

Appendix C

Response to Comments Received

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Response to Comments on May 11, 2015, Tentative Order General Comments

Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
ACCWP Legal	6	General	Unfunded State Mandates	<p>Many provisions of the Tentative Order are more stringent than required by federal law and constitute unfunded state mandates in that they impose new programs or higher levels of service on the co-Permittees, and therefore will violate Article XIII B, Section 6, of the California Constitution.</p> <p>The Tentative Order does not contain sufficient findings, nor does the evidence in the record support the Regional Board's conclusion in the Fact Sheet that the permit does not require actions beyond the MEP. Given the disparity of resources and heterogeneous nature of the co-Permittees, blanket evidence and findings as discussed in the Fact Sheet purporting to apply to all Permittees (or from Southern California) cannot suffice. If the Regional Board claims the right to make this determination, it at least has the obligation to provide an adequate record and findings to support its determination.</p> <p>The California Supreme Court is currently considering the case of Department of Finance, et al. v. Commission on State Mandates/County of Los Angeles, et al., Case No. S214855, which will clarify many issues on this subject including that jurisdiction to determine what aspects of the Tentative Order constitute unfunded state mandates properly rests with the Commission on State Mandates and not with the State's Water Boards.</p>	<p>We disagree with the commenter's blanket statement that the permit's provisions are more stringent than required federal law and constitute unfunded mandates, as explained in the Fact Sheet, Section V.C.</p> <p>We also disagree with the commenter's statements related to findings. The findings for the permit's provisions are set forth in the body of the permit and in the Fact Sheet and they are supported by substantial evidence in the record. The permit's requirements flow from the Clean Water Act's mandate to effectively prohibit non-stormwater discharges, require controls to reduce the discharge of pollutants to the maximum extent practicable (MEP) and such other provisions as the Board determines appropriate for the control of such pollutants. (33 U.S.C. § 1342(p)(3)(B)(ii)-(iii).) The technology controls required in the draft permit reflect MEP standard, which is a flexible standard that evolves over time with advances in technology and experience gained in storm water management. (55 Fed. Reg. 47990, 48052 (Nov. 16, 1990).) Requirements to effectively prohibit non-stormwater discharges are not subject to the MEP standard. (State Water Board Order No.WQ 2015-0075). Requirements to implement TMDLs are based on federal law requiring that permits contain effluent limitations consistent with the assumptions of any applicable wasteload allocation. They are also based on the Clean Water Act section 402 subsection (p)'s direction that an MS4</p>	None

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					<p>permit shall require “such other controls” as the permitting authority determines “appropriate for the control of such pollutants.”</p> <p>The permit’s requirements and the bases for them apply to all of the named Permittees such that separate findings for each permittee are unnecessary. Where requirements and findings associated with them are not common to all Permittees due to unique circumstances, the permit and findings make that clear. For example, the bacteria requirements are specific only to Pacifica and the County of San Mateo Permittees.</p>	
ACCWP Legal	7	General	Can't Fund Actions Required	<p>As Permittee testimony at the workshop hearings have indicated, MS4s are faced with significantly increased costs to local government associated with more stringent requirements anticipated by the provisions of the Tentative Order. Many other commentors have noted and described these consequences in their written responses as well to the Water Board. Consequently, to avoid contentious advocacy proceedings that may consume large amounts of resources on detailed administrative appeals and litigation that could instead be spent on water quality improvement, the Tentative Order should be revised in a manner reflecting consensus with Bay Area local governments on priorities and realistic implementation timetables (which in some cases may have to be phased into future permit terms) and/or the relevant requirements must be conditioned on the receipt of State funding guaranteed to help the municipalities staff and finance their implementation.</p> <p>In addition, Permittees are significantly restricted in their ability to increase fees for stormwater improvements and control by the provisions of Proposition 218. In November 1996, California voters adopted Proposition 218, the Right to Vote on Taxes Act, which added articles XIII C & D to the California Constitution.</p>	<p>We have worked extensively with the Permittees to get their inputs. Where possible, we have accommodated their requests; however, please note that we are a regulatory agency that must implement the Clean Water Act—not impose requirements based on consensus. While some aspects of the MRP may require the Permittees to develop new resources and funding, this is within the practical realm for the Permittees. We have carefully considered the necessity of each and every new requirement included in the revised tentative order. We understand that it can be difficult for the Permittees to obtain new resources or funds for this or any set of requirements. The requirements included in the revised tentative order are the least that we can require to accomplish the Clean Water Act goals.</p>	None

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				<p>These constitutional provisions specify significant restrictions and requirements for assessments, fees, and charges that local governments impose on real property or on persons as an incident of property ownership.</p> <p>As a general rule, it is not possible to create a new or increase an existing stormwater- specific fee without complying with Proposition 218 which, with the exception of wastewater, refuse, and water service, in some cases requires voter approval. The possibility of receiving grant funding is problematic because it entails expense, and then, is not guaranteed. Limited grant funding is available and applying for grants can be very time consuming - many costs are not eligible for reimbursement, local funding is often required; the applicant must advance funds; and there is no guarantee of receiving a grant. At the same time rate payer and political sensitivity has increase with regard to fees. With so little funding available from grants and general revenues constrained by competing service demands, it is increasingly difficult to fund new or increased stormwater programs. Legislative efforts that would lead to modification of Proposition 218 to exempt fees for stormwater control have not been successful.</p>		
Orinda	6b	General	No Funds to Meet New Requirements	The City of Orinda is operating in a budget deficit in meeting the current MRP requirements. These major new mandates will require a significant, sustained effort to implement, absent any new or additional funding source.	We acknowledge the permit requirements will cost more than current efforts. We have considered specific data and cost calculations and the value of the outcomes that outweigh the costs. It is not infeasible to pay for additional efforts, and the costs may be offset by grant funds or collaborating with other Permittees. The cost of meeting MEP in the manner proposed by the TO is less than other alternatives (e.g. treatment on every outfall).	None

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Brentwood Oakley Contra Costa Co. Clayton Concord Danville Hercules Moraga Pleasant Hill Orinda San Ramon San Pablo	1 2 1 2 8 7 7 2 2 7 10 10	General	New mandates are expensive. Eliminate less beneficial tasks	The permit requires major new and expanded mandates (trash, green infrastructure, LID, PCBs control) will require a major expense, sustained effort to implement, and no additional capital or ongoing maintenance funding has been identified for this purpose. These new mandates should be offset by eliminating other less beneficial tasks.	The MRP is not a zero sum endeavor. Each of the components in the Permit is there because it is necessary to effectively prohibit non-stormwater discharges, reduce the discharge of pollutants to the MEP, and to ultimately meet water quality standards related to pesticides, trash, mercury, PCBs and bacteria.	None
Oakley CCWP Clayton Concord Danville El Cerrito Hercules Lafayette Martinez Orinda Pleasant Hill Walnut Creek San Ramon San Pablo	1 4 1 1 1 1 1 1 1 1 1 1 1 1 1	General	Incorporate Permittee Ideas	For the past two years, representatives from Contra Costa municipalities, along with a consortium of Bay Area agencies and BASMAA, have been engaged in an ongoing dialogue with your staff regarding: experience gained and lessons learned from the current MRP; how to apply that experience toward maximizing the effectiveness of MRP 2.0; and, ensuring that the requirements contained in MRP 2.0 provide a clear path to compliance. This process generated many new ideas and approaches that build upon experience gained and identify how to expand upon and enhance our stormwater pollution prevention efforts. It also advocated consolidating or eliminating "less beneficial tasks" in the permit extending implementation dates, reducing reporting, and adjusting ongoing tasks to reduce effort while maintaining effectiveness in protecting water quality. Despite the extensive effort, few of these ideas were carried forward into MRP 2.0.	Many of the Permittees' ideas and suggestions were incorporated into the administrative draft MRP, the tentative order for the MRP, and many of the Permittees' comments influenced revisions of the tentative order for the MRP.	Many revisions have occurred due to the Permittees' comments

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League of CA Cities	1	General	Cities differ in availability of funding	We urge you to take into careful consideration the concerns that you are receiving from cities regarding MRP 2.0. Any Water Board policy changes should recognize the inherent differences between cities and regions in California and should also take into consideration the funding, or lack thereof, for the implementation of such practices.	See discussion of economic issues in Fact Sheet section IV. We have carefully considered all comments, including considerations of costs as they relate to controls to reduce the discharge of pollutants to the MEP. We acknowledge the permit requirements will cost more than current efforts. We have considered specific data and cost calculations and the value of the outcomes that outweigh the costs. It is not infeasible to pay for additional efforts, and the costs may be offset by grant funds or collaborating with other Permittees. The cost of meeting MEP in the manner proposed by the TO is less than other alternatives (e.g. treatment on every outfall).	Many revisions of the tentative order were in this general vein
Burlingame	3	General	Timelines and Funding	Burlingame fully supports the Water Board's efforts to protect Bay, but is concerned about the burden on its staff and financial resources brought about by the compliance schedule and requirements in this permit. While each permit provision outlines necessary work to improve our region's stormwater quality, the time necessary to meet the requirements of all provisions may affect a City's ability to carry out its goal of serving its residents and business owners. In addition, in order to carry out some provision requirements, additional funding will be required. This could involve requesting funds in fiscal year budgets or obtaining funds through outside sources, which takes time (several months to years) that the City does not feel is considered within the various timelines presented in the Permit. The City respectfully asks that the Water Board carefully consider the requests made in this letter as well as those of other Permittees.	Comment noted. We understand that the requirements of the entire MRP taken together will require considerable effort on the part of Permittees, and may require the Permittees to secure additional resources and funding to implement.	None
Daly City	1	General	Comments	Daly City's comments reflect the importance of developing	Comment noted	None

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San Bruno San Carlos San Mateo	1 1 1		Overview	requirements that are flexible, practical and cost effective in meeting the challenges of water quality protection in our creeks and Bay. Our intent in these comments is to contribute toward a continued constructive dialog that will result in additional permit revisions that provide a clear and feasible pathway for Daly City and all other Permittees to attain compliance. Our letter focuses on our highest priority areas of local concerns, Provision C.3 New Development and Redevelopment; C.IO Trash Load Reduction and C.II/12 Mercury and PCB Controls.		
Heying	1	General	Alameda Lagoons subject to T.O.	I would like to present from my laptop computer showing photographic evidence of environmental damage to San Francisco Bay apparently caused by discharges from the "finger" lagoons on Alameda Island. ... My findings point to a potentially catastrophic ecological threat to the waterfowl and marine habitat in San Leandro Bay stemming from apparent chemical-laden discharges from Alameda's finger lagoons. ... I consider Alameda's finger lagoons to be integral to the City's storm sewer system, either as a "catch basin" or as a "man-made channel" as defined in the MS4 regulation. These lagoons are therefore subject to the pending regulation the same as a storm drain or any other element of our stormwater system.	The finger lagoons are receiving waters of the State, and are also components of the Alameda storm drainage system. Any materials added to the lagoons to control algae or aquatic vegetation must comply with State regulation.	None
ACCWP	32	General	Compliance Dates	We suggest that any time schedules and submittal dates in the drafts or Tentative Order should be established with a specific and stated projected adoption date in mind, and then if the adoption slips beyond that date or happens at an earlier date, all time schedules and submittal dates would be adjusted accordingly. Another alternative would be to do as the Water Board often does in Site Cleanup Orders by setting deadlines and submittal dates within a certain number of months after permit adoption, rather than specifying actual calendar dates. Then the reasonableness of the deadline can be effectively assessed.	We have endeavored to do this in the revised tentative order.	Dates have been revised to reflect expected adoption date

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ACCWP	33	General	Some requirements not applicable to flood control districts	There are a number of requirements for "Permittees" that are not applicable to flood control districts. Change to "population-based Permittees" where applicable.	The permit does state requirements that are not applicable non-population based Permittees. We will clarify.	None
CCWP	84	General	Suggested redline-strikeout comments	<p>While we found these meetings to be productive in working through many issues and generating new ideas to build upon lessons learned and knowledge gained during MRP 1.0, we were disappointed that too few of the many ideas put forward with sound rationale for the changes we've advocated for, were not incorporated into the draft Tentative Order. These ideas would have helped reduce the administrative burdens on Permittees and prioritize and focus our limited resources on those actions that will maximize improvements to water quality. We urge you to seriously reconsider incorporating the Permittees ideas about reducing cost burdens into the revised MRP 2.0.</p> <p>Our comments are structured to provide general high level comments within this letter and specific detailed comments in Attachment 1. Additional attachments provide supporting details to the comments in Attachment 1. In addition we have provided and reference herein a separate submittal of a red-line of editorial comments directly to your staff to assist them in completing a final edit and polish of the Tentative Order.</p>	We have considered and responded to all formal comments of the Contra Costa Clean Water Program	None
CCWP	1	General	Address Funding Limitations	It is important to recognize that these new and expanded initiatives will take significantly more resources. Permittees do not currently have these resources and developing new funding sources and mechanisms is extremely challenging. CCCWP invites the Regional Water Board to be a partner to help change the state constitution and law that would allow stormwater to be treated the same as water and wastewater utilities relative to raising stormwater fees.	We agree that stormwater should be treated the same as other utilities for the purposes of obtaining fee based funding under state law. Our agency supports this approach to the extent that we are able.	None

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CCWP	2	General	Grant Funding	In the absence of dedicated funding for the stormwater program, stormwater programs have relied upon grants from state and federal agencies. CCCWP appreciates the Regional Water Board's support in securing these past grants and welcomes the continued collaboration to secure grants for on-going and MRP 2.0 initiatives. In particular, support and advocacy for green infrastructure projects – specifically to include these costs into transportation project funding – will be critical to getting the state and regional transportation agencies to include these features as allowable cost and budget items.	Comment noted. We will continue to support worthy green infrastructure projects.	None
CCWP	3	General	Funding Uncertainty	Without new funding sources or maintaining a cost neutral program, Permittees will be asked to draw compliance resources from general funds or other program funds. For instance, green infrastructure planning and implementation costs are likely to come from local agency transportation budgets. Projects will cost more and as a result fewer projects will be built and maintenance will be deferred longer. This is an unintended consequence that the Permittees want to avoid. The Regional Water Board must acknowledge its role in this effort to adequately fund stormwater compliance programs and work collaboratively with Permittees to secure dedicated funding via changes in legislation and opportunistic grants. The Regional Water Board must also acknowledge the inherent uncertainty in these efforts, and the fact that four previous attempts to amend the constitution to allow for stormwater to be funded the same way water and wastewater utilities are funded have failed.	We acknowledge Permittees have funding challenges. See response to ACCWP Legal #7.	None
CCWP	14	General	Extend Deadlines	The draft Order contains many requirements for implementation and/or reporting within the first 12 months after the proposed permit effective date of December 1, 2015. It must be understood and acknowledged in MRP 2.0 that December 1, 2015 falls in the middle of Fiscal Year 2015/16. Municipal budgets, which were adopted in spring 2015, are already established. The financial resources needed to implement many	Most of the significant deadlines in the MRP are for 2017 or later. In addition, many implementation deadlines have been adjusted to conform with fiscal year deadlines, rather than beginning in the middle of a fiscal year. Because Permit requirements are typically similar to those in the Previous Permit, and	Various, as described in the response. See the responses to comments on

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				of the new requirements will not be available. All effective dates for new provisions with substantial financial and staffing resources must be delayed to provide time to be included in FY 2016/17 budgets, which will be adopted in spring 2016, and to provide the time necessary for countywide and/or regional planning and coordination for each requirement. Action desired: Delay identified deadlines at least one year from the July 1, 2016 deadline to allow for budgeting in spring 2016, and additional time necessary for countywide and/or regional collaboration and coordination.	existing structures (e.g., reporting databases, inspection forms, etc.) are already in place to address those requirements, we have not proposed to delay every effective date by a year. However, see the responses to comments on individual provisions for more-detailed information regarding specific requested implementation deadline changes.	individual provisions for specific deadline changes.
CCWP	15	General	Use of the term "certify"	The use of the term "certify" for various provisions throughout the draft MRP 2.0, particularly for various provisions requiring annual reporting, is redundant (e.g., C.3.h.v.(4), C.6.e.iii.(1), C.10.f.iii) . The entire Annual Report must be certified, and requiring certification of each specific provisions within the permit will create additional unnecessary work and confusion. Action desired: Find and delete these unnecessary and redundant requirements to "certify" compliance with specific provisions.	We do not consider these requirements redundant, and include them for extra emphasis where needed.	None
SMCWPPP	0	General	Highest priorities	Please note that SMCWPPP's highest priority areas of concern are Provisions C.3 (New Development and Redevelopment, especially the Green Infrastructure provision), C.10 (Trash Load Reduction), and C.11/12 (Mercury and PCBs Controls).	Comment noted	None
SMCWPPP SCVURPPP San Jose	79 12 16	General	Permit effective date and reporting	The proposed effective date in the Tentative Order is December 1, 2015. This creates a situation in which the 2016 Annual Report (for FY 2015/16) will cover the end of the current permit and the beginning of the new permit. Regional Water Board staff has indicated that it will work with the Permittees on an Annual Report format that addresses this transition. However, changes to data collection and tracking methods in certain provisions will be difficult to implement in the middle of the fiscal year. Change the effective date for these and other new provisions related to data collection and tracking to July 1, 2016, so that Permittees	We have adjusted some provision reporting requirements so that they become effective July 1, 2016. See the responses to comments on individual provisions for more-detailed information regarding specific changes.	We have adjusted some provision reporting requirements so that they are not required until after July 1, 2016.

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				have time to adjust data collection, tracking and reporting methods, and so that the data collected within a given fiscal year will be consistent.		
SCVURPPP	2	General	Issues remain/resolve unintended consequences	Based on many discussions held between Program, Co-permittee, and Water Board staff between summer of 2013 and the release of the MRP 2.0 Administrative Draft in spring 2015, we understood that in MRP 2.0 Water Board staff hoped to address the unintended consequences realized during the implementation of the current MRP, provide a necessary balance between flexibility and enforceability, and acknowledge the uncertainties and limited control that Co-Permittees have with regard to the effectiveness and the pace at which pollutant reductions are realized. However, because we believed that significant issues remained in the language included in the Administrative Draft, we provided substantial technical comments to the Water Board in March 2015 in collaboration with other Phase I stormwater programs.	Comment noted	None
SCVURPPP	3	General	Some comments from administrative draft not addressed	Our review of the Tentative Order indicates that Water Board staff has made some modifications and improvements relative to the Administrative Draft in terms of the above-stated priorities. We particularly appreciate that staff has made significant changes to the trash section to incorporate clearer processes by which compliance with load reduction goals will be evaluated. However, our previous concerns regarding other Permit provisions (especially those addressing mercury and PCB-specific programs) have not yet been adequately addressed.	Comment noted.	None
SCVURPPP	11	General	Overview of requested revisions	The Tentative Order still includes many requirements that need further refinement prior to adoption. The requested revisions included in our comments are pragmatic improvements that will create a more feasible permit that focuses limited available municipal stormwater permitting resources on tasks that are most cost- effective in terms of increased water quality benefits. In addition, the recommended revisions provide Co- Permittees	We have considered the comments and, where appropriate, made revisions. The permit, as revised, provides challenging, but achievable requirements. For example, the PCBs load reductions in the permit are based on what Permittees achieved in the last permit. Moreover, the Fact Sheet gives	Many revisions of the MRP have been made due to the Permittees' comments.

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				with a clearer path towards compliance that while protecting and improving water quality avoid the risk of inappropriate subjective compliance evaluations and have the potential to minimize unnecessary third-party law suits that do nothing to improve stormwater quality.	examples of the many source controls, treatment controls and pollution prevention measures that Permittees may employ to achieve compliance.	
BASMAA	1	General	Prioritize	Grant funding is uncertain and will likely be lower during MRP 2.0 than the current term. Prop 218 limits Permittees' ability to create and run efficient and sustainable programs. Thus, MRP 2.0 should prioritize those issues of most importance for water quality by reducing requirements for medium and low priority items.	We acknowledge funding challenges and considered them to the extent allowed by federal law and regulations in setting priorities and permit requirements.	None
BASMAA	3	General	Remove provisions and streamline	Recommended Revisions: •As agreed at the Steering Committee, the Draft MRP should be reviewed to identify for potential removal provisions that likely have little effect on stormwater quality. •Streamline requirements for lower priority pollutants of concern and expand associated implementation schedules to allow Permittees to focus on trash, the highest priority water quality concern at this time.	The permit requirements must address all impacting pollutants. We have streamlined all requirements and have already removed provisions that would have little effect on stormwater quality.	None
BASMAA	15	General	Administrative draft comments incorporated by reference	In addition to the comments above, we attach and incorporate by reference the comments we provided on the Administrative Draft MRP on March 9, 2015; March 16, 2015; and March 27, 2015.	Previously submitted comments were considered in the development of the draft Tentative Order.	None
Mountain View	28	General	Requirements are burdensome, need more time	Implementation of stormwater pollution programs and actions, and construction of stormwater pollution controls (GI and trash controls, in particular) will have a significant burden on City resources. Revisions to the Municipal Regional Permit that allow necessary time for strategic planning over this permit term and looking ahead to future permits are critical to successful implementation.	The permit builds upon the last permit and does set forth realistic timeframes.	None
Palo Alto	2	General	Compliance Challenges	The City of Palo Alto believes that the Green Infrastructure, mercury and PCB requirements proposed in the Tentative Order	We disagree as there is reasonable certainty that a Permittee will be found in compliance by	None

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				present significant compliance challenges for the City and create a high degree of uncertainty in determining whether we will be deemed in compliance with the permit. (specific comments followed)	undertaking various straightforward actions identified in the provisions. See response to SCVURPPP comment 11 above.	
East Palo Alto	2	General	Prioritize	The City of East Palo Alto is currently understaffed to ensure full NPDES compliance and the existing funding structure is inadequate to address the required actions. More clear direction should be provided to lead Permittees toward successful implementation of targeted objectives. As Matt Fabry of the Bay Area Stormwater Agencies Association (BASMAA) indicated in oral testimony at the Water Board hearing on July 8, 2015, all permit provisions should be ordered by prioritization, to ensure all Permittees shall focus efforts on those most critical areas that represent the highest likelihood of providing the most substantial water quality improvement. Other provisions, while important, require more time to develop mature plans that can be used to target these pollutants for successful outcomes, efficiently, not trial-and-error approaches.	We understand that Permittees will in many cases need to develop new resources to implement aspects of the permit requirements. The permit contains flexibility within which the Permittees can exercise prioritized approaches to obtaining water quality improvement.	None
East Palo Alto	3	General	Trash should be highest priority	Trash Load Reduction should be the Water Board's highest priority. Addressing the reduction of trash has been studied and the City better understands the capital improvement needs for fully capturing these constituents; East Palo Alto is likely to meet these stringent reduction goals.	We agree.	None
East Palo Alto	5	General	Cannot achieve full compliance	East Palo Alto is unlikely to achieve full compliance to key provisions. Following SMCWPPP's notice as a template, the areas where the City of East Palo Alto is most likely to fall short of being able to meet provisions are included below.	We hope the Permittee is incorrect in this estimation. The compliance determination is years away for many of the Permit aspects, and much work lies ahead.	None
Berkeley Hayward	30 2	General	Reporting is confusing	Reporting on 2 permits in one Annual Report is difficult and confusing. Many permit requirements are based on implementing requirements on a July 1 through June 30 implementation schedule. If a new permit with revised annual requirements becomes effective after July 1, it's not clear what portion of, if any, of those annual requirements needed to be	See response to SMCWPPP #79. We have adjusted some provision reporting requirements so that they become effective July 1, 2016. See the responses to comments on individual provisions for more-detailed	We have adjusted some provision reporting requirements so that they

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				implemented during the less than one year period of the old and new permit. To avoid this problem, make the effective date of the new permit July 1, 2016. The schedule for completion dates could take into account the Permit adoption date as Permit adoption provides certainty.	information regarding specific changes.	become effective July 1, 2016.
Contra Costa Co.	26	General	Meet with Water Board staff	The County encourages Water Board staff to continue meet with Permittees to refine MRP 2.0 to meet our mutual goals to improve water quality within a time and financial framework that is feasible. We look forward to meeting with your staff to resolve of the remaining issues and to implementing MRP 2.0.	Comment noted.	None
Clayton	4	General	Reporting	Various reports/ studies submittals should be filed with the Annual Report submittal, not at separate times.	We have asked for those submittals separately for timing purposes, in some cases at the Permittees' request. In general, submittals are requested with the Annual Reports.	None
Clayton	5	General	Reporting through web	A Water Board hosted web based (cloud) annual report format and upload would allow for efficiencies in submittal and review, entering the digital age similar to other state agency departments that require annual report submittals by cities.	We agree that a web based reporting system would be preferable. We currently request that Permittees submit their reports digitally to our web based storage site, which is substantially similar.	None
Clayton	6	General	Reporting	We appreciate that the special project reports are done annually as part of the Annual Report submittal and not separate. This streamlined approach should be used for the other various report submittals that are currently identified in the MRP 2.0 proposed language to occur at different times.	We have asked for a few separate submittals, in cases where there is benefit or need for submitting them separate from the Annual Report	None
Concord	4	General	Reporting	As issuance of MRP 2.0 is anticipated mid-year, where Permittees are under MRP 1.0 until the effective date of MRP 2.0, we are requesting clarity on the annual reporting requirements for the year ending June 30, 2016. We are requesting that one reporting framework be prepared and approved by the Board prior to issuance of MRP 2.0 so the Permittees can focus their efforts on appropriate actions.	We have adjusted some provision reporting requirements so that they become effective July 1, 2016. See the responses to comments on individual provisions for more-detailed information regarding specific changes.	Adjusted some reporting requirements so that they become effective July 1, 2016.

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Danville	10	General	Too much reporting	Additionally, reporting requirements should be significantly reduced. Currently too many staff resources are utilized to generate large amounts of detailed data that do not appear to be utilized by the RWQCB each year. Perhaps a working group can sit down with Board staff to provide a more productive reporting method.	The reporting that is requested is all information used by staff to make compliance assessments.	None
Danville	21	General	Reporting	Annual Reporting is extremely time consuming now and would be even more onerous if we were required to report on two separate permits. Regardless of when the MRP 2.0 is adopted, the City requests that the annual reporting requirement not be split between two different permits.	We have adjusted some provision reporting requirements so that they become effective July 1, 2016. See the responses to comments on individual provisions for more-detailed information regarding specific changes.	Adjust some reporting requirements to become effective July 1, 2016.
Emeryville	2	General	Too much reporting	The completion of the Annual Report is a very time-consuming activity; we in Emeryville estimate that up to 30% of the staff time we have for stormwater pollution prevention is spent on reporting rather than implementation, even before the proposed requirement for visual assessments is taken into account. We ask that reporting requirements be extensively streamlined to include the key information needed for program review. Data that are not reviewed by Water Board staff and data that are duplicative from one section of the report to another should be removed from the reporting requirement, thus allowing significantly more time for Permittees to work on actually reducing the pollutant load into receiving waters.	The reporting that is requested is all information used by staff to make compliance assessments.	None
Emeryville	3	General	Reporting is burdensome	The current reporting requirement, for a single permit in a reporting period, is already extremely burdensome. If Permittees need to also report on the new permit, with new requirements, metrics, and reporting responsibilities in the same reporting period, the time required to prepare the reports may realistically take more than half of staff's annual time available for the implementation of the program. Permittees should not be required to report on two permits in one reporting period. We recommend that the new permit have an implementation date of	We have adjusted some provision reporting requirements so that they become effective July 1, 2016. See the responses to comments on individual provisions for more-detailed information regarding specific changes.	We have adjusted some provision reporting requirements so that they become effective July 1, 2016.

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				July 1, 2016 to avoid this problem. Alternatively, Permittees could be asked to report only on the permit that is in effect for the majority of the reporting period.		
Livermore	1	General	Unfunded Mandates	The City believes many of these requirements, C.3 j. "Green Infrastructure Planning and Implementation and the C.10 Trash Load Reduction", in particular, may be challenged as unfunded mandates.	These requirements stem from federal Clean Water Act regulatory drivers, and are not unfunded state mandate. See responses to SCVURPPP legal comments on unfunded mandates.	None
Oakland	20	General	Reporting	We recommend that the RWQCB staff initiate a workgroup with Permittees to identify opportunities to eliminate unnecessary reporting.	We agree.	None
SCVURPPP Legal	1	General	Incorporation of Fact Sheet into Permit Inappropriate	Notwithstanding the feedback presented above concerning the Draft Permit, the Santa Clara Program and its members take issue with several aspects of the Fact Sheet. Among other things, they specifically object to having the reissued MRP incorporate the Fact Sheet by reference rather than to merely refer to the Fact Sheet's availability and existence. Incorporation of the Fact Sheet is, in fact, legally inappropriate – under the NPDES regulations, a fact sheet is only supposed to “accompany” a draft permit and set forth facts and describe questions considered in preparing it; it is not supposed to piecemeal the permit and contain what amounts to additional findings or requirements themselves. See 40 C.F.R. §§ 124.6, 124.8.	The Fact Sheet, pursuant to the regulations (40 C.F.R. § 124.8), contains the basis for the draft permit's conditions, or findings. The Board is within its legal rights to not only attach the Fact Sheet into the permit, but also to incorporate it into the permit in order to make the findings required by law to support its action. (See <i>Topanga Assn for a Scenic Community v. County of Los Angeles</i> (1974) 11 Cal. 3d 506). Just because the federal regulations state that the Fact Sheet must accompany the permit (the case here) does not prohibit the Board from also incorporating it to avoid repeating the Fact Sheet's contents in the permit, which would make the already lengthy permit unnecessarily repetitive and unwieldy. For the foregoing reasons, most NPDES permits statewide incorporate the Fact Sheet.	None
SCVURPPP Legal	2	General	Unfunded Mandate	The legal basis for the City's unfunded mandate objection, including an analysis of why many of the provisions included in the City's technical comments go beyond the requirements	Permittees have mounted numerous claims that the draft MRP (and the previous permit) includes requirements that are unfunded	None

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				<p>of the federal CWA.</p> <p>The Fact Sheet's lengthy discussion of State Mandates, which appears to merely repeat the State Water Board's conclusory litigation advocacy position on these issues, goes well beyond the scope of 40 C.F.R. §§ 124.6, 124.8 and should be deleted. This is particularly the case in light of the California Supreme Court's impending decision in <i>Department of Finance, et al. v. Commission on State Mandates/County of Los Angeles, et al.</i>, Case No. S214855, which will clarify, among other things, that jurisdiction to determine what aspects of the Draft Permit constitute unfunded state mandates properly rests with the Commission on State Mandates and not with the State's Water Boards.</p> <p>In addition (and even if the California Supreme Court's decision is otherwise), in its recent final rule defining the "Waters of the United States," U.S. EPA has expressly <i>excluded</i> from the reach of the jurisdictional boundaries of the Clean Water Act (and, hence, the NPDES permitting program) numerous areas that are subject to requirements in the T.O., including, among others, pools and erosion and other control features constructed on land in order to convey, treat, or store stormwater. 80 Fed. Reg. 37054, 37096-37101 (June 29, 2015). Therefore, to the extent the reissued MRP imposes requirements that reach to such now- clearly excluded non-jurisdictional areas and features, such requirements arise from state rather than federal law and are subject to subvention under the State's unfunded mandates initiative, as well as to the need for analysis under Water Code Section 13241/13243 and the California Environmental Quality Act (CEQA).</p>	<p>state mandates requiring a subvention of funds to local governments for the cost of these requirements. The Board strongly disagrees, as set forth in the Fact Sheet. It is a significant factual and legal issue that is required by the federal regulations to be in the Fact Sheet (40 C.F.R. § 122.48(a)) and is as brief as the subject matter allows. In addition, the Board is within its full discretion to make those findings it deems appropriate to support its action. The pendency of the California Supreme Court case in which the Los Angeles Regional Water Board's storm water permit has been challenged as an unfunded mandate does not change this. It is unclear what the "numerous areas" are that the commenter is asserting are non-jurisdictional waters of the U.S. Storm water treatment systems have always been excluded from the definition of waters of the U.S. and the new but stayed EPA rule does not alter this. The Board has never and does not now regard them as waters of the U.S. The basis for regulating the Permittees' municipal storm water sewer systems is because they discharge pollutants into waters of the U.S. The draft MRP's requirements flow from federal law, not state law, and as such, require no subvention of funds, analysis under Water Code section 13241/13243 or CEQA. (<i>City of Rancho Cucamonga v Regional Water Quality Control Board, Santa Ana Region</i> (2006) 135 Cal.App. 1377; <i>County of Los Angeles v.</i></p>	

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					<i>California State Water Resources Control Board (2006) 143 Cal.App.4th 985).</i>	
San Jose Legal	1	General	Insufficient Evidence in the Record Demonstrating That Provisions Are Practicable or Necessary to Protect Water Quality	We do not believe that the record demonstrates that many of the provisions identified in the City's technical comments meet either the "nexus" requirement that is required under the Porter-Cologne Act (Cal. Water Code §§13241 and 13263) or the maximum extent practicable ("MEP") standard, which is the applicable statutory standard governing the substance of permits regulating municipal stormwater discharges under the Clean Water Act ("CWA"). Many of the provisions referenced in the City's technical comments are deficient under these standards. Of special concern are provisions that are costly or will increase workload or with no demonstrable water quality benefit, such as Provisions C.2 and C.3.	There is no "nexus" requirement in the cited sections of the Porter-Cologne Act. Section 13263 of the Act states WDRs "shall implement any relevant water quality control plans that have been adopted, and shall take into consideration the beneficial uses to be protected, the water quality objectives reasonably required for that purpose, other waste discharges, the need to prevent nuisance, and the provisions of Section 13241." (Cal. Wat. Code § 13263(a).) The draft permit does in fact implement the Basin Plan, takes into consideration the beneficial uses to be protected and the water quality objectives necessary to protect such uses. Section 13241 of the Act is relevant when establishing water quality objectives or when the Board issues CWA permits that are more stringent than federal law, which is not the case here. The MEP standard does require considerations of practicability, but it is unclear which specific requirements the commenter is asserting are neither practicable nor necessary to protect water quality. With respect to Provisions C.2 and C.3, they are both practicable and necessary to protect water quality. The Provision C.2 requirements reflect controls and management practices that are currently implemented by Permittees and are carried over from the previous permit with minor revisions that account for implementation	None

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					<p>practicability with no cost consequences. The Provision C.3 requirements also reflect controls and management practices that are currently implemented by Permittees and are carried over from the previous permit. The new C.3 requirements to develop and implement green infrastructure plans allow Permittees to self-determine controls with water quality benefit that are practicable.</p>	
San Jose Legal	2& 3	General	Provisions Are Too Specific in the Manner of Performance; Unfunded mandate	<p>The Porter-Cologne Act specifically prohibits the Board from specifying the "design, location, type of construction, or particular manner in which compliance may be had" Cal. Water Code §13360. Most of the provisions in the Tentative Order violate this prohibition by prescribing, sometimes in minute detail, how the City should conduct municipal operations or operate local programs, or even what ordinances must be adopted by the City Council. The overly prescriptive nature of the provisions related to exempted and conditionally exempted and provisions which do not sufficiently allow for Adaptive Management discharges [Provisions C.3, C.5, C.6, C.9 and C.15].</p> <p>The basis for City's unfunded mandate objection is in Mr. Falk's comments.</p>	<p>This argument, like many the City makes, has been rejected in court. As the Court of Appeal found, the CWA provides the storm water permitting agency with discretion to decide what practices, techniques, methods and other provisions are appropriate and necessary to control the discharges of pollutants and federal law preempts Water Code § 13360. (<i>City of Rancho Cucamonga v. Regional Water Quality Control Board, Santa Ana Region</i> (2006) 135 Cal.App.4th 1377.)</p> <p>On the unfunded mandate comment, please see responses to SCVURPPP Legal #2.</p>	None
San Jose Legal	4	General	Water Board Failed to Sufficiently Consider Economic Impacts	<p>For the provisions in the Tentative Order that go beyond requirements of the federal CWA, the Water Board is required to conduct an analysis of economic impacts and burdens pursuant to sections 13241 and 13263 of the Porter-Cologne Act. See <i>City of Burbank v. State Water Resources Control Board</i>, 35 Cal. 4th 613 (2005). Although the Fact Sheet (Attachment A to the Tentative Order) purports to contain an economic analysis, the studies cited are over 10 years old and do not address the requirements</p>	<p>We have revised the Fact Sheet to clarify the Board's obligation with respect to considering economics. In short, since the draft permit is not more stringent than federal law, economic considerations under Water Code § 13241 do not apply. Notwithstanding this, and because cost is a consideration under the MEP standard applicable to storm water controls (although no cost-benefit analysis is</p>	None

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				of this Tentative Order. Moreover, the Fact Sheet contains no analysis of the extent to which the programs included in those studies, which are primarily Southern California based, are comparable to the requirements in this Tentative Order. As indicated in more detail in the City's technical comments, specific provisions that are of particular economic concern to San Jose include: Provisions C.3, C.10, C.11 and C.12.	required) and antidegradation policies, the Fact Sheet sets forth information the Board has and the information presented to it related to costs.	
San Jose Legal	5	General	Tentative Order Subject to CEQA	The California Environmental Quality Act (CEQA) applies to permits issued by the Water Board to the extent the permit contains provisions that are not required under the federal CWA. <i>City of Arcadia v. State Board</i> , 135 Cal. App.4th 1392 (2006). The Tentative Order requirements exceed the CWA Mandates as Mr. Falk aptly stated. The need for a CEQA analysis is particularly relevant for provisions which specify the manner in which the Permittees can and cannot construct public improvements and those which require the Permittees to implement specific public improvement projects.	This comment that CEQA compliance is required is predicated on the argument that proposed permit is more stringent than the federal CWA. Since it is not, as explained elsewhere in the response to comments and in the Fact Sheet, CEQA compliance is not required. Moreover, CEQA does not apply to NPDES permits, except for new sources. (Wat. Code § 13389; <i>County of Los Angeles v. State Water Resources Control Board</i> (2006) 143 Cal.App.4th 985, 1004-1007.)	None
San Jose Legal	6	General	Some Provisions Exceed Water Board's Statutory Authority and Impinge on Local Land Use Authority	As a state agency, the Water Board only has the regulatory authority delegated to it by statute. The scope of this delegated authority does not include jurisdiction over local land uses decisions under state or federal law. Provision C.3 of the Tentative Order contains numerous instances where the Water Board is exceeding its statutory authority, with Provision C.3.b.i being of specific concern as indicated in the City's technical comments.	The federal regulations require that municipal storm water permits include controls to reduce pollutant discharges in areas of new development and significant redevelopment. (40 CFR § 122.26(d)(iv)(A).) Provision C.3 implements this mandate and requires municipalities to limit storm water pollutant discharges from new and redevelopment projects they approve. Where the regional water boards carry out this mandate in its permits, no separation of powers issue is present. (<i>City of Rancho Cucamonga, supra</i> , 143 Cal.App.4th at p. 1003.) With respect to the C.3.b.i, we understand that vested rights may preclude	None

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					cities from revisiting previously entitled projects. As such, the provision has been changed, as noted in the response to ACCWP comment 37, to include exemptions to this requirement for previously-approved development projects with a vested right to proceed and a Permittee has no legal authority to require changes to previously granted approvals.	
San Jose Legal	7	General	Some Provisions Are Outside the Scope of the Board's Permitting Authority for the City's Storm Sewer	<p>The Water Board is also limited in this proceeding to dealing with municipal storm water discharges. There are several provisions in the Tentative Order that attempt to regulate activities simply on the basis of impact on water quality, even though there is no demonstrated connection between these activities and the Permittees' storm sewer systems, including Provisions C. 5, C. 6, C. 9 and C.12.</p> <p>Moreover, the Tentative Order exceeds its permitting authority by mandating in C.9. that the Permittees lobby EPA with respect to its authority under the Federal Insecticide, Fungicide, and Rodenticide Act.</p>	<p>We disagree, and the commenter provides no evidence or information to bear to support the assertion that there are requirements to control activities with no demonstrated connection to storm sewer systems. All requirements in the Tentative Order are associated with sources or activities that discharge pollutants to storm sewer systems.</p> <p>Regarding C.9, Tentative Order Provision C.9.a – Track and Participate in Relevant Regulatory Processes, which is a requirement carried over from the previous permit, requires Permittees to track U.S. EPA's regulatory actions that permit use of pesticides. Provision C.9. calls on Permittees to track U.S. EPA pesticide evaluation and registration activities as they relate to surface water quality, and, when necessary, encourage U.S. EPA to coordinate implementation of the Federal Insecticide, Fungicide, and Rodenticide Act and the Clean Water Act and to accommodate water quality concerns within</p>	None

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					<p>its pesticide registration process. The primary mechanism called for by the provision is for Permittees to submit, as appropriate, comment letters on U.S. EPA regulatory actions relating to pesticides of concern for water quality. Submittal of these letters has been a long-standing best management practice that the Permittees have been using to control pesticides of concern for water quality in discharges from their storm sewer system. These discharges of pesticides from storm sewer systems cause or contribute to violations of water quality standards in receiving waters.</p> <p>The Water Board recognized, when adopting the TMDL for Diazinon and Pesticide-Related Toxicity for Urban Creeks in the Region and wasteload allocations for discharges from storm sewer systems, that while Permittees can control their own use of pesticides, Permittees' authority to regulate use of pesticides by others is constrained by federal and state law. Accordingly, in lieu of implementing the wasteload allocations as numeric limits in municipal separate storm sewer permits, the TMDL implementation plan adopted by the Water Board calls for Permittees to implement best management practices for addressing the wasteload allocations, which include best management practices to affect uses of pesticides of water quality concern by businesses and the public that result in discharge of such pesticides from the Permittees' storm sewer systems.</p>	

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					Provision C.9.a implements the TMDL wasteload allocations via best management practices in lieu of numeric limits on storm sewer systems discharges in accordance with the TMDL implementation plan.	
Speakers at June 10, 2015, and July 8, 2015, hearings	n/a	Various	Various	Various	We have reviewed the transcripts for these hearings and most all of the significant oral comments made were repeated in the written comment letters submitted by the speakers or by the entities with which the speakers are affiliated. The Response to Comments responds to the speakers' significant comments. Significant oral comments made on trash and C.3 are responded to in those section of the Responses to Comments.	As set forth in other responses

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ACCWP Legal, 1	C.1 and C.14	Clarify C.1 and C.14	<p>Provision C.1 requires compliance with discharge prohibitions and receiving water limitations. This Provision provides that if exceedances of water quality standards persist in receiving waters, implementation of additional procedures is required. However, the additional procedures are not required for exceedances for water quality standards for pesticides, trash, mercury, PCBs, and bacteria that are managed pursuant to Provisions C.9 – C.14.</p> <p>While there are stand-alone provisions in the Tentative Order for pesticides, trash mercury and PCBs, none exists for bacteria. We agree with and support the intention of this approach as set forth in Provision C.1; however, we note that the bacteria control measures set forth in Provision C.14 currently relate only to the City of Pacifica and San Mateo County Fecal Indicator Bacteria Controls. The exception stated in C.1 for bacteria controls should be clarified in Provision C.14 so as to extend to all Permittees regulated by the permit that effectively implement and manage bacteria controls measures as set forth in Provision C.8.d.vi. for Pathogen Indicators.</p> <p>Recommended Action: In Provision C.1, end the second sentence immediately after “Receiving Water Limitations B.1 and B.2” which would delete the language “for the pollutants in receiving waters identified in the provisions.” In addition, include a statement in Provision C.14 that states that for all receiving waters other than San Pedro Creek and Pacific State beach described in Table 14.1, Permittees are required to comply with the monitoring and follow-up requirements set forth in Provision C.8.d.vi.</p>	See responses to SCVURPPP Legal Comment No.4 pertaining to C.1 and SCVURPPP Legal Comment No. 5 pertaining to C.14.	
ACCWP Legal, 2	C.1	Quote State Board Order for Alternative Compliance Pathway	The State Water Board recently has adopted Order No.WQ 2015-0075. In that Order, the State Board directed that upon issuance/reissuance of Phase I MS4 stormwater permits, the regional boards should consider an alternative compliance approach for receiving water limitation compliance as described in the Order. There is no reference to this Order in Provision C.1 or the findings of the Tentative Order. The only partial reference to alternative compliance pathways considerations is in the Fact	<p>We agree that the Order should reference State Water Board Order WQ 2015-0075 and consideration of its alternative compliance approach principles and their applicability to Provisions C.9 – C.12 and C.14.</p> <p>See response to SCVURRP Legal Comment No. 4 as to why an alternative compliance path does not apply to copper (C.13).</p>	Revise Fact Sheet for Provision C.1 to account for State Water Board Order WQ 2015-0075 and

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			<p>Sheet pp. A-22, but reference is not specifically made to the Order. This is not sufficient.</p> <p>The Provision C.1 alternative compliance relationship to Prohibition A.2 and Receiving Water Limitations B.1 & B.2 that relates to alternative compliance needs to be clarified and strengthened. It is critical to Permittees that they not face the threat of resource-draining enforcement/litigation because the only reference in the permit adoption process is not specifically contained in the findings or provisions of the permit itself, but is only a partial reference in the Fact Sheet.</p> <p>Recommended Action: Finding 11 should be supplemented to acknowledge the precedent of this State Board Order, and expressly state that that, consistent with guiding principles of the State Order, Provisions C.1 and C.9-14 are intended to provide the co- Permittees with an alternative compliance pathway relative to Discharge Prohibition A.2 and Receiving Water Limitations B.1 & B.2 with respect to pesticides, trash, mercury, polychlorinated biphenyls, copper and bacteria.</p>		consideration of its alternative compliance approach principles.
SCVURPPP Legal, 3	C.1. Finding 11	Quote State Board Order for Alternative Compliance Pathway	<p>To avoid ambiguity that could result in years of unnecessary resource-draining litigation through the courts similar to that previously experienced in Southern California, the T.O.'s Finding 11 needs to be further clarified with respect to the relationship between Draft Permit Provisions A.2, B.1-B.2, and C.1. More specifically, Finding 11 should be expanded or supplemented to recognize the State Water Board's June 16, 2015 adoption of precedent order WQ-2015-0075 concerning Receiving Water Limitations ("State RWL Order"), and it should expressly state that, consistent with guiding principles set forth in the State RWL Order, Provisions C.1 and C.9-14 are designed to provide the co-Permittees with an alternative compliance pathway relative to Receiving Water Limitations B.1 and B.2 and Discharge Prohibition A.2 with respect to pesticides, trash, mercury, polychlorinated biphenyls, copper and bacteria.</p>	See response to ACCWP Legal Comment No. 2, wherein we agree to reference State Water Board Order WQ 2015-0075 and consideration of its alternative compliance approach principles. However, it is not necessary or appropriate to revise Finding 11, which is a statement of pollutants of concern in municipal stormwater.	Revise Fact Sheet for Provision C.1 to account for State Water Board Order WQ 2015-0075 and consideration of its alternative compliance approach principles.

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SCVURPPP Legal, 4	C.1	Clarify C.1	<p>As it reinforces and clarifies this Water Board’s longstanding approach in municipal stormwater permitting relative to the management of pollutants of concern and exceedances of water quality standards and will thereby help avoid unnecessary litigation, the Santa Clara Program and its members strongly support Provision C.1’s recognition that compliance with Provisions C.9- C.14 will constitute compliance with Receiving Waters Limitations B.1 and B.2 and that compliance with Provision C.10 will further constitute compliance with Discharge Prohibition A.2. The second sentence of Provision C.1 should, however, end immediately after “Receiving Water Limitations B.1 and B.2” as the words beyond that point are unnecessary, confusing, and could give rise to resource-draining litigation. Consistent with its intent and all prior municipal stormwater permits issued by this Water Board, to further avoid unnecessary litigation, the reference in the third sentence to “Discharge Prohibition A.2” should be changed to “A.1 and A.2.” Finally, the word “copper” appears to have inadvertently omitted from the list of pollutants of concern in the last sentence of the first paragraph in Provision C.1 and should be restored there.</p>	<p>The second sentence is correct as written in the Tentative Order, except as discussed in the copper discussion below, and is necessary and not confusing. Provisions C.9-C.12 and C.14 establish requirements for specific pollutants in the specific water bodies identified in the provisions. The requirements are not applicable to discharge of the specific pollutants to other water bodies and do not provide an alternate means of compliance with Receiving Waters Limitations B.1 and B.2 for the specified or other pollutants in other water bodies. In order to make this even clearer, the second sentence has been modified to refer to “pollutants and the receiving waters” instead of “pollutants in receiving waters.”</p> <p>The commenter is correct that the third sentence should be revised to include Prohibition A.1 in addition to Prohibition A.2. Provision C.10 establishes requirements applicable to both stormwater and non-stormwater discharges of trash, and as such, the requirements should have applied to compliance with Prohibition A.1 for nonstormwater discharges of trash as well. The correction has been made.</p> <p>Copper was purposefully omitted from the list of pollutants in the last sentence of the first paragraph in Provision C.1 and should not have been referenced in the second sentence. Provision C.13, Copper Controls, establishes requirements associated with the implementation plan established in the Basin Plan for copper site-specific water quality objectives for San Francisco Bay. These copper water quality objectives are not exceeded, and,</p>	<p>Revise Provision C.1 second sentence to refer to “pollutants and the receiving waters” instead of “pollutants in receiving waters.”</p> <p>Change the reference in the third sentence to “Discharge Prohibition <u>A.1 and A.2.</u>”</p> <p>Revise Provision C.1 second sentence to refer to “pollutants and the receiving waters” instead of “pollutants in receiving waters.”</p> <p>Remove reference to copper and C.13 in the second and last</p>

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				<p>therefore, copper is not be among the pollutants for which a “safe harbor” is needed. Safe harbors are appropriate during the time rigorous actions are being planned and implemented in order to achieve a water quality standard.</p> <p>The second and last sentences have been corrected to delete references to C.13. In the unlikely event copper exceedances occur, it is necessary that controls be implemented to remedy the exceedance, which is why copper was not omitted in the last sentence.</p>	sentences of the first paragraph.
SCVURPPP Legal, 5	C.1/C.14	Clarify C.1 and C.14 apply to all receiving waters	<p>So as to avoid unnecessary and resource-draining litigation and more fully effectuate the alternative compliance pathway set forth in Provision C.1 for water quality standard exceedances involving bacteria, Provision C.14 needs to be clarified to define the co-Permittees’ compliance obligations relative to receiving waters other than San Pedro Creek and Pacifica State Beach. This could be accomplished by addition of a new subprovision in C.14 that delineates such “For Other Receiving Waters” bacteria-related requirements. Alternatively, since Provision C.8.d.vi. already delineates detailed requirements for investigating pathogen (including Enterococci and E. coli) contamination in local creeks and areas where water- contact recreation is likely, allocates responsibility for addressing such requirements among co-Permittees, and defines a quantitative performance criteria to trigger follow up action under C.8.e, the same result might more easily be accomplished through the addition of a very short additional statement in the opening paragraph of Provision C.14 which speaks to the co-Permittees’ responsibilities for other receiving waters and then just provides a summary cross-reference to Provision C.8.d.vi.</p>	<p>Provision C.14 does not apply to other Permittees and receiving waters. It clearly states that the City of Pacifica and San Mateo County—not other Permittees—shall implement Provision C.14 for fecal indicator bacteria in order to implement the San Pedro Creek and Pacifica State Beach TMDL and wasteload allocations for the City of Pacifica and San Mateo County. There is no ambiguity. The Provision C.14 requirements call for implementation of control measures that are relevant to the City and County’s cause and contribution to exceedances of fecal indicator bacteria water quality objectives in San Pedro Creek and Pacifica State Beach waters. These control measures may or may not be relevant to discharges of fecal indicator bacteria to other water bodies. Also, Provision C.14 establishes monitoring requirements that are only applicable to San Pedro Creek and Pacifica State Beach waters and discharges from the City and County to these water bodies. Receiving Water Limitation A.1 and Provision C.8 are applicable to other receiving waters. To clarify this, the words “identified therein” have been</p>	Add “identified therein” to the second sentence in C.1

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				added to the second sentence in C.1 in reference to Permittees and the Provisions. Expansion of C.14 requirements to cover all Permittees and other receiving waters would require information and analysis that are not readily available.	
Baykeeper, 1	C.1	Safe Harbor Language	Baykeeper is concerned with the addition of the “safe harbor” language in section C.1 of the Draft MRP, which is inconsistent with core requirements of the federal Clean Water Act (“CWA”) requiring that an NPDES permit ensure compliance with the terms included in the permit. (See 33 U.S.C. § 1342(a).) In particular, whereas the present permit requires strict compliance with the narrative and numeric receiving water standards covered by Receiving Water Limitations B.1 and B.2 and Discharge Prohibition A.2, the Draft MRP would effectively eliminate these standards for pollutants covered by sections C.9 through C.14, instead requiring only implementation of the programmatic elements required pursuant to those provisions. Because the ultimate effluent quality permitted for discharge under this permit may contain more pollutants than currently permitted, these provisions are less stringent than the effluent limitations contained in the prior permit, thereby requiring analysis under the anti-backsliding provision of the federal Clean Water Act. (33 U.S.C. § 1342(o)(1); see 40 C.F.R. § 122.44(l)(1).)	<p>The “safe harbor” language in section C.1 is not inconsistent with CWA § 1342(a), under which permit conditions must be prescribed to assure compliance with applicable requirements of the CWA. The draft MRP does exactly that. It is also consistent with State Water Board Order WQ 2015-0075, which calls for allowance of alternative approaches to compliance with Receiving Water Limitations.</p> <p>Anti-backsliding provisions do not apply in all circumstances and are subject to certain exceptions. In MRP 1.0, the Board retained discretion to enforce compliance with the receiving water limitations at any time. The current draft MRP requires compliance with receiving water limitations, but explicitly allows compliance with the requirements in Provisions C.9 through C.12 and C.14 to constitute compliance for those pollutants and water bodies addressed therein, and reserves direct enforcement of the receiving water limitations to situations where a permittee fails to comply with a requirement in C.9 through C.12 and C.14. The approaches under the prior and proposed permit are designed to achieve the same results—compliance with receiving water limitations—but through distinct paths and that are not easily comparable for purposes of the specific, technical anti-backsliding requirements laid out in</p>	Revise the Fact Sheet to better explain the Board’s findings on anti-backsliding.

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				<p>federal law.</p> <p>The statutory anti-backsliding requirements of CWA § 402(o)(1) through (3) do not apply here because the receiving water limitations are imposed under CWA section 402(p)(3)(B) rather than based on best professional judgment, or based on section 301(b)(1)(C) or section 303(d) or (e) of the CWA. Regulatory history suggests that U.S. EPA's intent was to establish the anti-backsliding regulations with respect to evolving technology standards for traditional point sources. (See, e.g., 44 Fed. Reg. 32854, 32864 (June 7, 1979).) Even if the regulatory anti-backsliding requirements applied, an exception to backsliding based on new information applies here. (See 40 CFR § 122.44(l) and § 122.44(l)(2)(i)(B)(1).) Provisions C.9 to C.14 were informed by new information available to the Board from experience and knowledge gained through implementation of actions required by the previous permit and results of source identification studies and control measure effectiveness studies.</p> <p>We strongly disagree that the draft MRP will authorize more pollutants than the existing permit. Implementation of the required actions will lead to <i>fewer</i> pollutants into waters of the U.S., not more.</p> <p>In response to this comment, we have revised the Fact Sheet to better explain the Board's findings on anti-backsliding.</p>	
Baykeeper, 2	C.1	Compliance Schedules	The Draft MRP references "compliance schedules" contained in permit sections C.9 through C.14, but is unclear exactly what the basis and scope of these compliance schedules are. If the Draft	CWA § 402(p)(3)(B)(iii) does not require municipal storm water discharges to strictly comply with water quality standards, but NPDES permitting authorities	None

Response to Comments on May 11, 2015 Tentative Order
Provision C.1. – Compliance with Discharge Prohibitions and Receiving Water Limitations

Commenter, Comment #	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
			<p>MRP proposes to incorporate “schedules of compliance” pursuant to 40 C.F.R. §122.47, it is unclear why any of the pollutants covered by sections C.9 through C.14 should qualify for such a schedule of compliance. The Draft MRP does not propose any new receiving water limitations or discharge prohibitions for any of these pollutants, all of which are presently covered by the existing permit, and none of which are presently subject to any compliance schedules that we are aware of.</p> <p>Lastly, we note specific concerns with the pollutants referenced in this new provision, which are discussed more fully in separate sections of this comment. For example, the language in Section C.1 appears to refer to water quality standards for bacteria relevant to all Permittees, but Section C.14 only contains control measures for the City of Pacifica and San Mateo County.</p>	<p>have the authority and discretion “to determine that ensuring strict compliance with state water quality standards is necessary to control pollutants.” (<i>Defenders of Wildlife v. Browner</i> (9th Cir. 1999) 191 F.3d 1159, 1166.) Pursuant to State Water Board precedents (State Water Board Orders WQ 98-1 and WQ 99-05), the Board has required compliance with water quality standards, but required less than strict compliance. (See State Water Board Order WQ 2015-0075.) The draft MRP sets forth concrete milestones and deadlines (compliance schedules) to achieve receiving water limitations for those pollutants and waters identified in Provisions C.9 to C.12 and C.14. Requiring such milestones and deadlines is within the Board’s discretion to require strict compliance with water quality standards. The deadlines are as soon as possible in light of the municipalities’ challenges to immediate compliance. Moreover, the mercury, PCBs and bacteria deadlines are, as required by the federal regulations (40 CFR § 122.44(d)(1)(vii)(B)), consistent with the assumptions and requirements of the wasteload allocations of the relevant TMDL.</p> <p>With respect to bacteria, the control measures of C.14 and any “safe harbor” afforded under C.1 applies only to the City of Pacifica and San Mateo County.</p>	
Baykeeper, 35	C.1	Delete Safe Harbor Language	<p>Receiving Water Limitations are included in NDPES permits to ensure that discharges do not cause to water quality impacts, if technology-based standards are insufficient to protect beneficial uses. Section C.1 states that if a Permittee complies with the mercury controls in Section C.11, the Permittee will be deemed in compliance with Receiving Water Limitations. Yet, to reiterate, the</p>	<p>Provision C.1 is consistent with and implements State Water Board Order WQ 2015-0075 which calls for allowance of alternative approaches to compliance with Receiving Water Limitations and consideration of its alternative compliance approach principles. Order WQ 2015-0075 states MS4 permits</p>	<p>Revise Fact Sheet for Provision C.1 to account for State Water Board Order</p>

**Response to Comments on May 11, 2015 Tentative Order
Provision C.1. – Compliance with Discharge Prohibitions and Receiving Water Limitations**

Commenter, Comment #	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
			<p>actual control measures to regulate mercury discharges have not been developed or shown to be effective at protecting water quality. Therefore, Section C.1 takes away any safeguard that Permittees will be held liable for mercury discharges that contribute to water quality exceedances if control measures prove to be ineffective. The Regional Board should revise the Draft MRP to delete the portion of Section C.1 that grants Permittees a safe harbor from violating Receiving Water Limitations, so as to ensure that receiving waters are protected.</p>	<p>should incorporate TMDL requirements and a rigorous alternative compliance path, such as C.1 and the C.11 mercury controls and C.12 PCBs controls, that allows Permittees appropriate time to come into compliance with TMDL requirements and receiving water limitations without being in violation of the receiving water limitations during full implementation of the compliance alternative.</p> <p>Development and implementation of controls for certain pollutants, such as mercury, is challenging. The most effective controls for mercury are green infrastructure systems and Provision C.12 provides time to develop and implement them.</p>	<p>WQ 2015-0075 and consideration of its alternative compliance approach principles.</p>
<p>Baykeeper, 41</p>	<p>C.1.</p>	<p>Delete Safe Harbor Language</p>	<p>The MRP should not grant a safe harbor for violations of Receiving Water Limitations to Permittees even if they are in compliance with Section C.12.</p>	<p>See response to Baykeeper Comment No. 35.</p>	

**Response to Comments on May 11, 2015, Tentative Order
Provision C.2. – Municipal Operations**

Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
Pittsburg	1	C.2.d.	Pump Stations	Monitoring of pump station has found DO of receiving eutrophic waterbody to be consistently below 3 mg/L. Discharge from the City's pump does not contribute to low DO in receiving water. Open channel prior to pump is already included in the City's creek maintenance program and is covered with a Fish and Wildlife permit for regular maintenance. Exempt City from continuing to monitor for DO.	40 CFR 122.26(d)(2)(l)(f) requires Permittees to carry out all inspection, surveillance, and monitoring procedures necessary to determine compliance and noncompliance with permit conditions, including the prohibition on illicit discharges to the municipal separate storm sewer. Therefore, the pump stations, which collect and discharge from the storm drain systems, cannot contribute discharges with dissolved oxygen (DO) level below 3 mg/L. This could exacerbate the problem in the receiving water. Because pump station monitoring and reporting under the Previous Permit shows that completion of corrective actions (i.e., BMPs) prior to the pumps, in combination with using the pumps to discharge collected water, as opposed to simply allowing it to overflow, aerates the water to a DO level of at least 3 mg/L, this Permit removes the specific requirements for the monitoring of DO at pump stations and allows the Permittees greater flexibility to ensure that all water discharged from pumps stations is at least 3 mg/l.	None.

**Response to Comments on May 11, 2015, Tentative Order
Provision C.2. – Municipal Operations**

Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
SCVURPPP	13	C.2.d.ii.	Pump Stations	Issue: Although the Tentative Order does not include the explicit requirements for monitoring pump station discharges in the current permit, it maintained and strengthened the language regarding dissolved oxygen in discharges. There is no way to know whether the discharges are above 3 mg/L “at all times” without continuous monitoring, which is far more burdensome than the previous language. Requested Revision: Remove specific language regarding the 3 mg/L dissolved oxygen trigger. Alternatively, revise language to read “Upon becoming aware that a pump station discharge dissolved oxygen concentration is below 3.0 mg/L, implement corrective actions such as... and confirm with follow-up testing to verify effectiveness”.	Low DO in pump stations discharges can be problematic during the dry season, as discussed in the Fact Sheet. Data collected by the Permittees under the Previous Permit consistently showed that implementation of corrective actions prior to discharging from the pumps increased the DO of the discharge above 3 mg/L. With that information, this Permit includes language intended to ensure that appropriate BMPs are implemented to control and reduce the discharge of low DO water, and that eliminates the prescriptive monitoring requirements. As stated above, 40 CFR 122.26(d)(2)(l)(f) requires Permittees to carry out all inspection, surveillance, and monitoring procedures necessary to determine compliance and noncompliance with permit conditions, including the prohibition on illicit discharges to the municipal separate storm sewer. The requirements in this Permit were not intended to be more burdensome than in the Previous Permit.	Revisions have been made to the Revised Tentative Order and Fact Sheet to reflect Water Board’s staff intent and the commenter’s requested revision.
San Jose	17	C.2.d.ii.(1)	Pump Stations	Meeting the 3 mg/L dissolved oxygen level without continuous monitoring is more burdensome than the language in MRP 1. Remove language or revise language to read “Upon becoming aware that a pump station discharge dissolved oxygen concentration is below 3.0 mg/L, implement corrective actions such as...and confirm with follow up testing to verify effectiveness.”		

**Response to Comments on May 11, 2015, Tentative Order
Provision C.2. – Municipal Operations**

Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
San Jose	1	C.2.d.ii.(1)	Pump Stations	It is expensive and requires intensive work to ensure that pump station discharges meet dissolved oxygen level requirement "at all times." Delete provision.		
Baykeeper	3	C.2.f.ii.(2)	Corp Yard Inspection	Require permittees to complete a pre-rainy season Yard inspection between August 1 and August 15, rather than during September, since the rainy season may begin earlier than October 1 and any deficiencies need time to be corrected.	Permittees are required to routinely inspect their Corporation Yards and to ensure they are appropriately maintained and managed to prevent and minimize the discharge of pollutants. While it is possible to get early rains, completing a pre-rainy season inspection in September likely maximizes the degree to which corporation yards will be clean going into the rainy season. Further, the Permit requires corrective actions to be implemented before the next rain event, but no longer than 10 business days after the potential and/or actual discharges are discovered. A September inspection provides sufficient time for implementation of corrective actions.	None.

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Provision C.2. – Municipal Operations**

Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
CCCWP	16a	C.2.f.iii.	Corp Yard Inspection	Pre-rainy season inspections with data collection and reporting are unnecessary because SWPPPs have routine inspections. Eliminate inspection reporting requirements because this is a less beneficial task.	Water Board staff found violations associated with actual and/or potential discharges of pollutants at all corporation yards staff inspected under the MRP, even though their SWPPPs stipulated “routine” inspections, usually by lead staff in each area of the corporation yard. The reporting requirement is necessary to ensure that the Permittees’ corporation yards are appropriately inspected and corrective actions are taken, so that the yards are not sources of pollutants beyond the MEP standard. Completing a pre-rainy season inspection and appropriate corrective action before the rainy season begins is a simple way to minimize permit violations leading to discharges of pollutants. Some Permittees have lead staff in each area of the corporation yard who conduct “routine” inspections, but the annual inspection is conducted by the Permittees’ experienced Industrial and Commercial Site Inspectors, providing a fresh pair of eyes to look at the corporation yards.	None.

**Response to Comments on May 11, 2015, Tentative Order
Provision C.2. – Municipal Operations**

Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
Clayton Concord Danville El Cerrito Hercules Martinez Moraga Oakley Orinda Pinole Pleasant Hill San Pablo San Ramon	32 15 9 11, 21 12 18 9 9 12 8 11 11 18	C.2.f.ii.(2)	Eliminate Corp Yard Inspection	Eliminate Corp Yard Inspection since it duplicates requirements in SWPPP. Redundancy divert limited staff resources from more pressing clean water mandates.	As noted above, this requirement for routine inspections, and, at a minimum, one pre-rainy season inspection, is an appropriate approach to minimize pollutant discharges.	None.
ACCWP CCCWP	34 16d	C.2.f.ii.(2)	Allow 30 days to Implement Corrective Actions	Timeframe to implement corrective actions at corp yards should be 30 days.	The MRP requires industrial, commercial, and construction sites to implement corrective actions in a timely manner, with the goal of correcting them before the next rain event, but no longer than 10 business days after the violations are discovered. It is unclear why the Permittees are requesting more time across the board to implement corrective actions. Prolonging the time to implement corrective actions may result in non-stormwater discharges with the potential to impact water quality, and observed, or ongoing, discharges must cease immediately. The Permit already allows Permittees, and all other sites inspected, to have more time to implement permanent corrective	None.

**Response to Comments on May 11, 2015, Tentative Order
Provision C.2. – Municipal Operations**

Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
					actions if they involve significant resources and/or construction time. Short-term corrective actions would still be needed in the interim in such cases.	
CCCWP	16b	C.2.f.ii.(2)	Inspect according to SWPPP	Change Implementation Level language to require inspections “according to the Corporation Yard SWPPP.”	MRP 1.0 required site-specific SWPPPs for corporation yards to be completed by July 1, 2010. Corporation yards are now supposed to be implementing the site-specific SWPPP. However, Water Board staff’s experience is that Corporation Yard SWPPPs are not necessarily site-specific nor do they meet MRP requirements. Based on the SWPPPs reviewed and inspections conducted at corporation yards by Water Board and U.S. EPA staff (one inspection in each of the four big counties), only one SWPPP was site-specific: the City of Santa Clara’s. The remainder of the SWPPPs were generic templates and were neither site-specific nor complete.	None.
CCCWP	16c	C.2.f.ii.(2)	Delete inspection before rainy season	Delete “At a minimum, each corporation yard shall be fully inspected each year between September 1 and September 30.”	A pre-rainy season inspection is a common-sense action for Permittees to ensure that their own facilities appropriately minimize discharges of pollutants. As noted above, Water Board staff found potential and actual discharges of pollutants at all corporation yards	None.

**Response to Comments on May 11, 2015, Tentative Order
Provision C.2. – Municipal Operations**

Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
					inspected during MRP 1.0, indicating that the pre-rainy season requirement is likely to identify needed corrective actions, and ultimately to reduce discharges of pollutants to the storm drain. Some Permittees evaluated by Water Board staff have lead staff in each area of the corporation yard conduct "routine" inspections, but have the annual inspection conducted by their experienced Industrial and Commercial Site Inspectors, providing a fresh pair of eyes to look at the corporation yards before the rainy season.	
CCCWP	16e	C.2.f.iii.	Change Reporting Requirements	Request the following changes: "The Permittees shall list activities conducted in the corporation yard that have and BMPs in the site specific SWPPP, date of inspections, the results of inspections, and any follow-up actions, including the date <u>of any necessary</u> corrective actions were implemented, in their Annual Report."	It is important that the Permittees' own corporation yards are inspected and corrective actions implemented promptly so that they are not sources of pollutants. As noted above, previous inspections identified that Permittees' corporation yards must be operated in a cleaner way. Therefore, the reporting requirements are necessary at this time.	Added "of any necessary" and deleted "were."

**Response to Comments on May 11, 2015 TO
Provision C.3. – New Development and Redevelopment**

Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
BIA	1	General	Major Changes to MRP 1.0	BIA supports the proposed major changes to Board Order No. R2-2009-0074.	Comment noted.	None
ACCWP ACCWP Legal	37 3	C.3.b.i.	Regulated Projects Removal of Grandfathering	<ul style="list-style-type: none"> We do not support the proposal that would require projects not under construction to be subject to the new permit requirements. “Grandfathered” projects represent a small amount of impervious surface in the region. Private and public projects are conceived of, financed, and designed with the existing regulations in mind. Changing regulations at the point that a project is about to be constructed can prevent an otherwise environmentally beneficial project from happening. Revise this provision to provide greater flexibility. Add the following language to the end of C.3.d.iv. (Due Date for Implementation): “unless the development project has their own regional order from the Water Board. If there is an existing order that is still valid, the project shall follow the guidelines of that order.” 	<ul style="list-style-type: none"> Board staff acknowledges that in certain situations, a Permittee may not have legal authority to retroactively change the conditions of approval for development projects previously approved without requiring stormwater treatment. Board staff also acknowledges that some of these previously approved projects may not be able to install LID treatment because of site constraints. However, Permittees have not provided any specific information on the number of development projects impacted. Therefore, a reporting requirement for the 2017 Annual Report has been added to gauge how many projects each Permittee has and what action, if any, has been taken to require LID stormwater treatment. It is unclear what subset of development projects the suggested language would capture. The nature of urban runoff pollution is that it is comprised of many small contributions that, together, are significant. Grandfathered projects will ultimately be constructed of the same kinds of materials and will tend to generate the same kinds of urban runoff pollutants as similar, non-grandfathered projects. Incorporating clean water controls into those projects will contribute to reductions in urban runoff impacts to receiving waters. That is true even if 	<ul style="list-style-type: none"> The TO has been revised to include appropriate exemptions to this Provision. For previously-approved development projects meeting the criteria for these exemptions, some Permittees will not be required to revise and update their development permits to include stormwater treatment and in other cases will be required to include non-LID treatment. A reporting requirement has been added for Permittees to report on any development projects captured by this Provision.

**Response to Comments on May 11, 2015 TO
Provision C.3. – New Development and Redevelopment**

Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
					<p>those development projects represent a small amount of the region's impervious surface. The concept that they may constitute a vanishingly small or insignificant contribution of pollutants, however, has not been supported by appropriately-detailed information submitted by the Permittees.</p> <ul style="list-style-type: none"> • The Permit language has been revised to better identify situations in which it may be feasible for Permittees to incorporate such controls into development projects. 	
<p>ACCWP ACCWP Legal Belmont Brisbane Burlingame East Palo Alto San Bruno San Mateo SCVURPPP SMCWPPP</p>	<p>37 3 3 3 4 6 4 4 14, 95 7</p>	C.3.b.i.	Regulated Projects Removal of Grandfathering	<ul style="list-style-type: none"> • Permittees do not have the legal authority to impose new requirements on projects with approved entitlements or development agreements will face non-compliance with this requirement. • Only a small number of projects and a small percentage of impervious surfaces created/replaced in the region would be subject to this requirement. • It may be difficult for a project to change its site design and layout to accommodate LID treatment measures required by C.3.c and C.3.d. • Delete this requirement as it would have minimal water quality benefit and would likely lead to legal battles with developers. • If the requirement remains, then 	<p>See response to ACCWP 37, above.</p>	<p>See response to ACCWP 37 above.</p>

**Response to Comments on May 11, 2015 TO
Provision C.3. – New Development and Redevelopment**

Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
				<p>at a minimum include language to allow flexibility in implementation (for example, "provide treatment to the extent feasible" and allow use of media filters) for projects that have prior tentative map approvals or development agreements.</p> <ul style="list-style-type: none"> • One compromise is to allow the use of non-LID treatment at these projects, which would be easier to incorporate into an approved site design, but this does not address the legal issue. 		
BIA	2	C.3.b.i.	Regulated Projects Removal of Grandfathering	BIA opposes grandfathering of development projects approved prior to C.3. stormwater treatment requirements.	Comment noted.	None
CCCWP Clayton Concord Danville El Cerrito Hercules Martinez Moraga Oakley Orinda Pleasant Hill Pinole San Pablo San Ramon	18 33 16 16 22 13 19 10 3, 10a 13 3, 12 9 12 19	C.3.b.i.	Regulated Projects Removal of Grandfathering	Allow municipalities the flexibility to require such applicants to implement stormwater treatment requirements only to the extent not in conflict with state law and existing development agreements.	See response to ACCWP 37, above.	See response to ACCWP 37, above.
Concord Contra Costa Co	9 2	C.3.b.i.	Regulated Projects	<ul style="list-style-type: none"> • Permittees have no legal authority or mechanism to 	See response to ACCWP 37, above.	See response to ACCWP 37, above.

**Response to Comments on May 11, 2015 TO
Provision C.3. – New Development and Redevelopment**

Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
Daly City Livermore	4 2		Removal of Grandfathering	<p>impose additional requirements on projects with approved vested tentative maps and would not be able to legally comply with this provision.</p> <ul style="list-style-type: none"> • It is more appropriate to focus resource compliance on projects that come before our planning process after MRP 2.0 adoption. • It would take State legislation to create this authority; it is unlikely that such legislation would be approved by the Legislature and signed by the Governor. • This “sunset” of grandfathered projects poses potential serious legal ramifications for entitled projects with conditions of approval which are preserved under various tentative maps. • This requirement would only apply to a significantly small number of projects that will have minimal impact upon water quality and stream channel stability, while creating many legal issues and potential litigation. • Daly City acknowledges that the approval of a final map or parcel map does not confer a vested right to develop, but references Gov’t Code § 66474.2 for the proposition that approval or conditional approval of a vesting 		

**Response to Comments on May 11, 2015 TO
Provision C.3. – New Development and Redevelopment**

Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
				<p>tentative map shall confer a vested right to proceed with develop in substantial compliance with the ordinances, policies, and standards in effect at the time the vesting tentative map is approved or conditionally approved.</p> <ul style="list-style-type: none"> Daly City also refers to Government Code section 66498.1 for the proposition that a vesting tentative map expressly confers a vested right to proceed with a development in substantial compliance with the ordinances, policies, and standards in effect the time the application is deemed complete. 		
El Cerrito	13	C.3.b.i.	Regulated Projects Removal of Grandfathering	<ul style="list-style-type: none"> Removal of grandfathering may adversely affect much-needed development projects that were in stasis during the economic downturn, such as Eden Senior Affordable Housing, 1715 Elm Residential Development, and Creekside Walk. 	<ul style="list-style-type: none"> Projects that were in stasis during the economic downturn of 2008-09 should have been approved with stormwater treatment in compliance with Provision C.3.d. under the MS4 permit issued before the current MRP (specifically for Contra Costa County Permittees, Board Order No. 99-058, as amended by Board Order Nos. R2-2003-0022, R2-2004-059, R2-2004-0061, and R2-2006-0050). Provision C.3.b.i.(1) specifically exempts such projects from the LID requirements of Provision C.3.c. Therefore, projects that were approved with stormwater treatment measures in compliance with Provision C.3.d. may proceed as approved. 	None
San Jose	2, 18	C.3.b.i.	Regulated	<ul style="list-style-type: none"> Applying new LID requirements 	See response to ACCWP 37, above.	See response to

**Response to Comments on May 11, 2015 TO
Provision C.3. – New Development and Redevelopment**

Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
			Projects Removal of Grandfathering	<p>to un-built or longer-term phased projects already approved under previous permit conditions is not possible. Approved building permits are ministerial acts which grant entitlements to the developer and restrict the City's ability to impose any new requirements from that point forward.</p> <ul style="list-style-type: none"> • The phrase "has not begun construction" is ambiguous. The requirement must align with the City's legal ability to impose changes in the project design. • Additional unfavorable impacts on the City include: <ul style="list-style-type: none"> ○ Cost of potential litigation brought by a developer that has received a building permit for a phase of development, that has effectively effectuated the project.' ○ Significant cost to developers to retrofit projects; and ○ Time, cost, and training to implement a new process to ensure appropriate measures are in place per the grandfathering cause. • Delete this requirement. 	<p>In addition, Board staff concurs that some amount of staff time would be required to ensure appropriate incorporation of controls into project designs that lack them. We note that all Permittees are now implementing Provision C.3 requirements to incorporate such controls, and often are funding this work via permit/review fees. Given the revised Permit language, we believe the additional time and effort needed are reasonable.</p>	ACCWP 37, above.
San Jose	19	C.3.b.i.	Regulated Projects Joint Stormwater Treatment	<ul style="list-style-type: none"> • This Provision requires that a joint stormwater treatment facility be built by completion of construction of the first Regulated Project. 	<ul style="list-style-type: none"> • Each Regulated Project may build its own treatment system. There is no requirement for a Regulated Project to build a joint stormwater treatment facility. Stormwater cannot be allowed to 	None

**Response to Comments on May 11, 2015 TO
Provision C.3. – New Development and Redevelopment**

Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
			Facility	<ul style="list-style-type: none"> This is tremendously difficult because a stormwater treatment facility that covers more than one Regulated Project requires funding from all Projects and it is difficult to ask the first Regulated Project to cover the capital costs for a treatment system that will serve several Projects. Allow final construction of any facility that serves two or more Projects to be three years after the first Regulated Project is completed and allow the Regulated Projects that are completed prior to completion of the stormwater treatment to use temporary treatment facilities or a temporary connection to the stormwater system. 	<p>discharge from any Regulated Project untreated; therefore, if it is treated jointly, the joint treatment system must be operational when the first Regulated Project is finished.</p> <ul style="list-style-type: none"> The intent of building joint stormwater treatment facilities is for two or more Regulated Projects to share the cost and the treatment capabilities of the joint stormwater treatment system. Building and discharging to a joint treatment system is optional. It is reasonable to expect that all Regulated Projects discharging stormwater runoff to a joint treatment system will share the capital costs for the treatment system. How much each Regulated Project pays (i.e., whether the first completed Regulated Project pays more) should be worked out amongst all the Regulated Projects. There are situations where a development project incurs costs in advance of project completion, and those costs can be significant (e.g., impact fees to construct schools, fire stations, roads, etc., in advance of project construction or prior to completion of construction). Thus, project proponents should have existing models for incurring these kinds of expenses. 	
Baykeeper	4	C.3.b.ii.	Regulated Project Threshold for Regulation	<ul style="list-style-type: none"> The current threshold of 10,000 ft² effectively ensures only the largest of new and redevelopment projects, or those projects outside the central urban core of the Bay Area, to be subject to 	<ul style="list-style-type: none"> Provision C.3.b.ii.(1) identifies Special Land Use Categories that represent land use types that may contribute more-polluted stormwater runoff and requires stormwater treatment for all such Regulated Projects that create and/or replace 5,000 ft² of more of impervious 	None

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Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
				<p>stormwater management controls.</p> <ul style="list-style-type: none"> • Moreover, the 10,000 ft² threshold does not meet the requirement that MS4 NPDES permits include controls to reduce the discharge of pollutants to the “maximum extent practicable” (“MEP”) (33 U.S.C. § 1342(p)(3)(B)(iii)). The proposed threshold is twice that of San Francisco’s standard under their Stormwater Management Ordinance, which has proven, since passage of the Ordinance in 2010, that a lower threshold standard is feasible in even the most urban areas of Region 2. • In addition, the TO incorporates a 5,000 ft² threshold for “Special Land use Categories,” indicating that the Water Board has determined that a lower threshold is feasible. 	<p>area.</p> <ul style="list-style-type: none"> • The regulatory threshold for all other development projects is 10,000 ft² or more of impervious surface. • The inclusion of two regulatory thresholds in the TO is consistent with all other Phase I MS4 Permits in the State. The delineation of which size threshold (5,000 ft² or 10,000 ft²) applies to which categories of Regulated Projects is unique to each MS4 Permit statewide. • Board staff considered expanding the 5,000 ft² threshold to apply to all Regulated Projects as well as regulating road rehabilitation projects in existing footprints. However, in lieu of that, the TO requires each Permittee to develop a Green Infrastructure Plan (see Provision C.3.j.), which, through its evaluation of opportunities and constraints, will direct future green infrastructure implementation consistent with the MEP standard. • The Green Infrastructure Plan will serve as an implementation guide and reporting tool to provide reasonable assurance that urban runoff TMDL wasteload allocations will be met and that Permittees will transition, over time, from “gray” to “green” infrastructure. • The TO provides regulatory consistency with other Phase I MS4 Permits in the State and directs Permittees to proceed with green infrastructure planning and implementation; therefore, the TO satisfies the MEP standard. • Board staff is aware of the City of San 	

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Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
					Francisco's work, and recognizes that its ordinance was prepared with multiple goals in mind, including urban greening and reduced discharge of storm water runoff into a combined sewer system, and is funded significantly by fees from the City's combined sewer system, a type of funding source generally unavailable to the Permittees. As such, it was prepared to be responsive to requirements other than a municipal MS4 NPDES permit, and is not necessarily representative of a specific MEP threshold for an MS4 permit.	
ACCWP	35	C.3.b.ii.	Regulated Project Categories	We support the Tentative Order's (TO's) retention of the existing thresholds of impervious surface for Regulated Projects (i.e., 10,000ft ² and 5,000ft ² for certain project categories).	Comment noted.	None
Dublin	2	C.3.b.ii.(1)(a)(iv)	Regulated Projects Uncovered Parking Lots	<ul style="list-style-type: none"> As written, it is unclear if a project which otherwise would not qualify as a Regulated Project includes a parking lot that replaces/creates more than 5,000ft² of parking lot, is just the parking lot surface created/replaced subject to C.3.c and C.3.d requirements, or would the entire project site would be considered subject to C.3.c and C.3.d requirements. Revise to specify that only the impervious surface area(s) of uncovered parking lot created and/or replaced are subject to the requirements of Provisions 	<ul style="list-style-type: none"> If a development project creates and/or replaces 5,000 ft² or more of impervious surface on an uncovered parking lot, but the entire project (e.g., tiny building with a 5,000 ft² parking lot) creates and/or replaces less than 10,000 ft² of impervious surface, then only the uncovered parking lot's stormwater runoff must be treated with LID treatment in compliance with Provision C.3.c. and d. The current language in this Provision already adequately captures such a scenario as described. Furthermore, such a scenario would be very rare; therefore, no change to the language is warranted. 	None

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				C.3.c and C.3.d.		
ACCWP	36	C.3.b.ii.(1)(c)	Regulated Projects 50% Rule	<ul style="list-style-type: none"> • This Provision requires projects where 50% or more of existing impervious area is redeveloped to provide treatment for the entire area. • Most of the redevelopment projects result in a reduction in the overall amount of impervious surface and have other environmental benefits as well. • The 50% rule acts as a disincentive to do these environmentally beneficial infill projects because it is often very challenging to install measures to treat runoff from areas not being modified by the Regulated Project. • Delete this provision. 	<ul style="list-style-type: none"> • The purpose of the 50% rule is to require stormwater treatment for projects where a substantial amount of impervious surface is being replaced and the overall redevelopment investment is significant enough to warrant completing treatment for the entire project. It is a means to address the pollutant loading from existing development and impervious surfaces when these sites are being redeveloped. Use of the 50% rule in this Provision is consistent with the Permittees' current stormwater permits and stormwater permits statewide; therefore it is considered MEP. • In situations where the site conditions render the treatment of existing impervious areas challenging or cost-prohibitive, Provision C.3.e. provides an alternative means to comply with Provision C.3.b. • Water Board staff recognizes that redevelopment infill projects are a means for using land in existing urban areas (e.g., redeveloping old commercial or industrial sites as higher-density commercial, residential, or multi-use projects), and thus accommodating additional development within the Bay Area. While they may be less-impacting than lower-density projects on the suburban or exurban fringe, infill projects are still impacting, in that they generate urban runoff pollutants over the life of the project. Additionally, it is unclear that construction of an infill project 	None

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					<p>necessarily precludes or avoids construction of suburban or exurban projects, or results in the removal of existing low-density suburban or exurban development, which would more clearly show an environmental benefit.</p> <ul style="list-style-type: none"> If constructed with appropriate clean water measures, infill and infill redevelopment projects have the opportunity to be environmentally beneficial with respect to their urban runoff water quality, and the proposed Permit requirements address that opportunity. 	
CCCWP Clayton Concord Danville El Cerrito Hercules Martinez Moraga Oakley Orinda Pinole Pleasant Hill San Pablo San Ramon	20 35 18 18 24 15 21 12 10c 15 11 14 14 21	C.3.b.ii.(1)(c)	Regulated Projects 50% Rule	<ul style="list-style-type: none"> This Provision pre-dates the LID requirements. With new design requirements promoting the use of LID facilities distributed throughout a development site, rather than building one large detention basin to serve the entire site, this requirement can require applicants to retrofit areas, including plazas and buildings with underground drainage pipes, that are otherwise left untouched by additional development on the same site. Water Board staff has stated the purpose of the 50% rule is to promote retrofit of existing development, an objective which is now addressed by the new Provision C.3.j. Delete this requirement as the intent is superseded by the 	<ul style="list-style-type: none"> As stated in the Fact Sheet, green infrastructure requirements are in lieu of expanding the Regulated Projects road projects category to include reconstruction of roads. They are not in lieu of the 50% rule. The purpose of the 50% rule is to require stormwater treatment for projects where a substantial amount of impervious surface is being replaced. It is a means to address the pollutant loading from existing development and impervious surfaces when these sites are being redeveloped. Use of the 50% rule in this Provision is consistent with the Permittees' current stormwater permits and stormwater permits statewide; and is considered MEP. In situations where the site conditions render the treatment of existing impervious areas challenging or cost-prohibitive, Provision C.3.e. provides alternative means of compliance with 	None

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				green infrastructure requirements in Provision C.3.j.	Provision C.3.b.	
Clayton Concord Danville El Cerrito Hercules Martinez Moraga Oakley Orinda Pinole Pleasant Hill San Pablo San Ramon	34 17 17 23 14 20 11 10b 14 10 4, 13 13 13	C.3.b.ii.(4)	Regulated Projects Road Projects	<ul style="list-style-type: none"> This Provision retains the applicability of Provision C.3. treatment requirements to certain road improvement projects, even though Provision C.3.j sets forth a comprehensive long-term approach to achieving the retrofit of streets and drainage systems with green infrastructure. Delete this requirement that categorizes new road and lane addition projects as Regulated Projects because the intent is superseded by the green infrastructure requirements in Provision C.3.j. 	As stated in the Fact Sheet, green infrastructure requirements are in lieu of expanding the Regulated Projects' road projects category to include reconstruction of roads and not in lieu of new roads or new additional lanes added to existing roads. Additionally, the Green Infrastructure Plan requirements during the coming permit term are significantly planning requirements, as opposed to on-the-ground implementation requirements that will result in the construction of road urban runoff treatment controls during the coming permit term. While it is likely that Green Infrastructure Plan minimum requirements will be informed by the proposed Permit's road language, that will be worked out as part of the process set forth in Provision C.3.j.	None
Oakland	16	C.3.b.iii.	Regulated Projects Reporting Requirements	<ul style="list-style-type: none"> The amount of information required in the annual reports has grown substantially. Preparation of these reports requires City staff to devote approximately 2,000 hours per year to maintain, collect, and assemble the data necessary for reporting. Streamline reporting requirements and require reporting every other year. Reporting on specific design elements for each C.3 project. Reporting requirements should be changed to require City to 	<p>The data collection and reporting requirements for Regulated Projects are identical to what is required under the current Permit. Therefore, the databases developed and established under the current Permit remain valid. The required Provision C.3.b. Reporting Table should be easily generated from these existing databases.</p> <p>Water Board staff review of projects during the Previous Permit identified Permittees that had shortcomings in their project review and BMP implementation processes. A blanket certification that projects are C.3 compliant does not have</p>	None

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				certify that all new development is C.3-compliant.	the level of detail/granularity to serve as an appropriate compliance check.	
Belmont Burlingame Brisbane San Jose San Mateo SCVURPPP SMCWPPP	4 5 5 20 5 15 8	C.3.c.i.(2)(b)	LID Site Design Pervious Pavement Design Specifications	<ul style="list-style-type: none"> • Permittees are required to collectively develop and adopt design specifications for pervious pavement systems, subject to Executive Officer (EO) approval. • The process for compliance with this Provision is unclear (i.e., whether and what type of submittal is required, and by when). The requirement places an undue new level of work on the Permittees, and a potential new level of uncertainty because of the need for EO approval, without any factual basis in the fact sheet to support the increased effort. • Allow Permittees to reference a regional or countywide pervious paving specification in their Annual Reports (including a web link to the document) that meets the intent of this Provision. • In addition, the definition of pervious pavement systems should be expanded to include grid pavements (e.g., turf block or plastic grid systems). • This requirement duplicates work that already exists for SMCWPPP. There is no indication that existing specifications are insufficient or 	<ul style="list-style-type: none"> • Design specifications are necessary because improperly designed and engineered pervious pavement systems may cause flooding and the discharge of insufficiently-treated stormwater runoff. • This Provision requires the Permittees to collectively develop and adopt design specifications for pervious pavement systems, subject to the Executive Officer's approval. However, Board staff acknowledges that design specifications developed by the Permittees may already exist and are currently being used at development sites with no problems. • In addition, this represents an opportunity to incorporate, as appropriate, improvements in knowledge, such as an expected upcoming American Society of Civil Engineers design standard for the construction of pervious pavement using unit pavers. • Appropriate changes have been made in the Provision to acknowledge these existing design specifications. • The pervious pavement definition has been expanded as requested. 	<ul style="list-style-type: none"> • This Provision has been revised to allow Permittees to reference pervious pavement design specifications previously developed by countywide programs and adopted into countywide stormwater handbooks. • The definition of pervious pavement has been expanded to include grid pavers.

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				<p>ineffective.</p> <ul style="list-style-type: none"> San Jose requests deletion of this requirement. 		
Contech	1, 2,	C.3.c.i.(2)(c)	Bioretention versus Biofiltration	<ul style="list-style-type: none"> Distinguish between bioretention designs that retain the design storm and biofiltration, which employs underdrains and releases a portion of the design storm. The failure to distinguish between true bioretention designs with no underdrain, and biofiltration designs that release water downstream makes this tentative order inconsistent with other contemporary Phase I NPDES permits in California Restore a BMP selection hierarchy that prioritizes BMPs that retain the design storm (rainwater harvesting, infiltration and bioretention without underdrains) above those that treat and release a portion of the design storm. This assumption about biofiltration equivalency found in the tentative order is linked back to a “White Paper” on Provision C.3 in MRP 2.0 provided by BASMAA that states: “Bioretention is, on balance, equal in water quality effectiveness to harvesting/use or infiltration.” This is a patently false assumption since C.3 bioretention systems most often 	<ul style="list-style-type: none"> Comments noted. Water Board staff considered retaining in the Permit an infiltration/retention hierarchy similar to the Previous Permit, or incorporating a requirement similar to that in MS4 permits like that in the Los Angeles Regional Water Board’s Order No. R4-2012-0175. Low impact development runoff treatment practices, including bioretention, remove urban runoff pollutants through a variety of mechanisms, including mechanisms that prevent runoff from discharging directly downstream to a surface water, such as: infiltration of flows into the ground; evapotranspiration; and capture and reuse. These mechanisms can play a significant role in reducing pollutant loads in runoff (see, for example, bioretention performance studies at the International Stormwater BMP Database, www.bmpdatabase.org). Studies in the Bay Area and elsewhere have found that bioretention designs, even in clay soils expected to have fairly low infiltration rates, may infiltrate a significant portion of runoff (e.g., Contra Costa County Clean Water Program, September 15, 2013. IMP Monitoring Report). Ongoing improvements to bioretention designs, such as inverted elbows for underdrains, which maximize the time available for runoff to evapotranspire and infiltrate into the ground, are likely to continue to 	None

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				<p>do not retain the water quality event in its entirety.</p> <ul style="list-style-type: none"> • It is surprising that the tentative order would essentially double down on this untested design (bioretention) by elevating it to equal status with retention BMPs. • The stated goal of Provision C.3 “is for permittees to use their planning authority to reduce pollutant discharges and runoff flow into the storm drain system. How can we be sure that C.3 bioretention applied on virtually every priority project is actually reducing the discharge of pollutants of concern to the maximum extent practicable if no performance data is collected? • Taken together, reports demonstrate that bioretention effluent performance is highly variable and that where the water quality volume is not fully retained, biofiltration soil composition is critical, not just to maintain plant vitality and hydraulic capacity, but also to ensure significant pollutant removal performance. It also suggests that widespread implementation of sand- and compost-based systems may actually cause or contribute to nutrient impairments downstream. Rather than 	<p>improve volume reduction performance.</p> <ul style="list-style-type: none"> • At the same time, the Permit appropriately considers potential constraints, such as the significant area of clay-rich soils in the Permittees’ jurisdictions, the potential need to construct lined systems in certain limited situations, such as areas of high groundwater, immediately adjacent to structures, or on brownfield sites, and complicating factors such as the need to control potential mosquito breeding habitat. Recognizing that current bioretention designs can provide significant benefits relating to reductions in runoff flows, and that other processes (e.g., external grant awards, such as of Proposition 1 funds) may lead to further capture and reuse, Water Board staff is not proposing to incorporate an additional infiltration, retention, or reuse requirement. • Current bioretention designs are not “untested,” as suggested by the commenter. Rather, their designs and their pollutant removal mechanisms have been and continue to be the subject of significant testing and evaluation, reflected in part in the performance study summaries referenced above, by ongoing work by researchers such as Allan Davis at the University of Maryland, Rob Traver at Villanova University, Shirley Clark at Penn State University (Harrisburg), Bill Hunt at North Carolina State University, and others, and also in work completed elsewhere in California, and in the Bay Area by the Permittees and by entities 	

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				ignoring these lessons, the MRP 2.0 should be written to stimulate research that further illuminates the link between system design and performance and results in more effective BMPs.	like the San Francisco Estuary Institute. Local work includes study of performance relating to pollutants including nutrients, PCBs, and mercury. This is expected to result in continued improvement to bioretention designs consistent with the MEP standard, which is an evolving standard. • Additionally, the C.3 reporting requirements ensure that Permittees will report on implementation of LID measures in regulated projects, and that sufficient information is available for Water Board staff to ensure effective implementation.	
BIA SCVURPPP SMCWPPP	3 16 9	C.3.c.i.(2)(c)(i)	Low Impact Development Treatment	We support allowing properly-engineered and -maintained biotreatment systems to be installed without a feasibility analysis of harvesting and use, infiltration, or evapotranspiration treatment measures first.	Comment noted.	None
Contech	4, 5	C.3.c.i.(2)(ii)	Performance Standard for Flow Thru Systems Bioretention Soil Blends	<ul style="list-style-type: none"> • Ideally, MRP 2.0 would set a performance standard for flow-through treatment systems. This would stimulate research and is done in WA State. • If this clarity was provided, along with a verification process whereby performance relative to that standard could be assessed, the academic and private sectors would come alive to develop innovative solutions. This is the approach taken in some other states, notably Washington, where 	<ul style="list-style-type: none"> • Comments noted. • The Permit's bioretention performance criteria and related requirements were developed in coordination with the Permittees, U.S. EPA, and others after significant consideration of existing standards and knowledge. In comments on the proposed amendment of the Previous Permit in 2011 and again during discussions for this Permit, the Permittees indicated their intent to continue to experiment and innovate with regard to bioretention soil specs, which all acknowledge are a key aspect of effective bioretention performance. Water 	None

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				<p>specific performance targets for TSS, oil, dissolved metals, and phosphorus removal have been set and a program for the evaluation of emerging technologies has been established.</p> <ul style="list-style-type: none"> • Closer to home, a similar approach has been taken by the Sacramento Stormwater Quality Partnership, where peer-reviewed field verification of TSS removal performance is required for use of innovative stormwater treatment systems. • A simple change to the MRP would be to require that any flow-through treatment system, including any future media blends developed by the Permittees or others, be demonstrated to meet the Basic (TSS), Phosphorus, and Enhanced (dissolved Cu and Zn) performance standards set by the Washington State Department of Ecology. • Rather than allow Permittees to propose alternate bioretention soil blends, (1) set a performance target for alternative designs, (2) allow alternative system designs and alternative 5 inch/hour soil blends, and (3) allow any party to bring alternative designs for Regional Board review 	<p>Board staff anticipates the Permittees will prepare and submit a revised bioretention soil specification(s) during the coming Permit term. Review of the specification(s) will consider issues including those raised by the commenter.</p> <ul style="list-style-type: none"> • While the Regional Water Board does not currently have resources available to implement a new technology verification program equivalent or substantially similar to Washington State’s, designs implemented under the Permit have been, and will continue to be, informed by lessons learned from programs like Washington State’s, as well as ongoing research in the Bay Area, California, and elsewhere (see response to Contech 1, 2, above). We recognize that Washington State’s TAPE program, as described at https://fortress.wa.gov/ecy/publications/documents/1110010.pdf, and which includes dissolved copper and dissolved zinc in addition to other pollutants, is relatively more robust than assessment programs limited to a TSS standard. At the same time, by itself, it may not consider issues important to certain Permittees and in the Bay Area, including performance related to mercury and PCBs and performance over time. • A substantial portion of the MRP’s success is due to the cooperative relationships that have been built and maintained over time amongst Permittees and between Permittees, the Water Board, and other interested parties. Past Permittee work has been significantly informed by research and 	

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				<ul style="list-style-type: none"> As it stands now, Section C.3.c.i.2.c.ii allows the Permittees to propose alternate bioretention soil blends to Regional Board for approval. Unfortunately, this puts all the media development and testing responsibility on the shoulders of the Permittees, which would divert resources away from other important stormwater program activities. This provision should be improved in three ways. First, a performance target should be set for alternative designs. Currently, plant survivability and hydraulic capacity are the only criteria. Adopting the Ecology standards would be a good approach that is consistent with other programs. Second, alternative system designs should be allowed as well as alternative 5"/hr soil blends. As long as pollutant removal and hydraulic capacity performance standards are met, there is no reason to constrain systems to 5 inches per hour. Third, any party should be allowed to bring alternative designs forward for Regional Board review, not just permittees. 	<p>third party work both in the Bay Area and outside the Permittees' jurisdictions. The Permittees meet regularly in meetings open to the public (e.g., under BASMAA's aegis), and we urge the commenter to coordinate with the Permittees' ongoing efforts to develop revised bioretention soil specifications.</p>	
Baykeeper	5	C.3.d.i.	Hydraulic Sizing Criteria for Treatment	<ul style="list-style-type: none"> Volume- and flow-based hydraulic design standards presented in Section C.3.d.i. are presented as hydrologic and 	<ul style="list-style-type: none"> Each countywide program has adopted stormwater handbooks that serve as guidance documents for Permittees and the regulated community on the 	None

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				<p>hydraulic standards, requiring expertise to conduct site-specific calculations.</p> <ul style="list-style-type: none"> • Baykeeper’s experience is that in the absence of readily-available site-specific precipitation data, the regulated community either must hire consultants to conduct expensive analysis for generation of site-specific values, or make estimates based on information found on the internet. • To ensure adequate oversight and consistent implementation, the Water Board should prepare site-specific calculations of the 85th percentile storm runoff event, the 85th percentile hourly rainfall intensity, and information necessary to calculate the 50-year peak flow rate. 	<p>requirements contained in Provision C.3. These handbooks provide detailed guidance and example calculations for designing stormwater treatment systems that meet the volume- and flow-based hydraulic design standards of Provision C.3.d. As such, the regulated community is not required to come to each site <i>de novo</i>, but rather has straightforward existing guidance and methods that can be used for the site.</p> <ul style="list-style-type: none"> • Additionally, the countywide programs conduct regular training sessions on the Provision C.3. requirements for Permittees and the regulated community. • Countywide program managers and Water Board staff are also available to answer specific questions from Permittees and the regulated community on Provision C.3. and the other requirements in the MRP. 	
<p>Water Board June 10, 2015 Hearing Transcript Vaikko Allen, Regulatory Director Contech</p>	<p>Page 122 (Lines 10-25) Page 123 (Lines 1-2)</p>	<p>C.3.e.i.</p>	<p>Alternative Compliance Offsite Treatment or Payment of In- Lieu Fees</p>	<ul style="list-style-type: none"> • It is possible if you’re pursuing the alternative compliance path to do offsite treatment in the watershed, and you potentially have up to five years for that other project to come online and be treating water from the time that your project is completed. And that other project may also be treating water, probably will be treating water, from a different part of the watershed. What that leaves is the possibility for 	<ul style="list-style-type: none"> • Provision C.3.e.i.(1) Option 1 specifies that offsite LID treatment measures must be in the same watershed and provide hydraulically-sized treatment (in accordance with Provision C.3.d.) of an equivalent quantity of both stormwater runoff and pollutant loading and achieve a net environmental benefit. • Provision C.3.e.i.(2) Option 2 specifies that the Regulated Project must pay in-lieu fees to a Regional Project in the same watershed to provide hydraulically-sized treatment (in accordance with Provision C.3.d.) of an equivalent 	<p style="text-align: center;">None</p>

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				<p>runoff from your site, from the site in question, to be untreated and be discharged from the site really forever.</p> <ul style="list-style-type: none"> I think that there needs to be a baseline performance standard implemented for site runoff even when alternative compliance is – almost made it. Thank you. 	<p>quantity of both stormwater runoff and pollutant loading and achieve a net environmental benefit.</p> <ul style="list-style-type: none"> Provision C.3.e.i.(3) requires that any offsite or Regional Project be constructed within 3 years of the end of construction of the Regulated Project. The 3 years of additional time are allowed because more time may be required to complete construction of offsite and Regional projects because of administrative, legal, and/or construction delays. Board staff acknowledges in some instances, an even longer time may be required to complete construction of Regional Projects because they may involve a variety of public agencies and stakeholder groups and a longer planning and construction phase. Therefore, the timeline for completion of a Regional Project may be extended up to 5 years after the completion of the Regulated Project, with prior Executive Officer approval. Executive Officer approval will be granted contingent upon a demonstration of good faith efforts to implement the Regional Project, such as having funds encumbered and applying for the appropriate regulatory permits. In developing the Alternative Compliance language, staff considered the issues raised by the commenter. The options discussed above were developed in consideration of what is appropriate to require under the MEP standard (e.g., what can be accomplished given limitations such as the need to comply with local permitting processes), while 	

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					<p>ensuring it would result in a net environmental benefit. At present, there is a significant area of untreated urban landscape that discharges polluted runoff into the MS4. Thus, while Alternative Compliance can mean not treating new area, the alternative treatment of a separate existing area means that, with the Permit's requirements, there will be a net environmental benefit. At some point in the future, that may need to be changed, but there is a significant urban area available for retrofit, and will be for some time.</p>	
<p align="center">East Bay Leadership Council</p>	<p align="center">1</p>	<p align="center">C.3.e.i.</p>	<p align="center">Allow More Time for Offsite Projects</p>	<ul style="list-style-type: none"> • Being in the midst of one of the most severe droughts on record, it is an opportune time to recognize that stormwater capture and re-use may be one piece of a multi-faceted response to the increasingly complex challenge of providing sufficient water supply for the population and the environment so that the dual goals of economic vitality and quality of life remain viable and compatible. • We are concerned that, while the proposed permit identifies the importance of integrating efforts, it then forecloses the flexibility that will be necessary to actually accomplish that goal. For example, the time frame allowed for completing offsite and Regional Projects, just 	<ul style="list-style-type: none"> • Water Board staff recognizes the challenges posed by the California climate and current drought, including the need to manage water and water quality in a sustainable and resilient way, consistent with applicable regulatory requirements. • This Provision allows any Regulated Project to provide LID treatment for up to 100% of the required Provision C.3.d. stormwater runoff at an offsite location or pay equivalent in-lieu fees to provide LID treatment at a Regional Project, as long as the offsite or Regional Project is in the same watershed as the Regulated Project and constructed within 3 years of the end of construction of the Regulated Project. • The 3 years of additional time are allowed because more time may be required to complete construction of offsite and Regional projects because of administrative, legal, and/or construction 	<p align="center">None</p>

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				<p>three years, is unrealistic. Provision 3.C.3.e.i.(3). Requiring that significant offsite and Regional Projects be completed within three years of completion of the Regulated Project does not recognize the realities of designing and constructing such a project. Even with the opportunity to extend that period to five years at the discretion of the Executive Officer, the option does not give any significant project a chance to get off the ground. Any significant Regional Project intended to incorporate water supply, flood control, and groundwater recharge goals with stormwater treatment will likely take far more than three to five years to complete, given the necessary design and environmental review processes, including the always-present potential for lengthy legal challenges. If funding sources for these projects, i.e., in lieu fees, may only be available for three years, the stability of funding necessary to even initiate a truly significant Regional Project will never materialize.</p> <ul style="list-style-type: none"> • The East Bay Leadership Council urges the Regional Board to extend the time-frame for completing offsite and 	<p>delays.</p> <ul style="list-style-type: none"> • We acknowledge in some instances, an even longer time may be required to complete construction of Regional Projects because they may involve a variety of public agencies and stakeholder groups and a longer planning and construction phase. Therefore, the timeline for completion of a Regional Project may be extended up to 5 years after the completion of the Regulated Project, with prior Executive Officer approval. Executive Officer approval will be granted contingent upon a demonstration of good faith efforts to implement the Regional Project, such as having funds encumbered and applying for the appropriate regulatory permits. • There needs to be a limit on the additional time given for completion of offsite and Regional Projects because the Regulated Projects cannot be allowed to be built and discharging untreated stormwater runoff with no compensatory treatment elsewhere. That may result in significant unmitigated impacts to beneficial uses during that period. • Permit provision C.3.j, Green Infrastructure planning, sets a process that should facilitate future construction of offsite and regional projects by identifying and prioritizing project opportunities for such projects in advance. As such, the Permit includes a process intended, in part, to address the commenter's concerns. 	

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				<p>Regional Projects receiving in lieu fees to at least ten years with the opportunity to extend that period up to fifteen years at the discretion of the Executive Officer, and longer with Regional Board concurrence.</p>	<ul style="list-style-type: none"> Finally, we note that Permittees may determine to fund in advance (e.g., through their own funds, impact fees, grant awards, etc.) construction of alternative mitigation projects not otherwise connected to a particular development project or projects. As an example in a different water regulatory program, the Zone 7 Flood Control and Water District recently funded riparian enhancement in advance, with the intention of providing that as a mitigation opportunity for third-party projects obtaining creek and wetland fill permits; we understand that program has been proceeding with timelines similar to, or shorter than, what are in the Permit. Similarly, Permittees regularly require payment of impacts fees to complete improvements such as new schools and fire stations, road improvements, etc.— these can be required prior to project completion, as opposed to up to 3-5 years afterwards. As with water quality and minimizing impacts to beneficial uses, that timing recognizes that there are impacts resulting from projects that it is necessary to address sooner. Additionally, it becomes more challenging to estimate project costs the further they are in the future, increasing the uncertainty as to whether mitigation may be effectively implemented with fees collected 10-15 years ahead. One option Board staff considered was to allow significantly more time, as suggested by the commenter, but to address the intervening otherwise unmitigated 	

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					<p>environmental impacts by requiring regional projects to treat a multiple of the original untreated contributing area. For the reasons discussed above, including balancing uncertainty and funding with estimated costs, the timing, as proposed, is appropriate.</p> <ul style="list-style-type: none"> • Similarly, as a part of approving creek and wetland fill permits for large projects that have off-site mitigation components (e.g., construction or enhancement of wetlands and creeks), the Water Board has often required that the off-site mitigation lands and projects be obtained and completed concurrently with the development projects, or within a year of the development project's first impacts, which is typically while those projects are still under construction. Projects have met those requirements, which appear to involve a process similar to that needed for alternative compliance projects (e.g., obtaining land or appropriate permissions to work on land, environmental review, and appropriate regulatory approvals and constructing the mitigation). Therefore, a 3-year period after the end of construction for alternative compliance work that could be completed in advance, with additional time up to 5 years, is reasonable. 	
Belmont Burlingame Mountain View San Bruno San Jose San Mateo	5 6 2 6 3, 21 6	C.3.e.ii.	Alternative Compliance Projects FAR and Gross Density	<ul style="list-style-type: none"> • The current MRP allows Permittees to define FAR and calculate DU/acre consistent with their standard practices and professional land use planning standards. 	<ul style="list-style-type: none"> • Definitions of gross density and floor area ratio have been included in Provision C.3.b.ii. to aid consistent implementation of this Provision by all Permittees. The current Permit does not define these terms. 	None

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SCVURPPP SMCWPPP	17 10			<ul style="list-style-type: none"> • Contrary to what Permittees typically use, and contrary to past Water Board guidance on right-of-way and roadway projects, the TO prescribes specific definitions for each that include public rights-of-way, public plazas, and civic areas, which can be essential public infrastructure components or contribute toward an overarching community vision, livable high-density development, Smart Growth concepts, and placemaking goals for the area. • These new definitions of gross density and FAR will result in lower density values that may prevent some valuable high-density projects from qualifying for LID treatment reduction credits. • The new definitions create new data requirements for Permittees to track and report separately. • Change the definitions of FAR and gross density to exclude public plazas, public rights-of-way, and civic areas. 	<ul style="list-style-type: none"> • Gross Density is defined as the total number of residential units divided by the acreage of the entire site area, including land occupied by public rights-of-way, recreational, civic, commercial, and other non-residential uses. Floor Area Ratio (FAR) is defined as the ratio of the total floor area on all floors of all buildings at a project site (except structures, floors, or floor areas dedicated to parking) to the total project site area. These appear generally consistent with the definitions offered by the American Planning Association (e.g., at https://www.planning.org/pas/quicknotes/pdf/QN12.pdf). While some Permittees may choose to offer project proponents variations on density or related requirements (a stereotypical example is offering a height or density bonus in exchange for provision of a public plaza or other public space), the offered definitions provide consistency across all Permittees for the purpose of considering water quality impacts. • Gross density and FAR have been purposely defined to include public rights-of-way, recreational, civic, commercial, and other non-residential uses so as to raise the bar for Regulated Projects to qualify for the LID Reduction Credits allowed in Provision C.3.e.ii, recognizing that the impervious surfaces associated with these areas are contributors of urban runoff pollutants to the storm drain. While these relatively more conservative gross density and FAR values may result in some Regulated Projects qualifying for 	

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					<p>less LID Reduction Credit or not qualifying at all, it is an appropriate push to projects to complete relatively more-effective LID-based treatment.</p> <ul style="list-style-type: none"> • The reporting data for Special Projects under the current permit shows that “lack of space to provide full LID stormwater treatment” is the most frequent reason invoked for why 100% LID treatment onsite is infeasible. Therefore, it is appropriate that the space reserved for public rights-of-way, recreation, civic, commercial, and other non-residential uses are included in the calculations for gross density and FAR, especially since many of these areas may be used for installation of LID treatment measures. • At the same time, Water Board staff is aware of high density projects that have appropriately incorporated LID controls to treat urban runoff, both in the Bay Area and other jurisdictions. Raising the bar on Special Projects makes it more likely that the need for LID treatment will be incorporated into the projects as an identified constraint early in their design processes, thus making it more likely that the treatment will be effectively implemented. • Board staff also recognizes that placemaking and well-designed spaces, while important for any project, are crucial as densities increase. Far from being a detriment to such design, LID measures can serve as key components of it, even in ultra-urban settings like San Francisco’s Mint Plaza, a public plaza, and high-density areas like Leland 	

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					Avenue in SF's Visitacion Valley neighborhood, which significantly incorporates LID measures into the public ROW, and various condominium/loft projects in Emeryville.	
CCCWP Clayton Concord Danville El Cerrito Hercules Martinez Moraga Oakley Orinda Pinole Pleasant Hill San Pablo San Ramon	21 36 19 19 25 16 22 13 10d 16 12 15 15 22	C.3.e.ii.	Alternative Compliance Special Projects FAR and Gross Density	<ul style="list-style-type: none"> In at least one specific, documented case in Contra Costa County, a developer deleted a planned and negotiated pedestrian plaza from a development project in a downtown, pedestrian-oriented shopping area, so that the development would achieve the gross density required for C.3 "Special Projects" status. To avoid this disincentive for including pedestrian amenities, allow public plazas to be omitted from the calculation of project gross density and include the following recommended change for the definition of FAR: The ratio of the total floor area on all floors of all buildings at a project site (except structures or floors dedicated to parking) to the total project site area (excluding any area dedicated to public plazas). 	<ul style="list-style-type: none"> Water Board staff recognizes that any number of constraints can influence a project's design and the development of that design. It is unlikely that the TO's proposed gross density definition, by itself, and in the absence of any other constraints (e.g., parking requirements, street section requirements, a project proponent's desire to maximize a project's financial return, etc.) caused the developer to eliminate a planned pedestrian plaza, because the definition is only a proposed requirement. Further, we understand the project in question is being considered under current Provision C.3.e. requirements, which allow the exclusion of pedestrian plazas in the calculation of density. Additionally, LID is a broad category of practices that includes practices, such as flow-through planters, that have been constructed in high-density redevelopment projects, including public plazas, where there is otherwise very limited space. That is, it is a category with significant design flexibility that is adaptable to a wide range of projects. It offers a significant opportunity for benefits separate from water quality, including improved placemaking, human-scale details, pedestrian/multi-modal user (e.g., bicyclist) safety, and high-quality 	None

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					<p>urban environments that enhance property values and the experience of pedestrians and others.</p> <ul style="list-style-type: none"> • See response, above, to Belmont 5 Burlingame 6 Mountain View 2 San Bruno 6 San Jose 3, 21 San Mateo 6 SCVURPPP 17 SMCWPPP 10 	
San Jose	3, 21	C.3.e.ii.	Alternative Compliance Special Projects FAR and Gross Density	<ul style="list-style-type: none"> • Special Projects align with Smart Growth concepts and provide holistic environmental benefits (stormwater quality, green-house gas emissions, and air quality) by reducing urban sprawl through high-density redevelopment, locating within walking/biking distance to public transit, and creating less "accessory" impervious areas associated with automobile-related uses. • In order to achieve the goals of smart growth, Special Projects often must enhance infrastructure such as public rights-of-way, public parks and recreational areas, and pedestrian access through public plazas. Incorporation of these elements into the Gross Density definition will discourage projects from 	<p>Water Board staff recognizes that Smart Growth projects are intended to achieve multiple benefits, which can include minimizing impacts to water quality. The cited project elements (e.g., public plazas, parks and recreation areas, and public rights-of-way) are often elements in which LID treatment can be located, and LID can serve as a significant project amenity in those elements, providing significant benefits in addition to water quality. While the presence of any project constraint has the potential to change project design as compared to if it was not present, the proposed Permit language appropriately balances the Clean Water Act-mandated need to protect water quality with implementation challenges; to the extent LID is present as a requirement, there is a greater likelihood Permittees will work with project proponents to ensure it is incorporated from the beginning of a project's design.</p> <p>Water Board staff concurs that projects are</p>	None

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				<p>incorporating them into designs.</p> <ul style="list-style-type: none"> The definition proposed in the TO is counter to professional land use planning standards. Additionally, rights-of-way and civic areas are currently captured under the stormwater treatment requirements for roadway projects. Adding these areas into the density credit calculation would result in "double-counting." Use Net Density to calculate Special Project density credits, or change the definitions of Floor Area Ratio (FAR) and Gross Density such that they only include areas within the project boundary, and exclude public plazas, civic areas, and public rights-of-way. 	<p>also addressed by language in other parts of C.3. That is appropriate, as this subprovision addresses those instances when those related requirements may be relaxed.</p> <p align="center">In addition, see response, above, to Belmont 5 Burlingame 6 Mountain View 2 San Bruno 6 San Jose 3, 21 San Mateo 6 SCVURPPP 17 SMCWPPP 10</p>	
Walnut Creek	4	C.3.e.ii.	Alternative Compliance Special Projects FAR and Gross Density	<ul style="list-style-type: none"> This Provision creates a substantial disincentive for smart growth development in suburban downtown areas, especially Walnut Creek, where, many years ago, the voters approved height restrictions that limit the ability for any development project to achieve the minimum density required in the TO. With the locally-imposed setbacks that the project applicant must consider and the other setbacks required by the California Building Code for fire 	<p align="center">See response, above, to Belmont 5 Burlingame 6 Mountain View 2 San Bruno 6 San Jose 3, 21 San Mateo 6 SCVURPPP 17 SMCWPPP 10</p> <p align="center">and the response to CCCWP 21</p> <ul style="list-style-type: none"> We disagree that the Provision disincentivises smart growth, because 	None

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				<p>access and building egress, and utility requirements, the requirement in the TO mandating the construction of low impact development in these suburban downtown areas probably means that redevelopment, which will otherwise benefit water quality, will probably not be economically feasible.</p> <ul style="list-style-type: none"> • For example, a mixed-use project in downtown Walnut Creek that is currently under construction includes in its frontage a public courtyard. Under the proposed definition in the TO, the project would have eliminated this important public amenity plaza as the project cannot meet the more restrictive gross density requirements. 	<p>smart growth is a combination of design approaches, not just limited to density and location, that together work to reduce the impacts of development. Rather, the Provision helps define what it means for a project to be considered a smart growth project. We urge the commenter to embrace the design opportunity LID provides for placemaking and high-quality urban and suburban design, including considering the numerous successful examples in the Bay Area and in cities like Portland, OR, Seattle, Philadelphia, New York City, Minneapolis, and elsewhere. Project examples like Leland Ave. in SF and the EcoTrust building in Portland show that LID can be incorporated into modest spaces in ways that significantly improve not only water quality, but provide substantial additional benefit; they can be touted by developers after the fact as elements that made their projects more desirable, valuable, and successful, thus increasing project feasibility. There is an opportunity for significant additional project value presented by LID controls. Thus, the concept that the potential marginal difference in project cost (i.e., the difference between the cost of LID treatment and the cost of non-LID water quality treatment) that could be attained by fitting a project into one of the special project categories would lead a proponent to remove key amenities is difficult to credit without supporting information that has not been provided.</p>	

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ACCWP CCCWP Clayton Concord Danville Dublin El Cerrito Hercules Martinez Moraga Oakley Orinda Pinole Pleasant Hill San Pablo San Ramon	38 23 38 21 21 1 27 18 24 15 10f 18 14 17 17 24	C.3.e.ii.(2) C.3.e.v.(2)	Alternative Compliance Special Projects Infeasibility Analysis and Reporting	<ul style="list-style-type: none"> Delete requirement to conduct and document infeasibility of LID treatment for Special Projects as it creates considerable additional effort for applicants and Permittees without any expected water quality benefit. Revise provision to make reporting less burdensome. The purpose of the Special Projects provisions is to incentivize projects that are beneficial at a watershed scale. Requiring Special Projects to first demonstrate LID infeasibility does little to incentivize these projects. And requiring Special Projects to demonstrate infeasibility for offsite LID treatment is vague and unnecessarily difficult. 	<ul style="list-style-type: none"> The Board established LID treatment requirements in the MRP for all Regulated Projects in recognition of LID as a superior, cost-effective, beneficial, holistic, integrated stormwater management strategy. The documented benefits of LID establish it as a preferable approach to treating and reducing stormwater runoff because it is cost-effective, sustainable, and environmentally sound. LID treatment measures are effective because they can remove a broader range of pollutants in a more robust and redundant fashion, and can achieve multiple environmental and economic benefits in addition to reducing downstream water quality impacts, such as enhanced water supplies, cleaner air, reduced urban temperature, increased energy efficiency and other community benefits. Thus, there is a water quality benefit to implementing LID as opposed to other controls, and it is appropriate to require justification for situations when LID is not implemented. Provision C.3.e.ii.(1) of the MRP acknowledges that certain types of smart growth, high density, and transit-oriented development can reduce impervious areas and their auto-related impacts relative to other kinds of development. Given the relative reduction in potential water quality impacts from such developments, the MRP allows for incentive LID Treatment Reduction Credits to be applied to such projects. However, specific criteria have been established to limit: 1) the scope of 	None

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					<p>projects that qualify for such credits, and 2) the total credits that are allowed for any given project. The MRP tiering of LID Treatment Reduction Credits purposefully maximizes LID treatment for any given Special Project and minimizes the amount of runoff needing to be treated with non-LID measures. LID treatment measures have not been shown to increase cost or complexity of development projects.</p> <ul style="list-style-type: none"> • The Special Projects provisions were not created to solely incentivize certain types of projects, but rather to allow these projects to treat runoff with non-LID measures, but only after LID treatment measures have been considered and maximized. • Therefore, infeasibility analysis of all LID treatment measures onsite, offsite, and a combination of onsite and offsite, is necessary to fulfill the intent of the Special Projects provisions, because it provides information demonstrating that those projects being categorized as Special Projects are providing the reduced environmental impacts (as compared to less-dense development) for which the category was intended. • Reporting is consistent with the Previous Permit. As such, the Permittees have existing procedures in place to collect and provide the information. Given the water quality benefits of LID over other forms of treatment, there is appropriate cause to require the reporting; maintaining the reporting will also avoid the need for Permittees to incur costs to 	

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					change their existing procedures.	
Dublin	3	C.3.e.ii.(3)(a)(iv), C.3.e.ii.(4)(a)(iv) C.3.e.ii.(5)(e)(i)b	Special Projects Parking Allowance	<ul style="list-style-type: none"> • Special projects should be allowed to also include minimal incidental surface parking for commercial uses if the project is a mixed use project (i.e. residential with ground floor retail). • Revise to allow incidental surface parking for commercial uses (applicable for mixed-use projects- residential with ground floor retail). 	<ul style="list-style-type: none"> • Provision C.3.e.ii.(1) of the MRP acknowledges that certain types of smart growth, high density, and transit-oriented development can reduce impervious areas and their auto-related impacts relative to other kinds of development. Given the relative potential reduction in water quality impacts from such developments, the MRP allows for incentive LID Treatment Reduction Credits to be applied to such projects. However, specific criteria have been established to limit: 1) the scope of projects that qualify for such credits, and 2) the total credits that are allowed for any given project. The MRP accomplishes this by establishing tiered LID Treatment Reduction Credits that take into account the size, land use type, location, density, and surface parking of the projects. • Increasing the allowed surface parking for commercial and mixed use projects to include incidental parking for commercial uses defeats the purpose of the established criteria for assigning LID Treatment Reduction Credits. Also, if space is available for commercial surface parking, there should be room for LID treatment and the Special Project Provision should not have to be invoked. • Additionally, LID is a broad category of practices that includes practices, such as flow-through planters, that have been constructed in high-density redevelopment projects where there is 	None

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					otherwise very limited space. That is, it is a category with significant design flexibility that is adaptable to a wide range of projects.	
Water Board June 10, 2015 Hearing Transcript Rinta Perkins, Clean Water Program Manager Walnut Creek	Page 139 (Lines 20-25) Page 140 (Lines 1-7)	C.3.e.ii.(5)	Category C Special Projects Transit Oriented Development	<ul style="list-style-type: none"> Our second concern, we'd like to ask that the criteria for transit-oriented development, or Category C of the Special Projects provision, be modified. The limits placed on the Location Credit within the Tentative Order are out of line with any transit-oriented development guidelines around the country, and particularly within our own region. As an example, Bay Area Rapid Transit (BART) has transit-oriented development guidelines that start at a half mile, while the Tentative Order is much more restrictive at a quarter mile. So we ask for your consideration on this issue. I thank you for your time. 	<ul style="list-style-type: none"> This Provision establishes tiered LID Treatment Reduction Credits based on the location of transit-oriented development with the greatest credit (50%) given to development located within a ¼-mile radius of a transit hub and smaller credits (25%) given to transit-oriented development located within a ½-mile radius of a transit hub or within a Priority Development Area (PDA). This tiering directly reflects the concept that people are more likely to walk and take public transit if they live within a ¼-mile radius versus within a ½-mile radius. Category C appropriately acknowledges the value of transit oriented development located within a ½-mile radius but assigns less LID Reduction Credit to reflect the greater likelihood of developments located within closer proximity to transit hubs (within a ¼-mile radius) to decrease the use of automobiles and their accompanying contribution of pollutants to stormwater runoff. 	None
CCCWP Clayton Concord Danville Dublin El Cerrito	22 37 20 20 1 26	C.3.e.v.(1)	Alternative Compliance Special Projects Reporting	Delete requirement to track Special Projects that have been identified (application submitted) but not approved, as the number of projects, and amount of impervious area, has proven to be small.	<ul style="list-style-type: none"> The reporting requirements provide Water Board Staff with early notice of the Special Projects that are being considered by Permittees prior to the Permittees granting final planning approval. This allows Water Board staff to validate a Permittee's analysis of each 	None

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Hercules Martinez Moraga Oakley Orinda Pinole Pleasant Hill San Pablo San Ramon	17 24 15 10e 18 13 16 16 23				<p>Special Project and its assignment of appropriate LID Treatment Reduction Credits. During the Previous Permit, this data enabled Water Board staff to work with Permittees on several projects to obtain more-robust LID implementation than had originally been proposed.</p> <ul style="list-style-type: none"> • Water Board Staff intends to use the data collected on Special Projects during this Permit term and the Previous Permit term to evaluate the necessity of the Special Projects criteria after the development and implementation of Green Infrastructure Plans during this and subsequent Permit terms. • The intent of the Special Projects provision is to allow LID Reduction Credits only for certain types of smart growth, high density, and transit oriented development. The number of projects and amount of impervious surface area are expected to be small compared to the total number of Regulated Projects. Therefore, this additional reporting is not onerous and applies only to a small subset of Regulated Projects and Permittees. Permittees not wishing to provide this option to project proponents also do not have to incur the tracking and reporting costs. 	
Belmont Burlingame San Bruno SMCWPPP	6b 7b 7b 11	C.3.g.	Hydro-modification Requirements Typos	<p>Correct the following typos:</p> <ul style="list-style-type: none"> • C.3.g.i – Move items (1) through (3) to after the first paragraph in which they are referenced. • C.3.g.ii.(3) – change “charges” to “charts” In the first sentence. 	Comment noted.	Appropriate changes have been made to Provision C.3.g.

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				<ul style="list-style-type: none"> C.3.g.vii.(5) – delete the last bullet that refers to the Impracticability Provision, which is not included in the TO. 		
Belmont Burlingame CCCWP Clayton Concord Danville El Cerrito Hercules Martinez Moraga Oakley Orinda Pinole Pleasant Hill San Bruno San Mateo San Ramon San Pablo SMCWPPP	6a 7b 24 40 23 23 29 20 26 17 10h 20 16 19 7a 7 26 19 11	C.3.g.iv.	EO Approval of Hydro-modification Requirements	<ul style="list-style-type: none"> Allow Permittees to propose a different method for sizing hydromodification management facilities that is not biased against LID and allow implementation without a Permit amendment. Note that the Fact Sheet states that EO approval would be required, not a Permit amendment. The administrative hurdle of a Permit amendment is unnecessary, as the method is consistent with the current HM standard (and it is the only requirement in the TO requiring an amendment), and will cause delay and uncertainty as to when the methodology can be used. 	Comment noted.	<ul style="list-style-type: none"> Provision C.3.g.iv. has been revised to allow for EO approval of any proposed variation in sizing methodology of hydromodification management facilities. Typos have been corrected.
CCCWP Clayton Concord Danville El Cerrito Hercules Martinez Moraga Oakley	25 39 22 22 28 19 25 16 10g	C.3.g.vii.	Hydro-modification Requirements	<ul style="list-style-type: none"> Under MRP 1.0, Contra Costa Permittees require applicable development projects to incorporate LID facilities (Integrated Management Practices, or IMPs) that provide both treatment and HM. This is different from other counties, where flow-duration-control detention basins are used, 	<ul style="list-style-type: none"> Water Board staff has proposed to extend the deadlines for submittal of additional discussion and information regarding control measure design and effectiveness for hydromodification. The language allows the Contra Costa Permittees to continue to use existing sizing factors, and then requires that any changes associated with the submittal and Water Board review be incorporated 	<ul style="list-style-type: none"> Provision C.3.g.vii has been revised to allow for two years subsequent to Permit reissuance for these issues to be considered and addressed, and to more clearly describe the range of potential

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Orinda Pinole Pleasant Hill San Pablo San Ramon	19 15 18 18 25			<p>sometimes in series with LID facilities, to achieve HM requirements.</p> <ul style="list-style-type: none"> • Under MRP 1.0, to show that their individual development project meets the HM standard, Contra Costa applicants may choose to apply a continuous simulation runoff model, with 30 or more years of hourly rainfall data, or they may use standard designs for IMPs with sizing factors. The sizing factors are derived from CCCWP's continuous simulation runoff model, and account for differing soil types and rainfall patterns at development sites. • Most applicants—particularly those for smaller developments—use the sizing factors. • Water Board staff commissioned an independent analysis of CCCWP's continuous simulation runoff model, including a review of default values for key model parameters and a comparison to the basin-oriented Bay Area Hydrology Model (BAHM) approach used in other MRP counties. • That study found that the CCCWP continuous simulation runoff model produced sizing factors that were overly 	<p>into the standards. Additionally, Provision C.3.g.iv already allows, as suggested by the commenters, the commenters to submit, as part of the Permittees collectively, a proposal for an alternate hydromodification management methodology, subject to the Executive Officer's acceptance.</p> <ul style="list-style-type: none"> • As noted by the commenters, the Contra Costa Clean Water Program completed in September 2013 a review of its hydromodification modeling approach, including field work at two locations (five bioretention controls) in the Contra Costa Permittees' jurisdictions. While a completed report was submitted, Water Board staff is not yet able to concur with the report's conclusions, given limits on the field parameters that were observed, rainfall patterns, and related factors that call into question whether the report appropriately evaluates limiting conditions and how the results should be applied given those limitations. We have committed to provide written comments to the Contra Costa Permittees and the revised time period in the MRP should be sufficient to allow an appropriate discussion of next steps and completion of those next steps. In addition, the Provision has been revised to more clearly describe the range of possible results of the discussions, from no change to existing standards, to changes to sizing or design details, to use of other approved HMP methods. 	<p>changes that could result from consideration of the issues.</p>

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				<p>conservative, and stated that the results of the analysis “suggest that Contra Costa would do well to calibrate their [model] to local conditions.”</p> <ul style="list-style-type: none"> • MRP 1.0 required CCCWP to conduct a model calibration and validation project to monitor the performance of IMPs built using the current (2009) standard designs and sizing factors. This study was completed during 2011-2013 at a cost of over \$300,000, and a final report was submitted with CCCWP’s Annual Report in September 2013. • The final report concludes: “This project demonstrated that the IMPs and sizing factors approved by the Regional Water Board in 2006—and updated in subsequent editions of the Guidebook—are adequate to meet current regulatory requirements.” • CCCWP has not received any comments from Regional Water Board staff on the September 2013 report. • As the designs and sizing factors meet the current standard, and the TO proposes that the same standard be continued in the coming Permit term, there is no need for an extension of time to use current 		

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				<p>design standards. Nor is there any need for an additional technical report.</p> <ul style="list-style-type: none"> • Rather, CCCWP should be allowed to continue to use the current sizing factors while collaborating with Permittees in other counties in a regional effort to update the methodology used to size HM facilities (direct simulation of erosion potential, as provided in proposed Provision C.3.g.iv.). • Delete requirement for Contra Costa Permittees to submit a technical report describing they will implement current hydromodification management requirements. CCCWP submitted a 2013 report on the results of a multi-year monitoring study that concluded current policies and criteria already meet these requirements. 		
ACCWP Livermore San Mateo Co	39 3 3	C.3.h.ii.(6)	O&M Requirements Inspection of Pervious Pavement Installations	<ul style="list-style-type: none"> • This Provision requires the tracking and inspection of all pervious pavement systems that total 3,000 square feet or more. This as an unnecessarily burdensome requirement to track and inspect this one specific stormwater treatment measure. • The existing permit and the TO already require Permittees to develop and implement 	<ul style="list-style-type: none"> • This inspection requirement has been incorporated to clarify that, where part of LID designs, pervious pavement systems are an important part of the designs, both because they perform a treatment function and because system failure or degradation in performance can have results such as bypassing untreated runoff to the storm drain and increases in runoff flows to downstream treatment controls, potentially exceeding their designs and resulting in insufficient 	None.

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				<p>comprehensive Operation and Maintenance (O&M) programs to inspect stormwater treatment measures, so this provision should be deleted.</p> <ul style="list-style-type: none"> • The added language demonstrates and codifies a suspicion of property owners that is unfounded and, in turn, places additional burden on municipalities with limited staffing and whose actions to recover costs are also limited. • While Permittees are currently successful in implementing O&M requirements of the past permit, municipalities are not equipped for a large increase in O&M Inspections of un-Regulated Projects. • Permittees can provide educational information on proper maintenance of pervious pavement to the property owner. • Remove the requirement to inspect impervious surface installations. • If such a requirement is adopted, allow property owners to have a civil engineer certify in writing every 5 years that the area of pervious paving is still there or was replaced with an equivalent measure. 	<p>project treatment of runoff.</p> <ul style="list-style-type: none"> • The commenters' recognition that pervious pavement systems are treatment measures is appreciated. • Based upon Board staff's conversations with Permittees, it is our understanding that Permittees are already performing inspections, so this requirement should not add any substantial burden. • Although Permittees have stated to Board staff that O&M inspections often include inspections of pervious pavement installations, the findings are not documented in the inspection reports or database. Thus, there was a significant gap in ensuring the effective implementation of LID controls. • The specified threshold is intended to ensure that Permittees are appropriately tracking and ensuring the maintenance of these systems. While 3,000 ft² can be larger than typical sizes for other treatment controls, such as bioretention cells or planter boxes, staff believe it is likely to appropriately capture significant pervious pavement system installations, while incorporating exclusions for installations, like backyard patios, where limited maintenance is unlikely to have significant water quality impacts. In addition, for installations where many small installed systems are likely to behave in a substantially similar way (e.g., many driveways in a residential subdivision), it allows inspection of a representative subset of the systems installed. 	

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					<ul style="list-style-type: none"> Staff is not proposing to revise the requirement simply to allow a civil engineer to certify the pervious pavement system is still there or was replaced by an equivalent measure, as that would not address whether the system is functioning as intended in the project's larger design. 	
ACCWP CCCWP Clayton Concord Danville El Cerrito Hayward Hercules Martinez Moraga Oakley Orinda Pinole Pleasant Hill San Bruno San Jose San Pablo San Ramon SCVURPPP	39 26 41 24 8, 24 20 3 21 27 18 10i 21 17 20 9 22 20 27 19	C.3.h.ii.(6)(b)	O&M Requirements Minimum Annual Inspections	<ul style="list-style-type: none"> Delete requirement to inspect 20% of Regulated Projects annually to allow flexibility in scheduling inspections. Cities need more flexibility in determining how many C.3. facilities will be inspected each year as long as they meet the criteria of inspecting each site once in five years. The language for inspection frequency is duplicative and should be simplified and clear such as "inspection once per permit term or once every five years." 	<ul style="list-style-type: none"> The intent of requiring Permittees to inspect at least 20% of the total number of Regulated Projects is to ensure that the Regulated Projects are inspected at least once every 5 years and all the inspections will not take place in the 5th year. This requirement serves to prevent failed or improperly maintained systems from going undetected until the 5th year. This requirement does not interfere with the Permittees' current ability to prioritize their inspections and maintain flexibility. However, Board staff acknowledges that the Permittees may require more flexibility in how many inspections are done annually. It may be necessary to inspect certain projects annually or even, for projects with significant issues, at a greater frequency, at least until the issues have been resolved. At the same time, it is important that all projects are inspected at a minimum frequency, while providing appropriate flexibility; hence, the proposed change. 	Provision C.3.h.ii.(6)(b) has been revised to require Permittees to inspect an average of 20%, but no less than 15%, of the total number (at the end of the preceding fiscal year) of Regulated Projects, offsite projects, or Regional Projects.
Belmont Burlingame Clayton East Palo Alto	8, 9 9, 10 41 8	C.3.h.ii.(6)(b)	O&M Requirements Minimum Annual	<ul style="list-style-type: none"> Changes were made to allow Permittee to track inspections by the number of sites instead of numbers of treatment/HM 	See response to comment immediately above ACCWP 39 CCCWP 26	Provision C.3.h.ii.(6)(b) has been revised to require Permittees to

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San Bruno San Mateo San Pablo SMCWPPP	10 9 20 13		Inspections	<p>facilities, which was an improvement, but inspection of at least 20% of the total number of Regulated Projects is required each year.</p> <ul style="list-style-type: none"> Permittees have requested more flexibility around that number while still meeting the requirement of inspection of each site at least once every five years. In addition, more flexibility needs to be given to those Permittees that only have a small number of sites, so that they do not have to inspect them more frequently than necessary. Change language to require inspection of "approximately 20%" of sites per year. Establish a minimum inspection frequency for each site of every two years. 	<p>Clayton 41 (etc.)</p> <ul style="list-style-type: none"> This Provision requires a modest inspection schedule—as little as once every 5 years for some controls. That is already a sufficient amount of flexibility, regardless of the number of sites a Permittee may have, considering that many controls may need more-frequent inspection. 	<p>inspect an average of 20%, but no less than 15%, of the total number (at the end of the preceding fiscal year) of Regulated Projects, offsite projects, or Regional Projects.</p>
Belmont Burlingame East Palo Alto Mountain View San Bruno San Jose San Mateo SCVURPPP SMCWPPP	7 8 8 3 4,7 23 8 18 12	C.3.h.ii.(7)	O&M Requirements Enforcement Response Plan (ERP) Timeframe for Corrective Actions	<ul style="list-style-type: none"> This provision requires that Permittees develop O&M ERPs that specify corrective actions for identified problems with pervious pavement, treatment, and HM systems must be implemented within 30 days of identification, and if more than 30 days are required, a rationale must be recorded in the Permittee's inspection tracking database. The process of contacting and educating the property owner, 	<ul style="list-style-type: none"> Thirty days is more than adequate time, considering that many of the problems identified in past O&M inspection reports have been lack of maintenance service or build-up of sediment or debris. The correction of such deficiencies should not take more than 30 days. Provision C.3.h.ii.(1) requires Permittees to have a mechanism for requiring Regulated Project proponents or subsequent operators or owners to accept responsibility for the operation and maintenance of all installed pervious pavement systems (of 3,000 ft² or more), 	None

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				<p>allowing the property owner to arrange for maintenance work to be completed, and following up with an inspection typically, takes more than 30 days.</p> <ul style="list-style-type: none"> • C.3 facilities are unique in that for the majority of cases, responsibility is transferred several times before final ownership (e.g., developer transfers to owner, who transfers to HOA, who contracts maintenance). Knowledge and understanding of C.3 treatment facilities and responsibilities to maintain are often not effectively conveyed throughout each transfer of ownership. This results in a longer process of identifying, contacting, and educating the property owner, allowing the property owner to arrange for maintenance work to be completed, and following up with a re-inspection, all of which typically takes more than 30 days. • Allow 90 days for completion of permanent corrective actions and more than 90 days when a site is actively working to resolve an issue, consistent with current practice for some Permittees. 	<p>stormwater treatment systems, and HM controls.</p> <ul style="list-style-type: none"> • Additionally, Provision C.3.h.ii.(6)(a) requires Permittees to inspect all newly installed pervious pavement systems (of 3,000 ft² or more), stormwater treatment systems, and HM controls at the completion of installation. • Therefore, Permittees should have accurate information on the current operator or owner of these systems prior to or at the time of the inspections. Additional time to determine the responsible party should not be necessary so correction of O&M deficiencies should not take more than 30 days. • This Provision also allows for greater than 30 days to complete actions that require a greater amount of time, with the recording of a rationale in the inspection database or recordkeeping system. Such actions could include permanent corrective actions, such as installing additional curb cuts and making grading or vegetation improvements. 	
Belmont Burlingame San Bruno	10 11 11	C.3.h.ii.(7) C.3.h.v.(4)	Typos	<p>Correct the following typos:</p> <ul style="list-style-type: none"> • C.3.h.ii. (7) – begin first sentence with “Permittees shall 	Comment noted.	Appropriate changes have been made to these Provisions.

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SMCWPPP	13			<p>prepare and maintain..."</p> <ul style="list-style-type: none"> • C.3.h.v. (4) – Change "XX" Annual Report to "2017" Annual Report. 		
CCCWP	27	C.3.h.v.	O&M Reporting Requirements	<ul style="list-style-type: none"> • The reporting requirements of Provisions C.3.b and C.3.h. are poorly coordinated with each other and with the typical municipal development review process. • During the MRP 1.0 term, this lack of coordination resulted in apparent anomalies in Permittee reporting, leading to Water Board staff inquiries and, on the Permittee side, time lost responding to those inquiries. • The need to update C.3 reporting requirements was identified during MRP 2.0 negotiations, but was not followed through in time for issuance of the TO. • Include authorization for the Permittees to collectively propose an updated reporting system, such as entry of project data to a publicly accessible relational database, and to implement the updated reporting system following EO approval. 	<ul style="list-style-type: none"> • In the initial early drafts of the current Permit, Board staff proposed requiring Permittees to report Regulated Projects in the Provision C.3.b. Reporting Tables until they were constructed and moved over into the complete Provision C.3.h. Reporting Tables (all Regulated Projects constructed listed). • However, Permittees commented that this would be too burdensome and Board staff agreed to the current reporting requirements, where the C.3.b. Table only contains Regulated Projects approved during the reporting period and the C.3.h. Table only contains the Regulated Projects inspected during the reporting period (fiscal year). • Permittees have established databases to generate the information required for the Provision C.3.b. and C.3.h. Reporting Tables and changes are not warranted based on one Permittee's comment. • For the next Permit term, Permittees may collectively propose an updated reporting system. 	None
San Jose SCVURPPP	24 20	C.3.h.v.	O&M Reporting Requirements	<ul style="list-style-type: none"> • The change to track inspections by the number of sites instead of number of treatment/HM facilities will also make it 	The effective date has been revised per the commenters' request.	Appropriate changes have been made to establish an effective date of July 1, 2016,

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				<p>challenging for Permittees to plan, conduct and report inspections during FY 15-16, when the tracking process changes midway through the fiscal year (assuming an effective date of December 1, 2015).</p> <ul style="list-style-type: none"> Establish an effective date of July 1, 2016 for when Permittees change from tracking inspections by number of treatment/HM facilities to tracking by number of Regulated Project sites. 		for Provision C.3.h.ii.(6) and all requirements pertaining to pervious pavement systems in Provision C.3.h.ii.(1)-(5), C.3.h.iv., and C.3.h.v.
ACCWP	40a	C.3.i.	Small Projects	We support the proposal to retain the existing provisions concerning small projects.	Comment noted.	None
Baykeeper	6, 7	C.3.j.	Location and Design Standards to Achieve Wasteload Allocations	<ul style="list-style-type: none"> Specify the location and design standards intended to achieve wasteload reductions. Alternatively, follow pathways similar to those pursued in Region 4 (Los Angeles), to develop watershed management programs that include multi-benefit regional projects to ensure that MS4 discharges achieve compliance with all final WQBELs set forth in the Basin Plan and do not cause or contribute to exceedances of receiving water limitations by retaining through infiltration or capture and reuse the storm water volume from the 	<ul style="list-style-type: none"> Provisions C.11.d. and C.12.d. require the preparation of reasonable assurance analyses to ensure that wasteload allocations will be attained for mercury and PCBs, respectively. In those analyses, Permittees are required to: identify all technically and economically feasible control measures to be implemented; include an implementation schedule; and provide an evaluation and quantification of the load reduction of such measures and additional information. The reasonable assurance analyses will provide the specific location and designs the commenter seeks. Indeed, an important step in preparing the Green Infrastructure Plans and Reasonable Assurance Analyses will be to review available information to 	None

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				<p>85th percentile, 24-hour storm for the drainage areas tributary to the multi-benefit regional projects.</p> <ul style="list-style-type: none"> Review available information (on locations with high contaminant concentrations) to inform targeted wasteload reductions through installation of green infrastructure and other means. 	<p>inform targeted wasteload reductions through green infrastructure, and the Permit sets out a process to do that, including citing examples of tools, such as the San Francisco Estuary Institute's Green PlanIT tool, that are already piloting those analyses.</p> <ul style="list-style-type: none"> In concert with the reasonable assurance analyses, the Green Infrastructure Plan and its associated tools will serve as an implementation guide and reporting tool during this and subsequent Permit terms to provide reasonable assurance that urban runoff TMDL wasteload allocations for mercury and PCBs in San Francisco Bay will be met. The Plan also sets goals for reducing, over the long term, the adverse water quality impacts of urbanization and urban runoff on receiving waters. Thus, they are a program equivalent to the watershed management programs noted by the commenter. Provision C.3.j. specifies the minimum elements that must be included in each Green Infrastructure Plan. Board staff intentionally wrote the requirements with this minimum level of prescriptiveness to allow each Permittee the flexibility to develop a Green Infrastructure Plan suited for its unique jurisdiction. However, these Green Infrastructure Plans will be subject to Executive Officer approval to ensure that they are comprehensive, robust plans, and we have revised the Fact Sheet to incorporate guidance offered by U.S. 	

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					<p>EPA based on lessons learned from the development of watershed management plans in Los Angeles.</p> <ul style="list-style-type: none"> • One of the required elements is a mechanism to prioritize and map areas for potential and planned projects, both public and private, on a drainage-area specific basis for implementation over the same timeframes as specified in Provisions C.11. and C.12. for assessing load reductions. Each Permittee has flexibility in choosing the mechanism as long as it includes criteria for prioritization and outputs that can be incorporated into its long-term planning and capital improvement processes. • Another required element is that projects be designed to meet the treatment and hydromodification sizing requirements in Provisions C.3.c. and C.3.d. • Thus, the Permit requires appropriate analyses and implementation to ensure that urban runoff wasteload allocations for mercury and PCBs will be met. 	
Clayton Orinda	9, 10, 11, 12, 13 2	C.3.j.	Requirement to Develop Green Infrastructure Plan	<ul style="list-style-type: none"> • The TO assumes that current infrastructure will need replacing in the future. Clayton's curbs, gutters, and sidewalks are already set at ultimate location and no widening is planned in the future -- the public rights-of-way are fully built out. • Orinda, similarly, has limited right-of-way to accommodate and fit in Green Infrastructure features. 	<ul style="list-style-type: none"> • The Green Infrastructure Plan serves as a necessary implementation guide and reporting tool during this and subsequent Permit terms to provide reasonable assurance that urban runoff TMDL wasteload allocations for mercury and PCBs in San Francisco Bay will be met. The Plan also sets goals for reducing, over the long term, the adverse water quality impacts of urbanization and urban runoff on receiving waters. • Provision C.3.j. specifies the minimum 	None

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				<ul style="list-style-type: none"> • Further, with routine maintenance, curbs, gutters, and sidewalks easily last 100 years. Most of Clayton's sidewalks and curbs were installed in the 1980s, and therefore are expected to last another 75 years or more. Hence, in Clayton there are insufficient infrastructure improvement projects planned in the MRP 2.0 cycle that would replace such infrastructure in the future. • Many sidewalks in the Bay Area that were installed in the 1920s remain in fine shape. The TO suggests a city rip out perfectly good infrastructure, often paid by taxpayers, before the end of its useful life! • Therefore, this Provision needs to be modified to include an exception for cities that will not have any widening of streets or replacement of curbs, gutters, or sidewalks. 	<p>elements that must be included in each Green Infrastructure Plan. Board staff intentionally wrote the requirements to be flexible, and to allow each Permittee the flexibility to develop a Green Infrastructure Plan suited for its unique jurisdiction.</p> <ul style="list-style-type: none"> • The Green Infrastructure Plan requirement was written as an alternative to proposing more-restrictive requirements for retrofit of existing urban infrastructure, such as streets. As such, the intent was to allow Permittees to identify and prioritize projects on their own, in part as a means of meeting urban runoff wasteload allocations for mercury and PCBs. In future Permit terms, and with the adoption of future TMDLs, it is possible that Green Infrastructure Implementation requirements may become more prescriptive, including requirements to retrofit existing infrastructure, but the Permit's intent is to guide Permittees to identify what they will accomplish. Future retrofit requirements may be appropriate, to the extent they address the significant water quality impacts of our built urban environment consistent with Clean Water Act requirements. • Although a Permittee may not have any plans to widen streets or replace curbs, gutters, and sidewalks, there should still be green infrastructure projects because the total number of and geographical extent of green infrastructure projects implemented over time includes both private and public projects. Water Board 	

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					<p>staff recognizes that the understanding of what constitutes a desirable streetscape may change over time. As a result, it is inappropriate to assume that built infrastructure is necessarily fixed in place without change for 75 or 100 years. For example, many typical suburban and exurban street cross sections, stereotypically those built from the 1960s through the 1990s, have been identified as being dangerous to pedestrians, bicyclists, and other non-auto users, and as discouraging non-auto modes of transportation, because they have been built to maximize the efficiency of auto travel at the expense of other users. As a result, many jurisdictions are engaging in complete streets, green streets, new urbanist, and related planning efforts, during which there are opportunities to reduce the streets' impacts to water quality. Often, these efforts leave infrastructure largely in place, while only modifying it at key locations (e.g., with intersection bulb-outs for pedestrian safety that can also provide area for bioretention cells). Similarly, changes to transportation grants now require that certain grant applications include complete streets (i.e., multi-modal) designs; additional changes may result in grant funding being contingent on green street designs. Finally, current street designs, which typically quickly collect and discharge runoff to the storm drain and downstream creeks and the Bay, can shift significant costs—such as for flood</p>	

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					<p>protection—to entities like flood control districts and away from the entities owning and maintaining the streets, Green infrastructure planning allows the different jurisdictions to think flexibly about the most efficient (and least expensive) means of accomplishing different goals. For example, where costs for maintaining or expanding the flood flow capacity of existing creeks may be prohibitive, green infrastructure may provide a more cost-effective option to meeting those objectives.</p>	
Contra Costa Co	3, 4	C.3.j.	Requirement to Develop Green Infrastructure Plan	<ul style="list-style-type: none"> • These major new mandates will require a significant, sustained effort to implement, absent any new or additional funding source. • The cost to develop a Green Infrastructure Plan to treat stormwater runoff from many impervious surfaces needs to be offset by a commensurate reduction in other NPDES requirements for stormwater pollution. • As part of the Green Infrastructure Plan, the County will be required to assess the unincorporated urban areas built between 1945 and 1980 for watershed/drainage areas, and the Transportation Division of the Public Works Department will need to rewrite the Capital Road Improvement Plan for these areas to include LID to 	<ul style="list-style-type: none"> • The Green Infrastructure Plan is necessary to serve as an implementation guide and reporting tool during this and subsequent Permit terms, in coordination with the reasonable assurance analysis plans required by Provisions C.11.d. and C.12.d., to provide reasonable assurance that urban runoff TMDL wasteload allocations for mercury and PCBs in San Francisco Bay will be met. The GI Plan also sets goals for reducing over the long term, the adverse water quality impacts of urbanization and urban runoff on receiving waters. • Board staff appreciates that the County is committed to developing the Plan. • Board staff understands the geographical extent involved for the County and the associated costs for developing and implementing the Plan. • The costs may be offset to a certain extent by grant funds, collaborating with other Permittees, incorporating green 	<p>Provision C.3.j.i. and ii. have been revised to reflect that the total number of and geographical extent of green infrastructure projects implemented over time includes both private and public green infrastructure.</p>

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				<p>treat POCs. This will be a massive undertaking, involving the majority of the County's 17 unincorporated communities.</p> <ul style="list-style-type: none"> • The County Watershed Program is fully supportive of developing this Plan. The County is planning to budget \$1,000,000 over five years to develop the GI Plan. The County will not only assess County roads, but also County buildings and properties as part of the Plan. The estimated cost to develop the Plan is \$200,000 per year the County cannot spend on other stormwater pollution reduction activities. • Implementation of the Plan in public road rights-of-way will be funded through funds used to build and maintain road infrastructure. Integration of GI features will not only radically increase the cost of capital road, sidewalk, and trail improvements; it will compete with road funds used to maintain the existing County roads. With more Road Funds being spent on GI features, less money will be available for road maintenance. The quality of the pavement will worsen, the risk of pavement failure will increase, which will require more money to repair. This will impact the safety and 	<p>infrastructure features into budgeted and future infrastructure projects, and through alternative compliance in-lieu fees from Regulated Projects.</p> <ul style="list-style-type: none"> • The total number of and geographical extent of green infrastructure projects implemented over time includes both private and public green infrastructure projects so the burden for the total cost of implementing all these projects does not rest solely on the County. • Under the Clean Water Act, the maximum extent practicable standard is an evolving standard that does not necessarily include a zero-sum requirement for implementation of clean water practices by a Permittee under an MS4 permit. That is, development of a new approach must not necessarily be offset by reductions in other existing MS4 permit requirements, although Water Board staff has worked with Permittees to remove or reduce unnecessary and duplicative requirements. • Water Board staff recognizes that much of our existing road infrastructure was constructed without full consideration of its environmental impacts. One result of the Clean Water Act is that we work to gradually address such impacts, within the regulatory structure set up by the Act, including MS4 permits. This may have the effect of incorporating into roadway costs those external costs not originally addressed, and, as noted by the commenter, allowing the public to more clearly recognize those costs and 	

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				<p>driving experience of the traveling public. Revenue for roads has been decreasing for some time, and is expected to decrease even more in the future.</p>	<p>determine how they will be funded. Green infrastructure planning may allow reductions in total costs and significant non-water quality benefits—for example, through incorporating measures that more inexpensively address not only water quality, but also downstream flooding (as compared to alternatives like engineered flood control channels), or which reduce pedestrian and related deaths and injuries by calming traffic, or which raise property values by developing a streetscape more desired by residents.</p>	
Dublin	4	C.3.j.	Requirement to Develop Green Infrastructure Plan	<ul style="list-style-type: none"> • There is a lack of direction and information for development of a Green Infrastructure Plan. There are no guidelines or reference plans that we can use to develop our own Plan. We are concerned that we will expend our limited resources on the development of such a plan, which will then be rejected by Water Board Staff as being inadequate. • Provide a single Plan example that meets Board's requirements. Or give specific direction on the development of the Green Infrastructure Plan. It is a common practice that the scientific research is conducted in advance of a regulation to ensure the efficacy of the law. In this case there is no such scientific backup. 	<ul style="list-style-type: none"> • Provision C.3.j. specifies the minimum elements that must be included in each Green Infrastructure Plan. Board staff intentionally wrote the requirements with this minimum level of prescriptiveness to allow each Permittee the flexibility to develop a Green Infrastructure Plan suited for its unique jurisdiction. • There are comprehensive Green Infrastructure Plans that have already been developed for the cities of San Francisco and San Mateo that may be consulted as example Plans. Similarly, other municipalities in California, such as Los Angeles, San Diego, and Paso Robles, and numerous jurisdictions in combined sewer districts (e.g., Philadelphia, Kansas City, New York City, Milwaukee, Portland, Oregon, Seattle, Chicago, etc.) have developed green infrastructure plans or clean water plans with significant green infrastructure elements that could serve 	None

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					<p>to inform the preparation of the required Plan. All of these plans have a robust technical, or scientific, basis—often using mapping and modeling tools, in combination with data from laboratory and field studies on the performance of green infrastructure measures, including hydraulic performance and unit processes for pollutant removal. That information is used to address problems from combined sewer overflows, pollutants that impair water bodies, flooding, and related impacts. That is, their design is based on and informed by scientific and related analyses explaining how the plans, through their implementation actions, will address the specified impacts. The commenter’s statement that “there is no such scientific backup” is not correct.</p> <ul style="list-style-type: none"> • Significant information on design standards and implementation approaches and costs is available both from Bay Area projects, such as the Permittees’ 10 green street retrofit projects implemented during the Previous Permit, the hundreds of clean water controls installed during the Permittees approval of private development projects, and the large numbers of low impact development controls installed in California and in many combined sewer jurisdictions in the U.S.—particularly Philadelphia, Portland, Oregon, and Seattle. While there is ongoing work on low impact development designs (e.g., bioretention soil specifications, design particulars to 	

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					<p>address specific pollutants, etc.), there is no shortage of existing design guidance and specifications, including the existing technical guidance documents prepared by the countywide stormwater programs in the Bay Area.</p> <ul style="list-style-type: none"> • In addition, Plan development is likely to be informed by the preparation of reasonable assurance analyses (RAAs) required under Provisions C.11.d. and C.12.d., which must demonstrate how Permittees will achieve urban runoff wasteload allocations for mercury and PCBs. On September 23, 2015, Water Board and U.S. EPA staff hosted an RAA workshop, attended by numerous Permittee and storm water program representatives, at which case studies of existing California RAAs, which included significant green infrastructure components, were presented. Water Board and U.S. EPA staff will continue to work with Permittees to provide additional and updated guidance on RAAs. • Existing C.3 Permit requirements (e.g., for impervious surface project thresholds requiring implementation of low impact development measures) are likely to significantly inform the Plans. • As such, Permittees have significant information available to help prepare GI Plans, while having a flexible Permit requirement allowing them to adapt their plan to their particular jurisdiction. Water Board staff concurs that communication during Plan development will be 	

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					important.	
East Palo Alto	12	C.3.j.	Requirement to Develop Green Infrastructure Plan	<ul style="list-style-type: none"> • Develop guiding principles that Permittees can use to voluntarily implement green infrastructure into projects as they are being built, so that design standards can be further tested and cost implications can be better understood prior to full implementation, with the option of using the voluntary infrastructure for future permit terms. • Efforts during the MRP 2.0 term should focus on development of long- term Green Infrastructure Plans and opportunistic implementation of green infrastructure projects where feasible and where funding is available in the near term. 	<ul style="list-style-type: none"> • This Provision requires Permittees to focus on development of the Green Infrastructure Plans and during the Permit term, to identify opportunities for implementation of green infrastructure projects or addition of green infrastructure elements in infrastructure projects where feasible and funding is available. • In addition, see response, immediately above, to Dublin 4. 	None
Hayward Santa Clara Co	4 9	C.3.j.	Requirement to Develop Green Infrastructure Plan	<ul style="list-style-type: none"> • The Green Infrastructure Plan requirement has no clear feasible pathway to attain compliance. • City planning is not directed by pollutant reduction but focused on orderly growth and public safety. Permittees can incorporate green infrastructure where feasible, but will require more time and guidance from the Water Board to meet the intent of the Permit. • The TO imposes a vague and ambiguous path for the County's 	<ul style="list-style-type: none"> • See responses, immediately above, to: Dublin 4 East Palo Alto 12 Clayton 14 and Contra Costa 23. • See U.S. EPA's Attachment A at the end of the Provision C.3. Response to Comments Table for U.S. EPA's suggested list of specific elements to include in Green Infrastructure Plans. 	None

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				compliance with both green infrastructure implementation and related Mercury and PCB reductions.		
U.S. EPA	15, 18-20	C.3.j.	Requirement to Develop Green Infrastructure Plan	<ul style="list-style-type: none"> EPA is a strong proponent for Green Infrastructure Plans in MS4 permits. We see multiple benefits from developing and implementing them, including pollutant removal, decreased flood risk, greener urban landscape, increased habitat, and, potentially, infiltration for groundwater replenishment. To facilitate understanding of what is expected of Permittees, we encourage the Water Board to define the minimum and recommended components of GI plans in the permit's Fact Sheet. Also, we believe the Water Board should, in the permit, establish its ability to reject GI plan submittals if found deficient; the Water Board need not approve each submittal. See U.S. EPA's Attachment A at the end of the Provision C.3. Response to Comments Table for U.S. EPA's suggested list of specific elements to include in Green Infrastructure Plans. 	<ul style="list-style-type: none"> Board staff appreciates U.S. EPA's comments and support of Green Infrastructure Plans. The suggested elements in U.S. EPA's Attachment A have been included in their entirety at the end of the Provision C.3. Response to Comments Table and incorporated into the C.3 Fact Sheet section as a reference for the Permittees. Board staff concurs that there should be an approval or disapproval mechanism for the Green Infrastructure Plans included in this Provision. See also the responses, above, to: Dublin 4 and East Palo Alto 12. 	Provision C.3. j.i.(2) in the revised TO now states that the Green Infrastructure Plans are subject to Executive Officer approval. In addition, U.S. EPA's Attachment A has been incorporated into the C.3 Fact Sheet as guidance.
Walnut Creek	2, 3	C.3.j.	Requirement to Develop Green Infrastructure	<ul style="list-style-type: none"> Walnut Creek supports the ultimate goal of significantly reducing the amount of urban 	<ul style="list-style-type: none"> The Green Infrastructure Plan is necessary to serve as an implementation guide and reporting tool 	<ul style="list-style-type: none"> Provision C.3.j.i. and ii. have been revised to reflect that the

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			Plan	<p>runoff pollutants flowing into receiving waters. However, the TO mandates each Permittee implement a Green Infrastructure Plan on an individual project level and imposes unachievable deadlines.</p> <ul style="list-style-type: none"> • Many city streets have only a 50' right-of-way. This is not sufficient width to comply with the complete streets requirements to provide safely for all modes of transportation and to provide the bioswales that are required by the TO. We must have some flexibility to balance all community needs and requirements with the need to meet water quality standards. • Mandating the proposed green infrastructure requirements on cities such as Walnut Creek, which have very low potential for PCBs and mercury, is not fiscally responsible. • Permittees are in the best position to determine the right balance for their communities. LID facilities should be constructed where they make sense but not at the cost of needed community facilities. • Finally, if you retain these unrealistic requirements, the language in Provision C.11 (Mercury Reduction) and C.12 	<p>during this and subsequent Permit terms to provide reasonable assurance that urban runoff TMDL wasteload allocations for mercury and PCBs in San Francisco Bay will be met. The Plan also sets goals for reducing, over the long term, the adverse water quality impacts of urbanization and urban runoff on receiving waters.</p> <ul style="list-style-type: none"> • The costs may be offset to a certain extent by grant funds, collaborating with other Permittees, incorporating green infrastructure features into budgeted and future infrastructure projects, and through alternative compliance in-lieu fees from Regulated Projects. • The total number of and geographical extent of green infrastructure projects implemented over time includes both private and public green infrastructure projects so the burden for the total cost of implementing all these projects does not rest solely on the City. • One of the requirements for the Plan is to identify means and methods to prioritize particular areas and projects within each Permittee's jurisdiction, at appropriate geographic and time scales, thus allowing Permittees to self-determine the right balance for their communities and where LID facilities should be constructed, and which kinds of LID facilities are appropriate. For example, the commenter identifies an instance, where the commenter may not want to incorporate bioswales, a linear feature, into streets with a constrained right of way. The planning approach set 	<p>total number of and geographical extent of green infrastructure projects implemented over time includes both private and public green infrastructure.</p> <ul style="list-style-type: none"> • Revisions have been made to the dues dates and timelines in Provisions C.3.j.i.(1), (2), and (5) to be aligned with the due dates in Provisions C.11. and C.12.

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				<p>(for PCBs reduction) should be consistent.</p> <ul style="list-style-type: none"> • Because it requires significant investment on the part of all Permittees, we ask that the Board consider limiting the efforts for MRP 2.0 to planning at the regional level only. 	<p>forth in this Provision gives Permittees the flexibility to prioritize the right places for LID measures and right kinds of LID measures for each place. It does not specify that bioswales must be constructed in all streets with 50' rights of way.</p> <ul style="list-style-type: none"> • This Provision also allows Permittees to collectively propose an alternative approach to various scenarios where LID treatment in compliance with Provision C.3.d. is not feasible. • Board staff concurs that the timelines in this Provision should be better aligned with the deadlines specified in Provisions C.11. and C.12, and has revised them to better align. • It is unclear why the commenter believes its jurisdiction has a low potential for mercury discharge, as mercury accumulation and subsequent discharge in urban runoff has a significant atmospheric deposition component. Regardless, there are significant urban runoff impacts from the substantial areas of all Permittees' jurisdictions that have not been addressed by clean water controls. The Green Infrastructure Plans represent an opportunity for Permittees to think through how they will address those impacts over time. • While the Provision requires Permittees to individually prepare Green Infrastructure Plans, it provides the option for significant aspects of those plans to be developed on a group basis 	

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					<p>(e.g., green street specifications), and there will likely need to be communication on a regional level to ensure wasteload reductions are being appropriately addressed. At the same time, it is likely that individual Permittees have much of the information necessary for plan development within their jurisdiction (rather than it being available regionally), as well as a desire to make decisions themselves regarding prioritization within their jurisdiction. Thus, there is a necessary non-regional component to the plans.</p> <ul style="list-style-type: none"> • See also the responses, above, to: Dublin 4 and East Palo Alto 12. 	
Livermore Clayton	4 7a	C.3.j.	Unfunded Mandate Requirement to Develop Green Infrastructure Plan	This provision is seriously flawed, fails to consider all of the associated financial costs to Permittees, fails to recognize the funding limitations and constraints faced by Permittees, and goes well beyond the scope of "maximum extent practicable," thus creating an unfunded mandate.	<ul style="list-style-type: none"> • These requirements stem from federal Clean Water Act § 402(p)(3)(B)(ii)-(iii), and are not an unfunded State mandate. • Additionally, they are consistent with the maximum extent practicable standard, which is an evolving standard that is an iterative, evaluative process that includes, but is not limited to, factors such as the conditions of receiving waters, climate, hydrology, and the technical and economic feasibility of particular practices. Indeed, Provision C.3.j has been intentionally written to provide Permittees the flexibility to appropriately incorporate MEP concerns into their GI Plans, while still meeting Permit requirements. 	None
Union City	1	C.3.j.	Unfunded Mandate Requirement to	<ul style="list-style-type: none"> • The TO requires preparation and implementation of a Green Infrastructure Plan to facilitate 	<ul style="list-style-type: none"> • One of the requirements for the Plan is to identify means and methods to prioritize particular areas and projects 	Provision C.3.j.i. and ii. have been revised to reflect that the total

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			Develop Green Infrastructure Plan	<p>the inclusion of LID drainage design into storm drain infrastructure on public and private lands, including streets, roads, storm drains, parking lots, building roofs.</p> <ul style="list-style-type: none"> • Union City is largely built out and inclusion of LID drainage design features into the City's existing infrastructure and buildings is not feasible due to the substantial costs associated with the retrofit of existing facilities necessary to satisfy this requirement. • In addition, the amount of staff time related to project management and public outreach would also be significant. • Union City has experience with installing these types of improvements and the associated costs and related impact on staff resources. The City is currently in the process of retrofitting portions of three existing streets to install rain gardens, which is one of the primary ways of treating stormwater runoff from roads and satisfying the provisions listed in Section C.3.j. The combined street length of the projects is approximately 1.5 miles with a total estimated construction cost of approximately \$9.5 million. This 	<p>within each Permittee's jurisdiction, at appropriate geographic and time scales, thus allowing Permittees to self-determine the right balance for their communities and where LID facilities could and/or should be constructed.</p> <ul style="list-style-type: none"> • As green infrastructure details become the standard approach for street construction (or reconstruction), costs will drop, although Water Board staff recognizes that retrofit of already-constructed urban infrastructure is typically more costly than "greenfield" infrastructure. In developing the Permit requirements, staff considered cost information such as that from State grant-funded projects, as well as those in other areas, including, but not limited to, Portland, Oregon. The significant shift to, for example, green streets design, from designs that don't substantively address their water quality impacts, will result in a concomitant shift over time in the MEP standard for street design. • These requirements stem from federal Clean Water Act regulatory drivers, and are not an unfunded State mandate. • The commenter's comment also implies a false choice—the idea that there is a choice between either addressing the existing water quality impacts of built infrastructure and urban areas (e.g., via LID retrofit), or simply not doing it and leaving the water quality impacts in place. To the extent the impacts must be addressed under Clean Water Act requirements, the option is not whether, 	<p>number of and geographical extent of green infrastructure projects implemented over time includes both private and public green infrastructure.</p>

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				<p>equates to approximately \$6.5 million per mile to install this type of drainage improvement within an existing street.</p> <ul style="list-style-type: none"> • The City is currently developed with 237 miles of roadways. At an average cost of \$6.5 million per mile, it would cost the City approximately \$1.5 billion to retrofit its existing streets to install these types of facilities throughout the City. In addition, the City has expended substantial staff time for management of these projects as well as outreach to the public since these types of projects typically result in temporary disruption to the neighborhood from construction activities as well as permanent impacts such as displacement of parking, removal of trees, and the need for additional right-of-way. • This is just one practical example of the substantial financial burden that the proposed Green Infrastructure requirement places on cities. Without associated funding to support these activities, the requirements under Section C.3.j. results in an unfunded mandate. • Union City is supportive of incorporating these types of improvements into new streets and buildings as they are 	<p>but rather how to address them, and green infrastructure planning is intended to be a flexible approach that maximizes the Permittees' ability to plan best for their own jurisdictions. It has been proposed as an approach as an alternative to more-prescriptive retrofit requirements.</p> <ul style="list-style-type: none"> • See also the Responses, above, to: Clayton 9, 10, 11, 12, 13 Dublin 4 and East Palo Alto 12. 	

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				constructed but strongly objects to application of this Provision to existing facilities and buildings.		
Water Board June 10, 2015 Hearing Transcript Mayor Laura Hoffmeister Concord	Page 73 (Lines 20-25) Page 74 (Lines 1-9)	C.3.j.i.(1)	Green Infrastructure Framework	<ul style="list-style-type: none"> We hope that the resolutions that many of the Cities have already adopted supporting complete streets that have been submitted to Metropolitan Transportation Commission would be the higher level buy-in that you're speaking of about the Electeds understanding complete streets includes Green Infrastructure. Many, many of the jurisdictions have passed those resolutions in order to receive MTC funding for their streets projects, which would allow us to meet that one-year timeframe for Green Infrastructure very quickly by allowing that to be an opportunity for compliance. And I would ask that you maybe have staff see if that can be worked into the Permit as an option. 	<ul style="list-style-type: none"> The document that requires approval by each Permittee's governing body, mayor, city manager, or county manager ("the Electeds") is the framework or workplan that describes specific tasks and timeframes for each Permittee to develop its Green Infrastructure Plan. If any resolution passed by the "Electeds" in a City can serve as a framework or workplan that adequately describes specific tasks and timeframes for developing the Green Infrastructure Plan, then that resolution can be used to satisfy this requirement. It seems unlikely that a resolution supporting complete streets, by itself, would constitute the framework and buy-in, because complete streets refers to street designs that are multi-modal (i.e., accommodate users of different kinds of transportation, such as pedestrians, bicyclists, cars, and mass transit). However, complete streets design does not necessarily include green street/green infrastructure design. Additionally, by itself, support for complete streets doesn't encompass the range of tasks associated with completion of a green infrastructure plan, which are described in Provision C.3.j. 	None
ACCWP Berkeley	28 25, 26	C.3.j.i.(1)	Green Infrastructure Framework	<ul style="list-style-type: none"> Extend the time for submittal of the required framework to 24 months from the Permit 	<ul style="list-style-type: none"> Board staff concurs that more time should be allotted for development and approval of the framework for the Plan. 	<ul style="list-style-type: none"> Provision C.3.j.i.(1) has been revised to allow more time for

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Cupertino Emeryville Fremont Hayward Mountain View Santa Clara Co SCVURPPP	6 101 7 4 6 7 22		Due Date	<p>effective date because most Permittees will need to have the framework approved by their governing bodies rather than the city or county manager.</p> <ul style="list-style-type: none"> Developing a framework for approval by a governing body will require significant time and resources, and coordination and cooperation among various agencies with often conflicting priorities and constraints. The new Green Infrastructure approach and requirements will require significant financial resources and in-depth discussion and planning efforts by local agencies over upcoming years. The new Green Infrastructure Plan could cost between \$300,000 and \$500,000 for Berkeley to prepare, reducing funding available for construction of Green Infrastructure. This new requirement will reduce funding available for construction of green infrastructure projects. Based on Berkeley's experience to date, the preparation of the plan will result in the elimination of two to four plant-based green infrastructure sites throughout the City that would have otherwise been built. These efforts will significantly affect many areas 	<p>While we recognize the necessity of and benefit to the Plan of coordination between agencies and departments, completion of a framework (i.e., as opposed to completion of the Plan itself) should not require two years. We have revised the proposed provision language to allow until June 30, 2017, more than 19 months from the Permit's expected adoption date.</p> <ul style="list-style-type: none"> The time and expense to prepare the required plans are appropriate and likely a better alternative to a more-prescriptive requirements, such as for retrofit or to ensure treatment of flows from every discharge point into a receiving water. See also the responses, above, to: Clayton 9, 10, 11, 12, 13 Dublin 4 East Palo Alto 12 and Union City 1 	<p>development and approval of the framework for the Plan.</p> <ul style="list-style-type: none"> Provision C.3.j.i and ii. have been revised to reflect that the total number of and geographical extent of green infrastructure projects implemented over time includes both private and public green infrastructure.

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				of municipal government. Stated differently, this will be a major commitment for Permittees extending many years into the future.		
Belmont Brisbane Burlingame CCCWP East Palo Alto Pinole San Bruno San Carlos San Pablo SCVURPPP SMCWPPP	13a 5a 14a 29 11a 2 14a 4a 4 96 15	C.3.j.i.(1)	Green Infrastructure Framework Due Date	<ul style="list-style-type: none"> A very short timeframe is given to develop a framework for the Green Infrastructure Plan, given the effort required to coordinate and educate internal departments, educate upper level staff and elected officials, prepare the framework, conduct resource planning, and accommodate lead times for bringing the framework to governing bodies. Provide additional time to complete and obtain governing body approval of the Green Infrastructure Plan framework and extend the deadline to the required reporting date of September 15, 2017 (21½ months after Permit effective date). 	See response, immediately above, to ACCWP 28 Berkeley 25, 26 Cupertino 6 (etc.)	Provision C.3.j.i.(1) has been revised to allow more time for development and approval of the framework for the Plan.
Clayton Concord Daly City Dublin	7b 2b 5 7	C.3.j.i.(1)	Green Infrastructure Framework Due Date	Timeline for developing framework for Green Infrastructure Plan is unrealistic in regards to actual local governmental time frames and related budget processes which include notices and public meetings, etc.	See response, above, to ACCWP 28 Berkeley 25, 26 Cupertino 6 (etc.)	Provision C.3.j.i.(1) has been revised to allow more time for development and approval of the framework for the Plan.
Clayton Concord	42 25	C.3.j.i.(1)	Green Infrastructure	Extend the time for submittal of the required framework to a	See response, above, to ACCWP 28	Provision C.3.j.i.(1) has been revised to

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Danville El Cerrito Hercules Martinez Moraga Oakley Orinda Pinole Pleasant Hill San Pablo San Ramon	25 31 22 28 19 10j 22 18 21 21 28		Framework Due Date	minimum of 20 months after the Permit effective date.	Berkeley 25, 26 Cupertino 6 (etc.)	allow more time for development and approval of the framework for the Plan.
El Cerrito	9	C.3.j.i.(1) C.3.j.i.(1)(a)	Green Infrastructure Framework Due Date Mechanisms for Prioritization	<ul style="list-style-type: none"> The proposed Green Infrastructure Plan framework schedule with development and approval within one year is exceedingly aggressive considering its complexity. Prioritization and mapping of potential projects would be a major resource intensive effort that may require more than two years. 	<ul style="list-style-type: none"> See response, above, to ACCWP 28 Berkeley 25, 26 Cupertino 6 (etc.) Board staff concurs that more time should be allotted for prioritization and mapping of potential projects. 	<ul style="list-style-type: none"> Provision C.3.j.i.(1) has been revised to allow more time for development and approval of the framework for the Plan. The 2-year deadline in Provision C.3.j.i.(1)(a) has been deleted.
Livermore	5	C.3.j.i.(1)	Green Infrastructure Framework Due Date	This task will be an extensive, resource-intensive effort, which cannot be achieved in such a short timeframe. The schedule for completion should be extended to 36 months at a minimum.	See response, above, to ACCWP 28 Berkeley 25, 26 Cupertino 6 (etc.)	Provision C.3.j.i.(1) has been revised to allow more time for development and approval of the framework for the Plan.
San Ramon	7	C.3.j.i.(1)	Green Infrastructure Framework Due Date	<ul style="list-style-type: none"> Twelve months is a very short timeframe given the effort needed to coordinate and educate staff and elected officials, prepare the framework, conduct resource 	See response, above, to ACCWP 28 Berkeley 25, 26 Cupertino 6 (etc.)	Provision C.3.j.i.(1) has been revised to allow more time for development and approval of the framework for the

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				<p>planning, and accommodate lead times to bring elements of the framework to the City Council for adoption.</p> <ul style="list-style-type: none"> We ask for an extension to the deadline for a range of two to three years after adoption of the permit. 		Plan.
U.S. EPA	16	C.3.j.i.(1)	Green Infrastructure Framework	EPA supports the draft MRP requirements for Permittees to develop frameworks for Green Infrastructure Plans.	Comment noted.	None
Clayton	8	C.3.j.i.(1)	Green Infrastructure Framework and Plan	The creation of both a framework and plan will require Clayton to contract with outside engineering services, since we contract for this public service and do not have in-house credentialed staff to undertake such efforts, nor even the funds to hire such!	<ul style="list-style-type: none"> The Green Infrastructure Plan is necessary to serve as an implementation guide and reporting tool during this and subsequent Permit terms to provide reasonable assurance that urban runoff TMDL wasteload allocations for mercury and PCBs in San Francisco Bay will be met. The Plan also sets goals for reducing, over the long term, the adverse water quality impact of urbanization and urban runoff on receiving waters. The costs may be offset to a certain extent by grant funds or collaborating with other Permittees. See also the response, above, to: Contra Costa Co. 3, 4 and ACCWP 28. 	None
Clayton Contra Costa Co Emeryville	14 23 101	C.3.j.i.(1) C.3.j.i.(4)	Green Infrastructure Framework and Plan Due Dates	<ul style="list-style-type: none"> Implementation of the Green Infrastructure (GI) Plan will take longer to initiate than the interim and final timelines in the MRP TO. The development of Green 	<ul style="list-style-type: none"> Board staff concurs that more time should be allotted for development and approval of the framework for the Plan. Board staff disagrees that the full permit term is necessary for development of the Plan. Based on other cities' past 	Provision C.3.j.i.(1) has been revised to allow more time for development and approval of the framework for the Plan.

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				<p>Infrastructure Plan will take at least the full permit term to complete. It is a monumental planning effort that will require a paradigm shift by cities and counties regarding roads and stormwater runoff from them. Many of unincorporated Contra Costa County communities developed during the 1945 to 1980 period that will be the focus of the GI Plan. Many of these communities are closely intertwined with adjacent cities. This will require coordinated efforts with several cities, which only complicates the planning effort. Furthermore, many unincorporated communities lay within the hills or near the Delta/Bay margins, where drainage is particularly challenging to treat. Five years to develop a new plan to treat road run off may not be adequate.</p> <ul style="list-style-type: none"> The time frame for submitting a Green Infrastructure framework needs to be altered for submittal with the Annual Report filing in September 2018, and the Green Infrastructure Plan filed with the Annual Report in September 2019. 	<p>experiences in developing Green Infrastructure Plans, Board staff believes the allotted 3 years and 9 months (the Plan is due with the 2019 Annual Report) is adequate time for each Permittee to complete its Plan. Allowing the entire Permit term to complete the Plan is too much time and prevents any of the Plans from being used by Board staff to inform the development of the MRP in the next Permit term.</p>	
BASMAA Concord Danville	4 2a 2, 3	C.3.j.i.(1) C.3.j.i.(1)(a) C.3.j.i.(4)	Green Infrastructure Framework and	<ul style="list-style-type: none"> The TO includes a new mandate to develop Green Infrastructure Plans. This 	<ul style="list-style-type: none"> See above response to ACCWP 28 (cost) and Clayton 14 SFEI's Green Plan-IT tool was included 	<ul style="list-style-type: none"> Provision C.3.j.i.(1) has been revised to allow more time for

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El Cerrito Hercules Lafayette Martinez Moraga Oakley Pinole San Pablo SCVURPPP	2a 2, 3 2, 3 2, 3a 4 4 1a 2 24, 86		Plan Due Dates Mechanisms for Prioritization	<p>coordinated, multi-year effort represents a significant paradigm shift toward developing comprehensive long range plans that will significantly reduce the amount of urban runoff pollutants, including the pollutants of concern, flowing into receiving waters.</p> <ul style="list-style-type: none"> The requirements to develop a Green Infrastructure framework and Plan will require significant investment and will require major, resource-intensive and sustain efforts to implement, for which Permittees have not budgeted and yet have deadlines within one and two years, respectively and have no new funding source. Additional time is necessary for both tasks and the mechanism to develop the Plan should include other tools less complex than Green Plan-IT to keep local jurisdictional costs down. 	<p>as an example, not a requirement. Each Permittee has flexibility in choosing the mechanism, as long as it acceptably includes criteria for prioritization and outputs that can be incorporated into the Permittee's long-term planning and capital improvement processes. Examples of approaches other municipalities have taken, and modeling tools they have used, including in Los Angeles, Paso Robles, San Diego, and at Lake Tahoe, were presented at the recent September 23, 2015, U.S. EPA/Water Board workshop on reasonable assurance analyses. It is likely that many of those approaches could be appropriately adapted to implementation in the Bay Area under the Permit.</p>	<p>development and approval of the framework for the Plan.</p> <ul style="list-style-type: none"> Provision C.3.j.i.(2)(a) has been revised to include the phrase "or another tool" along with SFEI's Green Plan-IT as examples of mechanisms to prioritize and map areas for potential and planned green infrastructure projects.
Pittsburg	2	C.3.j.i.(1) C.3.j.i.(1)(a)-(c) C.3.j.i.(4)	Green Infrastructure Framework and Plan Due Dates Mechanisms for Prioritization Targets for Retrofit	<ul style="list-style-type: none"> The provision as written is unclear as to what deliverables are expected within the first two years, a "framework" for a Green Infrastructure program or a completed "plan." The requirement to create a prioritization map for potential projects based upon drainage areas will require valuable 	<ul style="list-style-type: none"> Provision C.3.j. has been revised to provide more clarity on the distinction between the "framework or workplan for the Green Infrastructure Plan" and the Green Infrastructure Plan itself and on the expected deliverables. The Green Infrastructure Plan is necessary to serve as an implementation guide and reporting tool during this and subsequent Permit terms 	<ul style="list-style-type: none"> Provision C.3.j. has been revised to provide more clarity on the distinction between the "framework or workplan for the Green Infrastructure Plan" and the Green

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				<p>resources for an effort which has little to no benefit for water quality.</p> <ul style="list-style-type: none"> • More clarification is needed regarding the expected deliverables, and more flexibility should be given for mechanisms by which Permittees track progress toward these goals. The referenced "targeted" dates for retrofit of impervious surfaces should instead be revised to "projections", as the proposed timeframes are unreasonable. Given the amount of effort required to produce this deliverable, additional time is requested for the first submittal. 	<p>to provide reasonable assurance that urban runoff TMDL wasteload allocations for mercury and PCBs in San Francisco Bay will be met. The Plan also sets goals for reducing over the long term, the adverse water quality impact of urbanization and urban runoff on receiving waters.</p> <ul style="list-style-type: none"> • One of the requirements for the Plan is to identify means and methods to prioritize particular areas and projects within each Permittee's jurisdiction, at appropriate geographic and time scales, thus allowing Permittees to self-determine the right balance for their communities and where LID facilities could and/or should be constructed. Using map-based analysis is a key aspect to developing and communicating an understanding of how plans will address the prioritization and implement projects over time, including in combination with tools like McHargian overlay analysis. • The Green Infrastructure Plan is intended to describe how Permittees will shift their impervious surfaces and storm drain infrastructure from gray (traditional) to green. That is, the Plan should describe how the Permittees will change over time infrastructure that directs runoff directly into storm drains and receiving waters to green infrastructure that slows runoff by dispersing it to vegetated areas, harvests and uses runoff, promotes infiltration and evapotranspiration, and uses bioretention and other green 	<p>Infrastructure Plan itself and on the expected deliverables.</p> <ul style="list-style-type: none"> • Provision C.3.j.i. and ii. have been revised to reflect that the total number of and geographical extent of green infrastructure projects implemented over time includes both private and public green infrastructure. • Revisions have been made to the dues dates and timelines in Provisions C.3.j.i.(1), (2), and (5) to be aligned with the due dates in Provisions C.11. and C.12.

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					<p>infrastructure practices to treat stormwater runoff.</p> <ul style="list-style-type: none"> • Therefore, one of the required elements for the Plan is for Permittees to self-determine and establish “targets” for the amount of impervious surface to be retrofitted with green infrastructure. “Targets” is more appropriate than “projections” because the purpose of this required element is to require Permittees to proactively identify green infrastructure work that they will complete beyond what would happen anyway. • Board staff concurs that the time schedules for meeting these targets should be consistent with the timeframes for assessing mercury and PCB load reductions specified in Provisions C.11. and C.12, and has revised the Permit language to make the schedules consistent. 	
San Jose	5, 26	C.3.j.i.(1) C.3.j.i.(4)	Green Infrastructure Framework and Plan Due Dates	<ul style="list-style-type: none"> • While San Jose supports the move to a holistic planning approach for green infrastructure and is already moving forward on a number of related efforts (e.g., a Storm Sewer Master Plan), San Jose has concerns regarding the deadlines, level of effort, and potential costs associated with development and implementation of a Green Infrastructure Plan. • The TO requires Permittees to develop and obtain governing 	<ul style="list-style-type: none"> • The Green Infrastructure Plan is necessary to serve as an implementation guide and reporting tool during this and subsequent Permit terms to provide reasonable assurance that urban runoff TMDL wasteload allocations for mercury and PCBs in San Francisco Bay will be met. The Plan also sets goals for reducing, over the long term, the adverse water quality impacts of urbanization and urban runoff on receiving waters. • The costs may be offset to a certain extent by grant funds or collaborating with other Permittees. 	Provision C.3.j.i.(1) has been revised to allow more time for development and approval of the framework for the Plan.

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				<p>body approval of a framework within 12 months of the permit effective date. Given the size and complexity of San Jose and the extent of interdepartmental coordination required to develop a framework, the 12 month timeline is too short.</p> <ul style="list-style-type: none"> • Allow at least 18 months for Permittees to complete these tasks and to require Permittees to submit the framework no earlier than the second Annual Report due under the permit. • Also, allow the full permit term for Permittees to develop Green Infrastructure Plans and focus on implementation of the plans in the following permit. 	<ul style="list-style-type: none"> • In working with Permittees and other interested stakeholders to develop the Green Infrastructure Plan language, Water Board staff considered that green infrastructure planning would be a cost in addition to current efforts under the Previous Permit. Staff also considered cost data and lessons learned from the Bay Area and other areas, including storm water grant budget data and reported project costs and cost estimates, and how those can change over time as project proponents, contractors, and related parties become more experienced in implementing green infrastructure designs, which often results in a reduction in unit costs. We also considered other options to meeting the combination of the Permit's MEP standard and the TMDL stormwater wasteload allocations for mercury and PCBs, which likely include a need to retrofit the existing built urban landscape over time. These other options, such as treating MS4 discharges at each discharge point into a receiving water body, were likely more expensive, in part because they were more prescriptive, offering Permittees less flexibility in future design and implementation. The value of the water quality benefit outweighs the cost increment to obtain it. Various references identify the significant not only water quality benefits, but additional benefits, such as high quality placemaking, pedestrian/multi-modal safety, reductions in the urban heat 	

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					<p>island effect, and other benefits (e.g., water quality benefits are discussed in detail in references available at the International Stormwater BMP Database, www.bmpdatabase.org. U.S. EPA has made available a variety of references on costs and benefits, at: water.epa.gov/infrastructure/greeninfrastructure/gi_costbenefits.cfm). The significant incorporation of green infrastructure as a part of the solution to urban runoff problems by cities including, but not limited to, Chicago, Milwaukee, Detroit, Kansas City, Philadelphia, New York, Portland and Eugene, Oregon, Seattle, Los Angeles, Minneapolis, San Diego, and Auckland, New Zealand, in China's developing "sponge city" approach, and elsewhere, as well as the concomitant support for those kinds of solutions by organizations like NRDC, TreePeople, and others, indicates the positive role green infrastructure can play in the urban environment. Additionally, it is not infeasible to pay for green infrastructure planning. The costs may be offset to a certain extent by grant funds or collaborating with other Permittees, establishing fees or other exactions, and by planning ahead of time to incorporate green infrastructure designs into infrastructure and other maintenance and replacement projects that will need to be completed over time. One aspect of the requirement to plan green infrastructure implementation over time as a part of the plans is to enable</p>	

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					<p>Permittees to identify the likely opportunities that will crop up and to plan for funding for the. As an example, the watershed management plans completed in Southern California for TMDL compliance, including in Los Angeles and San Diego, have served as a spur for planning for and obtaining funding, including successful bond measures.</p> <ul style="list-style-type: none"> • Board staff concurs that more time should be allotted for development and approval of the framework for the Plan. • Board staff disagrees that the full permit term is necessary for development of the Plan. Based on other cities' past experiences in developing Green Infrastructure Plans, Board staff believes the allotted 3 years and 9 months (the Plan is due with the 2019 Annual Report) is adequate time for each Permittee to complete its Plan. Allowing the entire Permit term to complete the Plan is too much time and would prevent Water Board staff from being able to use the Plans to inform the development of the MRP in the next Permit term. 	
San Mateo Co Santa Clara Co	4 6, 7	C.3.j.i.(1) C.3.j.i.(4)	Green Infrastructure Framework and Plan Due Dates	<ul style="list-style-type: none"> • Although opportunities are available to integrate GI objectives into the County's various long- range capital and sustainability programs, retrofit projects under those programs would be implemented by the County and not the Water Board. These retrofit projects 	<ul style="list-style-type: none"> • The Green Infrastructure Plan is necessary to serve as an implementation guide and reporting tool during this and subsequent Permit terms to provide reasonable assurance that urban runoff TMDL wasteload allocations for mercury and PCBs in San Francisco Bay will be met. The Plan also sets goals for reducing over the 	Provision C.3.j.i.(1) has been revised to allow more time for development and approval of the framework for the Plan.

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				<p>are projected to be constructed under long-term (e.g. ten year) capital funding cycles, and are further dependent on the availability of funding for long-term maintenance. The timeframes in the TO are simply unrealistic because developing a comprehensive GI Plan requires time and significant County resources. For example, the GI Plan framework has to be developed and approved by the Board of Supervisors within one year of the Permit effective date, which is unrealistic since numerous County agencies must be involved in evaluation of GI opportunities and amendment of capital plans and programs to include feasible components of GI. This planning work needs to be completed before consideration of a plan by the Board.</p> <ul style="list-style-type: none"> • The TO must be revised to provide two years to complete and obtain governing body approval of the GI. Framework, and further revised to provide the entire permit term to complete the GI Plan. This will ensure the County and other Permittees have the opportunity to conduct a thorough evaluation of GI opportunities; are able to properly vet potential GI projects with implementing 	<p>long term, the adverse water quality impact of urbanization and urban runoff on receiving waters.</p> <ul style="list-style-type: none"> • Board staff concurs that more time should be allotted for development and approval of the framework for the Plan. • Board staff disagrees that the full permit term is necessary for development of the Plan. Based on other cities' past experiences in developing Green Infrastructure Plans, Board staff believes the allotted 3 years and 9 months (the Plan is due with the 2019 Annual Report) is adequate time for each Permittee to complete its Plan. Allowing the entire Permit term to complete the Plan is too much time and would prevent Water Board staff from being able to use the Plans to inform the development of the MRP in the next Permit term. • See also response, above, to ACCWP 28 Berkeley 25, 26 Cupertino 6 (etc.) and San Jose 5, 26 	

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				departments, taxpayers/ residents, and elected officials; and have time to develop funding mechanisms to facilitate project implementation.		
U.S. EPA	17	C.3.j.i.(1) C.3.j.i.(4)	Green Infrastructure Framework and Plan Due Dates	EPA recognizes that timeframes of 2016 and 2018, respectively, have been proposed as due dates for Permittees to submit frameworks and complete plans to the Water Board. In the interest of developing feasible GI plans, EPA is open to extending these timeframes should Permittees provide justification that additional time is necessary	Comment noted.	Provision C.3.j.i.(1) has been revised to allow more time for development and approval of the framework for the Plan.
Belmont Brisbane Burlingame CCCWP El Cerrito East Palo Alto Mountain View San Bruno San Mateo San Jose SCVURPPP SMCWPPP	11, 12 4 12, 13 7, 28 7 9, 10 4, 5 13 10 25 21, 85 14	C.3.j.i.(1) C.3.j.ii.	Green Infrastructure Plans and Projects	<ul style="list-style-type: none"> This provision will be one of the most challenging portions of C.3 to implement and has a significant level of uncertainty in terms of what will constitute compliance. The level of effort and resources required to implement Provision C.3 could be dramatically higher than implementing the current permit because of these new requirements. The language in Provision C.3.j needs to be more consistent with the expectations in Provisions C.11 and C.12 for achieving PCB and mercury load reductions with green infrastructure. Make more explicit in C.3.j (as well as in C.11/12) that private 	<p>See also response, above, to San Jose 5, 26 Dublin 4 Walnut Creek 2, 3</p> <p>ACCWP 28 Berkeley 25, 26 Cupertino 6 (etc.) and</p> <p>San Mateo County 4 Santa Clara County 6, 7</p>	<ul style="list-style-type: none"> Provision C.3.j.i. and ii. have been revised to reflect that the total number of and geographical extent of green infrastructure projects implemented over time includes both private and public green infrastructure. Revisions have been made to the deadlines and timelines in Provisions C.3.j.i.(1), (2), and (5) to be aligned with the due dates in Provisions C.11.

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				development and redevelopment as well as public projects will count toward meeting PCB and mercury load reductions, and that constructed public green infrastructure projects within the permit term are not required for compliance with green infrastructure pollutant load reductions.		and C.12.
Dublin	5	C.3.j.i.(1) C.3.j.ii.	Green Infrastructure Plans and Projects	<ul style="list-style-type: none"> • Dublin is not convinced of the water quality benefits that will be achieved from the Green Infrastructure Plan and the construction of green infrastructure projects. The cost/benefit ratio for some green infrastructure projects will be too high to justify project planning, development and construction. • Provide scientifically sound information (data) that demonstrates the water quality benefits that will be achieved from the green infrastructure projects. 	<ul style="list-style-type: none"> • The Green Infrastructure Plan is necessary to serve as an implementation guide and reporting tool during this and subsequent Permit terms to provide reasonable assurance that urban runoff TMDL wasteload allocations for mercury and PCBs in San Francisco Bay will be met. The Plan also sets goals for reducing, over the long term, the adverse water quality impacts of urbanization and urban runoff on receiving waters. • Green infrastructure employs LID, which is recognized as a cost-effective, beneficial, and holistic integrated stormwater management strategy that will provide a more resilient, sustainable system that slows runoff by dispersing it to vegetated areas, harvests and uses runoff, and promotes infiltration, all of which will result in water quality benefits. See, for example, the references cited in San Jose 5, 26. • The costs may be offset to a certain extent by grant funds, collaborating with other Permittees, incorporating green infrastructure features into budgeted 	None

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					<p>and future infrastructure projects, as well as through alternative compliance in-lieu fees from Regulated Projects.</p> <ul style="list-style-type: none"> • The total number of and geographical extent of green infrastructure projects implemented over time includes both private and public green infrastructure projects so the burden for the total cost of implementing all these projects does not rest solely on the Permittees. • One of the requirements for the Plan is to identify means and methods to prioritize particular areas and projects within each Permittee's jurisdiction, at appropriate geographic and time scales, thus allowing Permittees to self-determine the right balance for their communities and where LID facilities could and/or should be constructed. • See also responses to other C.3 comments in this RTC, including, but not limited to, Clayton 9, 10, 11, 12, 13; San Jose 5, 26; and Contra Costa Co. 3, 4. 	
<p>El Cerrito Orinda Pinole San Pablo San Ramon</p>	<p>2b, 6, 8 2 1b 3 3</p>	<p>C.3.j.i.(1) C.3.j.ii.</p>	<p>Green Infrastructure Plans and Projects</p>	<ul style="list-style-type: none"> • The TO requires all Permittees to assess each planned infrastructure project and add green infrastructure features where feasible. • El Cerrito is concerned with the challenge of generating the additional financial resources that would be required to meet the terms of many of the new provisions. These new requirements could significantly impact how transportation 	<ul style="list-style-type: none"> • The Green Infrastructure Plan is necessary to serve as an implementation guide and reporting tool during this and subsequent Permit terms to provide reasonable assurance that urban runoff TMDL wasteload allocations for mercury and PCBs in San Francisco Bay will be met. The Plan also sets goals for reducing over the long term, the adverse water quality impact of urbanization and urban runoff on receiving waters. • The costs may be offset to a certain 	<p>None</p>

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				<p>infrastructure is built and maintained over the next several decades. The burden of these requirements must be balanced with the multiple other demands for use of limited public right-of-way in the built environment. Efforts during the MRP 2.0 term should focus on planning and opportunistic implementation where feasible.</p> <ul style="list-style-type: none"> • Green Infrastructure would be a cost-prohibitive option that would significantly increase the cost of pavement rehabilitation projects. The City of Orinda has the unfortunate standing as having some of the worst roads in the Bay Area, and funding would need to be diverted to water quality treatment facilities instead of the pavement itself. In addition, Orinda has limited right-of-way to accommodate and fit-in Green Infrastructure features. • Pinole and San Pablo ask that permit language is clarified to allow Permittees to analyze and consider factors such as: grading and drainage, pollutant loading associated with adjacent land use, use of available space within the project area, condition of existing infrastructure and potential funding to support LID elements. 	<p>extent by grant funds, collaborating with other Permittees, incorporating green infrastructure features into budgeted and future infrastructure projects, as well as through alternative compliance in-lieu fees from Regulated Projects.</p> <ul style="list-style-type: none"> • The total number of and geographical extent of green infrastructure projects implemented over time includes both private and public green infrastructure projects so the burden for the total cost of implementing all these projects does not rest solely on the Permittees. • One of the requirements for the Plan is to identify means and methods to prioritize particular areas and projects within each Permittee's jurisdiction, at appropriate geographic and time scales, thus allowing Permittees to self-determine the right balance for their communities and where LID facilities could and/or should be constructed. That includes options such as considering factors identified by the commenters. • Orinda comments that green infrastructure may increase the cost of pavement rehabilitation projects. As noted elsewhere in the responses to this section (see below) the choice faced under the MEP standard and requirement to achieve wasteload allocations for impairing pollutants is not a choice between the status quo (i.e., maintaining, possibly in perpetuity, the existing road infrastructure without addressing its water quality impacts) and green infrastructure planning. 	

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					<p>Rather, it is a choice between, or among, different solutions that address the ongoing contributions of runoff from urbanized area, including roads, to receiving waters. Green infrastructure planning represents a solution that is likely significantly more cost effective, more flexible, and which gives Permittees a greater degree of control than other options, such as end-of-pipe treatment. Additionally, we anticipate that, similar to the incorporation of complete street requirements into transportation grant funding, green street requirements will also be added, thus making such projects competitive for future transportation grant funds.</p> <ul style="list-style-type: none"> • See also responses elsewhere in this section, including, but not limited to: Clayton 9, 10, 11, 12, 13 Contra Costa Co. 3, 4 and San Jose 5, 26 	
<p>BASMAA Palo Alto Santa Clara Co SCVURPPP</p>	<p>4, 5 4 1 8</p>	<p>C.3.j.i.(1) C.3.j.i.(4) C.3.j.ii.</p>	<p>Green Infrastructure Plans and Projects Due Dates</p>	<ul style="list-style-type: none"> • This Provision will be one of the most challenging to implement and, similar to Provisions C.11 and C.12, has a significant level of uncertainty in terms of what will constitute compliance. • Developing a comprehensive Green Infrastructure Plan will take time and significant resources, and the timeframes in the TO for completion of the Plan are unrealistic. • Specifically, completing a Green Infrastructure Plan will be a complex and time-intensive 	<ul style="list-style-type: none"> • The Green Infrastructure Plan is necessary to serve as an implementation guide and reporting tool during this and subsequent Permit terms to provide reasonable assurance that urban runoff TMDL wasteload allocations for mercury and PCBs in San Francisco Bay will be met. The Plan also sets goals for reducing over the long term, the adverse water quality impact of urbanization and urban runoff on receiving waters. • One of the requirements for the Plan is to identify means and methods to prioritize particular areas and projects 	<ul style="list-style-type: none"> • Provision C.3.j.i.(1) has been revised to allow more time for development and approval of the framework for the Plan. • Provision C.3.j.i. and ii. have been revised to reflect that the total number of and geographical extent of green infrastructure projects

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				<p>process which will require a great deal of municipal interdepartmental coordination and should be provided the entire permit term to complete.</p> <ul style="list-style-type: none"> • Additionally, the TO requires early implementation of green infrastructure, focused on identifying and implementing public projects that have potential for including LID measures within the permit term. • Implementation (i.e., design and construction) during the Permit term of green infrastructure projects that are not already planned and funded will be very challenging for most Permittees. • We request that Water Board staff work with Permittees to make this section more consistent with C.11 and C.12, and more flexible for different types and sizes of Permittees to comply, and allow more realistic timeframes for compliance. • Efforts during the MRP 2.0 term should focus on development of long-term Green Infrastructure Plans and continue to leverage opportunistic implementation of green infrastructure projects where feasible. 	<p>within each Permittee's jurisdiction, at appropriate geographic and time scales, thus allowing Permittees to self-determine the right balance for their communities and where LID facilities could and/or should be constructed.</p> <ul style="list-style-type: none"> • Board staff concurs that more time should be allotted for development and approval of the framework for the Plan. • Board staff disagrees that the full permit term is necessary for development of the Plan. Based on other cities' past experiences in developing Green Infrastructure Plans, Board staff believes the allotted 3 years and 9 months (the Plan is due with the 2019 Annual Report) is adequate time for each Permittee to complete its Plan. Allowing the entire Permit term to complete the Plan is too much time and would prevent Water Board staff from being able to use the Plans to inform the development of the MRP in the next Permit term. • Provision C.3.j.ii.(1) requires each Permittee to prepare and maintain a list of green infrastructure projects, public and private, that are already planned for implementation during the permit term and infrastructure projects planned for implementation that have potential for green infrastructure measures. The purpose of Provision C.3.j.ii. is to ensure that each Permittee is proactively developing green infrastructure projects and including green infrastructure elements into already-planned infrastructure projects as much as 	<p>implemented over time includes both private and public green infrastructure.</p> <ul style="list-style-type: none"> • Revisions have been made to the dues dates and timelines in Provisions C.3.j.i.(1), (2), and (5) to be aligned with the due dates in Provisions C.11. and C.12.

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					<p>possible, while the Green Infrastructure Plan is being developed. Thus, it already allows for opportunistic implementation. It does not specify that a certain number of public green infrastructure projects be implemented during the Permit term.</p> <ul style="list-style-type: none"> • Board staff concurs that the timelines in this Provision should be better aligned with the deadlines specified in Provisions C.11. and C.12, and has revised Permit language to address this. • See response to Dublin 4, above, regarding certainty of compliance. 	
Santa Clara Co	3, 4, 5	C.3.j.i.(1) C.3.j.ii.	Green Infrastructure Plans and Projects	<ul style="list-style-type: none"> • There are few redevelopment opportunity areas within unincorporated Santa Clara County where private development projects could make significant contributions towards the total area retrofitted with green infrastructure. • The infrastructure managed by the County, such as hillside residential streets, freeway-like expressways, and rural and semi-rural parklands, may not provide good opportunities for green infrastructure retrofit projects, particularly those that would address mercury and PCB sources as the TO envisions. • The largest County facilities are located within the City of San Jose and not in unincorporated Santa Clara County. The TO 	<ul style="list-style-type: none"> • One of the requirements for the Green Infrastructure Plan is to identify means and methods to prioritize particular areas and projects within each Permittee's jurisdiction, at appropriate geographic and time scales, thus allowing Permittees to self-determine the right balance for their communities and where LID facilities could and/or should be constructed. • The Green Infrastructure Plan requirement has been constructed to be flexible, allowing the opportunity during Plan development for coordination within and between Permittees. The issue of crediting should be addressed during Plan development, in coordination with the development of Reasonable Assurance Analyses required pursuant to provisions C.11.d and C.12.d., and review by Water Board staff. • The kinds of road infrastructure projects 	None

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				<p>provides no guidance as to whether the County or City would be credited for these retrofits. Such guidance is requested. The County believes it should receive credit for these facilities since they are County-owned and -operated facilities that are often exempt from the City's building and land use authority.</p>	<p>cited by the commenter—freeway-like expressways and hillside streets—can have significant contributions to water quality impacts (e.g., through the discharge of trash and auto-related pollutants and through hydromodification). As such, it is important that they be considered as a part of green infrastructure planning. To the extent a particular green infrastructure approach is challenging to incorporate at a particular site, the County also has an opportunity to coordinate with its neighboring jurisdictions to identify opportunities to address those impacts.</p> <ul style="list-style-type: none"> • See also response to Santa Clara Co. 5 in the RTC for Provisions C.11 and C.12 for Water Board staff's current expectation of crediting. 	
<p>Belmont Brisbane Burlingame Cupertino Daly City East Palo Alto Mountain View</p> <p>San Bruno San Carlos San Ramon SCVURPPP SMCWPPP</p>	<p>13b 5b 14b 6 5 11b 6</p> <p>14b 4b 8,9 22 15</p>	<p>C.3.j.i.(1)(a) C.3.j.i.(4)</p>	<p>Green Infrastructure Plans Due Date Mechanisms for Prioritization</p>	<ul style="list-style-type: none"> • Completing a Green Infrastructure Plan will be a complex and time-intensive process that will require a great deal of municipal inter-departmental coordination and resources. • Provide the entire permit term to complete the Green Infrastructure Plan instead of just 3½ years from the expected Permit effective date. • Eliminate the two-year deadline to complete prioritization, mapping, and begin implementation of planned or 	<ul style="list-style-type: none"> • Board staff disagrees that the full permit term is necessary for development of the Plan. Based on other cities' past experiences in developing Green Infrastructure Plans, Board staff believes the allotted 3 years and 9 months (the Plan is due with the 2019 Annual Report) is adequate time for each Permittee to complete its Plan. Allowing the entire Permit term to complete the Plan would prevent Water Board staff from being able to use the Plans to inform the development of the MRP in the next Permit term. • Board staff concurs that more time should be allotted for prioritization and 	<p>The 2-year deadline in Provision C.3.j.i.(1)(a) has been deleted.</p>

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				<p>potential projects (before the Green Infrastructure Plan is completed), and include these efforts in the Green Infrastructure Plan development period.</p> <ul style="list-style-type: none"> • Allowing additional time would allow Burlingame to integrate MRP provisions into the General Plan. • 	mapping of potential projects.	
<p>Belmont Brisbane Burlingame CCCWP Mountain View San Bruno San Mateo SCVURPPP SMCWPPP</p>	<p>14 6 15 30 7 15 11 23 16</p>	C.3.j.i.(1)(a)	<p>Prioritization and Mapping of Potential and Planned Projects</p>	<ul style="list-style-type: none"> • Issue: Prioritization and mapping of potential and planned projects will be a major, resource-intensive effort, especially for those smaller jurisdictions that do not have GIS data layers already available. Additional flexibility in approaches to mapping and prioritization is needed. In addition, the time intervals for planning should be aligned with fiscal years, and made consistent with the time intervals for load reductions in C.11/12. • Requested Revision: The mechanisms used to develop the GI Plan and priorities should include other less complex tools in addition to the GreenPlan-IT tool. The time intervals should be changed to FY 19-20, FY 24-25, and FY 29-30 (to align with C.11/12 load reduction reporting intervals of 2020 and 2030). 	<ul style="list-style-type: none"> • Board staff concurs that more time should be allotted for prioritization and mapping of potential projects. • The requirement for the Green Infrastructure Plan to include a mechanism to prioritize and map areas for potential and planned projects, both public and private, on a drainage-area specific basis has been revised for implementation over the same timeframes as specified in Provisions C.11. and C.12. for assessing load reductions. • SFEI's Green Plan-IT tool was included as an example of a likely acceptable approach, not a requirement. Each Permittee has flexibility in choosing the mechanism as long as it acceptably includes criteria for prioritization and outputs that can be incorporated into the Permittees' long-term planning and capital improvement processes. 	<ul style="list-style-type: none"> • Revisions have been made to the dues dates and timelines in Provisions C.3.j.i.(1), (2), and (5) to be aligned with the due dates in Provisions C.11. and C.12. • Provision C.3.j.i.(2)(a) has been revised to include the phrase "or a another tool" along with SFEI's Green Plan-IT as examples of mechanisms to prioritize and map areas for potential and planned green infrastructure projects.

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Cupertino Mountain View	6 6	C.3.j.i.(1)(a) C.3.j.ii.(1)	Prioritization and Mapping of Potential and Planned Projects	<ul style="list-style-type: none"> Eliminate the 2-year deadline to complete prioritization and mapping. Implementation should begin after the GI Plan is completed. Efforts during the MRP 2.0 term should focus on development of long-term opportunistic implementation of green infrastructure projects where feasible and where funding is available. 	<ul style="list-style-type: none"> Board staff concurs that more time should be allotted for prioritization and mapping of potential projects. Provision C.3.j.ii.(1) requires each Permittee to prepare and maintain a list of green infrastructure projects, public and private, that are already planned for implementation during the permit term and infrastructure projects planned for implementation that have potential for green infrastructure measures. The purpose of Provision C.3.j.ii. is to ensure that each Permittee is proactively developing green infrastructure projects and including green infrastructure elements into already planned infrastructure projects as much as possible, while the Green Infrastructure Plan is being developed. It does not specify that a certain number of public green infrastructure projects be implemented during the Permit term. 	The 2-year deadline in Provision C.3.j.i.(1)(a) has been deleted.
Belmont Brisbane CCCWP Daly City\ Emeryville Livermore Mountain View San Bruno San Jose San Mateo San Ramon SCVURPPP SMCWPPP	15 7 31 5 102 6 8 16 6 12 8, 9 24, 87 17	C.3.j.i.(1)(c)	Targets for Amount of Impervious Surface to be Retrofitted	<ul style="list-style-type: none"> Issue: Provision C.3.j.i.(1)(c) requires Green Infrastructure Plans to include "targets for the amount of impervious surface within the Permittee's jurisdiction to be retrofitted" within 2, 7, 12, 27, and 52 years of the Permit effective date. It is unclear how these "targets" are to be established by each Permittee. In addition, the timeframes for establishing "targets" (we would prefer the term "projections") for the amount of impervious surface 	<ul style="list-style-type: none"> The Green Infrastructure Plan is intended to describe how Permittees will shift their impervious surfaces and storm drain infrastructure from gray (traditional) to green. That is, the Plan should describe how the Permittees will change over time infrastructure that directs runoff directly into storm drains and receiving waters to green infrastructure that slows runoff by dispersing it to vegetated areas, harvests and uses runoff, promotes infiltration and evapotranspiration, and uses bioretention and other green infrastructure practices to treat 	<ul style="list-style-type: none"> Provision C.3.j.i. and ii. have been revised to reflect that the total number of and geographical extent of green infrastructure projects implemented over time includes both private and public green infrastructure. Revisions have

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Provision C.3. – New Development and Redevelopment**

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				<p>retrofitted do not line up with the C.11/12 load reduction timeframes, making it difficult to calculate projected load reductions.</p> <ul style="list-style-type: none"> Requested Revision: Allow the development of "projections" instead of "targets", and allow Permittees to include projected private development as well as public projects. Allow projections to be developed for the years 2020, 2030, 2040, and 2065, consistent with C.11/12 and with other municipal planning documents. 	<p>stormwater runoff.</p> <ul style="list-style-type: none"> Therefore, one of the required elements for the Plan is for Permittees to self-determine and establish "targets" for the amount of impervious surface to be retrofitted with green infrastructure. "Targets" is more appropriate than "projections" because the purpose of this required element is to require Permittees to proactively identify green infrastructure work that they will complete beyond what would happen anyway. Board staff concurs that the time schedules for meeting these targets should be consistent with the timeframes for assessing mercury and PCB load reductions specified in Provisions C.11. and C.12. Board staff concurs that these targets should include public and private green infrastructure projects. 	<p>been made to the dues dates and timelines in Provisions C.3.j.i.(1), (2), and (5) to be aligned with the due dates in Provisions C.11. and C.12.</p>
<p>ACCWP Berkeley Dublin Emeryville</p>	<p>29 27, 28, 29 6 102</p>	<p>C.3.j.i.(1)(g)</p>	<p>Flexibility for Sizing Treatment controls at Road Projects</p>	<ul style="list-style-type: none"> The C.3.d.sizing requirement generally requires that the treatment system is about 4% of the area draining to the treatment system, has a minimum infiltration rate of 5 inches per hour, and has a specified type and depth of soil and gravel. As was learned through the Green Streets pilot projects required under the current permit, that standard is often impossible to achieve for roadway projects. Roadway retrofit treatment 	<ul style="list-style-type: none"> Board staff acknowledges that there may be constraints to meeting the Provision C.3.d. hydraulic sizing requirements for road retrofit projects. This Provision provides flexibility to address these situations in that Permittees may collectively propose a single approach with their Green Infrastructure Plans for how to proceed when such projects cannot fully meet the Provision C.3.d. sizing requirements. As such, the Permit language allows for a proposal to incorporate the flexibility requested by the commenters. The single approach can include 	<p>Provision C.3.j.i.(1)(g) [renamed C.3.j.i.(2)(g) in revised TO] has been revised to reflect greater flexibility by indicating that the single approach can include different options to address specific issues or scenarios.</p>

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				<p>projects are often highly constrained due to competing needs for space for pedestrian and bicycle traffic, Americans with Disabilities Act (ADA) compliance, as well as underground utilities. There is also often a large amount of runoff from adjacent private parcels that cannot be limited or diverted. The minimum 5 inch per hour infiltration rate will also preclude the planting of trees in the treatment area as trees need a slower draining soil (e.g., 3 to 4 inches per hour). Trees are an extremely desirable species to include in their green streets projects, and the City should be able to include tree wells within their treatment calculations. The requirement to meet the C.3.d sizing criteria is an undue cost burden on the City, EBMUD, PG&E, Comcast, AT&T, and other utility companies due to the competing needs and underground congestion. The added utility coordination can double the City's design and construction management costs, extend project delivery times, and cause other underground utilities to relocate their facilities. We believe outreach to other agencies and companies is important and</p>	<p>different options to address specific issues or scenarios. That is, the approach shall identify the specific constraints that would preclude meeting the sizing requirements and the design approach(es) to take in that situation. These could include opportunities for alternative compliance as suggested by the commenters, and the Permit language has sufficient flexibility to accommodate such a proposal.</p>	

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				<p>needs to be done to create a functional permit and weigh the impact to society. The requirement to meet the C.3.d sizing criteria will often not be possible to meet.</p> <ul style="list-style-type: none"> • Greater flexibility should be included in the permit. The allowance for all Permittees to provide a single alternative approach is not feasible as local conditions and constraints vary among jurisdictions and across the region. At a minimum the provision should be revised to allow countywide programs to submit alternative approach. Add alternative compliance and allow the treatment facility to be located outside the watershed. 		
Clayton	3	C.3.j.i.(4)	<p>Prioritization of tasks in MRP 2.0 Green Infrastructure Plan</p>	<ul style="list-style-type: none"> • The City of Clayton asks for prioritization. There is not an ability to achieve all the proposed requirements for Green Infrastructure and PCBs in the time frames identified with the lack of new funds or staffing. • The Green Infrastructure and PCB plans need to be moved in their start and implementation to later time periods so that cities can continue to focus on the Trash Reduction implementation. 	<ul style="list-style-type: none"> • Board staff understands that the requirements of the entire MRP taken together are significant, and may require the Permittees to secure additional resources and funding to implement. • The MRP is not a zero sum endeavor. Each of the components in the Permit is there because it is important to removing pollutants from stormwater. Board staff disagrees that the full permit term is necessary for development of the Plan. Based on other cities' past experiences in developing Green Infrastructure Plans, Board staff believes the allotted 3 years and 9 months (the Plan is due with the 2019 	<p>Green Infrastructure Plan planning dates have been aligned with the concomitant dates for Provisions C.11 and C.12, Hg and PCBs.</p>

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					<p>Annual Report) is adequate time for each Permittee to complete its Plan. Allowing the entire Permit term to complete the Plan would prevent Water Board staff from being able to use the Plans to inform the development of the MRP in the next Permit term.</p> <ul style="list-style-type: none"> • See also Response, above, to San Jose 5, 26 and Contra Costa 3, 4 	
BASMAA Belmont Brisbane Burlingame CCCWP Mountain View San Bruno San Carlos San Jose San Mateo Co San Mateo SCVURPPP SMCWPPP	4 16 8 17 32 9 17 5 27 5 13 25, 97 18	C.3.j.ii.	Early Implementation	<ul style="list-style-type: none"> • Issue: Provision C.3.j.ii requires early implementation of GI, focused on identifying and implementing public projects that have potential for GI measures (including LID treatment) within the permit term. It is unclear how compliance with this section will be determined. • The process for review of planned capital projects needs to be more defined and objective, in order to avoid disagreements with Regional Water Board staff as to what are "missed opportunities." • There also needs to be the recognition that while it may be technically feasible to add LID features to a capital project, the funding for the additional features and the ongoing maintenance of the LID features may not be available. • Implementation (i.e., design and construction) during the 	<ul style="list-style-type: none"> • Provision C.3.j.ii.(1) requires each Permittee to prepare, maintain, and submit with each Annual Report, a list of green infrastructure projects, public and private, that are already planned for implementation during the permit term and infrastructure projects planned for implementation that have potential for green infrastructure measures. • Provision C.3.j.ii.(1) has been revised to specifically state that the list should include both public and private projects. • It is implicit that the requested list shall include all Regulated Projects, public and private, that are already planned for implementation during the Permit term. Data on Regulated Projects is required under Provision C.3.b., so implementation of this Provision's reporting requirement should be immediate. It is understood that the list may not include any road retrofit projects (non-Regulated Projects) in the first (2016) Annual Report; therefore, this Provision does not have to state an implementation date of July 1, 2016, for review of capital projects and delay the 	Provision C.3.j.ii.(1) has been revised to specifically state that the list should include both public and private projects.

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Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
				<p>Permit term of GI projects that are not already planned and funded will be very challenging for most Permittees.</p> <ul style="list-style-type: none"> Requested Revision: Efforts during the MRP 2.0 term should focus on development of long- term GI Plans and opportunistic implementation of GI projects where feasible and where funding is available. Add language proposed by the Permittees as early input to the Administrative Draft Permit: "Permittees shall review and analyze appropriate projects within the Permittee's capital improvement program, and for each project, assess the opportunities and associated costs of incorporating LID Into the project. The analysis shall consider factors such as grading and drainage, pollutant loading associated with adjacent land uses, uses of available space with the project area, condition of existing infrastructure, opportunities to achieve multiple benefits such as providing aesthetic and recreational resources, and potential availability of incremental funding to support LID elements along with other relevant factors. Permittees will collectively 	<p>first due date for the list to the 2017 Annual Report.</p> <ul style="list-style-type: none"> The purpose of Provision C.3.j.ii. is to ensure that each Permittee is proactively developing green infrastructure projects and including green infrastructure elements into already-planned infrastructure projects as much as possible, while the Green Infrastructure Plan is being developed. It does not specify that a certain number of public green infrastructure projects be implemented during the Permit term. As written, the Permit allows for Permittees to use the factors suggested by the commenters in their consideration of early implementation opportunities. There may be disagreements regarding which projects really are missed opportunities; at the same time, during meetings with Permittees and other interested stakeholders, Board staff was not able to identify clear, bright-line tests regarding thresholds for a variety of factors that could influence whether a particular project is an opportunity. That was true, in part, because the specifics of each particular project can weigh heavily on whether it provides an opportunity for early implementation. The Permit already sets forth a mechanism for reporting and consideration of justification that can include the suggested factors. 	

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				<p>evaluate and develop guidance on the criteria for determining practicability of incorporating green infrastructure measures into planned projects.”</p> <ul style="list-style-type: none"> • This language would allow for consistent review of capital projects for GI opportunities, based on specified criteria. • Allow the development of these criteria to take place within the first seven months of the Permit effective date, and set the implementation to begin review of capital projects as July 1, 2016 (beginning of the fiscal year), with the submittal of the first list of projects with the 2017 Annual Report. 		
El Cerrito	10	C.3.j.ii.	Early Implementation	<ul style="list-style-type: none"> • The Early Implementation section does not provide a clear path to compliance. Because it affects long-range planning, it must be more defined and achievable in order to be realized. These major new mandates will require a significant, sustained effort to implement; however, absent any new or additional funding sources, most communities will be hard-pressed to achieve compliance. 	<ul style="list-style-type: none"> • Provision C.3.j.ii.(1) requires each Permittee to prepare, maintain, and submit with each Annual Report, a list of green infrastructure projects, public and private, that are already planned for implementation during the Permit term and infrastructure projects planned for implementation that have potential for green infrastructure measures. • Provision C.3.j.ii.(1) has been revised to specifically state that the list should include both public and private projects. • It is implicit that the requested list shall include all Regulated Projects, public and private, that are already planned for implementation during the Permit term. Data on Regulated Projects is required 	Provision C.3.j.ii.(1) has been revised to specifically state that the list should include both public and private projects.

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Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
					<p>under Provision C.3.b., so implementation of this Provision’s reporting requirement should be immediate. It is understood that the list may not include any road retrofit projects (non-Regulated Projects) in the first (2016) Annual Report; therefore, this Provision does not have to state an implementation date of July 1, 2016, for review of capital projects and delay the first due date for the list to the 2017 Annual Report.</p> <ul style="list-style-type: none"> • The purpose of Provision C.3.j.ii. is to ensure that each Permittee is proactively developing green infrastructure projects and including green infrastructure elements into already planned infrastructure projects as much as possible, while the Green Infrastructure Plan is being developed. It does not specify that a certain number of public green infrastructure projects be implemented during the Permit term. • The Early Implementation section affects projects that will be constructed during this Permit term. It is not clear how that affects long-range planning. • See also the response, immediately above, to: <ul style="list-style-type: none"> BASMAA 4 Belmont 16 Brisbane 8 (etc.). and San Jose 5, 26 	
Pittsburg	3	C.3.j.iv.	Tracking Green Infrastructure	It is ambitious to expect that Permittees could develop a	<ul style="list-style-type: none"> • The Green Infrastructure Plan is necessary to serve as an 	None

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Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
			Projects	<p>Capital Improvement Program to meet the prescribed mercury and PCB reductions as outlined in Provisions C.11 and C.12, while also incorporating C.3 into these projects. The Fact Sheet regarding reduction of PCBs acknowledges uncertainties regarding the effectiveness and benefits of control measures due to limited data and experience with these control measures. Additionally, there is no guidance provided to account for mercury and PCB load reductions with constructed green infrastructure projects. Before Permittees expend valuable time and resources towards this goal, the expectations and means to validate compliance must be clear. Further development of acceptable design standards that meet the intent of pollutant removal through green infrastructure projects is necessary for Permittees to develop constructible projects.</p>	<p>implementation guide and reporting tool during this and subsequent Permit terms, in coordination with the reasonable assurance analyses required by Provisions C.11.d. and C.12.d., to provide reasonable assurance that urban runoff TMDL wasteload allocations for mercury and PCBs in San Francisco Bay will be met. As such, it necessarily will include reporting tools to measure success. The Plan also sets goals for reducing, over the long term, the adverse water quality impacts of urbanization and urban runoff on receiving waters.</p> <ul style="list-style-type: none"> • The commenter’s distinction between developing a capital improvement program to meet Hg and PCB load reductions and “incorporating C.3 into these projects,” which we take to mean incorporating LID measures into projects, is confusing. It is confusing because LID measures are expected to play a significant role in achieving Hg and PCB load reductions—that is, the load reductions are achieved, in part, through incorporating C.3 into projects. <p>In addition, as a part of developing the Permit’s load reduction requirements, Water Board staff reviewed the Permittees’ own estimates of load reductions for PCBs associated with implementation of LID during the Previous Permit, during an economic recession when construction of such projects slowed. The Permit assumes Permittees will achieve at least that level</p>	

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					<p>of load reduction, and the Permit is being considered during a period of significant economic growth and construction, during which it is likely that load reductions due to LID will exceed those from the Previous Permit, which would meet or exceed Permit requirements for such reductions.</p> <ul style="list-style-type: none"> • Green infrastructure employs LID, which is recognized as a cost-effective, beneficial, and holistic integrated stormwater management strategy that will provide a more-resilient, sustainable system that slows runoff by dispersing it to vegetated areas, harvests and uses runoff, and promotes infiltration, all of which will result in water quality benefits. • The scale of load reductions from green infrastructure implementation, as outlined in Provisions C.11 and C.12, are appropriate relative to the expected pace of redevelopment, which creates opportunities for its implementation. Further, such treatment is not the only control measure that will be brought to bear for the reduction of PCBs and mercury from MS4s. Indeed, sufficient progress toward load allocations will be dependent on intelligent implementation of all relevant control measures. The purpose of the specific load reduction performance criteria for green infrastructure is to motivate efforts in this area and not to suggest that this is the scale of reductions from this source category that will ultimately be necessary to help achieve wasteload allocations identify means and methods 	

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					<p>to prioritize particular areas and projects within each Permittee's jurisdiction, at appropriate geographic and time scales, thus allowing Permittees to self-determine the right balance for their communities and where LID facilities could and/or should be constructed.</p> <ul style="list-style-type: none"> • Regarding providing guidance for crediting approaches for load reductions of PCBs and mercury due to green infrastructure implementation, please see the RTC for Provisions C.11 and C.12. Additionally, PCBs are significantly associated with sediment, which is one of the pollutants green infrastructure practices, such as bioretention, are most effective at controlling (see, for example, Geosyntec Consultants and Wright Water Engineers, December 2014. <i>International Stormwater Best Management Practices (BMP) Database Pollutant Category Statistical Summary Report: Solids, Bacteria, Nutrients, and Metals</i>, available at: http://www.bmpdatabase.org/performance-summaries.html). Additionally, substantial work on load reduction of pollutants from green infrastructure via "loss" (e.g., through infiltration and evapotranspiration) of urban runoff flows into green infrastructure practices further supports their role in PCBs load reduction. 	

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Provision C.3. – New Development and Redevelopment
Attachment A to U.S. EPA’s Comments**

Outlined below are some potential ideas for Green Infrastructure (GI) plans to be developed by Bay Area permittees during MRP 2.0. Components provided below primarily arise from Los Angeles Regional Water Board guidance for reasonable assurance in watershed management plans as part of MS4 permit. Many components, but perhaps not all, will be applicable to GI plans for Bay Area. EPA encourages the Water Board to consider these ideas, modify as they deem appropriate, and include similar description of GI framework in the MRP 2.0 Fact Sheet. We recognize the continued partnership of MS4 permittees, the Water Board, EPA, and other stakeholders to discuss these ideas prior to inclusion into final GI plans.

- A. Identify the water quality priorities with watershed.
 - 1. Include any applicable required water quality milestones and compliance deadlines
 - 2. Describe watershed features, waterbodies any other relevant environmental setting information
 - 3. Outline other municipal specific goals to be addressed; e.g., flood risk, sea level protection, groundwater infiltration.
- B. Describe current BMPs and estimate existing pollutant loads
 - 1. List pollutant sources in watershed
 - 2. Provide map of major MS4 outfalls
 - 3. List any current BMPs within watershed (structural and non-structural)
 - 4. Using existing data (up to 10 yrs), give estimates of pollutant loads from watershed. (could be cone-based if no flow measurements available)
 - 5. Define on pollutant specific basis
 - 6. To extent data available and feasible, assess critical condition loads
 - 7. Describe variability of estimations.
- C. Estimate required pollutant load reductions
 - 1. To extent feasible, provide estimate of pollutant load reductions, if mass-based then calculate difference between current and allowable loads; if concentration- based then define the two values.
- D. Identify future control measures/BMPs/strategies to be implemented
 - 1. Describe drainage areas for implementation
 - 2. Identify control measures for stormwater and non-stormwater discharges; include number, location(s) and type; i.e., structural or non-structural controls, within new development, retrofit of existing development, stream/habitat restoration projects,
 - 3. Clarify pollutants to be addressed
 - 4. Define/map location of each control measure in watershed/jurisdiction
 - 5. Quantify upstream drainage area captured by each BMP
 - 6. Clarify if municipal effort only, private efforts or public/private projects
 - 7. Identify if project is within local jurisdiction or regional and describe cities involved.
- E. Provide schedule of implementation
 - 1. Identify interim milestones and dates for achievement (within this permit cycle)
 - 2. Identify all future and final dates for achievement
 - 3. Demonstrate that existing and future control measures will yield final pollutant load reductions and/or meet receiving water limits.

**Response to Comments on May 11, 2015 TO
Provision C.3. – New Development and Redevelopment
Attachment A to U.S. EPA’s Comments**

- F. Provide Pollutant Reduction Plan
 1. Identify compliance points (should be consistent with any existing regulatory compliance locations; e.g., TMDL monitoring sites expected to assess compliance)
 2. Consider assessment locations in association with MS4 outfalls to monitor pollutant load responses due to upstream control measures.
 3. Describe and evaluate selected control measures - appropriate for pollutant and sizing for load capture
 4. Demonstrate selected control measures have reasonable assurance to meet interim/final requirements.
 5. Describe adaptive management process if pollutant milestones are not met and added BMPs are needed
 6. Include timeframe for future re-assessments.
- G. If model used, provide description of watershed model
 1. Identify model type; e.g., watershed, receiving water, BMP performance, empirical
 2. Provide (minimum required) model components: input data, parameters, BMP performance parameters, output
 3. Describe model calibration acceptance criteria
 4. Describe efficiency for BMP performance parameters
 5. Demonstrate model outputs for existing pollutant loads will be addressed by combination of control measures/BMPs to achieve final milestones.
- H. Describe corresponding water quality monitoring program
 1. Identify parameters of concern, all monitoring sites, sampling frequency (including wet and dry weather events)
 2. Clarify which monitoring sites are MS4 outfalls
 3. Briefly describe analytical methods and QA procedures to support monitoring
 4. Describe any future monitoring locations and anticipated timeframe of data collection
 5. Briefly describe pollutant sources upstream of monitoring sites.
- I. Identify post-implementation tracking assessment efforts
 1. Once completed, describe the BMPs implemented, including any modifications from original project design
 2. Describe assessment procedures for evaluating effectiveness of control measure and corresponding pollutant load reductions for each implemented BMP, as necessary
 3. Provide schedule for re-evaluation of BMP load reductions over long term.

**Response to Comments on May 11, 2015 Tentative Order
Provision C.4. – Industrial and Commercial Site Controls**

Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
Baykeeper	8	C.4.	Require Minimum Number of Inspections	Set percentage (such as 10%) of industrial and commercial sites with potential to discharge stormwater pollutants to be inspected annually.	The Inspection Plan required in C.4.b. is more comprehensive and protective of the environment than the change requested. The Inspection Plan requires Permittees to assign an appropriate inspection frequency for each facility based on the established priority criteria, potential for contributing pollution to stormwater runoff, and commensurate with the threat to water quality. Similar mechanisms have been in place prior to the MRP. Staff reviewed more than one-third of the Permittee's Inspection Plans required pursuant to C.4.b. These Inspection Plans showed that all facilities are inspected at least once every 5 years, with high and medium priority facilities inspected more frequently.	None.
Baykeeper	9	C.4.	Require Inspection of Stormwater Treatment and Flow BMPs	Require an on-going inspection program to annually inspect all stormwater treatment and flow control BMPs and facilities that are owned, operated, or regulated by the Permittees and to implement appropriate maintenance.	This provision is to prevent the discharge of pollutants from industrial and commercial sites. It appears that this comment may be on Provision C.3's treatment and hydromodification facilities. If so, Provision C.3.h. – Operation and Maintenance of Stormwater Treatment Systems requires inspection and maintenance of such public	None.

**Response to Comments on May 11, 2015 Tentative Order
Provision C.4. – Industrial and Commercial Site Controls**

Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
					facilities.	
East Palo Alto SMCWPPP	13a and b 19a	C.4.c	Keep <u>“Goal”</u> of Correcting Violations	Request edit to return to prior permit language which had a <u>“goal”</u> of correcting violations within 10 business days, as opposed to “requiring” corrections within 10 business days. Without “goal”, sites with minor issues during the dry season (i.e. verbal warnings) would need to be reinspected within 10 business days. There is a potential to eliminate collaboration between City inspectors and property owners/managers to obtain full, long term beneficial compliance. This may increase the workload for inspectors with no water quality benefit.	It is unclear what the commenters consider “minor” issues. Throughout the MRP term, Water Board staff asked for a list of “minor” issues from the Permittees. The only “minor” issue Water Board staff received was open garbage cans/ dumpster lids. Water Board staff has concurred that open garbage cans/dumpster lids are minor issues. The sites can correct the open garbage cans/dumpster lids on the spot and corrective actions would then have been implemented. The Water Board’s construction and industrial inspectors follow a similar protocol for open garbage cans/dumpster lids, but will still note the issues in their inspection findings. The Permit requires that corrective actions be implemented before the next rain event, but no longer than 10 business days after the potential and/or actual non-stormwater discharges are discovered. More time can be allowed as long as there is a rationale, thus allowing time for City inspectors to collaborate with owners/managers to obtain full,	None.

**Response to Comments on May 11, 2015 Tentative Order
Provision C.4. – Industrial and Commercial Site Controls**

Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
					long term beneficial compliance. The Permit does not stipulate that the sites need to reinspected to determine if corrective actions were implemented.	
SMCWPPP	19b	C.4.c	Add Language Allowing Other Methods to Confirm Implementation of Corrective Actions	Include language in the Fact Sheet that allows confirmation of corrective actions to happen during the initial inspection, with a photo submitted, or with documentation from the facility.	The Permit does not specify the method that must be used to confirm corrective actions. The method for confirmation of corrective actions of various scenarios has been left to the discretion of each Permittee to include in its Enforcement Response Plan (ERP) as guidance for its inspectors.	None.
CCCWP	33a	C.4.c.	10-Day Period to Correct Potential Discharges Expensive	All potential discharges should not be considered high priority. This increases inspection costs and reduces the total number of sites that can be inspected in a year.	The Permit does not state that all potential discharges are considered high priority and neither does it state that a reinspection is the only tool to verify that corrective actions have been implemented. This has been left to each Permittee's discretion. Further, we note that to help fund the business inspection program during times of diminishing public funds, a few Permittees charge for inspections. This has inadvertently become an enforcement tool for these Permittees, and also serves as a means of maintaining and increasing Permittee capacity to	None.

**Response to Comments on May 11, 2015 Tentative Order
Provision C.4. – Industrial and Commercial Site Controls**

Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
					complete inspections.	
CCCWP	33b	C.4.c.	No Incentive to ID Potential Problems	Requiring that every observed problem have a 10 business day follow-up creates disincentive for inspectors to proactively identify and communicate potential problems to site operators because it will require the inspector to complete prescriptive follow-up and documentation.	<p>As stated above, while appropriate follow-up is required to ensure identified problems are addressed, where such problems cannot be immediately addressed during the initial inspection, there is significant flexibility in the form that follow-up may take. For example, the Permit does not state that a reinspection is the only tool to verify that corrective actions have been implemented. This has been left to the Permittee's discretion.</p> <p>In addition, it is troubling that the commenter seems to imply that its inspectors do not record potential discharges or ensure that corrective actions are implemented. It is also troubling in that this may result in an inaccurate inspection history for a Permittee's sites. There are existing simple tools for noting problems and appropriately following up. For example, many Permittees use preprinted inspection forms with the BMPs listed on them. The inspectors check off the BMPs and make notes/comments, as</p>	None.

**Response to Comments on May 11, 2015 Tentative Order
Provision C.4. – Industrial and Commercial Site Controls**

Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
					appropriate, as they complete an inspection. Some inspection forms also serve as an enforcement notice, with space to list the issues and compliance date(s) for the corrective actions. On the same form, some Permittees have also allotted space for the corrective action verification. This form is filed for each site inspected and available for the next inspector to view the site's compliance history.	
CCCWP	33c	C.4.c.	Verbal Warnings and Warnings Notices Are Effective Tools	Verbal warnings and warning notices can be effective and efficient tools to identify and address observed problems without triggering the more time intensive follow-up, documentation, and reporting requirements.	Water Board staff agree that verbal warnings can be effective and efficient. As an example, Water Board inspection staff uses verbal warnings for uncovered dumpsters and small amounts of trash on the ground. Staff at the industrial/construction sites can immediately cover the dumpsters and pick up and properly dispose of the trash. The Water Board inspectors then note the issues and corrective actions in their inspection reports. It is of concern that the commenter is suggesting such potential discharges may not be documented. In that situation, it would be unclear if corrective actions for potential discharges had been implemented, and	None

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					<p>whether a site may have an ongoing problem that is corrected only periodically, when an inspector is present. There is little incentive for sites, some inspected only once every 5 years, to consistently implement appropriate BMPs during the period they are not being inspected if they are always given the opportunity to correct potential discharges and there are no written records of this.</p>	
CCCWP Hayward Pittsburg	33c and d 5 4	C.4.c and d	Keep Current Language that Allows 30 Days for Corrective Actions	<p>City will need to inspect more facilities under the new Industrial Discharge permit with the same limited resources. Keeping the current provision of allowing up to 30 days for corrective action to be implemented allows Permittees flexibility to take other actions that may be more effective at getting dischargers to implement corrective actions. Inspectors need to be able to use their expertise and best professional judgment to determine how to best allocate their time.</p>	<p>The Previous Permit did not allow up to 30 days for corrective actions to be implemented. However, it did allow for Permittees give sites for time to implement corrective actions with a rationale. This is also allowed in the proposed Permit. Limited resources is an ongoing issue for public agencies. To help fund the business inspection program during times of diminishing public funds and rising inspection program costs, a few Permittees charge for inspections. This has inadvertently become an enforcement tool for these Permittees, and also serves as a means of maintaining and</p>	None.

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					increasing Permittee capacity to complete inspections. Inspectors have full flexibility to plan their schedules as they see fit.	
Clayton Concord Oakley Danville El Cerrito Hercules Martinez Moraga Orinda Pinole Pleasant Hill San Pablo San Ramon	43 26 11 26 32 23 29 20 23 19 22 22 29	C.4.c.ii.(3)	Actual and Potential Discharges	Delete references that specify types of corrective actions and timeframes for implementation, as these create a disincentive for identifying minor problems and create unproductive administrative work.	The Permit does not specify the types of corrective actions that need to be implemented. Throughout the MRP term, Water Board staff asked for a list of “minor” issues from the Permittees. The only “minor” issue Water Board staff received was open garbage cans/ dumpster lids. Water Board staff concurs that open garbage cans/dumpster lids are minor issues. The sites can correct the open garbage cans/dumpster lids on the spot and corrective actions would then have been implemented. It is unclear what additional “minor” problems the commenters are referencing that cannot be corrected immediately. Permittees must have an accurate record of their inspection observations, so it is unclear why their inspectors wouldn’t document the “minor” problems in their inspection reports. Lack of documentation also increases the challenge in identifying ongoing minor	None.

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Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
					problems at facilities, which may only be corrected periodically, when an inspector is present. If an inspector is unwilling to identify potential discharges because that will trigger a 10-day window to ensure they are corrected, the Permittee may have failed to train the inspector adequately. That also calls into question the adequacy of the associated inspection program.	
CCCWP	34	C.4.d.	Reporting	Reporting requirements represent a less beneficial task to Permittees. Reduce the following excessive reporting requirements: <ul style="list-style-type: none"> • the number of inspections; • the number of each enforcement action; • the number of enforcement actions resolved in 10 working days, or otherwise deemed resolved in a longer but still timely manner • facilities that are required to have coverage under the General Industrial Permit but have not filed; and, • the dates of trainings, training topics covered, and percentage of inspectors attending training. 	The reporting requirements are necessary to allow the Water Board and the interested public to get a picture of how the Permittees are implementing the requirements of the Permit to minimize polluted discharges to the storm drains and water bodies. The commenter has not provided alternatives for the Water Board to determine Permit compliance with this provision.	None.
San Jose	29	C.4.d.ii.(3)	Keep Existing Language	“Frequency and types/categories of violations observed” and “types of violations noted by business category” in the MRP is not the same as “frequency	It has been streamlined to have the same meaning.	Changed “frequency and types of potential and actual non-stormwater discharges by business

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				and types of potential and actual discharges noted by business category” in the TO. Keep existing language.		category” to “frequency of potential and actual non-stormwater discharges by business category”.
San Jose	28	C.4.d.iii.(3)	# of Violations vs # of Enforcement Actions	The City tracks and reports at the discrete violation level because it believes this gives more accurate information on the types of problems observed. Allow Permittees the option to report data at the violation level or the enforcement action level or allow until July 1, 2016, to transition to enforcement action level reporting.	Water Board staff concurs that tracking and reporting at the discrete violation level provides more accurate information.	Added language to allow reporting at the enforcement action or discrete discharge level.

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Provision C.5. – Illicit Discharge Detection and Elimination**

Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
San Jose	30	C.5.a.	Exemption for Sewage-Related Discharges Misplaced	Exemption is misplaced and should be associated with the tracking and reporting rather than not having the legal authority. We recommend the following text be added to the provision: C.5.d.i Task Description – All incidents or discharges reported to the spill and dumping central contact point that might pose a threat to water quality shall be logged to track follow-up and response through problem resolution. The data collected shall be sufficient to demonstrate escalating responses for repeated problems and inter/intra-agency coordination, where appropriate. If data are tracked and reported to the Water Board under another permit (e.g., SSOs reported according to State Board Order No. 2006-0003-DWQ), it is not necessary to track and report the incident according to this provision.	Water Board staff has considered the comments and has made changes to the Revised Tentative Order to reflect the commenters' concerns.	See changes in C.5.a.ii.(1)(a) and C.5.d.i.
SMCWPPP	20	C.5.a.	Exemption for Sewage-Related Discharges Misplaced	Permittees should maintain the legal authority to address <u>all</u> sewage illicit discharges, but would like to exclude the requirement for tracking sanitary sewer overflows via their water quality spill and dumping complaint tracking and follow-up electronic database/tabular system required by the MRP if the data are already being reported through CIWQS. Add to		

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Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
				C.5.d.i.: <u>If data are tracked and reported to the Water Board under another permit (e.g., SSOs reported according to State Board Order No. 2006-0003-DWQ) it is not necessary to track and report the incident according to this provision.</u>		
CCCWP	33e	C.5.b.	30-days for Return to Compliance	Allow the current 30 days for corrective actions to be implemented for potential discharges.	The Previous Permit did not allow up to 30 days for corrective actions to be implemented.	None.
CCCWP	33c	C.5.b.ii.(2)	Verbal Warnings and Warnings Notices Are Effective Tools	Verbal warnings and warning notices can be effective and efficient tools to identify and address observed problems without triggering the more time intensive follow-up, documentation, and reporting requirements.	Water Board staff agree that verbal warnings can be effective and efficient. As an example, Water Board inspection staff uses verbal warnings for uncovered dumpsters and small amounts of trash on the ground. Staff at the industrial/construction sites can immediately cover the dumpsters and pick up and properly dispose of the trash. The Water Board inspectors then note the issues and corrective actions in their inspection reports. It is of concern that the commenter is suggesting such potential discharges may not be documented. In that situation, it would be unclear if corrective actions for potential discharges had been implemented, and whether a site may have an ongoing problem that is corrected only periodically, when an inspector is present.	None.

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Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
					There is little incentive for sites, some inspected only once every 5 years, to consistently implement appropriate BMPs during the period they are not being inspected if they are always given the opportunity to correct potential discharges and there are no written records of this.	
CCCWP	33a	C.5.b.ii.(3)	10-Day Period to Correct Potential Discharges Expensive	All potential discharges should not be considered high priority. This increases inspection costs and reduces the total number of sites that can be inspected in a year.	The Permit does not state that all potential discharges are considered high priority and neither does it state that a reinspection is the only tool to verify that corrective actions have been implemented. This has been left to each Permittee's discretion. Further, we note that to help fund the business inspection program during times of diminishing public funds, a few Permittees charge for inspections. This has inadvertently become an enforcement tool for these Permittees, and also serves as a means of maintaining and increasing Permittee capacity to complete inspections.	None.
CCCWP	33b	C.5.b.ii.(3)	No Incentive to ID Potential Problems	Requiring that every observed problem have a 10 business day follow-up creates disincentive for inspectors to proactively identify and communicate potential problems to site operators because it will require the inspector to complete prescriptive follow-up and documentation.	As stated above, the Permit does not state that a reinspection is the only tool to verify that corrective actions have been implemented. This has been left to the Permittee's discretion. In our experience, long periods of time without follow-up deemphasizes to a discharger the	None.

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Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
					importance of the water quality issue and makes it less likely that such issues will be timely addressed. If inspectors are unwilling to identify potential discharges because that will trigger a 10-day window to ensure they are corrected, the Permittee has not trained its inspectors adequately. In addition, it is troubling that the commenter may be suggesting that inspectors do not record potential discharges or ensure that corrective actions are implemented. It is also troubling in that this may result in an inaccurate inspection history for a Permittee's sites.	
CCCWP	33d	C.5.b.ii.(3)	Allow up to 30 days to Correct Potential Discharges	Inspectors need to be able to use their expertise and best professional judgment to determine how to best allocate their time.	Inspectors have the flexibility to plan their schedules as they see best.	None.
Clayton Concord Danville El Cerrito Hercules Martinez Moraga Oakley Orinda Pinole Pleasant Hill San Pablo	43 26 26 32 23 29 21 11 23 19 22 22	C.5.b.ii.(3)	Actual and Potential Discharges	Delete references that specify types of corrective actions and timeframes for implementation, as these create a disincentive for identifying minor problems and create unproductive administrative work.	The Permit does not specify the types of corrective actions that need to be implemented. Throughout the MRP term, Water Board staff asked for a list of "minor" issues from the Permittees. The only "minor" issue Water Board staff received was open garbage cans/dumpster lids. Water Board MRP staff has concurred that open garbage cans/dumpster lids are minor issues. The sites can correct	None.

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Provision C.5. – Illicit Discharge Detection and Elimination**

Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
San Ramon	29				the open garbage cans/dumpster lids on the spot and corrective actions would have been implemented. Therefore, it is unclear what additional “minor” problems the commenters are referencing that cannot be corrected immediately. Permittees must have an accurate record of their inspection observations, so it is unclear why their inspectors wouldn’t document the “minor” problems in their inspection reports. Lack of documentation also increases the challenge in identifying ongoing minor problems, which may only be corrected periodically, when an inspector is present.	
SMCWPPP	21	C.5.b.ii.(3)	Requiring Correction of all Potential Discharges Within 10 Business Days is Burdensome	Sites with minor issues would need to have a follow-up inspection within 10 business days to confirm corrective actions, even in the dry season. This potentially greatly increases the work load with no water quality benefit. Include text in the Fact Sheet to clarify the flexibility that confirmation of corrective actions is not limited to a follow-up inspection but may occur during the initial inspection, or be a photo submittal or documentation from the facility.	As stated above, Water Board staff asked for a list of “minor” issues from the Permittees throughout the previous permit term. The only “minor” issue Water Board staff received was open garbage cans/dumpster lids. Water Board MRP staff has concurred that open garbage cans/dumpster lids are minor issues. The sites can correct the open garbage cans/dumpster lids on the spot and corrective actions would have been implemented. Therefore, it is unclear what	None.

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Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
					additional “minor” problems the commenter is referencing. The Permit does not state that a reinspection is the only tool to verify that corrective actions have been implemented. This has been left to the Permittee’s discretion to provide guidance to its inspectors.	
CC County	5	C.5.e.	Hard to Monitor Mobile Cleaners	Very few are permitted. Proposed program would drive these businesses further underground. Start an initial outreach campaign implemented through BASMAA.	The implementation level for C.5.e. is carried over from the Previous Permit. This is not a new implementation level. Permittees were required to implement the Previous Permit. It is unclear how these requirements would “drive these businesses further underground” when Permittees are supposed to be educating the public as well mobile businesses about good BMPs and illicit discharges. The public has reported illicit discharges to the Water Board. In Spring 2014, Water Board staff evaluated Provision C.5. for five permittees, one from each county in the region. The three Permittees evaluated in Alameda, San Mateo, and Santa Clara counties, who fully implemented Provision C.5.d. – Mobile Sources, did not note that implementation of this provision drove mobile businesses	None.

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Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
					<p>underground. The permittees evaluated in Solano and Contra Costa counties did not fully implement Provision C.5.d. – Control of Mobile Sources, but neither did they state that implementation of this provision will drive the mobile businesses underground. The Previous Permit allowed the Permittees to cooperate regionally in developing and implementing their programs for mobile businesses. As of the 2013-2014 Annual Report, the regional program has yet to fully implement the scope of work detailed in its 2010-2011 Annual Report. We note that BASMAA began mobile cleaners outreach in the late 1990s, and this Permit continues to encourage Permittees to cooperate regionally.</p>	
CCCWP	35a	C.5.e.	Mobile Business Language Vague	<p>Unclear how Permittees can identify all mobile businesses operating within their jurisdiction. Not all municipalities require business licenses and some mobile businesses may not obtain licenses for all of the municipalities they operate in. Clarify the language regarding the identification of mobile businesses operating in a Permittee's jurisdiction. Clarify that these businesses are being addressed</p>	<p>The Permit does not require Permittees to identify all mobile cleaners. None of the 20+ Business Inspection Plans evaluated by Water Board staff identified mobile sources as part of their inspection programs. In the Tentative Order for the Previous Permit, Water Board staff identified mobile sources as sources of pollution that were not sufficiently addressed to focus attention on this group of pollution sources, which can</p>	None.

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Provision C.5. – Illicit Discharge Detection and Elimination**

Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
				through the inspection program as issues are identified. Require Permittees to address mobile businesses through business inspections.	discharge pollutants including surfactants, chlorine, sediment and turbidity, high temperature, and related pollutants into the MS4. Based on comments on the Previous Permit's Tentative Order, the mobile sources provision requirements were reduced to the requirements in the Previous Permit. However, the Previous Permit did not provide the reporting information needed for Water Board staff to understand what the Permittees were doing to implement inspections of mobile sources. The reporting requirements in this Permit are intended to help the Water Board understand what the Permittees are doing to address mobile sources specifically and determine how to address mobile sources in the next permit.	
CCCWP	35b	C.5.e.	ERP Adequate	Current ERP is adequate to address mobile businesses and does not require revision. Remove requirement to develop a separate ERP.	The Permit does not require development of a separate ERP.	None.
Dublin	8	C.5.e.	Let BASMAA Come Up With a Solution to Mobile Cleaners	Very specific and may not be the most effective. Allow greater flexibility while ensuring that the problem will be addressed through a submittal from BASMAA.	The implementation level for C.5.e. is carried over from the Previous Permit. This is not a new implementation level. Permittees were required to implement the Previous Permit. The Previous Permit and this Permit allow Permittees to cooperate	None.

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					county-wide and/or region-wide in the implementation of their programs. The regional program has a scope of work for this provision that it had yet to fully implement as of the 2013-2014 Annual Report.	
SMCWPPP	22a	C.5.e.	Language Needs to be Consistent	<p>We request that the mobile business lists referred to in C.5.e.ii.(1)(c) and C.5.e.iii.(2)(f) refer specifically to “mobile cleaners” for consistency. We also request that the reporting requirements C.5.e.iii.(1)(f) and C.5.e.iii.(2)(f) refer to “inventories” to be consistent with the implementation level requirements. The following changes are also requested.</p> <p>C.5.e.ii.(1)(c) Regularly updating mobile <u>cleaner</u> business inventories</p> <p>C.5.e.iii.(1)(f) a list of mobile cleaners operating within the Permittee’s jurisdiction; <u>Permittee’s inventory of mobile cleaner businesses</u></p> <p>C.5.e.iii.(2)(f) a list of mobile businesses operating within the Permittee’s jurisdiction; <u>Permittee’s inventory of mobile cleaner businesses</u></p>	Water Board staff has considered the comments and has made changes to the Revised Tentative Order to reflect the commenter’s concerns.	See changes in C.5.e.
Clayton Concord	44 27	C.5.e.iii.	List of Mobile Cleaners	Delete requirement to report a list of mobile cleaners operating in their	Permittees were required to have mobile business inventories in the	None.

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Danville El Cerrito Hercules Martinez Moraga Oakley Orinda Pinole Pleasant Hill San Pablo San Ramon	27 33 24 30 22 12a 24 20 23 23 30			jurisdiction, as this information is unavailable.	Previous Permit. The reporting requirements in this Permit will help the Water Board understand what the Permittees are doing to address mobile businesses currently and make additional refinements specific to mobile businesses in the next permit.	
Clayton Concord Danville El Cerrito Hercules Martinez Moraga Oakley Orinda Pinole Pleasant Hill San Pablo San Ramon	45 28 28 34 25 31 23 12b 25 21 24 24 31	C.5.e.iii.	Mobile Business Inspections Covered Elsewhere	Delete and clarify that requirements to inspect mobile businesses and abate discharges is covered by existing requirements elsewhere in Provisions C.4. and C.5.	Again, none of the 20+ Business Inspection Plans reviewed by Water Board staff identify mobile businesses as part of their inspection programs for Provision C.4. Provision C.5. covers illicit discharges and most certainly would cover illicit discharges from all mobile business operations. That is reactive. This specific Provision continues to require the Permittees to proactively identify and educate mobile businesses.	None.
San Jose	31	C.5.e.iii.	Level of Reporting is New	Need transition time to change database to track required data. Postpone FY 15-16 data to FY 16-17, if permit is approved December 2015.	Water Board staff concurs.	See changes in C.5.e.iii.
CCCWP	35c	C.5.e.iii.(1)	Insufficient Time to Address 2016 Annual Report Requirements	The 2016 Annual Report requirements should be coordinated regionally. Extend the 2016 Annual Report requirements to 2018 Annual	Permittees have had since December 1, 2009, to collaborate in developing and implementing their mobile business programs, and	Permit changes the dates for reporting. See changes in C.5.e.iii.

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Provision C.5. – Illicit Discharge Detection and Elimination**

Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
				Report to provide sufficient time for MRP Permittee collaboration and development and implementation of a regional program.	some Permittees have been collaborating on this issue as early as the late 1990s, when BASMAA began its mobile cleaner outreach program. This Permit does not have new implementation level requirements for this Provision. Programs should have already been developed to comply with the Previous Permit. The regional program scoped out tasks for the provision in the 2010-2011 Annual Report. As of the 2013-2014 Annual Report, the tasks had yet to be fully implemented.	
SMCWPPP	22a	C.5.e.iii.(1)	New Reporting Requirements Onerous and Duplicative	The Control of Mobile Sources reporting requirements are duplicative of reporting required in other provisions, including reporting on local, county-wide and regional outreach efforts reported in C.7, and the number of inspections conducted and the number and type of enforcement actions taken reported in C.4. and/or C.5. Additionally, delete the reporting requirements in Provision C.5.e.iii related to inspections, enforcement, and outreach that are reported in other Annual Report sections.	Water Board staff identified mobile sources as sources of pollution that were ignored in the Tentative Order for the Previous Permit and focused attention on this pollution source, which can discharge pollutants including surfactants, chlorine, sediment and turbidity, high temperature, and related pollutants into the MS4. The Previous Permit's reporting requirements did not provide information sufficient for the Water Board staff to understand what the Permittees were doing to implement this provision and to reach mobile sources. While such reporting may be in other provisions, it is combined and does	None.

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Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
					<p>not allow Water Board staff to understand what Permittees have done to specifically address mobile sources.</p> <p>As noted above, none of the 20+ Permittee Business Inspection Plans reviewed by Water Board staff identified mobile businesses as part of their inspection programs for Provision C.4.</p> <p>Provision C.5. covers illicit discharges and would cover illicit discharges from all mobile business operations. However, that coverage is reactive and is unlikely to result in proactive, effective efforts to prevent such discharges.</p>	

**Response to Comments on May 11, 2015 Tentative Order
Provision C.6. – Construction Site Control**

Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
CCCWP	33c and d	C.6.b.	30 days for Return to Compliance	Inspectors need to be able to use their expertise and best professional judgment to determine how to best allocate their time. Allow the current 30 days for corrective actions to be implemented for potential discharges.	The Previous Permit did not allow up to 30 days for corrective actions to be implemented. However, it did allow for Permittees to give sites time to implement corrective actions with a rationale. This is also allowed in the proposed Permit. Should a Permittee feel that certain potential discharges warrant longer timeframes for implementation of corrective actions, the Permit allows for it, with the provision of appropriate rationale in reporting. Inspectors have the flexibility to plan their schedules as they see best.	None
SMCWPPP	23a	C.6.b.	Keep " <u>Goal</u> of Correcting Violations"	The current permit requires that all violations before the next rain event are corrected in a timely manner with the "goal" for correcting violations before the next rain event but no longer than 10 business days, and if greater than 10 business days is required, the inspector must record rationale. Adding the language "Permittees shall require" does not allow for flexibility needed by inspectors. Without "goal," sites with minor issues during the dry season (i.e. verbal warnings) would need to be reinspected within 10 business days. This will greatly increase the work load for inspectors. Request that the language from the prior permit be retained.	It is unclear what the commenter considers "minor" issues. Throughout the MRP term, Water Board staff asked for a list of "minor" issues from the Permittees. The only "minor" issue Water Board staff received was open garbage cans/ dumpster lids. Water Board staff concurs that open garbage cans/ dumpster lids are a minor issues, in that site staff can fix that issue immediately and corrective actions would then have been implemented. The Water Board's construction and industrial inspectors follow similar protocol for open garbage cans/dumpster lids, but will still note the issues in their inspection	None

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Provision C.6. – Construction Site Control**

Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
					findings. The Permit requires that corrective actions be implemented before the next rain event, but no longer than 10 business days after the potential and/or actual non-stormwater discharges are discovered. More time can be allowed as long as there is a rationale. The Permit does not stipulate that the sites need to be reinspected to determine if corrective actions were implemented.	
SMCWPPP	23b	C.6.b.	Add Language Allowing Other Methods to Confirm Implementation of Corrective Actions	Include language in the Fact Sheet that allows confirmation of corrective actions to happen during the initial inspection, with a photo submitted, or with documentation from the facility.	The Permit does not specify the method that must be used to confirm corrective actions. The method for confirmation of corrective actions of various scenarios has been left to the discretion of each Permittee to include in its Enforcement Response Plan (ERP) as guidance for its inspectors.	None.
Clayton Concord Danville El Cerrito Hercules Martinez Moraga Oakley Orinda Pinole	43 26 26 32 23 29 20 11 23 19	C.6.b.ii.(3)	Actual and Potential Discharges	Delete references that specify types of corrective actions and timeframes for implementation, as these create a disincentive for identifying minor problems and create unproductive administrative work.	The Permit does not specify the types of corrective actions that need to be implemented. It is appropriate to specify time frames to ensure that potential and actual discharges of pollutants are appropriately and timely addressed. Water Board staff's experience is that at many construction sites, minor corrective actions that are not completed	None

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Provision C.6. – Construction Site Control**

Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
Pleasant Hill San Pablo San Ramon	22 22 29				<p>immediately, or within a few days, are not viewed as priorities and may not be implemented, absent additional inspections. Providing a 10-day window underlines the importance of water quality and operating a clean site, making it more likely that problems will be corrected even when an inspector is not present.</p> <p>If an inspector is unwilling to identify potential discharges because that will trigger a 10-day window to ensure they are corrected, the Permittee has not trained the inspectors adequately and it calls into question the adequacy of the construction site program.</p> <p>See also response above regarding “minor” issues and garbage can/dumpster lids. Having not received information from Permittees regarding other kinds of issues that might be considered minor, that category has not been called out separately in the Permit. It is unclear what additional “minor” problems the commenters are referencing.</p>	
CCCWP	33a	C.6.c.	10-Day Period to Correct Potential Discharges Expensive	All potential discharges should not be considered high priority. Doing so would increase inspection costs and reduce the total number of sites that can be inspected in a year.	The Permit does not state that all potential discharges are considered high priority and neither does it state that a reinspection is the only tool to verify that corrective actions have	None.

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Provision C.6. – Construction Site Control**

Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
					<p>been implemented. This has been left to each Permittee’s discretion. Further, we note that to help fund the business inspection program during times of diminishing public funds, a few Permittees charge for inspections. This has inadvertently become an enforcement tool for these Permittees, and also serves as a means of maintaining and increasing Permittee capacity to complete inspections.</p>	
CCCWP	33b	C.6.c.	No Incentive to ID Potential Problems	<p>Requiring that every observed problem have a 10 business day follow-up creates disincentive for inspectors to proactively identify and communicate potential problems to site operators because it will require the inspector to complete prescriptive follow-up and documentation.</p>	<p>As stated above, the Permit does not state that a reinspection is the only tool to verify that corrective actions have been implemented. This has been left to the Permittee’s discretion. In our experience, long periods of time without follow-up deemphasizes to a discharger the importance of the water quality issue and makes it less likely that such issues will be timely addressed.</p> <p>If inspectors are unwilling to identify potential discharges because that will trigger a 10-day window to ensure they are corrected, the Permittee has not trained its inspectors adequately.</p> <p>In addition, it is troubling that the commenter may be suggesting that inspectors do not record potential</p>	None.

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					<p>discharges or ensure that corrective actions are implemented. It is also troubling in that this may result in an inaccurate inspection history for a Permittee's sites.</p> <p>Many Permittees use preprinted inspection forms with the BMPs listed on them. The inspectors would check off the BMPs and make notes/comments, as appropriate. Some inspection forms also serve as the enforcement action notice, with space to list the issues and compliance date for the corrective actions. On the same form, some Permittees have also allotted space for the corrective action verification. This form is filed for each site inspected and available for the next inspector to view the sites' compliance history.</p>	
CCCWP	33c	C.6.b.	Verbal Warnings and Warnings Notices Are Effective Tools	Verbal warnings and warning notices can be effective and efficient tools to identify and address observed problems without triggering the more time intensive follow-up, documentation, and reporting requirements.	Water Board staff agree that verbal warnings can be effective and efficient. As an example, Water Board inspection staff uses verbal warnings for uncovered dumpsters and small amounts of trash on the ground. Staff at the site can then immediately cover the dumpsters and pick up and properly dispose of the trash. The Water Board inspectors then note the issues and corrective actions in their inspection	None.

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					reports. It is of concern that the commenter may be suggesting such potential discharges may not be documented. In that situation, it would be unclear if corrective actions for potential discharges had been implemented, and might be challenging to identify a periodic, but recurring, problem. There is little incentive for sites, some inspected only once every 5 years, to consistently implement appropriate BMPs during the period they are not being inspected if they are always given the opportunity to correct potential discharges and there are no written records of this.	
San Jose SMCWPPP	32 24	C.6.d.ii.(2)	Maintain Current Requirement to Verify NOI Has Been Filed	Determining whether or not a developer has obtained coverage under the CPG is the responsibility of the Water Board and not the Permittees. Maintain the current permit requirement to require verification that a site has filed an NOI for permit coverage under the CGP.	Water Board staff concurs.	See revision in C.6.d.ii.(2)
San Jose	33b	C.6.e.ii.(2)(b)	Use High Priority to Capture	Use the flexibility of the current permit for high priority sites to capture all appropriate construction projects with potential impacts to receiving water bodies. Or add the 15% slope to the current high priority reference to slope.	There were projects, brought to Water Board staff's attention during the Previous Permit, that were on steep slopes. Perhaps partly because they disturbed less than the 1 acre threshold for coverage under the Statewide NPDES Construction Storm Water General Permit, and thus did not require	None.
SMCWPPP	26c	C.6.e.ii.(2)(b)	Use Recommended Language from Administrative Draft	Use the program managers' early input on the Administrative Draft, which would limit inspections of hillside projects "meeting a		

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				minimum size threshold for disturbed land as defined by the Permittee.”	Construction General Permit coverage, minimal BMPs were implemented, resulting in a significant threat of construction site pollutant discharge to the storm drain. Therefore, this Permit specifically calls out hillside projects. During development of the Permit, Water Board staff requested from the Permittees specific thresholds or other measures to use in this section. “A minimum size threshold for disturbed land as defined by the Permittee” is not sufficiently specific to ensure that hillside construction sites with the significant potential to discharge construction site pollutants to the storm drain will be appropriately inspected and managed by the Permittees. However, the Permit section does allow Permittees to use their existing hillside development areas or criteria, and otherwise specifies a relatively steep slope (15%) to which this requirement applies, ensuring that at least the most significant sites are inspected and appropriately managed.	
San Jose	33a	C.6.e.ii.(2)(b)	Frequency of Inspections of Hillside Projects	Requirement will add additional tracking and outreach work. The City does not currently track slope. Need more time to make database and inter-departmental process changes to track	The effective date of the new requirement is July 1, 2016.	See footnote to C.6.e.ii.(2)(b).

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				and report the required information. Allow until July 2016 to start implementation.		
SMCWPPP	26b	C.6.e.ii.(2)(b)	Immediate Implementation Date Problematic	Immediate effective date to inspect sites on 15% slope problematic. This should begin at the beginning of the wet season. Postpone implementation to the 2016 wet season.		
SMCWPPP	26d	C.6.e.ii.(2)(b)	Change Language	{add at the end} <u>Effective Date – Immediate, except July 1, 2016 for category (2)(b) hillside projects.</u>		
SMCWPPP	26a	C.6.e.ii.(2)(b)	15% Slope Arbitrary	15% slope arbitrary and has no linkage to whether the project is a significant threat to water quality.	Most municipalities' guidance for slope from the street to the gutter is about 5% and from the property line to the curb is about 2%. Those are the slopes necessary to move water quickly and efficiently into the storm drain systems for public safety. Construction sites with 15% slopes pose a significant threat of discharging construction-related pollutants to the storm drain because they are likely to have higher runoff velocities and because BMPs must be more robust and more-robustly installed and maintained in order to control pollutants, as compared to less-steep sites. Water Board staff has observed storm water move sediment and other construction-related pollutants into storm drains at sites ranging from those with flat slopes to those with slopes greater	None.

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					<p>than 15%. While there is some variation in the threat for sediment-laden and turbid runoff depending on a site's particular conditions, such as soil type, run-on onto the site from adjacent properties, existing vegetative cover, and other conditions, it is reasonable to require inspection and appropriate management of small sites on hillside slopes less than 15%. Planning literature considers 5% or 10% slopes as hillside slopes, and the Permit allows Permittees to define hillside projects based on their own hillside development maps or criteria. If Permittees do not have either, the Permit sets the hillside project definition for sites with $\geq 15\%$ slope, with the intent of ensuring that at least those sites with the greatest potential threat to discharge construction-related pollutants to the storm drain are appropriately inspected and managed.</p>	
CCCWP	36	C.6.e.iii.	Reporting Number of Violations Inconsistent with Timely Correction for All Potential and Actual Discharges	<p>Reporting on the "Number of Violations" is inconsistent with Provision C.6.b.ii (3), which requires timely correction for all potential and actual discharges. <u>Action desired:</u> Revise the reporting requirements to be internally consistent. This would allow the annual reporting process more</p>	<p>The word "violations" has been replaced with "potential and actual discharges" to make the provision consistent. In the previous Permit, Water Board staff intended "violations" to include potential discharges (i.e., situations that</p>	See changes in C.6.e.iii.

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				efficient and effective. C.6.e.iii (2)(g) " <i>Number of <u>actual discharges violations</u> fully corrected prior to the next rain event, but no longer than 10 business days after the <u>actual discharges violations</u> are discovered or otherwise considered corrected in a timely, though longer period.</i> "	threaten discharge of pollutants to the storm drain, even if an ongoing or recent discharge is not observed by the inspector) and actual discharges. The Permit requires construction site inspections to be completed during the rainy season. Particularly during that time, it is vital that potential discharges are corrected in a timely manner so that they do not become actual discharges to the MS4 during a rain event.	
SMCWPPP	26e	C.6.e.iii.(1)	Delay Submittal Date for Certification	Use the following language, "In the <u>2017</u> Annual Report, each Permittee shall certify the criteria it uses to determine hillside developments. If the Permittee is using maps of hillside developments areas or other written criteria, include a copy in the Annual Report."	The commenter has not provided a rationale for why it cannot certify the criteria it uses hillside developments in the 2016 Annual Report. The hillside development area maps or criteria should already be done if Permittees have hillsides for development. If they are not completed, Permittees may use the 15% criterion listed in the Permit.	None.
SMCWPPP	26f	C.6.e.iii.(2)(a)	Change Language	Use the following language: "Total number of active hillside sites disturbing less than one acre of soil requiring inspection, <u>beginning in the 2017 Annual Report</u> "	Water Board staff concurs.	See change in C.6.e.iii.(2)(a)
SMCWPPP	25	C.6.e.iii.(2)(g)	Number of Violations vs. Number of Enforcement Actions	Request that the text in C.6.e.iii.(2)(g) be revised to refer to the number of "enforcement actions fully corrected" instead of the number of "violations fully corrected" so that it will be similar to C4.	Noted.	The Permit will allow Permittees to report by discrete discharges and enforcement actions. See revisions in

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San Jose	34	C.6.e.iii.(2)(g)	Report Number of Violations	Inconsistent with the reporting requirements in Provision C4. City tracks and reports at the violation level. Allow Permittees the option to report data at the violation level or the enforcement level. If the Water Board only wants data at the enforcement level, City needs until the 2016-2017 Annual Report, in order to change database.		C.6.e.iii.(3)(g).
Dublin	9	C.6.ii.e.ii.	Hillside Development Definition	<ul style="list-style-type: none"> • Is this the pre-existing slope or the post-construction slope? • Is this the average slope across the entire project site? What is the definition of “slope” as it applies to this requirement? How is “slope” measured? • If any portion (regardless of the net amount) of the site exceeds the minimum slope threshold does this trigger the requirement for monthly inspections of the entire site (i.e. say 100 SF of a 0.9 acre is considered “hillside”)? • <i>The default definition for “hillside” development should be revisited and further discussed prior to implementation. Also, a minimum disturbed surface should be included in the definition of “project.”</i> 	<p>This is for construction site controls so it is for pre-existing slope. Slope is the relationship of vertical rise to horizontal run, expressed as a percentage from the toe to the top of a slope.</p> <p>The Permit requires that Permittees have the legal authority to require <u>all</u> construction sites to have year-round effective BMPs. Hillside projects are emphasized because of their relatively greater threat of construction site pollutant discharge, as compared to flatter sites.</p> <p>The Permit gives the Permittees discretion to determine if the hillside project is truly a hillside project. The Permit states that hillside projects disturbing greater than or equal to 5,000 square feet need to be inspected during the rainy season.</p>	None.

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ACCWP	40b	C.7	Allow Greater Flexibility	Proposed alternative approach that allows greater flexible while still ensuring that the outreach will be effective.	Water Board staff has taken into consideration the comment and has made changes to C.7.b.-c.	See changes in Provision C.7.b.-c.
ACCWP	66	C.7	Change Language to Goal Statement	Each Permittee shall increase the awareness of the target audiences regarding the impacts of stormwater pollution on receiving water and potential solutions to mitigate the problems caused; positively influence the waste disposal and runoff pollution generation behavior of target audiences by encouraging implementation of appropriate solutions; and involve residents in mitigating the impacts of stormwater pollution.	See revised goal statement in Revised Tentative Order.	See revised goal statement in Revised Tentative Order.
CCCWP SMCWPPP	37 28	C.7	Consolidate Public Information and Outreach Sections	Relocate all public outreach-related tasks to Provision C.7, thereby creating one comprehensive public outreach provision. The provisions that currently include outreach tasks should instead refer to Provision C.7. This approach would be beneficial to Permittees and countywide programs for both identifying outreach tasks and compliance reporting.	Any public outreach or involvement events required under other provisions of the permit may be conducted under Provision C.7.	None.
Concord	3	C.7	Regional Public Outreach and Education	Focus advertising campaigns, media relations, public outreach events, and stormwater pollution prevention education at a regional level. This would be more effective than individual campaigns by permittees or countywide programs. There is great value in	Water Board staff agrees that there is great value in having consistent messages throughout the region on stormwater pollution prevention. A number of the subprovisions already allow and encourage the Permittees to	None.

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				consistent message throughout the region.	conduct the requirements at the regional or countywide level. Permittees still need to conduct some outreach events locally or at the countywide level to effectively reach more of their residents with the same or similar stormwater runoff pollution prevention messages being disseminated at the regional level.	
SMCWPPP	27	C.7	Add Language to Allow a Comparable Plan	Include language stating that Permittees may comply with the requirements of Provision C.7 through development of a comparable education and outreach plan that addresses the overall objectives of the Provision.	During Permit development, Water Board staff has said it was very open to input on alternative requirements for C.7. that will result in meaningful and effective outreach actions, and we requested that the Permittees submit a proposed plan that could be incorporated into the Permit. Rather than proposing a plan, the Permittees suggested language allowing submittal of a plan during the coming Permit term. Requiring development of a plan to meet public outreach requirements in the Permit is cumbersome. Water Board staff would be interested in working with Permittees to develop a comparable education and outreach plan that would overhaul the entire provision to provide more flexibility and it	None.
SMCWPPP	30b	C.7.e	Eliminate Table 7.1 and Associated Requirements	Eliminate the requirement for a specific number of events by population. Instead specify a framework that emphasizes engagement activities to be implemented at the discretion of each municipality based on a menu that includes tabling events, social media campaigns, presentations, workshops, cleanups, community based social marketing, collaboration with watershed stewardship groups, new printed promotional materials, and advertising. Require each municipality to select and implement a minimum of three activities from the menu, and establish accountability		

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				through the reporting section, where each municipality would justify why it chose the selected activities and document the effectiveness of its choices. Include language that would allow municipalities to team up on activities at their discretion. This would give municipalities more freedom to tailor outreach activities to their community needs and budgets.	would be submitted with the next Report of Waste Discharge for reissuance of the Permit.	
ACCWP	71	C.7.b	Change Language of Advertising Campaigns	Proposed language: Permittees shall develop and implement an Outreach Plan (may be developed at the countywide or regional level) designed to meet the goals of C.7.b.i. The Plan shall include advertising, social media, media relations, community involvement/watershed stewardship, and participation in outreach events. The Plan will be implemented at the local, countywide and/or regional level.	Requiring a development of a plan to meet public outreach requirements in the Permit is cumbersome. C.7.b. needs to be definitive and have set deliverables. However, Water Board staff has taken into consideration the comments and has made changes to C.7.b.-c. to provide a greater degree of flexibility and to acknowledge the changing landscape of free media.	See changes in Provision C.7.b.-c.
ACCWP	72	C.7.b.iii	Delete Reporting Requirements	Delete existing reporting requirements. Insert: Permittees shall report on the local, countywide, and regional implementation of the Outreach Plan in each annual report. At least once during the Permit term, Permittees will assess effectiveness of Outreach Plan implementation.		
Baykeeper	10	C.7.a	Maintain 100% of Markings	Over the course of the Permit term, Permittees should be able to inspect and maintain all of the storm drain inlet markings of municipality-	Many Permittees ensure that their storm drain inlet markings are legible annually as part of their storm drain inlet cleaning	None.

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				maintained inlets, rather than the 80% required in the Permit.	program before the rainy season. However, some Permittees are staff-challenged to get to every residential neighborhood. The Permit sets an appropriate goal.	
CCCWP Clayton Concord Danville El Cerrito Hercules Martinez Moraga Oakley Orinda Pinole Pleasant Hill San Pablo San Ramon	38 46 29 29 35 26 32 23 13a 26 22 25 25 32	C.7.a	Move Storm Drain Marking Requirement to C.2.	Move requirement to mark and maintain “no dumping” markings on storm drain inlets to C.2.	While there may be overlaps into provisions C.2. and C.3., Storm Drain Inlet Markings is a public education component and therefore belongs in C.7.	None.
ACCWP	67	C.7.a.i	Move Requirement to C.2. and C.3.	Move to C.2: Permittees shall have a program to mark and maintain municipally-maintained storm drain inlets with an appropriate stormwater pollution prevention message, such as “No dumping, drains to Bay” or equivalent. Move to C.3: For newly-approved, privately-maintained streets, Permittees shall require inlet marking by the project developer upon construction and maintenance of markings through the development maintenance entity. Markings shall be verified prior to		

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				acceptance of the project.		
Dublin	10	C.7.a.i and C.7.a.ii	Move Requirement to C.2. and C.3.	Move the marking of municipally-maintained inlets requirement to Provision C.2 and move the marking of privately-maintained inlets to Provision C.3.	While there may be overlaps into provisions C.2. and C.3., Storm Drain Inlet Markings is a public education component and therefore belongs in C.7.	None.
ACCWP	69	C.7.a.iii	Move Requirement to C.2. and C.3.	C.2: Report on implementation of the program once per permit term. C.3: Confirm that SD marking is verified prior to acceptance.		
ACCWP	68	C.7.a.ii	Delete	Delete Implementation Level	The commenter has not provided a basis for deleting the implementation level. The proposed minimum inspection requirements of 80% of marked municipality-maintained storm drain inlets, and verification of markings on privately-maintained streets prior to acceptance of the project, with a maintenance agreement, sets an appropriate balance.	None.
CCCWP Clayton Concord Danville El Cerrito Hercules Martinez Moraga Oakley Orinda Pinole	39 47 30 30 36 27 33 24 13b 27 23	C.7.b	Change "Advertising" to "Outreach"	Change "advertising" to "outreach" to make explicit that a variety of methods, including social media, may be used. Delete references to specific subjects. Allow more flexibility.	Water Board staff concurs.	See changes in C.7.b.

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Pleasant Hill San Pablo San Ramon	26 26 33					
CCCWP	40	C.7.b	Eliminate reference to two campaigns and a specific message.	Multiple advertising campaigns split money and dilute effectiveness of message. Single campaign would focus on stormwater awareness, similar to “Spare the Air”, “Keep Tahoe Blue” and “Only You Can Prevent Forest Fires.	<i>Our Water, Our World</i> is already considered one advertising campaign. Permittees have other stormwater pollution messages it needs to disseminate to its residents.	Based on comments, Provision C.7.b. has been revamped to allow more flexibility.
Contra Costa County	6	C.7.b	Require a Single Campaign, Chosen By BASMAA	Multiple advertising campaigns split money and dilute effectiveness of message. Require a single campaign, chosen by BASMAA, that is implemented over the permit term. Campaign would focus on stormwater awareness, akin to “Spare the Air” or “Keep Tahoe Blue” and would run for several permit terms.	<i>Our Water, Our World</i> is already considered one advertising campaign. Permittees have other stormwater pollution messages they need to disseminate to their residents. We are not proposing that the Permit require Permittees to participate in a regional advertising campaign, because some Permittees already have successful outreach campaigns that should be continued. The Permit already allows the option for Permittees to elect BASMAA or its countywide program to lead the campaign(s).	
ACCWP	70	C.7.b.i	Advertising Campaigns	Change language to “Permittees shall participate in or contribute to outreach campaigns with the goal of significantly increasing overall awareness of stormwater runoff pollution prevention messages and behavior changes in target	Water Board staff agrees with most of the changes requested and has proposed edits in response.	See changes in C.7.b.i.

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				audience.”		
ACCWP	73	C.7.c.i	Delete Media Relations Campaign	Delete: covered under C.7.b.	Media Relations has evolved during the Previous Permit term and now there are other types of free media.	Provision C.7.c. combined with the revised C.7.b.
ACCWP	74	C.7.d.i	Delete Stormwater Point of Contact	Delete. Spill and complaint response covered under C.5.	This requirement is about public education. The point of contact required in Provision C.5.c. – Spills, Dumping, and Complaints Response Program is about providing a central contact point for the public to report spills, dumping, and complaints. It could very well be the same person in some jurisdictions and this Provision already recognizes that.	None.
SMCWPPP	30c	C.7.e	Cut Prescribed Number of Events By One	However, if the current prescribed approach remains, we recommend at a minimum cutting the number of events by at least one across the board.	The total number of required events for each population category is the same or even fewer than what the combined totals for Outreach and Involvement were in the Previous Permit. It is unclear why the total number of events needs to be reduced even further.	None.
SMCWPPP	30a	C.7.e	Combining Outreach and Involvement Increased Number of Events	Provision C.7.e combines outreach and citizen involvement events and would increase the amount of events that most municipalities would have to conduct at a time when local budgets and staff availability for outreach activities are already currently stretched.	The Previous Permit separates out outreach and citizen involvement. This Permit combines them together. The total number of required events for each population category is the same or even fewer than	None.

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					what the combined totals were in the Previous Permit.	
SMCWPPP	29	C.7.c	Allow More Flexibility	Provide an alternative to the proposed six pitches by allowing four pitches coupled with ongoing social media postings. We also recommend noting under reporting (C.7.c.iii) that the success of social media may be documented with available metrics, such as number of likes and shares.	C.7.c. has been deleted and is now included in the revised C.7.b.	See changes in C.7.b.
ACCWP	75	C.7.e.i	Reduce Number of Public Outreach Events	Participate in and/or host events such as fairs, shows, workshops, (e.g., community events, street fairs, and farmers' markets), to reach a broad spectrum of the community with both general and specific stormwater runoff pollution prevention messages. Require planned effort to be included in the C.7.b. Outreach Plan. Minimum Events: Less than 100,000 = 1 100,000 to 250,000 = 2 Greater than 250,000 = 3	The number and categories of public outreach events in the Previous Permit were determined by the Public Outreach and Involvement subcommittee as appropriate. The subcommittee was comprised of Permittee staff who implement public outreach and involvement and also Water Board staff. Different methods of outreach are necessary to reach the varied population. The total number of required events for each population category is the same or even fewer than what the combined totals were in the Previous Permit. The commenter significantly reduces the number of events without providing a basis..	None.
Baykeeper	11	C.7.e	Shouldn't Allow for Regional Outreach Credits	Footnote 1 to Table 7.1 may allow for fewer total (outreach) events simply by virtue of a regional collaborative	This footnote is a continued from the Previous Permit. While the Previous Permit did allow	None.

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				disseminating advertising materials throughout each jurisdiction, thereby providing said jurisdiction with credit for the event, even if the event is held within another jurisdiction. The number of events required should be determined on a Permittee-by-Permittee basis.	Permittees to take individual credit for regional outreach events, there were none. The regional program tends to work on bigger projects, such as advertising and media pitches. The outreach events were either done on the local level or at the county level during the Previous Permit. County-level outreach tends to include the county fair, where residents from all over the county flock.	
SMCWPPP	31	C.7.f	Delete C.7.f and Include Watershed Stewardship Efforts	Eliminate C.7.f as a separate provision and include watershed stewardship collaborative efforts as an option under Provision C.7.e, as described above.	Watershed Stewardship Groups are important parts of numerous communities' stormwater pollution prevention education and involvement efforts. In some communities, public involvement could very well mean promoting and/or supporting a Watershed Stewardship Group's events, such as clean-ups, monitoring, and restoration activities. And only a certain population will be reached by Watershed Stewardship Groups.	
ACCWP	77a	C.7.f.i	Combine with C.7.g.	Combine C.7.g. with C.7.f.		None.
ACCWP	77b	C.7.f. and g.	Combine Involvement and Watershed Stewardship Collaborative Efforts into the New Alternative Plan in C.7.b.	Require planned efforts to for citizen involvement and watershed stewardship to be included in the new C.7.b Outreach Plan. Minimum Events: Less than 100,000 = 1	The number and categories of public involvement events in the Previous Permit were determined by the Public Outreach and Involvement subcommittee as appropriate. The subcommittee was comprised of Permittee staff	None.

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				100,000 to 250,000 = 2 Greater than 250,000 = 3	who implement public outreach and involvement and also Water Board staff. The commenter has not provided a basis for significantly reducing the number of events to the numbers proposed.	
ACCWP	78	C.7.h	Leave Language Concerning School-Age Children Outreach As Is		Comment noted.	None.
ACCWP	76	C.7.f.i	Delete Watershed Stewardship Task	Delete. Covered under C.7.b. and C.7.g	There is no basis to delete this section. Municipal officials are important for buy-in and funding of local stormwater pollution prevention programs.	None.
ACCWP	79	C.7.i	Delete Municipal Official Outreach	Delete section		

**Response to Comments on May 11, 2015 Tentative Order
Provision C.8. – Monitoring**

Commenter & Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
Baykeeper (12, 13, 15)	C.8.f	<p>Pollutants of Concern (POC) Monitoring does not require stormwater outfall monitoring</p> <p>POC Monitoring should be during wet season at identified outfalls</p>	<p>C.8.f POC Monitoring does not require monitoring when or where stormwater discharges occur. Unlike the 2009 Permit, this section almost never states when or where Permittees should sample. (See Fact Sheet, A-66.) It does not require monitoring when and where stormwater discharges - the discharges regulated by the MRP - will occur, namely during storm events at or near stormwater outfalls.</p> <p>Requests that POC monitoring be modified to (1) expressly require POC monitoring during storm events, or if appropriate, during the wet season, and (2) require that Permittees identify sampling locations at MS4 outfalls that are representative of the potential pollutants being discharged (i.e., outfalls that discharge stormwater runoff from urban infrastructure).</p>	<p>POC monitoring is required to be conducted during the wet season; indeed, this sampling occurs during storm events. However, outfall sampling will not yield information about progress towards meeting TMDL wasteload allocations and POC mass loadings to the Bay, which are the primary purposes for this type of monitoring; this information is obtained through bottom-of- watershed monitoring, as required in C.8.f.</p> <p>The Tentative Order requires sufficient monitoring of a type, interval and frequency sufficient to yield data which are representative of the monitored activity, namely stormwater discharges and to assure compliance with the permit. EPA has long recognized the difficulties inherent in monitoring stormwater because stormwater dischargers are highly variable and unpredictable in terms of flow and pollutant concentrations and the relationship between discharges and water quality can be complex. (61 Fed. Reg. 57426 (November 6, 1996).) Likewise, EPA has early on encouraged permitting authorities to evaluate monitoring needs and storm water objectives so as to select <i>useful</i> and cost-effective monitoring approaches. (<i>Id.</i> at 57428.) For most dischargers, EPA said monitoring can be conducted for two reasons: “1) to identify if problems are present, either in the receiving water or in the discharge, and characterize the cause(s) of such problems; and 2) to assess the</p>	<p>Revise Fact Sheet to better explain monitoring rationale.</p>

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				<p>effectiveness of storm water controls in reducing contaminants and making improvements in water quality.” (<i>Id.</i>) The Tentative Order exceeds these two criteria. For MS4 permittees, EPA stated that stormwater permits may use a variety of storm water monitoring tools including “receiving water chemistry; receiving water biological assessments (benthic invertebrate surveys, fish surveys, habitat assessments, etc.); effluent monitoring; including chemical, whole effluent and visual examinations; illicit connection screenings; and combinationsthereof, or other methods,” recognizing that end-of-pipe monitoring is more appropriate for an industrial facility than for a municipal facility. (<i>Id.</i>) More recently, EPA has stated that the standard end-of-pipe monitoring that has taken place as the Phase I storm water program has matured “has produced data of limited usefulness because of a variety of shortcomings” identified in the National Research Council’s (NRC) 2009 report “Urban Stormwater Management in the United States.” (See EPA’s District of Columbia MS4 Permit No. DC0000221 Fact Sheet, 2011.) EPA endorsed the NRC’s strong recommendations that MS4 programs modify their evaluation metrics and methods to include (1) biological and physical monitoring; (2) better evaluations of the performance/effectiveness of controls and overall programs; and (3) an increased emphasis on watershed scale analyses to</p>	

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				ascertain what is actually going on in receiving waters. (<i>Id.</i>) The Tentative Order's monitoring requirements do exactly that to obtain useful monitoring data to ensure compliance with the permit. It requires a combination of monitoring provisions designed to monitor urban creeks as well as the ultimate receiving water, the Bay. In this fashion, the Permittees will develop information concerning the health of receiving waters as well as information that will assist in pinpointing sources of pollutants and effectiveness of source control measures. We have revised the Fact Sheet to better explain the rationale for the required monitoring and how it is consistent with the federal regulations.	
Baykeeper (14)	General	Monitoring does not provide accountability mechanism	The permit includes no procedure by which the Regional Board or third parties can hold Permittees accountable for an insufficient monitoring program.	Staff disagrees that the Tentative Order does not include clear monitoring requirements to which the Water Board and third parties will be able to determine Permittee compliance. Numbers and types of samples to collect; analytical parameters and methods; and reporting requirements are spelled out to a greater degree than in the previous Order. The type of location is given, although the exact location in which to collect samples is not mandated, in order to facilitate a meaningful monitoring program that builds upon pre-existing knowledge and additional knowledge gained each year.	none
Baykeeper (12, 16, 20,	C.8.d		C.8.d Creek Status Monitoring does not focus on	See Response to Baykeeper Comment 12, 13, 15. In requiring Permittees to monitor the	none

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21)		Creek Status Monitoring does not monitor impacts of stormwater discharges	<p>stormwater discharges but rather on determining the overall water quality of receiving waters. Dry season monitoring will not indicate whether stormwater discharges cause or contribute to any water quality issues discovered. Sampling for pathogens during dry season won't detect sewer leaks; rainfall is necessary to detect exfiltration from sanitary sewer system to the MS4. This monitoring fails to "yield data representative of the monitored activity," as required (40 C.F.R § 122.48(b). Sampling representative outfalls during storm events will allow Permittees, regulators, and third parties to determine whether stormwater discharges are the actual source of water quality violations and to take actions to remedy such violations.</p> <p>If discharges were monitored, wouldn't need Stressor & Source Identification (SSID) projects; would simply determine BMPs to address water quality problems.</p>	<p>water bodies (both water column and sediment) that receive urban runoff, and to take actions when "trigger" values are exceeded, the Tentative Order achieves a better level of protection than would be achieved by outfall monitoring, and in a more cost-effective manner.</p> <p>Further, the Tentative Order requires both wet (C.8.f and g) and dry season (C.8.d and g) monitoring. Dry season monitoring is important for several reasons: It is the only time to collect certain biologic assessment data, per method requirements; it provides information on whether creek sediments are experiencing toxicity due to urban runoff (this cannot be done at outfalls during wet weather); and it assesses pathogens in creeks during the time when people are most likely to be recreating in them.</p> <p>Regarding SSID projects, the comment is not applicable in light of the validity of the proposed monitoring approach, as explained in our responses to this comment above. In addition, merely finding a pollutant does not allow us to identify the source within the outfall's catchment; an SSID project is likely still necessary.</p>	

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Baykeeper (17)	C.8.e	Source & Stressor Identification (SSID) Project requirements should be completed during permit term	Permittees aren't required to start all SSID Projects by the end of the permit term. Half of all SSID Projects (2.5 for the largest counties) must be started by the third year of the permit term, and Permittees must attempt to complete all half of the SSIDs during the permit term, and improved BMPs are not required to actually be implemented. At a minimum, the MRP should clarify that all SSID Projects required by the permit be completed prior to end of the permit term. A permittee need only <i>consider</i> conducting an SSID Project; the Permit only requires a minimum number of SSID Projects.	<p>Staff understands the Commenter's concern and shares the desire to speed up the SSID process. However, the reality of the timeframes for sampling, analyzing, and evaluating data, then designing and contracting for a SSID study means that initial SSID projects cannot begin until nearly the third year of the permit term. As data are collected in subsequent years, additional problems may be uncovered. Based upon the necessary sequence of events that must occur, it is actually impossible to complete all the required SSID projects by the end of the permit term.</p> <p>Regarding the comment that a Permittee need only consider conducting a SSID project, Staff will clarify the language to state that all results that exceed a target are candidates for SSID projects. The Commenter is correct in that a minimum number of SSID Projects is required, rather than a SSID for every monitoring result that exceeds a "trigger" threshold. Every trigger exceedance need not result in a SSID project because (1) triggers are not water quality objectives in most cases and (2) this approach requires investigation of potential water quality issues without duplicating efforts. See also the response to ACCWP (44).</p>	Clarify the language regarding candidate SSID projects each time it occurs in the Tentative Order, to more clearly require SSID projects
Baykeeper (18)	C.8.e	SSID requirements unclear	The breakdown of SSID projects to countywide program level is confusing.	Staff understands the Commenter's confusion with the wording. The intent is that Permittees in Santa Clara County	Edit wording in C.8.e.ii.(2) to delete the phrase

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			Do all Permittees in Santa Clara Co. collectively conduct one SSID Project, but no more than 5, over the permit term? Or must each Santa Clara Co. Permittee conduct one SSID Project, but no more than 5? The Permit should clearly state the minimum # of SSID projects.	collectively conduct five SSID Projects over the Permit term.	“no more than” where it appears (three times).
Baykeeper (19)	C.8.e	SSID requirements are arbitrary	The required number of SSID Projects is arbitrary because it is not related to the number of water quality impacts discovered. Should require that Permittees conduct SSID Projects for a percentage – 50% - of all water quality impacts discovered within their jurisdiction.	The number of SSID projects required in the Tentative Order is based on staff’s experience during the last permit term, when monitoring results indicated nearly ten distinct water quality “impacts” over the permit term. At this time, in balancing costs with the information gained from SSID projects, a separate SSID project is not required each time a threshold is exceeded, e.g., a toxicity benchmark is exceeded, because toxicity has been found to be caused by the same thing (pesticides) across all urban watersheds. Thus, more knowledge about possible causes of water quality impacts is gained by studying different problems over the permit term. The knowledge gained can then be utilized to take action as appropriate where ever the same impact is found, without requiring an additional SSID project.	none
SCVURPPP (Errata), ACCWP (41) SSCWPPP	C.8.d.i	Typographical error	There are two sections C.8.d.i.; renumber C.8.d subsections.	Agreed	Renumber C.8.d subsections up through D.8.d.vii

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(32)					
SCVURPPP (Errata)	C.8.f.ii - Table 8.4	Typographical error	Fix the typo in Column C of the toxicity row on Table 8.4 from 20 to 10.	Agreed	Fix the typo
SMCWPPP (33) SCVURPPP (35)	C.8.d.i.(1)	Physical Habitat assessment (PHab) method	Information collected using the full PHab method is not useful in random probabilistic- monitoring. Full PHab is more useful in targeted monitoring programs where specific sites are selected. Implementation of the full PHab methodology adds approximately 20 minutes onto the field time for each bioassessment station, eliminating most opportunities to sample two sites per day, resulting in increased costs to the sampling program. Restore the limited PHab method required in the previous permit.	Staff disagrees. Full PHab is needed to obtain SWAMP-comparable data, which is essential for understanding why a stream has poor or good benthic macroinvertebrate community structure and will be necessary if low benthic macroinvertebrate scores are followed up on in a SSID project. Full PHab data can be compared to statewide and regional SWAMP data. Permittees took great efforts to use a comparable sample draw and land classification system to SWAMP to facilitate this consistency. Further, full PHab will allow Permittees to more easily incorporate their data into CEDEN. Also, Water Board has collected full PHab at 42 Permittee sites over the past four years. Staff believes that full PHab is so important that Staff agreed to drop the stream/CRAM survey which required an additional site visit on a separate date from bioassessment in favor of collecting Full PHAB. By our assessment, full PHAB data collection takes 15-20 minutes more per site then the previous PHab; the additional 30-40 min/day does not necessarily preclude field crews from doing 2 sites in a day. SWAMP field crews with experienced staff sample two sites per day collecting full PHab.	none

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ACCWP (42) CCCWP (41) SMCWPPP (34) SCVURPPP (36)	C.8.d.ii(4)	Temperature Triggers	<p>Temperature trigger definition is based on non-California studies, does not acknowledge other environmental factors affecting variation in salmonid sensitivity to temperature. Include reference to watershed specific temperature thresholds developed through other regulatory processes (e.g., agreements with NMFS).</p> <p>Allow Permittees to determine watershed-specific temperature trigger thresholds consistent with targets established via other regulatory processes (e.g., agreements with NMFS), if applicable, and set reasonable “default” temperature thresholds for those streams where targets have not been established.</p>	<p>Staff disagrees. Triggers were derived from the most current, regionally representative, and comprehensive review of salmonid temperature thresholds (Sullivan et al. 2000). The 17°C max. weekly average trigger & 24°C acute instantaneous trigger were used as evaluation guidelines of cold freshwater habitat beneficial uses in Water Board SWAMP reports and to evaluate temperature data to place Suisun, Stevens, Arroyo Mocho, and Codornices Creeks on the §303(d) list. No other comprehensive synthesis of water temperatures as they affect salmonid populations in the SF Bay Area or Pacific northwest has been written. Stream studies in the Bay Area and Central Coast show that temperatures above 17°C WMAT may not adversely affect salmonids when the invertebrate food supply is adequate. However, the Order’s temperature trigger is independent of food supply and thus based on conservative assumption that food supplies are not abundant. The 17°C MWAT trigger is consistent with a 2003 legal settlement, the <i>Fish and Aquatic Habitat Collaborative Effort</i>, which directed USFWS, NOAA, and DFW to consider temperature and flow impacts on fish and calls for water temperatures to remain below 18°C in Coyote Creek and Guadalupe River and average temperatures below 19°C in Stevens Creek.</p>	none
SMCWPPP (35)	C.8.d.iv.	Toxicity in water column	The required water column aquatic toxicity analytical	Staff disagrees because EPA/600/R-99/064 is the correct method to use for chronic	Add a footnote to C.8.d.iv (now

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		– test methods	<p>procedure for <i>Hyalella azteca</i> & <i>Chironomus dilutus</i> does not include those organisms (except in an appendix) and does not specify the test protocol design, such as the number of replicates, number of organisms, etc.</p> <p>Replace EPA-821-R-02-012 with EPA-600-R-99-064 for <i>Hyalella azteca</i> and <i>Chironomus dilutus</i> which does provide specific protocols. A reference toxicant test method is prescribed for these organisms in water in the EPA-600-R-99-064 manual.</p>	<p>toxicity tests of <u>sediment</u>, not water column. EPA/821/R-02-012 is the correct method for acute toxicity in water column. The supplemental species list (pg 238 Appdx B) includes both <i>H. azteca</i> & <i>C. dilutes</i> and thus the method is complete for the required monitoring.</p>	<p>C.g.i) pointing to Appendix B for <i>H. azteca</i> and <i>C. dilutes</i> methods.</p>
<p>SMCWPPP (36, 37) SCVURPPP (37, 38)</p>	<p>C.8.d.iv. C.8.d.v.</p>	<p>TST statistical approach not adopted by State Board</p>	<p>The TST statistical approach has not been adopted by the State Board and therefore should not be included in the MRP. Revise to require current methods from MRP 1.0 until State Board adopts the Policy for Toxicity Assessment and Control.</p>	<p>The commenter is incorrect about where the State Board stands on the TST statistical approach and that State Board’s adoption of the Toxicity Policy is needed for implementation of the TST approach. According to a State Board memo to Water Board Managers and Staff (Breuer May 12, 2015), the State Board supports the TST statistical approach. It recognized that while the approach may not be used for effluent testing under the federal regulations, NPDES Permits may use the approach for stormwater receiving water monitoring. It stated, “[t]he benefits of requiring the TST in new or amended permits include improving</p>	<p>none</p>

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				the statistical power of the toxicity test, and it is simpler to use than either traditional hypothesis test methods or point estimates. The calculations are straightforward and provide a clear pass/fail result.” The TST approach currently is required in MS4 permits across the state.	
ACCWD (43) CCCWP (42) SMCWPPP (38) SCVURPPP (39)	C.8.d.v. Table 8.2	Delete some required analytes	Several analytes with low benefit for ambient creek sampling in comparison to analytical costs, or addressed by C.8.f, should be deleted. Specifically, PCBs, mercury and organochlorine pesticides.	Staff agrees that the 3 specified analytes do not yield useful information in the ambient monitoring design and note that these analytes remain in the Pollutants of Concern and Long Term Monitoring requirements. We agree to delete these analytes and add imidacloprid, a neonicotinoid pesticide we very recently learned is causing widespread toxicity in California urban streams.	Delete PCBs, mercury and organochlorine pesticides from creek monitoring; Add imidacloprid to Toxicity in Water Column parameters
ACCWP (44) CCCWP (42) SCVURPPP (40)	C.8.d.v.(4) (c)	Toxicity / pollutants in sediment follow up	Based on MRP 1.0 results, the “threshold effects concentration” trigger for pollutants without WQOs is too conservative -- should consider follow-up only when results exceed Probable Effects Levels. Delete “or Threshold Effects Concentrations.” For example, in San Mateo County the predominant TEC values triggered during MRP 1.0 were Chromium and Nickel. Both are found in watersheds throughout the County due to the presence	Staff disagrees with this concept, because the trigger does not require a follow up study. Instead, the trigger provides a threshold for considering follow up, and Permittees determine which “triggers” are most important. For the San Mateo County example given by San Mateo Countywide Permittees, chromium and nickel triggers would not be prioritized for SSID projects, if there is reasonable support for stating the source of the exceedance is known and is uncontrollable.	none

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			of naturally occurring serpentinite bedrock.		
ACCWP (45) CCWP (43, 44)	C.8.e.ii.(1) and (2)	Requirement for toxicity SSID follow up project is inappropriate	Requiring a minimum of one toxicity project assumes there will be at least one toxicity threshold exceedance in the region or county; it also overly constrains selection of regional projects. Delete requirement (preferred) or state that this would only apply when at least one qualifying toxicity threshold exceedance appears on the list required by Prov. C.8.d.i	Staff disagrees with deleting the requirement, but will add the qualifying phrase. Based on long-term data, at least one sample will exhibit toxicity. We continue to encourage Permittees to monitor water quality through a true regional collaborative, in which case only one toxicity SSID is required in total.	Clarify in C.8.e.ii.(1) and (2) that the requirement is not applicable when no sample exceeds the toxicity threshold
ACCWP (46) CCCWP (45)	C.8.e.iii.(1)	Initiation of SSID projects	Requiring at least half of SSID projects to be initiated by 3rd year makes project selection rely more heavily on data generated during the previous permit term or in years 1-2 of this permit. Delete requirements or state that initial workplans based on first 2 years can be modified in Year 3 of permit.	Staff agrees that requiring half of SSIDs be started by year 3 theoretically can result in poor prioritization of follow up projects. Note however, that delays in initiating SSIDs is not ideal either – see Baykeeper comment #17. We agree that ACCWP's proposed solution to allow modifications is likely to address the prioritization issue without delaying SSID progress.	Add C.8.e.iii.(1)(i) to allow the SSID work plan to be modified in later years of the permit term if monitoring results indicate a higher-priority water quality problem is discovered.
ACCWP (47) CCCWP (46) SMCWPPP (40) SCVURPPP (41)	C.8.e.iii(1)(f)	Reinstate TRE option	Toxicity Identification Evaluation (TIE) is required when no chemical pollutant is associated with the sample, skipping Toxicity Reduction Evaluation (TRE) as possible	Staff agrees. The omission of the TRE option was an oversight that occurred when this section was reformatted.	Include the option to conduct a TRE in C.8.e.iii(1)(f)

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			initial step. This skips a cost effective step that could eliminate the need for a TIE.		
ACCWP (48)	C.8.e.iii(2)	Completion of SSID projects	<p>Requirement to “complete all steps for half of the required SSID projects” does not allow for possible multiple iterations of control actions and evaluation, or the difficulty of determining effectiveness for episodic exceedance conditions. Also the second sentence regarding intent of provision is more appropriate to introduction of provision than this particular step. This provision should refer to completion of Steps 1 and 2 (SSID workplan and investigation), not all of the Step 3 follow-up actions.</p> <p>Delete second sentence and replace with: "The Permittees shall attempt to complete Steps 1 and 2 for half their required SSID projects, at a minimum, during the permit term".</p>	<p>Staff agrees that the 2nd sentence is more appropriate in the provision introduction.</p> <p>Staff disagrees that the sentence should be deleted or modified for two reasons. First, completing SSID projects is not a firm requirement, as indicated by the wording in the Tentative Order: "... Permittees shall attempt to complete.." Thus, the wording allows for the cases where multiple iterations are necessary. Second, we wish to convey that existing knowledge be used to get at the most likely problem source as quickly as possible.</p>	<p>Move the sentence "SSID projects are intended to be oriented toward taking action(s) to alleviate stressors and reduce sources of pollutants; thus the Permittees shall attempt to complete all steps for half their required SSID projects, at a minimum, during the permit term" to C.8.e introductory paragraph.</p>
CCCWP (47)	C.8.e.iii(2)	Completion of SSID projects	In Step 2, the Tentative Order says "Permittees shall attempt to complete <u>all</u> steps for half their SSID projects...during the permit	Staff agrees with this comment, but find the sentence may provide more clarity by putting it in subprovision C.8.e.iii.(1), and specifying Step 2, rather than Step 1 as suggested.	Amend C.8.e.iii(1) to include the goal of completing Step 2 for half

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			term.” Suggest clarifying to state “complete <u>Step 1...</u> ”		the required SSID projects
ACCWP (49) CCCWP (48) SMCWPPP (41) SCVURPPP (42)	C.8.e.iii(3) b	Executive Officer concurrence for completion of SSID project	Written concurrence of Executive Officer should not be required to determine an SSID project is completed, especially when Permittee determines MS4s do not contribute to an exceedance.	Staff disagrees that this requirement should be deleted. Oversight of SSID projects is necessary to confirm permit compliance, thus we will include this “sign off” requirement for this permit term.	none
ACCWP (50)	C.8.e.iii(3) c	Completion of SSID project	In first line, “inclusive” appears to be a typo. Concurrence should not be required for determination of completion. Replace “inclusive” with “inconclusive” and revise second sentence per above comment on C.8.e.iii(3)b.	Staff agrees that “inclusive” is a typographical error. We will maintain the “sign off” as stated in response to comment #49 above.	Replace “inclusive” with “inconclusive”
CCCWP(49) CCCWP (53)	C.8.e.iv. C.8.g.iii(2)	SSID Reports	Clarify to make the distinction that the annual required SSID reports are status reports on efforts to date.	Staff agrees and will make the suggested edits.	Change “SSID report” to “SSID status report” in each occurrence
ACCWP (51) SMCWPPP (47) SCVURPPP (47)	C.8.f.ii. Table 8.4	Yearly minimum number of samples is overly restrictive	Table 8.4’s yearly minimum number of samples is overly restrictive, particularly for the pollutants with 1-2 samples per year, since a more cost-effective and stronger sample design may group a larger # of samples in some yrs while sampling none in others. SMCWPPP & SCVURPPP	Staff disagrees that more flexibility is needed. The proposed sampling strategy is designed to be quite flexible, and is not onerous. Indeed, these requirements are significantly more flexible than they were in the previous permit. The Tentative Order allows for the collection of a larger number of samples in some years, but the yearly minimum is important to retain as a requirement, to ensure that Permittees make progress toward completing the monitoring	none

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			request: Eliminate annual requirements for copper, pesticides, toxicity, and nutrients to allow for the option of meeting the minimum Total Samples Collected during intensive watershed studies conducted over one or two years.	requirements during every year of the permit. Regarding the request to eliminate annual requirements for copper, pesticides, toxicity, and nutrients, please see the response below.	
SMCWPPP (46) SCVURPPP (46)	C.8.f.ii Table 8.4	Analyte list – reduce copper, pesticides, nutrients samples	The yearly minimum samples for copper, pesticides, and nutrients (20/2) is double the required minimums for toxicity (10/1). The cost of sending out field crews to collect that additional copper, pesticide, and nutrient samples is high and the benefit of the data is low. There are programs in place to address copper and pesticide management actions. Further, many nutrient samples will be collected concurrent with Biological Assessments required by Provision C.8.d. Additional required samples eliminates opportunities to realize cost savings by coordinating copper, pesticide, and nutrient sampling with toxicity sampling.	Staff disagrees that the requested reduction in requirements is warranted, or that the benefit of these data is low. The copper site-specific objective identified urban runoff as the largest source of copper to the Bay. The modest monitoring requirements (20 total samples per countywide program over the entire term of the permit) are necessary to address the relevant management questions of loads, presence/absence and trends. Likewise, urban runoff represents the largest contribution of pesticides to the Bay. Requiring each countywide program to collect 20 total samples over the course of the permit is a modest effort given the water quality impacts possible from these pesticides. Further, this level of effort will be necessary in order to provide sufficient information to address the relevant management questions. Further, the Tentative Order provides a cost savings with a reduced number of analytes compared to MRP 1.0, and the flexible approach whereby more of the sampling	none

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				effort can be accomplished in one year versus another provides opportunities for scheduling sampling in a way to reduce costs as well.	
CCCWP (50) SMCWPPP (45)	C.8.f.ii- Table 8.4 POC Monitoring Parameter s	Reduce the sampling requirements for Contra Costa and San Mateo Counties	The number of samples required for Contra Costa & Santa Mateo Counties should be consistent with the tiered sample number requirements in Creek Status Monitoring (C.8.d). Suggest decreasing by half the number of copper, pesticides, toxicity and nutrient samples required.	Staff disagrees. We find the level of effort for pollutants of concern is appropriate as stated in the Tentative Order. There is no basis for treating the countywide programs differently in terms of monitoring effort for pollutants of concern, and the management questions apply equally to each countywide program.	none
SMCWPPP (42) SCVURPPP (43)	C.8.f.ii Table 8.4	Footnote conflicts with Table	Footnote “a” states that the Total Samples Collected column applies to the permit term; however, this conflicts with the paragraph preceding Table 8.4 which states that the total shall be collected by the end of the fourth Water Year. It is unclear by what date the total number of samples should be collected.	Staff agrees with this comment.	Revise text paragraph preceding Table 8.4 (now Table 8.2) to be consistent with footnote “a.”
SMCWPPP (48) SCVURPPP (48)	C.8.f.ii Table 8.4	Allow for statewide pesticide monitoring	Table 8.4 does not address potential changes to POC Monitoring in the event that a statewide coordinated pesticides and pesticides-related toxicity monitoring program begins collecting data during the permit term. Request: Add a footnote to	Staff agrees with this comment.	Add requested footnote, allowing Executive Officer to “modify, reduce or eliminate this monitoring provided the resultant change,

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			the Pesticides row stating that “In the case that a statewide coordinated pesticides and pesticides-related toxicity monitoring program begins collecting data on an ongoing basis during the permit term, Permittees may request the Executive Officer reduce or eliminate this monitoring requirement.”		viewed in context of the state-wide program, would improve pesticide monitoring data collection.” Add same footnote to Status Monitoring Table 8.1 and 8.2 (now Tables 8.4 & 8.5), because the footnote was inadvertently omitted. Reformat C.8 so that all pesticide and toxicity monitoring is in one place to facilitate coordination with state-wide monitoring.
ACCWP (52) CCCWP (52) SMWCPPP (49) SCVURPPP (49)	C.8.f.iii Table 8.5	Pollutants of Concern - PCB analytical methods	Table 8.5 requires 40 PCB congeners be analyzed using USEPA method 1668. While the 2008 PCB TMDL Staff Report recommended this method for data collection in the Bay, it also notes that PCB levels in different sample matrices can vary widely. Method 8082A is acceptable to SWAMP and is being used for congener	Staff agrees with this comment. There are sampling regimes in which methods other than 1668 are appropriate.	Revise Table 8.5 (now Table 8.3) to allow congener analyses by other USEPA methods including 8082A (and 8270D modified by Method 1625) when appropriate for addressing management

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Provision C.8. – Monitoring**

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			analyses with sufficient resolution for POC monitoring related to management information need #1 (Source Identification). Also, the second sentence in provision erroneously refers to "Table 8.2" instead of Table 8.5		information needs. Fix second sentence to refer to the correct table (Table 8.3).
CCCWP (51) SMCWPPP (43) SCVURPPP (44)	C.8.f.	Error in Table 8.4	An error in Table 8.4 states that the minimum yearly sample should be 20 for toxicity. This minimum number should be reduced to 10 samples in order to coincide with the total number of samples required.	Staff agrees that this was an error. In response to comments from ACCWD, CCCWP, SMCWPP, and SCVURPPP, all toxicity monitoring has been reformatted to improve monitoring design, reporting and data usefulness. In doing so, staff realized the number of sediment samples was well beyond what is necessary to determine impacts from MS4 discharges, particularly in light of the fact that creek sediment toxicity is very closely associated with pyrethroid pesticides. The total annual number of samples proposed in the revised is six or seven, depending on the year.	In Table 8.4 (now in C.8.g.ii), change minimum number of sediment toxicity samples to 6-7.
SMCWPPP (44) SCVURPPP (45)	C.8.f.ii Table 8.4	Wet season sediment sampling	Sediment toxicity sampling is required during the wet season but not necessarily during storms. Typically sediment samples are collected during the dry season both to characterize sediment transport that has occurred throughout the year and to coordinate sampling with other dry season	Staff agrees that sediment toxicity sampling is best conducted during the dry season, because sediment is in motion during storm events, and the value in monitoring sediment is in determining whether pollutants have been deposited.	Change toxicity sediment monitoring to dry season in Table 8.4 (now in Table 8.5)

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			<p>parameters. There is no scientific justification for sediment sample collection during the wet season.</p> <p>Request: Delete the required timing of the sediment sample, change it to the dry season, or provide a technical justification for wet season sediment sampling.</p>		
<p>ACCWP (53) CCCWP (54) SMCWPPP (51)</p>	C.8.g.iv	Pollutants of Concern Monitoring data submittal	<p>The last sentence requires submittal by Oct. 15 of data types not accepted by CEDEN, collected during the previous Water Year which ends on September 30. This is an unrealistic timeframe for data collected during the last 3 months of the Water Year, especially involving analysis of PCB congeners. Change date for submittal of non-CEDEN data to March 15, which is consistent with reporting requirements in the rest of C.8.g.</p>	<p>Staff agrees that it is not essential to have the types of data not accepted by CEDEN in the Water Year report.</p>	<p>Change C.8.g.iv (now C.8.h.iv) to require the data not accepted by CEDEN be reported in the following March's Urban Creeks Monitoring Report</p>
<p>CCCWP (54) SMCWPPP (50) SCVURPPP (50)</p>	C.8.g.iv.	Consolidate reporting due dates with Status Monitoring	<p>Remove the duplicative POC reporting and allow this monitoring to be reported with the UCMR.</p>	<p>Staff disagrees with this approach because the content of the POC report due in October, as stated in the Tentative Order, is a description of the POC monitoring scheme for the water year starting that same month. Experience shows us that Permittees are not prepared to commit to a POC monitoring</p>	<p>none</p>

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				strategy until they have had ample time to analyze the previous water year's data, so Permittees would not be ready for an earlier submittal (the previous March) and the following March would be too late to provide the Water Board and public with the upcoming sampling scheme.	

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Provision C.9. – Pesticides Toxicity Control**

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Baykeeper (22)	C.9	Permittees are not required to reduce pesticide use or only use pesticides when necessary.	Waste load allocations must be incorporated into the MRP and reduction of pesticide loads must occur in accordance with the Pesticides TMDL and the Clean Water Act. The Draft MRP does not establish a system whereby Permittees are required to reduce pesticide use. The last permit iteration required Permittees to establish IPM ordinances and policies and to report pesticide use. The Draft MRP should be revised to require that Permittees reduce their pesticide use in their municipal operations and on municipal property and only use pesticides when necessary.	<p>NPDES permits must contain effluent limits and conditions consistent with the assumptions and requirement of the waste load allocations (WLAs) in the TMDL, not incorporate the WLAs into the permits. See 40 CFR § 122.44(d)(1)(vii)(B). The effluent limits may be numeric, if feasible, or BMPs. U.S. EPA's 2014 memorandum revising its 2002 guidance on TMDLs and stormwater permitting (referred to in the MRP) states that BMPs can be used to achieve WLAs. Here, the point of the BMPs required in the MRP is to reduce use of pesticides of water quality concern.</p> <p>Moreover, we note that the Basin Plan states that although WLAs apply to all urban runoff sources, the responsibility for attaining the WLAs is not the sole responsibility of urban runoff agencies, whose legal authority to regulate pesticide use is constrained. That said, the Board is committed to ensuring that Permittees reduce pesticide usage in their operations as one step in attaining the TMDL. Requiring pesticide use tracking as a tool will help accomplish this goal and inform the Board as to whether additional efforts are warranted.</p> <p>Importantly, we expect implementation of the suite of BMPs laid out in the Basin Plan will ensure attainment of the WLAs for pesticide-related toxicity. As such, the MRP need not be revised further.</p>	None
Baykeeper (23)	C.9	Permit should require continual	The Maximum Extent Practicable (MEP) standard anticipates and requires new	We agree that NPDES stormwater permits should require best management practices to meet the evolving MEP standard. Provision	None

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		improvement of IPM; include discussion of IPM progress.	<p>and additional controls be included with each successive permit. MEP should continually adapt to current conditions and BMP effectiveness and should strive to attain water quality standards. Therefore, the Draft MRP must include a mechanism by which Permittees are required to evaluate and implement new and effective methods of IPM.</p> <p>There is no discussion in the Permit regarding whether pesticide use has decreased since the 2009 permit, whether IPM measures are effective, and whether pesticide concentrations and toxicity targets are being attained.</p>	<p>C.9.g, Evaluate Implementation of Pesticide Source Control Actions, requires Permittees to do just this. To facilitate a meaningful evaluation of effectiveness, Permittees are required to do so only once each permit term.</p> <p>IPM methods are site specific, and various factors affect effectiveness of the IPM method(s) used and amount of pesticide use, but in general IPM is the latest and most effective best management practice to reduce pesticide-related toxicity. Decreases in pesticide use cannot be simply measured and stated because pesticides have widely different levels of toxicity and physical properties, so decreased use of a pesticide does not correlate to less toxicity in our waters. We know there is recurring pesticides-caused toxicity in receiving waters due to pesticides used in accordance with their labels, and we know that overall use of pesticides by the public and businesses far exceed levels used by Permittees. Consequently, we are pursuing regulatory action by US EPA and the California Department of Pesticide Regulation (DPR) as the best means to abate pesticide-caused toxicity, rather than consideration of more stringent IPM requirements in the Permit. There have been successes with this approach, especially at the state level. For example, the DPR has begun to evaluate water quality impacts at the time of pesticide registration. This overall approach is consistent with the TMDL, which has no deadline to meet the targets because the toxicity is caused by federally allowed usage.</p>	

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Dublin (11)	C.9.a.iii. (2)	Reporting	Revise from "Permittees shall describe two IPM actions implemented in the reporting year" to "Permittees shall provide a description of any new IPM actions implemented in the reporting year."	We disagree. During working meetings, Permittees preferred to report on 2 IPM actions, as proposed in the Tentative Order, because many IPM actions continue every year, and as a result, in some years a <i>new</i> IPM action is not taken.	None
SCVURPPP (51)	C.9.c.i	Typographical error?	This requires Permittees to hire IPM-certified contractors AND include contract specifications requiring contractors to implement IPM. Water Board staff has indicated that this is a typo and that they intended to change the "and" to "or" in the revised Tentative Order.	We agree.	Correct typo by changing "and" to "or"
Oakley (14), Clayton (48), Concord (31), Danville (3), El Cerrito (37), Hercules (28), Martinez (34), Moraga (25), Orinda (28), Pinole (24), PleasantHill(27) San Pablo (27) San Ramon (34), CCCWP (55) SCVURPPP (52)	C.9.c.ii	Delete requirement	Requires Permittees to observe pesticide applications by their contractors. Permittees do not inspect pesticide applications by pest control operators and believe this is outside of their jurisdiction and authority.	We disagree that this requirement merits deletion. Permittees are required to implement IPM in all facets of municipal operations (C.9.a). When Permittees hire contractors to do pest management, it logically follows that Permittees must ascertain that such contractors implement IPM on Permittee properties. This can be done by a critical review of invoices and any other records required by the City's IPM policy; it is not required that City staff observe pesticide applicators.	None

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El Cerrito (13), CCCWP (52)	C.9.c.ii	Requirement redundant	All applicators already receive IPM training and sign the City's IPM policy contractor agreement. Increased pesticide application observation is redundant and burdensome.	We disagree. The Urban Creeks Pesticide-Related TMDL implementation plan states that Urban Runoff Agencies will track progress by periodically reviewing the pesticide use by its hired contractors. Based on numerous Permittee Annual Reports, there is little/no evidence that this is done. Further, some cities' contracts for pest control contain contradictory requirements (e.g., "follow IPM policy" and "remove all pests within 24 hours"); similarly, implementation of IPM training varies greatly.	None
Dublin (12), SCVURPPP (52)	C.9.d	Keep current permit requirement	Not all permittees will need to communicate with the county agricultural commissioners. Revise to state that permittees shall describe any communications that they have with the County agricultural commissioners.	We do not understand the comment, because, as written, C.9.d.ii does require Permittees to briefly describe any communications they have had with county agricultural commissioners.	None
CCCWP (53) SCVURPPP (52)	C.9.d	Keep current permit requirement	Replace the language in C.9.d.i(c) with the language in Provision C.9.f.i.(3) of the current permit: "report violations of pesticide regulations (e.g., illegal handling) associated with stormwater management."	We disagree. The Urban Creeks Pesticide-Related TMDL implementation plan states that Urban Runoff Agencies will work with County Agricultural Commissioners (and others) to coordinate education and outreach programs to minimize pesticide discharges. Thus, the TMDL calls for a broader discussion than that requested by the Commenter.	None
SMCWPPP (54), SCVURPPP (53)	C.9.e	Include landscapers in public outreach	Revise to include underlined language: "The Permittees shall conduct outreach to residents who use or contract for structural pest control <u>or</u> <u>landscape professionals</u> by (a) explaining the links	We agree. Please note that current pesticide use data indicate that the pesticides of greatest threat to water quality in our urban creeks are applied primarily by structural pest control operators. Thus, while Permittee outreach to landscapers is worthwhile, we cannot accept it in lieu of ANY outreach to pest control	Make the proposed changes, except replace "or" with "and"

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			<p>between pesticide usage and water quality; <u>(b) providing information about IPM in structural pest management certification programs or landscape professional trainings</u>; and <u>(c) disseminating tips for hiring structural pest control operators or landscape professionals</u>, such as the tips prepared by the UC Extension IPM Program.</p>	<p>operators. Permittees have found structural pest control outreach materials available through UC-IPM and are encouraged to use those materials in conjunction with outreach efforts, rather than conduct additional outreach.</p>	

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Provision C.10. – Trash Control**

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ACCWP(16), Berkeley(15), Hayward(8), Livermore(7), Oakland(1,2), SCVURPPP (88)	C.10.a.	Schedule for 70% and 100% trash reduction should be extended	Still determining which Best Management Practices (BMPs) are most effective, need more time for results of studies of inlet screens, for instance. Changing the street sweeping program requires a long lead time. Also, a longer time frame, 100% in 2025 would be consistent with the Amendment to the State Ocean Plan and Caltrans Permit.	The results of the BMP evaluations will be known this winter, so there is adequate time to meet the trash reduction limits by 2017. These are long-standing targets which have been in place since 2009 and reflect a 13-year process to reach the 2022 goal of clean receiving waters. This is longer than the as the 10-year process incorporated into the recent Statewide Trash Amendment, and thus is consistent with the Amendment's compliance time. The Trash Amendments to the Ocean Plan and the Inland Surface Waters, Enclosed Bays and Estuaries (Amendments), which require full capture systems in priority land uses or full capture system equivalency, specifically allow this Board to establish an earlier compliance deadline than the Amendments. (See footnote 2 in both Amendments.)	None
ACCWP(17),	C.10.a.	Make deadlines	The reduction targets should be	See response above. In	None

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Berkeley(17,18), Fremont(2), Hayward(7), Oakland(3)		consistent with Statewide Trash Plan and Caltrans deadlines	changed to July 1, 2020 for a 70% reduction and July 1, 2025 for 100% reduction. The 2025 deadline is consistent with the Statewide Trash Plan. For larger and more heavily trash-impacted jurisdictions it may be impossible to achieve required reductions, even within the extended timeframe. Similar to State's requirements for reducing solid waste to landfills under AB 939. AB 939 was passed in 1989 and required a 50% reduction in waste within 11 years (2000). As with trash, it was very difficult to establish a baseline even though the solid waste stream is much easier to measure than litter in the environment. Local and regional jurisdictions are now (26 years later) trying to achieve a 75% reduction. In addition, waste management agencies are not subject to the same funding constraints as stormwater programs are under Prop 218.	addition, there is not sufficient rationale for changing the targets for trash reduction at the current time. The Permittees are making progress toward the limits and that progress is being driven, in part, by the reduction targets. It is likely that the result of providing additional time would be reduced resources devoted to the trash reduction issue. The compliance targets have been in place and projected since 2009, giving permittees adequate time to allocate resources to achieve the required reductions.	
ACCWP(18), Berkeley(16)	C.10	Caltrans has until 2025 to meet its reduction targets	Another reason to extend the compliance dates is that many of the highest trash problem	Various entities will have different permit schedule details based upon when	None

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			<p>areas are along Caltrans roadways. Caltrans has until 2025 to meet its reduction targets under the Caltrans statewide permit. Revised schedule would also line up with Caltrans' schedule and make it much easier to coordinate with Caltrans.</p>	<p>permits were created. Adding time to permit requirements any time a new entity is permitted with a trash requirement is counterproductive. Additionally, we are working with Caltrans as they develop and implement their trash control plan. A significant element of that plan is for Caltrans to coordinate with the permittees, which they have already begun.</p>	
<p>ACCWP(19), Berkeley(19), Clayton(53), Dublin(15), Fremont(6), Hayward(10), Livermore(9), Oakland(4,5) San Pablo (32)</p>	<p>C.10.b.iv</p>	<p>source control increase to 15% or 20%</p>	<p>The Alameda Countywide Storm Drain Trash Monitoring and Characterization Project ACCWP demonstrated an 8% reduction from existing source control actions. These source control efforts should be encouraged by increasing the maximum offset to at least 15%. Other permittees suggest removing 5% credit cap on source control measures or increasing source control credit to 20% to fully credit existing bans and incentivize future source control actions.</p>	<p>The compliance value for source control has been increased to up to 10%. This value takes several issues into account. In particular, it encourages efforts to complete source control, which requires an investment of permittee staff time. It also is intended to reflect on-the-ground benefit that is not otherwise measured by the permittees via their on-land assessment. This benefit includes reduction via source control in trash that is discharged directly (i.e., not</p>	<p>Increase source control value to up to 10%</p>

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				via the MS4) to receiving waters, as well as incremental reductions in low trash generation rate areas and in other areas, where those reductions are not sufficient to shift the status of the area from one category to another.	
ACCWP(20), Berkeley(20), Livermore(10), Oakland(10), SCVURPPP (92)	C.10.c.i.	Additional Creek and Shoreline cleanup maximum offset should be increased to 20%	Municipalities spend a tremendous amount of resources to clean up trash from in and around local creeks and the Bay shoreline. This trash is directly impacting local waterways; trash is often deposited along these waterways through mechanisms other than discharge from the municipal storm drain system (e.g. wind). Cleanup efforts should be encouraged by increasing the offset to at least 20%	This offset value has been increased to up to 10%, to better reflect the potential benefit to receiving waters that may result from these cleanups. That offset value also reflects expected benefits due to increased citizen stewardship of receiving waters due to their involvement in cleanup events. Increasing the offset value to 20% or more creates less of an incentive for permittees to focus on source control and other actions that are necessary to eliminate trash discharges by the 2022 target.	Increase cleanup offset value to up to 10%
ACCWP(21), Berkeley(21)	C.10	No visual assessment for compliance	The Visual Assessment Protocol has not been vetted sufficiently to be used as a Permit compliance tool for the following	Visual assessment is the primary means of determining the outcomes of trash control measures. The	None

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			<p>reasons: 1) The temporal and spatial variation is not well understood or quantified</p>	<p>current method is a straightforward approach using a visual guide that is similar to other kinds of visual assessments (e.g., estimating residual dry matter in grazed landscapes and Manning's <i>n</i> in open channels). The visual assessment logic is simple, in that trash present on the area being assessed has a significant likelihood of discharging to the storm drain and ultimately to receiving waters—or, from the opposite perspective, if the area being assessed is clean, then it is unlikely to be a source of trash to receiving waters. Permittees are free to develop and propose other assessment methods for consideration, but no other major assessment tools have been proposed to date. We understand that the Permittees may make such proposals in the future.</p>	

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ACCWP(22), Berkeley(21.a)	C.10	Visual assessments subjective	2) There is an element of subjectivity to the visual trash assessments that cannot be eliminated;	We disagree. Permittees may develop photo samples or other means of directing staff to consistently visually assess trash source areas. Visual assessment has proven to be a useful means of determining the outcomes of trash control measures. Permittees are free to develop and propose other assessment methods for consideration, but no other major assessment tools have been proposed to date. We understand that the Permittees may make such proposals in the future.	None
ACCWP(23), Berkeley(21b)	C.10	Trash generation categories too broad	3) The definitions of generation rate categories (i.e., Very High, High, Moderate, and Low) are too broad to detected actual trash reductions in many cases	Major changes are the ones that matter for compliance, and four categories are sufficient to gauge those major changes. Ultimately, all areas must be moved to a low trash generation rate or have full trash capture devices (or the equivalent). Additionally, the Permit provides a means of addressing this partial shift issue via the opportunities for compliance and offset value.	None

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ACCWP(24), Berkeley(21c), Dublin(14), Oakland(8,9)	C.10	Visual assessments imperfect, time consuming, too burdensome as specified	Visual assessment covering 10% of trash management areas is burdensome. Decrease the required area. How to account for variations from one assessment to the next has not been determined. Conducting visual on-land assessments is subjective and time consuming; drawing staff and finite resources away from actual trash reduction efforts that directly improve water quality. Visual assessments should be used for only qualitative assessment during this permit term.	Visual assessment is a straightforward method that can be combined with other existing functions. For example, street sweeper operators could perform a visual assessment while operating a street sweeper. Presumably, the Permittees are performing street sweeping on more than 10% of trash management areas. Consistent training of employees and consistent application of trash reduction activities will lead to consistent reporting and trash reduction. This is the best method that the Permittees have put forward to assess trash generation areas, and has been put into practice with positive results on this scale by many permittees. Permittees can develop other methods for consideration, but no other major assessment tools have been proposed to date.	None
ACCWP(25), Berkeley(22), CC County(14) Dublin(13),	C.10	Mapping of private land	The requirement to map all private property down to 5,000 sq. ft. in moderate or higher trash generation areas should	We will revise this requirement so it does not mandate mapping but will allow other means for	Clarify mapping is not required and that other means to record location and status of

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<p>El Cerrito (5), Fremont(3), Livermore(8), Oakland(7), Emeryville(103), SMCWPPP(56), Belmont(18), Brisbane(9), Burlingame(19), East Palo Alto(14), San Bruno(19), San Mateo(15), SCVURPPP(55), San Jose(11,36), Santa Clara Co.(11), SCVURPPP (89)</p>			<p>be deleted.</p> <p>This mapping would require a tremendous resource intensive effort without any clear benefit. The requirement will lead private property owners to believe that the City is responsible for private drainages. It is often nearly impossible to determine how storm drains are plumbed at older developments. Maps of these private storm drain systems are hard to obtain and often non- existent or inaccurate. This requirement should be deleted. Other permittees recommend linking the mapping requirements to other deadlines (e.g., the 70% action level in 2017). Remove mapping provision. Alternatives proposed include using existing inspection programs or Permittees can identify high priority areas that generate moderate, high or very high levels of trash and are plumbed directly to their</p>	<p>recording location and trash generation status. The intent of the requirement is to create an understanding of which trash-prone areas are plumbed directly to the municipal storm drain, and confirm that trash discharges from these areas are sufficiently controlled. It is not intended to require Permittees to create parcel-specific storm drain maps for parcels of 5,000 ft² or greater. To clarify this, we revised the minimum parcel size for reporting to 10,000 ft², although Permittees must still ensure trash generation is appropriately controlled across the area under their jurisdiction that discharges to the MS4, including smaller-sized parcels. Private property owners' potential incorrect perceptions of the Permittees' responsibilities is easily corrected through communication with them.</p>	<p>these parcels may be considered. Raise the affected parcel size to 10,000 ft² and larger.</p>

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			storm drain systems and implement BMPs to minimize trash discharges from these areas.		
ACCWP(26), Berkeley(23), Dublin(16), Oakland(6), SMCWPPP(60), Belmont(22), Burlingame(23), San Bruno(23), San Mateo(18), SCVURPPP (10), SCVURPPP(59), Mountain View(13), San Jose(43), SCVURPPP (93)	C.10.b.v.	The Receiving Water Observations requirement (C.10.b.v) should be removed	<p>The Receiving Water Observations requirement (C.10.b.v) should be removed until clear monitoring protocols are developed and adopted.</p> <p>Conducting receiving water observations is another requirement that will take significant resources without any clear benefit and will result in the diversion of resources from trash reduction efforts. No protocols have been established and there is tremendous variation in the amount of trash from site to site and over time depending on the timing and size of storm events. It is not clear that the data produced from this effort could guide future management actions. Trash could be from sources other than the MS4.</p> <p>Revise TO to state that the purpose is “to evaluate the level of trash present in receiving waters over time and, to the extent possible,</p>	The trash reduction target is no impact to receiving waters from trash by 2022. New tools for determining receiving water impact from trash will need to be developed in order to better make this regulatory determination at the relevant time. Permittees will be allowed to use this permit term to develop and test receiving monitoring tools and protocols to be used in the next permit.	Clarify purpose of receiving water monitoring and replace draft permit requirements with requirements to submit plan to develop monitoring tools and protocols and to submit report and proposed monitoring program before end of permit.

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			determine whether there are ongoing sources outside of the Permittee's jurisdiction that are causing trash impacts in receiving waters." Permittees express willingness to develop and pilot test a protocol during the permit term.		
ACCWP(27), Berkeley(24)	C.10	Monitoring grant	Through the Tracking California Trash Grant, BASMAA is working with Five Gyres to develop a protocol for sampling and quantifying trash discharged during storm events. The receiving water monitoring requirement should be removed from this permit and reconsidered once a protocol has been established. We also recommend that receiving water observations be used solely as trend monitoring of trash in the environment and not for compliance determinations.	We will revise the Permit to clarify that the Permit requires development and testing of receiving water monitoring tools and protocols during this permit term. Use of receiving water observations for compliance determination is not an issue since as stated in Provision C.1, compliance with Provision C.10 requirements will constitute compliance with trash receiving water limitations and prohibitions during this permit term.	Clarify purpose of receiving water monitoring and replace draft permit requirements with requirements to submit plan to develop monitoring tools and protocols and to submit report and proposed monitoring program before end of permit
ACCWP(54), Fremont(5), Hayward(9), SMCWPPP(58), Belmont(20), Brisbane(11), Burlingame(21),	C.10.b.i.a.	Full capture maintenance rates	This provision specifies maintenance frequencies based upon the trash generation rate of the surrounding land use. This is not the best approach as other factors such as the size of the catch basin, the number and	We agree that maintenance rates should be determined on the state of the device, not necessarily on the surrounding trash generation condition only. We have revised the language to give	Remove the maintenance requirements based on trash management area generation rate, but leave one additional

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San Bruno(21), SCVURPPP(57), Cupertino(5), San Jose(12,38,39), SCVURPPP (91)			type of trees in the area, and weather are more relevant factors. Permittees should have Permittee-specific maintenance programs; Permittees would then report on implementation of maintenance programs, adaption and any issues that need to be addressed. Maintenance frequencies based on trash generation are inconsistent with experience and knowledge of Permittees. Tailor maintenance to specific devices rather than surrounding TMA. Require only reporting on effectiveness of maintenance. Flooding may be hard to report, as it is an emergency situation.	more flexibility in this requirement. We have added one additional inspection/year for high and very high TMA devices.	required inspection per year for devices in areas with high and very high trash generation rates.
ACCWP(55)	C.10.b.ii.b.	Visual assessment only for curb and gutter	The draft permit requires on-land visual assessment of all Non-FTC management areas. The proposed visual assessment method is not appropriate for all types of trash reduction measures. The visual assessment protocol is designed for use along the road surface, curb, and sidewalk of public right-of-way. It is not designed to	Visual assessment is a straightforward method for assessing trash condition of urban landscapes, and can be easily transferred/adapted to other urban landscapes such as parking lots and dumpster areas. – We will consider alternative methods of assessment, but we have not seen any proposals on par with visual assessment.	None

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			be used on areas such as a parking lot of a large shopping center, or to assess trash management in and around commercial dumpsters.	It is important to assess contributing areas beyond streets because those areas also contribute trash to the storm drain and, ultimately, receiving waters. If those areas are not assessed, the status of a trash management area could inappropriately be determined to be lower than its actual contributions to receiving waters.	
ACCWP(56)	C.10	Full trash capture equivalence	The Permittees are currently evaluating combinations of management actions (e.g., street sweeping in combination with retractable inlet screens) to assess equivalency to full trash capture. If these prove to be equivalent, they should be allowed under this permit.	Provision C.10.b.ii already allows Permittees to implement and evaluate combination of actions. Provision C.10.b.ii.b.(iv) also allows Permittees to put forth evidence that certain sets of management actions when performed to a specified performance standard yield a certain trash reduction outcome reliably. If this evidence is presented and accepted by the Executive Officer, Permittees may claim a similar trash reduction outcome by demonstrating that they have performed these trash reduction actions	None

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				within certain trash management areas to the same performance standard accepted by the Executive Officer.	
ACCWP(80), CC County(15)	C.10	Impact of public outreach	<p>Public outreach can have a long-term impact on behavior. As Board Member Lefkovits mentioned, those who grew up with him still remember Smokey the Bear.</p> <p>Education programs for various levels of K-12 students and community-targeted education and outreach programs should be encouraged by being recognized as part of a trash reduction strategy and receiving credit (e.g. 5%).</p>	These programs play an important role in changing behavior and already are recognized as part of trash reduction strategy. The issue is how these actions can be given a compliance value. That occurs through outcome-based measurements, such as visual assessments, which document the effect the programs are having with respect to reducing trash on the urban landscape contributing to the Permittees' MS4s.	None
ACCWP(81)	C.10	Alternate compliance measurements	Board member Kissinger suggested that alternative approaches to compliance were needed. ACCWP agrees and would appreciate the opportunity to develop alternative approaches through discussions with Water Board staff and/or Water Board members.	C.10.b.ii already allows Permittees to implement and evaluate actions or combination of actions and the option to use alternative approaches to determine compliance.	None

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ACCWP(82)	C.10	BMP uncertainty	Staff presentation mentioned several best management actions Permittees could implement: increased street sweeping, especially to the curb; solar belly trash compactors; and volunteer cleanups. While these are all useful, they require significant resources and there is no guarantee that they will result in compliance with the Permit. Additional time is needed to come to agreement on how compliance can be achieved.	The results of the BMP evaluations will be known this winter, so there is adequate time to meet the trash reduction limits by 2017. These are long-standing targets which have been in place since 2009 and reflect a 13-year process. This is longer than the 10-year process incorporated into the recent Amendment.	None
ACCWP (83)	C.10	Deadlines difficult for trash challenged Cities	The Permit should provide special consideration to trash challenged communities. The date for accomplishing a 70% reduction should be extended to 2020. Even with the extension, some communities will not be able to meet the deadline. In the MRP Steering Committee meetings, WB staff stated that special consideration would be given to “trash impacted” communities. The Draft MRP does not provide that consideration.	The deadline for the 70% reduction is consistent with the reduction schedule established in the previous permit. Should some Permittees be unable to achieve the specified reduction, as with any enforcement, the Board would consider their efforts to meet it under in any potential enforcement action. If a Permittee has made significant efforts, but faces a much larger trash generation issue than most other Cities, some flexibility may be shown. As noted	None

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				above, Permittee efforts to reduce trash are driven, in part, by the reduction targets. Delays to those targets are likely to result in delays in reduction of efforts.	
ACCWP(84)	C.10	Phase II for K-12 Schools trash	Schools are often high trash-generation properties. Local jurisdictions have limited authority over schools. Some schools/districts are reluctant to host anti-litter education programs. The Water Board has the authority to have Region 2 K-12 schools covered under the Phase II stormwater permit. The Water Board should require at least litter reduction and anti-litter education under Phase II permits for K-12 schools.	We agree. We intend to work with school districts, and encourage Permittees to communicate with them.	None
ACCWP(85)	C.10	Phase II for BART trash	The WB should increase its regulatory oversight of BART under Phase II to ensure BART addresses litter at its stations and along its right-of-way. BART property is a significant source of litter. Jurisdictions have limited authority over BART.	We agree. We intend to work with BART, pursuant to its coverage under the Phase II permit, to ensure BART acts appropriately to reduce trash discharges associated with its system.	None
ACCWP(86)	C.10	Caltrans trash	Caltrans property is a significant source of litter. Local jurisdictions have limited	We are working with Caltrans, pursuant to their coverage under their	None

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			authority over Caltrans property. Caltrans is covered under a statewide stormwater permit. The Water Board should require Caltrans to implement increased litter reduction activities.	statewide NPDES stormwater permit, to develop a trash reduction plan and to implement appropriate trash-reduction measures including coordination with the Permittees.	
CCWP(9), Clayton(49), Concord(6,32), Danville(5,32), El Cerrito(4,14,38), Hercules(5,19), Lafayette(5), Martinez(4,11,35), Moraga(3,26), Orinda(29), Pinole(25), Pittsburg(5), Pleasant Hill(5,28), San Pablo (28) San Ramon(5,35), Walnut Creek(5), Oakley(15), SCVURPPP(9), Mountain View(10), San Jose(10,35), Santa Clara Co.(10), BASMAA(8), SCVURPPP (54)	C.10.a.i.a.	Extend 70% deadline	Trash reductions have now become increasingly more challenging with higher percentage reduction goals. Furthermore, the trash reduction approach and accounting methodology for measuring trash reductions changed significantly during MRP 1.0, requiring a major redirection of Permittee efforts resulting in lost time and opportunities. Because of this, the proposed deadline of 70% reduction by July 1, 2017, must be extended. Various permittees propose a number of different extensions, including deletion of interim targets. Others suggest including trash reduction in permits for BART, Caltrans and school districts.	The current deadline for achieving 70% reduction of trash over 2009 levels is reasonable. There has been no substantial case put forward that this deadline is not practical. This is a long-established compliance target, in place since 2009. The 80% reduction in 2019 has been converted to a compliance limit in response to Save the Bay's and Baykeeper's comments and what Chair Young proposed and invited comments on at the July 8, 2015 workshop. The 60% target in 2016 is necessary to gauge progress. As noted above, Caltrans already has trash reduction requirements in its NPDES stormwater permit, and we will work with BART and school districts.	None

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CCWP(10)	C.10	High \$ to comply	Meeting the higher percentage reduction goals will result in significant increases in capital, operating and maintenance costs for which some municipalities have not yet identified funding. Set timelines consistent with the Statewide Trash Amendments ¹ - 100% - 2025.	The current deadline for achieving 70% reduction of trash over 2009 levels is reasonable. There has been no substantial case put forward that this deadline is not practical. This is a long established compliance limit. As noted above, the 13-year period allowed by the previous permit and this permit and projected into the next permit is greater than the 10-year compliance time established under the Statewide Trash Amendments.	None
CCWP(11)	C.10	Reduced credit	Challenge to meet the higher trash load reductions with changes to the formula that reduced the credit allowed for the beneficial efforts of source control and creek and shoreline clean-ups	The use of source control and creek and shoreline credits was excessive in the reporting of 40% trash reduction, often with little verification or documentation. Nevertheless, we recognize the value of these cleanups and source control in reducing trash discharge and in generating a sense of stewardship and ownership	Increase compliance value to up to 10% for source control, up to 10% for creek and shoreline cleanup, and up to 15% for direct discharge cleanups

¹ Amendments to the Statewide Water Quality Control Plans for the Ocean Waters of California to Control Trash and Part 1 Trash Provisions of the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California

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				in participants. We have increased the compliance value and offset value of these topics.	
CCWP(12), CC County(8), Clayton(21,50), Concord(33), Danville(33), El Cerrito(15,39), Hercules(30), Martinez(12,36), Moraga(27), Orinda(6,30), Pinole(26), Pittsburg(6), Pleasant Hill(6,29), San Pablo (29) San Ramon(11,12,13,36), Walnut Creek(6), Oakley(15)	C.10.a.ii.b.	Private Parcel Mapping costs, trash control	Resource intensive tasks of annual mapping of trash control devices and storm drainage systems on private lands, including, in some cases, residential parcels. Permit requires local staff to map using dye tests and contracting with specialized survey companies in cases where maps do not exist. Permittees do not have the capacity or resources to perform these tasks. Already a topic of commercial stormwater inspections. Allow use of existing inspection system and authority. Integrate inspections and enforcement into Provision C. 4 (Commercial and Industrial Inspections).	We will clarify the management of trash on private lands does not require mapping, but only some means of recording location and trash control status of these parcels. Private lands must be inspected to know where these directly storm drained features are and to ensure they are cleaned of trash or have trash capture. We encourage the use of existing inspection programs and authorities. Permittees can prioritize this in various ways to integrate it into existing operations and make the activity as efficient as possible. Full trash capture on these private parcels is not required, but just one alternative.	Clarify the management of trash on private lands does not require mapping, but only some means of recording location and trash control status of these parcels. Raise the affected parcel size to 10,000 ft ² and larger.
CCWP(13)	C.10	Trash fees	Proposition 26, approved by California voters in 2010, has likely effectively eliminated the ability to use a regulatory fee for	Trash reduction fees are just one tool to provide resources for cleanup of businesses that are contributing a litter	None

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			stormwater management costs, without a balloted two-thirds majority approval.	burden on city streets.	
CCWP(56)	C.10.a.i.a.	Extend compliance deadlines	<p>Trash reductions become increasingly more challenging with higher percentage reduction goals. Furthermore, the trash reduction approach and accounting methodology for measuring trash reductions has changed significantly during MRP 1.0 requiring a major redirection of Permittee efforts resulting in lost time and opportunities. <i>Action desired: Extend 70% load reduction time schedule to the end of the permit term.</i></p> <p>i. Schedule - Permittees shall reduce trash discharges from 2009 levels, described below, to receiving waters in accordance with the following schedule:</p> <p>a. 70 percent <u>by November 30, 2020</u>by July 1, 2017;</p> <p>and</p> <p>b. 100 percent or no adverse impact to receiving waters from trash by July 1, 2025<u>2022</u>.</p>	<p>The current deadline for achieving 70% reduction of trash over 2009 levels is reasonable. There has been no substantial case put forward that this deadline is not practical. This is a long established compliance limit. As noted above, the 13-year period allowed by the previous permit and this permit and projected into the next permit is greater than the 10-year compliance time established under the Statewide Trash Amendments.</p>	None

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CCWP(57)	C.10.a.ii.a.	Define overflow for full trash capture	Full trash capture devices discharges trash in large storm events. The language is problematic because a “large storm event” has not been defined.	Large storm event is defined in the full trash capture definition as greater than the 1 year 1 hour storm.	None
CCWP(58)	C.10.a.ii.b.	Mapping private lands	<p>This provision includes requirements to ensure that private lands plumbed directly to the MS4 are equipped with full trash capture devices or managed to a low trash generation rate, and requires mapping of those lands greater than 5,000 square feet by 2018. There is no distinction between residential and commercial/industrial properties though trash on these lands is being addressed through C.4 and C.5 programs. Permittees do not have the capacity to perform the proposed requirement, but can and will address trash issues on these properties through the C.4 programs.</p> <p><i>Action desired: Remove C.10.a.ii.b and instead integrate inspections and enforcement of high priority</i></p>	We will revise this sub-provision to clarify that mapping is not required and Permittees have until July 1, 2018, to accomplish documentation of private parcels that directly drain to the MS4. Permittees identify moderate to very high trash generation areas, parking lots, industrial lots and commercial lots that are plumbed directly to the storm drain, greater than 10,000 ft ² .	Clarify that the Permittees have until July 1, 2018, to accomplish this documentation of private parcels that directly drain to the MS4 and that mapping is not specifically required. Raise the affected parcel size to 10,000 ft ² and larger.

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			<i>private drainage areas into C.4 programs.</i>		
CCWP(59), Clayton(56), Concord(39), Cupertino (4), Danville(9,39), El Cerrito(45), Hercules(36), Martinez(42), Moraga(33), Orinda(36), Pittsburg(7), Pleasant Hill(35), San Pablo 35), San Ramon(42), Oakley(15)	C.10.a.iii.	C.3 structure overflow screen	The Permit requires bioretention facilities to be equipped with a screen to qualify as full capture devices. Recommend that these facilities qualify as full trash capture. C.3 overflow screens may cause flooding and may not be necessary, as analysis shows C.3 overflow occurs at higher than 1 year, 1 hour flow. Requiring screening of overflow pipes is beyond Permittee's authority because nearly all treatment facilities are privately owned and maintained.	We disagree that C.3 device overflow occurs at greater than the 1 year, 1 hour storm. We have reviewed the technical analysis and find that it only demonstrates that C.3 bioretention devices can contain this larger flow until the storage capacity in the surface pond of the device is full, which would occur within minutes of the start of a large storm. Screening is only necessary up to that overflow specification, not over the entire overflow pathway. Screening is only necessary on systems for which it is desired to claim full trash capture credit, and for such private parcels, the Permittees will be requiring the property owners to demonstrate that there is no trash discharge to the MS4. Thus it will be in the property owners' interest to fix the overflow systems.	None

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CCWP(60), CC County(9), Clayton(51), Concord(34), Danville(34), El Cerrito(40), Hercules(31), Martinez(37), Moraga(28), Orinda(31), Pinole(27), Pleasant Hill(7,30), San Pablo (30) San Ramon(37), Oakley(15)	C.10.b.i.a.	Full trash capture maintenance	Maintenance intervals of a full trash capture device should be based on device type, drainage area, characteristics of the land it drains (amount of trash, amount of vegetation, etc.) and inspections/monitoring. Some Permittees propose setting a minimum frequency (e.g. annually), to be adjusted based upon experience. Possibly specify inspection schedule but not maintenance. Maintenance also depends on manufacturers' recommendations.	We have revised this sub-provision to provide flexibility, and to specify inspection, not maintenance frequency. Permittees are expected to maintain devices as needed to maintain full trash capture function.	Revise to provide flexibility, and to specify inspection, not maintenance frequency. Devices must be checked annually unless located in a high or very high trash generation area, in which case one additional inspection is required.
CCWP(61), Clayton(52), Concord(35), Danville(35), El Cerrito(41), Hercules(32), Martinez(38), Moraga(29), Orinda(32), Pleasant Hill(31), San Pablo (31) San Ramon(38), Oakley(15)	C. 10.b.i.c, C.10.f	Full trash capture maintenance	Numerous factors beyond the control of Permittees may result in a device being found plugged or clogged even though the device is being maintained on a frequency found to be appropriate. Permittees request the language be modified to require Permittees to annually report that they have an operation and maintenance program designed to meet the full trash capture system requirements, and are implementing that program.	We agree that various factors will impact the efficacy of full capture devices. The requirement to certify adequate full capture maintenance is essential to ensuring that these devices are adequately maintained in order to function as specified, and that there is adequate reporting to document this maintenance.	None
CCWP(62,16),	C.10.b.ii.v.	More credit for	Permit language provides no	We will increase the source	Increase source

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CCC FCD(3),		other measures	<p>incentive for source control approaches as the maximum achievable reduction credit is fixed at a maximum of 5%. Need more flexibility and greater incentives for identifying the best and most cost effective combination of strategies. Action desired: Include language in permit that provides development of a proposed interim or temporary credit for significant actions that may result or significantly contribute in time to a generation rate change. Included in this may be education programs and outreach efforts.</p> <p>“C.10.b.ii.v. Permittees may put forth substantial effort to reduce trash loads in certain areas which may not be immediately apparent when performing the visual assessments. Permittees shall be allowed to put forth evidence of these efforts or programs, as well as supporting documentation on an allowable interim percent reduction credit for these actions, pending project completion and demonstration of achievement of the reduction in the trash load</p>	<p>control value to up to 10%. The value of other actions will be the outcomes which will be apparent through visual assessment. If compliance value is proposed for educational outreach, there must be assessment to demonstrate that there is sufficient impact from these actions.</p>	<p>control value to up to 10%</p>

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			generation rate.”		
CCWP(63), Concord(36), Danville(36), El Cerrito(42), Hercules(33), Martinez(8,9,39), Moraga(30), Orinda(33), Pleasant Hill(8,32), San Ramon(39), Walnut Creek(7), Oakley(15), SMCWPPP(59), Belmont(21), Brisbane(12), Burlingame(22), East Palo Alto(15), San Bruno(22), San Mateo(17), SCVURPPP(58), Cupertino(3), Mountain View(12), Palo Alto(7), San Jose(7,42), SCVURPPP(61), Mountain View(15), San Jose(8,45), Santa Clara Co.(13), SCVURPPP (95), Keep Coyote Creek Beautiful (1)	C.10.b.iv.	Need more credit incentive to tackle source control	Maximum value allowed for each action is arbitrary and inconsistent with our current knowledge of the benefits associated with these actions/programs. A TMA with very high trash generation rate may continue to be very high even though it is now on the lower end of the range of that rate as a result of the product ban. Without sufficient incentives for source control, there will be little incentive for Permittees to tackle other persistent and problematic litter-prone items such as cigarette butts, plastic bottles, metallic balloons, non-paper-based food wrappers, plastic cup lids and straws, etc.... Action desired: Edit section C.10.b.iv language increasing the maximum credit to 25% (some Permittees request 20%). Permittees will still be responsible for providing evidence to support the percentages claimed. Omit maximum percent reduction for direct discharge programs. Supporting evidence would be required to claim reductions	We will increase the source control value to up to 10%. This value takes several issues into account. In particular, it encourages efforts to complete source control, which require an investment of permittee staff time, and it also is intended to reflect on-the-ground benefit that is not otherwise measured by the permittees via their on-land assessment. This benefit includes reduction via source control in trash that is discharged directly (i.e., not via the MS4) to receiving waters, as well as incremental reductions in low trash generation rate areas and in other areas, where those reductions are not sufficient to shift the status of the area from one category to another. Compliance value for source control will also appear in the visual assessments of the trash management areas. These amounts of compliance value and offset are double	Increase source control value to up to 10%

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			associated with source controls.	the current amounts or more, but do not over value these efforts. These values will probably be removed in future permit cycles as the 100% goal is achieved, so should not compose too high a portion of any Permittee's compliance profile.	
<p>CCWP(64), Clayton(22,25,57), Concord(40), Danville(40), El Cerrito(46), Hercules(37), Martinez(43), Moraga(34), Orinda(37), Pleasant Hill(36), San Pablo (36), San Ramon(43), Oakley(15)</p>	<p>C.10.b.iv/ C.10.f.vi.</p>	<p>Receiving Water Monitoring</p>	<p>Clarify purpose of observations. It is not possible to definitely determine the source of all trash in receiving waters (upstream, windblown, direct dumping) and therefore these receiving water observations cannot and should not be linked to compliance with trash load reductions. There is no definition of the amount or location for this monitoring. Should this occur where there is full trash capture?</p>	<p>It is necessary to assess the impact of trash on receiving waters as the Permittees actions control trash towards the eventual goal of “no impact of trash to receiving waters”. Although it may be difficult in some instances, it is possible to under many circumstances to determine the source of trash in the receiving waters based on observation of nearby activities and observation of product packaging and labels. We will revise the Permit to clarify the purpose of receiving water monitoring and to require development of receiving water monitoring tools and protocols to determine receiving water conditions and to determine, to the extent possible, the</p>	<p>Clarify purpose of receiving water monitoring and replace draft permit requirements with requirements to submit plan to develop monitoring tools and protocols and to submit report and proposed monitoring program before end of permit.</p>

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				effectiveness of Permittee trash controls (which would include full trash capture systems) and whether there are other sources of trash in receiving water(s). The Permittees have the flexibility to self-determine locations and amount of this monitoring with justification. Use of receiving water observations for compliance determination is not an issue since as stated in Provision C.1, compliance with Provision C.10 requirements will constitute compliance with trash receiving water limitations and prohibitions during this permit term.	
CCWP(65), CC County(10), CCC FCD(2), Clayton(54), Concord(37), Danville(37), El Cerrito(6, 43), Hercules(34), Martinez(10,40), Moraga(31), Orinda(5,34), Pittsburg(8,33),	C.10.e.i.	Additional Creek and Shoreline Cleanup	The formula for calculating the reduction should be revised to have 3:1 instead of 10:1 offset and the maximum allowable percent reduction should be increased to 10%. Additionally, remove the requirement that creek cleanups must be conducted twice a year to claim the minimal percent reduction. Cleanup events should receive trash load reduction credit	We will raise the value of the offset to up to 10%, but the formula remains the same with a 10:1 internal offset to avoid over-compensation associated with the short-term benefit (volume) of cleanups compared to ongoing trash load discharges (average volume/time). The amounts of trash collected in these	Raise maximum offset to up to 10%

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Pleasant Hill(33), San Ramon(40), Oakley(15), SMCWPPP(61), Belmont(23), Burlingame(24), East Palo Alto(16), San Bruno(24), San Pablo (33), San Mateo(19), SCVURPPP(60), Mountain View(14), San Jose(9,44), Keep Coyote Creek Beautiful (2), Keep Coyote Creek Beautiful (3)			based on volume of collected trash.	cleanups are very large compared to the baseline numbers developed by BASMAA.	
CCWP(66), CCC FCD(1), Clayton(58), Concord(41), Danville(41), El Cerrito(47), Hercules(38), Martinez(44), Moraga(35), Orinda(38), Pleasant Hill(37), San Ramon(44), Oakley(15), SMCWPPP(62), Belmont(24), Burlingame(25),	C.10.e.ii.	Direct discharge	Direct discharge, (illegal dumping, homeless encampments) 10% maximum credit is too small. Offset should be 3:1 rather than 10:1. No justification for reducing formula offset to 3:1.	We will increase the maximum offset for this action to 15%. A 15% offset-cap based on the C.10.e.i formula provides a balance between incentive and reward for control of these non-storm drain system sources and the uncertainties associated with the simple formula.	Increase the maximum offset for this action to 15%

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East Palo Alto(17), San Bruno(25), San Pablo (37), San Mateo(20)					
CCWP(67)	C.10.f.i.	Map TMA actions	Mapping specific TMA actions too difficult and no benefit	We will revise this requirement to only require that maps are produced on request, or if the Permittees want to update their baseline map in 2016. This language does not require detailed mapping of actions, merely a description of areal extent of action if not the entire TMA.	Revise to only require that maps are produced on request, or if a Permittee wants to update its baseline map in 2016.

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CCWP(68), CC County(14), Clayton(59), Concord(42), Danville(42), El Cerrito(48), Hercules(39), Martinez(45), Moraga(36), Orinda(39), Pleasant Hill(9,38), San Pablo (38), San Ramon(45), Oakley(15)	C.10.f.ii.	Update trash map	Providing an updated map every year is too burdensome. Tie requirement to the 70% and 100% requirement.	We will revise this requirement to only require this map be generated and produced when requested, but no more frequently than annually. The trash generation area map is the primary reporting mechanism for the outcomes of trash reduction actions, so must accompany report of reduced trash generation.	Revise to only require map be produced when requested, and no more frequently than annually.
SMCWPPP(55), Belmont(17), Burlingame(18), Daly City(6), San Bruno(18), San Carlos(6), San Mateo(14)	C.10.a.i.	Extend 70% reduction deadline	Extend 70% reduction deadline to at least 2018 to allow more time to meet this difficult requirement	The 70% reduction by 2017 is reasonable, long established, and no Permittee has demonstrated that it is not achievable. The Permittees are making progress toward the limits and that progress is being driven, in part, by the reduction targets. It is likely that the result of providing additional time would be reduced resources devoted to the trash reduction issue. The compliance targets have been in place and projected since 2009, giving permittees adequate time to allocate resources to	None

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				achieve the required reductions.	
SMCWPPP(57), Belmont(19), Brisbane(10), Burlingame(20), San Bruno(20), San Carlos(7), San Mateo(16), SCVURPPP(56), Cupertino(4), San Jose(37), Santa Clara Co.(12), SCVURPPP (90)	C.10.a.ii.b.	C.3 full capture equivalence. Screens on overflow.	Water Board should find that C.3 treatment systems are equivalent to full trash capture without modification of overflow; remove requirement for screening. Outside the scope of the Permittees' authority because these are privately owned and maintained. Request removing the requirement for "screening" all Green Infrastructure treatment facilities installed and maintained consistent with provision C.3 and deem these facilities equivalent to full capture systems.	The flow standard for full trash capture of the 1 year, 1 hour storm is quite a bit larger than the 85 percentile annual storm runoff for the C.3.f. design storm. Partial screening of the overflow system may be necessary to prevent trash discharge through the overflow. This language does not require complete screening, and if other circumstances exist, such as sufficient vegetation to screen trash, screening may not be necessary. Private systems can be upgraded when the Permittees contact private owners about trash discharges direct to the MS4.	None
SMCWPPP(63), Belmont(25), Brisbane(13), Burlingame(26), San Bruno(26), San Mateo(21), SCVURPPP(62), San Jose(46)	C.10.f.v.b.	reporting	Permittees cannot make a determination of non-compliance, require submittal of updated trash load reduction plan if 70% reduction not met.	If 70% is not met by the Permittees own reporting, then non-compliance can be reported by the Permittee. This is terminology taken directly from the Code of Federal Regulations.	None

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SCVURPPP(55), San Jose(11,36), Santa Clara Co.(11)	C.10.a.ii.b.	Private drainages	Mapping of private drainages that discharge directly to MS4 too burdensome, not necessary to solve problem of controlling trash from these areas. Remove mapping provision. Alternatives proposed include using existing inspection programs or Permittees can identify high priority areas that generate moderate, high or very high levels of trash and are plumbed directly to their storm drain systems and implement BMPs to minimize trash discharges from these areas.	We will revise the requirement to only require that the location and status of these sites be recorded, not necessarily mapped. We will clarify that only rudimentary mapping, similar to the trash generation maps, is optional for these parcels. We will also raise the threshold to 10,000 ft ² .	Revise to only require that the location and status of these sites be recorded, not necessarily mapped. Clarify that only rudimentary mapping, similar to the trash generation maps, is optional for these parcels. Raise the threshold to 10,000 ft ² .
SCVURPPP (94)	C.10	Creek and Shoreline Cleanup	Increase Creek and Shoreline credit from 5% to 10%, reduce offset from 10:1 to 3:1, remove requirement for minimum of 2 X/yr cleanups.	We will increase the maximum offset to 10%, but will not make other changes. The increased offset better reflects the potential benefit to receiving waters that may result from these cleanups. That offset value also reflects expected benefits due to increased citizen stewardship of receiving waters due to their involvement in cleanup events.	Increase maximum offset to 10%

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Save the Bay (1)	C.10.a.i.	Failure to meet performance guidelines	If Permittee fails to meet performance guidelines, must submit plans for meeting mandatory reductions; suggest the following activities that warrant certification: street sweeping, regular on-land cleanup and/or additional full trash capture	Based on this and similar comments, we agree there needs to be more action and incentives for action. A permittee can theoretically not meet the 2016 performance guideline nor the 2017 compliance deadline, but there would be no real incentives to comply for the remainder of the permit term since there are no additional mandatory deadlines after 2017. This could make it even harder for that permittee to comply with the next permit's deadlines. As such, we will convert the 2019 performance guideline into a compliance deadline. We will also add language on efforts required if the compliance deadlines are not met.	Convert the 2019 performance guideline into a compliance deadline. Add language on efforts required if compliance deadlines not met.
Save the Bay (2)	C.10	Failure to attain mandatory reductions	Permittees who fail to meet compliance milestones almost ten years after impaired waters listing for trash must implement engineered solution (full trash capture equivalent); not another plan to attain compliance	We will add language on efforts required if compliance standards not met, but engineered solutions may not be feasible in all drainage areas.	Add language on efforts required if compliance deadlines not met.
Save the Bay (3)	C.10	Receiving Water	Require monitoring of creek	The focus of the	Clarify the receiving

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		Monitoring	banks and shorelines as soon as possible; refine the existing Rapid Trash Assessment, and use other tools to measure in-stream trash as soon as they are developed to begin monitoring trash in the first year. This will help Permittees find the most persistent and dominant sources of trash.	requirements in this permit term is on drainage area assessments with consideration of the types and sources of trash to inform and evaluate effectiveness of control actions. The trash hot spot cleanup requirements will also generate information. We will revise the Permit to clarify that the Permit requires development and testing of receiving water monitoring tools and protocols during this permit term.	water monitoring requirements
Save the Bay (4)	C.10	On-land visual assessment	Permittees should conduct visual inspections no less than twice per quarter in all medium, high, and very high trash generation areas, and that these inspections are conducted at the same locations each time.	The permit requires Permittees to conduct observations at a frequency consistent with known or estimated trash generation rate(s) within a trash management area and the time frequency of implementation of the control action(s) implemented or planned in the management area. Inspections twice per quarter or more may be needed or appropriate in some areas, but that frequency may be more than	None

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				needed or too often in others.	
Save the Bay (5)	C.10	Alternative to visual inspections	We support an alternative to on-land visual assessments that focuses on storm drain outfall monitoring. By measuring trash flowing directly from the MS4, confusion with loading from direct discharges and other sources is eliminated. Allow Permittees to develop and submit detailed protocols, which can be used following Executive Officer approval. Storm drain outfall monitoring should specify the proportion of outfalls that must be surveyed, required frequency of assessment, and data that must be included in submittals.	We will revise the Permit to clarify that the Permit requires development and testing of receiving water monitoring tools and protocols during this permit. The requirements will allow consideration of alternatives to receiving water monitoring, such as outfall monitoring. Consideration of the proportion of outfalls that must be surveyed, frequency of assessment, and data that must be included in submittals will be part of method and protocol development. We have insufficient information to specify these in advance of method and protocol development and testing. Also, there are accessibility, logistical and safety challenges with outfall monitoring that have to be considered.	Clarify the receiving water monitoring requirements
Save the Bay (6)	C.10	Visual assessment used unless other	Until direct outfall monitoring methods are developed and certified, permittees should	We agree monitoring methods should include visual observations at	None

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		monitoring can be proposed and accepted	be required to complete visual assessments. Storm drain outfall monitoring protocols should specify: <ul style="list-style-type: none"> • The proportion of outfalls that must be surveyed • Required frequency of assessment • Data that must be included in submittals. 	outfalls where practical and feasibility. However, the focus of the requirements in this permit term is on drainage area assessments not outfalls, and we have insufficient information and no standard protocols to justify the requested specifications at this time.	
Save the Bay (7)	C.10	Source control	To incentivize future innovation around source control, we recommend allowing up to 15% credit for activities supported by consistent data demonstrating measurable reductions.	We will raise the value for source control actions to a maximum of 10%.	Raise the value for source control actions to a maximum of 10%.
Save the Bay (8)	C.10	Trash Characterization	We recommend requiring that both on-land and hot spot assessments include a list of dominant trash types.	Based upon the Permittees' presentations to the Board, Permittees are aware of the types of trash that is being collected, and make use of this information without the need to extensively record and report it.	None

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Save the Bay (9)	C.10	Direct discharge control credit	In addition to the information currently required by section C.10.e.ii, we recommend that permittees submit: <ul style="list-style-type: none"> •An established funding and staffing plan •Description of interdepartmental and/or public-private, public-nonprofit collaborations. 	The suggested additions are an implicit part of the C.10.e.ii requirements to the extent they are relevant and necessary to support the required description of control actions in a proposed comprehensive plan.	None
Save the Bay (10)	C.10	Reporting database	Develop a web-based database for permittees to submit data from trash capture device maintenance, visual assessments, receiving water monitoring, trash hot spot clean-up, and other trash reduction activities.	We have not made changes to the permit, but support this concept. Ability to develop such a database is dependent upon sufficient resources.	None
CWA (1)	C.10	Standard for compliance unclear	There is no explanation of what “no adverse impact to receiving waters” means for 2022. This needs to be specified.	This permit establishes a schedule of trash reduction deadlines, anticipating a goal or target of “no adverse impact to receiving waters” in 2022. That is not a compliance standard at this point since it extends beyond the term of the permit. The receiving water monitoring work will assist in developing appropriate criteria for success for the next permit term.	None

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CWA (2)	C.10	Full trash capture equivalency.	Given that no determinations have been made concerning how much trash full capture devices allow down storm drains in large storm flows, there is no way to determine whether an alternate device is truly “full capture device equivalent”.	The standard is based on visual assessment, not full trash capture equivalency. There is no secondary standard.	None
CWA (3)	C.10	100% means no trash present	100% and “no adverse impact” should be something equivalent to no trash being present in receiving waters as demonstrated by visual and in-water monitoring.	See response to CWA (1).	None
CWA (4)	C.10	Full trash capture inspections and maintenance	No specification of when maintenance should occur. Full trash capture inspections should be after storm events.	We will leave timing of inspections and maintenance to the Permittees, but full trash capture functionality must be maintained.	None
CWA (5)	C.10	Source Control	Suggest revising the term “source control” to “source reduction.” Permittees should be encouraged to additional source control actions.	The term “source control” adequately conveys the intent that Permittees reduce the source of trash. We agree that reducing trash generation at the source is an important part of the solution; we will raise the value for source control actions to a maximum of 10%.	Raise the value for source control actions to a maximum of 10%.

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CWA (6)	C.10	Trash under 5 mm	The Permit does not control or regulate trash under 5 mm; recommend increasing credit for source control.	We will raise the value for source control actions to a maximum of 10%.	Raise the value for source control actions to a maximum of 10%
CWA (7)	C.10	Receiving Water Monitoring	Addition of receiving water monitoring is appropriate. Suggested inclusions: 1) outfall monitoring (2X/wet season); and 2) in water assessment based upon trash flux monitoring that grant work is defining. Permittees should continue to use RTA or equivalent methodology until this tool is available.	We agree that receiving water monitoring is appropriate. We hope Clean Water Action will work with Permittees as they develop appropriate monitoring methods during this permit term.	None
CWA (8)	C.10	Identify trash items	For visual assessments, photo documentation should be accompanied by a report that characterizes and quantifies the products in the photos.	Consideration of the types, sources, and quantities of trash items is an implicit part of the required assessments to the extent they inform they inform and evaluate effectiveness of control actions. Based upon the Permittees' presentations to the Board, Permittees are aware of the types of trash that is being collected, and make use of this information without the need to extensively record and report it.	None
CWA (9)	C.10	Compliance	Failure to meet the 2017	We will add language	Add language

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		failure consequence too light	mandatory deadlines and performance guidelines should result in a requirement to perform full trash capture or other specified measures to reach the mandatory reduction.	requiring definite plans for full trash capture or equivalent to make up any deficit.	requiring definite plans for full trash capture or equivalent to make up any deficit.
CC County (7)	C.10	Diversity and Geographic complexity of CC County – need more time	Need more time to develop individual strategies for 19 communities with demographic and geographic diversity; Water Board should consider specific community challenges when evaluating compliance.	The deadline for the 70% reduction is consistent with the reduction schedule established in the previous permit. Should some Permittees be unable to achieve the specified reduction, as with any enforcement, the Board would consider their efforts to meet it in any potential enforcement action. If a Permittee has made significant efforts, but faces a much larger trash generation issue than most other Cities, some flexibility may be shown. As noted above, Permittee efforts to reduce trash are driven, in part, by the MRP's reduction targets. Delays to those targets are likely to result in delays in reduction efforts.	None
CC County (11)	C.10	Stream cleanup trash area	It is inappropriate to assign trash rates for streams; upland areas	The permit does not assign trash rates for streams.	None

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			generate the trash. Need clarification regarding whether Permittees should assess the trash load (gallons/acre) and assign a trash rate category for the cleanup area or estimate the drainage area discharging into the cleanup area. The County proposes assessing the trash levels in the cleanup area prior to the cleanup event using reference pictures and repeating the process after the cleanup. Another option would be calculating the number of trash bags times a gallon volume divided by the number of acres.	Determination of volume of trash removed in cleanups is a standard practice. The formula in C.10.e.i provides a means to claim a trash load offset value based on volume of trash removed. The areas in the formula are predetermined based on a Permittee's 2009 total jurisdiction areas of very high, high, and moderate trash generation.	
CC County(12, 15), Clayton(55), Concord(38), Danville(38), El Cerrito(44), Hercules(35), Martinez(7,41), Moraga(32), Orinda(35), Pleasant Hill(34), San Pablo (34), San Ramon(41), Oakley(15)	C.10.e.	No credit for actions that don't change TMA a whole major step	No credit for trash reduction activities that fail to make a "quantum" or significant change in trash rate. Suggest intermediate or interim credit by allowing post treatment calculations of trash loads at the lowest rate for each category.	The existing evaluation and credit structure provides an adequate framework to assess compliance and progress toward performance goals. We agree that major changes <i>are</i> required to reach the mandatory reductions in this permit term and ultimate goal of no impact to receiving water in 2022.	None
Clayton (20)	C.10	Flexibility, \$	Maintenance costs for full trash capture are high (\$200 x 25 full	The existing permit language provides flexibility to meet	None

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			capture devices). Request greater flexibility in allowing alternative measures with less onerous reporting requirements so Permittees can comply in a cost feasible way	full trash capture or equivalent.	
Clayton (23, 26)	C.10	Inspect TMA upstream of full trash capture?	Eliminate the need for upland drainage area visual assessment for those drainage areas that have installed full trash capture devices. The only annual report information should be on the devices and target only devices that were not functioning properly.	There is no such requirement for visual assessment of drainages going to full trash capture. Visual assessment is only necessary where other methods of trash reduction are used.	None
Clayton(24), Concord(7), Danville(6), Hercules(6), Lafayette(6), Martinez(5), San Ramon(6)	C.10	Require private property owners in high and moderate trash areas to install full trash capture	Require private property owners in high and moderate trash areas to install full trash capture	Permittees have the ability through their stormwater ordinance to require property owners to prevent trash discharge	None
El Cerrito(16)	C.10	Credit for on-land cleanups	Volunteer “Green Teams” cleanup should be directly credited based on volume removed.	The only volume based compliance value is the offsets for creek and shoreline and direct dumping removal. The work of these volunteers should show up and be accounted for in visual assessments in the trash management areas.	None

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Emeryville (1)	C.10	On-land crews equivalent to full trash capture	Crews cover 2 miles/day of 19 miles of city streets – 7 hours a day, 7 days a week – at least as good as full trash capture.	If so, then visual assessment, perhaps by the supervising staff person of the crew, should demonstrate that fact.	None
Fremont (4)	C.10.a.ii.b.	Full trash capture on private lands	It is unclear whether local agencies have the legal authority to compel private landowners to retrofit properties with trash-capture devices in the absence of seeking a development permit or having to abate a nuisance. There is a wide disparity of drain shapes, sizes and depths, which may not support trash capture devices. Suggested approach is to allow structured method of updating private storm drain maps and increase trash capture coverage on a going forward basis.	Permittees are responsible for all sources of trash into their MS4. Permittee are not required to impose installation of full trash capture on private parcels, they only have to assure that these parcels are not a source of trash directly to the MS4. There are many ways to accomplish this, including using existing inspection programs, but not limited to these. Full trash capture is not the only method to control trash generated on these parcels. All of the trash control methods can be used.	None
Hayward (1)	C.10	No clear path to compliance	No clear and feasible path to load reductions.	We disagree. For trash, there is a clear path to compliance using either full trash capture or actions which make a clear impact using visual assessment to assess outcomes.	None

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Hayward (6)	C.10.a.	Benchmarks duplicative	Remove benchmarks which are duplicative of the Permittees detailed long-term trash reduction plan.	The benchmarks and compliance deadlines are necessary to track and assure progress.	None
Hayward (11)	C.10.e.	Add credit for Public Outreach	Public outreach should be credited towards trash reduction directly. If no credit for outreach, remove from C.7.	Compliance value for public outreach will occur as changes in TMAs that is verified by visual assessment. We will revise C.7 to eliminate the mandatory trash specific advertising campaign requirement.	Revise C.7.b - Advertising Campaigns requirement to provide flexibility and eliminate trash specific requirement.
Oakland(17,18,19)	C.10	Annual reporting too burdensome	Annual reporting for trash has grown and is too burdensome. Reduce and require only every other year.	The reporting currently required is the minimum that is needed to determine compliance with this provision. It would not be practical nor legal to platoon the annual reporting by the Permittees, as it is necessary to make compliance determinations on all Permittees in each year and required under 40 C.F.R. § 122.42(c).	None
Orinda (4)	C.10	Majority is Low Trash	Majority of the City is Low Trash Generating, with less than 5% of City land as high trash generating. Challenging to implement trash reducing measures in fruitful areas.	Orinda's task should be straightforward, to focus on the few high trash areas.	None

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U.S. EPA (10)	C.10	Receiving Water Monitoring	Clarify intent and expectations behind receiving water monitoring requirements. Permittees will pilot water column flux monitoring and decide whether to pursue further.	We will revise the Permit to clarify that the Permit requires development and testing of receiving water monitoring tools and protocols during this permit term, including water column flux monitoring.	Replace draft permit requirements with requirements to submit plan to develop monitoring tools and protocols and to submit report and proposed monitoring program before end of permit.
U.S. EPA (11)	C.10	Define sample stations	Define sample stations for receiving water monitoring within 2 years.	The revised requirement for Permittee to develop and test receiving water monitoring tools and protocols include determination of monitoring location.	Include determination of monitoring locations in revised receiving water monitoring requirements.
U.S. EPA (12)	C.10	Identify management questions for monitoring	Identify management questions for receiving water monitoring for trash.	We will specify the management questions in the revised receiving water monitoring requirements.	Add management questions to revised receiving water monitoring requirements.
U.S. EPA (13)	C.10	Trash tracker database	Evaluating trash reduction measures for compliance in the long term requires major data management. This should be done with a GIS platform database, such as the “Trash Tracker”, which can be continuously improved.	We agree that this approach would be the most efficient. We will pursue this with Permittees through development of annual report improvements.	None
U.S. EPA (14)	C.10	Set minimum monitoring	Set minimum monitoring requirements for reporting and	The current permit requirements are specific in	None

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		requirements for reporting and compliance.	compliance; requirements should be variable based on trash generation rates. The 2014 annual reports lacked definition to allow simple compliance determination	both visual assessment quantity and areal extent to determine compliance. The amount of visual assessment activity to adequately monitor a trash management area may not be related to the trash generation rate. The Provision C.10.b Outcome Demonstration requirements of this permit improve and simplify compliance determination.	
Cupertino (2)	C.10	Appreciate flexibility	Appreciate flexibility to use cost effective opportunities to reduce trash	Comment noted	None
Mountain View (11)	C.10	Underground parking garages should be deemed "Low"	Underground parking garages should be deemed "Low" trash generation	When assessing private parcels, a Permittee is free to make any such determination	None
San Jose (40)	C.10.b.ii.b.	C.10.b.ii.(v.) does not exist	C.10.b.ii.(v.) does not exist	We will change it to read C.10.b.ii.b.(iv.), which does exist.	Correct to read C.10.b.ii.b.(iv.)
San Jose (41)	C.10.b.ii.b.(iv)	How to obtain EO approval	How do Permittees obtain EO approval of proposals for other trash reduction assessments; timeframe for EO decision; whether a proposal may be considered accepted if no objection is received in a given timeframe (e.g. 30 days). Request deletion of EO	Default approval for relief of a permit requirement is not appropriate if there is no Executive Officer objection within a specified timeframe. We will add language to the permit that clarifies that a proposal must be under separate cover and sent to	Clarify that the submittals must be under separate cover and sent to the Executive Officer.

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			approval.	the Executive Officer. That will trigger a response. We expect a well-documented assessment demonstration will be reviewed and considered for approval in a timely manner.	
BASMAA (6)	C.10	Trash very difficult, long term problem	Trash very difficult, long term problem. There are many pathways for trash to get to waters. Solutions are long time scale. Solutions situation dependent.	Comment noted.	None
BASMAA (7)	C.10	Monitoring difficult	Monitoring to demonstrate progress in reducing trash very difficult because of variability. More data may not solve problem.	Comment noted.	None
SCVURPPP Legal (69)	C.10	Reference Discharge Prohibition A.1 and A.2 Nonjurisdictional /beyond NPDES; provide feasibility & economic analyses <ul style="list-style-type: none"> • New requirement, thus unfunded mandate • Contains 	First, as per Legal Comment No. 4 (and since it covers both the wet and dry seasons), to reduce the potential for unnecessary litigation about it, at its outset, Provision C.10 should reference Discharge Prohibition A.1 in addition to A.2. Second, as was true under the current MRP and noted under SCVURPPP Legal Comment No. 2, because Provision C.10	The commenter is correct that the third sentence should be revised to include Prohibition A.1 in addition to Prohibition A.2. Provision C.10 establishes requirements applicable to both stormwater and non-stormwater discharges of trash, and as such, the requirements should have applied to compliance with Prohibition A.1 for non-stormwater discharges of trash as well. The correction	Add reference to Discharge Prohibition A.1, for trash discharges. Revised the permit to state the 100% trash reduction by 2022 requirement is a goal.

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		requirements beyond 5-yr permit term which should be stated as goals	<p>extends its requirements beyond the jurisdiction of the Clean Water Act as recently clarified by US EPA, it reaches beyond the NPDES program's confines and, to this extent, requires a not-yet-provided analysis of technical feasibility and economic reasonableness pursuant to Sections 13263 and 13241 of the Water Code as well as potential analysis under CEQA.</p> <p>Third, even if it was contemplated under the current MRP and is consistent with the prior long term vision of the Water Board, the increase of an actual trash reduction requirement from 40% to 70% from 2009 levels by July 1, 2017 in Provision C.10.a clearly represents a new requirement and/or calls for a higher level of service. It therefore constitutes an unfunded mandate and should be conditioned on the co-permittees' prior receipt of State- provided funding for the programs necessary to reduce</p>	<p>has been made.</p> <p>We disagree that Provision C.10 extends beyond the jurisdiction of the Clean Water Act under the stayed new rule on the waters of the U.S. To the extent the commenter is referring to C.10.e. Optional Trash Load Reduction Offset Opportunities, it contains no requirements and imposes no obligations on the permittees. Rather, it contains optional measures permittees may undertake (or not) and were put into the permit at the behest of the permittees who seek to offset part of their trash reduction requirements.</p> <p>The narrative water quality objectives in the Basin Plan for floating, settleable, and suspended materials, all of which pertain to trash, state that waters shall not contain floating materials, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial</p>	

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			<p>trash loadings by an additional 30%.⁴</p> <p>Finally, the requirement for achieving 100% trash reduction/no adverse impact by July 1, 2022 in Provision C.10.a (which is described as a “mandatory deadline” rather than as a long term target) illegally extends beyond the five year term of this NPDES permit cycle (see Water Code Section 13378) and should be deleted or restated to just represent an aspirational future goal.</p>	<p>uses; waters shall not contain substances in concentrations that result in the deposition of material that cause nuisance or adversely affect beneficial uses; and water shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses, respectively. Since at least 1995, permittees have been subject to receiving water limitations prohibiting discharges from causing or contributing to a violation of any applicable water quality objective for receiving waters. And yet trash remains a pervasive problem in creeks and in San Francisco Bay, adversely affecting beneficial uses and causing nuisances. In 2009, 26 waterbodies in the region were listed under the Clean Water Act’s section 303(d) list as impaired by trash. In</p>	

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				<p>view of this background, requiring permittees to reduce trash by 70% from 2009 levels (a situation in which trash will still be discharged storm sewers in not insignificant amounts) by 2017 is neither a new requirement nor a requirement for a higher level of service, since permittees have since the 1990s been prohibited from discharging trash in amounts that cause or contribute to a violation of water quality objectives for receiving waters. (Violations of receiving water limits may occur irrespective of compliance with the iterative process set forth in permits to comply with the limits. State Water Board Order WQ 2015-0075.) They cannot now disavow this underlying requirement because the draft permit presently provides a schedule and a path for the</p>	

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				<p>permittees to meet this pre-existing requirement. Baykeeper maintains the draft permit is less stringent than the existing permit to the extent the draft now provides a safe harbor for trash discharges from storm drains. Accordingly, there is no unfunded mandate, and we decline to condition this requirement contingent on prior receipt of state funding.</p> <p>We will revise the draft permit to state the 100% trash reduction by 2022 requirement is a goal, since 2022 extends beyond the term of this permit. That said, the 2022 goal may be a requirement in the next permit.</p>	
Partnership for Sound Science in Environmental Policy (PSSEP) (1)	C.10	Value for Source Control needs demonstration of outcomes, and no substitute trash	To obtain compliance value for implementing ordinances for source control, Permittees should be required to demonstrate trash reductions attributable to those ordinances. Also, demonstrate that substitute litter does not occur.	San Jose has demonstrated that the implementation of their single use bag ordinance led to dramatic reduction of plastic throwaway bags in litter cleaned up by volunteers and city crews. The amount	None

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			No empirical data shows that the volume of trash reaching waterways has been reduced by product bans. It is inappropriate to provide regulatory incentives to Permittees to adopt product bans when there is no evidence of measurable reductions in litter surveys.	of reduction was 8%. They demonstrated extensive use of reusable bags in place of the single use bags. Foam foodware ordinances require replacement with non-floating and biodegradable items, which will not travel as far and will break down faster. The same is true of paper replacement items.	
PSSEP (2)	C.10.b.iv.	Source control. Must provide evidence that actions reduce trash by claimed value.	We appreciate staff's efforts to limit the availability of credits as well as to require permittees claiming those credits to make an affirmative and verifiable demonstration that such actions are actually reducing litter. Permittees must provide substantial evidence that these actions reduce trash by the claimed value.	Comment noted.	None
PSSEP (3)	C.10.b.iv.	Source control. Must provide evidence that actions reduce trash by claimed value. No reference to studies.	We believe the phrase "substantial evidence" is vague and confusing, and should be replaced with more appropriate language like "substantive and credible information" to avoid confusion with an unrelated legal concept; Permittees cannot meet their evidentiary burden merely by referencing studies in	We have made the change to "substantive and credible evidence." Reference to studies in other jurisdictions, if the ordinances are sufficiently similar and implemented in sufficiently similar manners, is adequate demonstration that source control has	Change to substantive and credible evidence.

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			other jurisdictions.	demonstrated value in the Permittee's jurisdiction.	
PSSEP (4)	C.10	Trash reduction and baseline calculation must be peer reviewed.	Permittees must demonstrate that their baseline trash calculation methods, as well as trash reduction calculation methods, have been peer reviewed and are generally accepted in the field.	The process of staff review and Board consideration is sufficient to determine the sufficiency and adequacy of the trash reduction accounting method, based on trash generation mapping. Peer review would add an additional and unnecessary cost burden to the process.	None
PSSEP (5)	C.10	Use garbage franchise agreements to install and maintain full capture systems	Adopt new stormwater fees or pursue other funding means for full trash capture controls such as garbage franchise agreements to install and maintain trash capture systems.	The Permit does not regulate the funding mechanisms Permittees may use to meet the requirements of the permit. We encourage and support creative means of financing or obtaining funding for better solutions.	None
Baykeeper (24)	C.10	Trash assessment protocols inadequate to determine compliance	The assessment protocols (developed by BASMAA) do not provide a mechanism for determining compliance with trash load reduction standards. This approach clearly is not working and the Regional Board must introduce specific permit requirements.	The current protocols, which we have developed in partnership with BASMAA, do provide an adequate method to determine compliance, using a combination of mapping of both full trash capture catchment areas and visual assessment outcome based measurement of other areas,	None

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				<p>which do not use full trash capture to reduce trash. As Permittees implement trash control actions, the mapping and visual assessments will provide feedback the Permittees can use to focus future efforts.</p>	
<p>Baykeeper (25)</p>	<p>C.10</p>	<p>Compliance assessment lacks detail</p>	<p>The specifications for receiving water observations, described in Section C.10.b.iii., lack sufficient detail for Permittees to follow and provide no basis from which Permittees can determine compliance with permit terms.</p>	<p>US EPA has recognized the difficulties inherent in monitoring stormwater - a variable and relatively unpredictable discharge. US EPA advises that the monitoring requirements for stormwater should be designed "1) to identify if problems are present, either in the receiving water or in the discharge, and to characterize the cause(s) of such problems; and 2) to assess the effectiveness of storm water controls in reducing contaminants and making improvements in water quality." This Permit exceeds these two criteria. Through receiving water monitoring and mapping and visual assessment, Permittees will be able to report on the causes of trash</p>	<p>None</p>

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				<p>in waterways as well as the success of trash control actions, the key criteria for determining compliance with the Permit. The receiving water monitoring described in this Permit is not intended to be used to determine compliance at this time. It is intended that Permittees will gain experience and develop methods for measuring trash in receiving waters, as well as an understanding of areas that require more trash control measures.</p>	
Baykeeper (26)	C.10	“Trash generation areas” unrelated to receiving water quality	<p>Baykeeper has serious concerns regarding the Draft MRP’s approach of demonstrating attainment of mandatory deadlines through the use of “trash generation areas,” which appear to be arbitrarily established and may have no correlation to the quality of receiving waters. Although the four Very High, High, Moderate, and Low categories have specific trash generation rates attached to them, there appears to be significant discretion and confusion regarding how the Permittees</p>	<p>Trash generation areas are not arbitrary; rather they are established in response to observations and specified criteria. With consistent training and application by Permittees, these criteria will provide Permittees with sufficient information to evaluate trash sources and effectiveness of control measures. There are only a few ways for trash to enter the storm drain system to then be discharged to receiving waters. If the street and sidewalk areas</p>	None

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			will categorize areas within their jurisdictions and calculate percentage discharge reductions.	are clean, there is a good likelihood that no trash will wash off of these areas to the storm drain system. In evaluating how to document the trash reduction outcomes of non-full capture actions, the best approach to date is the use of visual assessment on the urban landscape, coupled with the mapping of trash management area status.	
Baykeeper (27)	C.10	Establish compliance using loading at point of discharge	We urge the Regional Board to develop an alternate compliance standard based on trash loading at the point of discharge (see Appendix 1 of comment letter). This approach calls for end-of-pipe full capture devices, some of which have been evaluated by Permittees, to assess trash loading from representative discharge points. Such an approach has been endorsed by Region 4. The Regional Board may also wish to specify such an approach where Permittees discharge to a 303(d) listed waterbody for trash.	The Board's approach is consistent across all waterbodies in the region, recognizing the pervasiveness of trash. Because of the interconnected nature of many of the waterways, focusing on only 303(d) listed waterbodies was not logical. There are few end-of-pipe full trash capture devices deployed, certainly not enough to provide a representative sampling of the thousands of discharge points, and certainly not enough for use in compliance determination for	None

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				<p>the many Permittees. The Board, and the Permittees, are actively following trash control efforts in the Los Angeles region, and evaluating the effectiveness of those efforts. To the extent that end of pipe full capture devices are not cost prohibitive and are a more effective means of removing more trash per dollar spent, or are effective for monitoring at the end of pipe, Permittees have the flexibility to implement them.</p>	
Baykeeper (28)	C.10	Permit should describe observation and assessment protocols	Receiving water observations and assessment protocols must also be described in order to reduce uncertainty. Options for evaluating receiving water quality and load reduction performance include fixed line transects at known trash hot spots, end of pipe full capture, and installation of trash booms.	We will revise the Permit to clarify that the Permit requires development and testing of receiving water monitoring tools and protocols during this permit term, which will include consideration of uncertainties. Our understanding of fixed line transects at known trash hot spots means to count the trash items on the transect. This would be a new method. To date, Permittees have submitted data concerning the volume of	Clarify purpose of receiving water monitoring and replace draft permit requirements with requirements to submit plan to develop monitoring tools and protocols.

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				<p>trash removed and performed evaluations concerning the types of trash removed, in an effort to better pinpoint sources of trash and effectiveness of control activities. We are open to additional methods of evaluating the effectiveness of trash hot spot cleanups, provided they are consistent and result in verifiable, repeatable sampling and recordation methods. See response to Baykeeper comment 27 above about end-of-pipe full trash capture. Finally, trash booms may be a valuable piece of the trash control puzzle, but they only assess floating trash (as opposed to sinking), and can be swept out by larger storms. In proposing end-of-pipe and trash booms, Baykeeper indicates a preference for controlling trash at the receiving water. While these may also be important elements of the overall control strategy, it is our experience that significant</p>	

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				efforts in source control reduce the need for and reliance on these measures which, if they fail, may be much more catastrophic if they are the sole means of control as opposed to source control in the upper watershed.	
Baykeeper (29)	C.10	Permit should require mandatory reductions in all permit years	The Regional Board should revise the Draft MRP to state that the 60% reduction requirement for July 1, 2016 and the 80% reduction requirement for July 1, 2019 are mandatory deadlines.	We agree in part and will make the 2019 reduction of 80% a mandatory deadline. See Response to Save the Bay Comment 1. An additional reduction requirement in 2016 may force Permittees to focus on reporting rather than developing control activities. Substantial 2016 performance shortcomings will be caught by the 2017 mandatory deadline And factored into enforcement considerations.	Make the 2019 reduction of 80% a mandatory deadline.
Baykeeper (30)	C.10	Permit should not provide offsets for source control	No further offsets or credits should be provided in addition to what is already included in the Draft MRP.	The offset system is in place to encourage Permittees to undertake activities that may not have an immediate effect, but, over the-long term, will result in significant reductions in trash.	Increase the maximum offsets for source control to 10%, creek and shoreline cleanup to 10%, and direct dumping to 15% l.

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				<p>Removing the offset system at this point could lead to short-term litter removal efforts by Permittees as opposed to investments in long-term strategies that will control waste better and more cost effectively. This Permit represents an additional step in a process of going from extremely trash-impacted waterways to a goal of no trash. At this point in the process, the Permit is focused on actions that will prevent trash from entering the waterways; including not only engineered controls but also behavior modification. As Permittees implement these methods of control, offsets will become less meaningful and receiving water quality more telling of the effectiveness of the Permittees' efforts. We anticipate that the offsets will be unnecessary in the following Permit term, but are convinced by firsthand accounts of Permittees and third parties of the utility of</p>	

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				offsets at this point in the process.	
Baykeeper (31)	C.10	Non-compliance consequences should be strengthened	For Permittees who fail to meet performance guidelines, the Regional Board should (1) impose specific control actions to achieve attainment of the guideline, and (2) require the Permittees to demonstrate attainment within a specific time period (i.e., 6 months). For Permittees who fail to meet mandatory deadlines, the Regional Board should (1) require the installation of additional full trash capture systems to achieve the deadline, and (2) require the Permittees to demonstrate compliance with the deadline within a specific time period (i.e., 6 months) rather than the Draft MRP’s standard of “in a timely manner.”	The Board can employ a variety of enforcement approaches to obtain compliance. We prefer to retain the flexibility of these different approaches, rather than have the consequences of non-compliance predetermined.	None
Emeryville (1)	C.10	Credit value for BMPs.	A crew averaging ten County furlough workers and one City employee cover nearly the entire one-square-mile city each day, picking up trash. Emeryville has only 19 miles of street, which means that on average, each worker walks	Assessment of this method for trash removal should be possible using the visual assessment protocol.	None

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			about two miles of street each day picking up trash. Visual observations demonstrate that these frequent on-land cleanups are at least as effective as Full Trash Capture devices		
Water Board July 8, 2015 Hearing Transcript – Mayor Bob Simmons, Walnut Creek (1)	C.10	Obtain trash reduction from BART and public schools.	The Water Board should help the Permittees to obtain trash reduction from BART and public schools.	We agree.	None
Water Board July 8, 2015 Hearing Transcript – Council Member Morris, San Pablo (2)	C.10	Funding for Full Capture and Maintenance impacts City budget	Funding for Full Trash Capture and Maintenance will significantly impact the City budget. Need flexibility.	The permit provides flexibility. Full trash capture is not the only way to meet the requirements.	None
Contech (7)	C.10	Require regular trash removal for LID systems	LID systems, to be considered full trash capture, must have trash removed regularly to avoid visual or water quality impacts	Maintenance requirements for full trash capture devices are specified in another section, C.10.b.i.a., however, all full trash capture systems must be regularly maintained so that trash collected does not impact downstream receiving waters and so that the device functions properly to control trash.	None
Contech (8)	C.10	Different maintenance specs for different trash systems	Different maintenance specifications for trash capture systems with in-line vs. off-line trash storage. 25% screen plugging should trigger	Rather than create a list of maintenance specifications for each type of full trash capture system, we will allow Permittees to maintain all	None

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			maintenance.	such systems in a state that will function fully during each storm. These specifications are somewhat arbitrary and there is not yet sufficient information to base such specifications on.	
Contech (9)	C.10	Photos of maintenance	Add a requirement that before and after maintenance photos be collected and provided upon request of the Regional Board.	We will spot check maintenance of full capture devices. Taking thousands of photos, storing and labelling them will be very time consuming.	None
Contech (10)	C.10	Reference error	C.10.b.ii.b - Check reference in first sentence; no such section in permit.	We will correct the typo.	Change C.10.b.ii.b to C.10.b.ii.b.(iv.)
Contech (11)	C.10	Receiving Water or Storm Drain assessment	C.10.b.ii.b. - Add a receiving water monitoring based assessment of effectiveness of "other trash management actions", or add storm drain system inspection to the visual assessment actions.	We do not know how to effectively specify either of these ideas in a form to judge compliance at this time.	None
Contech (12)	C.10	Phase out credits, offsets	C.10.d, C.10.b.iv - Credits offered should be phased out over time; shoreline cleanups do not prevent discharges from MS4s.	The credit and offset values are only applicable during this permit term. They will be reconsidered and possibly not be included or phased-out in future permit reissuance.	None

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Contech (13)	C.10	Require full trash capture installation for non-compliance	C.10.f.v.b - Penalty for not meeting compliance deadlines - requiring installation of full capture systems in the watershed at an accelerated pace to bring the permittee into compliance.	Full trash capture, while effective in many circumstances, cannot be used everywhere. We prefer to have the full range of options for responding to non-compliance available.	None

**Response to Comments on May 11, 2015 Tentative Order
Provision C.11 and C12. – Mercury and PCBs**

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ACCWP Legal Dublin	4 18	C.12.a.ii.(4)	Programs not Permittees, population-based responsibility	<p>This Provision requires Permittees to implement control measures to achieve county-specific load reduction criteria set forth in Table 12.1. However, the first sentence of the third paragraph of Provision C.12.a.ii.(4) provides that the Countywide Urban Runoff Programs are responsible for the specific portions of the Permit-wide load reduction shown in Table 12.1. The Programs are not waste dischargers under the permit, thus, this statement regarding responsibility of the Programs is inappropriate.</p> <p>The following paragraphs relating to Table 12.1 provide a confusing and unclear compliance pathway for Permittees. Furthermore, the population based default lacks a nexus to the potential for PCB load reduction in that different co-Permittee jurisdictions in that land area and industrial development often have little relation to population in that area. This is further discussed in the ACCWP comments.</p>	<p>We agree that the countywide programs are not waste dischargers under the permit. The San Francisco Bay PCBs TMDL includes wasteload allocations specific to each county and each county-based wasteload allocation applies to all Permittees in the county. So even though the countywide programs are not waste dischargers, the member agencies of a countywide program, such as the Alameda Countywide Clean Water Program, are all of the Permittees within the county. As such, we are using countywide programs as a pseudonym for all of the Permittees within a given county. For example, in C.8 Water Quality Monitoring, where responsibility of the requirement is shared by all Permittees in a county, we use county permittees as the pseudonym for all Permittees in a county, e.g., Alameda Permittees. Each group of county permittees is identified on the first page of the Tentative Order, except for Permittees in Solano County. To be clearer, we have revised the third paragraph of Provision C.12.a.ii.(4) of the Tentative Order and other parts of the Tentative Order to replace use of the term countywide program or county program with county Permittees. We also define the Solano Permittees when that pseudonym is used for all Permittees in</p>	<p align="center">See referenced changes to Provision C.11 and C.12</p>

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					<p>Solano County.</p> <p>We disagree with the commenter's assertion that the Permittee compliance paragraphs that follow relating to Table 12.1 provide a confusing and unclear compliance pathway for Permittees. The Tentative Order specifies the manner in which the load reduction responsibility is derived for individual Permittees. The San Francisco Bay PCBs TMDL and San Francisco Bay Mercury TMDL county-specific wasteload allocations were based on relative population. As such, use of relative population to establish Permittee-specific load reduction responsibility is consistent with the assumptions and requirements of the county-specific wasteload allocations. The Tentative Order allows Permittees to propose an alternative approach to derive Permittee-specific load reductions if they can identify one that better reflects the relationship between Permittee and PCB load reduction opportunities. An acceptable alternative approach is subject to a permit amendment.</p>	
ACCWP Legal Belmont Brisbane Burlingame San Bruno	5A 1 1 1 2	C.11/12.c	No clear path to compliance	Provisions C.11 & C.12 impose requirements for these legacy pollutants already in the Bay system that will be extremely challenging to	The Tentative Order imposes requirements to reduce loads to the Bay from the MRP area. In response to this and similar comments, we have added detail to the section of the Fact Sheet	None

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San Carlos San Mateo	2 2			<p>implement, both from a technical and fiscal perspective. This has been emphasized by Permittees in the Board workshop hearings.</p> <p>Provisions C.11.c. & C.12.c require Permittees to implement green infrastructure projects during the permit term in order to achieve PCBs and Mercury load reductions of 120 grams/year for PCBs and 48 grams/year for Mercury, achieved over the last three years of the permit. The Provisions require implementation of sufficient green infrastructure projects to achieve the county-specific load reduction performance criteria shown in Tables 11.1 & 12.2. The intention and description of the load reduction performance criteria are ambiguous and vague. This language is easy to misinterpret placing the MS4s at risk in regulatory/litigation enforcement actions.</p> <p>The co-Permittees lack clear paths to compliance and sufficient controls have not been provided in this permit to assure that numerically denominated quotas of mercury and PCB load</p>	<p>that explains the technical basis of and how load reduction value is established for green infrastructure implementation. These load reduction calculations are not complex and they provide a clear method for demonstrating compliance with requirements in the Tentative Order.</p> <p>The load reduction Permittees achieved through green infrastructure (including Provision C.3 required treatment controls) in the last three years of the last permit term exceeds the scale of load reductions through green infrastructure required in this permit. The previous permit timeframe included years when the Bay Area was rebounding from a significant recession, and economic conditions for redevelopment appear to be much more favorable during the permit term. To the extent that load reductions from Provision C.3 required treatment controls for new and redevelopment projects are insufficient to meet the numeric performance criteria of load reductions, Permittees have opportunity to implement public infrastructure projects that could attain the short falls in load reductions. Thus, the Tentative Order establishes a reasonable and achievable load reduction for Permittees to achieve through green</p>	

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				<p>reductions will be realized in each of the last three years of the permit. To now connect Green Infrastructure to PCB and mercury load reductions, when there is little technical basis for predicted reductions is legally inappropriate.</p> <p>Permittees lack sufficient control to assure that numerically-denominated quotas of mercury and PCB load reductions will be realized in each of the last three years of the permit, and as currently stated, these green infrastructure requirements are contrary to the Basin Plan - and this remains the case regardless of whether such quotas are defined on an area-wide, county-level, or proportionate Permittee specific basis.</p>	<p>infrastructure controls during the permit term.</p> <p>The green infrastructure requirements are not contrary to the Basin Plan. They are based on an assessment of controls to reduce mercury and PCBs to the maximum extent practicable, and they consistent with the SF Bay mercury and PCBs TMDL wasteload allocations and implementation plans in the Basin Plan.</p>	
ACCWP Legal SCVURPPP Legal	5B 7C	C.11/12.c	No clear path to compliance Numeric limits	The State Board has repeatedly found that numeric effluent limitations have not yet proved feasible for MS4 dischargers. It must be made clear that these projected load reductions over the last three years of the permit and the performance criteria of Tables 11.1 and 12.1 are not narrative or numeric effluent limitations, but are goals or, at	We decline to revise the noted subprovisions (and associated aspects of the Fact Sheet) to specify that the quantitative performance criteria they reference are numeric action levels (NALs) (or similar mechanisms), not numeric effluent limitations (NELs). The numeric performance criteria in Provisions C.11 and C.12 are numeric effluent limitations (NELs), not numeric action levels (NALs). The C.11 mercury	None

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				<p>most, Numeric Action Levels for load reduction in the design and implementation of green infrastructure projects.</p> <p>The Water Board must therefore expressly clarify the type of numeric requirement it is imposing in C.11.c and C.12.a and c in order to legally adopt the permit under the NPDES regulations and principles of due process of law. See <i>Connally v. General Constr. Co.</i> 269 U.S. 385 (1925). Specifically, it needs to revise these subprovisions (and associated aspects of the Fact Sheet) to specify that the quantitative performance criteria they reference are NALs (or similar mechanisms), not NELs. Indeed, directly enforceable NELs would be inconsistent with the Basin Plan, the State Board's most recent (and consistent) direction on this subject, and U.S. EPA's most recent guidance memorandum on implementing TMDL requirements in municipal stormwater permits.</p> <p>While all three of these legally controlling documents recognize</p>	<p>requirements and C.12 PCBs requirements are consistent with the Basin Plan requirements for implementing the wasteload allocations of the San Francisco Bay Mercury and PCBs TMDLs, and, counter to the assertion by the commenter, these directly enforceable NELs are consistent with the State Water Board's most recent precedential order on this subject, and U.S. EPA's most recent guidance memorandum on implementing TMDL requirements in municipal stormwater permits.</p> <p>The commenter has misinterpreted findings of the State Water Board on use and feasibility of NELs. An expert panel convened by the State Water Board has found that numeric effluent limits are feasible in certain circumstances – in particular when the limit is expressed as a loading (as is the case in the Tentative Order) rather than a stormwater concentration. Much of the difficulty in whether numeric effluent limits are appropriate or feasible for stormwater concerns the difficulty in measuring concentrations in stormwater in view of the variability experienced during a storm. None of these difficulties is present with the implementation of the sort of numeric limit expressed in this permit.</p>	

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				<p>the potential for the eventual use of NELs to address TMDLs, they also recognize that NALs and other alternative requirements must be used where NELs have not yet proven feasible for stormwater, as the State Board has repeatedly found in recent years. Indeed, the State RWL Order specifically states: “from a policy perspective, we find that MS4 Permittees that are developing and implementing [alternative compliance measures] should be allowed to come into compliance with ...interim and final TMDLs through provisions built directly into their permit rather than through enforcement orders” – i.e., enforcement orders that could arise from non-compliance with NELs per se. The EPA Memo expressly conditions the use of NELs in municipal stormwater permits on feasibility and emphasizes that MS4 permit writers “have significant flexibility” to use “various forms of clear, specific and measurable requirements” as alternatives to NELs where they have not been shown to be</p>	<p>The commenter also misinterpreted the State RWL Order statements pertaining to use of enforcement orders. The State RWL Order statements were in response to petitioners that asserted strict compliance with water quality standards must be enforced and any interactive or phased schedule of implementation actions deemed necessary to attain water quality standards should only be allowed in an enforcement order not in a permit. On the contrary, in the State RWL Order, the State Water Board stated the NPDES permits could and should allow an alternative compliance path that allows permittees appropriate time to come into compliance with receiving water limitations without being in violation of the receiving water limitations during full implementation of the compliance alternative. The State RWL Order further stated that the alternative compliance path must be ambitious, rigorous, and transparent. The C.11 mercury requirements and C.12 PCBs requirements provides alternative compliance path that is ambitious, rigorous, and transparent.</p> <p>The 2014 U.S. EPA Memo states “where the NPDES authority determines that MS4 discharges have the reasonable potential to cause or</p>	

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				feasible. EPA Memo at 4-5	<p>contribute to a water quality standard excursion, EPA recommends that the NPDES permitting authority exercise its discretion to include clear, specific, and measurable permit requirements and, where feasible, numeric effluent limitations as necessary to meet water quality standards.” Indeed, it is clear that the stormwater discharges of mercury and PCBs have the reasonable potential to cause or contribute to water quality standard excursions (the Bay is impaired by mercury and PCBs, and municipal stormwater discharged to the Bay is a significant source of mercury and PCBs). The clear, measureable, and specific numeric effluent limitations that are in this permit were feasible to develop and are feasible to achieve.</p> <p>The numeric effluent limitations in this permit can be feasibly achieved with modest increases in effort over and above the level of effort in the previous permit term. This increase in effort is consistent with the approach described in the Fact Sheet and in provisions for mercury and PCBs. The previous permit term provided an opportunity to test a variety of control measures, and this permit term calls for the implementation of control measures where they may provide effective load reduction benefit.</p>	
SCVURPPP	7A	C.11/12	Revise TMDL	While not seeking to legally	This comment questions the basis of	None

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Legal				challenge them when they were adopted, the Santa Clara Program and its members have long questioned the technical basis and feasibility of the total maximum daily loads (“TMDLs”) and associated allocation/implementation plans and timetables adopted by the Water Board for mercury and PCBs. These TMDLs deal with legacy pollutants already in the Bay. Trying to achieve massive load reductions in current discharges to offset what is already in the receiving water as the result of historical activities through the imposition of requirements on current discharges simply is unrealistic and will not lead to attainment of water quality objectives within the timetables the TMDLs contemplate. These TMDLs fundamentally need to be revisited and revised under the adaptive management principles as was expressly contemplated at the time of	the San Francisco Bay Mercury and PCBs TMDLs, which would be subject to a public process beyond this permit reissuance effort. Regardless, we disagree with the concept that these TMDLs require “massive” and “unrealistic” load reductions, and the commenter provides no evidence, just an opinion that the imposition of requirements on current discharges is unrealistic and will not lead to attainment of water quality objectives within the timetables the TMDLs. On the contrary, the underlying assumptions and basis of the TMDL and wasteload allocations indicate the load reductions will affect attainment of water quality objectives. There is also new evidence from studies conducted by the Regional Monitoring Program ¹ that margin areas of the Bay that receive discharges of urban stormwater covered by the Tentative Order are more severely impacted by PCBs than margin areas that do not receive urban stormwater discharges. Regardless, the load reduction requirements in the Tentative Order are consistent with the legally applicable wasteload allocations and	

¹ Davis, J.A., L.J. McKee, T. Jabusch, D. Yee, and J.R.M. Ross. 2014. PCBs in San Francisco Bay: Assessment of the Current State of Knowledge and Priority Information Gaps. RMP Contribution No. 727. San Francisco Estuary Institute, Richmond, California.

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				<p>their adoption.</p> <p>The sooner such revision occurs, the better, so that more realistic, technically feasible, and economically achievable municipal stormwater permit requirements can be better calculated.</p>	<p>their underlying assumptions and the phased implementation plans for the TMDL allocations described in the Basin Plan.</p> <p>The Basin Plan also describes conditions that must be satisfied in order for the Water Board to consider revising any aspect of the TMDLs, and these conditions are reiterated in the Fact Sheet. Important among these is that Permittees must demonstrate “that all technically and economically feasible and cost-effective control measures recognized by the Water Board have been fully implemented and the PCBs load reduction of such measures has been quantified.” The actions proposed in the Tentative Order are a step in the direction that could enable Permittees to make this demonstration successfully to the Water Board.</p>	
SCVURPPP Legal	7B	C.11/12	Provisions are vague	<p>Provisions C.11 and C.12 (and the related explanations of them in the Fact Sheet) <i>must be significantly clarified</i> to withstand legal muster.</p> <p>First, as currently drafted, the references to numeric load reduction performance criteria in Provisions C.11.c and C.12.a and c are impermissibly vague and ambiguous such that they may be</p>	<p>The performance criteria in C.11 and C.12 are numeric effluent limitations; there is nothing in the draft permit or in extensive discussions with the Permittees to suggest they are NALs. They are intended to be directly enforceable permit requirements, wholly consistent with the scale of PCBs load reductions required in the PCBs TMDL phased implementation plan. The commenter presumes the enforceable permit requirements expressed as</p>	<p>We have edited the Fact Sheet to include the complete accounting system used to compute load reduction value for control measures.</p>

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				<p>misinterpreted by some to contain numeric water quality based effluent limitations (“NELs”) rather than numeric action levels (“NALs”) or similar mechanisms. The distinction is of critical importance as NALs will, where quantitative performance criteria cannot be fully addressed, trigger requirements for the co-permittees to report on the circumstances giving rise to that situation and identify additional actions and time schedules acceptable to the Executive Officer to further address them. In contrast, NELs would trigger liability for a permit violation <i>even if</i> the inability to achieve them within the timetable required were beyond the capability of the co-permittees and/or subject to being reasonably addressed by the further action plans they submit and are directed by the Executive Officer to implement.</p>	<p>numeric performance criteria may not be attainable and as such would trigger a liability for a permit violation, but does not provide evidence that the numeric performance criteria are not attainable. Compliance with these numeric effluent limitations can be achieved through a number of control measures that are available to the Permittees as described in the Fact Sheet. The commenter asserts that numeric action levels are more appropriate. However, as presented by the commenter, numeric action levels would likely just trigger a vague plan for further action to attain the action levels and as such, without further specificity, numeric action levels have no clear meaning or set of consequences, and are thus an inadequate means of ensuring accountability and adequate actions on the part of Permittees. To date, the Permittees have had ample opportunity but have provided minimal documentation of commitments to implement new or enhanced actions to reduce mercury and PCBs loads that could be considered credible action plans in lieu of the proposed numeric effluent limitations. See also response to ACCWP Legal 5B on the topic of the degree of control Permittees have in achieving load reductions.</p>	

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SCVURPPP Legal	7D	C.11/12.c	No clear path to compliance	While legally controlling documents recognize the potential for the eventual use of NELs to address TMDLs, they also recognize that NALs and other requirements must be used where NELs have not yet proven feasible for stormwater, as the State Board has repeatedly found. The State RWL Order states: “from a policy perspective, we find that MS4 Permittees that are developing and implementing [alternative compliance measures] should be allowed to come into compliance with . . . interim and final TMDLs through provisions built directly into their permit rather than through enforcement orders” – i.e., enforcement orders that could arise from non-compliance with NELs per se. The EPA Memo expressly conditions the use of NELs in municipal stormwater permits on feasibility and emphasizes that MS4 permit writers “have significant flexibility” to use “various forms of clear, specific and measurable requirements” as alternatives to NELs where they have not been shown to be	See response to ACCWP Legal #5B on the topic of feasibility of numeric effluent limits, the permissibility of using numeric effluent limitations instead of action levels, and consistency with the Basin Plan. In response to this and similar comments, we have added some detail to the section of the Fact Sheet that explains how load reduction is established for green infrastructure implementation. These load reduction calculations are not complex and they provide a clear method for demonstrating compliance with requirements in the Tentative Order. The load reductions Permittees achieved through green infrastructure (including implemented C.3 new and redevelopment treatment controls) in the last three years of the previous permit term exceeds the numeric performance criteria (quotas) of load reductions through green infrastructure in this permit. The previous permit timeframe included years when the Bay Area was rebounding from a significant recession, and economic conditions for redevelopment are much more favorable during the permit term. Accordingly, Permittees may not have to do more than what may be achieved via compliance with C.3 new and	None

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				<p>feasible. EPA Memo at 4-5.</p> <p>Provisions C.11.c and C.12.c also need to focus requirements and performance criteria on local government approvals of public and private projects relative to them incorporating green infrastructure features. While municipalities can, with great effort and significant resources, reasonably be expected to put into place green infrastructure plans in initial years of this permit term and may even be expected to apply green infrastructure requirements to their approvals of public and private projects so opportunities are not lost, local governments cannot control the number of project applications or fully control the pace of CEQA review, funding approval, or construction timetables.</p> <p>Because Permittees lack control to assure mercury and PCB load reductions will be realized in each of the last three years of the permit, these green infrastructure requirements are contrary to the Basin Plan.</p>	<p>redevelopment requirements. To the extent that the Permittees cannot control the number of project applications they receive or fully control the pace of CEQA review, funding approval, or actual construction build-out timetables associated with such projects, and the number of such projects are insufficient to meet the numeric performance criteria of load reductions, Permittees have the opportunity to implement public infrastructure projects that could attain the short falls in load reductions. Thus, the Tentative Order establishes a reasonable and achievable load reduction for Permittees to achieve through green infrastructure controls during the permit term.</p>	

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SCVURPPP Legal	7E	C.11/12.c	Credit approval of GI projects	T.O. requirements must be revised to <i>refocus</i> the achievement of the performance criteria on loading reductions that will <i>arise from project approvals</i> issued within the permit term. To the extent the number of projects approved within the final three years of the permit term are not sufficient to give rise to loading reductions fully meeting the performance criteria due to circumstances beyond local government control, the co-Permittees should also be allowed to address this in a report and plan submission that will afford them additional time without being in noncompliance for the reasons stated above.	See response to SCVURPPP Legal #7D and response to ACCWP Legal Comment #5A.	None
SCVURPPP Legal	7F	C.11/12.a, c	No clear path to compliance	For the numeric performance criteria to stand up as legal, Permittees must, <i>at the time of permit adoption</i> , be given a defined, certain and reliable means by which their efforts to meet them will be measured. <i>See Connally, supra</i> . Currently they put off until <i>after</i> adoption of the T.O. a determination about whether the assessment methodologies developed in 2013 will govern these	In response to this comment, we have revised the accounting methods in the Fact Sheet to describe the complete accounting system used to compute load reduction value for control measures the correspondence between a unit of effort of a control measure and the amount of load reduction value received that will be used in this permit term. See also response to Brentwood #5.	We have edited the Fact Sheet to describe the complete accounting system used to compute load reduction value for control measures.

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				<p>measurements throughout the permit term.</p> <p>If developing an enhanced assessment methodology during the course of the permit term for application in <i>future</i> permits is still something the Water Board decides to ask the Permittees to devote their limited resources, Provisions C.11.b and C.12.b must otherwise be refined to provide that the 2013 assessment methodologies will be the ones applied to the numeric performance criteria <i>throughout this permit term</i> and not just on an interim basis.</p>		
SCVURPPP Legal	7G	C.12.f	Unfunded mandate	<p>As noted under Legal Comment No. 2, Provision C.12.f appears to be a requirement for a new state-imposed program concerning the regulation of construction demolition on properties often lying outside of the jurisdiction of the federal Clean Water Act. As such, it subject to the unfunded mandates initiative and requires an analysis of technical feasibility and economic reasonableness pursuant to the Water Code as</p>	<p>The commenter is incorrect that Provision C.12.f a new state-imposed program outside the jurisdiction of the Clean Water Act. PCBs discharge into municipal storm sewers during and after demolition of certain structures containing PCB building materials. The Clean Water Act requires municipal stormwater permits to contain requirements to effectively prohibit non-stormwater discharges into the storm sewers and such other provisions as the EPA Administrator or the State (here, the Board) determines appropriate for the control of pollutants.</p>	<p>Revised TO requirements and Fact Sheet to make the connection between building materials and stormwater discharges clearer.</p>

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				<p>well as the need for potential analysis under CEQA. Local governments do not have the resources or fee authority to fund such a requirement, and the framework it contemplates sensibly should be developed at a state or federal level given that, like the case with asbestos and lead paint, the issue of PCBs in historic building materials is national or at least statewide in scope and its environmental and human health risk implications.</p>	<p>(33 U.S.C. § 1342(p)(3)(B)(ii)-(iii).) PCBs from building materials that enter the municipal storm sewer during the dry season are non-stormwater discharges that must be effectively prohibited. PCBs entering the municipal storm sewer via stormwater runoff and into waters of the U.S. are appropriate for control because the Bay is impaired by PCBs and the PCBs TMDLs contain PCBs wasteload allocations for urban runoff that must be met by 2030. NPDES permits are required to contain effluent limitations that are consistent with the assumptions and requirements of any available wasteload allocation. (40 C.F.R. § 122.44(d)(1)(vii)(B).) The requirements to develop and implement a protocol to manage PCBs in building materials during demolition activities so that PCBs do not enter the storm drain derive from the Clean Water Act requirements stated above. Since there seems to be confusion about the intent of Provision C.12.f and its connection to storm water, we have modified the provision to make the connection with storm water and the requirements clearer.</p>	
Baykeeper	32	C.11	Mercury should have an enforceable	The San Francisco Bay Mercury TMDL calls for an urban stormwater mercury load reduction of 40 kg/yr between the	As described in the Fact Sheet, the interim loading milestone of 120 kg/yr mercury loading is already being achieved. The interim loading milestone	None

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			limit	2003 estimated load (160 kg/yr) and 2018 (120 kg/yr). The Draft MRP should be revised to make clear that this is an enforceable limit.	was not intended to be an enforceable effluent limit in the mercury TMDL.	
Baykeeper	33	C.11	Monitoring to assess compliance	We are concerned, in particular, that any assessment methodology used to determine compliance with waste load allocations be supported by actual stormwater sampling data, and not be purely theoretical. Without stormwater discharge monitoring, there is no way by which Permittees or the Regional Board can judge whether the control measures are actually reducing mercury loads into receiving waters. As stated above, the water quality monitoring provisions currently do not require Permittees to specifically monitor stormwater discharges, and must be revised.	The mercury TMDL provides three means of showing progress toward and ultimate achievement of the load allocations. The most feasible of these methods is accounting for the load reductions that result from implementation of control measures. This is the approach that is called for in Provision C.11.a. Further, the estimates we have now for the loading from stormwater were generated from the type of monitoring called for by the commenter. These types of data are expensive to collect on an ongoing basis. Were such “end-of-pipe” monitoring emphasized in this permit term, the likely result would be that we would receive an estimate of mercury loads to the Bay approximately in line with current estimates described in the Fact Sheet (approximately just under 120 kg/yr). By emphasizing data collection to document load reductions, there is opportunity to learn about how control measures translate into load reductions. This is a better use of monitoring resources than confirming a loading estimate that is expensive to	None

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					generate and already available.	
Baykeeper	34	C.11	Require methylmercury monitoring	In fact, the Mercury TMDL, as adopted in the Basin Plan, requires that Permittees “monitor levels of methylmercury in discharges.” The Fact Sheet states that this requirement to monitor discharges was satisfied during the 2009 Permit. However, since discharges are still occurring, the requirement in the TMDL is still applicable and must be included in the MRP.	The Basin Plans states that “[o]nce the Water Board accepts that a requirement has been completed by an urban runoff management agency, it need not be included in subsequent permits for that agency.” The requirement to monitoring methylmercury came about because the State Water Board explicitly called out the need to monitor methylmercury in discharges. The remand resolution directed the Water Board to “revise the TMDL to require inclusion in the next round of NPDES permits or in the watershed NPDES permits monitoring for, and determination of the relative proportion of, methylmercury in effluent discharges.” The State Water Board did not intend for this to be an ongoing requirement but rather a permit requirement that could be satisfied with data collected during a single permit term. There is no TMDL for methylmercury and there are no required control measures for methylmercury so there is no need to continue this monitoring on an ongoing basis since the information need has already been satisfied. There are other TMDL requirements in the Basin Plan for stormwater that are of this type as well (e.g., develop allocation-sharing scheme with Caltrans).	None

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Baykeeper	36	C.11	Require explanation of pollution controls and costs	In addition, the Draft MRP fails to give guidance on how to develop control measures that meet MEP. The requirement that Permittees prepare an implementation plan to achieve TMDL allocations limit control measures to those that are “economically feasible” without explanation as to how that term should be interpreted consistent with MEP. The MRP should require an explanation of pollution controls that were rejected as economically infeasible, together with a description of how the Permittee determined that the costs were “wholly disproportionate to the potential benefits.”	Permittees must identify technically and economically feasible mercury (and PCBs) control measures as part of attaining final wasteload allocations in the future. Economic feasibility is viewed in light of the State Board’s interpretation of MEP under State Water Board Order WQ 2001-11 (see Fact Sheet Section IV on Economic Issues). That said, MEP technology controls are the floor in terms of requirements and if Permittees cannot attain the final wasteload allocations through such controls, they will have to undertake additional controls in order to comply with the final allocations.	None
Baykeeper	37	C.11	No credit before full implementation	Baykeeper also questions the propriety of crediting Permittees with mercury load reductions before they occur. Until planned pollution controls are in place, no mercury load reduction credit is warranted. The Draft MRP makes no contingency plan for retroactively retracting credits if the project fails to achieve its goals. This may result in double counting, if during the first year the infrastructure element is fully operational, the full and actual	The purpose of this partial crediting is to provide incentive for implementation of control measures throughout the term of the permit as a means of achieving load reductions needed to achieve the effluent limitations. The commenter’s concern about double counting may be based on a misreading of the provision. The 50% credit of yearly load reduction only applies to those control measures that are not fully operational by the end of the permit term. In this case, 50% of one year of credit would be applied at the end of the	none

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				load reduction of that year is credited, in addition to the retroactive 50% credit from the construction year.	permit term in which construction is still taking place, and the remaining 50% of the yearly load reduction would be credited during the year the measure came on line. There are only two 50% pieces to be allocated in this fashion according to the permit language so no double counting is possible. In other words, even if the control measure becomes fully operational in year 1 of the subsequent permit, it would only receive the remaining 50% of the credit for this first year.	
Baykeeper	38	C.11	Insufficient GI load reductions	Baykeeper supports requiring reductions to be achieved through implementation of green infrastructure, but question (1) whether the modest targets represented in g/yr are sufficient to maintain progress towards both interim and final load allocations, and (2) the use of year 2040 as a planning horizon when the TMDL requires a load allocation of 82 kg/yr be attained by year 2028.	The scale of load reductions from green infrastructure implementation is appropriate relative to the expected pace of the redevelopment that creates opportunities for its implementation. Further, such treatment is not the only control measure that will be brought to bear for the reduction of PCBs and mercury from MS4s. Indeed, sufficient progress toward load allocations will be dependent on intelligent implementation of all relevant control measures. The purpose of the specific load reduction performance criteria for green infrastructure is to motivate efforts in this area and not to suggest that this is the scale of reductions from this source category that will ultimately be necessary to help achieve wasteload allocations.	None

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					<p>As we explained in the Fact Sheet, the year 2040 is used in the context of a planning horizon for the implementation of green infrastructure. Because mercury is distributed throughout the urban landscape, extensive implementation of green infrastructure elements will be necessary to achieve the load reductions required by the TMDL. However, the planning, financing and implementation of green infrastructure will take a long time, perhaps as much as 25 years or more, thus, the load reduction benefits will also be realized over an extended time. To ensure Bay Area municipalities are working expeditiously to implement appropriate green infrastructure controls to reduce loads of mercury, PCBs and other pollutants, the Tentative Order proposes Permittees prepare a reasonable assurance analysis to quantitatively demonstrate that mercury load reductions of at least 10 kg/yr throughout the Permit area will be achieved over the course of the next 25 years (i.e., by 2040) through implementation of green infrastructure. The Permittees are still required to attain the mercury (and PCBs) wasteload allocations by the deadlines set forth in the TMDLs.</p>	

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Brentwood Oakley Belmont Berkeley	2 5 30 12	C.12.f	No clear pathway to compliance – demolition uncertainty	The Tentative Order provides no clear path for Permittees to avoid noncompliance. The draft Tentative Order mandates achieving specified reductions in the total quantity of PCBs discharged from municipal storm drains. A major means of achieving these reductions is through removal of PCBs during building demolitions. However this fails to acknowledge that Permittees have no control over timing of when properties redevelop.	In response to this and similar comments, the TO and Fact Sheet have been revised to state that Permittees will receive a PCB load reduction value of 2 kg/yr for developing and implementing a protocol to ensure PCBs from building materials do not discharge into storm sewers during demolition, regardless of the occurrence of demolitions within their jurisdictions. The Permittees do have control over the development and implementation of a protocol to ensure that controls are in place for applicable buildings that could contain high concentrations of PCBs. The timing of redevelopment is not pertinent to receiving a PCB reduction value for developing and implementing the building material protocol.	The TO and Fact Sheet have been revised as set forth in the response.
Brentwood Oakley	3 5	C.12.f	Demolition program development	The City ask that development of a program to control PCBs during building demolitions, rather than applying controls to a specified number of buildings demolished, should represent compliance with this requirement.	As stated above, the Tentative Order does provide a PCB load reduction value for establishing and implementing a protocol to manage PCBs in building materials so that they do not enter storm drains. Beyond that, the Fact Sheet contains the accounting method for quantifying load reductions through controlling actual demolitions for the next permit. The Tentative Order does not require “applying controls to a specified number of buildings demolished” because it is	none

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					not possible to establish that number. The Tentative Order does require that the demolition control protocol be implemented to keep PCBs from storm drains once it is established.	
Brentwood Oakley	4 6	C.12	No clear pathway to compliance	The City ask that development of a program to systematically identify and review potential sources, and refer them to appropriate agencies for abatement, should be the basis for credit toward compliance.	The commenter does not suggest appropriate agencies for abatement. Nonetheless, it is not intended that municipalities take on the control of PCBs, as that will likely be the domain of the demolition contractor, following established BMPs, at a minimum. Municipalities would be responsible for ensuring that such requirements were carried out, as they do with a variety of requirements at the time of demolition. Basing permit compliance on the mere identification and referral of properties for abatement is not sufficient accountability to ensure that load reductions will be realized.	None
Brentwood Oakley Belmont Brisbane Burlingame San Bruno San Mateo San Jose Mountain View ACCWP CCCWP SCVURPPP	5 7 30 18 31 31 25 50 20 61 76 69, 79	C.12	Finalize PCBs accounting scheme prior to permit adoption	The draft Tentative Order allows only four (4) months after Permit adoption for Permittees to submit a more complete "measurement and estimation methodology and rationale" for stipulating PCB reduction credits. The City ask that BASMAA's PCBs programs accounting methodology be finalized, incorporated into the permit, and then used to calculate PCBs load reductions	The Fact Sheet has been revised to include load reduction accounting information for most PCBs and mercury load reduction control measures. The deliverable mentioned in the comment is now due in June 2016 and will focus on supporting information for the accounting factors provided in the Fact Sheet as well as providing details as to the information sources used by Permittees in performing the load reduction accounting calculations.	Revised Fact Sheet to include more mercury and PCBs load reduction accounting factors. Revised Tentative Order such that the

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				during Permittee annual reporting.		deliverable regarding the accounting system is due in June 2016 rather than April 2016
Brentwood Oakley Clayton Concord Danville El Cerrito Hercules Lafayette Martinez Orinda Pinole San Pablo San Ramon CCCWP SMCWPPP	6 8 31 14 14 20 11 14 17 11 7 9 17 5, 25 1	C.12	No numeric requirements for compliance determination	The City ask that the load reduction performance criteria not be the point of compliance, and that Water Board staff work with Permittee representatives to revise the Draft Tentative Order so that it provides a clear and feasible pathway for Permittees to attain compliance. Most factors that are key to meeting the load reduction performance criteria are uncertain and many are not within Permittee control (e.g., extent of source properties that will be found, building demolition rates, and redevelopment rates), making achievement of compliance uncertain.	See response to ACCWP Legal #5A and 5B and Brentwood #2. It appears that the commenters largely object to the accountability mechanism in this permit stated as a numeric load reduction requirement. Many commenters have called for a “clear and feasible pathway to compliance”, but they have not been very clear on what this means. There have been some suggestions that compliance should be based on simply establishing a program of implementation or even doing some implementation – and that Permittees who establish and implement a program should be deemed “in compliance”. This approach, however, is highly subjective and falls far short of meeting the Water Board’s needs to ensure that actions are being carried out to reduce loads of PCBs. The Water Board has a responsibility to implement the PCBs TMDL, and this responsibility is very difficult to meet if we are not clear on	None

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					the expectations for load reduction performance from stormwater programs. One of the virtues of a numeric load reduction approach is that it is not subject to multiple interpretations. The Fact Sheet describes how load reduction value can be calculated in a technically sound manner for a variety of control measures. Achieving these load reductions will be challenging, but Permittees can estimate the scale of activities that will be required at the outset and plan accordingly to accomplish these reductions.	
Baykeeper	39	C.12	Interim limit should be enforceable	The Draft MRP should be clear that interim limits are enforceable.	The commenter mentions an interim limit in the context of PCBs. We are unsure what the commenter is referring to. If the commenter is referring to interim TMDL loading milestones, then there are no such interim loading milestones in the PCBs TMDL. If the commenter is referring to short-term loading reduction requirements, these are already included in the Provision and are enforceable.	None
Baykeeper	40	C.12	Monitoring to determine compliance	Assessment methodology used to determine compliance with waste load allocations must be supported by actual stormwater sampling data and not be purely theoretical. Moreover, the calculation of anticipated	See response to Baykeeper #33	None

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				reductions in PCB loads is based purely on modeling, which the Fact Sheet states will be updated if necessary. Yet, without actual stormwater discharge monitoring, there is no way to judge whether the control measures were effective or the modeling properly calculated reductions.		
Baykeeper	42	C.12	No credit before full implementation	The MRP should delete the provision that allows Permittees to count load reductions for control measures that are not yet operational.	See response to Baykeeper #37	None
Baykeeper	43	C.12	Require explanation of pollution controls and costs	The MRP should be clear that MEP requires implementation of control measures that are technically feasible, unless costs are “wholly disproportionate to the potential benefits,” and Permittees should be required to show this analysis to the Regional Board.	See response to Baykeeper #36	None
Baykeeper	44	C.12	Clarify creditable load reductions	We are unclear under what circumstances load reductions would have been achieved under the 2009 Permit term, but not credited, and how verification of such load reductions would be made to appropriately credit during under the new MRP. The PCB load reduction assessment report includes reporting on PCBs load reductions “achieved	It is well understood that such load reductions refer to stormwater load reductions only. The commenter does not suggest any other type of load reduction. If perhaps the commenter is referring to air deposition, we do not provide a method for calculating this, and it has not been mentioned over the course of discussions with Permittees spanning over 5 years.	None

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				through other relevant efforts not explicitly required by the provisions of this permit.” We ask that this be clarified to apply only to stormwater load reductions.		
Baykeeper	45	C.12	Clarify use of 2040 for GI load reductions	Again, we question the benefit and appropriateness of targeting year 2040 for demonstration of PCB load reductions through green infrastructure implementation when the TMDL waste load allocation should be achieved by 2030. We, of course, support further load reductions after the 2030 load allocations are attained, as would result from these provisions. However, we believe interim and final targets for green infrastructure leading up to year 2030 would be appropriate.	See response to Baykeeper #38.	None
Belmont Brisbane Burlingame San Bruno San Mateo El Cerrito	12 4 13 13 10 7	C.12	Creditable projects for GI reductions	Requested Revision: Make more explicit in C.3.j (as well as in C.11/12) that private development and redevelopment as well as public projects will count toward meeting PCB and mercury load reductions, and that constructed public GI projects within the permit term are not required for compliance with GI pollutant load reductions.	In response to this comment, we have added language in C.11.c and C.12.c that makes it clear that green infrastructure projects on private and public lands can count toward the load reduction requirements.	Made explicit that public and private green infrastructure projects count toward fulfillment of load reductions stated in C.11.c and C.12.c

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Belmont Brisbane Burlingame San Bruno East Palo Alto San Carlos CCCWP SMCWPPP SCVURPPP SCVURPPP Emeryville	27, 28 15 28 28 10 8 7 65, 66 5, 64 65 104	C.12	PCB general. Many issues	<p>No controls identified to-date are particularly cost-effective, apart from the 1979 ban by USEPA on PCBs manufacture, import, export, and distribution in commerce in the United States.</p> <p>Most identified hot spots are associated with properties that are currently under cleanup orders or are currently permitted by these agencies or could be in the future. These sites are generally outside of the control of local agencies.</p> <p>The rate at which buildings are demolished and redevelopment occurs, and therefore the timeframe for reduction of PCBs associated with these sources and areas, is generally out of the control of local agencies.</p> <p>This lack of control over redevelopment and demolition, and the unknowns about the extent and magnitude of additional "hot spots" creates a high level of uncertainty in the level of implementation that cities and counties can commit to during the next five year permit term.</p> <p>In turn, the uncertainty in</p>	<p>We disagree with the assertion that no cost effective control measures for PCBs and mercury have been identified. These include: green infrastructure implementation, retrofits or other treatment controls, street sweeping, storm drain cleanout, street flushing, pump station cleanout, protocols to control PCBs in demolition material, recycling of mercury-containing devices, cleanup contaminated properties, PCBs and mercury removal associated with trash capture devices, among others. See the response to comment Brentwood #2 regarding the way in which the permit now accounts for the variability of building demolition.</p> <p>See the response to ACCWP 5A regarding the relationship between the pace of redevelopment and the achievement of expected green infrastructure load reductions.</p> <p>See response to ACCWP Legal 5A and 5B and Brentwood #6 on the pathway to compliance.</p> <p>The grant funding that was made available during the last permit term was made available precisely because there were permit requirements that allowed Permittees to demonstrate a</p>	None

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				<p>implementation creates compliance uncertainty when compliance targets in the permit include assumptions regarding the rate of redevelopment and demolition.</p> <p>Our overarching concern is that Provision C.12 continues to fall well short of providing Permittees with a clear and feasible pathway to attaining compliance with this load reduction requirement. It is also important to note that the level of effort and associated resources required to implement Provision C.12 as set forth in the Tentative Order is highly uncertain.</p> <p>Much of the cost of implementing PCBs control programs during the current permit term was offset by a grant from USEPA that will end in 2016. The availability of grant or other funding for implementing Provision C.12 of the reissued permit is unknown.</p>	<p>need to take actions that required support.</p> <p>We have crafted permit requirements entirely consistent with the mercury and PCBs TMDL. Achieving the TMDL wasteload allocations does require aggressive efforts. The requirements in this Tentative Order are reasonable and achievable (see memo: <i>Basis for Required PCBs Load Reductions in MRP 2</i>, February 23, 2015), provided that Permittees commit to action and implement effective control measures during the entire permit term.</p>	
<p>Belmont Brisbane East Palo Alto San Bruno Burlingame San Mateo</p>	<p>29 17 20 30 30 24</p>	C.12.a	Schedule unrealistic	<p>Due dates for deliverables for C.12.a.iii(1) and C.12.a.iii(2) are unrealistic and should be moved to the 2017 Annual Report.</p> <p>East Palo Alto requested that</p>	<p>In response to these comments, we have extended several reporting dates; however, the suggested 2020 reporting is unreasonable.</p> <p>Still, Permittees must rapidly identify the</p>	<p>C.11.a.iii(1) and C.12.a.iii(1) is now a progress report on</p>

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Mountain View San Jose ACCWP CCCWP SMCWPPP SCVURPPP	18 48 60, 62 8, 74 68 67, 83			these deadlines be moved by to either the 2020 annual report or the end of the permit term.	watersheds and management areas where they will take action and identify the control measures that will be implemented. Waiting more than a year for such information (as commenters request) makes it difficult if not impossible to assess whether Permittees will be on track to achieve required load reductions.	identifying watersheds and management areas due in April 2016. The complete list of watersheds and management areas is now due with the 2016 Annual Report.
Belmont Brisbane Burlingame San Bruno San Mateo San Jose Mountain View CCCWP SMCWPPP SCVURPPP	31 19 32 32 26 51 21 5 69, 70 70, 80	C.12.b.iii	Load reduction methodology	Omit the requirement to submit load reduction accounting method early in the permit term. Instead, the interim accounting method should be finalized, incorporated into the permit, and then used to calculate PCBs load reductions during Permittee annual reporting.	In response to this comment, the default accounting method is in the Fact Sheet to account for load reductions from control measures for PCBs in building materials as well as all of the land use-specific mercury load yield information. The deliverable is still necessary in that Permittees must provide information supporting the land-use yield information. In addition this June 2016 deliverable must include the details of how Permittees will perform the calculations to account for mercury and PCBs load reductions from all types of control measures that could conceivably be used for the reduction of these pollutants. This information includes	Revised C.11/12.b.iii to state that Permittees may submit alternative load reduction accounting factors differing from those presented in the Fact Sheet. Revised the Fact Sheet to contain nearly all of the

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					what data will be used to assign treated areas, how to assign land use to select a yield, how material will be sampled to determine the contaminant concentration (for control measures requiring such information). Permittees should also identify the types of supporting information that will be submitted so that the calculations can be reproduced.	information needed to compute load reductions based on mercury and PCBs control measures and to more clearly explain the type of information that still must be included in the submittals required under C.11/12.b.iii(1)
Belmont Brisbane Burlingame San Bruno San Mateo Mountain View San Jose San Mateo Co. Cupertino SCVURPPP SMCWPPP	32 20 33 33 27 22 52 10 7 71, 81 4	C.12.a,c	Effluent Limits	Water Board staff has acknowledged that load reduction performance criteria are not numeric effluent limits. This should be made clear in the permit. In addition, further clarity is needed regarding the legal definition of the performance criteria and implications with regard to enforcement and potential third party lawsuits. Requested Revision: PCBs load reduction performance criteria should be in the form of Numeric Action Levels or a similar mechanism for triggering	There is no ambiguity that the PCBs load reduction criteria are numeric effluent limits and are enforceable. If these effluent limits are not achieved, the Board has a wide variety of enforcement tools available as well as discretion in applying these tools depending on the circumstances of non-compliance. Numeric effluent limits are necessary to ensure that Permittees undertake enough actions to meet the TMDLs. They are also achievable because they are based on what the Permittees submitted under the existing permit.	None

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				requirements for additional action and reporting. In addition, the permit should include contingency language that would allow for achieving compliance if a good-faith demonstration of efforts and actions by Permittees consistent with permit requirements falls short of achieving the load reduction performance criteria.	See also the response to the comment ACCWP Legal #5B.	
Belmont Brisbane Burlingame San Bruno San Mateo San Jose San Mateo Co. Mountain View ACCWP CCCWP SMCWPP SCVURPPPP SCVURPPP	33 21 34 34 28 49, 53 11 19, 23 59 8, 72 72 68, 72 83	C.12.b.iii	Permittee-specific load reductions	Although Permittees and the RMP have spent considerable time and resources towards identifying PCB hot spots and watersheds producing greater levels of PCBs to the Bay, data have not been collected at a level to which proportions of load reduction responsibilities could confidently be assigned to Permittees. Assigning Permittee-specific responsibilities with high levels of uncertainty upon which compliance could be based is not good public policy. Delete requirement to develop and submit Permittee-specific proportions of load reduction responsibilities.	The Fact Sheet and TO describe a default approach for assigning load reduction responsibility to individual Permittees. It is necessary to have accountability for load reductions at the Permittee level because the responsible entities for the permit are individual Permittees (municipalities) rather than counties. The default approach is based on population because it is consistent with how the county-level wasteload allocations were derived in the TMDL. The permit provides the opportunity (but not requirement) for Permittees to develop and submit an alternative method of establishing the Permittee-specific load reduction responsibilities. See also the response to the comment ACCWP Legal #4.	Clarified that the Permittees may submit an alternative method for Permittee-specific load reductions, but that it is not a requirement to develop such an alternative. The due date for this alternative method is the 2017 Annual Report. Permittees may also suggest an alternative

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						method for allocating Permittee-specific load reduction value for C.12.f implementation in the 2019 Annual Report.
Belmont Brisbane Burlingame San Bruno San Mateo Co. San Mateo San Jose East Palo Alto Mountain View Dublin CCCWP SMCWPPP SCVURPPP	34 22 35 35 12 29 54 21 24 17,19 77 73 73	C.11.c and C.12.c	Delete GI load reduction requirements	It is unnecessary to include performance criteria for PCBs load reductions through implementation of GI over the reissued permit term. PCBs load reductions will not be the driver for GI implementation during the reissued permit term. Regional Water Board staff has noted that based on extrapolation of data from the current permit term, the proposed metrics should be met via redevelopment in old industrial areas. Thus the proposed criteria would not influence GI implementation during the reissued permit term and meeting them would instead be dependent upon an activity that is not under Permittee's control. While we expect to learn valuable lessons via opportunistic early implementation of GI retrofit	We disagree that the requirement for a modest load reduction from implementing green infrastructure should be deleted. The absence of such a driver would logically reduce the motivation to expeditiously plan and install green infrastructure facilities. The load reduction requirement is not onerous and data from the previous permit term indicate the requirement can be met. See also response to Belmont comment #1.	None

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				projects through Provision C.3.j.ii, the pollutant load reductions associated with these retrofits implemented over MRP 2.0 is anticipated to be relatively small. Requested Revision: Provision C.12.c should be deleted.		
Belmont Brisbane Burlingame San Bruno San Mateo Mountain View San Jose SMCWPPP SCVURPPP	35 23 36 36 30 25 55 74 74	C.12.c	Scale of future GI load reductions	It does not make sense to prejudge that PCBs load reductions of at least 3 kg/yr throughout the Permit area should be achieved by 2040 through implementation of Green Infrastructure plans. The actual load reductions that Permittees expect to achieve via Green Infrastructure will be determined during the planning and reasonable assurance analysis required by Provision C.12.d., as part of planning for achieving the overall PCBs TMDL allocations. Requested Revision: Provision C.12.c should be deleted.	We disagree and refer the commenter to our response above. In addition, given the scale of load reductions necessary to achieve the 18 kg/yr area wide from urban runoff and more than 14 kg/yr from the MRP area, load reductions of at least 3 kg/yr through green infrastructure are likely going to be necessary. Moreover, information submitted (in the 2014 Integrated Monitoring Report) by MRP Permittees suggests that a large portion of PCBs are found in moderately contaminated areas – perhaps 50% or more of the total load (McKee and Yee 2015). Application of green infrastructure treatment is a feasible way to address such moderately contaminated areas. The modeling and further study conducted through the reasonable assurance analysis should shed more light on the scale of expected reductions, but 3 kg/yr is quite reasonable in terms of what is currently known about the distribution of PCBs in the landscape.	None

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Belmont Brisbane Burlingame San Bruno San Mateo Co. San Mateo Palo Alto San Jose San Carlos Mountain View BASMAA CCCWP SMCWPPP SCVURPPP Emeryville	36 24 37 37 13 31 6 13, 56 10 26 13, 14 78 76 75, 82 105	C.12.f	PCBs in Building Materials	<p>We are not aware of data regarding the amount of PCBs released during demolition and then mobilized into the MS4, making it challenging to project with any certainty the actual water quality benefit of the proposed control program. Cost-effectiveness relative to other PCBs controls is also highly uncertain at this time.</p> <p>The potential problems associated with PCBs in building materials (i.e., water quality, human exposure at the site and disposal) should be addressed holistically on a statewide or federal basis. Meeting the Tentative Order's three year timeframe to develop a program to manage PCBs in building materials would likely require administration at the local level. This inappropriate and rushed approach would result in highly inefficient use of scarce public funds and likely be ineffective at addressing the problems. It would also likely result in inconsistent programs across the Bay Area. Allow at a minimum the entire permit term for Permittees to work with the State, U.S. EPA,</p>	<p>Regarding the water quality benefit: The Permittees established in their Integrated Monitoring Report (2013) the very large mass of PCBs likely present in Bay Area buildings, and a grant-funded project completed by the Permittees demonstrated through the literature the link between PCBs in buildings (particularly caulk) and PCBs in the environment. While demolition projects in the Bay Area have data showing PCBs in soils on-site, to date these projects have not been required to sample in the MS4. Studies by Herrick found PCBs in dust inside buildings at 1-81 ppm (2005) and in soil at 3-34 ppm surrounding buildings with PCB-containing caulk (2007), indicating PCBs are in the environment even when demolition is not taking place. Given these facts, we conclude with reasonable certainty that PCBs in building materials are a significant, and controllable, source of PCBs in urban runoff.</p> <p>Regarding cost-effectiveness: There are 3 factors to consider, in addition to the costs of other PCBs controls. First, no capital costs are involved. Staff recognizes that Permittee staff time will be needed to establish the PCBs in demolition control protocol, which can be built upon existing construction</p>	None

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				<p>the building industry, and other stakeholders to attempt to develop a comprehensive statewide or federal program analogous to current programs for asbestos and lead paint. Given the multiple environmental and public health issues in play, U.S. EPA should play a large role in development of this program.</p>	<p>debris and demolition permitting programs, using materials generated in the grant-funded program. Presumably, staff time will be needed for other PCB control methods as well, although perhaps to a lesser degree. Second, in many but not all municipalities, the number of potential PCB-containing buildings will be small, or none, and thus the workload will be likewise small. Third, the potential load reduction from PCBs in building material is far greater than from any other source, and possibly greater than from all other sources combined.</p> <p>Regarding allowing the entire permit term for Permittees, U.S. EPA, State and building industry stakeholders to establish a demolition control protocol: We disagree that this is the best and only way to develop such a program. The buildings containing PCBs are already under the jurisdiction of Permittees and receive permits for demolition and building activities that could feasibly include elements to address the materials containing PCBs so that they are not discharged into storm sewers. Developing this protocol locally allows Permittees maximum control. There is no guarantee that a program would be developed at a state and federal level, and the consequence</p>	

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					of such inaction is that this source would remain unaddressed and Permittees would forego an opportunity to address a likely source of PCBs loading into their storm sewers and waters of the U.S.	
San Mateo County Belmont Brisbane Burlingame San Bruno San Carlos San Mateo Mountain View San Jose CCCWP SMCWPPP	8 28 16 29 29 9 23 17 47 50 5 5, 67	C.12.a	Numeric Performance Criteria	Focus on implementation of PCBs control programs: Load reduction performance criteria should not be the point of compliance. Compliance should be based upon implementing PCBs control programs designed to achieve a load reduction target, based on an interim accounting method. The target would be informed by what the BMP programs could achieve, based on the accounting system, which should be agreed upon by the Permittees and the Water Board upfront and incorporated into the permit. At a minimum, the revised permit should specify actions identified in June 10, 2015 Staff Summary Report, such as: •Control of PCB-containing wastes during building demolition; •Storm drain and street cleaning in areas with high PCB levels; •Cleanup and referral to the	Regarding the request that load reduction performance criteria should not be the point of compliance, see the response to Brentwood comment #6. Regarding requiring implementation of PCBs controls instead of numeric load reductions, see responses to comments Berkeley 8/ACCWP 7. Regarding agreeing on an accounting system upfront, we have changed the Fact Sheet in response to this comment. We disagree with comments regarding specifying control actions, although we retain the control of PCB-containing wastes during building demolition so that they do not discharge into storm drains as requested. Beyond that, Permittees may pursue any of the other suggested control measures to control loads of PCBs and mercury. Permittees must also document the load reductions from these activities to reduce loads by the amounts required by the permit.	The Fact Sheet has been revised to include more mercury and PCBs load reduction accounting factors.

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				<p>Water Board for cleanup of sites contaminated with high levels of PCBs;</p> <ul style="list-style-type: none"> •Diversion of first-flush stormwater runoff and dry weather flows to the sanitary sewer; and •Green infrastructure retrofit of streets and storm drain systems. <p>As recommended By SFEI, the County recommends that the Water Board allow source control actions that result in:</p> <ul style="list-style-type: none"> •A large amount of PCBs and total mercury being removed from as few locations as possible. Thus it is important to find as many high leverage properties and source areas as possible. •Potential multiple benefits - for example both PCBs and Hg pollution or other pollutants such as trash or unsightly housekeeping that can be dealt with at the same time •Clear connection between the in situ pollutant and stormwater conveyance -for example evidence of off-site transport from the polluted area directly to a municipal storm drain inlet or some other conveyance system. 	<p>Permittees have the flexibility to choose the optimum suite of control measures given the particular circumstances in their jurisdictions. The Water Board is not specifying this suite of control measures, but rather the numeric performance criteria (effluent limitations).</p>	

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Daly City	7	C.11/12	General Approach	Numeric permit limitations have no place in a stormwater permit which is premised upon application of Best Management Practices. PCBs and Mercury are legacy pollutants. PCBs are widely dispersed into soils and sediments. Efforts within the Bay Area have identified a small number of "hot spots" which are under separate clean up orders from other agencies including the Regional Board, EPA and DTSC. Mostly, these sites are generally out of the control of local agencies. Now, local agencies must contend with a Tentative Order which is highly uncertain yet places agencies at considerable risk should numeric limits not be achieved. The issue of PCBs and Mercury is much larger in scope than MRP 2.0 and the compliance pathway expected by Regional Board staff is less than clear.	Numeric permit limits are appropriate for stormwater permits, especially when there is a TMDL requiring specific load reductions that are expressed in numeric fashion and numeric effluent limitations are feasible, as is the case for mercury and PCBs. There is nothing inherent about a stormwater permit that one can suggest that all stormwater permits must be premised upon the application of best management practices. The Water Board is not constrained from crafting permit requirements that go beyond mere application of such management practices in order to meet legal requirements, such as implementing a TMDL. See also the response to Brisbane comment #15	None
Daly City	8	C.12.f	Building Materials	The load reductions sought should at the very least be incorporated into a Best Management Practice when suspect buildings are demolished. The extent of PCBs in caulking or	While BMPs to address PCBs during building demolition exist and may be incorporated into the demolition process for applicable buildings, the Tentative Order requires Permittees to develop a protocol to manage applicable structures with PCBs during demolition	None

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				<p>weatherproofing is unknown. Equally unknown is when such buildings would be demolished. At the very least, a Best Management Practices approach could serve as an equivalent method to bridge how such legacy pollutants can be addressed to serve water quality concerns.</p>	<p>so that PCBs do not enter municipal storm drains. The protocol can ensure that BMPs get implemented. See also the responses to Brentwood comment #3 and Brisbane comment #15.</p>	
East Palo Alto	4	C.11/12	PCB and Mercury General	<p>PCB and Mercury provisions-as indicated in the TO create significant hurdles that will require more extensive planning with an unknown horizon; it is unlikely significant pollutant load reduction can be accomplished during the permit term. Due to this steep planning and funding development curve, the Water Board should include an extended planning schedule with modest or no pollutant load reduction requirements, but rather "goals," which, if voluntarily met, can count toward overall pollutant load reduction in future permit terms, in a similar manner to the trash load reduction credits, previously provided to encourage and reward product bans.</p>	<p>The Water Board is responsible for implementing the mercury and PCBs TMDLs, both of which call for significant load reduction requirements for storm water Permittees. The suggestion of the commenter that we should rely on the voluntary achievement of unenforceable load reduction goals is not an adequate accountability mechanism to ensure that Permittees are making sufficient progress toward achieving what the TMDLs require in terms of load reduction.</p>	None

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East Palo Alto	19	C.12	General	<p>The City lacks control over a timeframe for redevelopment and demolition of existing buildings; this creates uncertainty in the level of implementation that East Palo Alto can commit to. This provision assumes clarity of future development opportunities, which does not exist in East Palo Alto, which has infrastructure deficits preventing development (primarily drinking water and deficient storm drainage systems).</p> <p>Provision C.12 uses two approaches, requiring: 1) BMP implementation and 2) pollutant load reduction. Required BMPs are Green Infrastructure and managing PCBs during building demolition. The City relies on Countywide programs and regional campaigns to ensure these types of waste are source separated. While the City could require, through updated policies, that applicants provide evidence of appropriate disposal of these materials, the City does not have the capacity to determine whether a particular building is a potential risk. The City would rely on outside agency such as San Mateo County lead abatement</p>	<p>Regarding the lack of control over the timeframe of redevelopment, see the response to ACCWP Legal #5A and Brentwood #3.</p> <p>Regarding the workload associated with addressing the large reservoir of PCBs associated with building materials, see the response to Belmont comment #36.</p> <p>All of the Permittees have the same requirement so it is not expected or desired that East Palo Alto or San Mateo County should be tasked with figuring out the optimum program and approach for addressing PCBs in building materials. Permittees are encouraged to work together and share resources.</p>	None

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				<p>program to ensure proper disposal of this material. These details require research to determine an approach that will not create substantial impact to demolition and removal of these buildings. The timeframe given is unlikely to be within reach for San Mateo County, which is already overburdened and understaffed.</p>		
BASMAA	10	C.12	Pathway to compliance	<p>There is a lack of clear and feasible pathway for Permittees to attain compliance with the load reduction requirements. Most key factors in meeting the mandated load reduction are uncertain and many are not within Permittees' control – making achievement of compliance uncertain. These factors include: PCBs are legacy pollutants, long-lived and ubiquitous, at low concentrations, which makes traditional stormwater treatment (non-green infrastructure) expensive and likely ineffective. The Water Board-recommended BMP (Manage PCB-containing Materials and Wastes During Building Demolition) is opportunistic and yet existence of opportunities is uncertain and dependent on factors not within</p>	<p>On the topic of factors being under the control of Permittees, please see the response to ACCWP Legal #5A and 5B and Brentwood #6.</p> <p>On the topic of the lack of control of Permittees concerning building demolition, see the response to Brentwood #2.</p> <p>On the topic of accounting methods to assess performance, see the response to Brentwood #5.</p> <p>On the topic of the numeric effluent limits in the permit, please see the response to SCVURPPP Legal #7B. For more information on the topic of a pathway to compliance, see the Fact Sheet discussion for C.12.</p>	

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				<p>Permittees' control (e.g., extent of source properties found, building demolition rates, redevelopment rates). There is no agreed-to accounting method to assess performance.</p> <p>Despite all of these uncertain and uncontrollable factors – intractable problem, no clear solution (BMP), and no agreed-to measure of success – staff is proposing to commit Permittees to a specific regulatory performance level (Kg/year reduced) or “load reduction performance criteria”. This is the antithesis of a clear and feasible pathway to compliance. Regional Water Board staff has acknowledged that load reduction performance criteria are not effluent limits. This should be made clear in the permit. PCBs load reduction performance criteria should be in the form of action levels, i.e., levels set at a typical performance level and which require action when the level is triggered or not met.</p>		
BASMAA CCCWP	11 5, 6	C.12.a	Action Levels and Compliance	Replace the load reduction performance criteria with a Numeric Action Level (NAL). Base compliance upon	See the response to SCVURPPP Legal #7A for the topic of action levels vs. effluent limitations. We also note that the Fact Sheet does contain a complete	None

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				implementing PCBs control programs designed to achieve a NAL, using an interim accounting method included in its entirety in the permit and applicable for at least the term of the permit, and taking specified actions if the NAL is triggered.	accounting methodology for foreseeable control measures. Basing compliance on numeric action levels, which have no clear consequences associated with non-attainment, does not provide the Water Board with an adequate accountability mechanism to ensure that the strongest efforts will be undertaken to achieve PCBs load reductions.	
BASMAA	12	C.12.f	PCBs in building materials	Based on Bay Area sampling and similar sampling in other areas, there appears to be a large standing stock of PCBs in certain buildings in the Bay Area, sometimes at concentrations that would likely exceed California hazardous waste levels. There is also a potential health risk to workers (e.g., at a demolition site) or building occupants exposed to PCBs in building materials. These problems are common to urban areas throughout the country. We don't know whether or not PCBs in building materials is a significant water quality issue. However, addressing the various potential problems associated with PCBs in building materials appears to be a worthwhile and "no regrets" cause.	We agree with this comment, which appears to support the proposed requirement at C.12.f of the Tentative Order, and we agree that addressing PCBs in building materials appears to be a worthwhile and "no regrets" cause. We also agree with the commenter's observations regarding potential health risks and waste disposal issues, and we are aware that such issues must be addressed to the appropriate extent during development of a program to control PCBs during demolition.	None

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San Mateo Co.	9	C.12.a.iii	Extend reporting timelines	Extend the deadlines for reporting and align timeline with the GI planning time frame. The County recommends a modified timeline to allow for more time to collect additional data, to confirm sources, and to plan GI projects as required by C.3. An adjusted timeline is necessary to prepare for implementation and assessment.	We agree to extend the deadline for the list of watersheds or management areas. See the response to Belmont #29. The reporting for C.12.a is more than just about green infrastructure. It is necessary for Permittees to report on where they are going to address PCBs as well as how. There is ample information available now to report on where actions will take place. Permittees must work quickly to develop the approach for how to address PCBs contamination in those areas and report that per the permit requirements. The permit also provides an opportunity to update this information (reported under C.12.a.iii(1,2) in subsequent annual reports.	Extend due date for list of watersheds or management areas for PCB control implementation
San Jose SCVURPPP	144	C.12.a	Load reduction performance criteria	Load Reduction Performance Criteria in Table 12.1 of the Tentative Order are based on an assumption that PCBs loads are related to population, not the actual availability of controllable sources of PCBs. The City is also very concerned that the Tentative Order requires implementation of sufficient control measures to achieve county-specific load reduction performance criteria shown in Table 12.1. It then contradicts this by saying that all	The Permittee-specific load reduction criteria are based on population, and this is consistent with the population-based PCBs TMDL wasteload allocations for countywide programs. Permittees have an opportunity to propose an alternative means of computing the Permittee-specific load reductions under C.12.b.iii(2). There is no contradiction as alleged in the comment. The permit presents a tiered approach to determining compliance. This is explained in the Fact Sheet and provision. The provision	None

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				<p>Permittees will be in compliance with the load reduction performance criteria as long as the total load reductions for the entire area covered by this permit are achieved. Moreover, uncertainties and assumptions in the accounting methodology in the Fact Sheet do not allow for a clear path to compliance. Stormwater PCBs loads and required reductions were originally assigned based on population. Through study during the previous permit term, PCBs are distributed according to land use factors not necessarily associated with population. However, the Tentative Order load reduction requirements are still based on population. Moreover, it is unclear that the prescribed load reductions are achievable in the timeframe set forth in the administrative draft. The Water Board must establish a clear path to compliance that provides meaningful and achievable reduction of PCBs loads to the Bay during the permit term, and to address shortcomings in the original loading estimates and allocations.</p>	<p>must be read in its entirety. The commenter does not explain exactly how the “uncertainties and assumptions in the accounting methodology do not allow for a clear path to compliance” so a response is not possible. See also the response to Brentwood #6 on this topic.</p> <p>The Fact Sheet explains how a Permittee may show compliance by undertaking a sufficient number of control measures, tallying up the load reduction credit according to the procedures explained in the Fact Sheet. The required load reductions are meaningful and achievable (see memo: <i>Basis for Required PCBs Load Reductions in MRP 2</i>, February 23, 2015).</p>	

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San Jose	15	C.12.c	GI load reductions	<p>The City is concerned about the Tentative Order requirements to plan and implement green infrastructure to reduce PCBs loads. Although green infrastructure projects are currently underway in San Jose, it is unclear whether additional projects can be funded and sited appropriately to achieve reduction goals.</p> <p>Requested Revision: Remove language creating County-specific load reduction criteria and revise language to state that Permittees will be in compliance based on the stipulated load reduction benefits of proposed control measures, and acknowledge the possibility of stipulating further benefits from activities not listed in the Fact Sheet.</p>	<p>See response to ACCWP Legal #5A.</p> <p>Regarding the requested revision, please see the response to Berkeley Comment No. 8/ACCWP No. 7.</p>	None
Santa Clara Co.	2	C.11/12.c	GI load reductions	<p>The County objects to (2) the method for assessing the County's progress towards meeting PCB and Mercury Load reductions vis-a-vis the GI retrofit projects implemented.</p>	<p>The commenter has not proposed an alternative means of assessing progress toward meeting the PCBs and mercury load reductions. See also the response to San Jose #15 and ACCWP Legal #5A.</p>	None
Santa Clara Co.	3	C.11/12.c	Redevelopment opportunities	<p>The County provided oral testimony at the June 10, 2015, Water Board Public Workshop regarding: The few</p>	<p>The modest load reductions called for from green infrastructure can be achieved through implementation of green infrastructure on both public and</p>	None

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				redevelopment opportunity areas within unincorporated Santa Clara County where private development projects could make significant contributions towards the total area retrofitted with Green Infrastructure.	private projects.	
Santa Clara Co.	4	C.11/12.c	No good GI opportunities	The infrastructure managed by the County, such as hillside residential streets, freeway- like expressways and rural and semi-rural parklands may not provide good opportunities for GI retrofit projects, particularly those that would address Mercury and PCB sources as the TO envisions.	Santa Clara County's landscape is similar to other counties of the Bay Area, and load reductions may come from both on public and private projects. The scale of load reductions required for this permit term is on the order of that achieved during the last permit term. Sufficient opportunities (C.3 treatment and other green infrastructure treatment) were found region-wide despite the difficulties described by the commenter. See also the response to ACCWP Legal #5A. The cities within Santa Clara County have many other types of landscape, and there are sufficient opportunities in Santa Clara county, considering this broader range of treatment modalities.	None
Santa Clara Co.	5	C.11/12.c	GI load reductions	The largest County facilities are located within the City of San Jose-not unincorporated Santa Clara County-and the TO provides no guidance as to whether the County or City would be credited for these retrofits. Such guidance is requested. The	The City of San Jose would receive value for those projects for the purpose of comparing load reductions to the Permittee-specific load reduction requirements. San Jose is part of Santa Clara County, so the Santa Clara Countywide Program would receive value for the purpose of comparing to	None

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				County believes it should receive credit for these facilities since they are County owned and operated facilities which are oftentimes exempt from the City's building and land use authority.	the countywide load reduction requirements.	
Santa Clara Co.	9	C.11/12	Vagueness	The TO imposes a vague and ambiguous path on the County's compliance with both Provision C.3 Green Infrastructure implementation and related C.11 Mercury and C.12 PCB reductions.	We disagree with this comment. The Tentative Order establishes an unambiguous performance metric for load reductions through green infrastructure, and the Fact Sheet clearly describes how those load reductions should be evaluated based on the area treated by such projects. See also the response to Brentwood #6.	None
San Mateo Co.	7.1	C.12.a	General	The level of effort and resources required to implement Provision C.12 will be dramatically higher than the previous permit and the proposed timeframe is too short and does not align with what is proposed for development and implementation of the GI Plan. The lack of control over redevelopment and demolition will significantly affect the County's success with load reduction and the potential extent of the "hot spots," creates a high level of uncertainty in achieving the 3 kg/year load reduction performance metric and successful implementation of	We acknowledge that the level of effort and resources to implement Provision C.12 will be higher than last permit term, particularly in light of the grant funding Permittees received then. Implementing control measures is necessary to achieve the TMDL wasteload allocations. Very small PCBs load reductions were achieved during the previous permit term because the purpose was to test various control strategies. This permit term calls for an increased effort and implementing control measures where they may result in load reductions. This requires effort and resources. On the topic of timeframes and alignment with green infrastructure	None

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				Provision C.12.	<p>plans, please see the response to San Mateo Co. #9.</p> <p>On the topic of lack of control over redevelopment, see the response to ACCWP Legal #5A.</p> <p>On the topic of “high level of uncertainty in successful implementation of C.12”, Permittees have a range of control measures to reduce loads of PCBs. If all such opportunities are explored and the best are implemented, the load reductions can be achieved. This will require effort on the part of Permittees. The Fact Sheet explains how the load reduction benefits for each type of action will be evaluated.</p>	
San Mateo Co.	7.2	C.12.a	General	<p>Existing data, which is biased by targeted reconnaissance of suspected source areas, indicates that very few areas within San Mateo County contain significant concentrations of PCBs (greater than 0.5 parts per million).</p> <p>C.12 does not appear to be based on adequate data to identify target areas where significant load reduction will be achieved.</p> <p>The proposed C.12 requirements do not provide a clear and feasible pathway to attaining</p>	<p>We understand that San Mateo County does not have numerous old industrial areas. This is also the case of other counties. Please note that, Water Board staff learned in February of this year of a storm drain site in Redwood City that contained 7 ppm of PCBs, which illustrates that there are heretofore unknown opportunities for PCBs loads reduction. There is enough information to begin addressing these areas while continuing to look for more.</p> <p>Furthermore, a large share of the load reduction value can be secured through establishing effective controls on demolition of certain buildings.</p>	None

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				compliance with the load reduction requirements since acceptable control measures are not established.	<p>The scale of load reductions required in this permit is based on estimated load reductions achieved through pilot testing in the previous permit term and the expectation of modest increases of effort compared to last permit term.</p> <p>Regarding the comment about the permit not establishing acceptable control measures, please see the response to San Mateo County #7.1.</p>	
San Mateo Co.	7.3	C.12.a	General, achieving load reductions	<p>The County is aware of approximately 222 urban and/or nonurban storm drain sediment samples that have been collected during numerous investigations county-wide between 2007 and 2015. Of this data, less than 10 percent (only 20 samples) of data exceeded one part per million (ppm) and the average and median concentrations are 0.979 ppm and 0.079 ppm, respectively. Within unincorporated San Mateo County, only 13 sample points exist and none of the data exceeds one ppm. The average and median concentrations in unincorporated San Mateo County are 0.138 and 0.056 ppm, respectively. On the whole, the vast majority of data is low in concentration and may be difficult</p>	<p>Please see response to San Mateo Co. #7.2. The County is required to remove just 370 grams of PCBs per year by the end of the permit term. Approximately 2/3 of this could come from strong efforts to deal with building demolitions so that PCBs from these activities do not discharge into storm drains. This leaves a little more than 120 grams per year for the County. We anticipate that if San Mateo County implements control measures in the contaminated areas currently known and those discovered through the permit term, accounts for the load reductions through measures such as trash control, and accounts for the load reductions achieved through implementation of green infrastructure and other redevelopment-related treatment, then achieving these additional 120+ grams per year of load reduction will be feasible.</p>	None

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				to capture outside of the target areas.		
San Mateo Co.	7.4	C.12.a	Need more time	Development and implementation of control measures will require additional data, which takes considerable time. As part of the sample collection, monitoring performed in San Mateo County consists of samples that were collected in February 2015. The anticipated publication date of the report for that monitoring event is September 2015. Accounting for planning and work plan preparation, nearly a year was needed to conduct the latest round of monitoring, underscoring the need for additional time to effectively collect and evaluate data.	The requirements for information in C.12.a.iii(1) and (2) must be fulfilled early in the permit term to demonstrate that sufficient actions will be taken to achieve the required load reductions. If additional locations for implementation come to light after that 2016 Annual Report, Permittees may update the information in subsequent annual reports. The reporting deadline for reporting on management areas has been extended to the 2016 Annual Report.	Extend due date for list of watersheds/m management areas
San Mateo Co.	7.5	C.12.a	PCBs target areas	Significant PCB target areas need to be identified prior to implementing control measures in order to manage public resources effectively. The County is concerned about committing resources for load reduction without first identifying verifiable target areas, which may result in irresponsible expenditure of resources that do not contribute to improving the Bay. Sufficient data is critical to assigning	This comment covers the same issues as other San Mateo Co. comments. Please see the responses to San Mateo County comments #7.1 - #7.4.	None

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				<p>priority, funding, and jurisdictional obligation to specific cleanup/load reduction efforts. Attempting to reduce discharges from widespread areas of very low level PCBs will likely be difficult to capture, and is not anticipated to mitigate or offset the more significant PCB contamination existing in the Bay.</p>		
Palo Alto	3	C.11 and C.12	Attaining load reductions	<p>The attainability of load reduction requirements for PCBs and mercury are based on a number of assumptions regarding the controllability of these pollutants. However, these assumptions are highly uncertain and many are not within the City's control. For example, the City is in the process of determining whether properties with high levels of PCBs exist, and hot spots are difficult to find and these pollutants are generally dispersed. Additionally, the City does not control the rate of redevelopment that may create the green infrastructure opportunities on private property. Lack of control with the rate at which controls are implemented on private property is a significant concern and does not provide us</p>	<p>We disagree with the level of uncertainty expressed in this comment. The load reduction requirements were based on estimates of load reductions reported by Permittees in the December 2014 Integrated Monitoring Report with the expectation of increased levels of effort during this permit term.</p> <p>Regarding the fact that the City is in the process of determining whether properties with high PCBs exist, please see the response to San Mateo Co. #7.4.</p> <p>Regarding the lack of control over the pace of redevelopment as it relates to requirements for load reductions from green infrastructure implementation, please see the response to ACCWP Legal #5A.</p> <p>On the general topic of a clear path to</p>	None

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				with a clear path to compliance with the permit.	compliance, please see the response to San Jose #14 and Belmont #6.	
Palo Alto	5	C11 and C12	Compliance	<p>Permittees need to have realistic time frames and a higher level of certainty that sincere efforts to make a difference, which may fall short of achieving the load reduction goals in the Tentative Order, will not put their agency in a compliance limbo. The currently proposed requirements based on load reduction performance criteria create a high level of uncertainty as to whether the City will be deemed in compliance with the permit, regardless of the level of effort put into the control of these legacy pollutants. Compliance should be based upon implementing control programs designed to achieve load reduction action levels within realistic timeframes rather than achieving specific load reductions.</p>	<p>The PCBs TMDL calls for load reductions from urban runoff of approximately 18 kg/yr by the year 2030. Since the TMDL was adopted five years ago, perhaps a little more than 1 kg/yr has been achieved. This permit requires that an additional 3 kg/yr of load reduction is achieved by the end of the permit term. These are very modest requirements given the scale of reductions necessary to achieve the TMDL. Permittees appear to have done very little planning for greater control measure implementation in advance of this permit term despite encouragement to do so by Water Board staff.</p> <p>Please see also the responses to San Mateo County #8.</p>	None
Clayton Concord Danville El Cerrito Hercules Lafayette Martinez Orinda	27 10 11 17 8 11 13 8	C.12.f	Development of demolition program should be compliance	<p>MRP 2.0 provides no clear path for Permittees to avoid noncompliance. Some examples include: A major means of achieving PCBs reductions is through removal of PCBs during building demolitions. However this Order</p>	<p>Please see responses to Brentwood #2 regarding control over demolitions and to Brentwood #3 regarding the Commenters' preference for a control program, rather than applying controls.</p>	None

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Pinole San Pablo San Ramon Walnut Creek	3 5 14 8			fails to acknowledge that Permittees have no control over when properties redevelop. Development of a program to control PCBs during demolitions should represent compliance with this requirement, rather than applying controls to a specified number of buildings demolished.		
Clayton Concord Danville El Cerrito Hercules Lafayette Martinez Orinda San Pablo San Ramon Walnut Creek Pinole CCCWP	29 12 12 18 9 12 15 9 7 15 9 5 80	C.12	Abatement Program	The Tentative Order includes (in the Fact Sheet) an incomplete method to achieve stipulated reduction credits for each building demolished with PCB controls, for each redeveloped site with new bio-retention facilities, and for finding and abating concentrated sources of PCBs. Looking for hidden PCB sources is a good idea, but Permittees cannot guarantee it will find them and be able to abate them. We ask that development of a program to systematically identify and review potential sources, and refer them to appropriate agencies for abatement, become the basis for credit toward compliance.	In response to this comment, we have finalized the accounting method for PCB loads reduction. We disagree with the concept of loads reduction value for a PCB site referral program. The Tentative Order does not intend to encourage Permittees to look for PCB referral properties to such an extent that significant resources are expended with a result of zero load reduction. Load reduction value must have a closer connection to control actually being put in place to reduce loads of PCBs. For property referrals, some load reduction value can be applied when the property is referred provided that control measures are put in place to address the PCBs that may have migrated off site prior to referral. The Fact Sheet describes the way in which load reduction value will be derived associated with referral of contaminated sites.	The Fact Sheet has been revised to include more mercury and PCBs load reduction accounting factors.

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Clayton Concord Danville El Cerrito Hercules Lafayette Martinez Orinda Pinole San Pablo San Ramon Danville	30 13 13 19 10 13 16 10 6 8 16 13	C.12	Accounting program timeline	The draft Tentative Order allows only four (4) months after Permit adoption for Permittees to submit a more complete "measurement and estimation methodology and rationale" for stipulating PCB reduction credits. We ask that BASMAA's PCBs programs accounting methodology be finalized, incorporated into the Permit, and then used to calculate PCBs load reductions during Permittee annual reporting.	See response to Brentwood #5.	None
Clayton Concord Danville Hercules Lafayette San Ramon Dublin El Cerrito	17 5 2 4 4 4 20 3	C.12.f	Funding for building materials program	The program to manage PCB-containing structures during demolition is a major new mandate & will require a significant, sustained effort to implement, absent any new or additional funding source. The most effective programs would be consistent either region wide or state wide and would be modeled after existing effective programs such as asbestos or lead abatement. We are requesting that the Board consider implementation of a regional or state program administered by the state where municipalities require contractors to provide appropriate	Regarding this requirement comprising a new mandate, please see the response to SCVURPPP Legal #7G. Regarding the Commenters' preference for a region- or state-wide program, please see Belmont #36.	None

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				documentation that they have filed with the state prior to the issuance and closure of demolition permits;		
Hayward	14	C.12.f	Building demolition program	The City has no control over when and where demolition projects occur and limited oversight over the environmental evaluations in regards to these projects. Creating a comprehensive PCB-containing building program is going to require working with state and federal agencies. The City cannot be the lead agency for creating a federal or state PCB program for demolition. A comprehensive program analogous to current programs for asbestos and lead-based paint will likely take much longer than three years to create. The City needs more time to collaborate within the Alameda County-Wide Clean Water Program collectively to work with the state and federal agencies to regulate demolition projects.	<p>On the topic of control over where and when demolition occurs, please see the response to Brentwood #2. The Water Board does not expect Permittees to exert control over the pace of demolitions and redevelopment, merely to ensure that proper practices are in place to stop the migration of PCB-contaminated sediment into storm drains when such demolitions occur.</p> <p>The Water Board is not asking Permittees to be the lead agency for creating a federal or state program. We are requiring you to create a locally administered program. See also the response to Clayton #17.</p> <p>Regarding the 3-year timeframe, please see the response to Berkeley #14.</p>	None
Moraga	7	C.11 and C.12	Green infrastructure installation	To achieve its share of the County's load reduction based on population and land-use mass yields of PCBs in the Fact Sheet, the Town would need to install GI to treat runoff from approximately	The load reduction value can come both from the public and private implementation of green infrastructure treatment controls, including those associated with private redevelopment. The requirement is not for any particular	None

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				10 acres in the last three years of the permit. This amount of green infrastructure would be cost-prohibitive and of limited benefit in reducing PCB loads in a suburban-rural town with no industry.	Permittee to install such treatment only on public property.	
Moraga	8	C.12	Small cities with few opportunities	While other municipalities in the County with high potential PCB source properties may achieve higher rates of PCB reduction and reduce the burden on municipalities with low PCB source properties such as Moraga, there is no guarantee.	We concur that some municipalities will have more obvious PCB reduction opportunities. The Tentative Order is structured such that each Permittee tries to do its part and address the sources it can control. Permit compliance is structured in such a way that all Permittees will be in compliance if the overall (region-wide) load reduction requirements are met. Counties may also be found in compliance if the county-wide share of the regional total is met. It is only when both the region-wide share and county-wide load reductions are not met that the Water Board would compare the performance of each municipality to the Permittee-specific reduction requirements.	None
Oakland	11	C.12.a	Compliance based on control measures	Compliance with PCB Load Reduction should be based on Implementation of Specified Control Measures (C.12.a) As noted by Regional Board staff and Board members, the permit's numeric PCB reductions are	In partial response to this comment, we finalized the Fact Sheet's PCB load reduction accounting method (see Brentwood Comment No. 5). In response to the comment regarding implementation of PCBs control measures: This is problematic relative	Revised Fact Sheet to include more mercury and PCBs load reduction accounting

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				based on uncertain, assumed load reductions for specific control measures which have not been sufficiently verified. Most of the BMPs evaluated during MRP 1 that were thought to achieve significant load reductions, such as enhanced street sweeping and drop inlet cleaning, and diversion of stormwater flows to sanitary sewers, turned out to have very limited load reduction benefits	to judging the sufficiency of actions. Please see the response to Brentwood #6. Staff notes that Board members explicitly stated in subcommittee report that there was adequate information in the Fact Sheet with which to calculate load reduction value for various types of control measures. We disagree with the summary of MRP 1.0 studies. There are control measures available (many evaluated during the previous permit term) that can result in significant PCBs load reductions if implemented aggressively. Please see the response to ACCWP Legal #5A.	factors.
Orinda Clayton Clayton	3 15 18	C.12.f	No buildings that contain high concentrations of PCBs	This municipality does not have any potentially high PCB-containing material properties. This requirement will significantly increase administrative costs and group costs associated with monitoring and abatement for cities such as the City of Orinda where PCB-containing properties are less prevalent. Provide a "safe harbor" from per capita allocation for those Permittees that do not have structures subject to the PCB proposed regulation.	In response to this and similar comments, we added language to the Tentative Order stating that municipalities that provide evidence acceptable to the Executive Officer that no non-single-family-residential property developments pre-date 1980 are exempt from this requirement.	Added language to the Tentative Order stating that Permittees that provide evidence acceptable to the Executive Officer that no non-single-family-residential property developments pre-date 1980

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						are exempt from this requirement.
Clayton	16	C.12	Building materials	During demolition, PCBs should be handled as the Bay Area Air Quality Management District Board has done with asbestos & lead. State regulations require permits for demolition to ensure materials are properly disposed. The applicant provides the estimated amount of materials to be removed and how and where to be removed. The Air District collects fees to cover review and staff time, etc. The issued permits are then submitted to the local building permitting authority as part of the demolition application. Local building departments aren't equipped to identify and monitor such aspects of PCB. Further, many city data bases do not exist pre-1970s; prior information must be culled through research of old paper or microfiche records, field research, and interviews. The time frame stipulated in the proposed Permit provides only four (4) months to create such a plan? Modify the time frame for PCB Reduction Plan related to demolitions to be submitted no	Comment noted. Please also see the responses to Hayward #14 and Clayton #15. The Tentative Order provides over three years, not 4 months as stated by the Commenter, to develop the program to address this source of PCBs.	None

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				sooner than with the Annual Report in September 2019.		
U.S. EPA	2	C.11/12	Include TMDL milestones	EPA supports the Water Board's inclusion of specific numeric mercury -and PCB milestones and deadlines within this permit cycle. We recognize these pollutant specific values are interim milestones to achieve step-wise progress in this permit as well as to measure progress towards attaining the final TMDL wasteload allocations (mercury in 2028 and PCBs in 2030) which are included for reference in this permit. This is consistent with EPA guidance (2014) that MS4 permits implement WLAs as either numeric effluent limits or clear, specific, and measurable milestones for assessing required pollutant load reductions.	Comment noted.	None
Berkeley ACCWP	2 1	C.12.a	Remove performance criteria	The 0.5 kg/yr and 3.0 kg/yr PCB load reduction performance criteria should be removed. There is no certainty regarding the ability of best management practices (BMPs) to meet the proposed load reduction performance criteria. The Fact Sheet acknowledges that achievement of the performance criteria is speculative at this stage	Please see the responses to ACCWP Legal #5A, SCVURPPP Legal #7B, and Brentwood #6.	None

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				<p>of load reduction methodology, and describes a default approach to estimating load reductions resulting from foreseeable control measures implemented during the permit term. Most BMPs evaluated during MRP 1 that were thought to have promise turned out to have very limited load reduction benefits. For example, it was thought that enhanced street sweeping and drop inlet cleaning, and diversion of stormwater flows to sanitary sewers, would be able to achieve significant reductions in PCB loads. Further study during MRP 1 has determined that this is not the case.</p>		
Berkeley	3	C.12.a	General	<p>Only two BMPs currently appear to have potential to significantly reduce PCB loads: source property identification and remediation, and managing PCB containing waste during building demolition. However, lack of reliable data and Permittees' inability to control all aspects of implementation mean there is no certainty that the stipulated load reductions could be achieved.</p>	<p>We do not concur that only two control measures have potential to reduce PCBs loads. Depending on the circumstances and nature of the contaminated management areas, a variety of control measures may be effective at removing PCBs or preventing their transport to receiving waters.</p> <p>In partial response to this comment, we have explained in the Fact Sheet the load reduction value that would be granted for both of the control measures</p>	<p>The Fact Sheet has been revised to include more mercury and PCBs load reduction accounting factors.</p>

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					mentioned in the comment. Load reduction value is available at the time of referral of contaminated properties provided that Permittees effectively address contamination that has migrated from referred properties. Substantial load reduction value is available if Permittees ensure that demolition of buildings does not result in migration of PCBs-contaminated sediment into storm drains. Permittees do have the authority to ensure that such controls are put in place.	
Berkeley ACCWP	4 2	C.12.a	Referred properties – accounting for load reductions	Source Property Identification and Remediation: Through previous investigations, Permittees have identified several sites in old industrial areas with significant PCB contamination. Based upon this finding, we are currently conducting a screening of all old industrial parcels throughout the County, and conducting PCB analysis of sediment adjacent to the sites that appear to have the highest likelihood of being a PCB source property. Through this process we may find some sites that are significant sources of PCBs. However, the number of sites will probably be relatively low, and it will be difficult or	The Fact Sheet already contains an explanation of the load reduction value available for referred properties. It is not necessary to go through the exercise of estimating the load because an accounting method is already available for this purpose.	None

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				impossible to develop an accurate estimate of the annual load of PCBs from these sites in advance of their investigation and remediation under the direction of appropriate state and federal agencies.		
Berkeley ACCWP	5 3	C.12.a	Building demolitions – uncertainty	There is very little published data, a wide range of estimates that rely on personal judgment for key assumptions, and no studies of PCBs released from building demolition to storm water runoff. Developing an accurate estimate within several months (April 2016) or even several years is infeasible given the wide variation from site to site in the mass of PCB containing hazardous waste, the concentration of PCBs, the types of waste, the type and size of structure, the control BMPs implemented, and the type of demolition. The proposed 3 kg/yr load reduction relies heavily on the assumed load reduction from managing building demolition waste. This assumption is unfounded and cannot form the basis for a regulatory PCB load reduction requirement.	In response to this and similar comments, we edited the Fact Sheet to state the amount of PCB load reduction value available if controls are put in place on such buildings. This estimate is based on the data available currently on the amount of PCBs in these buildings and other local factors. It is not necessary for Permittees to develop an estimate for this quantity as suggested in the comment.	The Fact Sheet has been revised to include more mercury and PCBs load reduction accounting factors.
Berkeley	6	C.12.a	Permittee-	The Draft Permit states that	In partial response to this and similar	Clarified that

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ACCWP	4-7		specific load reductions	Permittees need to develop an allocation scheme or the default will be by population. Neither option is feasible. There are several problems with developing an alternative load allocation among Permittees in addition to the unrealistic timeframe (i.e., April 2016): (1) There is no legally binding mechanism to reallocate loads; and (2) Permittees whose allocation would rise under an alternative allocation could not agree to a higher allocation and put their jurisdiction in jeopardy of non-compliance when there is no certainty regarding meeting the target. A population-based allocation is not feasible as some of our newer cities (e.g., Dublin, Pleasanton, Livermore, Fremont) have relatively large populations and very little old industrial or old urban (pre-1980) development and therefore, very little opportunity for PCB reduction credit through either building demolition (C.12.f) or Green Infrastructure implementation (C.12.c).	<p>comments, we clarified the default Permittee-specific load reduction requirement, based on population, will be used. The wasteload allocations for counties from the PCBs TMDL were based on population so the Permittee-specific allocation are consistent with this approach.</p> <p>Permittees have the option, but not the obligation, to develop an alternative method of distributing the county load reduction requirements to individual cities.</p> <p>The deadline for submittal of this optional scheme has been moved to the 2016 Annual Report.</p> <p>The commenter has criticized the population-based approach. Permittees may propose alternatives for distributing the county load reductions to individual cities.</p>	<p>the county-specific load reduction scheme will be used unless Permittees take the option to develop an alternative</p> <p>Extend due date for submittal of alternate, optional scheme for computing Permittee-specific load reductions.</p>
Berkeley Oakland	7 13	C.12.a	Load reductions not	PCB load reductions are not required by the PCB TMDL. The	We disagree with the commenters' reading of the PCBs TMDL, which	None

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ACCWP	8		required	TMDL Implementation Plan states that PCB reductions should be evaluated after 10 years (i.e., 2020). In 2020, after MRP 2 requirements have been completed, we will have a much better understanding of what can be achieved and through which combination of control measures and will have provided updates to the initial load estimation methodologies. Load reduction targets could then be set at that time.	<p>states that loads from urban runoff to the Bay must be reduced from about 20 kg/yr to 2 kg/yr by 2030. This is the same thing as saying that loads from this source category must be reduced by 18 kg/yr. Therefore, the TMDL does require load reductions.</p> <p>The TMDL implementation plan describes the circumstances and conditions that must be met for the Water Board to consider modifying the TMDL. For example, the Water Board will not be in a position to evaluate how to proceed with modifying TMDL requirements until all feasible control measures are put in place and an estimate of what additional control measures may be necessary to achieve the TMDL is performed. That is why it is crucial for Permittees to implement thoroughly all available control measures during this permit term.</p> <p>The Fact Sheet explains the conditions stated in the TMDL implementation plan regarding possible future TMDL modification, and the permit is consistent with the TMDL implementation plan.</p>	
ACCWP	9	C.12.a	Path to compliance	The permit needs to provide Permittees with a clear and feasible path to achieving	Regarding replacing load reductions with PCB control programs, please see response to Berkeley No. 8/ACCWP	None

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				compliance based on implementation of PCB control programs described in C.12 that can realistically be planned and completed during the permit term. Therefore, the load reduction targets should be removed, especially the 0.5 kg/yr criterion for the second year of the permit, which is unnecessary and burdensome.	No. 7 above. On the topic of the path to compliance, please see the responses to ACCWP Legal #5A and #5B, Brentwood #2 and #6, Belmont #27-28, and the Fact Sheet related to Provision C.12.	
Berkeley ACCWP	9 10	C.12	State reductions as action levels	If the 3.0 kg/yr performance criterion for the permit term is retained, it should be explicitly stated in the form of an action level to avoid any confusion between the permit's performance metrics and effluent limits; clarifying this legal definition has important implications for enforcement and the risk of potential third party lawsuits. Also, the Permit Fact Sheet should fully describe the default interim accounting method for all of the proposed PCB control measures.	On the topic of action levels, please see the responses to ACCWP Legal #5B and SCVURPPP Legal #7B. On the topic of the accounting system in the Fact Sheet, please see the response to Brentwood #5.	None
Berkeley ACCWP	10 11, 12	C.12.b	Accounting system	Provision C.12.b: Revise documentation approach for interim load estimation methodology, if submittal is required allow at least twelve months after the permit adoption,	More time has been allowed for the documentation of the methods to be used for load estimation methodology. The Fact Sheet contains factors associated with estimating load reduction values for foreseeable control	Changed the due date for additional load reduction accounting method

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				<p>especially if documentation of load estimation methodology is required.</p> <p>The Permit notes that the "full description of measurement and estimation methodology" required in this provision is intended as a documented version of the default interim method in the Fact Sheet, applicable to this permit term. In conjunction with the above requested changes in C.12.a, this submittal should be deleted as unnecessary, since a description of a permanent method will be provided before the end of the permit per Provision C.12.b.iii(3). If numeric load reduction targets are retained, the Fact Sheet should document all of the parameters and assumptions involved in this method, which BASMAA representatives provided to Water Board staff in summary form.</p>	<p>measures but does not contain all of the details for how Permittees will use available information to compute load reductions (data sources, assumptions, etc.). The Water Board will review these details early in the permit term before they are used by Permittees in reporting load reductions.</p> <p>It is not appropriate to allow 12 months after adoption because the Water Board needs to see the methods prior to Permittees using the methods to estimate loads for the first annual report.</p> <p>The permit allows Permittees to adjust the accounting system and load reduction calculations for future permit terms, and that deliverable is scheduled for later in the permit term. However, that is a separate matter and does not obviate the need for the information required under C.12.b.iii(1) and (2).</p>	documentation
Berkeley ACCWP	11 13	C.12.f	Building demolition	Permittees are willing to partner with other agencies in this effort but cannot be the leads for implementing necessary upgrades or interpretations to federal and state PCB	Please see the response to Clayton #16.	None

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				<p>regulations. The Draft Permit recognizes that working with state and federal agencies is necessary to create a coordinated program for management of PCB-containing building materials, like those successfully implemented for asbestos or lead-based paint. ACCWP Permittees and other municipalities collaborated with the San Francisco Estuary Partnership's PCBs in Caulk Project, which identified gaps in existing information and regulatory approaches to PCBs in existing buildings. Permittees can encourage proponents of demolition projects to abate PCB containing materials in accordance with existing regulations but cannot pre-empt or anticipate future federal and state regulations.</p>		
Berkeley ACCWP	12 14	C.12	Property referrals	<p>Discussions with Water Board staff indicate that USEPA Region 9 contacts overseeing PCB clean-ups will not commit to timely review or response of proposed abatement plans for projects with PCB-containing building materials, if Permittees were to require documentation of</p>	<p>The permit Fact Sheet clearly explains the manner in which load reduction values can be calculated for referred properties and how some value can be applied at the time of referral if contamination is dealt with that has migrated off-site. None of this is dependent upon the USEPA Region 9 review referenced in the comment.</p>	None

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				abatement plan submittal to USEPA prior to issuing demolition permits. Such uncertainty would expose the projects to highly uncertain time and cost impacts.		
Berkeley ACCWP	13 15	C.12	Load reductions lack clarity	The Fact Sheet lacks clarity regarding the default assumptions used to estimate potential load reductions associated with this provision, which are subject to especially large uncertainties due to lack of published data on release to runoff of PCBs in building materials or from demolition activities. USEPA has not shared results of recent clean-ups or research which would inform updated guidance and best practices, nor made any statements on whether demolition activities will be addressed in its PCB rulemaking process (originally announced in 2010).	There may be a lack of published studies on the exact rate at which PCBs in building materials get into stormwater runoff, but we do know that PCBs do discharge into storm sewers. That is one reason why the PCBs load reduction accounting method provides a significant 2 kg/yr value for the development of a protocol to manage PCBs in building demolition so that they do not discharge into storm sewers and waters of the U.S.	None
ACCWP	15	C.12.f	Building demolition program	Permit language should recognize that a truly comprehensive framework will take longer than 3 years and that Permittees have no control over the participation or action timelines of federal, state or regional agencies.	See the response to Berkeley No. 14.	None

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Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
Contra Costa County	17	C.12	Industrial Properties	Very few "Old Industrial" properties have the potential to discharge PCB-tainted sediment in unincorporated Contra Costa County. Unincorporated Contra Costa County has over 1,000 properties with land use designation, or zoning, for industrial uses between 1945 and 1980 (the period when PCBs were used). After removing those properties that had been capped with impervious surfaces, redeveloped into other uses, or visually assessed and deemed unlikely to potentially discharge sediment, there were less than 20 properties available to sample for PCBs. Consultants took sediment samples from road rights of way adjacent to these properties, which are currently being analyzed by a local lab. But the small number of sites which could potentially produce PCBs entering into the MS4 brings into question the potential benefits of targeting illicit discharge from old industrial properties.	This comment appears to say that a small PCBs load reduction is likely from property referrals. We acknowledge the efforts made to date to identify historic PCB-containing properties and notes that referrals are one of several options currently being considered for PCBs load reduction.	None
Contra Costa County	18	C.12	Load reduction challenge	The County will pursue a three-prong path to achieve Mercury and PCB reductions. 1 st , stop PCB-tainted sediment from	Comment noted. We reiterate that the Water Board will take appropriate actions if sites are referred to us. The remedies may include a variety of	None

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				entering the storm drain & local receiving waters, will require substantial assistance from the Water Board. County staff are committed to investigating and using enforcement response plan to require property owners to implement sediment controls to keep PCB-tainted sediment on-site. It will utilize County ordinances to issue fines, if necessary. But municipal fines pale in comparison to administrative civil liabilities issued by the Regional Board. The County anticipates requesting assistance from the Regional Board, and strongly encourages the Regional Board to have adequate staff resources to assist the County and other PCB-challenged communities.	enforcement actions, but staff cannot anticipate the outcome of any particular case since it is the Water Board that decides on a case-by-case basis.	
Contra Costa County	19	C.12	General	The County will also implement enhanced operations to keep County roads free of PCB-tainted sediment. Unfortunately, the majority of roads adjacent to properties that have high potential for PCBs from old industry do not have curb, gutter, or storm drains. This will make enhanced municipal operations, like street sweeping and storm	Comment noted. We concur that this is a good application for green infrastructure.	None

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				drain inlet cleaning, ineffective. The County will prioritize these areas for early implementation of the Green Infrastructure Plan.		
Contra Costa County	20	C.12	Referrals	We suspect that the greatest source of industrial legacy PCBs lies in railroad rights of way and areas associated with electrical utilities. The County intends to sample road rights of way adjacent to many of these land uses. If these areas have PCB-tainted sediment, the County has no authority to implement its Enforcement Response Plan to require the property owner to abate discharge of tainted sediment. Contra Costa County will rely on the authority of the Regional Board to take enforcement action. It was disheartening at the June 8, 2015 hearing to hear testimony from the City of Oakland indicating that two years after referring specific properties to the Regional Board, staff had yet to act in tangible ways. The County and other municipalities will need the Water Board to take action quickly against any property owners against whom the municipality has no authority, in order to	Comment noted. We reiterate that the Water Board will take appropriate actions if sites are referred to us. See also the response to Berkeley #12.	None

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				achieve the mandated Mercury and PCB reductions in stormwater.		
Contra Costa County	21	C.12.f	Building demolitions	Achieving significant PCB reductions during building demolitions during building demolitions will rely on early and sustained opportunities during the next MRP permit term. However, permittees will have no control over timing of when properties redevelop. Furthermore, a program of this nature, with such widespread impacts, should be implemented by the State, in a manner similar to the asbestos abatement program.	On the topic of control over timing of redevelopment, please see the response to Brentwood #2. On the request that the program be implemented by the State, please see the response to SCVURPPP Legal #7G.	None
Contra Costa County	22	C.12.f	Building demolition	Additionally, it is unclear how much benefit will be gained by containing PCB-laden dust during demolition. The County supports developing a state-wide program to abate dust during demolition of potentially PCB laden buildings, but County Watershed Staff are concerned there may not be enough opportunity or accountability to successfully remove significant levels of PCBs to assist in achieving mandated reductions.	The Fact Sheet explains the load reduction value that will be applied for ensuring that these control measures are in place at applicable buildings. Please also see the responses to Belmont #36 and Contra Costa #21.	None
Contra Costa	24	C.11 and	Not feasible	Because of limited opportunities	Please see the responses to ACCWP	None

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		C.12	to comply	to abate sediment from entering local waterways, the limited capabilities to implement a program to abate caulk in demolished buildings, and the extraordinary challenges to plan and implement Green Infrastructure, Contra Costa County believes the numeric PCB and Mercury requirements are not feasible.	Legal #5A and Contra Costa County #17.	
Clayton	3	C.12	Delay PCBs actions	Additional efforts are needed by most all cities to continue to implement the Trash Reduction requirements. These efforts have just commenced and going forward will undoubtedly consume more staff resources and funds. In addition to the ramp-up of the Trash Reduction implementation, two (2) new requirements will push the need for more staffing and funds: Green Infrastructure, and PCB Reduction. The City of Clayton asks for prioritization, as suggested below. There is not an ability to achieve all the proposed requirements in the time frames identified with the lack of new funds or staffing. The Green Infrastructure and PCB plans need to be moved in	We do not agree that there is an option to delay PCBs load reduction actions. The PCBs TMDL requires significant load reductions from urban runoff by the year 2030. The control measures that Permittees need to implement will need to start immediately and be sustained if the wasteload allocations will be achieved	None

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				their start and implementation to later time periods so that cities can continue to focus on the Trash Reduction implementation.		
Emeryville	4	C.12	Permittee-specific load reductions	As currently written, there is no mechanism by which a Permittee can know its "share" of the regional PCB reduction requirement. The numeric load reduction requirements are premature in the face of so many unknowns regarding the quantity of PCBs in the environment and the effectiveness of various BMPs in preventing their discharge into receiving waters. Numeric load reduction targets should be removed in favor of the implementation of BMPs and continued research that will allow more quantification.	<p>Please see the response to ACCWP Legal #4.</p> <p>Regarding the commenter's suggestion that numeric load reduction targets should be removed in favor of implementation of BMPs, please see the response to Berkeley 8/ACCWP 7.</p> <p>The Fact Sheet does describe the load reduction value that will be granted for a variety of control measures so Permittees may estimate in advance the scale of efforts required to achieve the required load reductions.</p>	None
Fremont	1	C.12	Feasibility	The City is concerned about the feasibility of meeting the PCB load reduction performance criteria with best management practices (BMPs) and believes the default allocation scheme is unreasonable. We agree with the detailed comments submitted by the Alameda Countywide Clean Water Program on this provision, but will not repeat them in this letter.	<p>On the topic of meeting load reduction requirements, please see the responses to ACCWP Legal #5A and Contra Costa County #17.</p> <p>We assume that the commenter is referring to the method of allocating load reduction responsibility to individual Permittees. Please see the response to ACCWP Legal #4.</p>	None

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Hayward	1	C.12	Feasibility	The MRP 2.0 does not provide a clear, feasible pathway to attain compliance with load reduction requirements. Specially, no feasible activities or best management practices have been described in MRP 2.0 to show how the City can attain compliance. This leaves the City on uncertain ground regarding how to proceed to plan and implement programs for the near future. With this uncertainty, the MRP 2.0, in its current term, may cause the City to begin programs that will ultimately not lead to achieving compliance with the permit. Overall, the schedule proposed for new and current load reductions is infeasible and should allow more time for development, surveying, allocation, and collaborations to meet those reductions.	On the topic of meeting load reduction requirements, please see the responses to ACCWP Legal #5A and Contra Costa County #17. On the topic of allowing more time, please see the response to Clayton #3.	None
Hayward	12	C.12.a	Feasibility	The requirements have no clear feasible pathway to attain compliance. The requirement for 0.5kg/yr and 3kg/yr reduction should be removed as there is no feasible way the City can achieve those goals. Development and redevelopment within the City is not focused on PCB reduction	On the topic of meeting load reduction requirements, please see the responses to ACCWP Legal #5A and Contra Costa County #17. Permittees may achieve PCBs load reductions in several other ways than by waiting passively for development and redevelopment to occur. Please	None

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				nor to a large extent planned, as the City has no control of when or where private developments occur.	see response to Contra Costa #17.	
Hayward	13	C.12.b	More time	The PCB requirements do not allow a sufficient amount of time to study, quantify or report locations of PCB sites, the City's contribution of PCBs, control measures planned or implemented, and the time to develop assessment methodology much less implement that methodology to assess if control measures are achieving PCB reduction. More time should be allowed to study environmental benefits with possible PCB reducing control methods available to achieve PCB reduction.	The commenter has possibly misunderstood the purpose of C.12.b and the effort required. The Fact Sheet contains the default accounting system by which load reduction value can be obtained for various control measures. There is no need to submit more information about this. C.12.b requires documentation supporting the load reduction accounting scheme described in the Fact Sheet (e.g., support and derivation for the factors listed in the Fact Sheet). It also requires an explanation of exactly how Permittees will use available information to report load reductions according to the accounting scheme. And, the provision requires the yearly reporting of load reductions stemming from control measure implementation. Therefore, we do not see a basis for allowing more time for the fulfillment of the requirements under C.12.b.	None
Moraga	5	C.12	Path to compliance	We ask that the load reduction performance criteria not be the point of compliance, and that Water Board staff work with Permittees to provide a clear and feasible pathway to attain	On the topic of load reduction performance criteria as point of compliance, please see the response to Brentwood #6. On the topic of factors outside the	Added language to the Tentative Order stating that municipalities

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				<p>compliance. Most factors that are key to meeting the load reduction criteria are uncertain and many are not within Permittee control (e.g., extent of properties that will be found, building demolition rates, and redevelopment rates), making compliance uncertain. A major means of achieving reductions is through removal of PCBs during building demolitions. However the Town has no control over timing of when properties redevelop. Given historical trends, little to no redevelopment of commercial properties will likely occur in the permit term and the Town would likely need to rely on GI projects to meet its share of PCB load reductions. Based on field surveys conducted, the Town has identified no high or moderate potential source properties for PCB release to the municipal storm drain system.</p>	<p>commenter’s control for demolition and pace of redevelopment, please see the response to Brentwood #2.</p> <p>Regarding the scarcity of load reduction opportunities alleged in comment, please see response to Moraga #8.</p> <p>In response to the issue of having no structures with PCBs, we have added language to the Tentative Order stating that municipalities that provide evidence acceptable to the Executive Officer that no non-single-family-residential property developments pre-date 1980 are exempt from this requirement.</p>	<p>that provide evidence acceptable to the Executive Officer that no non-single-family-residential property developments pre-date 1980 are exempt from this requirement.</p>
Oakland SMCWPPP	14 71	C.12.a	Action Levels	<p>The Regional Board should modify the permit to require PCB reductions only within Permittees control and with known, quantified benefit. If the 3.0 kg/yr performance criterion for the permit term is retained, it should</p>	<p>On the topic of action levels, please see the responses to ACCWP Legal #5B and SCVURPPP Legal #7B.</p> <p>It is not possible to unambiguously define the “good faith” effort as suggested in the comment.</p>	None

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				<p>be explicitly stated in the form of an action level to avoid any confusion between the permit's performance metrics and effluent limits; clarifying this legal definition has important implications for enforcement. Alternatively, the permit should be revised to clarify that any Permittee showing good faith through implementation of specific actions (as determined by the Regional Board's Executive Officer) will be considered in compliance with the permit.</p>		
Oakland	15	C.12.b	<p>Need more time Extend Time Frame for Collecting, Documenting and Refining Load Reduction Estimates to April 1, 2017</p>	<p>Permittees will spend substantive time and resources to assess and verify reduction amounts for all pollution prevention and control measures. Specifically, the permit states: "develop, document, and implement assessment methodology and data collection program ... of any and all pollution prevention, source reduction, and treatment control efforts" and report by April 1, 2016 and then regularly throughout the permit term. Program implementation takes time as does the measurement and assessment of the results. In</p>	<p>Please see the response to Hayward #13.</p>	None

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				addition, Permittees will be coordinating within and between counties on assessment methods and the accuracy of these assessments is critical.		
Oakland	19	C.12.b	Streamline reporting	Permit requires annual reporting on the implementation and evaluation of trash and PCB control measures. We recommend a biennial reporting period (every other year) with a portion of the Permittees reporting each year. This would allow a more thorough assessment by the RWQCB and give Permittees more time to analyze and evaluate their control measures.	We acknowledge that reporting takes time and is generally open to suggestions for improvement of reporting content, such as the commenter provides. However, at this time, the Water Board's need to gauge the progress of control measure implementation and level of load reduction precludes biennial reporting.	None
Pittsburg	9	C.12.a	Need more guidance	Further guidance needs to be developed for this Provision to be implementable. Accounting and procedures to validate PCB reductions through mitigation measures have not yet been developed. Permittees have no control over the rate of demolition, and further guidance is necessary for effective implementation of the Green Infrastructure. The City respectfully proposes elimination of the numerical interim load reduction schedule, in favor of	In response to this and similar comments, Staff edited the Fact Sheet to clarify the PCBs load reduction accounting method. The commenter refers to the lack of accounting procedures for green infrastructure implementation and the control of PCBs from demolition activities. Please see the response to Brentwood #2. Regarding the interim load reduction requirements, please see the response to Berkeley #8.	Clarified the PCBs load reduction accounting method in Fact Sheet

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				the ultimate and more relevant goal of total reduction by the end of the permit term. This change will measure interim compliance by levels of effort expended rather than a numerical limit.		
Pleasant Hill	10	C.12	No control over compliance	The Tentative Order requires Permittees to achieve reductions in PCBs discharged to City storm drains. For the most part, this is accomplished by removal of PCBs, commonly found in insulating fluids (for transformers and capacitors), and caulking and sealants which are more prevalent in old industrial zones and abated during building demolition. In reality, Permittees have no control over when private property owners demolish these buildings.	There are a number of control measures that may be appropriate to implement. Please see the response to Belmont #27, 28. Permittees are also encouraged to look for the presence of PCBs-containing equipment as part of their industrial inspection program. Regarding the issue of controlling the pace of demolitions, please see also the response to Brentwood #2.	None
U.S.EPA	3	C.12.b	Support accounting framework	Specific to PCBs, we support the Water Board's proposed accounting framework provided in the factsheet. EPA believes the Permittees' experience with implementing BMPs for PCBs during MRP1.0 provides the lessons learned for continued efforts to install PCB control measures in Bay watersheds. This framework is straightforward and will be useful in evaluating	Comment noted. Staff appreciates the support for this provision.	None

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				compliance within this permit term. Furthermore, Permittees will be able to improve the accounting scheme during MRP 2.0.		
U.S.EPA	4	C.12.f	Support regional building demolition program	Regarding PCBs in building materials (caulk), we concur with Water Board's desire to pilot a locally controlled program, which can be developed for region-wide consistency for PCB removal during age-specific building demolition. We recognize this program will require coordination with other Federal and State agencies; however it need not be started as a state-wide program.	Comment noted. We appreciate the support for this provision.	None
U.S.EPA	5	C.12.f	EPA support for building demolition program	EPA Land Division is able to offer the Regional Board technical support in development of guidance documents in preparation for program implementation.	We appreciate this offer of technical support for program implementation. We look forward to partnering with U.S. EPA, local agencies, and Permittees to develop a successful approach to reducing this source of PCBs.	None
U.S.EPA	6	C.12.a	Support flexible approach to implementation	We reinforce the Water Board's approach to allow for flexibility in determining the various control measures to achieve PCBs milestones and recommend this approach be retained in the final permit.	We appreciate this support and have maintained the flexible approach. Please see also the response to ACCWP Legal #5A.	None
U.S.EPA	7	C.12	Support accounting	We also support the proposed accounting framework provided in	Comment noted.	None

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			scheme	the factsheet based on Permittees' success with several PCBs pilot projects during the current permit term, and likelihood of continued Permittee efforts,		
U.S.EPA	8	C.12	Milestones achievable	We support Water Board's staff analysis that these milestones are feasible attainable in the next permit cycle.	Comment noted. The analysis referred to in the comment can be found in the memo: <i>Basis for Required PCBs Load Reductions in MRP 2</i> , February 23, 2015).	None
U.S.EPA	9	C.12.f	Support for program to address PCBs in building materials	We also endorse the Water Board's evolving 'program' to minimize PCBs from entering urban runoff via age-specific building materials and concrete sealants. Given this is new permit provision, we acknowledge the Water Board will need time to develop this program, which includes (at minimum) demolition and retrofit protocols concurrent with inter-agency coordination and discussions with permittees on considerations of PCBs load reduction credits.	Comment noted.	None
ACCWP CCCWP	57 70	C.12	Clarify introductory paragraph	Clarify that per the PCB TMDL the aggregate load and waste load allocation for Permittees are 14.4 kg/yr and 1.6 kg/yr respectively.	We agree.	The introductory paragraph has been edited consistent with the commenter's

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						request.
ACCWP	58	C.12.a	Delete numeric limits	Delete Table 12.1 and text references to numerical load reduction targets, especially the 0.5 kg/yr criterion for 2 nd year of the permit. Numerical criteria remaining in this provision should be stated in the form of an action level. State that compliance will be determined based on implementation of control measures (if necessary these should be associated with the action levels per comments below).	On the topic of action levels, please see the responses to ACCWP Legal #5B and SCVURPPP Legal #7B. Regarding the interim load reduction requirements, please see the response to Berkeley #8. .	None
ACCWP	63	C.11/12.c, d	Green infrastructure issues	Delete provisions C.11/12.c or at minimum remove Tables 11.1 and 12.2. Otherwise, allow at least an additional 6 months after submittal of Green Infrastructure Plan for Permittees to prepare additional analyses and conduct peer review for the Green Infrastructure aspects of the TMDL implementation plan, and align timeframes for future projections with those required in the plan submittals for C.3.j.	Staff disagrees that deleting GI load reduction requirements is warranted (see response to Belmont #34). The request to align timeframes for future projections (C.12 and C.3 requirements) is reasonable and will be accommodated.	The future projection timeframes required in C.3 and C.12 will be harmonized.
ACCWP	64	C.12.f	Building demolition program	Consider using Water Board and USEPA authority to develop a single required PCB removal permit for applicable demolition or renovation projects analogous	Staff has considered the use of Water Board authorities and determined that Permittees' permitting authority for building construction/demolition is key as the point where controls will be put in	None

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Provision C.11 and C12. – Mercury and PCBs**

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				to the protocols used by the BAAQMD or DTSC for projects involving removal of asbestos or lead-based paint.	place. While the Water Board can contribute to development of the protocol, and USEPA has indicated it will provide some level of assistance, neither entity has direct authority to issue demolition permits for these activities. See also the response to SCVURPPP Legal #7G.	
ACCWP	65	C.12.f	Building demolition program	SFEP's PCBs in Caulk Project recommended that standardized cleanup plans would reduce the uncertainties facing applicants for demolition projects about time and cost required to comply with existing state and federal regulations regarding handling and disposal of PCB wastes. Development of standardized plans would require cooperation of USEPA staff and is not wholly in control of the Permittees. Revise the effective date of implementation to be set at a reasonable interval (e.g. 18-24 months) after USEPA approval of guidelines for standardized clean-up plans for the categories of projects to be affected.	We disagree that USEPA's approval of demolition PCB-containing waste is needed. USEPA has recently updated (Dec. 2012) its postings of such BMPs, which should provide demolition proponents adequate information. The Tentative Order provides three years to vet these BMPs while developing a local control protocol. When and if Permittees and/or the Water Board determine that additional BMPs, or enhancements of existing BMPs are needed, based on problems encountered in implemented a demolition PCBs control program, such work should be done at that time.	None
CCCWP	6, 71	C.12.a	Compliance	CCCWP requests MRP 2.0 base compliance on implementation of PCBs and Hg control programs designed to achieve the load reduction performance criteria	In response to this and similar comments, we edited the Fact Sheet to clarify that the PCBs load reduction accounting method is final.	The Fact Sheet has been revised to include more mercury

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				<p>using an a-priori agreed upon interim accounting method and to restate the load reduction performance criteria as action levels. Compliance assessments would be based upon the Permittees good-faith demonstration of actions and effort consistent with these control programs. This approach is warranted based on the level of uncertainty, recognized by your staff and the Permittees, in the available data, models and assumptions in the accounting methods. CCCWP recommends the inclusion of a statement in MRP 2.0 that acknowledges this, such as “If the PCBs load reduction performance criteria are not achieved, then Permittees shall demonstrate reasonable and demonstrable progress toward achieving the criteria through the implementation of the control programs.”</p>	<p>Regarding the suggested approach to require a “good faith demonstration of actions” and “reasonable and demonstrable progress toward achieving criteria ...”, see the response to Berkeley #8 and Berkeley #14.</p>	<p>and PCBs load reduction accounting factors.</p>
CCCWP	69	C.11/12	Timelines	<p>With the delay in the release of the Draft Tentative Order from February to May 2015, many of the required submittal and/or completion deadlines have not been appropriately extended, and as currently written would be</p>	<p>In response to this and similar comments, some deadlines for deliverables have been adjusted. See the response for CCCWP #8.</p>	<p>Some reporting dates are extended</p>

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				<p>extremely difficult, if not infeasible, to meet. For example: C.11.a.iii.(1) due February 2016; C.11.a.iii.(2) due with the June 2016 Annual Report; C.12.a.iii.(1) due Feb. 1, 2016; C.12.a.iii.(2) due with the 2016 Annual Report; and, C.12.a.ii.(4) due April 2016. Action desired: Extend the deadlines for these reports to the 2017 Annual Report and work with Permittees to establish more realistic time frames for submittal of reports and/or completion of certain tasks, including the Green Infrastructure Framework in Provision C.3.j.i.(1).</p>		
CCCWP	73	C.12.a	Interim load reductions	<p>The interim PCBs load reduction compliance performance criteria (i.e., 500 g/yr during 1st two yrs) should be omitted. Preliminary calculations of the benefit of reasonable control program scenarios over the first two years of the permit term reveals that meeting the year 1 and year 2 load reduction criteria are not feasible. Additionally, the PCBs load reduction performance criteria in Table 12.1 are unclear. Presumably, the proposed area-</p>	<p>We disagree that eliminating these interim load allocations is warranted and that the load reductions are not feasible. See the response to ACCWP #58. The Commenter does not provide the “preliminary calculations” cited in the comment. The required load reductions are meaningful and achievable (see memo: <i>Basis for Required PCBs Load Reductions in MRP 2</i>, February 23, 2015).</p> <p>Regarding the Fact Sheet, the Commenter has misunderstood material presented in the Fact Sheet as to how</p>	<p>Revised Interim load reductions to meet by June 30, 2018 rather than an average during first two years of permit.</p>

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				<p>wide load reduction performance criteria to be achieved by end of permit term is 3 kg/yr (as opposed to 10 kg/yr if one assumed that 0.5 kg/yr would be required in each of the first two years and 3 kg/yr would be required in each of the subsequent three years). Note that the Fact Sheet states the load reductions should be achieved “each year” (Fact Sheet, page A-98). This should be clarified by stating that 0.5 kg/yr is required at the end of year 2 (preferably this interim performance criterion should be removed) and that 3 kg/yr be achieved by the end of year 5. Action desired: Remove the PCBs load reduction performance criteria for the first two years of the permit term from this provision.</p>	<p>the load reduction requirements add up. As presented in the draft Tentative Order the load reductions of 0.5 kg/yr are required for each of the first two years but assessed as the average of years 1 and 2. Therefore, load reductions totaling 1 kg for the first two years would average to 0.5 kg/yr for each of those years. For years 3-5, Permittees must accomplish load reductions of 3 kg/yr for those years. Again, a total of 9 kg or reduction over those three years would average 3 kg/yr for those years. The commenter has confused total amounts with amounts per year based on the comment. Regardless, to account for the expected permit effective date of January 1, 2016, which is midway through the existing fiscal year, and to simplify the compliance evaluations, we have revised the requirement so the interim load reductions must be met by June 30, 2016 rather than as an average during the first two years of the permit.</p>	
CCCWP	75	C.12.a.iii.	Referrals reporting	<p>Permittees must report on contaminated sites referred to the Regional Water Board during the permit term in the 2016 Annual Report, although this is the first annual report of the permit term. Action desired: Replace “during the permit term” with “during the</p>	<p>We agree that the phrase “this permit term” is unclear. The intent is for Permittees to include a clear, up-to-date listing of all potential PCB-containing sites referred to the Water Board in the 2016 Annual Report.</p>	<p>Clarified that all referral properties identified to date shall be reported.</p>

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				previous year of the permit term” as this information will be updated each year per Provision C.12.a.iii.(3).		
CCCWP	79	Fact Sheet	Fact Sheet edit request	Revise Permit Fact Sheet to reflect the current state of scientific knowledge based on the RMP PCBs Synthesis Report and work to date on PCBs sources and control strategies. Revise the sentence on page A-94 above, or identify the uncertainties associated with achieving the performance criteria.	The suggested revisions to the Fact Sheet are not necessary or warranted, as they go beyond the information needed to support the Tentative Order. We disagree with the commenter’s interpretation of the Fact Sheet regarding the feasibility of achieving the load reduction performance criteria. The information submitted in the Integrated Monitoring Report was used in the development of the load reduction accounting scheme presented in the Fact Sheet as well as the estimates for achievable load reductions in the memo: <i>Basis for Required PCBs Load Reductions in MRP 2</i> , February 23, 2015. See also the response to SCVURPPP Legal #7A.	None
CCCWP	81	Fact Sheet	Request edits	The Permit Fact Sheet references many values from the Sources, Pathways, and Loadings Multi-Year Synthesis Report (McKee and Yee, 2015). As this is currently a draft report, the Permit Fact Sheet should be revised to reflect final edits to the report. Action Desired: Revise the Permit Fact Sheet to reflect final edits to the report.	The report (McKee and Yee, 2015) is still in draft form and is the only available version for citation at this time, but the passages cited are strongly supported and unlikely to change as the report is finalized.	None

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SMCWPPP	75	C.12.e	Request more time	SMCWPPP agrees that this potential source of PCBs should be evaluated. However, given the numerous tight schedules during the early part of the permit term, we request an extra year to collaborate with other Bay Area stormwater programs to complete this work. Recommended Solution: Change the reporting due date from the 2017 to the 2018 Annual Report.	We agree.	The due date for reporting on this monitoring is the 2018 Annual Report.
SCVURPPP SCVURPPP SMCWPPP	6, 7 66, 78 2, 6	C.12	Scale back PCBs provision	At the July 8, 2015 hearing, Board members acknowledged that given high costs and difficulties to address PCBs, trash controls should be given priority during the permit term. This is consistent with the State Water Board's message via the recently adopted trash amendments. Based on this direction, PCB requirements should be reduced and the implementation schedule expanded to allow Permittees to focus on trash during this permit term. Regional Board members also noted the general approach in the permit is to require implementation of BMPs, and that requirements should be predictable and provide a	We disagree with the commenter's interpretation of the Water Board's message in regards to PCBs programs. We note that, in the subcommittee report at the beginning of the July hearing, the Board expressed support both for the scale of required PCBs load reductions as well as the required pace of those reductions. See also the response to San Mateo #8. In regard to compliance being based on implementing a PCBs control program, please see Berkeley #8/ACCWP Legal #7.	None

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Provision C.11 and C12. – Mercury and PCBs**

Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
				<p>clear/concise path to compliance.</p> <p>We request the Tentative Order be revised so that: 1) the load reduction criteria are not the point of compliance and compliance be based upon implementing PCBs control programs designed to achieve a load reduction target (such as a Numeric Action Level or similar mechanism for triggering additional action and reporting), based on an interim accounting method included in the permit and applicable for at least permit term; and 2) implementation schedules be expanded to allow focus on higher priority water quality controls as deemed by the Regional Board.</p>		
SMCWPPP	3	C.12	Board member comments on C.12	<p>Regional Water Board members also noted that the general approach in the permit is to require implementation of BMPs and pollutant controls, and that the requirements in the permit should be predictable and provide a clear/concise articulation of the path to compliance. These factors are particularly relevant to crafting the PCBs-related requirements.</p>	<p>The requirements in the Tentative Order are clear. The Fact Sheet has been edited to better describe the ways in which Permittees may demonstrate compliance with the provisions.</p> <p>See also the response to ACCWP Legal #5A, Brentwood #6, Brentwood #2, Brentwood #5, SCVURPPP Legal #7B and the Fact Sheet discussion for C.12.</p>	None

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Provision C.13. – Copper**

Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
Baykeeper	46	C.13	Control Measure Sufficiency	Neither the Draft MRP, nor the Fact Sheet, makes any showing that the control measures included in Section C.13 are sufficient to meet copper SSOs. EPA Guidance states that, when adopting measures to maintain or re-attain water quality standards, the agency should have “reasonable assurances” that the measures it adopts will effectively meet its goals. Reasonable assurance requires analyzing the effectiveness of management measures. The Draft MRP simply requires the same measures it required in the 2009 Permit without any analysis of whether these measures are sufficient to meet the copper SSOs.	Copper water quality in the Bay continues to exceed the goals of the copper site-specific objective implementation program. The copper concentration in all Bay segments is not only well below the site-specific objectives, but also below the trigger levels set forth in the implementation program (http://www.sfei.org/content/copper-site-specific-objective-3-year-rolling-averages). This data demonstrates that current management measures are sufficient in maintaining water quality standards relative to copper.	none
Baykeeper	47	C.13	Updated assessment of copper control measures	The Basin Plan requires that the MRP include “implementation of best management practices and copper control measures to prevent urban runoff discharges from causing or contributing to exceedances of copper water quality objectives.” The Basin Plan specifically requires that “[r]equirements in each permit issued or reissued and applicable for the term of the permit shall be based on an updated assessment of control measures to reduce copper in stormwater runoff to the maximum extent practicable.” The Draft MRP does not include an “updated assessment of control measures” for	As stated in response to Baykeeper comment #46, copper concentrations in the Bay are below the trigger levels (and generally 50% below the site-specific objectives). Therefore, there are no exceedances of copper water quality objectives in San Francisco Bay to which urban runoff could be causing or contributing to. The MRP requires the control measures identified in the implementation program for the site-specific copper objectives that have not already been satisfied or that still apply. Because the ambient	none

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Provision C.13. – Copper**

Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
				any of the three sources targeted in Section C.13: copper architectural features, copper algacides, and industrial sites. Rather, it simply merely repeats the same requirements that were included in the 2009 Permit.	concentrations of copper are well below water quality objectives, it can be reasonably assumed that the currently required control measures for urban runoff are adequate and effective and thus no changes are necessary at this time. The current MRP requirements do, in fact, reflect an assessment of the control measures to reduce copper in stormwater runoff to the MEP.	
Baykeeper	48	C.13	Removal of control measures from last permit	Moreover, the 2009 Permit included additional Copper Controls that have been removed in the Draft MRP. Specifically, the 2009 Permit required Permittees to “engage in efforts to reduce the copper discharged from automobile brake pads” by participating in the Brake Pad Partnership. (2009 Permit at 103.) Although Senate Bill 346 was passed as a result of the Brake Pad Partnership, the law does not require the phase out of copper in brake pads until 2025. Substantial copper loads will enter the Bay and its tributaries in the meantime. It is unclear whether the Regional Board has considered this timeframe in determining whether the Copper Controls are sufficient. In the 2009	The legislation to remove copper from brake pads is the single most effective measure that could be taken to reduce copper from brake pads and address this major source of copper. The commenter is correct that the phase-out will be accomplished over the next decade. However, copper loads from brake pads can be expected to begin decreasing even during this time period as brake pad manufacturers begin introducing products that comply with the legislation. Further, this time period is appropriate for accomplishing a large-scale change in a product and is an	none

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Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
				<p>Permit, Permittees were also required to “conduct or cause to be conducted technical studies to investigate possible copper sediment toxicity and technical studies to investigate sub-lethal effects on salmonids.” It is unclear how, or whether, the Draft MRP incorporates the information gathered from the studies over the last permit cycle, although presumably such studies were initiated to inform future copper measures.</p>	<p>acceptable pace of reduction for San Francisco Bay given that copper concentration in the Bay are less than 50% of the water quality objective. Therefore, it is not necessary to require additional actions relative to brake pads given that this legislation is in place and will begin yielding benefits over the next decade. The Fact Sheet explains the outcomes of the studies conducted to investigate the possible sublethal toxicity of copper to salmonids and how this effect was not found for San Francisco Bay.</p> <p>Therefore, the Basin Plan requirement for the study has been satisfied via MRP 1.0 and the technical information is now available so such studies no longer need to be included as requirements in subsequent permits.</p> <p>The Fact Sheet has also been updated to include a finding related to the decision not to continue to include a requirement to investigate possible sediment toxicity in the Bay. There has</p>	

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Provision C.13. – Copper**

Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
					been no recent data indicating that copper is causing toxicity in San Francisco Bay sediments, and sediment copper concentrations have been decreasing.	
Baykeeper	49	C.13	Require sampling at outfalls	Moreover, the Draft MRP fails to include an accounting system whereby the Regional Board or Permittees can measure whether the Copper Controls are, in fact, regulating copper discharges so that they do not cause or contribute to violations of SSOs. It is illogical that sampling for copper, as for most constituents, need not occur during storm events when the most significant loading occurs. Moreover, since the sampling will likely not monitor the actual copper loads entering receiving waters through stormwater, the monitoring will be insufficient to determine whether the Copper Controls are effectively regulating copper loading.	Provision C.13 establishes requirements associated with the implementation plan established in the Basin Plan for copper site-specific water quality objectives for San Francisco Bay. These copper water quality objectives are not exceeded and ambient copper concentrations are well below the objectives. Because there are no violations of the SSOs, there is no cause or contribution to such violations from stormwater loading that must be determined or monitored. There is copper monitoring required by Provision C.8. The permit requires copper monitoring within watersheds that can provide useful information on the adequacy of control measures and where some problem areas could be.	none

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Provision C.13. – Copper**

Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
					<p>However, we fully expect the good water quality in the Bay relative to copper to continue.</p> <p>Moreover, many sources of copper may not be most apparent during storm events – copper runoff from treatment of architectural features or discharge from pools, spas and fountains would likely be more pronounced during the dry season so it would make little sense to try to assess the adequacy of such control measures with wet season sampling at stormwater outfalls.</p>	
SCVURPPP	76	C.13.b	Pools, spas, and fountains	<p>This provision contains new reporting requirements that require duplicative reporting of enforcement activities reported under Provision C.4 and C.5. Permittees are now required to report annually on any enforcement activities associated with this provision.</p> <p>Requested Revision: Reference other provisions where Permittees may more efficiently report permitting and enforcement activities.</p>	<p>Permittees were required during the last permit term to certify that they had the regulatory authority to address the discharges from this type of source. They all have done so. It is very reasonable to now require that Permittees report on enforcement activities generated through application of this new regulatory authority.</p> <p>Provision C.4 and C.5 do not explicitly identify pools spas and</p>	none

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Provision C.13. – Copper**

Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
					<p>fountains as a source to be reported on, so the explicit requirement under C.13 ensures that there is no misunderstanding as to what the Water Board intends. Further, this is consistent with other parts of the permit in that pollutant-specific provisions are grouped under a certain provision, as is the case for pesticides, mercury, and PCBs. Because this provision originated from a site-specific objective project for copper, the Water Board declines to distribute the required elements throughout the permit but to keep them in C.13.</p>	

**Response to Comments on May 11, 2015 Tentative Order
Provision C.14. – City of Pacifica and San Mateo County Fecal Indicator Bacteria Controls**

Commenter and comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
ACCWP Legal #1 SCVURPPP Legal #5	C.14	Clarify Requirements	Provision C.1 requires compliance with discharge prohibitions and receiving water limitations. This Provision provides that if exceedances of water quality standards persist in receiving waters, implementation of additional procedures is required. However, the additional procedures are not required for exceedances for water quality standards for pesticides, trash, mercury, PCBs, and bacteria that are managed pursuant to Provisions C.9 – C.14.	Please see the response to comments on Provision C.1	none
San Mateo Co. #1	C.14	Consistency with TMDL	The County requests consistency between the permit, the San Pedro Creek and Pacifica State Beach Bacteria TMDL Best Management Practices Implementation Plan and Monitoring Plan, and the Basin Plan Amendment.	Proposed Permit provision C.14 is consistent with the Basin Plan amendment, which has the following implementation plan requirements and schedule (Basin Plan Table 7.4.1-4): Requirements: Submit a plan to the Water Board, acceptable to the Executive Officer, which describes BMPs being implemented and additional BMPs that will be implemented to prevent or reduce discharges of bacteria to storm drain systems to attain wasteload allocations. The plan shall include implementation methods, an implementation schedule, and proposed milestones.” Additionally, Table 7.4.1-4 includes requirements to submit a bacteria water quality monitoring plan, acceptable to the Executive Officer, to “(1) better characterize...bacteria contributions; and (2) assess compliance with the wasteload allocations.” The Permittees, including the Commenter,	none

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Commenter and comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
				submitted a plan entitled “ <i>San Pedro Creek and Pacifica State Beach Bacteria TMDL Best Management Practices Implementation Plan and Monitoring Plan</i> ,” The Plan was not acceptable to the Water Board Executive Officer because it did not include sufficient, and sufficiently-detailed, measures to address the identified impairment consistent with Basin Plan requirements. At this time, there is no mechanism in place which will implement these portions of the TMDL. For these reasons, Water Board staff is proposing appropriate alternative permit language, instead.	
San Mateo Co. #14	C.14	Delete table of limits	<p>Table 14.1 should be deleted because Section 7.4.1.6 (pg. 7) of the Basin Plan Amendment (BPA) states that the Water Board will not include numeric limits, based on the wasteload allocations in the NDPEs permit, if the discharger demonstrates that it has fully implemented technically feasible, effective, and cost-efficient BMPs to control all controllable anthropogenic sources. However, the County and City of Pacifica have not yet been given the chance to demonstrate how effective their BMPs are.</p> <p>Furthermore, Section 7-4.1.5 of the BPA states that "dischargers are collectively responsible" for meeting the allowable exceedance-based wasteload allocations in Table 14.1. Several sources in addition to municipal stormwater runoff and dry-weather flows contribute bacteria to</p>	<p>Water Board staff disagrees. Table 14.1 contains load and wasteload allocations, not numeric effluent limits, as misstated by commenter. The Table is directly from the San Pedro Creek and Pacifica State Beach Bacteria TMDL Basin Plan amendment (BPA), which, as the commenter notes, states:</p> <p>The Water Board may establish permit requirements to implement wasteload allocations based on implementation of BMPs in lieu of numeric limits. The wasteload allocations are not designed to be implemented directly as numeric effluent limitations applicable to a discharger, Pacifica, or San Mateo County. The Water Board will not include numeric limits, based on the</p>	none

**Response to Comments on May 11, 2015 Tentative Order
Provision C.14. – City of Pacifica and San Mateo County Fecal Indicator Bacteria Controls**

Committer and comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
			<p>receiving waters. These include wildlife, sanitary sewer systems, and horse facilities, over which the County has little to no control.</p>	<p>wasteload allocations, in NPDES permits if the discharger demonstrates that it has fully implemented technically feasible, effective, and cost efficient BMPs to control all controllable sources to and discharges from their storm drain systems.</p> <p>Pacifica and the County still have the opportunity to implement technically feasible, effective and cost-efficient BMPs to achieve the WLAs prior to the Board imposing numeric effluent limits.</p> <p>To the extent the Commenter disagrees with the TMDL’s statement that dischargers are collectively responsible for meeting the wasteload allocations, such challenge is not timely. In any case, the wildlife discharges are accounted for by utilizing a “reference systems and antidegradation approach,” which allows for a certain number of bacteria water quality objective exceedances based on the exceedance levels observed at a reference site with wildlife inputs.</p> <p>Finally, the County has both the responsibility and capability to control pathogens from horse facilities and the sanitary sewer located within its jurisdiction from discharging into the municipal storm sewers.</p>	

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Commenter and comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
San Mateo Co. #15	C.14.a.ii	Illicit discharges	Provision C.14.a.ii (1) should be removed because it is inappropriate to include controls for the sanitary sewer system in an NPDES MS4 permit. Section 7-4.1.6 (pg. 6) of the BPA states that the Responsible Parties and Jurisdictions for the wasteload allocation for sanitary sewer systems will be implemented through the requirements and provisions of the Statewide General Waste Discharge Requirements Order for sanitary sewer systems and the CDO. The BPA does not mention the MRP as one of those jurisdictions. Thus, this MRP provision conflicts with the BPA.	Sanitary sewer discharges within the County jurisdiction were inadvertently not included in the BPA; however, these discharges may nonetheless be regulated under the “Illicit Discharges” Provision of MRP to the extent they may result in discharges to the MS4, as proposed in Section C.14.a.ii (1). Under Clean Water Act § 402(p)(3)(B)(ii), MS4 permits must include requirements to effectively prohibit non-stormwater discharges, such as sewage, into the storm sewer. Thus, the permit retains the requirement that the County effectively prohibit such illicit discharges into storm sewer system. We have, however, deleted specific requirements pertaining to cleaning, inspection, repair and replacement of the sanitary sewer. We encourage the County to undertake proper operation and maintenance of its sanitary sewer system. In addition to enforcing the Permit for illicit discharges, the Water Board may also use its other regulatory authorities to compel the County to properly operate and maintain its sanitary sewer system where it fails to do so.	Retain C.14.a.ii.1, but not C.14.a.ii.1(a)-(c).
San Mateo Co. #16	C.14.a.ii	Flexibility for sewer line repairs	If Provision C.14.a.ii (1) is kept in the Permit, the County recommends extending the timeframe to repair or replace failing sewer lines or changing Permit language to provide Permittees with flexibility in meeting time frame. For example, permit could be changed to	See response to San Mateo Co. #15 above.	none

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Provision C.14. – City of Pacifica and San Mateo County Fecal Indicator Bacteria Controls**

Commenter and comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
			require repair/replacement within six months of discovery "at extent possible" or require repairs/replacement "to be initiated within six months of discovery."		
San Mateo Co. #16	C.14.b.iii	Provision conflicts with TMDL requirement	<p>C.14.b.iii.(1)(e) should be deleted because it contradicts the BPA directive for an adaptive management plan and accelerates the wasteload allocation timeline.</p> <p>The BPA states that Adaptive Implementation should be used to adapt the TMDL and implementation plan to incorporate new and relevant science. The BMP and Implementation Plan for the TMDL watershed was developed with an adaptive and iterative approach. Requiring a new plan in Year 4 contradicts the BPA requirements for Adaptive Implementation.</p> <p>The requirement modifies and accelerates the wasteload allocation timeline in the BPA. The wasteload allocation timeline sets deadlines to meet wasteload allocations within 8 years of effective TMDL date for Pacifica State Beach and within 15 years for San Pedro Creek Watershed.</p>	<p>Staff disagrees. Provision C.14.b.iii.(1)(e) is consistent with the clearly stated BPA requirements.</p> <p>The Provision states: <i>“A detailed and comprehensive assessment of wasteload allocation attainment by the end of year 4 of the Permit term shall be completed. If wasteload allocations are not achieved by the end of the Permit term, no later than 180 days prior to Permit expiration, the City [of Pacifica] and [San Mateo] County shall submit a plan in their Report Of Waste Discharge, acceptable to the Executive Officer, that describes additional control measures or increased levels of existing control measures that will be implemented to prevent or reduce discharges of bacteria to storm drain systems to attain wasteload allocations. The plan shall include implementation methods, an implementation schedule, and proposed milestones.”</i></p> <p>Table 7.4.1-4 of the BPA states: <i>“If wasteload allocations are not achieved by the end of a permit term, [City of Pacifica and San Mateo County], no later than six months prior to permit expiration, shall submit a plan acceptable to the Executive</i></p>	none

**Response to Comments on May 11, 2015 Tentative Order
Provision C.14. – City of Pacifica and San Mateo County Fecal Indicator Bacteria Controls**

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				<p><i>Officer, which describes additional BMPs or increased levels of existing BMPs that will be implemented to prevent or reduce discharges of bacteria to storm drain systems to attain wasteload allocations. The plan shall include implementation methods, an implementation schedule, and proposed milestones.”</i></p> <p>Provision C.14.b.iii.(1)(e) is thus consistent with the BPA.</p>	
San Mateo Co. #16	C.14.b.iii	Delete requirement for assessment	C.14.b.iii.(1)(e) requires Permittees to submit an assessment by the end of Year 4 of the Permit term if wasteload allocations are not achieved. Permit is unclear on specific provisions of this assessment and how it would provide additional benefit to the annual TMDL Status and Monitoring report.	<p>Staff disagrees. As noted immediately above, Permittees are required by the BPA, towards the end of each permit cycle (e.g., every 4-5 years), to assess whether wasteload allocations have been met (Basin Plan Table 7.4.1-4).</p> <p>Specific elements of the Year 4 assessment will undoubtedly take into account the information in the Annual TMDL Status and Monitoring, in Provisions C.14.b.iii.(1)(a)-(d). In addition, Water Board staff expects that the assessment (Provision C.14.b.iii.(1)(e)) will be a thoughtful, detailed, and robust consideration of available data sufficient to inform the additional measures or changed level of effort of existing measures that will result in achievement of the wasteload allocations.</p>	none
San Mateo Co. #16	C.14.b.iii	Delete requirement	This requirement should be deleted and, in its place, additional reporting requirements	The comment does not clearly identify what the Commenter wishes to delete. It	

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		for assessment	or data analysis for this assessment be outlined as a provision of the TMDL report in Year 4 under Section C.14.b.iii.	<p>is our interpretation that the Commenter is suggesting deletion of the annual report requirement and adding any additional requirements or data analysis into the requirement for a Year 4 assessment.</p> <p>The comprehensive Year 4 assessment should include the findings from the “Annual TMDL Status and Monitoring” conducted during the preceding 4-5 years, but it is not the same as the annual assessments, in that it evaluates temporal and cumulative changes in water quality over an approximately 5-year period as well as success of the implementation of various control and enforcement measures.</p>	
San Mateo Co. #19 Pacifica #1	C.14.c	Reference the BMP Plan	There already exists a San Pedro Creek and Pacifica State Beach Bacteria TMDL Best Management Practices Implementation Plan and Monitoring Plan (TMDL BMP and Monitoring Plan). This Plan contains the control measures and monitoring elements required by Provision C.14. Provision C.14 in its entirety and C.14.c in particular should be revised to reference this Plan, rather than detail the specific requirements of the Plan.	Staff disagrees. The “TMDL BMP and Monitoring Plan” drafted and mentioned by the Commenters is an incomplete draft document that is not acceptable to the Water Board’s Executive Officer in its current form. As such, it would be inappropriate to refer important permit details to that Plan.	none
San Mateo Co. #20	C.14.c	Use of characterization results	The County would like assurance that the results of the County's and City of Pacifica's characterization monitoring will be taken into account for any future evaluations of the TMDL watershed. Past characterization study results indicating that exceedances	Water Board staff’s approach is to identify and appropriately consider all relevant monitoring data and related information in considering impairments and efforts to address them. That approach is reflected in the TMDL and its associated Staff	none

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			are likely a result of uncontrollable, non-anthropogenic sources were discounted by Water Board staff when discussing TMDL BMP and Monitoring Plan.	Report, and the proposed Permit language reflects our intent to continue this practice. The “past characterization study results” mentioned by the Commenter were from a single study with limited amount of monitoring, both in scope and time. As such, they were not conclusive, and point to the need for additional, longer-term, and more-comprehensive monitoring.	
San Mateo Co. #21	C.14.c	Allow flexibility in monitoring	The requirement to monitor at twelve stations every year of monitoring does not allow the County and City flexibility to intensify sampling at select stations or expand the geographic scope of the program based on monitoring results. Revise provision to require characterization monitoring at twelve sampling stations in WY 2016 and then in subsequent years require Permittees to "collect a minimum of one hundred (100) pathogen indicator bacteria samples per water year."	Staff concurs. Provision C.14.c.ii has been revised to allow more flexibility in monitoring activities in subsequent years.	<u>In monitoring years subsequent to the WY2016 monitoring year, based on the results of the WY2016 monitoring, the sample locations, sample quantity, and sampling frequency may be modified. However, in each subsequent monitoring year, a minimum of one hundred</u>

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					<u>ten (110) fecal indicator bacteria samples shall be collected.</u>
San Mateo Co. #22	C.14.c	Wet weather definition	Provision C.14.c.ii(2) defines wet weather as "any day with 0.1 inch or more and following three days". Other agencies have a higher rainfall threshold for defining wet weather event. For example, in a Streambed Alteration Agreement, the CA Department of Fish and Wildlife, defines wet weather as "when there has been 1/4 inch of rain within a 24-hour period"	Comment noted. The specified wet weather definitions are consistent with the definitions adopted in the TMDL to calculate load and wasteload allocations (e.g., allowable number of exceedances of the bacteria water quality objectives) during wet weather periods. To assess whether these allocations are being attained or not, the same wet weather definition (i.e., 0.1" of rain within a 24-hour period) must be used to distinguish between wet and dry periods.	none
San Mateo Co. #23 Pacifica #3	C.14.c	Delete requirement for human, horse, and dog genetic markers	<p>The Permit is not clear whether these constituents should be analyzed beyond Water Year (WY) 2016.</p> <p>Results from prior studies conducted in the San Pedro Creek watershed using these methodologies were discounted by Water Board staff when discussing TMDL BMP and Monitoring Plan.</p> <p>These analyses are expensive and the value of repeating them beyond WY2016 is uncertain both in terms of scientific knowledge gained and Water Board acceptance of any findings from the sampling.</p>	<p>Source-specific genetic markers for human, dog, and horse should be measured beyond WY2016. Provision C.14.c.ii.(3) has been revised to better clarify this requirement.</p> <p>Our understanding is the "prior studies" identified by the commenters are a single study with limited amount of monitoring, both in scope and time. As such, the data were not conclusive, and there is a need for additional, longer-term, and more-comprehensive monitoring.</p> <p>Given the episodic nature of potential bacteria discharges from human, horse,</p>	Revise C.14.c to say: ... <u>during each monitoring year (i.e., WY2016, and every other water year thereafter)</u> ...

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				<p>and dog sources, as well as the short “shelf life” of their associated genetic markers in the environment, and inherent interannual variabilities, broader and longer-term monitoring for these constituents is required than measuring them at only four stations and during only four events in a single year, as proposed by the commenters. That proposal would not provide the amount of information needed to conclusively determine whether or not any of these sources are contributing to exceedances of bacteria water quality objectives in the San Pedro Creek watershed. Longer-term sampling is also necessary to verify the efficacy of other measures intended to reduce these sources of bacteria.</p> <p>During discussions with the commenters regarding necessary TMDL-related monitoring, Water Board staff did not propose to require monitoring for host-specific genetic markers, partly due to their relatively high cost. However, the commenters proposed conducting the monitoring, and Water Board staff agreed to include it.</p>	
San Mateo Co. #24 Pacifica #4	C.14.c	Do not require Water Board to accept	Characterization monitoring is intended to be iterative in nature and allow for flexibility of design and details in years subsequent to WY2016. Executive Officer review and acceptance of changes to the plan may be lengthy and/or result in unnecessary	Staff disagrees. Due to the open-endedness of the iterative monitoring approach, it is appropriate for the Executive Officer to review/approve changes to the plan.	none

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		characterize -ation plan changes	additional investigation with unknown cost and schedule implications		
San Mateo Co. #25 Pacifica #5	Fact Sheet for C.14	Acknowledge ecological differences	The Fact Sheet finding for Provision C.14 should include an acknowledgement that the reference composite watersheds used to set the bacteriological water quality objectives in the BPA differs ecologically from the Pacifica State Beach/San Pedro Creek watershed. The Regional Water Board has not considered the ecological differences between the reference site and the San Pedro Creek watershed adequately to accommodate for additional bacteria loading from wildlife sources due to differences in the ecological communities.	Staff disagrees. This issue was considered during completion of the TMDL. The reference composite watersheds used in the TMDL were comprised of 38 separate sites, whose exceedance rates of bacteria water quality objectives were measured, combined, and averaged over a three-year span, thereby evening out effects on water quality due to variables including watershed size, land use distribution, topography, and ecology. The Commenters have not provided any evidence to support their claim that “ <i>the reference composite watersheds used to set the bacteriological water quality objectives in the BPA differ ecologically from the Pacifica State Beach/San Pedro Creek watershed.</i> ” Staff is not aware of any significant ecological differences between the San Pedro Creek watershed and the reference composite watersheds used to determine bacteria loading from wildlife sources.	none
Pacifica #2	C.14.a	Reduce frequency of requirements	Provision C.14.a.ii.(5) requires that the City inspect and clean-up the ten (10) high priority dog waste locations (required under Prov. C.14.a.ii.(4)) on a monthly basis from November 1 through March 31 and prior to	Staff have revised Provision C.14.a.ii.(5) to increase the rainfall depth trigger for conducting inspection and clean-up events from 0.1 inches of rain to 0.2 inches of rain within a 24-hour period (as	Revise as follows: From November 1 through March 31, inspections

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			<p>forecast rain events with a rainfall of 0.1inches or more. Recognizing limited City resources, the frequency of inspections and clean-ups should be reduced to a quarterly basis throughout the year. Given the unpredictable nature of rainfall, it is difficult for the City to ensure that staff will be available for this task prior to storm events. If the Water Board does not modify this requirement, the City requests that the Water Board specify which forecast station to monitor and what time period applies (e.g., daily, hourly). In addition, the rainfall depth should be increased from 0.1 to 0.5 inches. In Pacifica's coastal location, rainfall events of 0.1inches are very common. For example, between 1998 and 2014, 0.1inches of daily rainfall was recorded at Pacifica rain gauges an average of 40 times per year. If inspections and cleanups were required prior to each of these rainfall events, it would represent a very costly undertaking.</p>	<p>measured at Half Moon Bay Airport (KHAF) Meteorological Station), which is the closest station to the San Pedro Creek watershed identified by staff that has forecast data available at the NOAA forecast website.</p> <p>Staff previously requested the City to submit an analysis of rainfall event distribution in or near the San Pedro Creek watershed, but did not receive it. That analysis could better inform this requirement.</p>	<p>and clean-ups shall be conducted prior to forecast rain events with a rainfall <u>depth</u> of 0.1<u>0.2</u> inches or more (<u>as measured at Half Moon Bay Airport (KHAF) meteorological Station</u>), and at a frequency of no less than once a month.</p>

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CCCWP	82	C.15.b.	Conditionally Exempt Fire Hydrant Testing and Small New Construction Water Line Cleaning	Include fire department hydrant testing and small new construction water line cleaning as conditionally exempted discharges, as long as BMPs are in place to reduce chlorine.	The Statewide General NPDES Permit for Drinking Water System Discharges, Order WQ 2014-0194-DWQ (Order), requires the owners/operators of drinking water systems to apply for coverage. The Order provides regulatory coverage for all discharges from the owners/operators of water systems, including discharges from hydrant testing, water system testing/flushing, and small new construction sites' water line cleaning, as stated in Order Section II.B, "Discharges Authorized Under this Order" (Order, p.6). We are not proposing to cover the discharges under the MRP because they can be covered under the Order.	None.
San Mateo	32b	C.15.b.	Some Planned Potable Discharges Not Covered in State's Permit or MRP	Planned potable discharges from "non-water purveyor" types of discharges, such as water system testing/flushing for new developments (not subject to the General Construction Permit), and private property fire hydrant flushing/testing are not covered in the General Permit and vague in MRP 1.0	The types of discharges identified by the commenter are essential operation and activities undertaken to comply with permitting requirements for potable water systems. To the extent they are completed by a private party or party other than the entity permitted under the Order, that party would be expected to coordinate with the permitted party to ensure appropriately protective management measures and reporting are completed. Potable water dischargers, including private parties, can also manage water such that it does not discharge to the MS4 or waters of the United States—for example, by using it for dust control, applying it to landscaping, or hauling it to a POTW	None.

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					headworks for discharge.	
Mountain View San Mateo SCVURPPP SMCWPPP SCVURPPP Legal	27b 32c 27b 78b 8	C.15.b.	Restore MRP 1.0 Language	The Water Board should either restore Provisions C.15.b.iii (1) and (2) from the current MRP or craft new subprovisions that would specify that “Potable water discharges that meet the Discharge Specifications set forth in Section IV.A or the Multiple Uses or Beneficial Reuse terms set forth in Section VI of the Statewide General NPDES Permit for Drinking Water Systems Discharges, Order WQ 2014-0194-DWQ shall be deemed to be conditionally exempt provided that the Permittees maintain records of these discharges, BMPs implemented, and any monitoring data collected.”	It is appropriate to address drinking water system discharges via a permit that is specific to those discharges (Order WQ 2014-0194-DWQ), and the State Water Board has indicated its intent that such discharges be regulated in a consistent way. We are not proposing to permit potable water discharges through an MS4 permit by reference. Additionally, permitting by reference makes it challenging to determine applicable requirements and compliance.	None.

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San Mateo	32a	C.15.b.	SWRCB Directed Water Boards to Continue Specifying Potable Discharge Requirements	In its response to comments, the SWRCB directed all Regional Water Boards to continue to specify potable discharge requirements in municipal stormwater permits and, on a going-forward basis, it left it up to them as to how best to craft such requirements: “Regional Water Boards adopting such permits are charged with determining appropriate requirements to protect water quality and address the needs of both the MS4 and drinking water discharges on a system-specific basis.”	We disagree that the State Water Board directed all Regional Water Boards to continue to incorporate potable discharge requirements in MS4 permits. State Water Board staff’s response to comments on the July 3, 2014, draft potable water system discharge order did include notes such as: (1) the State Water Board does not intend for Regional Water Boards to terminate MS4 permit regulatory coverage for such discharges automatically, after one year (response to comment 47.2); (2) Requirements in an MS4 permit are dictated by the decision-making Board (Regional or State Water Board) and the public process for individual MS4 permitting actions (response to comment 48.4); (3) the applicable Regional Boards retain discretion to adopt appropriate requirements for such systems (response to comment 20.4). Order WQ-2014-0194-DWQ (Order) states that permit coverage is not required when: “The water purveyor is an MS4 permittee, or co-permittee, named on a State Water Board or a Regional Water Board issued MS4 permit that also authorizes discharges from drinking water systems, and all drinking water system discharges solely discharge into its own MS4 system”; However, the Order does not mandate that coverage for such discharges under an MS4 permit be retained, and the noted	None.
SCVURPPP SMCWPPP Mountain View SCVURPPP Legal	27a 78a 27a 8	C.15.b.	State Charged Water Board to Continue Potable Water Requirements	State permit was specifically amended prior to adoption to provide that drinking water system discharges which are or can be addressed through a municipal stormwater permit issued by a regional water board will be regulated in that manner so as to avoid a situation where a municipality has to obtain separate coverage under two permits and pay two separate permit fees or be on two separate reporting cycles. In its response to comments, State		None.

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				<p>Board directed all regional water boards to continue to specify potable discharger requirement in municipal stormwater permits and, on a going-forward basis, it left it up to them as to how best to craft such requirements: "[The State Water Board] takes no position on provisions or requirements within specific permits for MS4 owners and operators who are also water purveyors and whose MS4 permits also authorize drinking water discharges. Regional Water Boards adopting such permits <i>are charged with</i> determining appropriate requirements to protect water quality and address the needs of both the MS4 and drinking water discharges on a system-specific basis."</p>	<p>"...intention of the State Water Board to regulate all mandatory low-threat-type discharges from community water systems statewide with consistent regulation" (State Water Board website) indicates that a reasonable approach is to cover such discharges under the Order, which is specific to them. While it is true that in adopting any MS4 permit, a Regional Water Board must determine appropriate requirements to protect water quality, the response is not a directive that such requirements be included in an MS4 permit.</p> <p>The State Water Board has not mandated that the Regional Water Boards continue or incorporate potable discharge requirements in MS4 permits, which is made clear by State Water Board staff's statement in this response that "[t]he Draft Permit addresses discharges from drinking water systems and takes no position on provisions or requirements within specific permits for MS4 owners and operators...." Additionally, while the Order describes how to approach situations when potable water discharges are covered under a separate MS4 permit (Order Section A, "Water Purveyors NOT Required to Enroll in This Order"), it does not require that drinking water system discharge coverage be maintained or begun in MS4 permits. The Order includes</p>	

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					appropriate and specific requirements to address drinking water system discharges and we expect that, in the future, it will provide a vehicle for timely updates as BMP technology or other practices change. As such, we have not proposed to return potable water system discharge coverage to the MRP.	
San Jose	57	C.15.b.	Restore Potable Water Discharges	Another permit fee and separate reporting requirements increases the amount of regulatory overhead for both the State and affected municipalities. Insert provision C.15.b.iii. from the MRP, with monitoring requirements from the statewide permit.	This Water Board has determined that drinking water system discharges are appropriately covered under the Order WQ 2014-0194-DWQ (Order), which is specific to those discharges. Water Board staff has always made clear that a stormwater permit is not the venue to cover drinking water system discharges. Water Board staff had drafted a general permit to cover drinking water systems discharges, but it was not adopted because State Board proceeded to draft and adopt a statewide version, which has brought consistent expectations and requirements to all drinking water systems discharges in the state. While there is some change in overall regulatory overhead, the substantive requirements associated with the discharges, including completion of BMPs to address them, tracking, etc., have a similar or modestly reduced level of effort under the Order as compared to likely Permit requirements, in part because of the different thresholds for reporting. Additionally, the current	None.

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					annual fee for coverage under the Order ranges from \$0 – \$2,062. Overall, there is not a significantly different level of effort under the Order.	