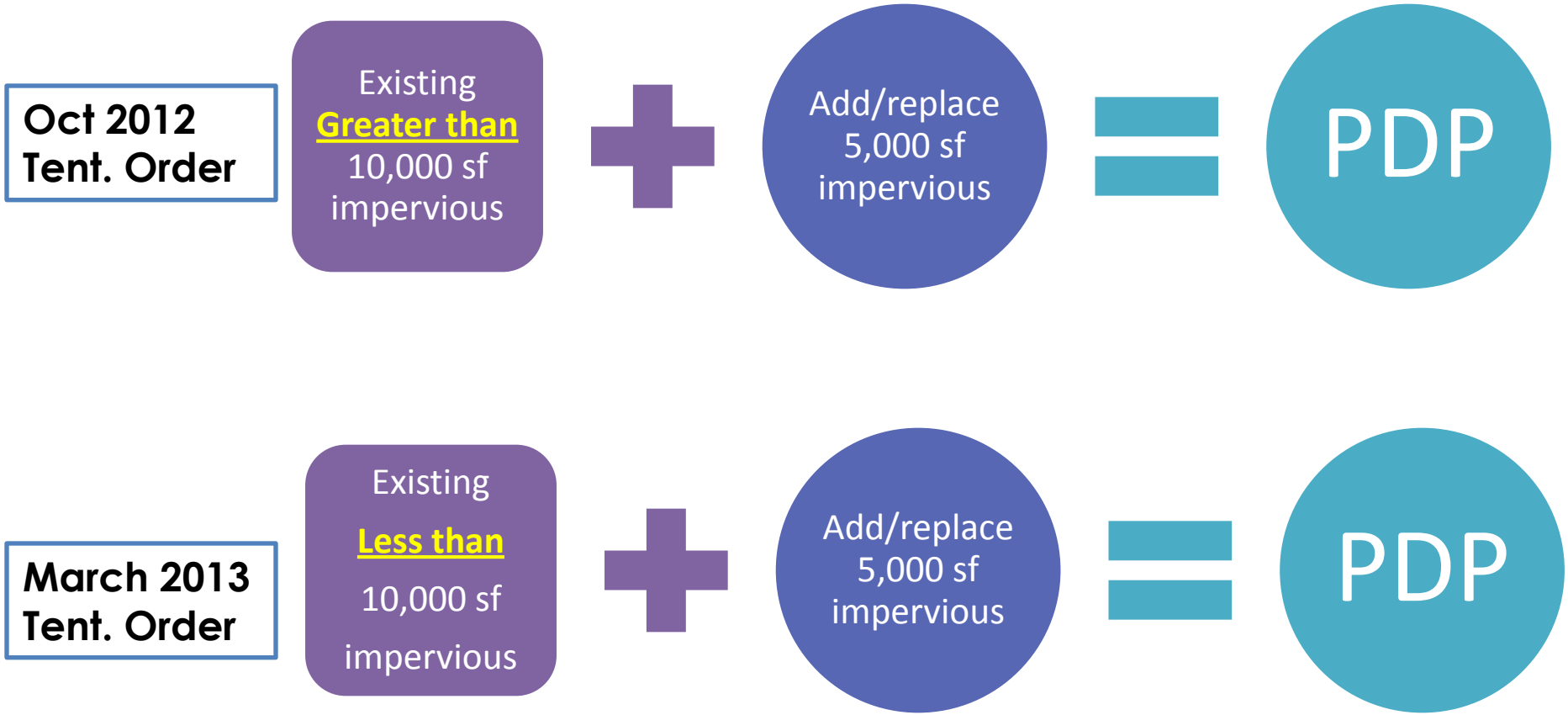
Provision E.3.e.(1)(a) page 94 (redline page 104)

Priority Development Projects

- Redevelopment threshold is more stringent than new development
- Redevelopment has a positive impact on water quality and should be encouraged
- Project must create/replace 5,000 sq. ft. of impervious surface AND the existing development meets a PDP category

Provision E.3.b.(1)(a) page 85 (redline page 89)

Redevelopment Threshold



Provision E.3.b.(1)(a) page 85 (redline page 89)

Change PDP redevelopment language:

Priority Development Projects include the following:

(a) New development projects that create 10,000 square feet or more of impervious surfaces (collectively over the entire project site), or redevelopment[1] projects that create and/or replace 5,000 square feet or more of impervious surface (collectively over the entire project site). This category includes commercial, industrial, residential, mixed-use, and public development projects on public or private land.

[1] "If the existing development combined with the redevelopment does not meet any of the size thresholds for new development, then this rule does not apply."

Provision E.3.b.(1)(a) page 85 (redline page 89)

Single Family Residential (SFR)

- SFR alternative removed from PDP exemptions
- Include SFR alternative with use of pre-identified BMPs
  - Complies with Source Control, LID, & Structural BMPs
  - Streamlines SFR approval process
  - Less cumbersome on small residences
  - Focuses jurisdictional resources on significant polluters

Provision E.3.b.(3)(c) page 87 (redline page 92)

Add SFR alternative:

(3) Priority Development Project Exemptions

Each Copermittee has the discretion to exempt the following projects from being defined as Priority Development Projects:

(a) New or retrofit paved sidewalks, bicycle lanes, or trails that meet the following criteria:

(i) Designed and constructed to direct storm water runoff to adjacent vegetated areas, or other non-erodible permeable areas; OR

(ii) Designed and constructed to be hydraulically disconnected from paved streets or roads; OR

(iii) Designed and constructed with permeable pavements or surfaces in accordance with USEPA Green Streets guidance.

(b) Retrofitting of existing paved alleys, streets or roads that are designed and constructed in accordance with the USEPA Green Streets guidance.

(c) New single family residences that meet the following criteria:

(i) Must not be constructed as part of a larger development or proposed subdivision; AND

(ii) Designed and constructed with structural BMPs that will achieve the performance requirements of Provisions E.3.c.(1) or E.3.c.(2) onsite.

(d) Redevelopment of existing single family residences that meet the following criteria:

(i) Designed and constructed with structural BMPs that will achieve the performance requirements of Provisions E.3.c.(1) or E.3.c.(2) onsite.

Provision E.3.b.(3)(c) page 87 (redline page 92)

Pre-development

- Mitigation for impacts not caused by project
  - Lacks nexus
  - Liability exposure
  - Infringes on police power
- Alternative Compliance unenforceable
  - Fee based on impacts
  - Mitigation Fee Act “reasonable relationship”
- Response to Comments left unresolved

Provision E.3.c.(2)(a) page 89 (redline page 94)
Provision E.3.c.(3)(a)(iii) page 90 (redline page 96)

Replace with pre-project:

(a) Post-project runoff conditions (flow rates and durations) must not exceed ~~pre-development~~ pre-project runoff conditions by more than 10 percent (for the range of flows that result in increased potential for erosion, or degraded instream habitat downstream of Priority Development Projects).

"Pre-~~Development~~ Project Runoff Conditions" defined:

- "Approximate flow rates and durations that exist or existed onsite before land development occurs. For new development ~~and redevelopment~~ projects, this equates to runoff conditions immediately before project construction. ~~For redevelopment projects, this equates to runoff conditions from the project footprint assuming infiltration characteristics of the underlying soil, and existing grade. Runoff coefficients of concrete or asphalt must not be used. A redevelopment Priority Development Project must use available information pertaining to existing underlying soil type and onsite existing grade to estimate pre-development runoff conditions."~~

Provision E.3.c.(2)(a) page 89 (redline page 94)

Monitoring and Assessment

Monitoring (Cont.)

- **Issue:**
  - The San Diego Copermittees requested Wet Weather MS4 Outfall Monitoring to be twice during the transition period (once per year) instead of twice per year.
    - Copermittees already have robust data sets for residential & commercial land uses(similar or greater # than LA data sets). An additional 250 random wet weather samples provide baseline
    - 51 annual events instead of 102 is adequate to complete the industrial land use data set and provide additional baseline

- **Proposed Solution:**
  - Revise Transitional Wet Weather MS4 Outfall Monitoring to once per year for consistency with the new minimum WQIP requirements.

- **Suggested Language:**

"Each wet weather MS4 outfall discharge monitoring station selected pursuant to Provision D.2.a.(3)(a) must be monitored ~~**twice**~~ **once** during the wet season (October 1 – April 30)."

Provision D.2.a.(3)(b) page 56 (redline page 58)

Monitoring (Cont.)

- **Issue:**
  - Special Studies completed prior to acceptance of the WQIP (first 2 years of permit term) are not applicable towards the special study requirements of D.3.a.
    - Special studies should count towards permit requirements regardless of the timing of WQIP acceptance.

- **Proposed Solution:**
  - Strike the additional language or revise

- **Suggested Language:**

"Special studies completed before the **effective date of this Order** ~~**Water Quality Improvement Plan is accepted by the San Diego Water Board**~~ cannot be utilized to fulfill the special study requirements of Provision D.3.a."

Provision D.3.d page 66 (redline page 68)

Monitoring (Cont.)

- **Issue:**
  - Copermittees are required to annually conduct a spreadsheet exercise to estimate discharge concentration & volumes from each land use area for each major MS4 outfall for each storm event:
    Annual – No additional benefit/ Request analysis once per permit term (due to variability there is no benefit to conducting this analysis annually)
    Thousands of outfalls - No additional benefit to outfall by outfall approach, aggregate outfalls at hydrologic subarea (scale of modeling)
    Duplicative requirement - Annual estimates from monitored outfalls will be extrapolated to estimate individual jurisdictional loads (D.4.b.(2)(b)[c])

- **Proposed Solution:**
  - Request to reduce the frequency to one year during the permit term and to provide the flexibility of conducting the analysis on the hydrological subarea level instead of on individual major MS4 outfalls

Provision D.4.b.(2)(b)(i)[d] page 70 (redline page 73)

Monitoring (Cont.)

- **Suggested Language:**

"**For one year during the permit term, provide** ~~T~~**t**he percent contribution of storm water volumes and pollutant loads discharged from each land use type within the drainage basin to each of the Copermittee's major MS4 outfalls in its jurisdiction to receiving waters **or from each hydrologic subarea (HSA)** ~~**within the Watershed Management Area**~~ for each storm event with measurable rainfall greater than 0.1 inch."

Provision D.4.b.(2)(b)(i)[d] page 70 (redline page 73)

Monitoring

- **Issue:**
  - A new requirement is the Transitional Monitoring and Assessment Program Annual Report.
    - Assuming the Copermittee transitional program begins before Oct 1, this could be due on January 31, 2014. Copermittees budget for FY 2013-2014 was finalized in January 2013 and this report was not included.

- **Proposed Solution:**
  - To accommodate the Copermittees budgeting timeline, require first transitional report for San Diego Copermittees be due on January 31, 2015 and include monitoring results from Oct 1, 2012 through Sept 30, 2014.
  - Inserting the word "complete" to denote that the report is not due until after the first complete monitoring season (October 1 through September 30) will allow necessary lead time for budgeting.

- **Suggested Language:**

"The Copermittees for each Watershed Management Area must submit a Transitional Monitoring and Assessment Program Annual Report no later than January 31 for each <u>complete</u> transitional monitoring and assessment program reporting period (i.e. October 1 to September 30)…"

F.3.b.(2) page 119 (redline page 133)

TMDLs (Cont.)

- **Issue:**
  - The Assessment and Reporting Requirements add a compliance calculation requirement that is not from the TMDL:
  - "Part [c]: If there are any storm events not sampled, the bacteria density for every wet weather day of those storm events must be assumed to be equal to the highest bacteria density result reported from wet weather samples collected."
    - The Bacteria TMDL only speaks to intra-storm event *days* that are not sampled. It does not require application of results from sampled *storms* to non-sampled storms. This is very stringent and not sound science.
    - Page A-54 of Bacteria TMDL states "Because of the many issues related to collecting wet weather samples from multiple sites within a short time frame, dischargers are expected to develop a wet weather monitoring and sampling approach in their BLRPs or CLRPs." Plans submitted in October 2012 and will be implemented upon Permit adoption.
    - Santa Monica Bacteria TMDL and other LA Bacteria TMDLs base wet weather interim compliance using only sampled storms.

Attachment E.6.d.(1)(c)(iii)[c] and E.6.d.(2)(c)(iii)[c] pages E-48 and E-50 (redline pages E-54 and E-56)

TMDLs (Cont.)

- **Proposed Solution:**
  - Strike subsection [c] from both sections.

- **Suggested Language:**

~~**[c]: If there are any storm events not sampled, the bacteria density for every wet weather day of those storm events must be assumed to be equal to the highest bacteria density result reported from wet weather samples collected.**~~

Attachment E.6.d.(1)(c)(iii)[c] and E.6.d.(2)(c)(iii)[c] pages E-48 and E-50 (redline pages E-54 and E-56)

Action Levels

Action Levels

- **Issue:**
  - The Tentative Order provides a clear linkage between Provision B and Provision C and states that the Water Quality Improvement Plan should guide the customization of NALs/SALs to meet the highest water quality priorities in a given watershed.

- **Proposed Solution:**
  - Copermittees should be allowed to customize NALs/SALs

Provisions C.1.a , C.1.b , C.2.a , and C.2.b, pages 35 to 39 (redline pages 37 to 41)

Action Levels (cont'd)

- **Suggested Language:**

C.1.a:"The following NALs must be incorporated, **if the Copermittees do not establish numeric action levels within the Water Quality Improvement Plan based on watershed priorities:** " C.1.b: "~~**If not identified in Provision C.1.a,**~~ NALs must be identified, developed, and incorporated in the Water Quality Improvement Plans…."
C.2.a: "The following SALs for discharges of storm water from the MS4 must be incorporated, **if the Copermittees do not establish numeric action levels within the Water Quality Improvement Plan based on watershed priorities:** "
C.2.b: "~~**If not identified in Provision C.1.a,**~~ SALs must be identified, developed, and incorporated in the Water Quality Improvement Plans…."

Provisions C.1.a , C.1.b , C.2.a , and C.2.b, pages 35 to 39 (redline pages 37 to 41)

NAL/SAL Footnote Revisions

- **Issue:**
  - Revisions to footnotes 8 and 10 regarding NALs and SALs arguably makes them independently enforceable compliance points.
    - Compliance points for WQBELs are in Attachment E. If NAL/SAL is a WQBEL, it should not be enforceable independent of Attachment E.
    - Footnotes create potential for backdoor attempt to undermine alternative compliance options in Attachment E.
  - Recommended revision to make clear that WQBELs are enforced only through TMDL provisions in Attachment E:

- **Suggested Language:**

"NALs/SALs incorporated into the Water Quality Improvement Plans are not considered by the San Diego Water Board to be enforceable effluent limitations~~,~~. ~~unless~~ **However, in instances where** the NAL/SAL is based on a WQBEL expressed as an interim or final effluent limitation for a TMDL in Attachment E and the interim or final compliance date has passed**,** **exceedances of the WQBEL that is the basis of the NAL/SAL may result in a violation of provisions in Attachment E.**"

Provision C pages 35 and 38 (redline page 37 and 40)