A. PROHIBITIONS AND LIMITATIONS

The purpose of this provision is to describe the conditions under which storm water and non-storm water discharges into and from MS4s are prohibited or limited. The goal of the prohibitions and limitations is to protect the water quality and designated beneficial uses of waters of the state from adverse impacts caused or contributed to by MS4 discharges. This goal will be accomplished through the implementation of water quality improvement strategies and runoff management programs that effectively prohibit non-storm water discharges into the Copermittees' MS4s, and reduce pollutants in storm water discharges from the Copermittees' MS4s to the MEP. Implementation of the Compliance Option described in Provision B.3.c of this Order shall constitute compliance with the Discharge Prohibitions (A.1.a, A.1.c), Receiving Water Limitations (A.2) and Effluent Limitations (A.3.b) Provisions of this Order.

1. Discharge Prohibitions

a. Discharges from MS4s in a manner causing, or threatening to cause, a condition of pollution, contamination, or nuisance in receiving waters of the state are prohibited.

b. Non-storm water discharges into MS4s are to be effectively prohibited, through the implementation of Provision E.2, unless such discharges are authorized by a separate NPDES permit. Compliance with Provision E.2 shall constitute compliance with this requirement to "effectively prohibit" non-storm discharges.

c. Discharges from MS4s are subject to all waste discharge prohibitions in the Basin Plan, included in Attachment A to this Order.

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 applicable to these discharges, included in Attachment A to this Order. All other discharges from the Copermittees' MS4s to ASBS are prohibited.

2. Receiving Water Limitations

a. Discharges from MS4s must not cause or contribute to the violation of water quality standards in any receiving waters, including but not limited to all applicable provisions contained in:

(1) The San Diego Water Board's Basin Plan, including beneficial uses, water quality objectives, and implementation plans;

(2) State Water Board plans for water quality control including the following:

(a) Water Quality Control Plan for Control of Temperature in the Coastal and Interstate Waters and Enclosed Bays and Estuaries (Thermal Plan), and

(b) The Ocean Plan, including beneficial uses, water quality objectives, and implementation plans;

(3) State Water Board policies for water and sediment quality control including the following:

(a) Water Quality Control Policy for the Enclosed Bays and Estuaries of California,

(b) Sediment Quality Control Plan which includes the following narrative objectives for bays and estuaries:

(i) Pollutants in sediments shall not be present in quantities that, alone or in combination, are toxic to benthic communities, and

(ii) Pollutants shall not be present in sediments at levels that will bioaccumulate in aquatic life to levels that are harmful to human health,

(c) The Statement of Policy with Respect to Maintaining High Quality of Waters in California;[2]

(4) Priority pollutant criteria promulgated by the USEPA through the following:

(a) National Toxics Rule (NTR)[3] (promulgated on December 22, 1992 and amended on May 4, 1995), and

(b) California Toxics Rule (CTR).[4, 5]

b. Discharges from MS4s composed of storm water runoff must not alter natural ocean water quality in an ASBS.

3. Effluent Limitations

a. TECHNOLOGY BASED EFFLUENT LIMITATIONS

Pollutants in storm water discharges from MS4s must be reduced to the MEP.[6]

b. WATER QUALITY BASED EFFLUENT LIMITATIONS

Each Copermittee must comply with applicable WQBELs established for the TMDLs in Attachment E to this Order, pursuant to the applicable TMDL compliance schedules.

4. Compliance with Discharge Prohibitions and Receiving Water Limitations

Each Copermittee must achieve compliance with Provisions A.1.a, A.1.c and A.2.a of this Order through timely implementation of control measures and other actions as specified in Provisions B and E of this Order, including any modifications. The Water Quality Improvement Plans required under Provision B must be designed and

[2] State Water Resources Control Board No. 68-16
[3] 40 CFR 131.36
[4] 65 Federal Register 31682-31719 (May 18, 2000), adding Section 131.38 to 40 CFR
[5] If a water quality objective and a CTR criterion are in effect for the same priority pollutant, the more stringent of the two applies.
[6] This does not apply to MS4 discharges which receive subsequent treatment to reduce pollutants in storm water discharges to the MEP prior to entering receiving waters (e.g., low flow diversions to the sanitary sewer). Runoff treatment must occur prior to the discharge of runoff into receiving waters per Finding 7.

adapted to ultimately achieve compliance with Provisions A.1.a, A.1.c and A.2.a.

a. If exceedance(s) of water quality standards persist in receiving waters notwithstanding implementation of this Order, the Copermittees must comply with the following procedures:

(1) For exceedance(s) of a water quality standard in the process of being addressed by the Water Quality Improvement Plan, the Copermittee(s) must implement the Water Quality Improvement Plan as accepted by the San Diego Water Board, and update the Water Quality Improvement Plan, as necessary, pursuant to Provision F.2.c;

(2) Upon a determination by either the Copermittees or the San Diego Water Board that discharges from the MS4 are causing or contributing to a new exceedance of an applicable water quality standard not addressed by the Water Quality Improvement Plan, the Copermittees must submit the following updates to the Water Quality Improvement Plan pursuant to Provision F.2.c or as part of the Water Quality Improvement Plan Annual Report required under Provision F.3.b, unless the San Diego Water Board directs an earlier submittal:

(a) The water quality improvement strategies being implemented that are effective and will continue to be implemented,

(b) Water quality improvement strategies (i.e. BMPs, retrofitting projects, stream and/or habitat rehabilitation projects, adjustments to jurisdictional runoff management programs, etc.) that will be implemented to reduce or eliminate any pollutants or conditions that are causing or contributing to the exceedance of water quality standards,

(c) Updates to the schedule for implementation of the existing and additional water quality improvement strategies, and

(d) Updates to the monitoring and assessment program to track progress toward achieving compliance with Provisions A.1.a, A.1.c and A.2.a of this Order;

(3) The San Diego Water Board may require the incorporation of additional modifications to the Water Quality Improvement Plan required under Provision B. The applicable Copermittees must submit any modifications to the update to the Water Quality Improvement Plan within 90 days of notification that additional modifications are required by the San Diego Water Board, or as otherwise directed;

(4) Within 90 days of the San Diego Water Board determination that the modifications to the Water Quality Improvement Plan required under Provision A.4.a.(3) meet the requirements of this Order, the applicable Copermittees must revise the jurisdictional runoff management program documents to incorporate the modified water quality improvement strategies that have been and will be implemented, the implementation schedule, and

any additional monitoring required; and

(5) Each Copermittee must implement the updated Water Quality Improvement Plan.

b. The procedure set forth above to achieve compliance with Provisions A.1.a, A.1.c and A.2.a of this Order do not have to be repeated for continuing or recurring exceedances of the same water quality standard(s) following implementation of scheduled actions unless directed to do otherwise by the San Diego Water Board.

c. Nothing in Provisions A.4.a and A.4.b prevents the San Diego Water Board from enforcing any provision of this Order while the applicable Copermittees prepare and implement the above update to the Water Quality Improvement Plan and jurisdictional runoff management programs.

Insert the following as Provision B.3.c:

c. DISCHARGE PROHIBITIONS ~~AND~~, RECEIVING WATER LIMITATIONS, AND EFFLUENT LIMITATIONS COMPLIANCE OPTION

Each Copermittee has the option to utilize the implementation of the Water Quality Improvement Plan to achieve ~~demonstrate~~ compliance with the requirements of Provisions A.1.a, A.1.c, ~~and~~ A.2~~.a~~ and A.3.b within a Watershed Management Area. A Copermittee ~~will be deemed to be~~is in compliance with Provisions A.1.a, A.1.c, ~~and~~ A.2~~.a~~ and A.3.b within a Watershed Management Area for waterbody/pollutant combinations addressed under B.3.c.(1)(a) and B.3.c.(1)(b) that are caused or contributed to by MS4 discharges when the following conditions are met:

(1) The Water Quality Improvement Plan for a Watershed Management Area must incorporate the following:

(a) Numeric goals and schedules developed pursuant to Provision B.3.a that include the following:

(i) WQBELs established by the TMDLs in Attachment E to this Order applicable to the Copermittee's jurisdiction within the Watershed Management Area; and

(ii) Numeric goals applicable either to the Copermittee's MS4 discharges or to receiving waters impacted by such discharges within the Watershed Management Area ~~expressed as numeric concentration-based or load-based goals~~ for all other pollutants listed on the Clean Water Act Section 303(d) List of Water Quality Impaired Segments[1] for the receiving waters in the Watershed Management Area that do not have a TMDL developed and incorporated into Attachment E to this Order and where data indicates continued impairment of water quality in the receiving water; and

~~(iii) Numeric goals for receiving waters that will result in chemical, physical, and/or biological conditions of the receiving waters that will be protective of the beneficial uses within the Watershed Management Area under the Copermittee's jurisdiction.~~

(b) For other waterbody/pollutant combinations that do not meet the State's 303(d) listing requirements to indicate an impairment in the receiving water and exceedances of receiving water limitations persist, exceedances will be addressed through Provision A.4.a. For pollutants where exceedances have not been shown to be persistent, the pollutants shall continue to be addressed by existing watershed or jurisdictional programs.

[1] ~~2010 and subsequent 303(d) Lists~~Latest 303(d) List at the initiation of WQIP development or update

Comment [CoPer1]: Revised to incorporate effluent limitations associated with A.3.b.

Comment [CoPer2]: Revised to incorporate ASBS RWLs into the compliance approach for consistency amongst the Permit's RWL requirements. Note the remaining strikeouts for A.2~~.a.~~ are not identified with a comment to reduce repetition of the same comment.

Comment [CoPer3]: Revised to incorporate effluent limitations for TMDLs for consistency with the intent of the TMDL schedules. Note the remaining additions of A.3.b are not identified with a comment to reduce repetition of the same comment.

Comment [CoPer4]: Revised for clarity to affirm compliance and avoid potential misinterpretation of intent.

Comment [CoPer5]: Language added to clarify that if necessary or so desired Copermittees may address some but not all pollutants via the compliance pathway. The concern was that without clarification one could interpret the language as requiring all pollutants be addressed to utilize the compliance pathway (i.e., all or none). Also added clarity to focus being on issues caused to or contributed to by the MS4 consistent with Provision A.

Comment [CoPer6]: As described in B.3.a, numeric goals for non-TMDL pollutants may take a variety of forms (discharge or receiving water based, concentration or load based, etc.) to support WQIP implementation and measure progress. The approach in B.3.a was thoughtful and allowed for the selection of goals depending on the priority and desired outcome. Continuing the approach seems appropriate. Examples of non concentration or load based goals include: reduced presence of human markers/viruses found in discharges, reduced number of outfalls found to be discharging during dry weather, and reduced number of exceedances in receiving waters.

Comment [CoPer7]: The footnote was revised to clarify that the 303(d) list in place at the time of WQIP development/update should be used to avoid confusion on whether past listings that have been changed are required to be addressed.

Comment [CoPer8]: Language was added so that if, based on a review of available data, it was determined that a waterbody is no longer impaired, Copermittees would not follow this process, but would rather follow the process outlined in the next provision (a new part b below). Requiring WQIPs to address pollutants that are no longer listed (or ...

Comment [CoPer9]: Deleted as receiving waters were added to the previous bullet.

Comment [CoPer10]: As written, B.3.c does not explicitly provide a compliance pathway for exceedances of pollutants that are not addressed by a TMDL or on the 303(d) list. The addition of this language is intended to: ...

~~(b)~~(c) An analysis utilizing a watershed model or other watershed analytical tools that meets the following conditions for waterbody/pollutant combinations addressed under B.3.c.(1)(a):

(i) The analysis must quantitatively demonstrate that the implementation of the water quality improvement strategies required under Provision B.3.b will achieve the numeric goals within the established schedules required to be developed pursuant to Provisions B.3.a and B.3.c.(1)(a).

(ii) The development of the analysis must include a public participation process which allows the public to review and provide comments on the analysis methodology utilized and the assumptions included in the analysis. Public comments and responses must be included as part of the analysis documentation included in the Water Quality Improvement Plan.

(iii) The analysis may be performed by an individual Copermittee only for its jurisdiction within the Watershed Management Area, or jointly by two or more of any of the Copermittees choosing to utilize this option for their jurisdictions within the same Watershed Management Area.

(iv) The analysis must be updated as part of the iterative approach and adaptive management process required under Provisions B.5.a-b.

(v) Copermittees choosing to utilize the Water Quality Improvement Plan to demonstrate compliance with the requirements of Provisions A.1.a, A.1.c, A.2, A.3.b prior to updating WQIP priorities, goals, and strategies per adaptive management requirements in B.5, may submit documentation to the San Diego Water Board Executive Officer that demonstrates the strategies included within the Water Quality Improvement Plan address pollutants categorized under B.3.c.(1)(a)(ii) and B.3.c.(1)(b). During the first Water Quality Improvement Plan update required to address priorities, goals, and strategies, the requirements in B.3.c will be fully incorporated into the Water Quality Improvement Plan.

~~(c)~~(d) Specific the monitoring and assessments included in the monitoring and assessment program required pursuant to Provision B.4 that will be performed by the Copermittee to 1) demonstrate that the implementation of the water quality improvement strategies within its jurisdiction is making progress toward achieving the numeric goals in accordance with the established schedules developed pursuant to Provisions B.3.a and B.3.c.(1)(a), and 2) determine whether interim and final numeric goals have been achieved. The specific monitoring and assessments must be updated as part of the iterative approach and adaptive management process required under Provision B.5.c.

Comment [CoPer11]: Language added to clarify that if necessary or so desired Copermittees may address some but not all pollutants via the compliance pathway. The concern was that without clarification one could interpret the language as requiring all pollutants be addressed to utilize the compliance pathway (i.e., all or none). Also, with the addition of language related to a compliance pathway for non-TMDL/303(d) listed pollutants, clarity is needed regarding for which pollutants the requirements of this provision apply.

Comment [CoPer12]: San Diego County Copermittees will have just completed development of WQIPs at the time of adoption of the compliance pathway language. The language was added so that the pathway can be followed prior to a full WQIP update rather than necessitating a WQIP update immediately after a revised Permit is adopted. However, such an approach can only be followed if a demonstration can be made that the strategies that will be employed during the time period between the adoption of a new Permit and the first WQIP update will address the additional pollutants in some manner. The intent is demonstrate that actions are being taken in the interim prior to a full WQIP update.

~~(d)~~(e) Documentation that the numeric goals proposed pursuant to Provision B.3.c.(1)(a), the analysis performed pursuant to Provision B.3.c.(1)(~~b~~c), and the specific monitoring and assessments proposed pursuant to Provision B.3.c.(1)(~~c~~d) have been reviewed by the Water Quality Improvement Consultation Panel (see Provision F.1.a.(1)(b)) for any recommendations. Updates must be reviewed by the Water Quality Improvement Consultation Panel for any recommendations.

(2) A Copermittee who provides notice in writing to the Regional Board Executive Officer of its intent to utilize the Compliance Option provided in this Provision B.3.c shall be deemed in compliance with Provisions A.1.a, A.1.c, A.2 and A.3.b from the date of that notice to the date that the Executive Officer approves the Water Quality Improvement Plan pursuant to Provision F.1.b.(5) if the Copermittee meets all deadlines set forth in Provisions F.1.(a)-(b) for the development of the Water Quality Improvement Plan containing the Compliance Option and is otherwise in compliance with the requirements of this Provision B.3.c.

~~(2)~~(3) Each Copermittee that chooses to utilize this option ~~will~~is, for the pollutant/water body combinations set forth at ~~included in the analysis performed pursuant to~~ Provision B.3.c.(1)(~~b~~a) and Provision B.3.c.(1)(b), ~~be deemed~~ in compliance with Provisions A.1.a, A.1.c, ~~and~~ A.2.~~a~~ and A.3.b when the Water Quality Improvement Plan, incorporating the requirements of Provision B.3.c.(1), is accepted by the San Diego Water Board Executive Officer pursuant to Provision F.1.b(5).

~~(3)~~(4) The Copermittee ~~will~~is, for the pollutant/water body combinations included in the ~~analysis performed pursuant to~~ Provision B.3.c.(1)(~~b~~a) and Provision B.3.c.(1)(b), ~~remain~~ in compliance with Provisions A.1.a, A.1.c, ~~and~~ A.2~~.a~~ and A.3.b during the term of this Order as long as:

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

(b) The Copermittee continues to implement the water quality improvement strategies within its jurisdiction developed pursuant to Provision B.3.b.(1) in accordance with the schedules for implementing the strategies established pursuant to Provision B.3.b.(3)(a); AND

(c) The Copermittee continues to perform the monitoring and assessments specified in the Water Quality Improvement Plan, developed and implemented pursuant to Provision B.3.c.(1)(~~c~~d), to demonstrate its progress toward achieving the numeric goals applicable to its MS4 discharges in accordance with the interim and final dates for achieving the numeric goals established pursuant to Provision B.3.a.(2); AND

(d) The Copermittee continues to implement the requirements of Provision A.4.a.

Comment [CoPer13]: Revised because of the addition of a new provision. Note the remaining revisions to references changed due to the addition of the new provision (B.3.c.(1)(b)) are not identified with a comment to reduce repetition of the same comment.

Comment [CoPer14]: The language was added so that during WQIP development/update and during the public/Regional Board's review, Copermittees have coverage so long as all deadlines are met and the WQIP is ultimately accepted by the RWQCB EO. Non-compliance during development/ update does not serve a purpose of improving water quality. Resources should focus on plan development and WQIP/program implementation rather than addressing exceedances/violations that stem from the provision the compliance pathway is seeking to address. The LA MS4 Permit expressly provides coverage during plan development and during plan revision when incorporating new pollutants (pgs. 49-52). The State Board's April 24, 2015 Tentative Order in response to petitioners on the LA MS4 Permit (SB TO) dated confirms the approach (pgs. 52-55). Further, the SB TO provides guidance (pgs. 85) on developing alternatives and includes providing a period of time to come into compliance. Without coverage during development/ update, such time is not provided and the approach could be considered inconsistent with the SB TO. Part of the reasoning in the SB TO is the clear process and deadlines for plan development. The coverage is not unlimited in time or scope and the approach provides constraints on applicability (including the ability for the RWQCB to reject the submittal and remove coverage as occurred in LA to multiple Permittees that failed to submit plans that met neither the letter nor the spirit of the LA MS4 Permit).

Comment [CoPer15]: Revised for clarity to affirm compliance and avoid potential misinterpretation of intent.

Comment [CoPer16]: Language added to capture the addition of sub-bullet b

Comment [CoPer17]: Revised for consistency with acceptance process in Provision F.

Comment [CoPer18]: Revised for clarity to affirm compliance and avoid potential misinterpretation of intent.

Comment [CoPer19]: Language added to capture the addition of sub-bullet b

Comment [CoPer20]: Revised for clarity to affirm compliance and avoid potential misinterpretation of intent.