

**San Diego Regional Water Quality Control Board  
Alternative Compliance for Receiving Water Limitations  
Workshop Summary  
April 28, 2015  
1:00 p.m. to 3:30 p.m.**

**Participants:**

David Barker, San Diego Water Board  
Eric Becker, San Diego Water Board  
Laurie Walsh, San Diego Water Board  
Wayne Chiu, San Diego Water Board  
Betty Olsen, San Diego Water Board  
Marco Gonzalez, Coastal Environmental Rights Foundation  
Julia Chunn-Heer, Surfrider Foundation  
Colin Kelley, Orange County Coastkeeper / Inland Empire Waterkeeper  
Mike McSweeney, BIA  
David Garcia, Riverside County Flood Control & Water Conservation District  
Jarrod Gibbon, County of Riverside  
JoAnn Weber, County of San Diego  
Clem Brown, City of San Diego  
Helen Davies, City of Escondido  
Boushra Salem, City of Chula Vista  
Richard Boon, County of Orange  
Ryan Baron, County of Orange  
Tracy Ingebrigtsen, City of Laguna Beach  
Lewis Michaelson, Katz & Associates  
Bree Robertoy, Katz & Associates

**Summary of Comments**

***Copermittees***

- There is a compelling need for an alternative compliance pathway, and the proposed approach is consistent with the direction the State Board is taking. Fundamentally, the language is a good start. The County of Orange supports the B.3.c language with some modifications. Specifically, section 'B' should reference section 'A' and vice versa.
- The City of San Diego supports the language and the idea of an alternative compliance pathway. The Water Quality Improvement Plans are leaps and bounds ahead of the previous permit in terms of promoting innovation and pursuing priorities, so that Copermittees can "move the needle."
- It is challenging to discuss funding needs with elected officials when no assurance can be given them that compliance will be achieved. Copermittees have a good idea of funding needs at this point, but it's hard to convince people to provide funding if there is no guarantee that they will be protected from the threat of litigation when they fund new projects.

- The City of Escondido is happy that alternative compliance is being addressed and generally likes the language.
- Recommendations from the San Diego County Copermittees include:
  - Focusing energy on highest priority pollutants and having language that reflects that.
  - Limiting to TMDLs.
  - Addressing the time period before approval of reasonable assurance plans and allowing for compliance during that period.
    - Response: Obtaining approval for a WQIP is a long process, so language needs to provide for enforceability during that time period.
    - Response: The Board does not want to include a compliance pathway during this time because it would not have the support of USEPA..
  - Adding alternative compliance language regarding areas of special biological significance (ASBS).
    - Response: ASBS is cited in provision 'A' in the permit. A WQIP could act as a compliance document.
    - Response: ASBS is "hallowed ground" to the environmental community, so this would be tough to do.
- Question: Are ecological outcomes included in B.c.3.iii, as opposed to concentration or load-based?
  - Answer: Yes.
- Question: Is the Section 'A' linkage we discussed in 2013 going to be considered?
  - Answer: It will be considered, but the Board doesn't want to limit the ability of environmental groups to take action if needed.

### ***Environmental Community***

- These standards have been around for more than 20 years, and the Supreme Court has ruled that these permits are enforceable. However, alternative compliance is a "safe harbor" that offers reduced accountability for responsible parties. A positive aspect of alternative compliance is that it requires numeric goals. Regulations should be focused on concrete (numeric) goals and achieving benchmarks within specified time periods.
- The language seems to encourage agencies to put out documents quickly to achieve compliance, rather than spending the time to finish a well-thought out document. Documents should be submitted when they're ready to meet permit standards.
- There has not been a municipal lawsuit based on receiving water limits in 15+ years. Lawsuits are typically based on programmatic failures. There is no need for interim "safe harbors" because there is no realistic threat of litigation, unless enforcement is a problem. Environmental groups want fishable, swimmable waters. To accomplish that, regulations should require quantifiable, objective goals.
  - Response: The permit is allowing Copermittees to shift away from the standard towards using creative solutions, which is risky. The threat of

litigation can be a barrier to getting plans approved by management and elected officials.

- Environmental groups want to see agencies attempting to make progress. As long as sincere efforts are being made to improve water quality, that would be the primary consideration before turning to litigation.
- Coastkeeper is frustrated with how slow progress has been. It's hard to square the idea that "removing liability" will speed up progress. The organization hasn't had adequate time to review the new language, but it prefers the language of the original permit.
- The Clean Water Act relies on NGOs being able to sue. Environmental groups need to have "teeth" to hold Copermitees accountable; otherwise there will be no progress.
- Submitting documents is not enough "liability;" Copermitees should be meeting requirements.
  - Response: The proposed language will provide for plans that must include schedules, numeric goals, etc., which will also help enable agencies to get funding for projects.
- A good plan is not enough. CEQA is a long process and funding will be an issue. There won't be enough incentive for plans to be executed. A dichotomy exists of wanting flexibility for municipalities, while also maintaining accountability. The focus should be on numbers, starting with outfalls and moving up the watershed looking for sources of pollution.
- What about instituting a time-limited alternative compliance?
- A precedent should be set for future agencies to follow. There should be enforceable, numeric goals that are date-certain and include specific projects.
  - Response: WQIPs address TMDLs, numeric goals, dates and projects. The enforceability is that if Copermitees don't implement WQIPs, they are not in compliance.
  - Response: When the Board finds a deficient program through auditing, we'll issue a notice and ask for agencies to make adjustments and show how they will fix it.
- Question: What are these documents going to look like?
  - Answer: They use water quality models based on real-world data and will include:
    - Numeric goals (not exceeding maximum outputs) and highest priorities.
    - Strategies to achieve goals and how to fund these.
    - Monitoring and assessment.
- Question: B.c.3.iii can also include things not under the control of MS4s. Where does prioritization fit into this in terms of compliance?
  - Answer: Strategies will be based on what is most important as well as what can achieve multiple benefits. Achievement of goals might be staggered. The plan should be laid out in advance and transparent. It's not intended to address everything in the watershed at once, but to lay out what you can and will control. The Board is looking for whether the receiving water is supporting its beneficial uses.

- The language should address when and where it is appropriate to use alternative compliance (i.e., toxicity, metal and mass loading issues probably won't work for alternative compliance since their accumulation only causes a bigger problem down the road if not initially addressed).

### ***Development/Business Community***

- Only the newer homes in San Diego have BMPs. While the development industry hasn't done any additional harm in the last several years, no one has really figured out how to fix the problems of prior development. We need to set up a program that focuses on capturing and treating pollutants, but in order to do that, municipalities need to involve developers.

### **Comments from the Audience**

- San Diego County Water Authority - We need to work on this holistically, looking at the watershed in its entirety. We like the alternative compliance approach and want to encourage watershed-based planning and modeling.
- City of Encinitas (speaking as an engineer) - Everyone has been drinking potable water for many years. I think alternative compliance will work, but it takes lots of trust. When the population increases, it takes our intervention to improve water quality.