



April 3, 2009

Mr. Bruce Wolf
Executive Officer
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

Sent by electronic mail and regular US mail.

Re: Comments from City of Sunnyvale on the Municipal Regional Permit Revised Tentative Order

Dear Mr. Wolfe:

The City of Sunnyvale appreciates the opportunity to review and submit comments on the Regional Water Board's Municipal Regional Permit (MRP) Revised Tentative Order dated February 11, 2009. This letter identifies our key concerns and significant issues with this Tentative Order and more detailed comments on specific provisions are included in Attachment A. In addition, the City of Sunnyvale supports and incorporates by reference the comments submitted by the Santa Clara Valley Urban Runoff Pollution Prevention Program, the Bay Area Stormwater Management Agencies Association (BASMAA), Mr. Robert Falk (Morrison and Forester) and Mr. Gary Grimm (Counsel for Alameda Countywide Clean Water Program).

Introduction:

The City of Sunnyvale is a co-permittee of the Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPPP) and has had a proactive municipal stormwater pollution prevention and control program in place since the first countywide municipal storm water permit was issued in 1990. As an active, participating member of SCVURPPP, we have received numerous local and national awards for our efforts to manage and minimize stormwater related impacts on water quality. Most recently in 2008, we received awards for our work in conjunction with the other co-permittees from the California Stormwater Quality Association for the trash management guidebook entitled the "Trash Tool Box" and our Santa Clara Valley Green Gardener training and outreach program on sustainable landscaping practices and Integrated Pest Management (IPM) to landscape maintenance personnel and contractors in both Spanish and English. Also in 2008, we received the California Department of Pesticide Regulation's IPM Innovator award for our Pesticide User Outreach Program with SCVURPPP.

We have participated in discussions with Water Board staff over the past four years and worked toward the goal of developing a regional permit that provides consistency in the expectations for municipal performance throughout the Bay Area, while adding some additional requirements to address pollutants of concern (POCs) for our region. In our previous comments on the Tentative Order issued on December 4, 2007 we requested:

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- The linkages between new or expanded requirements need to be practical, understandable, and address the implementation of efforts that will benefit water quality.
- There is a need for prioritization of any new or expanded requirements. (This means prioritization across all the requirements of the permit, not just amongst those within a specific provision.)
- The highly prescriptive nature of the Tentative Order limits the permittees' ability to evaluate local alternatives and implement cost-effective methods to achieve water quality improvements in their jurisdiction. The financial burden to the municipalities and agencies who must implement these requirements is significant, and flexibility must be allowed in order for permittees to maximize water quality benefits with limited resources.
- Timelines for implementation for new or expanded requirements as written are very short. Adequate time is needed where changes to ordinances, municipal plans or significant capital expenditures are required. With the current timelines for certain provisions in this Tentative Order, it is very likely that the City will not be able to meet compliance deadlines for some provisions.
- Phasing is needed to reflect the revenue and funding constraints that the city faces in trying to implement new programs and revise existing programs to meet new provision requirements. The permit's compliance dates should be adjusted to acknowledge the need to secure and accrue funding for significant new permit requirements.

These areas remain as a high priority for the City of Sunnyvale. With the current economic downturn, the cost-effectiveness of stormwater management measures becomes even more critical.

We appreciate that Water Board staff did hear us and address some of our previous comments that resulted in:

- Allowing the city to select street sweeping equipment to meet sweeping requirements
- Focusing on more significant impervious surface data collection rather than on small "unregulated" development or redevelopment projects
- Modifying some of the most prescriptive requirements of Enforcement Response Plans for provisions C.4 and C.5
- Focusing on developing BMPs for mobile business operations and their inspections on an as-needed basis.

General Comments:

We appreciate the Water Board staff's efforts to make significant changes to the standard operational components of the permit (i.e., C.2, C.4, C.5, and C.6). However, concerns remain for the following issues:

- Consistent implementation of current performance standards

- Phased-in implementation of measures consistent with adopted pesticide, PCB, and mercury TMDLs
- A focused and cost-effective effort to address trash that is in stormwater, or likely to be conveyed by it into our waterways. This should include using our existing data for assessments and analyses as to the nature and location for measures to be implemented.
- Limited and cost-effective monitoring that is linked to helping answer relevant management questions.

Previous concerns expressed by the City and SCVURPPP related to monitoring requirements, POC programs for mercury and PCB controls, and trash control requirements were not adequately addressed in this Tentative Order. Also, there was no attempt to set priorities among these requirements so as to allow their phasing-in over more than one permit cycle and to take into consideration limited municipal resources. These areas remain our highest concern, and the cost-effectiveness of the newly required stormwater management measures is especially critical during the current economic downturn.

The combination of all these requirements places a considerable strain on the city's resources, given that storm sewer infrastructure changes would need to be addressed as part of the Tentative Order requirements (e.g., pump station connections or storm drain collection system retrofits to meet trash full-capture criteria).

Need to Phase in Enhanced Pollution Controls That Would Increase Municipalities' Costs

Local governments are facing unprecedented fiscal challenges, not only with respect to funding new permit requirements, but in continuing to implement programs at current levels of funding. The City of Sunnyvale is attempting to maintain current levels of service, at a time when city revenues continue to decline at a significant rate.

The city continues to request that Regional Board staff prioritize areas for implementation and provide more time for phasing in requirements that will allow cities to ramp up as more resources become available and thereby allow continuous compliance with permit requirements. We are very concerned that the very tight compliance timelines currently contained in the MRP are unattainable, given the state of financial resources and the inability of cities to respond quickly to additional permit requirements.

Since the first stormwater permits were issued over 15 years ago, the requirements have increased significantly from simply developing stormwater management programs as envisioned by USEPA's regulations. These increased requirements have significantly increased the cost of compliance for cities such as Sunnyvale. Many local governments have reached the maximum funding levels available to their stormwater management programs. Proposition 218 and other factors severely constrain local governments'

ability to fund at higher than current levels.¹ In view of these factors, legislative relief cannot be considered a feasible alternative at this time.

This system-wide inability to significantly raise funds is compounded by the current and deepening recession, which is expected to take years from which to recover. Like your agency, our city is being forced to seriously evaluate each and every service level based on declining revenue streams. Potential funding for stormwater quality, such as the State's \$90 million Proposition 84 Storm Water Grant Program, which Water Board staff have put forward as the way to fund many of the new MRP requirements, seems to have vanished. The approximately \$140 million in potential funding from the Federal government's American Recovery and Reinvestment Act of 2009 has been diverted from flowing to local governments for new water-related projects to covering State obligations. There is no "new money" to be found. Designing and adopting a permit with a significant jump in the cost of the requirements, while the cost and expenditures of every other aspect of government are being held at current levels or reduced, does not demonstrate a sound public policy direction.

The Water Board should recognize that municipalities such as Sunnyvale need an opportunity to achieve permit compliance by allowing an adequate phase-in period to attempt to secure additional sources of revenue. This is especially true for the Trash Reduction – full capture device retrofit requirements in provision C.10 and POC requirements in provisions C.11 (mercury) and C.12 (PCBs).

A detailed summary of key concerns for Sunnyvale on specific provisions of this Tentative Order are included in Attachment A.

In conclusion, the Tentative Order includes many potential new or significantly expanded requirements that:

- (1) Are not mandated by law or reflected in USEPA-issued municipal stormwater permits;
- (2) Would represent a significant expenditure of public resources that are not available at the local level; and
- (3) With a few notable exceptions involving pollutants of concern (which still need to be fine-tuned to avoid wasting resources), are unlikely to produce a significant return in terms of increased water quality benefits.

¹ Over the last six years, there have been three attempts to pass State legislation (ACA 10, ACA 13, and SCA 12) that would allow the State to place before California voters for approval a State Constitutional Amendment on the ballot. None of the three legislative attempts were successful in moving the bills out of their house of origin (Assembly or Senate), let alone to a full vote of the Legislature, to potential approval by the Governor, and to a vote of the people. No such bill is proposed in the current 2009-2010 legislative session. Thus, legislative/voter relief cannot be considered a feasible alternative at this time. In addition, while we appreciate the efforts of the Water Board staff to help seek funding for stormwater, including grant funds, those funds, if received are small and short-lived when compared to the very significant and long-term capital and operations and maintenance expenditures necessary to address the plethora of requirements that have been included in the Revised Tentative Order.

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It is essential that the MRP requirements be prioritized to address identified, significant water quality problems (i.e., TMDLs and trash) and be phased in over time based on a realistic assessment of current municipal resources and the other burdens being placed on Bay Area cities, counties and special districts at this time.

Thank you for the opportunity to comment on the Revised Tentative Order. Please contact Lorrie B. Gervin at (408) 730-7268 if you have questions.

Sincerely,

A handwritten signature in black ink that reads "Marvin A. Rose". The signature is written in a cursive style with a large, stylized 'M' and 'R'.

Marvin A. Rose
Director of Public Works

Attachment A
Summary of Key Concerns of Specific Provisions

cc: Adam Olivieri, SCVURPPP
Lorrie B. Gervin, City of Sunnyvale

Attachment A: Summary of Key Concerns on Specific Provisions

Permit Provision #	Brief Description of Provision	Sunnyvale's Comments
C.2	Municipal Operations	
C.2.d.ii (2-4)	Stormwater Pump Stations – Implementation Levels	<p>The implementation of the monitoring requirements for Dissolved Oxygen (DO) levels for pump stations owned by the City of Sunnyvale will require increases in both staff time and funds to perform the inspections/monitoring. As one small item, it may not be significant, but when included as a whole with all the other new requirements of the permit that Sunnyvale will have to comply with, it has a cumulative impact on already limited resources.</p> <p>We request that you clarify that the DO value included in this provision is a trigger and would be used for the purpose of identifying pump stations with problems and for identifying additional actions that might be needed.</p> <p>The inspection requirement for pump stations after a ¼ inch of rain within a 24-hour storm event or larger storms makes an assumption that we have oil absorbent booms at the pump stations. This is not necessarily the case. This should be clarified that pump stations are not expected to have oil booms in place.</p>
C.2.d.iii	Reporting	<p>The data required to be kept and reported on for maintenance activities at storm water pump stations is excessive. Requiring that cities report the mass or volume of the debris and trash removed from a pump station fore-bay or bar screen does not provide essential information as to the effectiveness of the pump station operations. It is unclear why this information is needed. It should be sufficient to provide records of pump station maintenance activities, showing that appropriate maintenance has occurred without having to collect data that does not have a clear purpose identified.</p> <p>Again, this type of activity may not significantly increase staff time and maintenance requirements by itself, but when included as a whole with the other new requirements, it will have a cumulative effect on already limited resources for permit compliance by</p>

		Sunnyvale.
C.3	New Development & Redevelopment	
C.3 (general)	Expansion of requirements in general	<p>Continual expansion of Stormwater requirements is burdensome for local jurisdictions and applicants. We can all agree that water quality and Stormwater issues are very important, but they are among dozens of other critical issues that must be addressed in project planning and review. Staff resources are limited and are spread thin across many issues.</p> <p>Every time Stormwater requirements are expanded, staff must devote additional time and resources which we do not have. This is often at the expense of overall project quality. It is important to understand that Stormwater is not a stand-alone issue.</p> <p>Every increase in Stormwater requirements further strains limited staff and applicant resources and has consequences for other project features. We believe the existing MRP requirements include sufficient Stormwater controls and should not be expanded.</p>
C.3.a.ii	Due dates for full implementation	<ul style="list-style-type: none"> • The requirements of this section are different from the current permit and will require time to revise ordinances, policies, procedures, update/revisions to guidance manuals for project applicants, and educate staff and project applicants about the changes. • Immediate implementation is not feasible. This process will require staff work coordinated among multiple departments, preparation of ordinances and General Plan updates, scheduling of public hearings on any ordinance/GP changes and other written materials. • At a minimum, ordinance updates generally need 6 months in order to follow required procedures for their adoption. • General Plan updates require several years to complete. • Funding will also need to be identified and allocated for any updates to plans, ordinances, and guidance materials. • Required implementation dates must take into account the processes jurisdictions will need to go through.

C.3.b	Definition of Regulated Projects changed to reduce applicable square footage to 5,000 for certain uses	<p>We do not support the lowering of the threshold to 5,000 square feet for certain regulated projects. Lowered thresholds have the following negative effects:</p> <ul style="list-style-type: none"> • Preparation of Stormwater Management Plans is very expensive for applicants. Requiring this for smaller projects is likely to have a chilling effect on development and redevelopment at a time when it is most needed due to the economic situation; • Expanding the number of projects requiring Stormwater review takes up additional staff time and resources at a time of financial difficulty when budgets are tight; • Using different thresholds for different types of projects introduces additional complexity and confusion for applicants/staff.
C.3.b.ii	Effective Date for Threshold Change (Date of applicability changed from “deemed complete” date to “final, major, staff-level discretionary review and approval”)	<p>The definition in the revised TO is unworkable and comes too late in the development review process. We do not support this proposed change. Issues include:</p> <ul style="list-style-type: none"> • Other development standards and requirements (CEQA, Map Act, etc.) are triggered at the time the project is “deemed complete.” Staff and the applicant need a clear expectation of which standards are being applied during that review. If standards change after review is complete (but before approval), it is too late to make changes to the project design. The entire review process would need to start again. As a result, the “deemed complete” date should continue to be the cut-off. Introducing a different definition is inconsistent, impractical, and unfair to applicants who have a right to some certainty in which requirements will apply to their project; • For projects requiring an Environmental Impact Report, this threshold is particularly problematic because preparation of the EIR may take several years. Subjecting a project to new/changed Stormwater requirements at the time of approval could render the EIR insufficient, forcing new environmental review. This is prohibitively expensive for applicants, and projects could become trapped in an endless loop where they cannot be approved due to constant need for re-design and re-review.

		<ul style="list-style-type: none"> • The language defining the time of applicability is also confusing. It refers to “staff-level” approvals, but many approvals requiring Stormwater review are made by elected/ appointed officials at public hearings rather than by staff. It also refers to “major” approvals, yet every jurisdiction has its own way of interpreting “major” and “minor” permits and these do not necessarily conform to the thresholds for Stormwater review. At a minimum, remove the words “major” and “staff-level.” If this new language is adopted, “final discretionary approval” should be a sufficient description.
C.3.b.ii(4)	Road Redevelopment & Bike Lanes	<ul style="list-style-type: none"> • There is an inconsistency in the way that bike lanes are exempt or regulated in a new road project. The reasons bike lanes are exempt from road widening projects listed on page 23 of the MRP fact sheet are applicable to new roads as well. They have an environmental benefit for encouraging alternative modes of transportation. We request that bike lanes be included to the list of specific exclusions from this category • The revised TO includes road widening under the “New Road Projects” category instead of under “Other Redevelopment Projects” for the purpose of excluding road widening projects from the “50% rule” of redevelopment projects. Treating runoff from the entire road instead of just the added impervious area creates a significant financial burden on a city when road capacity is increased under locally adopted transportation plans. We request that road widening be treated in the same manner as other redevelopment projects, as it is in our current permit.
C.3.b.v (1)	Reporting (Requirements now include developer name and phase number of project)	<ul style="list-style-type: none"> • Reporting already consumes significant staff time and effort. Additional reporting requirements may require restructuring of databases and data collection systems, consuming additional resources. • Developer name and phase number are unnecessary in establishing compliance with requirements and should not be added. • Reporting on each phase of a project separately is also unnecessary if the Stormwater Management Plan prepared at the time of approval covers all phases. It should be sufficient to report on all

		planned BMPs at one time.
C.3.b.iii	Green Streets Pilot Projects	Sunnyvale supports the comments made by SCVURPPP to modify this provision that will allow more flexibility and facilitate its implementation.
C.3.c.i (2) (d)	Site Design and Stormwater Treatment Requirements (Incorporate minimum source control and site design requirements for all regulated projects.)	<p>Sunnyvale does not support requiring specific source control and site design measures for all “regulated projects”. The required measures may not be feasible for many projects, particularly redevelopment projects in an urban setting such as a downtown area.</p> <p>For example: It is likely that in a developed, high-density urban area (which are present in many of the jurisdictions subject to this MRP), it will not be possible to divert runoff to rain barrels or vegetated areas. The alternatives of using permeable surfaces may also be infeasible because of concerns about groundwater quality.</p> <p>This requirement appears to have been developed with greenfield development in mind, without considering that many jurisdictions subject to this MRP are engaged primarily in redevelopment of existing urban areas. More flexibility in determining appropriate BMPs is needed, especially in highly urbanized areas.</p>
C.3.c.i.(2)(e-i)	Establishes a tiered approach for selection of treatment measures	All tiers listed should be applied “as practicable.” Jurisdictions need flexibility to determine which BMPs are feasible and appropriate for specific projects.
C.3.c.i (4)	Notify the Water Board E.O. & provide justification prior to project approval for any project using vault-based systems to treat 10-20% of runoff	<p>Justifying the use of vault-based systems may be part of the annual reporting process, but should not be required prior to project approval. Notifying the Water Board on a project-by-project basis:</p> <ul style="list-style-type: none"> • Has the potential to result in delays in project processing, which may violate other requirements such as the Permit Streamlining Act; • The Water Board Executive Officer has questionable legal authority to review or take part in local agency issuance of discretionary project approvals.
C.3.c.i (5)	The Water Board Executive Officer must review and approve any	<p>Sunnyvale strongly opposes this requirement, which is perhaps the most serious concern in the new MRP. Issues include:</p> <ul style="list-style-type: none"> • We maintain that the Water Board Executive Officer does not have the legal authority to review or take part in local agency issuance of

	project design using vault-based systems to treat more than 50% of runoff prior to local agency approval of the project	<p>discretionary project approvals. The Executive Officer may determine at the end of annual reporting that a jurisdiction has not met MRP requirements for the year, but cannot supersede local authority over individual projects;</p> <ul style="list-style-type: none"> • Seeking approval from an outside agency prior to making a decision on a project has a significant potential to delay and/or derail the project review process. Jurisdictions have limited time to make discretionary decisions under the Permit Streamlining Act (PSA), and PSA violations are likely if jurisdictions are forced to seek Water Board approval (particularly if such approval is delayed or withheld). <u>Projects not acted upon within timelines established by law can be “deemed approved”, a consequence that conflicts with common stormwater goals.</u> • The intention of this requirement is clearly to disallow the use of vault-based systems as stand-alone treatment systems. It ignores the reality that many jurisdictions under this MRP are engaged not in greenfield development, but in redevelopment of higher-density urban areas. In those contexts, other treatment measures are frequently infeasible and vault-based systems may be the only option.
C.3.e.i.(3)(b)	Alternative Compliance: Contributing Equivalent Funds to a Regional Project	The allowance of more time to contribute to an Equivalent Offsite Treatment project should be contingent upon Executive Officer approval, consistent with the requirement later in this same paragraph for Regional Projects. The requirement that the Equivalent Offsite Treatment Project provide additional capacity is unreasonable and unworkable as conditions of approval and designs cannot be changed after the fact, especially if a project is already under construction.
C.3.g	Hydro-modification Management	Sunnyvale requests that the revised HMP applicability map provided by SCVURPPP be adopted with this permit. The current map, as provided with the TO, contains some minor mapping errors (especially in the exempted drainage area for the Sunnyvale West Channel) which incorrectly indicate that the HMP requirements are applicable.
C.3.h.ii.(6)	BMP Operation & Maintenance Inspection Plan	Sunnyvale has concerns about the requirement that we must annually inspect a minimum of 20% of the total number of all BMPs installed within the

		<p>city within 5 years and 20% of the vault-based systems.</p> <ul style="list-style-type: none"> • As the number of installed BMPs increases over time, this will be an increasing burden to our existing staff. Also, the prioritization process for inspections of these units involves many factors such as their type of maintenance activities outlined in the facility’s Stormwater Management Plan, if the owner is using a contractor for maintenance, the maintenance history of the facility, etc. • Inspection of “all newly installed storm water treatment systems within 45 days of installation to ensure approved plans have been followed” is not reasonable. Various treatment systems may be installed at different times during the construction of the facility and they are inspected by Building Inspectors as part of their inspection of the facility. This permit requirement will result in an unwise use of limited staff time to perform multiple “post-construction” visits to one site to inspect the different phases of the installation for treatment systems on a site that is still under construction. At some facilities, there may be several elements of a “treatment train” that may be completed at different times in the construction process. It does not make sense to inspect each part of the system until all parts are in place at the facility. This would occur when the Building Division has completed its last inspection and the facility is ready for occupancy. Up until that time, the facility will be covered by its Construction Stormwater Pollution Prevention Plan, if the project was large enough in size. • We request that the 45-day time period requirement be rephrased to require post-construction inspections within 45 days after a project has been completed or occupancy approved. • This permit requirement should continue to allow flexibility on the types and numbers of BMPs inspected, based on their potential for problems or failure.
C.3.h.iii	Maintenance Approvals	Please revise the first sentence to say “Permittees shall require” that treatment systems be properly maintained and operated for the life of the project.

		There is no possible way for Sunnyvale to “ensure” the proper operation and maintenance for those systems on privately owned property. We can require them to be maintained properly, then follow enforcement procedures if they fail, but we cannot “ensure” that they will operate or maintain them for the life of the project.
C.3.h.ii.(5), iii(1) and iii(3)	BMP O&M verification reporting	The reporting requirements listed in these sections continue to be excessive. Sunnyvale believes that submittal of a summary of the total number and types of BMPs inspected, and categories of problems observed/addressed will be sufficient to evaluate our inspection program. Detailed records can be kept locally for review upon request. Specifically, facility name, address, and responsible operator should be kept in local files and not be part of public annual reports, with possible web postings.
C.3.i.i	Requires minimum site design measures for small projects (2,500 to 10,000 sq. ft) including single-family homes	<p>We do not support requiring specific site design measures for small “unregulated” projects. Issues include:</p> <ul style="list-style-type: none"> • The dramatic increases in the number of projects staff must review for compliance with site design requirements will place additional strains on already limited resources; • Ordinances, staff processes/procedures, and written materials will need to be updated, which will require additional staff resources; • The required measures may not be feasible for some projects, particularly redevelopment projects located in an urban setting. In such settings it is possible that neither cisterns, rain barrels, runoff to vegetated areas, nor permeable surfaces would be feasible (see comments on C.3.c above). • Incorporating a site design measure for these small projects should be “encouraged” at most, not required.
C.4	Industrial and Commercial Site Controls	
C.4.c	Enforcement Response Plan (ERP)	Sunnyvale’s current ERP is designed to mainly enforce federal pretreatment regulations. Modifications of our existing ERP (which will likely include revisions to a city ordinance) to meet the requirements outlined within the MRP will take a significant amount of time as well as funds to complete. While this can eventually be

		accomplished, it is not likely that we would be able to do so by the implementation date of the permit (July 1, 2009), which would put Sunnyvale immediately into non-compliance with this MRP provision. Additional time will be needed to revise our ERP (and potentially a city ordinance) to meet these new requirements.
C.5	Illicit Discharge Detection and Elimination	
C.5.b	Enforcement Response Plan (ERP)	As described in C.4.c above, the Sunnyvale's ERP (and possibly city ordinances) will need to be revised to meet the new requirements of the MRP. This can eventually be accomplished, but not by the implementation date of July 1, 2009. Additional time will be needed to revise our ERP (and potentially a city ordinance) to meet these new requirements.
C.5.c.i	Spill and Dumping Response, Complaint Response, and Frequency of Inspections	<p>The requirement listed in the third paragraph of this provision is unclear. What is expected to show compliance by the term "Permittees shall conduct reactive inspections in response to complaints"?</p> <p>Also, as described in other sections of the permit, addressing the new requirement for establishing a non-emergency voice-mail for reporting that is checked daily will require additional funds and staff time to implement it. As one small item, it may not be significant, but when included as a whole with all the other new requirements of the MRP that Sunnyvale will have to comply with, it has a significant cumulative impact on already limited resources.</p>
C.5.d	Control of Mobile Sources	This provision requires that Sunnyvale and the other permittees immediately (by July 1, 2009) develop and implement a program to reduce the discharges from mobile businesses. Immediate implementation of this provision is not feasible and will likely result in immediate non-compliance by Sunnyvale and other permittees. To cooperate regionally to develop and implement a program, it will take more than the few months after the intended adoption date for the MRP to develop and implement such a program region-wide. Additional time is needed to comply with this provision.
C.5.e	Collection System Screening –	The requirement to develop and implement a screening program utilizing the USEPA/Center for Watershed Protection publication "Illicit Discharge

	<p>Municipal Separate Storm Sewer System (MS4) Map availability</p>	<p>Detection and Elimination (IDDE): A Guidance Manual for Program Development and Technical Assessment” as immediate upon adoption with no phase in time is unacceptable and will likely cause municipalities such as Sunnyvale to be out of compliance with this provision upon adoption of the permit.</p> <ul style="list-style-type: none"> • According to Table 4 the USEPA document listed above, to implement an IDDE program, the first step is to audit the existing program with the resulting product being a 5-year IDDE program development plan. The monitoring criteria listed in the Provision C.5.e.ii of the permit would not start until year 2-5 of the plan, once developed, according to the guidance document cited. However, the permit requires this type of program to be implemented immediately. • Also, according to Table 9 of this publication, the estimated Median Annual Cost of an IDDE program is \$121,825, based on 2004 dollars. If video inspections are required, obtaining just the equipment to perform such surveys is at least \$180,000, and this does not count the staff training and operating time for the unit, plus any flushing of lines that would need to be done to utilize the video equipment appropriately. This is a significant cost as a new program requirement, and when included as a whole with all the other new requirements, it will have a considerable cumulative effect on already limited resources for permit compliance by Sunnyvale. • The requirement to produce and make available maps of the MS4 system to the public still does not take into account issues with potential Homeland Security requirements. In the response to comments, Water Board staff indicated that they had not yet contacted Homeland Security about this issue. <p>Sunnyvale requests that an implementation time frame, such as that outlined in the USEPA publication referenced in this provision (a 5-year time frame) be allowed so that cities can develop a collection system screening program in a reasonable and cost-effective manner. Also, we believe that the requirement to publicize maps of the city’s storm drain collection system should not be required until</p>
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		such a time that the Water Board staff has received clear direction that it is not a Homeland Security issue.
C.6	Construction Site Control	
C.6.b	Enforcement Response Plan (ERP)	Sunnyvale has enforcement authority to require effective stormwater pollutant controls and progressively implement stricter enforcement actions to bring construction sites/contractors into compliance. However, the city currently does not have a formal ERP in place that meets all the requirements of this section. To develop such a plan will require a significant amount of staff time and funds to support its development, as well as possible ordinance changes to support its implementation, which require public review processes. The amount of time allowed to develop and implement the ERP, including possible ordinance changes is less than one year from the effective date of the permit. When this requirement is included as a whole with all the other new requirements of the permit that Sunnyvale will have to comply with, it has a significant cumulative impact on already limited resources. Sunnyvale requests that additional time be provided to allow for implementation and budget considerations for implementing this new requirement.
C.6.c	Best Management Practices Categories	This provision requires “all” construction sites to have seasonally appropriate BMPs in place. Sunnyvale is concerned about the impact that this would have on very small sites, perhaps ones that are currently not regulated due to the size or nature of the construction activity. Currently we promote the use of the practices in the BASMAA “Blueprint for a Clean Bay” for all construction activities that could result in stormwater pollution. Sunnyvale requests that a clarification be provided as to the size or type of construction project where these requirements are applicable.
C.6.e.ii(2)(b)	Frequency of Inspection: High Priority Sites	Sunnyvale requests that a better definition of “high priority” be included in this provision, similar to what SCVURPPP has proposed. This would define “high priority” sites as “other sites determined by the permittee or with the Water Board has designated as significant threats to water quality.”
C.6.e.ii (4)	Tracking	<ul style="list-style-type: none"> • This requirement for tracking information is

		<p>overly prescriptive. For example, it is not feasible to report the inches of rainfall since the last inspection as it will vary from site to site, depending on the micro-climates of the area and the information is not something that is readily available to inspectors. Plus, it is not relevant or necessary information to acquire in order to determine the effectiveness of a site's BMPs and operations.</p> <ul style="list-style-type: none"> • Since there is no phase-in of this tracking and database development requirement, when it is included as a whole with all the other new requirements of the permit that Sunnyvale will have to comply with, it has a significant cumulative impact on already limited resources. It will likely require new staff be hired to conduct the monthly inspections, enter data, and prepare the required reports. <p>Sunnyvale requests that sufficient time (i.e. one year) be provided to allow some phase-in of this requirement, and to determine how we can efficiently incorporate data collection efforts into existing programs.</p>
C.6.e.iii.(1)	Reporting	<p>Sunnyvale can support the use of data summaries to indicate the effectiveness of an inspection program. However, we request that summaries of numbers of discharges (f) and site with discharges (g) be removed as they are difficult to track/compile and the information will be provided in the summaries of violations (d).</p>
C.7	Public Information and Outreach	<p>Sunnyvale has no comments on this section.</p>
C.8	Water Quality Monitoring	<p>Sunnyvale supports and incorporates by reference the comments on Provision C.8 that were submitted by SCVURPPP.</p>
C.9	Pesticides Toxicity Control	
C.9.a	Adopt an IPM Policy or Ordinance	<p>Sunnyvale appreciates the phase-in time allowed with this provision for us to update and modify our existing city-wide IPM Policy to ensure it complies with the new requirements listed in this provision, as well as provide training to staff on the new requirements.</p>
C.9.d	Require	<p>It is not clear, nor is it defined anywhere in the MRP</p>

	Contractors to Implement IPM	documentation what an “IPM-certified” contractor is. To our knowledge, there is no IPM certification program for pesticide applicators within the Department of Pesticide Regulation or other state agency. There is an “EcoWise” certification program for structural pest control operators, but there is no equivalent for those who apply pesticides to landscapes. Until there is a state certification for pesticide applicators that use IPM practices, we suggest that this language be removed or modified to reflect the actual situation. We believe including the requirement to include contract specifications for contractors to incorporate the requirements of an agency’s IPM policy or ordinance is sufficient to promote the use of IPM practices.
C.10	Trash Reduction	
C.10.a.(iv)	Trash Hot Spot Clean-up to Trash Action Level(TAL)	<p>Sunnyvale supports SCVURPPP’s request that the TAL be defined as a numerical goal to define a threshold for further management actions, and not a water quality objective or numeric effluent limit. Sunnyvale also supports SCVURPPP’s recommendations to set the TAL at 100 pieces of trash or less, per 100 feet of creek or shoreline rather than the “urban optimal” category.</p> <p>Based on Sunnyvale staff’s experience with performing the URTA in multiple locations over the past four years, we believe it will reduce the subjectivity of some of the URTA questions/assessment categories. As stated by SCVURPP, this will allow permittees to reduce trash to a specific and measurable endpoint.</p>
C.10.a (v)	Trash Capture Requirement	<p>Sunnyvale is one of the two SCVURPPP cities to have participated in the pilot trash retrofit of storm drain inlets (SDIs) using “Full Capture” devices (Storm Tek inserts) as defined by the Los Angeles Regional Water Board.</p> <p>Requiring the use of a device approved for use in Los Angeles may be problematic for communities to fully adopt for our area. This comment is based on Sunnyvale’s experience with the pilot testing with SCVURPPP and the City of San Jose over the last year.</p> <p>Based on preliminary data and experiences with installing the full-capture devices in Sunnyvale, it will be very difficult, if not impossible to retrofit all</p>

		<p>the inlets in a particular “retail, wholesale, or commercial” area within a city to cover 30% of the ABAG 2005 land use by July 1, 2013 for the following reasons:</p> <ul style="list-style-type: none"> • Of the 5 types of treatment BMPs that have been certified by the LA Regional Water Quality Control Board, possibly only two of them will be suitable for use by cities in their urban, highly developed, commercial areas, as required by the permit. These are the inserts developed by the City of Glendale and the inserts developed by Advanced Solutions (Storm Tek devices used by Sunnyvale and San Jose in the local Pilot Project). The use of the other larger area treatment options such as the end-of pipe trash nets, linear radial gross solids removal device or the inclined screen gross solids removal device, all require substantial land or open space to install. • With the very limited choices for cities to select from, it will be extremely difficult for all 76 cities coming under the MRP requirements to obtain these devices in the quantities needed in the time frame prescribed. To obtain and install the 13 Storm Tek units in Sunnyvale took almost a full year’s time from when the sites were selected until installations were complete. According to the MRP (Fact Sheet Attachment10.1), Sunnyvale may need to install upwards of 200 units within the commercial/retail areas of the city to meet the 4.45% of retail-commercial land treatment requirement. • Given the fact that the Storm Tek devices must be custom made to fit each inlet, it takes a significant amount of time just to manufacture them and install them. (Also, based on our experiences in Sunnyvale, even with careful measurements and photographs, we had to send two of the 13 units back for remanufacture, as they did not fit the SDIs appropriately.) Considering the demand of 76 cities on one business for meeting the July 1, 2013 deadline in the permit does not seem reasonable. • The cost for purchase and installation of the approximately 200 units for Sunnyvale to comply with this requirement will likely be in excess of \$250,000 (based on 2007 dollars). This figure
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		<p>does not include the increased annual costs for maintenance of retrofitted SDIs. We are in the process of determining what those costs will be as part of the SCVURPPP pilot project. However, preliminary indications are that some retrofitted SDIs will need to be cleaned out more frequently than one time per year, which is our currently budgeted inspection and clean out frequency. In areas with numerous street trees, maintenance may need to be as frequent as monthly during the leaf-drop season from November – February in order to prevent street flooding during significant storm events.</p> <p>Sunnyvale requests that the requirement to install full capture devices in such a large portion (30% of acreage) of a city’s commercial/retail areas be reconsidered until there are more options available for full capture devices in highly urbanized commercial/retail areas. Either the number required needs to be reduced, or additional time must be granted to incorporate the funding into capital budgets and allow for their manufacture and installation within the permittees’ cities.</p>
C.10.a.vii	Trash Source Reduction	<p>An example of an ordinance change in this provision refers to the implementation of parking restriction ordinances to clear curbs on street sweeping days. In order to comply with such a requirement, “no parking” signage would be required prior to street sweeping. It is unclear whether the signage would need to be permanent or not, which would help to determine the added costs to the city to meet this provision. Posting permanent signage would be a significant capital cost along with the added clean up (i.e., graffiti removal) costs for the signs. If the signs were temporary (i.e., posted the day before sweeping and removed after) the costs could be significant as well, since staff would be needed to post signage before sweeping and remove it afterwards. Also, using the posting of streets for sweeping as an example for source reduction does not seem to be an actual source reduction activity as it is not preventing litter in the same way that the other examples are (e.g., single-use bag ordinances).</p>
C.10.b.(i)	Trash Hot Spot Assessment	<p>Sunnyvale supports the SCVURPPP comment regarding the of the Urban Rapid Trash Assessment</p>

		score, due to the subjectivity of some of the items of the URTA. A quantification of actual numbers of trash items at hot spots will provide less subjective data that is useful in addressing the TAL of 100 pieces of trash per 100 ft. section of waterway.
C.10.c	Long Term Plan for Trash Impact Abatement	Sunnyvale supports the SCVURPPP comment on extending the goal of “no trash impacts” to a 20-year time frame to 2029, to be more consistent with the requirements of TMDLs that have been approved for the Bay Area waterbodies.
C.10.d.(ii) & (iii)	Reporting – 2010 & 2011 Annual Reports	<ul style="list-style-type: none"> • In section (ii) it is not clear why the city should be reporting on the laws or ordinances implemented to deal with displacement of creek-side homeless encampments under the storm water discharge permit requirements. While the issue of homeless encampments and their impacts on waterways can be significant, requiring a stormwater discharge permittee to report on this activity is not appropriate, since these trash sources in waterways that are not coming from stormwater outfalls. We request that this reference be removed from this provision. • In section (iii) there is a reference to “establishing pilot full trash capture device installations”. It is our understanding that the requirement of this permit to install full capture devices is not a “pilot” effort, and we suggest that this reference be removed.
C.11 & C.12	Mercury Controls & Polychlorinated Biphenyls (PCBs) Controls	Sunnyvale agrees with SCVURPPP’s comments on these two sections of the permit, since many of the provisions are similar. We support the SCVURPPP recommendation to merge them into one provision and the comments SCVURPPP has provided on these two provisions...
C.12.f	Diversion of Dry Weather and First Flush Flows to POTWs	The requirements in this provision assume that the findings of the feasibility study will determine that diversions to POTWs are feasible (which may or may not be the case). To allow an iterative approach with this provision, Sunnyvale supports the request that the language be revised to indicate that the ability of stormwater programs to implement a minimum number of diversions (one per county-wide program) be based on the results of the feasibility study, and not simply presume that that they will be feasible.
C.13	Copper	

	Controls	
C.13.iii	Reporting	<p>The provisions in C.13 require a number of ordinance changes for the city. Some of these may require changes to building or plumbing codes in addition to municipal codes related to stormwater management. The requirement to certify that all legal authority is in place by the September 2010 annual report deadline will be difficult, if not impossible to comply with, given all the other potential ordinance changes that are being required as part of the MRP. Consideration should be provided for the amount of time ordinance changes take within a city. Providing additional time for compliance at the outset will reduce a city's need to provide justification as to why the deadline for certification of legal authority could not be met, and not put a city in jeopardy of permit non-compliance.</p>
C.14	Polybrominated Diphenyl Ethers (PBDE), Legacy Pesticides and Selenium	<p>Sunnyvale support SCVURPPP's suggested edits on the redline/strikeout draft provided with their comments.</p>
C.15	Exempted and Conditionally Exempted Discharges	
C.15	General Comments	<p>Sunnyvale previously commented that the draft MRP and the previous TO contained numerous, overly burdensome requirements for conditionally exempt discharges to storm drains within a city's jurisdiction. We requested that this section be rewritten to include a simplified list of practical and effective BMPs for each type of conditionally exempt discharge. The revised TO contains no real changes to address the important concerns expressed in our February 20, 2008 comments on this section. The only changes made to this section by Water Board staff were simply to include more detail on how the monitoring, tracking, and reporting of the various discharges be done.</p> <ul style="list-style-type: none"> • We again request that this provision undergo substantial revision to emphasize best management practices. • We also request that the current SCVURPPP-Conditionally Exempted Discharges Report that

		was submitted and approved by the Water Board in 2000, be grandfathered and remain in full effect.
C.15.b(ii - iv)	Various Discharge Types	All of these provisions have no phase in period for compliance. Some of these will require ordinance changes (e.g., (ii), (iv), and (v) which cannot be accomplished by the July 1, 2009 deadline. If the other requested changes are not made to this provision, then municipalities will need additional time (at least one year from the adoption date) to address ordinance changes required by these significant changes to the Exempted or Conditionally Exempted discharge section of our current permit.
C.15.b.iii	Planned Discharge – Notification and Reporting Requirements.	<p>This provision requires that all planned potable water discharges must be reported in a tabular form and included in the annual report. As an example, the City of Sunnyvale Water Utility would need to report on 1,600 hydrant flushes, 500 blow-offs, and the 250 meter tests they conduct each year. This constitutes a massive amount of staff time to enter all the data required in provision (iii) as well as the ancillary costs of database development, quality control, and report preparation.</p> <p>We request that this reporting requirement be eliminated or greatly reduced as it does not seem to provide any real benefit to demonstrate compliance with the implementation of BMPs to reduce relatively minor impacts of potable water to aquatic systems.</p>
C.15.b.(v)(e)	Irrigation Water, Landscape Irrigation, Lawn or Garden Watering	<p>This new provision of the permit will require the City to include Illicit Discharge enforcement actions for “large volume landscape irrigation runoff” to the MS4. However, no definition is provided as to what is considered a “large volume” discharge.</p> <p>Besides being an overly prescriptive requirement, it requires cities to devote limited resources to responding to relatively minor potential impacts of irrigation water discharges. We request that this requirement to implement a new program be removed from this permit and allow cities to continue to promote good irrigation practices and the wise use of water resources.</p>
C.15.c	Monitoring Requirements	The amount of new monitoring outlined in this provision will require all water department employees obtain training to a higher certification

		level (D-3). In most cases this will require up to two years of time for an individual to complete and cost the city upwards of \$2,000 per employee. No basis has been provided for the overly prescriptive requirements for monitoring these minor types of non-stormwater discharges that pose very limited threats to waterbodies. We request that the monitoring requirements for these types of discharges be limited to what is in the SCVURPPP Conditionally exempted Discharges Report (June 2000).
Attachment F	Santa Clara Permittees Hydro-modification Requirement	Sunnyvale requests that the coloring error in the SCVURPPP HMP Applicability Map be corrected for the area between the intersection Highway 101 and Highway 237 that is within Sunnyvale. This area should not be "green" as indicated on the TO's HMP map version. HMP requirements do not apply to this area, since stormwater drainage goes to the Sunnyvale West Channel.