Alameda Countywide Clean Water Program

Contra Costa Clean Water Program

Fairfield-Suisun Urban Runoff Management Program

Marin County Stormwater Pollution Prevention Program

Napa County Stormwater Pollution Prevention Program

San Mateo Countywide Water Pollution Prevention Program

Santa Clara Valley Urban Runoff Pollution Prevention Program

Sonoma County Water Agency

Vallejo Sanitation and Flood Control District

B A S M A A

August 15, 2013

Emel G. Wadhwani
California State Water Resources Control Board
Senior Staff Counsel
P. O. Box 100
Sacramento, CA 95812-0100

Subject: SWRCB/OCC FILE A-2236(a) THROUGH (kk) COMMENTS IN RESPONSE TO QUESTIONS POSED BY THE STATE WATER RESOURCES CONTROL BOARD CONCERNING RECEIVING WATER LIMITATIONS AS ADDRESSED IN ORDER NO. R4-2012-0175 - WASTE DISCHARGE REQUIREMENTS FOR MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) DISCHARGES WITHIN THE LOS ANGELES COUNTY FLOOD CONTROL DISTRICT, INCLUDING THE COUNTY OF LOS ANGELES, AND THE INCORPORATED CITIES THEREIN, EXCEPT THE CITY OF LONG BEACH

Thank you for the opportunity for the Bay Area Stormwater Management Agencies Association (BASMAA) to provide comments to the State Water Resources Control Board (State Water Board) in response to the State Water Board's July 8, 2013 request for feedback on the watershed management program/enhanced watershed management program (WMP/EWMP) alternative contained in the Los Angeles MS4 Permit as a potential approach to revising the receiving waters limitations (RWLs) in MS4 permits. BASMAA is a 501(c)(3) non-profit organization comprised of the municipal stormwater programs in the San Francisco Bay Area representing 96 agencies, including 84 cities and 7 counties.

BASMAA provided extensive comments to the State Water Board on the RWLs issue last November and participated in the State Water Board's RWL workshop later that month through a presentation made on its behalf by former State Water Board counsel, Elizabeth Miller (Betsy) Jennings. We suggested that, consistent with prior State Water Board precedent and policy as well as federal and state law, the State Water Board reserve enforcement of the RWLs per se to the State and Regional Water Boards. The issues giving rise to the need for this approach are now more compelling than ever, particularly in light of the remand decision the Ninth Circuit issued last week in the *NRDC vs. LA County, et al*. case. Therefore, as a preliminary and not mutually exclusive matter, BASMAA renews its request that the State Water Board adopt language implementing the state law-based enforcement approach to RWLs that Ms. Jennings and we suggested last November.[1].

Bay Area Stormwater Management Agencies Association

P.O. Box 2385

Menlo Park, CA 94026

510.622.2326

info@basmaa.org

[1] A copy of BASMAA's comments is attached.

Second, based on its experience with the Municipal Regional (MS4) Stormwater Permit in effect in the Bay Area (MRP), BASMAA endorses the comments Dr. Thomas Mumley of the California Regional Water Quality Control Board, San Francisco Bay Region offered to the State Water Board on the RWLs issue last year. Dr. Mumley essentially suggested a prioritized water quality-based permit requirements approach as an alternative to RWLs or their direct application to MS4 permittees per se.[2] Because it allows for prioritization and would allow Region 2 and its members to build on the approach embodied in the MRP, BASMAA believes that the approach Dr. Mumley recommended would be a preferable alternative to the WMP/EWMP contained in the Los Angeles MS4 Permit.

Third, BASMAA is generally supportive of the comments and suggested RWL-related language being submitted to the State Water Board by the California Stormwater Quality Association (CASQA).[3] At its heart, CASQA's approach dovetails with Dr. Mumley's and suggests that certain strategic compliance programs, including those adapted incrementally from existing water quality priority-driven MS4 programs such as those in place in the Bay Area under the MRP, can serve as useful and pragmatic alternatives to direct enforcement of RWLs per se.

Last and most importantly, BASMAA requests that the State Water Board *not* impose the particular WMP/EWMP approach contained in the LA MS4 Permit on MS4s in the Bay Area and instead leave Region 2 free to adopt an MRP with prioritized water quality-driven alternative permit requirements that are designed to achieve compliance with RWLs as an alternative to requiring direct compliance with RWLs per se. A "one-size fits all" approach simply makes no sense given the diversity of the state and the evolution and varying status of the MS4 programs within it. Directing the Region 2 Board to revise its approach to the MRP, based on whatever emerges relative to the Los Angeles MS4 Permit, could present an unproductive and significant drain on resources with little benefit as compared to the approaches BASMAA, Dr. Mumley, and CASQA have suggested.

BASMAA thanks the State Water Board for its consideration of these comments and urges the State Water Board to take action on the RWLs issues as soon as possible.

Sincerely,

Matt Fabry
Chair, BASMAA Board of Directors

cc (w/encls.): BASMAA Board of Directors

[2] A copy of Dr. Mumley's comments is also attached.

[3] Due to the nature of TMDL pollutants and typical wet season conditions in the Bay Area, BASMAA believes that the final sentence of subsection E.5.d.v in CASQA's proposed RWLs language (its Attachment A) needs to be extended to include the following additional language: "or otherwise controlled to the satisfaction of the regional water board."

Alameda Countywide
Clean Water Program

Contra Costa
Clean Water Program

Fairfield-Suisun
Urban Runoff
Management Program

Marin County
Stormwater Pollution
Prevention Program

Napa County
Stormwater Pollution
Prevention Program

San Mateo Countywide
Water Pollution
Prevention Program

Santa Clara Valley
Urban Runoff Pollution
Prevention Program

Sonoma County
Water Agency

Vallejo Sanitation
and Flood
Control District

B A S M A A

November 9, 2012

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th floor
Sacramento, CA 95814

Subject: Comment Letter – Receiving Water Limitations Language Workshop

Dear Ms. Townsend:

Thank you for the opportunity for the Bay Area Stormwater Management Agencies Association (BASMAA) to file comments on this very important issue of receiving water limitations language in NPDES permits for MS4s issued by the State Water Board and the Regional Water Boards. BASMAA is a consortium of nine municipal stormwater programs in the San Francisco Bay Area, collectively representing 96 municipal agencies, including 84 cities and 7 counties.

We have reviewed the State Water Board staff's Issue Paper and applaud its thorough and thoughtful analysis. In addition to the feedback we are providing on some of the five alternatives presented on the attached, we present at your invitation another option that we ask the State Water Board to evaluate. We believe this option will provide a path forward that will address the concerns of BASMAA members in a manner consistent with the State Water Board's prior precedent decisions and prior court decisions and which respects the State and Regional Water Boards' potential discretionary enforcement authority under the California Water Code.

We appreciate the State Water Board's consideration of this option and the remainder of the attached comments and note that we have requested up to ten minutes for our principal consultant on them, Elizabeth Miller (Betsy) Jennings to discuss them at the November 20th workshop.

Sincerely,

James Scanlin

Jim Scanlin
Chair, BASMAA Board of Directors

cc (w/encl.): BASMAA Board of Directors

Bay Area
Stormwater Management
Agencies Association

P.O. Box 2385
Menlo Park, CA 94026
510.622.2326
info@basmaa.org

COMMENTS OF BASMAA FOR STATE WATER BOARD'S 11/20/12 WORKSHOP ON RECEIVING WATERS LIMITATIONS

The Bay Area Stormwater Management Agencies Association (BASMAA) appreciates the opportunity to comment upon the issue of receiving water limitations in storm water permits for municipal separate storm sewer systems (MS4s). The Issue Paper published by the State Water Resources Control Board (State Water Board) contains an excellent review of this issue and the various proposals presented for discussion include a number of thoughtful ideas. BASMAA recommends melding several of the options set forth in the Issue Paper.

Specifically, BASMAA recommends that the State Water Board: (1) Improve the iterative process for achieving compliance with water quality standards through improved BMPs by including additional detail on its implementation; (2) Clarify that compliance with permit provisions that implement relevant TMDLs or that are otherwise addressed to achieving compliance with a specific water quality standard constitutes compliance with the water quality standards in question; and (3) Clarify that permit provisions requiring compliance with water quality standards are adopted under state law, and are enforceable only by the State and Regional Water Boards. In order to explain more fully the position of BASMAA, we will briefly review the history of the State Water Board's positions on this issue and thus explain the basis for our recommendations.

Background of the Receiving Water Limitations Issue and the Iterative Approach in Municipal Storm Water Permits

As explained in the Background section of the Issue Paper, MS4 permit requirements in the federal Clean Water Act are unique in that dischargers are required to reduce pollutants in receiving waters to the Maximum Extent Practicable (MEP), but are not required by federal law to comply with additional requirements to achieve compliance with water quality standards.[1] While the State and Regional Water Boards are not required by federal law to include permit terms in MS4 permits that would assure compliance with water quality standards, the State Water Board has acknowledged the impacts of storm water on water quality in California, and therefore the need to include permit terms that will protect water quality.[2] The State Water Board has also acknowledged the unique challenges facing MS4s in controlling their discharges to receiving waters, particularly because municipal storm water discharges are made up of disparate runoff from various sources including illegal dumping, atmospheric deposition of pollutants, and illegal use of pesticides among other examples. In addition, in the semi-arid climate of California, there are long dry periods followed by heavy storms, often resulting in large and highly variable pollutant loadings over short periods of time. These weather patterns may contribute to the potential impacts of municipal storm water discharges on water quality, but also present difficulty in ensuring compliance with water quality standard-based permit requirements. Therefore, the State Water Board has long

[1] 33 U.S.C. § 1342(p); *Defenders of Wildlife v. Browner* (9th Cir. 1999) 199 F.3d 1199.
[2] SWRCB Order WQ 2000-11.

required an approach to achieving compliance with water quality standards through implementation of BMPs in an iterative process.[3]

Through a number of precedent rulings, the State Water Board adopted an iterative process wherein MS4 dischargers must continually update and adopt new best management practices (BMPs) in order to achieve compliance with water quality standards over a reasonable time. In Board Order WQ 2001-15, at page 5 (emphasis added), the Board stated: "The Board has already considered and upheld the requirement that municipal storm water discharges must not cause or contribute to exceedances of water quality objectives in the receiving water. *We adopted an iterative procedure for complying with this requirement….*" In light of new sources and types of pollutants that end up in storm water, it was always assumed that the process would be dynamic, without a certain and final endpoint.

Throughout the years since these precedents were established, there have been concerns from all sides that the iterative process may be overly vague. Moreover, dischargers have argued that if they are in compliance with the iterative process, they should be deemed in compliance with all permit terms concerning water quality standard-based requirements, including receiving waters limitations. In the absence of numeric effluent limitations which the State's expert panel determined to be infeasible for MS4 permits, environmental groups have argued that dischargers should only be considered in compliance with storm water permits if water quality standards are met in the receiving waters.

The State Water Board addressed these various contentions by clarifying that the iterative process would be required in every MS4 permit, but that there would be no bar on State or Regional Water Board enforcement if water quality standards were exceeded.[4] Thus, the State Water Board required independent provisions in MS4 permits that required compliance with water quality standards and water quality standard-related prohibitions, and compliance with BMPs. The State Water Board noted, however, its intention that the iterative approach would generally be the measure of permit compliance and that it did not expect Regional Water Boards to take enforcement actions against dischargers who were complying with the iterative process in good faith. "…[W]e continue to believe that the iterative approach, which focuses on timely improvement of BMPs, is appropriate. We will generally not require 'strict compliance' with water quality standards through numeric effluent limitations and we will continue to follow an iterative approach, which seeks compliance over time. The iterative approach is protective of water quality, but at the same time considers the difficulties of achieving full compliance through BMPs that must be enforced throughout large and medium municipal storm sewer systems."[5]

---

[3] SWRCB Order WQ 98-01 (*Environmental Health Coalition*), WQ 99-05 (*Environmental Health Coalition*).

[4] SWRCB Order WQ 99-05 (*Environmental Health Coalition*), WQ 2001-15 (*Building Industry Association*).

[5] SWRCB Order WQ 2001-15, at p.8 (footnotes omitted).

Citizens Suit Provisions of the Clean Water Act

The federal Clean Water Act allows citizens meeting certain requirements to file actions in federal court to enforce violations of NPDES permits.[6] This is a separate right from that of the Regional and State Water Boards to enforce the permits they adopt. Thus, MS4 dischargers are in a peculiar position in California that, while the federal law does not require that MS4 permits include provisions requiring compliance with water quality standards, as a result of the State Water Board's decision to include them, those same provisions are enforceable in federal court by citizens.

Accordingly, in the recent Ninth Circuit case,[7] the MS4 provisions at issue regarding the iterative process and compliance with water quality standards were read to be separable and enforceable. Rather than the iterative process being a means to achieving compliance with the water quality standards requirements, the court concluded that the iterative process was essentially an *additional requirement* applicable to dischargers where water quality exceedances persist.[8]

Thus, under this interpretation, in Clean Water Act citizen suits, compliance with the iterative process is irrelevant to whether enforcement will proceed; if there is an exceedance of water quality standards, the permit has been violated, regardless of the actions that the discharger has taken to comply with standards and regardless of whether the exceedance may have been caused by unforeseen or uncontrollable factors. This is not consistent with the approach that the State Water Board envisioned or directed the Regional Water Boards to take in their actions to enforce MS4 permits.

In light of the above and the fact that the issue of water quality standards compliance for MS4s falls clearly within its discretion, it is appropriate for the State Water Board to review its prior precedential language at this time. The State Water Board carefully drafted its language to obtain a result where MS4s are pushed hard to continue to review and upgrade BMPs and to monitor the results in the receiving water. In return, the State Water Board acknowledged the difficulty of continuously eliminating all exceedance of water quality standards, especially as new sources and pollutants develop and major storm events occur. While no absolute safe harbor was adopted, the State Water Board acknowledged that such factors should inform and govern the use of enforcement authority enforcement actions. It is therefore clear from reviewing the precedent decisions and other relevant documents in context, that the State Water Board never intended compliance with water quality standards to be divorced from implementation of BMPs or the iterative process. Instead, the reverse is true -- the method for compliance with water quality standards was to be through the iterative process over time, with direct

[6] 33 U.S.C. § 1365.

[7] *Natural Resources Defense Council v County of Los Angeles* (9th Cir. 2011) 673 F.3d 880, cert. granted [CITE].

[8] *Natural Resources Defense Council v County of Los Angeles, Supra,* at {insert}

enforcement of water quality standard exceedances to be reserved by the State or Regional Boards for only unusual circumstances.

BASMAA Recommendations

1. The Iterative Process Should Include Greater Clarity and Specificity

It is in the interest of all participants – the Boards, the dischargers, the environmental groups, and the public, to amend the iterative process language to include greater clarity and specificity. BASMAA agrees with suggestions, including by the California Stormwater Quality Association, that the iterative process description in MS4 permits should be improved.

2. Where Municipal Storm Water Permits include TMDL and other water quality standard-specific implementation provisions, those Permits Should Clarify that Compliance with those Terms Constitutes Compliance with Respect to the Water Quality Standards that are Addressed by those Provisions.

TMDLs are water quality control plans which are adopted to set forth a path toward the achievement of water quality standards over time. If an MS4 is in compliance with permit provisions implementing a relevant TMDL or addressed to another specific water quality standard, then it is in compliance with the State's plan for attaining the water quality standards in question and the permit should so specify. In this regard, it is incumbent on Boards to adopt permit terms to implement TMDLs and not simply place the language of the TMDL or a generic obligation to comply with a TMDL in the permit. Where a permit requirement implements a water quality standard-specific requirement that is not covered by a TMDL, the State Water Board should clarify that compliance with such permit requirements constitute compliance with those water quality standards as well.

3. The State Water Board Should Clarify that Compliance with the Iterative Process will Constitute Compliance with the Permit under the Clean Water Act, While Preserving State and Regional Water Board Enforcement Authority Under the California Water Code.

The State Water Board has made clear its intention that for a variety of technical and policy reasons consistent with the Water Code, compliance with water quality standards should be achieved through the iterative process of improving BMPs to address water quality exceedances. While we recognize that improvements are desirable to clarify and specify the iterative process, the underlying rationale for the retaining and giving preference to the iterative process remains. MS4 discharges are made up of untreated runoff from disparate sources, many of which are not subject to the direct control of the dischargers. Moreover, as new construction, new products, and new urban land uses develop, there will be a continuing need to develop or revise BMPs. This is not to say that water quality standards can never be met or need not be met over time. Rather, it is to acknowledge that the absence of exceedances at all times is infeasible.

Therefore, it is BASMAA's position that while State and Regional Boards may want to reserve their enforcement authority under the Water Code should circumstances warrant its use, the permit should not open other pathways to litigation, the very process of which could unduly punish or drain resources from the MS4 that acts responsibly and in good faith. The State Water Board has, in fact, acted under this assumption in adopting its precedential orders and the State's courts have already endorsed this approach.[9]

Accordingly, since it was not identified as an alternative in the Issues Paper, BASMAA now asks the State Water Board to consider the additional option of adding language along the lines of the following to new precedent language for all MS4 permits:

> "If a Permittee complies with the [TMDL and other water quality standard-specific program implementation provisions of this Permit and with its iterative process provision], the Permittee shall be in compliance with [the Permit's receiving waters limitations and water quality standard-related discharge prohibition provisions] pursuant to provisions of the CWA. The only enforcement of [the Permit's receiving waters limitations and water quality standard-related discharge prohibition provisions] in such circumstance shall be pursuant to the California Water Code."[10]

Conclusion

In order to support its long-standard precedents, the State Water Board should now amend its precedential language to: 1) improve the iterative process; 2) deem compliance with an MS4 permit's TMDL implementation and other water quality standard-specific provisions compliance with their subject water quality standards; and 3) clarify that where a discharger is in compliance with the iterative process requirements, enforcement of MS4 permit receiving waters limitations and discharge prohibitions that are tied to the attainment of water quality standards shall be reserved to the State or Regional Boards, by allowing enforcement only through the California Water Code where extraordinary circumstances justify its use.

[9] *Building Industry Association of San Diego County v. State Water Resources Control Board, et al.*, 124 Cal. App. 4th 866 (2004).

[10] BASMAA further suggests substituting specific alpha-numeric permit section numbers in for the bracketed language shown in narrative form above.

October 30, 2012

Regional Water Board Perspective on Receiving Water Limitations and Alternatives
– Thomas Mumley, San Francisco Bay Region

Our preference for addressing concerns with municipal stormwater permit receiving water limitations is a hybrid of Alternative 2 and Alternative 4. Enforceable water quality based requirements would provide a safe harbor from direct enforcement of receiving water limitations.

Permits should provide clarity and specificity for starting and maintaining the iterative process leading as quickly as possible to development of water quality based effluent limitations (WQBELs) with appropriate compliance schedules. WQBELs would be enforceable water quality based permit requirements and could be numerical or narrative. Compliance with enforceable water quality based permit requirements (i.e., WQBELs) would provide a safe harbor. This approach would be similar to the wastewater permitting approach that requires WQBELs for pollutants that have the reasonable potential to cause violations of water quality standards.

Implementation provisions of approved TMDLs should be translated into water quality based permit requirements with compliance schedules. By definition, such WQBELs would result in compliance with receiving water limitations, but through enforceable tasks and schedules rather than an open ended iterative process. Obviously, this approach will require some adaptability and defined and managed flexibility to account for uncertainties, challenges, and constraints associated with controlling pollutants in stormwater to the extent necessary to attain water quality standards.

Water quality based permit requirements (i.e., WQBELs) could and should also be established for pollutants that are known or have the reasonable potential to cause violations of water quality standards, but there is no approved TMDL. The WQBELs with compliance schedules would frame and define appropriate application of the iterative process leading to attainment of the water quality standard. This approach will also require some adaptability and defined and managed flexibility to account for uncertainties, challenges, and constraints associated with controlling pollutants in stormwater to the extent necessary to attain water quality standards.

These concepts are not new. We have included narrative and enforceable water quality based requirements (without calling them WQBELs) in Region 2 permits. Our Municipal Regional Permit has TMDL-based "WQBEls" for mercury, PCBs, and pesticides, and non-TMDL "WQBEls" for copper and trash. It also has requirements that specify the first steps of the iterative process for other pollutants.

Other regions have also included water quality based requirements in permits. Most recently, the Los Angeles permit has many TMDL-based requirements, as does the forthcoming San Diego permit.

The following is my initial shot at answering the workshop questions.

1. What changes need to be made to the iterative process to promote measurable water quality improvements? Consider this question in light of the parameters for the iterative process specified in Alternative 2 of the Issue Paper.
   - Permits should have clear, explicit requirements that define the iterative process on a permit-term basis within the confines of an appropriately defined long-term compliance schedule. Such requirements should be established for pollutants that are known or have reasonable potential to cause or contribute to violations of water quality standards. The process should include measureable outputs and outcomes that lead to or result in measurable water quality improvements.
   - The current unbounded, open-ended iterative process calls for evaluation of existing BMPs and identification and implementation of additional BMPs needed to control (or prevent) violations of water quality standards. At a minimum, each permit-reissuance application should include a report that provides an updated assessment of existing and needed BMPs and a proposed short and long term schedule of implementation with measurable outputs or outcomes with supporting rationale. Short-term is the ensuing permit term, and long-term is the projected attainment of water quality standards via subsequent permit terms.
   - Explicit pollutant-specific permit requirements including measurable outputs and/or outcomes would be established based on the permit application report and other factors generated or provided in the permit development and review process. The outputs or outcomes could be numeric limits, but they also could be action-levels that trigger reevaluation and additional implementation.
   - To guide and facilitate this process, we should establish technical guidance and policy direction on what constitutes an adequate evaluation and schedule of implementation of needed BMPs for specific pollutants or categories of pollutants. The guidance should account for expected implementation scenarios based on community and watershed characteristics.
   - This better defined iterative process would apply to pollutants for which a TMDL has been established, applicable 303(d) listed pollutants without a TMDL, and pollutants for which there is a reasonable potential for the discharge to cause or contribute to violations of water quality standards.
   - This better defined iterative process would also serve to improve how stormwater discharge are accounted for in TMDLs. Future TMDL implementation plans should provide clear direction on expected BMPs, levels of effort, and implementation schedules in subsequent permits consistent with a better defined iterative process.
   - Monitoring requirements should inform implementation of the iterative process. Permit monitoring requirements should account for measureable outputs and outcomes designed and adapted through the interactive process that lead to or result in measurable water quality improvements.

2. Should the receiving water limitations requirements be different for:
   1. Storm water v. non-storm water discharges?
      - The receiving water limitations should be the same = discharges shall not cause or contribute to violations of water quality standards. However, the implementation requirements should be different. Non-stormwater discharges

that may cause or contribute to violations of water quality standards should be prohibited or covered by NPDES permits with enforceable water quality based requirements.
- The challenge is there are certain non-stormwater discharges that cause violations of water quality standards that are not prohibitable or covered by NPDES permits, most notably sanitary sewer overflows and potable water system discharges. At a minimum, MS4 permits should clarify responsibility of MS4 dischargers.
- With 20+years of experience, we should and can establish standard MS4 permit requirements for essentially all types of non-stormwater discharges.

2. Discharges with pollutants subject to a Total Maximum Daily Load (TMDL) Waste Load Allocation and discharges not subject to a TMDL?
   - The receiving water limitations requirements framework should be the same, but TMDL-based requirements could be different to the extent the TMDL accounted for specific watershed characteristics, opportunities, and constraints and justified different or more specific requirements.

3. Phase 1 as opposed to Phase 2 permittees?
   - Yes and no. The requirements framework should be the same, but the required levels and timing of efforts may differ.
   - Whether general permit requirements or individual permit requirements should be the same is a better question since by definition, general permits have requirements applicable to general categories of discharges, not specific discharges. The general permit requirements should be consistent with the initial phase(s) of receiving water limitations requirements and allow small MS4s to follow the lead of large MS4s and small MS4s covered by individual permits.
   - Many small MS4s are already covered by county-wide or regional individual permits. Other small MS4s and non-traditionals, which are found to be significant contributors to violations of water quality standards, should probably be covered by individual permits.

4. In the iterative process, should there be specified, enforceable time frames between iterations? Should there be an explicit compliance schedule or time limit for ultimate compliance with receiving water limitations?
   - Iteration time frames should be permit-term based and enforceable requirements should be established for each permit term.
   - There should be an appropriately defined long-term compliance schedule. Permit-term iterations should be within the confines of an appropriately defined long-term compliance schedule. However, the long-term schedule will require some adaptability and defined and managed flexibility to account for uncertainties, challenges, and constraints associated with controlling pollutants in stormwater to the extent necessary to attain water quality standards.

5. What is the most appropriate alternative? Please discuss in light of the criteria listed below. The proposed alternative may be an alternative in the Issue Paper, a combination of those alternatives, or an alternative not identified in the Issue Paper. Please identify and discuss a second alternative that your organization(s) would regard as a second choice.
   a. Water Quality Protection – Is the requirement protective of water quality?
   b. Practicability/Cost-effectiveness – Is it practical and cost-effective to implement the requirement?
   c. Clarity – Are the requirements clear and unambiguous?
   d. Enforceability – Can the requirement be readily enforced for non-compliance?
   e. Municipal Resources – What are the impacts of the requirement on municipal staff and financial resources?
   f. Regulatory Resources – What are the impacts of the requirement on the staff and financial resources of the regulatory agencies?
   g. Acceptability – To what degree does the requirement provide a path to compliance that is acceptable to all parties?
   h. Other Criteria – What other criteria are appropriate for consideration?
      - Our preference for addressing concerns with receiving water limitations is a hybrid of Alternative 2 and Alternative 4 that results in enforceable water quality based requirements. Enforceable water quality based requirements would provide a safe harbor from direct enforcement of receiving water limitations.
      - We do not support the full safe harbor alternative without an enforceable iterative process.
      - All of the criteria are relevant.
        - Requirements must be clear and enforceable and lead to water quality protection and improvement.
        - We need to consider municipal resource constraints, but we cannot limit requirements to just actions that municipalities can currently afford. Substantial water quality improvement will require significant financial resources and permit requirements must recurring push the financial envelop.
        - To obtain the needed financial support requirements must be practicable and cost-effective, while being acceptable to all parties.
      - The practicability criterion should be parsed into components that account for technology limitations and legal, land use, and logistical constraints.