

**REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

EXECUTIVE OFFICER SUMMARY REPORT

March 13, 2024

ITEM 5

SUBJECT

Consideration of Tentative Time Schedule Order (TSO) R9-2024-0010 (Tentative TSO) issued to designated Responsible Permittees required to comply with the Bacteria Project I - Twenty Beaches and Creeks Total Maximum Daily Load (TMDL) (Bacteria TMDL) requirements prescribed in the Regional Municipal Separate Storm Sewer Systems Permit for the San Diego Region¹ (Regional MS4 Permit). (*Mireille Lecourtois and Laurie Walsh*)

STAFF RECOMMENDATION

Adoption of Tentative TSO R9-2024-0010 is recommended (**Supporting Document No. 1**).

KEY ISSUES

- The Regional MS4 Permit regulates stormwater discharges from 39 municipalities (Responsible Permittees) in the San Diego region. Twenty-nine Responsible Permittees are subject to the requirements of the Bacteria TMDL. The Regional MS4 Permit requires the 29 Responsible Permittees (TMDL Responsible Permittees) to comply with the Final Dry Weather Water Quality Based Effluent Limitations (Final Dry Weather WQBELs) by April 4, 2021. Staff assessed compliance with the Bacteria TMDL and found that several TMDL Responsible Permittees did not demonstrate compliance with the Final Dry Weather WQBELs by the April 4, 2021 deadline. Twenty TMDL Responsible Permittees (TSO Responsible Permittees) requested coverage under the Tentative TSO (Supporting Document No. 5). The Tentative TSO provides additional time for TSO Responsible Permittees to comply with the Final Dry Weather WQBELs in the Regional MS4 Permit.
- Staff received and reviewed written timely comments regarding the 2023 version of the Tentative TSO (Supporting Document No. 6) from TMDL Responsible Permittees and non-governmental organizations (NGOs). See Supporting Document Nos. 3 and 4. Tentative TSO R9-2024-0010 addresses the comments received and responses are provided in Supporting Document No. 2.
- TSO Responsible Permittees discharging to TMDL beach segments listed in the TSO (TSO Beaches) have the option to comply with Interim Bacteria Receiving Water Limitations or Interim Bacteria Outfall Effluent Limitations. TSO Responsible Permittees discharging to TMDL creek segments listed in the TSO (TSO Creeks) must comply with Interim Bacteria Outfall Effluent Limitations.

¹ National Pollutant Discharge Elimination System (NPDES) Permit No. CAS0109266 and Waste Discharge Requirements for Discharges from the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds Within the San Diego Region, Order No. R9-2013-0001, as amended by Order Nos. R9-2015-0001 and R9-2015-0100.

- Based on feedback received at the February 8, 2023 Public Workshop and in response to written comments, San Diego Water Board staff included two methods for TSO Responsible Permittees to comply with the Interim Bacteria Outfall Effluent Limitations in the Tentative TSO. The first method requires TSO Responsible Permittees to conduct dry weather outfall discharge monitoring and compare water quality sample results with Interim Bacteria Outfall Effluent Limitations and allowable exceedance frequencies. The second method requires TSO Responsible Permittees to conduct dry weather outfall flow observations and compare observations of flow with Interim Bacteria Outfall Effluent Flow Limitations and allowable flow frequencies.
- The Tentative TSO does not amend the Regional MS4 Permit, but states that the San Diego Water Board does not intend to recommend additional enforcement as long as TSO Responsible Permittees comply with the Tentative TSO requirements and schedule.

PRACTICAL VISION

Consistent with the mission of the Strategy for Healthy Waters chapter of the Practical Vision,² the Tentative TSO requires compliance with Interim Bacteria Receiving Water Limitations or Interim Bacteria Outfall Effluent Limitations to ensure TSO Responsible Permittees will make progress to achieve Final Dry Weather WQBELs by implementing specific focused efforts to control sources of bacteria.

Further, the San Diego Water Board staff met on several occasions with TMDL Responsible Permittees throughout 2023 to engage in discussions on topics raised during the Board's February 8, 2023 public workshop and comments received in writing during the formal public comment period. Such engagements helped San Diego Water Board staff foster two-way learning opportunities to inform the Board's decision-making process through effective engagement and communication, core pillars of the San Diego Water Board's Practical Vision.

DISCUSSION

The San Diego Water Board regulates discharges from MS4s in the San Diego region under the Regional MS4 Permit. The Regional MS4 Permit became effective on June 27, 2013, and is still in effect under an administrative extension. The Regional MS4 Permit includes receiving water limitations requiring that MS4 discharges shall not cause or contribute to exceedances of water quality standards in receiving waters, and other water quality based specifications that require compliance with implementation provisions of approved TMDLs.

Specific Provision 6 in Attachment E of the Regional MS4 Permit includes compliance requirements and compliance schedules for the Bacteria TMDL. Specific Provision 6 also specifies the impaired waterbodies and segments thereof subject to the Bacteria TMDL requirements (TMDL waterbodies), the TMDL Responsible Permittees, and the WQBELs to implement the TMDL waste load allocations. Specific Provision 6 requires TMDL Responsible Permittees to comply with final WQBELs no later than April 4, 2021, for dry weather conditions. The TSO Responsible Permittees have not demonstrated compliance with the Final Dry Weather WQBELs, and high Fecal Indicator Bacteria (FIB) levels

² [Practical Vision](https://www.waterboards.ca.gov/sandiego/water_issues/programs/practical_vision) (https://www.waterboards.ca.gov/sandiego/water_issues/programs/practical_vision)

continue to exist in receiving waters. The Tentative TSO would provide more time for the TSO Responsible Permittees to come into compliance with the dry weather Bacteria TMDL requirements in Specific Provision 6.

If adopted, the Tentative TSO would extend the Bacteria TMDL dry weather final compliance date to September 30, 2028. The Tentative TSO directs the TSO Responsible Permittees to take certain actions to address high FIB levels in the TMDL waterbodies covered by the TSO (TSO waterbodies) and includes the following directives:

1. Directive No. 1 requires TSO Responsible Permittees discharging to TSO Beaches to comply with Interim Bacteria Receiving Water Limitations annually and no later than September 30, 2028. TSO Responsible Permittees discharging to TSO Beaches have the option to comply with either Directive 1 or Directive 2.
2. Directive No. 2 requires TSO Responsible Permittees discharging to TSO Creeks, and TSO Responsible Permittees discharging to TSO Beaches and electing to comply with Directive 2, to comply with Interim Bacteria Outfall Effluent Limitations annually and no later than September 30, 2027, as an interim milestone, and September 30, 2028, as a final TSO milestone. TSO Responsible Permittees are offered two methods to comply with Interim Bacteria Outfall Effluent Limitations: either 1) comply with outfall effluent limitations with allowable exceedance frequencies or 2) comply with allowable outfall flow discharge limitations and frequencies.
3. Directive No. 3. requires TSO Responsible Permittees discharging to TSO Creeks; and the TSO Responsible Permittees discharging to TSO Beaches and electing to comply with Directive 2, to submit a TSO Monitoring Plan detailing proposed monitoring activities to comply with Directive 2.
4. Directive No. 4. requires all TSO Responsible Permittees to attain and demonstrate compliance with the Final Dry Weather WQBELs for FIB no later than September 30, 2028.
5. Directive No. 5. requires TSO Responsible Permittees discharging to TSO Creeks, and the TSO Responsible Permittees discharging to TSO Beaches and electing to comply with Directive 2, to conduct anthropogenic source investigations no later than September 30, 2027, through the implementation of a Microbial Source Identification Work Plan. TSO Responsible Permittees discharging to TSO Creeks, and the TSO Responsible Permittees discharging to TSO Beaches and electing to comply with Directive 2, must also abate anthropogenic sources no later than September 30, 2028, through implementation of a Microbial Source Abatement Work Plan.
6. Directive No. 6 requires TSO Responsible Permittees discharging to TSO Creeks, and the TSO Responsible Permittees discharging to TSO Beaches and electing to comply with Directive 2, to submit a Pollution Prevention Plan (PPP) no later than January 31, 2026. The PPP must detail existing and additional bacteria pollution prevention measures necessary to abate human and non-human anthropogenic sources of bacteria.

7. Directive No. 7 requires all TSO Responsible Permittees to prepare and submit written annual TSO Compliance Reports by January 31 of each year. TSO Compliance Reports must detail whether compliance with the TSO Directives were met, and actions taken or planned during the monitoring year to abate the sources causing exceedance of the Final Dry Weather WQBELs and the Interim Receiving Water Limitations in Directive 1 or the Interim Outfall Effluent Limitations in Directive 2.

LEGAL CONCERNS

None.

PUBLIC NOTICE

On December 19, 2022, the San Diego Water Board provided notice of an opportunity to comment on the 2023 version of the Tentative TSO for a 61-day public review and comment period (Supporting Document No. 7). The notice and the 2023 version of the Tentative TSO were posted on the San Diego Water Board's website for the duration of the 61-day comment period and sent to all interested parties.

On February 8, 2024, the San Diego Water Board shared the Tentative TSO, the Response to Comments Timely Received, and the Updated Notice of Public Hearing (Supporting Document No. 8) with TMDL Responsible Permittees and NGOs via email. The Tentative TSO, the Response to Comments Timely Received, and the Updated Notice of Public Hearing was posted on the San Diego Water Board website and shared through the Notice of Board Meeting and Agenda.

SUPPORTING DOCUMENTS

1. Tentative TSO No. R9-2024-0010
2. Response to Comments Timely Received
3. Comment Letters from TMDL Responsible Permittees
4. Comment Letters from Heal the Bay and Environmental Groups
5. Additional Documents Relied On
6. Tentative TSO No. R9-2023-0006
7. Notice of Opportunity to Comment, Public Workshop, and Public Hearing, December 19, 2022
8. Updated Notice of Public Hearing, February 8, 2024