# RESPONSE TO COMMENTS

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM GENERAL PERMIT FOR STORMWATER DISCHARGES ASSOCIATED WITH COMMERCIAL, INDUSTRIAL, AND INSTITUTIONAL FACILITIES IN THE DOMINGUEZ CHANNEL/INNER AND OUTER LOS ANGELES AND LONG BEACH HARBOR WATERSHED AND THE LOS CERRITOS CHANNEL/ALAMITOS BAY WATERSHED
ORDER NO. R4-XXXX-XXXX
GENERAL NPDES PERMIT NO. XXXXXX

Comments submitted on July 26, 2022, tentative permit.

| Letter Number | Commenter (Click to go to location) |
|---|---|
| 19 | Industrial Environmental Coalition of Orange County |
| 20 | California Chamber of Commerce |
| 21 | State of California Auto Dismantlers Association |
| 22 | Relativity Space, Inc. |
| 23 | International Paper |
| 24 | Gold Bond Building Products, LLC |
| 25 | Costco Wholesale, Inc. |
| 26 | Costco Business Center #564 |
| 27 | Costco Wholesale #1202 |
| 28 | Costco Wholesale Torrance |
| 29 | #769 Inglewood Costco Wholesale |
| 30 | Costco Wholesale Hawthorne #671 |
| 31 | Costco Signal Hill #424 |

| Acronym | Definition |
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| 40 CFR | Title 40 of the Code of Federal Regulations |
| BAT | Best Available Pollutant Control Technology Economically Achievable |
| BCT | Best Conventional Pollutant Control Technology |
| BMP | Best Management Practice |
| BPT | Best Practicable Control Technology Currently Available |
| CII Facilities | Commercial, Industrial, and Institutional facilities in the Dominguez Channel/Inner and Outer Los Angeles and Long Beach Harbor Watershed and the Los Cerritos Channel/Alamitos Bay Watershed |
| CII Permit | Commercial, Industrial, and Institutional General Permit |
| CTR | California Toxics Rule |
| CWA | Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251 et seq.) |
| CWC | California Water Code |
| ELG | Effluent Limitation Guideline |
| Fact Sheet | Attachment F of the tentative CII Permit |
| IGP | Industrial General Permit |
| Los Angeles Water Board | Los Angeles Regional Water Quality Control Board |
| MDL | Method Detection Limit |
| MS4 | Municipal Separate Storm Sewer System |
| MS4 Permit | Regional Municipal Separate Storm Sewer System Permit |
| NAICS | North American Industrial Classification System |
| NAL | Numeric Action Level |
| NEC | No Exposure Certification |
| NOI | Notice of Intent |
| NONA | Notice of Non-Applicability |
| NPDES | National Pollutant Discharge Elimination System |
| NSWD | Non-Stormwater Discharge |
| Order | Order NO. R4-2024-XXXX |
| PAH | Polynuclear Aromatic Hydrocarbon |
| PCB | Polychlorinated Biphenyl |
| PRD | Permit Registration Document |
| QSE | Qualifying Storm Event |

| Acronym | Definition |
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| ROWD | Report of Waste Discharge |
| SIC | Standard Industrial Classification |
| SMARTS | Stormwater Multiple Application and Report Tracking System |
| SWPPP | Stormwater Pollution Prevention Plan |
| TBEL | Technology-Based Effluent Limitation |
| the two watersheds | (1) Dominguez Channel/Inner and Outer Los Angeles and Long Beach Harbor Watershed and (2) the Los Cerritos Channel/Alamitos Bay Watershed |
| TMDL | Total Maximum Daily Load |
| TSO | Time Schedule Order |
| TSS | Total Suspended Solids |
| U.S. EPA | United States Environmental Protection Agency |
| WLA | Wasteload Allocation |
| WMG | Watershed Management Group |
| WMP | Watershed Management Program |
| WOTUS | Water of the United States |
| WQBEL | Water Quality-Based Effluent Limitation |

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| 1.1 | Regarding the Draft Permit, we are pleased with the novel regulation of unpermitted CII sites and the flexible compliance options afforded to covered facilities. However, the permitting scheme currently included in the Draft Permit presents numerous compliance challenges and loopholes and requires significant changes to ensure attainment of water quality standards and avoid backsliding for permittees under the regional municipal separate storm sewer system ("MS4") permit ("MS4 Permit") and the statewide Industrial General Permit ("IGP"). We are primarily concerned with the insufficient onsite Best Management Practices ("BMPs") and the lack of adequate monitoring and sampling requirements under Compliance Option 1, and we are certain the Draft Permit will result in backsliding for IGP permittees that opt to enroll the entire facility under the CII Permit.<br><br>To remedy our concerns, we urge EPA and the Regional Board to make the following changes and clarifications in the Draft Permit:<br><br>(I) Revise the Residual Designation to require permit coverage for all CII sites greater than five acres in size;<br><br>(II) Revise Compliance Option 1 in several ways to favor compliance funding toward downstream regional stormwater projects and improve the administration of funding agreements to ensure net environmental benefits and protect against backsliding in water quality during the interim period as projects are developed;<br><br>(III) Revise Compliance Option 2 to update the applicable storm size threshold based on best available data and to require more robust monitoring of BMPs;<br><br>(IV) Clarify the applicability of the IGP to industrial portions of CII sites to ensure there will be no rollbacks of industrial permit requirements under the CII Permit;<br><br>(V) Shorten the implementation time period under the CII Permit; and<br><br>(VI) Investigate and regulate stormwater discharges from CII facilities in other watersheds in the Los Angeles County region. | Comment summary acknowledged. Please see specific responses below. Please note that comments related to U.S. EPA's preliminary designation memo are outside the scope of the action before the Los Angeles Water Board. |
| 1.2 | The five-acre impervious cover threshold in the Residual Designation is arbitrary and insufficient to attain water quality standards in the Watersheds.<br><br>[See comment letter from Los Angeles Waterkeeper, American Rivers, the Natural Resources Defense Council, the California Coastkeeper Alliance, and Heal the Bay for full comment text.] | This comment pertains to U.S. EPA's preliminary designation memo and is outside the scope of the action before the Los Angeles Water Board. |

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| 1.3 | Compliance Option 1 must be revised in several ways to achieve its intended purpose of improving water quality and to ensure permittees are held accountable. We understand and appreciate the Regional Board's efforts to provide a feasible range of compliance options in the Draft Permit. The most novel is Compliance Option 1, which would find a permittee in compliance with the Draft Permit if the permittee enters into a legally binding agreement with a local Watershed Management Group ("WMG") to provide funding toward a regional stormwater capture project as part of a Watershed Management Program ("WMP") under to the MS4 Permit. We support the concept of this compliance option, as it is an important mechanism to shift the burden of complying with stormwater pollution controls to private facilities. Local governments are presently entirely responsible for those pollution controls under the WMPs in both Watersheds developed pursuant to the MS4 Permit, despite facing funding constraints and associated challenges implementing regional stormwater management projects under the WMPs in a reasonable timeframe.<br><br>Nevertheless, we have significant concerns with the lack of detail and accountability for Compliance Option 1 in the Draft Permit. We believe this compliance option, as written, is insufficient to guarantee improvements in water quality in the Watersheds and could shield permittees from accountability for polluted stormwater discharges that enter receiving waters. Absent substantial revisions to Compliance Option 1, the CII Permit is unlikely to make a meaningful difference in the trajectory of regional stormwater pollution controls in the Watersheds. As such, we offer the following recommendations to improve and strengthen Compliance Option 1 in the Draft Permit.<br><br>These recommendations will ensure that Compliance Option 1 results in equitable and effective water quality improvements throughout the Watersheds, while preserving the streamlined approach to compliance and minimizing costs to facility owners for onsite BMPs. | The tentative CII Permit has been revised in response to this comment and the specific responses to comments below outline the increased detail and accountability for Compliance Option 1 to ensure success of regional stormwater projects and improvement of water quality in the watersheds. |
| 1.4 | The Term "Technically Feasible" in relation to downstream project funding must be clearly defined in the Draft Permit. Fundamentally, Compliance Option 1 must be limited to permittees whose discharges of polluted stormwater can be captured by a downstream stormwater project for groundwater infiltration or other uses, therefore preventing the stormwater from entering the receiving waters in the Watershed. In such a case, the permittee would agree to pay money to a WMG for constructing, operating, and maintaining a project designed to capture, filter, and/or treat the facility's stormwater, saving the permittee from having to construct structural stormwater controls onsite. The Draft Permit rightfully requires that any such funding agreement be proportional to the volume of stormwater received from the permittees to ensure that the project has the capacity to capture all of the | The Los Angeles Water Board disagrees that Compliance Option 1 must be limited to CII facilities whose discharges can be captured by a downstream stormwater project. To clarify, a downstream stormwater project is a regional stormwater project that is located within the municipal separate storm sewer system between the CII facility and the point where the MS4 discharges to the receiving water. The comment argues that discharges from a CII facility must be physically treated by a regional project to participate in Compliance Option 1. However, this is not necessary because, for the situations where a CII facility could |

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| | facilities' runoff. This common-sense cost-shifting arrangement will ensure that more stormwater projects can be built in the Watersheds and will achieve significant pollutant loads from entering impaired receiving waters, while saving local government significant compliance costs under the MS4 Permit.<br><br>Nevertheless, the Draft Permit also contemplates situations under Compliance Option 1 where a permittee may still enter into a funding agreement with a WMG even if "a downstream regional project is not technically feasible" as part of the applicable WMP. In such a case, the WMG can instead identify an upstream stormwater project and direct the permittee's funding toward that upstream project. Without sufficient guardrails on the upstream project funding arrangements, Compliance Option 1 could create a "pay to pollute" loophole in some circumstances, where a permittee can be found in compliance with the Draft Permit through nominal payments even if its polluted stormwater discharges continue to cause or contribute to ongoing impairment in receiving waters in the Watersheds. To avoid this result, it is imperative to ensure that the definition of when downstream projects are "technically feasible" is as broad as possible, and conversely, that the availability of upstream project funding is limited to the narrowest circumstances possible.<br><br>We are particularly concerned about the availability of offsite upstream compliance options for the many large cargo terminals and other port facilities at the Port of Los Angeles and the Port of Long Beach, which operate considerable heavy machinery, involve numerous daily trips of drayage trucks and other industrial vehicles, and currently do not operate with adequate stormwater controls. Port terminals and facilities should be required to commit to onsite BMPs wherever feasible, which would likely be necessary to achieve water quality standards in the harbor waters. Restricting the scope and availability of Compliance Option 1 will therefore be necessary to ensure a net environmental benefit for any compliance payments made.<br><br>Critically, however, the term "technically feasible" is undefined in the Draft Permit, creating significant uncertainty among permittees, local governments, and the public at large as to when a permittee can contribute funding to an upstream project. The Draft Permit must offer a specific definition of the term "technically feasible" to avoid such uncertainty moving forward. Determining the feasibility of downstream projects should include, at minimum, considerations of the geographic location of the facility, the hydrologic flow of stormwater discharges between the facility and the primary receiving water, and opportunities to direct the facility's discharges to a stormwater project at every point during the path of flow— | participate in an upstream stormwater project, the impact on water quality would be managed by the Watershed Management Program containing that project. To explain, as part of their reasonable assurance analyses, the WMPs predicted the pollutant reductions to be achieved by various watershed control measures, including regional projects. The sizing and design of these regional projects are determined based on the entire volume or load reduction required for a sub-watershed as a whole, not necessarily the exact volume or load reduction required for the particular area upstream of a regional project, and many of the CII facilities permitted under the tentative CII Permit have been included in the WMPs' predicted pollutant reductions. Put differently, the load reduction for each CII facility eligible to participate in Compliance Option 1 has already been determined by the WMPs. By paying into the WMP in an amount proportional to the volume of stormwater runoff and facility type (and therefore, amount of pollution), each CII facility eligible to participate in Compliance Option 1 will be paying in direct proportion to water quality benefits achieved. The amount to be paid will be consistent with the mathematical formula set forth in Section 8.1 of the Permit. A fee schedule based on this formula will be developed by the Watershed Management Groups responsible for the WMPs. Enabling downstream CII facilities to participate in upstream regional projects, where no downstream regional projects are available, would thus directly implement the WMPs and facilitate attainment of waste load allocations and receiving water limits on a sub-watershed scale, and ensure that the pollutant load that each CII facility contributes to the watershed is offset and captured in a proportional amount. Accordingly, there is no "pay to pollute" loophole.<br><br>The tentative CII Permit has been revised to clarify that a CII facility may only participate in Compliance Option 1 if the CII facility, regardless of whether it is upstream or downstream of a |

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| | including all points between when the stormwater leaves the facility and right before it enters the receiving water.<br><br>To ensure a proper and limited application of Compliance Option 1 to the select permittees without a legitimate downstream stormwater project option, we request that Section 8.1 be revised to explicitly address three important aspects of the determination of when a downstream project would be "technically feasible." | regional stormwater project, is included in the area modeled by the reasonable assurance analysis for a WMP. |
| 1.5 | Cost considerations should be excluded from determining the technical feasibility of downstream projects under Compliance Option 1. Costs come in play in two aspects—the amount of funding paid from the permittee to the WMG, and the cost of developing downstream stormwater projects. The former is irrelevant to whether it is technically feasible for a permittee to make payments for an available downstream stormwater project. The latter is also an improper consideration for whether it is technically feasible to develop a stormwater project in the first place. The costs of stormwater projects will always be subjective and dependent on the size and location of such projects, any other multi-benefit uses associated with the regional project, and the amount of infrastructure to be developed as part of the project. If such a project has been identified, then regardless of the cost of developing and maintaining the project, it is technically feasible to route a permittee's stormwater discharges to that project. The definition of "technical feasibility" for downstream projects under Compliance Option 1 must explicitly memorialize this important principle. | The revised tentative CII permit excludes the cost of implementation from the determination of availability of a downstream project. |
| 1.6 | The definition of technical feasibility should include permittees that discharge stormwater into the MS4 system, and thus the Draft Permit should prohibit upstream project funding for such permittees. It is certainly feasible for any covered facility that discharges into the MS4 system to be considered upstream of a potential stormwater project, as the applicable municipality would be able to reroute the MS4 flows to a stormwater project rather than discharging that water into the receiving waters. To illustrate, the County of Los Angeles has been developing the Rory M. Shaw Wetlands Park Project for many years, which will result in an engineered multi-purpose wetlands park at the site of a former landfill that will reduce flood risk and stormwater pollution by capturing stormwater discharges from the multitude of industrial facilities in the area. A key component of the wetlands project to ensure its utility is the Sun Valley Upper Storm Drain Project, which will reroute stormwater discharges from facilities that enter the MS4 system to the wetlands park via a 4.75-mile-long storm drain project.<br><br>As these projects show, under the CII Permit, it is technically feasible to develop "downstream" stormwater projects that reroute permittees' discharges from the MS4 system | Compliance Option 1 is intended for dischargers to choose a project that is downstream by default; dischargers can only participate in upstream projects when there are no downstream projects. As explained in response to comment #1.4, there is no need to reroute stormwater from a CII facility upstream to ensure that the exact stormwater from that facility is treated by a regional project because load reductions in WMPs are achieved on a sub-watershed scale. |

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| | into a regional stormwater capture or storage project to improve water quality. Additional piping infrastructure might be necessary for improvements to the MS4 system that will reroute the water to a regional project, but the additional costs associated with changes to the MS4 system do not render downstream projects "infeasible." Infrastructure projects to improve the MS4 system would also be feasible to collect stormwater discharges from port terminals, as many facilities at the ports discharge all or a portion of their stormwater into storm drains. We therefore urge the Regional Board to ensure that permittees discharging into the MS4 system will always have a "technically feasible" downstream regional stormwater project that the applicable WMG can pursue through funding from Compliance Option 1 payments under the Draft Permit. The option for upstream project funding should be limited to permittees that discharge directly into the receiving waters in the Watersheds, without traveling through the MS4 system. | |
| 1.7 | The definition of "regional projects" under Compliance Option 1 should be expanded to include privately-developed stormwater projects on private lands. As currently written, the Draft Permit only contemplates that funding under Compliance Option 1 will be used for regional projects developed by municipalities under a WMP for compliance with the MS4 Permit. Limiting recipient projects to municipally-owned ones exclude the possibility that private landowners downstream of covered facilities might be willing and able to collect stormwater discharges from those facilities. While we believe municipalities should still be the primary recipient of permittee funding under Compliance Option 1, the Draft Permit should not preclude a municipality from applying compliance payments from permittees toward a privately developed stormwater project that serves the same function as a municipally developed project.<br><br>Private credit trading compliance options for water quality improvements have proven to be successful in other programs around the country. Stormwater credit trading programs were initially pioneered in the District of Columbia as an MS4 permit compliance measure. Later, the cities of Grand Rapids in Michigan and Chattanooga in Tennessee adopted this approach, which is also under consideration by the County of Los Angeles and the City of San Diego. The compelling benefit of private party exchanges is that they are very likely to be less expensive to implement and maintain than projects undertaken by public agencies, and private projects can be implemented far more rapidly. This cost efficiency has been borne out in analyses conducted by American Rivers for stormwater credit trading programs in Grand Rapids, Eugene in Oregon, and in the San Mateo County Countywide Stormwater Program. It is notable that under the current limited framing of Compliance Option 1, CII permittees can | The Los Angeles Water Board acknowledges the opportunities that privately-developed stormwater projects provide. It is for this reason that the tentative permit already allows for privately-developed stormwater projects on private lands. While the tentative CII permit requires regional projects to be "included in a WMP," it doesn't require that the projects themselves be developed by municipalities. The WMPs allow for the use of private-public partnerships and municipalities may include privately-developed projects in their WMPs.<br><br>However, the Los Angeles Water Board doesn't agree that CII Permittees should be allowed to work directly with other private entities to implement regional projects. Instead, the requirement in Compliance Option 1 that regional projects be included in a Board-approved WMP ensures transparency, accountability, and oversight. As part of the reasonable assurance analysis, the WMPs predicted the pollutant reductions to be achieved with various watershed control measures, including low impact development, nature-based solutions, and regional projects, to meet effluent limits and receiving water limits by total maximum daily load compliance dates. By requiring that regional projects under Compliance Option 1 be included in Board-approved WMPs, the permit ensures that the regional projects will be |

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| | conceivably pay into a WMG regional project fund that will not deliver stormwater management projects for five or more years. From a water quality and community health standpoint, this is not an optimal outcome. Allowing CII permittees to contract with other private entities to implement and maintain the requisite stormwater capture volume on a more immediate timeline could result in accelerated attainment of water quality goals under the CII Permit. | designed, constructed, and maintained to attain effluent and receiving water limitations. |
| 1.8 | Private stormwater capture projects could function in at least two ways in the context of the CII Permit. Landowners may agree to capture additional stormwater volume from nearby facilities covered under the CII Permit, above and beyond the stormwater capture requirements for the property itself, thereby creating a regional benefit of stormwater capture that would not otherwise be accessible due to the lack of a municipally-developed regional stormwater capture project in that vicinity. WMGs are best situated to solicit private stormwater project arrangements from interested property owners, and therefore public-private partnerships for offsite stormwater capture could be incorporated into the WMPs as a stormwater pollution control that will help achieve compliance with the municipalities' obligations under the MS4 Permit. Alternatively, the Regional Board could establish a new compliance option for private credit trading for stormwater capture, separate from Compliance Option 1. | The tentative CII Permit and the Regional MS4 permit, as written, allow for the consideration of privately-owned projects that are incorporated into the WMP. Responsibility will fall upon the CII Permittee to work with the WMG to ensure that the private regional project is included in the WMP.<br>Note that Compliance Option 1 already allows Permittees alternative means of compensation such as property exchange or easements to enable public development of regional projects (section 8.1.3.1) on private land. |
| 1.9 | In either case, such a compliance option should provide specific guidance for permittees and private landowners about the mechanism of stormwater capture trading, and specific program requirements to limit the types of projects that would comply, with sufficient oversight by the Regional Board and WMGs to ensure net environmental benefits. Guidance on private credit trading should include mechanisms establishing a preference for nature-based solutions and green infrastructure with the capacity to capture stormwater and infiltrate it into the groundwater table, without the need for significant gray infrastructure such as underground cisterns. The Regional Board should also provide guidance or impose clear requirements on, among other things, (1) the specification of preferred BMPs, (2) performance standards for those BMPs, (3) the timing of implementing and maintaining the BMPs, (4) offset ratios for private credit trades, including multipliers as recommended above, (5) the timing and duration of payments from permittees under the CII permit, (6) limitations on the geographic location of offsite compliance parcels, and (7) robust tracking and accounting requirements, including mechanisms to ensure accountability and public transparency. LA Waterkeeper, American Rivers, and NRDC have relevant expertise about the successful design and implementation | The Los Angeles Water Board appreciates the commenters' expertise in private credit trading programs. However, implementation of a private credit trading program is a long-term endeavor that is currently being investigated by municipal permittees as part of Regional MS4 permit implementation. Explicit guidance about preferred types, performance, and timing of best management practices, as well as the valuation, tracking, and accounting of credits, can be explored as part of that long term endeavor. Note that the selection and timing of BMPs are already considered as part of the publicly transparent WMP review and approval process.<br>At this stage of the CII program, water quality improvement will be more effectively achieved by investing in the already-existing WMP programs rather than developing a brand-new credit trading program. Compliance Option 1 could potentially be expanded in the future to allow for credit trading among private |

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| | of private trading programs, and we are willing to discuss our experience and expectations with the Regional Board during any process to develop relevant guidance. | entities based on lessons learned from implementation of this first iteration of the CII Permit.<br><br>The Los Angeles Water Board will continue to work with the WMGs on ways to promote transparency with Compliance Option 1 to enable CII Permittees to cost compare among compliance options. |
| 1.10 | Ultimately, when applying these criteria to the definition of whether downstream projects are "technically feasible," we expect that it would be technically feasible for WMGs to direct almost all permittees' discharges to a downstream stormwater project of some form. Therefore, we urge the Regional Board to adopt a clear definition of "technically feasible" as used in Section 8.1 of the Draft Permit that limits the availability of upstream project funding to very specific circumstances, which is necessary to avoid overexpansive applications of upstream project funding without onsite BMPs that would authorize continued degradation of receiving waters indefinitely—and certainly in the short term of the Draft Permit as new regional stormwater projects are developed. | Please see response to comment #1.4 and Attachment A of the revised tentative permit for a clarification of the criteria for participation in upstream regional projects. |
| 1.11 | The Regional Board must clarify that funding agreements with WMGs provide compliance only for the duration of the permit term.<br><br>As currently written, Compliance Option 1 in the Draft Permit does not provide any temporal requirements on the compliance payments to WMGs, or for how long a permittee will be deemed in compliance with the Draft Permit once an agreement with a WMG is made. Rather, the Draft Permit vaguely states that any agreements between permittees and WMGs must include a "specified timeframe for the agreement." The absence of clear guidance on how long a permittee must make payments to the applicable WMG, and how long such an agreement will provide deemed compliance under the Draft Permit, creates the opportunity for a favorable deal between select permittees and WMGs, to the detriment of water quality in the Watersheds. | Although section 8.1 of the tentative CII Permit does not specify the duration of the agreement between the WMG and the CII Permittee, section 9.1 of the CII Permit requires the CII Permittee to submit an annual report detailing its participation in the agreement. The annual report shall include the activities funded during the previous reporting year in support of the WMP, and confirmation that the Permittee has complied with the requirements of the agreement, including payment of applicable fees. Additionally, the CII Permittee shall update the agreement with the WMG by December 15th of each reporting year, if necessary. In this way, the tentative CII Permit makes it clear that the CII Permittee must participate in the funding agreement with the WMG for as long as the Discharger chooses to employ Compliance Option 1. |
| 1.12 | Our primary concern is a scenario where a permittee agrees to make a single up-front payment to a WMG that renders the permittee "in compliance" with the Draft Permit indefinitely. We acknowledge that up-front payments may be necessary to ensure the WMG can develop a new regional stormwater project on an expedited timeline, and we support | The overall goal of Compliance Option 1 is to facilitate the CII Permittee's involvement in watershed-scale improvements by helping fund multi-benefit stormwater control projects indefinitely. These projects require ongoing funding for operation and |

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| | granting WMGs the flexibility in structuring payments from permittees under Compliance Option 1 to achieve this goal. More concerning, however, is the lack of guidance from the Regional Board about how long the permittee will remain in compliance with the Draft Permit under Compliance Option 1. Once the stormwater project is developed, it will be vital to identify ongoing funding for operations and maintenance for the stormwater project, or the need for other supplemental project enhancements down the road, which may require further negotiation between the WMG and the permittee. Without a temporal limitation on how long a permittee may be deemed in compliance under Compliance Option 1, permittees may seek to enter an indefinite agreement with a WMG that merely provides up-front stormwater project funding, meaning that the permittee will not be subject to any long-term requirements for compliance. We understand that WMGs have an incentive to ensure that all agreements with permittees provide sufficient funding to guarantee the development and maintenance of applicable stormwater projects. Nevertheless, the Draft Permit should not be written in such broad terms that allow for permittees with political influence or bargaining power to take advantage of the WMGs' urgent need for funding to develop stormwater projects as soon as possible. | maintenance, and the payments at issue here will, eventually, help pay for such costs. The revised tentative CII Permit clarifies that a single up-front payment to a WMG does not constitute compliance with Compliance Option 1. The term "funding" has been clarified to include both capital and operation and maintenance costs. Please see revised text in section 8.1 of the Order and section 4.9.1.2 of the Fact Sheet.<br><br>The details of the funding terms of the agreement, including the schedule of payments, should be developed between the WMG and the CII Permittee. The WMGs are the subject matter experts on the costs of regional BMP planning, design, construction, operation, and maintenance. WMGs also need flexibility to establish funding terms to account for unplanned, unforeseen, or uncontrollable project impacts such as inflation, labor, and supply issues. Therefore, the tentative CII Permit doesn't specify the funding terms of the agreement. However, the tentative CII Permit now provides guidance in section 8.1 related to the funding level or participation fee based on CII site-specific factors affecting pollutant contribution to regional projects required for Compliance Option 1. |
| 1.13 | Further, under the current Draft Permit, permittees will not be held accountable for their own polluted stormwater discharges in any form if they select Compliance Option 1. As discussed in Section II.E below, the Draft Permit currently would not require permittees selecting Compliance Option 1 to monitor or sample their discharges during the period they are making compliance payments. Those permittees could therefore discharge excessively dirty stormwater from their properties without the public having access to the data necessary to track implementation of the minimum BMPs required for all permittees under the CII Permit. Without a finite compliance time horizon for agreements with WMGs under Compliance Option 1, we are concerned that some downstream permittees discharging directly into receiving waters will be indefinitely deemed to be in compliance with the Draft Permit after a single up-front payment to a municipality for an upstream project, and will never have to monitor their discharges again. These permittees funding upstream projects must be obligated to enter into new agreements with WMGs at some point to provide additional funding for operating and maintaining upstream projects, and to reconsider whether onsite | Compliance Option 1 and all compliance options in Section 8 of the CII Permit are for compliance with water quality-based effluent limitations in section 7.2 only. The tentative CII Permit has been revised to clarify this. Regardless of the compliance option selection for the water quality-based effluent limits, all CII Permittees are required to develop and implement site-specific Stormwater Pollution Prevention Plans with minimum BMPs according to Section 6 of the tentative CII Permit. While they are not required to sample their discharges, CII Permittees must submit annual reports demonstrating compliance with their SWPPPs, including visual monitoring of discharges (tentative CII Permit, section 9, Monitoring and Reporting Requirements). The tentative CII Permit has been revised to clarify that this requirement applies to all CII Permittees. |

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| | BMPs might become necessary for those permittees—through monitoring and sampling—once upstream projects are operational and funded from other sources. | Please see response to comment #1.18 regarding the commenter's suggestion on monitoring and sampling.<br><br>Please see response to comment #1.12 regarding the commenter's suggestion on entering into new agreements with Watershed Management Groups.<br><br>Please see response to comment #1.4 regarding upstream compliance and revisions to the tentative CII Permit; and regarding the fact that Compliance Option 1 is designed to require CII Permittees to pay for their share of pollutant load reduction already taken into account by the WMPs. |
| 1.14 | Most importantly, indefinite upstream project funding arrangements without accountability could lead to disproportionate and inequitable pollution burdens for disadvantaged communities within the Watersheds. The WMGs overseeing the Watersheds encompass primarily disadvantaged communities, in particular the community of Wilmington adjacent to the Port of Los Angeles, as can be seen in the California Office of Environmental Health Hazard Assessment's mapping of disadvantaged communities through the CalEnviroScreen tool.<br><br>Through upstream project funding agreements, WMGs may choose to divert funding from permittees in disadvantaged communities identified in the map to upstream projects in the areas outside of those disadvantaged communities. This arrangement, if allowed to continue indefinitely, would further entrench the ongoing stormwater pollution issues within environmental justice communities like Wilmington already facing excessive pollution burdens, while cleaning up stormwater in communities that already have proportionally healthier environments. | The tentative CII Permit will not lead to disproportionate and inequitable pollution burdens. The tentative CII Permit only allows participation in upstream regional projects if downstream regional projects are not available. Even if the number of upstream projects funded by CII Permittees were significant, the majority of the Dominguez Channel Watershed is on the SB 535 map of Disadvantaged Communities cited in the comment letter and experience high pollution burdens according to CalEnviroScreen, including many communities in the upper part of the watershed.<br><br>In addition, the Regional MS4 Permit requires WMGs to prioritize projects based on water quality impairments. This requirement ensures that communities facing the greatest water pollution burden will be most prioritized. Given these reasons, it is unlikely that WMGs would choose to divert funding from CII Permittees to regional projects in areas outside of disadvantaged communities because there are very few regional projects located outside of the SB 535 map of Disadvantaged Communities, and it is more likely that disadvantaged communities will benefit from the projects CII Permittees fund. The current list of regional projects in the Dominguez Channel WMP is: El Segundo Pump Station, Jim Thorpe Park, Darby Park, Harbor City Park, Averil Park, Wilmington Recreation Center, Alondra Park, Carriage Crest |

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| | | Park, Carson Civic Center, Del Amo Park, Normandale Recreation Center, Wilmington Green Streets, Downtown Lomita Multibenefit project, Ebony Lane Park, Douglas Pump Station, and Southern Lawndale project. The majority of these projects are located within the SB 535 map of Disadvantaged Communities or within a mile of the nearest disadvantaged community. |
| 1.15 | At a certain point after upstream projects are already completed, onsite enhanced BMPs will become the only mechanism for permittees truly without a "technically feasible" downstream stormwater project option to prevent polluted discharges from entering the receiving waters in disadvantaged communities. A permittee's deemed compliance for upstream project funding under Compliance Option 1 should therefore be limited to a short and definite term under each agreement with a WMG, which will ensure that the Regional Board, municipalities, and the public all have the opportunity to assess whether the permittee can continue to rely on upstream project funding under a subsequent agreement, or whether the permittee must implement onsite BMPs at that time to improve local water quality for environmental justice communities.<br><br>For these reasons, we urge the Regional Board to clarify in Section 8.1 that funding agreements with WMGs under Compliance Option 1 will deem the permittee in compliance only for the expected term of the CII Permit, and for no more than five years. After five years, the permittee should be obligated to enter into a wholly new agreement with WMG to re-obtain its compliance status for the ensuing term, resetting the negotiations between the sides. Requiring both sides to renegotiate a new agreement after five years will ensure that all permittees—whether funding upstream or downstream projects—will be obligated to provide commensurate funding for ongoing operation and maintenance of stormwater projects over the long term. For upstream projects, a maximum five-year compliance term for WMG agreements will provide all stakeholders the opportunity to revisit whether an upstream funding arrangement is appropriate in light of any evidence localized water quality impacts in environmental justice communities during that term. This guardrail on compliance is necessary due to the likelihood that the CII Permit will not be renewed timely, which unfortunately has been the case for other regional stormwater permits in Region 4.41. Additionally, the Regional Board should explicitly note in the Draft Permit that both the Regional Board, and WMGs entering into agreements with permittees, have the authority to refuse to allow Compliance Option 1 payments for upstream offsite stormwater projects | As stated in response to comments #1.4 and #1.6, Compliance Option 1 only applies to water quality-based effluent limitations. All CII Permittees must meet all other permit requirements, including implementing the minimum BMPs defined in section 6.5 of the tentative CII Permit, irrespective of location or compliance option selection, which will prevent polluted discharges from entering receiving waters and having localized impacts.<br><br>Additionally, the tentative CII Permit requires an annual report on the regional project funded during the previous year, fees paid, and confirmation that the CII Permittee has complied with the WMG agreement. The CII Permittee shall also update their WMG agreement by December 15th of each reporting year, if necessary. Therefore, the CII Permittee's compliance status will be reevaluated annually by the Los Angeles Water Board.<br><br>Furthermore, as explained in responses to comments #1.4 and #1.5, even after upstream projects are completed, Compliance Option 1 will still be a viable and important vehicle to show compliance with the tentative Order. These upstream projects will need to be operated and maintained after they are built to ensure that adequate pollution control occurs, and Compliance Option 1 requires funding regional projects in perpetuity, and funding can go towards operation and maintenance costs. And the upstream projects in Compliance Option 1 are projects that will take an amount of pollutants out of the watershed that is |

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| | where there are tangible concerns about localized pollution impacts in environmental justice communities. | proportional to what the Discharger discharges into the watershed. |
| 1.16 | Compliance Option 1 in the Draft Permit does not impose any requirements on the timeline for WMGs to complete regional stormwater projects once funding is received from permittees. We acknowledge that the planning and construction phases for regional stormwater projects can take some time, but we are concerned about backsliding of water quality during that time period if permittees selecting Compliance Option 1 will still be discharging stormwater into receiving waters until the downstream projects are completed. Additionally, as discussed in Section II.E below, permittees selecting Compliance Option 1 would have no obligations under the Draft Permit to monitor and sample their stormwater discharges, creating the possibility that permittees will backslide in the quality of their stormwater discharges and result in worsening water quality in receiving waters throughout the Watersheds prior to the construction of municipal stormwater projects. The disparity between Compliance Option 1 and the other compliance options for on-site compliance is stark: under Compliance Option 2 and Compliance Option 3, CII sites must promptly show they have installed stormwater capture BMPs or are discharging clean stormwater, while under Compliance Option 1, there is no need to provide any proof of a functioning offsite stormwater project in order to be deemed in compliance with the CII Permit.<br><br>We urge the Regional Board to incorporate temporal limitations on how soon WMGs must complete regional stormwater projects upon receipt of funding from permittees under Compliance Option 1. With significant new funding sources available, municipalities should be able to expedite the planning and construction processes and should be able to complete some of these projects without the delays we have observed when developing existing regional projects. The revised timeline would likely require WMGs to modify their WMPs under the MS4 Permit, so the CII Permit should order WMGs to make such modifications as soon as feasible and submit revised WMPs to the Regional Board for review and approval as necessary.<br><br>Our recommendation is to require WMGs to complete regional stormwater projects within two years of entering into agreements with permittees under Compliance Option 1 after the CII Permit goes into effect. With available funding from CII permittees selecting Compliance Option 1, two years should be sufficient time for municipalities to engage consultants, complete the planning process, and expedite construction of stormwater capture projects. The agreements between WMGs and CII permittees can and should specify the projects that | The CII Permit regulates discharges from CII facilities, not WMGs formed to comply with the Regional MS4 Permit. Hence, this permit is not the appropriate mechanism to place timelines for completion of regional projects. The Regional MS4 Permit requires WMGs to implement regional stormwater projects according to their approved WMPs, which include TMDL-based compliance schedules.<br><br>The commenter's concern regarding backsliding for existing permitted dischargers under the IGP who select Compliance Option 1 is discussed in response to comment #1.18, and the response is incorporated herein by reference.<br><br>The commenter's concern regarding the disparity in the timeframes for water quality improvements among the compliance options is noted. |

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| | will be receiving the funding from the permittee, which will enable the public to understand and assess the expected timeline for developing and completing those projects. | |
| 1.17 | Compliance Option 1 should include a funding multiplier of at least 2x for upstream project payments. In addition to limiting the timeframe for compliance for agreements under Compliance Option 1, the Draft Permit should include a funding multiplier for permittees making payments toward upstream regional stormwater projects. The Draft Permit currently requires a permittee selecting Compliance Option 1 to pay the applicable WMG a proportional amount toward a regional stormwater project that is adequately sized to address the stormwater and non-stormwater volume received from that permittee. But the same is not true for funding an upstream regional project that does not capture the permittee's stormwater, which is not necessarily a 1:1 ratio between the amount of funding and the equivalent volume of stormwater being captured by that project due to inefficiencies and uncertainty in calculating load reductions.<br><br>Multipliers and trading ratios are commonly used in other environmental credit trading programs to achieve net environmental benefits through the same or greater reduction in pollutants from other sources, considering other factors that account for the uncertainties associated with the pollutant reductions at another location. The same ratio adjustments are warranted here for permittees funding upstream stormwater projects under Compliance Option 1 in the Draft Permit, to ensure that those payments correspond to equivalent—and greater—water quality improvements to offset the harm caused by the permittee's continuing polluted discharges. Because Compliance Option 1 was mentioned as the preferred compliance route for Regional Board staff and for permittees alike at the Regional Board workshop for the CII Permit on August 31, 2022, the complexity of credit trading necessitates more guidance from the Regional Board as part of the Draft Permit to ensure the program's effectiveness.<br><br>We urge the Regional Board to revise Compliance Option 1 to include a funding credit multiplier of at least two times the proportional amount of stormwater captured at the upstream project to ensure that those permittees are contributing to net positive water quality improvements throughout the Watershed. A 2x multiplier would serve as a margin of safety to guarantee net environmental benefits for any upstream project funding arrangements, reducing concerns about uncertainty and inefficiencies in the credit trading process. A credit multiplier may also incentivize permittees to pursue direct compliance strategies under Compliance Option 2 or Compliance Option 3 through cheaper onsite BMPs if those options | The Los Angeles Water Board has revised the tentative CII Permit to provide guidance in section 8.1 related to funding level or participation fee based on CII site-specific factors affecting pollutant contribution to regional projects required for Compliance Option 1. However, it does not differentiate funding levels for downstream or upstream BMP participation. In determining funding level assessments for Compliance Option 1 participation, the WMGs may consider a fee structure at the project scale, drainage area or sub-watershed scale. Please see also response to comment #1.16.<br><br>There is no disproportionate impact on the communities experiencing environmental injustice under Compliance Option 1. See response to comment #1.14. |

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| | are available, which will avoid the concerns about disproportionate impacts to environmental justice communities discussed above. | |
| 1.18 | Compliance Option 1 must require permittees to monitor and sample their stormwater discharges to track implementation of minimum BMPs. The Draft Permit currently excuses permittees utilizing Compliance Option 1 from monitoring and sampling requirements for their stormwater discharges. All permittees have to do to obtain compliance status is submit their agreement with a WMG on the Stormwater Multiple Application and Report Tracking System (SMARTS) administered by the State Water Resources Control Board ("State Board"). There is no corresponding requirement under Compliance Option 1 for a permittee to monitor and sample discharges from the facility during the term of the CII Permit. The absence of monitoring and sampling creates an opportunity for permittees selecting Compliance Option 1 to backslide in their onsite stormwater controls and housekeeping measures as required by the minimum BMPs in the Draft Permit, without any mechanism to hold those permittees accountable for failing to implement those procedures. | While the Los Angeles Water Board acknowledges the benefits of CII facility-specific monitoring, the primary goal of Compliance Option 1 is to improve water quality on a watershed basis. Hence, the monitoring and reporting programs for the WMPs to monitor pollution reduction are adequate to gauge progress and ensure compliance with the water quality based effluent limits. Facility-specific monitoring is currently required by Compliance Option 3, should Permittees choose this route.<br><br>Additionally, as part of the Los Angeles Water Board's oversight of CII Permit implementation, staff will conduct periodic inspections to verify minimum BMP implementation.<br><br>Finally, the concern about backsliding is unclear. Sections 402(o) and 303(d)(4) of the Clean Water Act (CWA) and federal regulations at 40 CFR § 122.44(l) prohibit backsliding in National Pollutant Discharge Elimination System (NPDES) permits. These anti-backsliding provisions require effluent limitations in a reissued permit to be as stringent as those in the previous permits, with some exceptions where limitations may be relaxed. This permit is new and has yet to be "reissued." Furthermore, it should be noted that many (but not all) of the Dischargers subject to this Order have not been regulated by the Los Angeles Water Board's, or the State Water Resources Control Board's (State Water Board) industrial stormwater programs before. Therefore, the anti-backsliding provisions are inapplicable as a matter of law.<br><br>However, and to the extent that this comment is addressed to those Dischargers that may also be subject to the State Water Board's General Permit for Storm Water Discharges Associated with Industrial Activities, NPDES Order WQ No. 2014-0057 DWQ as amended in 2015 and 2018 (Industrial Stormwater Permit, or IGP), the Los Angeles Water Board has removed any and all |

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| | | requirements that overlap with the IGP from the tentative CII Permit in response to this and other comments (see, Section 3.1, Applicability of the CII Permit) thereby requiring all IGP permittees who may also be subject to this Order to maintain separate coverage under the IGP. The Los Angeles Water Board finds that removal of the overlapping requirements simplifies the overall permitting approach to stormwater in the Region and ensures that water quality will be protected by requiring industrial facilities subject to the IGP to continue complying with the requirements in the IGP. |
| 1.19 | Compliance Option 1 must require permittees to monitor and sample their stormwater discharges to track implementation of minimum BMPs. The Draft Permit contains a detailed list of minimum BMPs that all permittees must include in their Stormwater Pollution Prevention Plan ("SWPPP") and implement and maintain during the term of the permit. In a typical stormwater permit, implementation of minimum BMP requirements is measured by compliance with certain technology-based effluent limitations ("TBELs"), sometimes reflected via numeric action levels ("NALs") or numeric effluent limitations ("NELs") identified for different constituents addressed by those BMPs.[See, e.g., Industrial General Permit, p. 47, table 2 (listing NALs for different constituents). We note, however, that the NALs in the IGP are not equivalent to technology-based effluent limitations reflective of the Best Available Technology and the Best Conventional Pollutant Control Technology as required by the Clean Water Act, as the State Water Resources Control Board never made such a determination in the IGP.] In other words, exceedances of the TBELs would not be expected to occur if the minimum BMPs are implemented properly. Compliance with the TBELs, of course, can only be determined by requiring the covered facilities to sample stormwater discharges from the property.<br><br>Here, however, the absence of monitoring and sampling requirements conceals violations of minimum BMP measures from both the Regional Board and the public. While permittees have to include these BMPs in their SWPPP under the Draft Permit, in the absence of sampling requirements and TBELs, it will be challenging, if not impossible, to verify that the permittees are actually implementing those minimum BMPs. Having permittees self-certify compliance with those minimum BMPs would not offer any comfort either, at least without objective proof of implementation. Staff of the Regional Board, already stretched thin with limited resources, would have to undertake frequent site inspections of these facilities to | The tentative CII Permit has been revised to remove overlap with the IGP. Therefore, any permittees who are currently enrolled in the IGP must also enroll in the CII Permit if their facilities meet the eligibility criteria of the CII Permit. The only numeric effluent limitations in the CII Permit now are WQBELs, not TBELs.<br><br>Furthermore, the Los Angeles Water Board recognizes that the commenter is referring to the established IGP procedure of establishing numeric action levels, the exceedance of which will trigger the escalation of facility oversight and required BMPs. The approach to regulating stormwater pollution has evolved over time, and the CII Permit constitutes a different approach from the IGP. Instead of the iterative methodology used in the IGP, the tentative CII Permit is focused on immediate application of numeric effluent limitations with flexible but easily trackable and enforceable compliance options. The compliance options in the CII Permit are designed to directly require CII sites to attain water quality standards regardless of their history of compliance or noncompliance with numeric action levels. This approach directly implements U.S. EPA's designation of CII facilities in the two watersheds, which is based on comprehensive evidence that receiving waters remain impaired after multiple iterations of the IGP and MS4 Permit.<br><br>Although Option 1 does not require onsite sampling of discharge, Permittee funding through Compliance Option 1 helps generate |

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| | confirm that structural BMPs are installed and properly maintained in the locations represented in the SWPPP, and that the permittee routinely undertakes the represented non-structural BMPs and housekeeping measures as required by the Draft Permit. In the absence of monitoring and sampling requirements for Compliance Option 1, these obstacles to ensuring minimum BMP implementation under the Draft Permit appear to be insurmountable. | lasting water quality improvements in the watershed by helping fund multi-benefit structural stormwater control projects. Compliance Option 2 sets explicit limitations on the volume of stormwater that a facility may discharge, reducing pollutant loading (Fact Sheet section 4.9.2.2), and Compliance Option 3 establishes direct demonstration of compliance with WQBELs that, if exceeded, will immediately translate into corrective action to bring the CII site back into compliance. |
| 1.20 | We acknowledge that there is no need to establish monitoring and sampling requirements for permittees that discharge stormwater upstream from a completed and functioning regional stormwater capture project, even to verify the implementation of minimum BMPs. As the stormwater from those facilities is captured by the project before it reaches receiving waters, the quality of the stormwater discharge is divorced from attainment of water quality standards in the receiving waters. Nevertheless, Compliance Option 1 would remove monitoring and sampling requirements for *any* permittee *immediately* upon filing an agreement with a WMG on SMARTS, regardless of whether the permittee's stormwater is actually draining into a completed downstream stormwater project. As a result, permittees could be polluting receiving waters with dirty stormwater for many years until the downstream project is operational—without any obligation to monitor discharges and without any accountability for degrading receiving waters. If a permittee's funding is applied toward an *upstream* stormwater project, the risk of this outcome is a near certainty. Further, for facilities partially covered by the IGP that opt to enroll fully in the CII Permit, selecting Compliance Option 1 may mean the entire facility's discharges, including from industrial areas, could be discharged directly into receiving waters without accountability. While we acknowledge that WMGs seem to have the flexibility to require monitoring and sampling for facilities committing to Compliance Option 1, the absence of any clear requirements in the Draft Permit will cause confusion among permittees and could create contentious negotiation processes with WMGs. | See response to comment #1.18. In addition, all facilities must have SWPPPs designed to curb discharges and are required to visually monitor their discharges even if they participate in Compliance Option 1. |
| 1.21 | Without monitoring and sampling obligations under Compliance Option 1, we are concerned that water quality in the receiving waters may backslide and further degrade in these circumstances to the point where existing instream uses and the necessary water quality associated with those uses cannot be maintained and protected, therefore violating federal and state antidegradation policies* and the Clean Water Act's anti-backsliding provisions relating to facilities partially covered by the IGP.** As further explained in Section IV below, we have significant concerns that, as applied to existing permittees under the IGP that choose to | Regarding the comment that Compliance Option 1 results in the elimination of applicable effluent limitations from the IGP and backsliding concerns, this comment and the specific concerns have been addressed, as explained in response to comment #1.18.<br><br>With respect to antidegradation, the federal and State antidegradation policies will not be violated. As set forth above, |

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| | enroll fully in the CII Permit, Compliance Option 1 results in the elimination of applicable effluent limitations due to the absence of monitoring and sampling requirements, therefore resulting in "less stringent" effluent limitations by nature and very likely leading to increases in violations of water quality standards resulting from stormwater discharges from these industrial facilities.<br><br>*As acknowledged in the Fact Sheet for the Draft Permit, the federal antidegradation policy requires states to develop and adopt a statewide anti-degradation policy to ensure that "[e]xisting instream water uses and the level of water quality necessary to protect [those] uses [are] maintained and protected." 40 C.F.R. § 131.12(a). To implement this federal policy, the State Water Resources Control Board passed Resolution No. 68-16 ("Resolution 68-16") which incorporated the requirements of the federal antidegradation policy and established a state policy to regulate permits for water discharges so "as to achieve the highest water quality consistent with maximum benefit to the people of the State." If the Regional Board determines that a discharge authorized under the Draft Permit will degrade water to the point that instream uses and associated water quality cannot be maintained and protected, the Regional Board may only allow the resulting degradation if it finds that such degradation "(1) will be consistent with maximum benefit to the people of the State, (2) will not unreasonably affect present and anticipated beneficial use of such water, and (3) will not result in water quality less than that prescribed in state policies." *Associacion de Gente Unida por el Agua v. Central Valley Regional Water Quality Control Bd.* (2012) 210 Cal. App. 4th 1255, 1278 (internal quotation marks omitted).<br><br>** Section 402(o) of the Clean Water Act codifies federal anti-backsliding policy by prohibiting new NPDES permits for industrial facilities from containing effluent limitations that are less stringent than in the previous permit. 33 U.S.C. § 1342(o)(1); 40 C.F.R. § 122.44(l). Similarly, water quality-based effluent limitations derived from TMDLs for impaired water bodies must protect against backsliding of water quality. 33 U.S.C. § 1313(d)(4). In no event can a renewed permit contain less stringent effluent limitations if implementing the new limitations would result in violations of water quality standards. 33 U.S.C. § 1342(o)(3). | there are no backsliding concerns. Moreover, the discharge of pollutants from covered facilities will cease and water quality will improve with the implementation of this Permit. As the Fact Sheet explains, discharges under this Permit will be consistent with the maximum benefit of the people of the state and will not result in water quality that is less than that prescribed in state policies. To the contrary, the Permit requires compliance with TMDLs, which will result in improvement in present and anticipated beneficial uses, and in improvement of water quality consistent with the Water Quality Control Plan for the Coastal Watersheds of Los Angeles and Ventura Counties (Basin Plan) and state policies.<br><br>With respect to the concern that pollutants could continue to pollute receiving waters prior to the time that downstream projects are completed, the law does not require immediate restoration of impaired water bodies nor does it require an immediate prohibition of discharges that contribute to an exceedance in the water body. (See, 40 CFR § 122.47 (authorizing compliance schedules); California Water Code section 13263, subdivision (c).; Fact Sheet at p. F-59) As explained in the Fact Sheet, where, as here, TMDLs have been established, Water Code section 13242 states that the TMDL implementation plan, as incorporated into the water quality control plan, shall include a time schedule for actions to be taken. When issuing waste discharge requirements, Water Code section 13263 requires regional boards to implement any relevant water quality control plans that have been adopted. Certainly, water quality objectives must be achieved; but the law, as cited above, recognizes and allows for the fact that it can take time to restore or achieve the objectives. In this regard, some impaired water bodies may stagnate or, rarely, continue to degrade for a period of time before showing improvement. This period of time may be as long as multiple years. This is not |

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| | | contrary to the authorities for compliance schedules stated above and is not contrary to the antidegradation policies. |
| 1.22 | The Draft Permit must be revised to incorporate a mechanism of accountability under Compliance Option 1 for the period during which a permittee's stormwater continues to enter receiving waters. Compliance Option 1 must require industrial permittees otherwise covered by the IGP to comply with the same monitoring and sampling requirements in the IGP during the interim phase of developing the downstream stormwater project. The same monitoring and sampling requirements in Compliance Option 3 should also apply to the unpermitted commercial portions of CII sites during the interim project development period, but with three suggested modifications to account for the permittees' commitment to regular compliance payments. | All the suggestions here in comments #1.22 - #1.26 have been addressed in responses to comments #1.18 and #1.21. |
| 1.23 | The frequency of sampling could be reduced from the standard requirements to sample two different Qualifying Storm Events ("QSEs") in each half of the reporting year, down to only one sample from a QSE in each half of the reporting year. If the results of each QSE sample are within the applicable NALs, then nothing more would be required. | All the suggestions here in comments #1.22 - #1.26 have been addressed in responses to comments #1.18 and #1.21. |
| 1.24 | The Regional Board could develop interim NALs during the stormwater project implementation period that are less stringent than the NALs applicable to permittees under Compliance Option 3. These interim limits could be derived at levels that are solely intended to measure whether the permittee is complying with minimum BMPs. A single exceedance of a NAL would trigger the same enforcement mechanisms under the Draft Permit applicable to permittees selecting Compliance Option 3. | All the suggestions here in comments #1.22 - #1.26 have been addressed in responses to comments #1.18 and #1.21. |
| 1.25 | All monitoring and sampling requirements should cease as soon as a downstream stormwater project, actually receiving the permittee's discharges, becomes operational. Monitoring and sampling also could be removed for industrial portions of CII sites currently regulated under the IGP once the industrial stormwater is no longer reaching receiving waters, which would be consistent with the existing off-site compliance option under the IGP.51 However, for permittees funding *upstream* projects, because the facilities' stormwater discharges will continue to enter receiving waters, monitoring and sampling must continue to occur indefinitely to ensure the permittees are complying with minimum BMPs in the Draft Permit. | All the suggestions here in comments #1.22 - #1.26 have been addressed in responses to comments #1.18 and #1.21. |
| 1.26 | To reiterate, these relaxed monitoring and sampling requirements should only apply to commercial unpermitted portions of CII sites, while any industrial portions of CII sites must continue to adhere to the monitoring and sampling requirements outlined in the IGP as long | All the suggestions here in comments #1.22 - #1.26 have been addressed in responses to comments #1.18 and #1.21. |

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| | as the industrial discharges reach receiving waters. We believe this middle-ground approach would be appropriate to hold all permittees accountable to comply with minimum BMPs identified in the Draft Permit (and the required BMPs in the IGP) in a publicly transparent manner, while minimizing the costs of monitoring and sampling for unpermitted portions of CII sits during the interim phase as stormwater projects are developed under the MS4 Permit. | |
| 1.27 | There appears to be a typo in Section 8.1.3. While that section appears within the discussion of Compliance Option 1, it reads that dischargers "in compliance with Compliance Option 3 shall be deemed in compliance with the discharge prohibitions and effluent limitations" appearing elsewhere in the Draft Permit. We believe this provision was intended to reference Compliance Option 1, rather than Compliance Option 3, and we request that the Regional Board make such a change to the Draft Permit. | The typo in section 8.1.3 has been corrected. |
| 1.28 | The Regional Board must revise Compliance Option 2 to update the calculation of the design storm threshold based on more recent data and to require visual observations of onsite structural BMPs at least annually. We concur with the Regional Board's decision to include Compliance Option 2 and Compliance Option 3 in the Draft Permit, which effectively mirror onsite BMP requirements featured in the IGP. For Compliance Option 2, we wanted to offer two small suggestions to improve the effectiveness of facility-specific design standards and the operation of onsite BMPs to capture and use, infiltrate, or evaporate stormwater.<br><br>First, we believe it is no longer proper for the Regional Board to rely on the Water Environment Federation's Manual of Practice No. 23/ASCE Manual of Practice No. 87, cited in Chapter 5 of the 1998 Edition and Chapter 3 of the 2012 Edition (the "1998 Manual"), as the formula for calculating the volume of runoff produced by an 85th percentile 24-hour storm event. For starters, that 1998 Manual is out of print and should not be considered the most up-to-date science for that reason alone. There are more recent manuals available that provide the same stormwater calculations and utilizing more recent rain data than a manual from 24 years ago that was last updated 10 years ago. Other recent modeling data is available for free through the Los Angeles County Hydrology Map tool, as well as the Water Quality Capture Optimization Statistical Model tool from the Urban Watersheds Research Institute. While these other resources merely serve as examples of alternative modeling tools and data sets, it is clear that the 1998 Manual should no longer be relied upon, particularly in light of decades changes to rainfall patterns and storm intensity due to impacts from the worsening climate crisis. Thus, we urge the Regional Board to update the calculation | Section 8.2.1.1 has been revised to be consistent with the Straight Calc stormwater runoff volume calculation for onsite compliance option in the IGP Order 2014-0057 as amended in 2015 and 2018. |

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| | methodology for stormwater volumes from the 85th percentile 24-hour storm event to reflect the best available science. | |
| 1.29 | It is insufficient for permittees selecting Compliance Option 2 to perform visual observations of their onsite stormwater capture BMPs every two years. More frequent assessments of onsite stormwater BMPs are necessary to ensure the BMPs' effectiveness and provide regular opportunities to maintain or fix any deficient BMPs. If a stormwater capture BMP is not operating properly, a permittee might not be aware of any defects in the BMP for two entire wet seasons before being obligated to inspect the BMP. Permittees that install stormwater capture BMPs must also implement measures to ensure the BMPs are implemented and maintained properly, which may vary depending on the type of BMP and the location installed. It is unclear from reviewing the Draft Permit why every type of BMP installed under Compliance Option 2 would only require visual observations every two years to ensure proper maintenance, and we substantively disagree that such a BMP inspection program would be sufficient. We urge the Regional Board to revise the language under Compliance Option 2 to require permittees to ensure the proper maintenance of all stormwater capture BMPs installed at the CII facility through appropriate means, and in any event visual observations of the BMPs at least every three months. | Attachment I, section 1.5.1.2 of the tentative CII Permit requires the Permittee to submit an operation and maintenance plan certified by a California licensed civil engineer as a part of the SWPPP that includes, but is not limited to, the following items:<br>1) Inspection frequency;<br>2) titles of personnel authorized to conduct BMP(s) inspections;<br>3) maintenance procedures for BMP(s) and installed pretreatment (if applicable); and<br>4) a maintenance schedule.<br>These requirements ensure an inspection frequency that is tailored to the site and that is certified by a licensed engineer.<br>In addition to the annual evaluation and reporting of installed stormwater BMPs, the revised CII permit requires annual reporting of visual observations of discharge of NSWDs and excess storm water volume above and beyond the 85$^{th}$ percentile 24-hour storm in Attachment E (MRP), sections 2.1 and 2.2.4 as specified in Attachment I, section 1.4.1. |
| 1.30 | The Regional Board must clarify that CII facilities engaging in industrial activities are still subject to the full requirements of the Industrial General Permit for the industrial portions of the facilities. The Draft Permit applies to CII facilities with five or more acres of total area that are presently permitted under the IGP. As such, the Draft Permit authorizes those facilities to apply for coverage under the CII Permit as an alternative to permitting under the IGP. Neither the Draft Permit, nor the attached fact sheet, provide any additional clarity as to how the CII Permit will ensure that the requirements of the Clean Water Act and the IGP will remain applicable to industrial permittees opting for coverage under the CII Permit for the entire facility.<br>We have grave concerns about backsliding in effluent limitations and violations of water quality standards as a result of enrolling industrial portions of CII sites under the CII Permit. The Residual Designation from EPA does *not* designate permitted industrial portions of CII | The tentative CII Permit does not allow backsliding for enrollment of industrial portions of CII sites. Nor does the tentative CII Permit remove or revise the requirements of the IGP. As explained above, the tentative CII Permit has been revised to remove all overlapping IGP requirements and any permittees subject to the IGP and the tentative CII Permit will have to enroll in both permits. See response to comment #1.18. |

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| | sites for regulation under the CII Permit; rather, it provides only for designations of the unpermitted portions of industrial facilities above five acres in size, or where those facilities have submitted a no exposure certification or notice of non-applicability under the IGP. From our conversations with EPA staff leading up to the Residual Designation and the Draft Permit, we understood that the intent was for the new CII Permit to apply only to the "unpermitted portions" of industrial facilities, while preserving the applicability of the IGP to the industrial portions. As we understand the Draft Permit, these existing IGP permittees, or future IGP permittees, will instead be able to obtain coverage under the CII Permit for the industrial portions of those facilities, or even for the entire facility even if there are no commercial portions of the facility. If industrial facilities are allowed to obtain coverage under the CII Permit for the industrial portions, we are certain that the CII Permit will result in backsliding of both applicable effluent limitations to industrial facilities and increasing frequency and magnitude of violations of water quality standards, in violation of the Clean Water Act and federal regulations implementing the CWA.<br><br>Section 402(o) of the Clean Water Act codifies federal anti-backsliding policy by prohibiting new NPDES permits for industrial facilities from containing effluent limitations that are less stringent than in the previous permit. Similarly, water quality-based effluent limitations ("WQBELs") derived from Total Maximum Daily Loads ("TMDLs") for impaired water bodies must protect against backsliding of water quality. In no event can a renewed permit contain less stringent effluent limitations if implementing the new limitations would result in violations of water quality standards. The fact sheet for the Draft Permit notes that backsliding is not an issue for the application of the CII Permit to currently unregulated CII sites and commercial portions of regulated industrial facilities. However, backsliding is of paramount concern for enrollment of industrial portions of CII sites under the CII Permit, which is explicitly noted as an option for CII sites in the Draft Permit. We also question whether the Regional Board possesses the authority to remove or revise requirements of the IGP, a statewide permit promulgated by the State Board, for permitted facilities that would enroll in the regional CII Permit. | |
| 1.31 | To avoid illegal backsliding of effluent limitations and water quality standards, the CII Permit must be amended to clarify that industrial facilities that are covered by the IGP will not be able to skirt the binding requirements of the IGP and the CWA for the industrial portions of those facilities if they choose to enroll in the CII Permit. We make three important recommendations in this regard | See response to comments #1.18 and #1.30. |

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| 1.32 | The Draft Permit must explicitly incorporate the IGP's TMDL effluent limitations (IGP Attachment E) for all potential IGP permittees that enroll in the CII Permit. On November 6, 2018, the State Board amended the IGP to incorporate TMDL Implementation Requirements under IGP Attachment E. Current IGP Permittees that decide to enroll in the CII Permit must be required to meet their existing effluent limitations under the current IGP, including all incorporated TMDL-based effluent limitations.<br><br>The TMDL Implementation Requirements under IGP Attachment E are absent from the Draft Permit and are not explicitly cross-referenced as applicable to any permittee. Instead, the Draft Permit focuses its WQBELs solely on new commercial, institutional, and currently unregulated industrial facilities. For example, in the fact sheet for the Draft Permit, the Regional Board asserts that for the Los Cerritos Channel Metals TMDL, the "TMDL does not explicitly assign [waste load allocations] to CII facilities." While that statement may be true for currently unregulated CII sources, existing IGP permittees that will transfer to the CII Permit are explicitly assigned waste load allocations ("WLAs") under the Los Cerritos Channel Metals TMDL. The Draft Permit then applies the Los Cerritos Channel Metals TMDL for new CII enrollees with the justification that "CII facilities subject to this Order lie within the boundaries of the MS4" and as such the "CII facility discharges are accounted for in the MS4 WLAs." We do not disagree that the MS4 WLAs should apply to new CII permittees, but existing IGP permittees have existing and different effluent limitations under the IGP that must be incorporated into the CII Permit for any permittees that would otherwise obtain coverage under the IGP.<br><br>If the Regional Board does not incorporate the existing IGP TMDL effluent limitations into the Draft Permit, the failure to preserve those effluent limitations will constitute backsliding for existing IGP permittees that enroll under the CII Permit. WQBELs derived from TMDLs for impaired water bodies must protect against backsliding. In no event can a renewed permit for existing permittees contain less stringent effluent limitations if implementing the new limitations would result in violations of water quality standards. Therefore, the Draft Permit must be revised to incorporate the TMDL effluent limitations in Attachment E of the IGP for existing or potential IGP permittees that enroll under the CII Permit. The Draft Permit, and the Regional Board, must be explicit that IGP permittees cannot seek to enroll in the CII Permit to skirt existing effluent limitations that would otherwise apply under the IGP. | As set forth above in response to comment #1.18, the tentative CII Permit has been revised to remove all overlap with the IGP and all IGP permittees subject to the tentative CII Permit, too, must enroll in both the IGP and the tentative CII Permit. It is worthwhile to note however that there are more TMDL-based effluent limitations for more pollutants in the tentative CII Permit, and the values of the limits are more stringent than in the IGP. |
| 1.33 | The Draft Permit must explicitly confirm that the same minimum BMPs and technology-based effluent limitations and pollution control requirements under the IGP will still apply to industrial portions of CII facilities. The Draft Permit has narrative language that appears to require | See comment #1.18. There is no need for the tentative CII Permit to "explicitly confirm that the same minimum BMPs and technology-based effluent limitations and pollution control |

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| | dischargers to develop and implement BMPs that comply with the best conventional pollutant control technology ("BCT") and best available technology economically achievable ("BAT") as required under the CWA. Thus, the Draft Permit acknowledges that the BAT/BCT requirements of the CWA apply to permittees under the CII Permit. However, when reviewing the Draft Permit, it does not appear that the three Compliance Options, particularly Compliance Option 1, impose equivalent stormwater pollution controls for CII sites to constitute BAT/BCT for discharges of stormwater associated with industrial activity at those sites.<br><br>The Draft Permit requires dischargers to develop a SWPPP includes the minimum BMPs identified in the Draft Permit and to select one of the three Compliance Options for achieving the WQBELs. Notably, the minimum BMPs are less robust than the minimum BMPs included in the IGP, eliminating categories such as Preventative Maintenance, Spill and Leak Prevention and Response, and Material Handling and Waste Management. While the Draft Permit seems to suggest the minimum BMPs, SWPPP development, and Compliance Options it does require will achieve BAT/BCT, there is no supporting analysis in the fact sheet or findings for the Draft Permit to demonstrate that these measures represent BAT/BCT for industrial portions of CII sites. The fact sheet simply states in a conclusory manner that SWPPP requirements, minimum BMPs, and the possibility of advanced BMPs constitute "BMP-based TBELs in the same manner as the IGP." But they are not the same—they require less pollution control and result in backsliding from the IGP requirements.<br><br>The fact sheet also employs circular reasoning, without supporting analysis, by characterizing the minimum BMPs as "anything that is effective at preventing pollutants from entering the environment, and for meeting applicable limits of this General Permit." As we note elsewhere in this letter, under Compliance Option 1, there are no applicable discharge limits for industrial portions of CII sites because permittees are excused from monitoring or sampling requirements, rendering any discharge limits inherently inapplicable and unenforceable. Overall, the Draft Permit merely refers to these measures as reducing pollutants in discharges "in a manner that reflects best industry practice considering technological availability and economic practicability and achievability." This "best industry practice" standard is not derived from the CWA or implementing regulations, and therefore the Regional Board must explain how this standard is equivalent to BAT/BCT, including specifically how the measures it requires constitutes BAT/BCT for discharges of stormwater associated with industrial activity from CII sites. | requirements under the IGP will still apply to industrial portions of CII facilities," since any and all overlap with the IGP has been removed from the tentative CII Permit. The same comment explains why there is no backsliding.<br><br>With respect to whether the BMPs in the tentative CII Permit constitute BAT / BCT and generally comply with CWA requirements, the Los Angeles Water Board responds that all of the BMPs in the tentative CII Permit are compliant with the CWA, and all of them have been established pursuant to 40 CFR § 125.I).<br><br>Please specifically refer to Fact Sheet Section 4.6.2 which specifically states that:<br><br>> The TBELs in this Order represent the BPT (for conventional, toxic, and non-conventional pollutants), BCT (for conventional pollutants), and BAT (for toxic pollutants and non-conventional pollutants) levels of control for the applicable pollutants. Where U.S. EPA has not promulgated ELGs for a particular discharge, this Order includes TBELs established on best professional judgment. TBELs in this Order are expressed as requirements for implementation of effective BMPs. (40 CFR § 122.44(k).) This General Permit (Section 6) requires all Dischargers to develop and implement Stormwater Pollution Prevention Plans (SWPPPs), including minimum BMPs. In addition, this General Permit requires Dischargers to implement more advanced BMPs that are necessary to adequately reduce or prevent pollutants in discharges to achieve WQBELs. These requirements, together, ensure that the BCT/BAT standards are achieved consistent with the TBELs in section 7.1.1 of the Order.<br><br>In summary, the TBELs themselves, which are narrative effluent limitations set forth in section 7.1.1 of the Order, are established |

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| | While we acknowledge that Compliance Option 2 and Compliance Option 3 are generally the same as similar compliance options under the IGP, we particularly disagree with the notion that Compliance Option 1 as written would constitute BAT/BCT for the commercial or industrial portions of covered CII sites. Compliance Option 1 is very different from the off-site compliance option identified in the IGP, which contains a multitude of additional requirements to ensure the program's effectiveness. Most importantly, the off-site compliance option under the IGP explicitly requires that the industrial permittee's stormwater discharges "must not discharge to a water of the United States or a water of the state prior to reaching the Off-Site BMP(s)." Compliance Option 1 in the Draft Permit, by comparison, does not include such a requirement and would purportedly authorize permittees selecting that compliance option to discharge polluted stormwater directly into receiving waters without accountability until a downstream regional stormwater project is developed, leading to degradation of the receiving waters, backsliding of TBEL and WQBELs in the IGP, and violations of water quality standards. Further, CII permittees making payments toward upstream regional projects under Compliance Option 1 would also not be required to ensure their discharges are captured before reaching receiving waters, nor are they required to implement sufficient onsite BMPs to constitute BAT/BCT for industrial portions of the site. As a result, upstream project funding under Compliance Option 1 would be guaranteed to result in environmental harm from polluted stormwater discharges.<br><br>To remedy this loophole, the Draft Permit must be revised to require all CII sites that would otherwise have to enroll in the IGP comply with the same BAT/BCT requirements of the IGP for the industrial portions of the site, unless and until the facility's stormwater no longer reaches receiving waters. Alternatively, the Draft Permit should only apply to the commercial portions of industrial facilities, while the industrial portions must remain enrolled in the IGP without exception. In either case, the Regional Board must address these concerns by clarifying in the Draft Permit and the accompanying fact sheet how the CII Permit will apply to industrial portions of CII facilities to ensure attainment of BAT/BCT. | based on BPJ, per 40 CFR § 125.3 sub (c) and (d). BAT/BCT apply to BMPs in the SWPPP, which Permittees are required to implement. |
| 1.34 | The Draft Permit must include the same monitoring and sampling requirements for all industrial portions of CII facilities, including obligations to implement new BMPs upon exceedances. The concerns outlined above about the insufficiency of the existing control measures and minimum BMPs are compounded by the absence of any accountability mechanism to ensure that permittees are adequately implementing those measures to meet the requisite standard of BAT/BCT. The IGP requires site-specific monitoring and sampling programs for covered facilities for this exact purpose unless an exemption applies. | Please see response to comment #1.19. |

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| | Conversely, under Compliance Option 1 in the Draft Permit, *any* permittee would be able to circumvent monitoring and sampling requirements by making compliance payments to WMGs, without regard for the quality of their stormwater discharges that enter receiving waters and without regard for the implementation of BAT/BCT onsite. | |
| 1.35 | The fact sheet for the Draft Permit asserts that there will be no backsliding in effluent limitations for industrial facilities covered under the CII Permit "because the water quality-based effluent limitations (WQBELs) and technology-based effluent limitations (TBELs) in this Order are at least as stringent as those in the IGP." Assuming that those WQBELs and TBELs remain the same as in the IGP—which is not necessarily true for the TBELs—the absence of monitoring and sampling under Compliance Option 1 renders those effluent limitations completely inapplicable and unenforceable. Sampling stormwater discharges is the only manner to assess whether the effluent limitations are being met. If industrial permittees opt to enroll the entire facility in the CII Permit, the monitoring and sampling requirements under the IGP would no longer apply under Compliance Option 1, accountability will fall to the wayside, resulting in significant backsliding in water quality.<br><br>Further, there is no requirement under Compliance Option 1 or Compliance Option 2 for regular visual monitoring of discharges to ensure that onsite minimum BMPs and/or advanced BMPs are functioning properly as BAT/BCT requires. While we believe more than just visual observations are necessary on a regular basis to ensure the effectiveness of BMPs, the absence of even the most basic ongoing monitoring obligations confirms that CII sites selecting these compliance options will not be meeting the BAT/BCT standard.<br><br>The Draft Permit must clarify that all of the same monitoring and sampling requirements under the IGP, including sampling the requisite QSEs and the requirement for monthly visual monitoring of discharges, apply to all CII permittees that would otherwise enroll in the IGP. As for the commercial portions of CII sites, the monitoring and sampling requirements should be consistent with our recommendations above in Section II.E. The bottom line is that the CII Permit must not be interpreted as a free pass for CII sites with industrial portions to relax the requirements of the IGP for onsite BMPs that constitute BAT/BCT, including monitoring and sampling requirements that are necessary for the Regional Board and the public to ascertain whether those standards are being met. | Compliance Option 1 doesn't apply to TBELs. Regarding WQBELs, the assertion that the only manner to assess whether the effluent limitations are being met is incorrect. See response to comment #1.18 regarding backsliding.<br><br>A Permittee who chooses Compliance Option 2 will be capturing and reusing all non-stormwater discharges and the volume of runoff produced up to and during an 85$^{th}$ percentile 24-hour storm event. Thus, except for visual observation of discharge in excess of the 85$^{th}$ percentile 24-hour storm, there is no sampling requirement for the discharge under Compliance Option 2.<br><br>In addition to the annual evaluation and reporting of installed stormwater BMPs, the revised CII permit requires annual reporting of visual observations of discharge of NSWDs and excess storm water volume above and beyond the 85th percentile 24-hour storm in Attachment E (MRP), sections 3.22.1 and 2.2.4 as specified in Attachment I, section 1.4.1. |
| 1.36 | We strongly urge the Regional Board to shorten the NOI period in the Draft Permit from one year after the effective date to two months, which would be more than enough time for covered CII facilities to submit their NOI. Existing CII dischargers do not need an entire year | The timing for submittal of Enrollment Documents is one year because Los Angeles Water Board and State Board staff need |

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| | to simply submit a form NOI under the CII Permit, which would encompass an entire rainy season and likely many storm events. More importantly, the municipalities participating in the applicable WMGs would have no ability to know which facilities will end up enrolling during this period, making it uncertain where the municipalities should direct their resources between speedily entering agreements with enrolled facilities and ensuring that non-filer facilities are effectively brought into the program. There is simply no justification to have CII facilities do nothing to begin complying with or implementing the permit for a year after the effective date of the Draft Permit. Two months should be more than enough time—indeed, a shorter period of only 45 days is deemed sufficient for new dischargers under Section 3.4.2 | time to develop eNOI and other SMARTs features after permit adoption. |
| 1.37 | The deadline to submit the Permit Registration Documents for Compliance Option 2 and Compliance Option 3 should be correspondingly reduced to 14 months after the effective date of the Draft Permit. Permittees selecting onsite compliance options would be able to install the requisite BMPs within one year of enrolling in the CII Permit, so the one-year implementation timeline should be maintained if the NOI period is reduced to two months.<br><br>While we understand the enormous challenge that WMGs face in reaching agreements with hundreds of CII sources within the Watersheds, the deadline to submit Permit Registration Documents for Compliance Option 1 should be correspondingly reduced to 20 months after the effective date of the Draft Permit. We believe that an 18-month timespan should be sufficient time for municipalities to enter into these agreements, after identifying the regional stormwater projects toward which the facilities' funding would apply and calculating the equivalent stormwater volume that should be credited for the compliance payments. Nevertheless, we understand that municipalities will face significant resource constraints when trying to negotiate so many agreements with diverse CII facilities throughout the Watersheds on a limited timeline, especially if the WMGs are afforded the requisite flexibility to negotiate provisions in agreements related to monitoring and sampling or other checks against backsliding in water quality. Our proposal would actually grant permittees and WMGs an additional 6 months to negotiate agreements than the current Draft Permit, which would ease the regulatory burden imposed on municipalities participating in the WMGs.<br><br>Regardless of the timeline, it is imperative that the Regional Board provide guidance in a revised CII Permit that will assist municipalities in understanding the confines of these agreements and will streamline the negotiation process. The Regional Board must provide CII permittees and WMGs with template agreements, forms that CII permittees must complete to identify information about the facilities' volume of stormwater discharges, and other clear guidance that will ensure permittees understand the limitations on the funding agreements | Under the revised tentative CII Permit, the permittees who choose Compliance Option 1 must submit an NOI and SWPPP within one (1) year of the effective date of the CII Permit and Compliance Option Documents within two (2) years of the effective date. The Compliance Option Documents for Compliance Option 1 include a legally binding agreement with the WMG. The agreement at a minimum includes any related fees and alternative means of compensation (easements or property exchanges), identification of project(s) funded, the timeframe of the agreement, and any other provisions agreed upon by the Discharger and WMGs.<br><br>Shortening the PRD submission timeline for permittees who choose Compliance Option 1 will place undue administrative burden on WMGs during the negotiation of the legally binding agreements with CII Permittees.<br><br>The Los Angeles Water Board will consider the comment regarding provision of guidance agreements for CII permittees and WMGs to streamline the negotiation process, to provide transparency regarding the funding and expenditure process and any limitations on the funding agreements. Staff will work with WMGs to ensure consistency with the WMP implementation. |

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| | and that municipalities preserve sufficient flexibility and discretion when entering into these agreements. | |
| 1.38 | The Regional Board must provide guidance for new CII permittees and WMGs about how to reach agreements under Compliance Option 1 within a narrow 45-day timeframe. We expect municipalities to have significant difficulties reaching these agreements while simultaneously negotiating, especially if new filers submit NOIs during the initial implementation period of the Draft Permit for existing dischargers. The guidance described above is nowhere more pressing than for these new filers once the Draft Permit is in effect. While we leave it to the Regional Board's expertise in preparing such guidance, we are willing to meet with the Regional Board and the WMGs to review and discuss any draft guidance for the funding agreements under Compliance Option 1 to ensure its effectiveness and consistency with the requirements of the Draft Permit. | The revised tentative CII Permit states that a new Permittee is required to submit all relevant permit registration documents, including an NOI, SWPPP, and compliance option documents at least 45 days before commencement of discharge. Furthermore, a new Permittee is currently defined in Attachment A section 2 of the CII Permit thusly:<br><br>A facility from which there is a discharge, that did not commence the discharge at a particular site prior to August 13, 1979, which is not a new source as defined in 40 CFR § 122.29, and which has never received a finally effective NPDES permit for discharges at that site. See 40 CFR § 122.2.<br><br>Any new Permittee would therefore be obliged to initiate an environmental review as part of their pre-construction permitting. This action will encompass CII Permit requirements.<br><br>However, the Los Angeles Regional Board agrees with the commenter's greater point that WMGs and Permittees face a challenging task in creating their legally binding agreements without a template to follow. The Los Angeles Regional Board will consider the commenter's concern and determine an appropriate level of guidance for Compliance Option 1 agreements. |
| 1.39 | EPA and the Regional Board should investigate and regulate stormwater discharges from CII facilities in other watersheds in the Los Angeles County region.<br><br>Finally, we wanted to note that we are grateful for the excellent progress being made to clean up the Dominguez Channel, the Harbor Waters, and the Los Cerritos Channel under the Draft Permit. Nevertheless, we believe that CII sites similarly cause and contribute to exceedances of water quality standards in other watersheds throughout the region, and we are confident that the same permitting scheme for CII sites would be effective in cleaning up all of our local waterways. While we acknowledge this novel permitting scheme only applies to the | U.S. EPA's modeling of pollutant loading for the impaired 303(d) waterbodies listed in the original petition has identified the Los Cerritos Channel/Alamitos Bay Watershed and the Dominguez Channel/Inner and Outer Los Angeles and Long Beach Harbor Watershed for their preliminary designation. Therefore, the CII Permit has been drafted to address these two watersheds. |

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| | Watersheds as a direct result of the litigation filed by LA Waterkeeper, American Rivers, and NRDC, this narrowly-focused permit is only a first step. As the Draft Permit is finalized and implemented, we request that EPA and the Regional Board promptly begin the process of regulating discharges from CII facilities in other watersheds in Region 4 to ensure an equitable and consistent application of commercial stormwater controls throughout the region.<br><br>Additional studies throughout Region 4 are unfortunately necessary after Governor Newsom's disappointing decision to veto AB 2106, a bill which we supported and would have required the State Board to issue a statewide commercial stormwater permit that would regulate all CII sites statewide. In the absence of a statewide permit, there are many thousands of CII sites throughout the rest of Region 4 that will continue to go unregulated—including in the Los Angeles River watershed, which encompasses mostly impervious land and many industrial facilities that only have partial coverage under the IGP. We believe regulating CII sources in these other watersheds is not just appropriate, but necessary to achieve water quality standards and provide mechanisms for permittees under the MS4 Permit to shift the cost of compliance onto private actors. Without consistent regulation throughout Region 4, other environmental justice communities outside of the Watersheds will continue to bear the cost of continuing stormwater pollution from CII sources while waiting for regional stormwater projects to be developed under the MS4 Permit. In the absence of compliance funding from CII sites, these communities will experience even longer timelines for WMGs to implement those projects than communities in the Watersheds.<br><br>As part of their regulatory duties to achieve water quality standards, EPA and the Regional Board possess the authority to initiate studies into commercial stormwater sources and to request funding from federal and state budgets to support those studies. We therefore urge EPA and the Regional Board to take the first step of conducting a study to investigate and model CII loading in other watersheds in the Regional Board's jurisdiction and, subsequently, to issue a similar CII Permit for those watersheds. | |
| 2.1 | As the leading business group in Southern California, the Los Angeles County Business Federation ("BizFed") has identified the possibility of unintended adverse consequences if the Draft CII Permit is adopted in its current form…Therefore, as discussed in further detail below, we respectfully request that the Regional Board forego adoption of the Draft CII Permit at this time or, in the alternative, stay adoption pending execution of EPA's residual designation authority and further consultation and coordination with the regulated community. For the good of the region, we highly recommend the Regional Board not move forward with | In the year between the close of the comment period for the tentative CII Permit and the release of a revised tentative CII Permit, the Los Angeles Water Board consulted and coordinated with the regulated community, including the Los Angeles County Business Federation, and has made several changes in |

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| | this proposal and this is our recommendation to the board. However, if the Board is unwilling to forego or temporarily stay adoption of the Draft CII Permit, we recommend adopting an amended permit, including the proposed modifications we have outlined below. | response to feedback from the regulated community and other stakeholders. |
| 2.2 | Consideration of the Draft CII Permit is Premature Prior to EPA Undertaking the Required Notice & Comment Rulemaking to Exercise its Residual Designation Authority. Under federal law, the United States Environmental Protection Agency (EPA) may exercise its discretionary authority to designate certain stormwater discharges as requiring NPDES permits based on localized conditions or additional information. In this case, exercise of EPA's residual designation authority is the legal basis underpinning the Regional Board's adoption of the Draft CII Permit. In parallel with the Regional Board's permit adoption, EPA Region 9 (EPA) is seeking to designate stormwater discharges from CII sites in the Alamitos Bay/Los Cerritos Channel Watershed and the Dominguez Channel and Los Angeles/Long Beach Inner Harbor Watershed for NPDES permitting.<br><br>However, the Regional Board's process is premature absent a formal designation from EPA. EPA is currently in the midst of public comment and any decision to exercise its residual designation authority is still subject to change. Accordingly, the Regional Board should delay adoption of the Draft CII Permit pending completion of the EPA process.<br><br>[The full text of the comment about the U.S. EPA process, which is outside of the action before the Los Angeles Water Board, is included in the BizFed comment letter] | The coordinated public notice of U.S. EPA's preliminary designation memo and the Los Angeles Water Board's tentative CII Permit allows potential permittees to see the tentative permit requirements at the same time as the preliminary designation. The parallel process provides more complete information to the potentially regulated community and allows immediate implementation of the permit, thus benefiting water quality. However, the Los Angeles Water Board will not adopt the permit before the preliminary designation becomes final. |
| 2.3 | The Technical Modeling is Not Sufficient. We reviewed the modeling used by the Regional Board to quantify pollutant loads from CII facilities within Dominguez Channel and Los Cerritos Channel watersheds and to determine the load reductions necessary to meet applicable water quality objectives for those watersheds and have identified multiple issues with the modeling that should be addressed before the Draft CII Permit is finalized and implemented. For example, we noticed that Paradigm Environmental conducted modeling and related analyses to quantify the pollutant loads for two metal pollutants, zinc and copper. However, there are no similar modeling and analyses available for any of the other pollutants that have effluent limitations in the Draft CII Permit. Even though zinc and copper may be the most concerning pollutants in the watersheds, there are 15 other pollutants included in the permit. If dischargers are expected to be subject to effluent limitations for those other pollutants, they should have access to the modeling that was used to develop the effluent limitations. The Regional Board should conduct modeling for all the other pollutants in the | Additional modeling to support inclusion of WQBELs for pollutants other than copper and zinc is not necessary.<br><br>The CWA and its implementing regulations require development of WQBELs when technology based effluent limitations alone will not achieve applicable water quality standards. (NPDES Permit Writer's Manual, Ch. 6 at p. 6-1; CWA section 301(b)(1)(C)) Inclusion of WQBELs is based on a reasonable potential analysis, which does not require technical modeling. As explained in section 4.6.3 of the Fact Sheet, the tentative CII Permit includes WQBELs for pollutants in addition to zinc and copper because those pollutants have reasonable potential to cause or contribute to an excursion above water quality standards. This reasonable potential has been demonstrated through (1) the TMDL development process and (2) the presence |

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| | Draft CII Permit and make the modeling available to the public, or they should remove the other pollutants from the proposed permit. | of pollutants on the CWA section 303(d) list in combination with an analysis of national and local land use studies that demonstrated that CII facilities are a source of pollutants such as bacteria, ammonia, pH, and PAHs. These methods for determining reasonable potential have long been recognized by U.S. EPA.<br><br>In this regard, it should be noted that 40 CFR § 122.44(d)(1)(vii) does not require or contemplate a separate reasonable potential analysis at the permitting stage if a TMDL has been developed. The TMDL development process is an in-depth and comprehensive process involving extensive research, data analysis and modeling of various pollutants that cause impairment. TMDLs identify and allocate the amount of pollutants that can be discharged from identified sources in the watershed into receiving water bodies to achieve water quality objectives. The WQBELs listed in the tentative CII Permit section 7.2 implement the adopted TMDLs for the watersheds included in U.S. EPA's preliminary designation.<br><br>The other means of determining reasonable potential was based on the presence of a 303(d) listing and a literature review. In U.S. EPA's preliminary designation, it determined that CII facilities contribute to violations of water quality standards. Because the 303(d) list reflects the standards that have been violated, U.S. EPA's preliminary designation implicitly applies to the specific pollutants on the 303(d) list. The literature review supporting this conclusion was based on national and local land use studies that showed that CII facilities are a source of TSS, PAHs, PCBs, pH, and indicator bacteria.<br><br>Finally, the modeling used by U.S. EPA to support its preliminary designation focused on zinc because it is commonly considered a "limiting pollutant", which means that zinc requires the greatest reduction of all pollutants to achieve water quality standards. If the discharge of zinc is controlled, then the discharge of other pollutants is controlled too, making zinc a useful surrogate for |

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| | | examining the discharge of all pollutants of concern from CII facilities. |
| 2.4 | *City of Taunton v. United States EPA* (1st Cir. 2018) 895 F.3d 120, 129 is instructive as to the level of technical support that should be typical for deriving effluent limitations. In the case, the court upheld an NPDES permit's nitrogen effluent limitation where the limit was supported a three-year water quality monitoring study and data from various monitoring stations. The Regional Board's effluent limitations for the 15 other pollutants should be justified by technical modeling and other analyses comparable to those in *City of Taunton*. For the Draft CII Permit, the Regional Board, as mentioned above, failed to perform modeling and related analyses to quantify pollutant loads associated with CII facilities for the 15 other pollutants. | See response to comment #2.3. Additional modeling to support inclusion of water quality based effluent limitations for pollutants other than copper and zinc is not necessary.<br><br>The seven applicable TMDLs, and the effluent limits derived from those TMDLs, as described in the Fact Sheet and listed in Attachment J are fully supported by the evidence referenced in #2.3, and *City of Taunton* is not to the contrary. Indeed, the evidence there, which included a full explanation as to how U.S. EPA arrived at the conclusion that the waterbodies in question had reached their assimilative capacity (895 F.3d 120, 130 (1st Cir. 2018)) is very similar to the evidence here, particularly in the TMDLs and their supporting documentation. The Fact Sheet for the tentative CII Permit provides the level of technical support required to derive water quality based effluent limitations, and a list of TMDLs and their supporting technical documentation is available at the Los Angeles Water Board website (https://www.waterboards.ca.gov/losangeles/water_issues/programs/tmdl/tmdl_list.php). The Fact Sheet also provides a summary of and citations for the local and national studies upon which the water quality based effluent limitations for 303(d) listed pollutants are based. |
| 2.5 | For technology-based effluent limits, the Draft CII Permit's fact sheet states that "[w]here U.S. EPA has not promulgated ELGs for a particular discharge, this Order includes TBELs established on best professional judgment." Other than this statement, the fact sheet fails to justify implementing certain TBELs not covered by the ELGs. The Regional Board should justify these TBELs with technical data, instead of concluding simply that they used their "best professional judgment." | The tentative CII Permit has been updated based on comments to remove any overlap with the IGP. Therefore, any TBELs that were formerly based on ELGs have been removed. The remaining TBELs are expressed as BMPs. BMPs are specifically authorized as controls under CWA section 402(p) for stormwater discharges, and 40 CFR § 122.44(k).<br><br>The BMPs in the tentative CII Permit are imposed pursuant to 40 CFR § 125.3 subds. (c) and (d). The Fact Sheet, section 4.6.2, provides a discussion regarding use of best professional judgment in determining BPT, BCT and BAT standards. BMPs for |

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| | | stormwater management are well-established; indeed, U.S. EPA publishes a "National Menu of … BMPs for Stormwater". There is no need for any further justification of these TBELs. This is particularly true since – as the Fact Sheet explains – the minimum BMPs specified in the tentative CII Permit represent common practices that can be implemented by most CII facilities. In addition, the tentative CII Permit generally does not mandate the specific mode of design, installation or implementation of BMPs, but rather requires Dischargers to select, design, install, and implement facility-specific BMPs in a manner that reflects best industry practice considering their technological availability and economic practicability and achievability. |
| 2.6 | For water quality-based effluent limits, the fact sheet states that:<br><br>> WQBELs are included where the Los Angeles Water Board has determined that discharges from CII facilities have the reasonable potential to cause or contribute to an excursion above water quality standards. Reasonable potential can be demonstrated in several ways, one of which is through the TMDL development process. Where a point source is assigned a WLA in a TMDL, the analysis conducted in the development of the TMDL provides the basis for the Los Angeles Water Board's determination that the discharge has the reasonable potential to cause or contribute to an exceedance of water quality standards in the receiving water.<br><br>However, the Draft CII Permit fails to sufficiently describe whether or how the previously enacted TMDLs fully account for discharge from CII facilities, despite the fact that TMDLs do not explicitly assign WLAs to CII facilities. For some of the TMDLs, the fact sheet states that MS4 WLAs are applicable to CII facilities because CII facilities are within the footprint of the MS4 and contribute to the pollutant loading in the MS4. For other TMDLs, the Regional Board simply used WLAs assigned to "future NPDES dischargers." However, because these TMDLs were developed before the sources covered by the Draft CII Permit were regulated, the Regional Board should support effluent limits with additional site-specific studies, data analyses, monitoring data, and modeling results. | U.S. EPA's preliminary designation has determined that CII sites tend to discharge a disproportionate share of pollutant loading relative to their acreage. U.S. EPA's preliminary designation states:<br><br>> While not a factor in EPA's decision, this preliminary designation would result in CII sites and MS4s sharing responsibility for controlling pollutants in urban stormwater than the MS4s bearing the responsibility alone. The Petitioners had expressed concern that the MS4 permittees may lack adequate resources to address the impairments and that permitting of discharges from CII sources would more equitably distribute the load reduction responsibility while also improving the chances of addressing water quality impairments in a timely manner. EPA estimates that the preliminary designation would shift approximately 41.5% of the load reduction responsibility to privately owned CII sources in the watersheds (see Appendix 1 and 2).<br><br>The Los Angeles Water Board notes that individual waste load allocation translations to WQBELs are further discussed on a case-by-case basis, in accordance with their respective TMDL |

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| | | language in the Fact Sheet, section 4.6.3.1. Also see response to comments #2.3 and #2.4, which explain the support for the water quality based effluent limitations, including modeling for copper and zinc, and national and local land use studies that show that CII facilities are a source of TSS, PAHs, PCBs, pH, and indicator bacteria.<br><br>Finally, with respect to the argument that TMDLs themselves did not specifically assign a WLA to CII discharges, most of the TMDLs assigned WLAs to general categories that apply to the CII facilities subject to the tentative CII Permit. These categories include "any future enrollees under a general NPDES permit", "any future NPDES dischargers," "any additional responsible jurisdictions in the future under Phase 2 of the US EPA Stormwater Permitting Program," "any future enrollees under the Phase II MS4 permit, an individual NPDES permit, a general NPDES permit, the general industrial stormwater permit, or the general construction stormwater permit," and "other stormwater permittees." Three TMDLs do not assign WLAs to a general category that includes CII facilities. These three TMDLs assign grouped WLAs to stormwater discharges (MS4, Caltrans, general construction, and general industrial). The MS4 WLAs are applicable to the CII facilities because CII facilities are within the footprint of the MS4, contribute to the pollutant loading in the MS4 and are accounted for in the MS4 WLAs. The WLAs are concentration-based and easily translated to WQBELs for CII facilities. This is explained in the Fact Sheet, section 4.6.3.1. Furthermore, the applicable TMDLs were each developed with a margin of safety to account for any lack of knowledge concerning the relationship between effluent limitations and water quality (40 CFR § 130.7 subd. (c)(1).) |
| 2.7 | Pursuant to 40 C.F.R. section 124.8, a Draft CII Permit fact sheet must "briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit." The Regional Board did not include any mention of modeling or analyses related to the effluent limits in the Draft CII Permit. The Regional Board | The comment that "The Regional Board did not include any mention of modeling or analyses related to the effluent limits in the Draft CII Permit" is factually incorrect. Section 2.3 of the Fact Sheet discusses the modeling results and other studies and |

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| | should at least “briefly” provide modeling results and analyses supporting the effluent limits in the fact sheet. | analyses supporting the effluent limits in the tentative CII Permit in depth.<br><br>In addition, U.S. EPA's preliminary designation and associated modeling analysis are intended to identify and designate the CII sites for NPDES Permitting. Once U.S. EPA has designated a facility as needing an NPDES permit, that permit must be consistent with the assumptions and requirements of waste load allocations in applicable TMDLs. Also see response to comments #2.3, #2.4 and #2.6. |
| 2.8 | In addition, there are questions regarding the appropriateness and applicability of the underlying land use data that was used to calculate pollutant loads. Reports used by EPA in preparing the Draft CII Permit and in the underlying modeling appear to be outdated. As such, it is unclear whether the underlying data accounts for the various watershed-wide stormwater improvements that have been implemented over the past decade. | The Paradigm Environmental memo from U.S. EPA's modeling analysis package (https://www.epa.gov/npdes-permits/residual-designation-authority-address-stormwater-quality-problems-epas-pacific) is dated February 2021, and states:<br><br>> To quantify loading from CII areas, land use codes from the Los Angeles County Tax Assessor’s Parcel dataset were used to designate parcels with CII land uses.<br><br>The Los Angeles County Tax Assessor's Parcel dataset (https://egis-lacounty.hub.arcgis.com/) is updated quarterly, and therefore reflects the most recently available data. |
| 2.9 | The CII Permit Will Place Potentially Untenable Requirements on the Regulated Community It is also not certain that there is readily available and implementable technology that could be deployed as required under the Draft CII Permit. The Draft CII Permit requires that dischargers implement “BMPs that comply with the best conventional pollutant control technology (BCT) and best available technology economically achievable (BAT) requirements. . . to reduce or prevent discharges of pollutants in their stormwater discharge in a manner that reflects best industry practice considering technological availability and economic practicability and achievability.” There is little guidance on what sorts of technology would meet this requirement or indication of whether such technology is currently available. Moreover, the Regional Board has failed to adequately assess the cost-benefit of using such technologies. The failure to consider the technical capabilities and costs of using applicable technologies and practices contravenes applicable law. | U.S. EPA's preliminary designation has identified CII sites as significant contributors to violations of water quality standards in the two watersheds that require an NPDES permit.<br><br>The federal stormwater regulations became effective December 17, 1990 (55 Fed. Reg. 47,990 (Nov. 16, 1990)). Stormwater BMPs, which are the only TBELs at issue in the revised tentative CII Permit, have been implemented for discharges of stormwater from municipal and industrial activities for about three decades. Several guidance documents have been published by U.S. EPA and CASQA on stormwater BMP implementation that that can be adapted to CII facilities. See revised section 3.12.4 of the Fact |

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| | | Sheet for more detailed economic considerations. Also, see response to comment #2.5. |
| 2.10 | Pursuant to 40 C.F.R. 125.3(d)(2)(ii), in setting technology-based treatment requirements, the permit writer must consider, for BCT requirements, "the comparison of the cost and level of reduction of such pollutants from the discharge from publicly owned treatment works to the cost and level of reduction of such pollutants from a class or category of industrial sources." Likewise, for BAT requirements, consideration must be made as to "the cost of achieving such effluent reduction."<br><br>Despite these requirements, the Draft CII Permit is generally devoid of any meaningful economic analysis regarding permit implementation. Costs of permit compliance are only directly addressed in Attachment F (Fact Sheet) of the Draft CII Permit, in the context of Water Code section 13241 (which the Draft CII Permit suggests is inapplicable). Even so, the "Economic Considerations" do not address BCT or BAT requirements and merely refer the reader to the design standards and cost estimates for BMPs in the California Stormwater Quality Association's BMP handbook without undertaking any evaluation of such costs for the retrofitting of existing facilities. The Draft CII Permit alludes to the consideration of what are likely to be significant compliance costs by stating that "the costs of the BMPs will vary by facility" and that "[w]hile it is important to consider the cost of compliance, it is also important to consider the costs that would be incurred by not fully regulating or controlling CII discharges to receiving waters." As such, there is no indication that the Regional Board meaningfully considered the costs of setting technological requirements. Without such a detailed cost-to-comply assessment, the Regional Board's statement regarding the relative consideration of cost-to-comply versus costs of not fully regulating is lacking. | As stated in the Fact Sheet, section 4.5.2:<br><br>> The Los Angeles Water Board has selected minimum BMPs (section 6.5 of the Order) that are generally applicable at all facilities. Due to the diverse CII sites covered by this General Permit, the development of a more comprehensive list of minimum BMPs is not currently feasible. The selection, applicability, and effectiveness of a given BMP is often related to facility-specific facts and circumstances.<br><br>Under the tentative CII Permit, permittees will select BMPs in a manner that reflects best industry practice considering their technological availability and economic practicability and achievability. This is because permittees are responsible for characterizing their sites and selecting BMPs that are well-suited to those characteristics. In choosing the applicable BMPs, the Discharger will choose what is best for their facility, and in so doing should consider the cost benefit when selecting its BMPs. (E.g., Ch. 7, State of Hawaii Storm Water Permanent Best Management Practices Manual (http://hidot.hawaii.gov/wp-content/uploads/2015/05/Appx-E.1-Permanent-BMP-Manual-Feb-2007.pdf)) Some factors include, but are not limited to, upfront cost, maintenance-cost, pollutant removal efficiency per area/treatment unit, local permitting, site hydrology and geology, safety, space, and staffing and monitoring needs for implementing the BMP. There are many ways to calculate the upfront and maintenance cost of BMPs that consider, for example, BMP sizing, the annual cost for maintenance and/or the annual maintenance hours required.<br><br>With respect to the contention that a detailed cost-to-comply estimate is necessary, the Los Angeles Water Board finds that is not true. Indeed, it is well-established that the CWA "does not |

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| | | require a precise calculation of BAT costs." (*Natural Resources Defense Council, Inc. v. U.S. E.P.A.* (9th Cir. 1988) 863 F.2d 1420, 1426) Instead, the Los Angeles Water Board must "take into account the cost of BAT" [citation omitted] and need "develop no more than a rough idea of the costs the industry would incur," or a "reasonable cost estimate." *Id.* [citations omitted] Here, the Los Angeles Water Board has updated the Fact Sheet, section 3.11.4, to include further discussion of stormwater BMPs and the general cost of compliance with the Permit, along with a discussion of, and citations to, various documents detailing the estimated costs of compliance implementing stormwater BMPs based on BAT/BCT, which are well-established. |
| 2.11 | We think more is necessary. Water Code section 13241 is instructive as to the level of economic consideration the Regional Board should undertake. In *City of Duarte v. State Water Resources Control Bd.,* 60 Cal. App. 5th 258 (2021), the court found that for compliance with requirements of Water Code section 13241, the regional board gave sufficient consideration to economic effects of NPDES permit's terms where the regional board provided ranges and averages of cost data and economic impacts in several categories, considered how much more costs might be under permit's terms, identified potential sources of funds to cover costs, and concluded failure to regulate would increase health-related expenses. Also in *City of Arcadia v. State Water Resources Control Bd.,* 135 Cal. App. 4th 1392 (2006), State and Regional Boards complied with a statute requiring consideration of economic factors before adopting and approving a zero trash total maximum daily loads (TMDL) discharge from municipal storm drains into river where Boards' TMDL included the estimated costs of several types of compliance methods and a cost comparison of capital costs and costs of operation and maintenance. The Draft CII Permit's economic analysis failed to even come close to the economic analyses affirmed by the courts in *City of Duarte* and *City of Arcadia*, lacking any consideration of quantitative cost data or concrete economic impacts.<br><br>Prior to additional rule making, this Board should conduct a more comprehensive economic impact analysis. | In *City of Duarte v. State Water Resources Control Board et al.*, the Court of Appeal held that "…the Water Control Boards are charged with taking into account economic considerations, not merely costs of compliance with a permit…economic considerations also include, among other things, the costs of not addressing the problems of contaminated water." (*City of Duarte*, 60 Cal.App.5th 258, 276 (considering 13241 factors in context of municipal separate storm sewer system or MS4 permit).) Indeed, the "manner in which the Water Control Boards consider and comply with Water Code section 13241 is within their discretion." (*Id.*, at p. 273, citing *City of Arcadia v. State Water Resources Control Board* (2006) 135 Cal.App.4th 1392, 1415.) Since the Los Angeles Water Board has broad discretion in how it considers this factor, the Board interprets this factor as not only requiring a consideration of the costs of compliance, but also other relevant economic factors such as the societal and environmental costs of not adequately controlling discharges.<br><br>An analysis under CWC section 13241 is required by CWC section 13263 when waste discharge requirements are more stringent than what federal law requires. There are no requirements in the tentative CII Permit, particularly the |

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| | | technology based effluent limits, that are more stringent than what federal law requires. Nevertheless, the factors set forth in CWC section 13241 were considered, as presented in the Fact Sheet. Furthermore, Fact Sheet, section 3.11.4, has been revised to include further discussion of the cost of compliance with the tentative CII Permit. See also response to comment #2.10. |
| 2.12 | The Draft CII Permit also fails to provide sufficient detail regarding technological standards. In setting BCT and BAT requirements, federal regulations require a permit writer to consider "the engineering aspects of the application of various types of control techniques," the "age of equipment and facilities involved" and "the process employed." The Draft CII Permit fails to meet this requirement in any meaningful regard.<br><br>For instance, under Compliance Option 2 in the Draft CII Permit, a Discharger must design, implement, operate, and maintain onsite stormwater controls which capture and use, infiltrate, and/or evapotranspire all NSWDs and runoff produced during an 85th percentile 24-hour storm event. This may include BMPs that capture and divert the required stormwater runoff volumes to a treatment facility or a regional reclaimed water distribution system. It is unclear what best available, economically achievable technology would allow CII facilities to retrofit their existing sites to comply under this option.<br><br>Compliance Option 3, which requires direct demonstration of compliance with water quality-based effluent limitations, suffers from the same problem. Retrofitting existing sites will likely have technological issues regarding prevention, monitoring, and treatment. | See response to comment #2.10.<br><br>Furthermore, the Compliance Options do not apply to the technology based effluent limitations in the tentative CII Permit, but rather the water quality based effluent limitations, which are not subject to and which have not been imposed pursuant to 40 CFR § 125.3(d). The Compliance Options are beyond the scope of BAT and BCT guidelines, and are intended to help permittees achieve the WQBELs in the CII Permit (Fact Sheet, section 4.6.3). The language for Compliance Options 2 and 3 reflects this distinction between WQBELs and TBELs. |
| 2.13 | The Draft CII Permit should also recognize that EPA has not set national effluent limitations, guidelines and standards (ELGs) or BAT or BCT standards for most categories and classes of industry covered by the Draft CII Permit. Because no BAT or BCT standard has been set, it is impossible for the regulated community to demonstrate compliance with the requirement to implement BMPs that comply with BAT and BCT. | See response to comment #2.10. |
| 2.14 | Absent changes, the CII Permit will have significant economic impacts on the regulated community, particularly non-profit institutions, which have not been appropriately analyzed. Implementing the Draft CII Permit could cost individual businesses and institutions tens of thousands to millions of dollars without evidence of meaningful corresponding water quality or public health benefits. This significant cost will hit hospitals, churches, and other institutions such as schools or universities particularly hard. Research conducted by Paradigm | This comment cites a quotation from page 6 of the Paradigm Environmental study, dated to 2016. While the Los Angeles Water Board acknowledges the value of reflecting on the administrative record, the Board notes that U.S. EPA has contracted with Paradigm to release a 2021 study as part of the modeling analysis package. Institutional CII sites are explicitly |

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| | Environment on behalf of EPA shows that for institutional sources, “total loading [of zinc and copper] was relatively small and below average on a per acre basis, compared to other land uses.” By failing to recognize that institutions contribute comparatively low loads of the relevant pollutants, the Draft CII Permit imposes an undue burden on them. Consequently, institutions (including hospitals, churches, schools) should be exempt from the Draft CII Permit.<br><br>Again, prior to additional rule making, this Board should conduct a more comprehensive economic impact analysis. | included under U.S. EPA's preliminary designation and therefore must be addressed by the tentative CII Permit. Furthermore, costs are sufficiently analyzed for all permittees in Fact Sheet, section 3.11.4 and its subsections. |
| 2.15 | The CII Permit will impose frivolous litigation risk on businesses, hospitals, churches, schools, and more. Without additional alternative compliance measures, the Draft CII Permit will also subject businesses and institutions to unnecessary litigation risks in the form of citizen suits that could cost hundreds of thousands of dollars to defend. Federal law permits citizen suits under section 505 of the Clean Water Act. However, due to the availability of attorney’s fees provision, citizen suits are commonly abused by enterprising plaintiffs’ attorneys. With the lack of government oversight over such lawsuits, many companies settle with such plaintiffs and categorize such expenditures as a “cost of doing business.”<br><br>This problem was highlighted by the United States Department of Justice (DOJ) filing a statement in 2018 criticizing a law firm’s citizen suits against three California companies for violating stormwater discharge limits under applicable permits. The DOJ emphasized that the single law firm brought over 150 CWA cases and had vague and unclear allegations in the notices and complaints. The DOJ statement raised concerns that plaintiffs of the law firm were clustered at the same addresses, and that plaintiffs did not continue environmental monitoring despite being compensated for such monitoring. The DOJ emphasized that the plaintiffs also had no technical experience in developing or assessing implementation of BMPs. Such law firms are repeat players in high-volume practices that file lawsuits with boilerplate notices and complaints in a “see what sticks” approach to CWA lawsuits.<br><br>The Draft CII Permit opens a whole new category of victims for such frivolous lawsuits. Without resulting in meaningful water quality or public health benefits, the Draft CII Permit would subject hospitals, colleges, small businesses, and retail centers to expensive lawsuits, costing potentially hundreds of thousands of dollars to defend. The requirements could further “redline” these communities from private investment as companies seek alternative locations where the (often duplicative and potentially impracticable) requirements would not apply and the litigation risk would not loom. | U.S. EPA’s preliminary designation requires the Board to issue an NPDES Permit to address water quality issues in the two watersheds. The tentative CII permit offers a clear path to compliance, with three Compliance Options for WQBELs, to give permittees more opportunities to achieve the terms of the tentative CII Permit. These Compliance Options are largely the same as all other point source dischargers of stormwater that are subject to NPDES Permits in the Los Angeles Region. Accordingly, the litigation risks in this permit are the same as all other NPDES Permits – if the Discharger fails to comply, the Discharger could be subject to administrative or judicial civil liability, citizen suits, and any other remedies afforded to citizens or the Los Angeles Water Board under the CWA and/or the California Water Code. |

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| 2.16 | The Draft CII Permit applies to privately owned "unpermitted CII sites with five (5) or more acres of impervious surface and permitted CII sites with five (5) or more acres of total area." The Draft CII Permit states that "CII facilities with five or more acres of impervious surface area contribute a zinc load of 11,000 kg/year and approximately 32% of the total zinc load in the Dominguez Channel/Greater Los Angeles and Long Beach Harbor Watershed and the Los Cerritos Channel/Alamitos Bay Watershed." Besides this statement, the Regional Board has provided little justification for why the five-acre limitation was selected. Would a ten-acre limitation (or any other size) be just as effective, while also being less burdensome on businesses (particularly small businesses and nonprofits)? The Regional Board has not presented alternative size limitations for public review and comment. To facilitate informed and transparent public participation, the Regional Board should not adopt the Draft CII Permit until a robust alternative analysis is provided to the public. At a minimum, the Regional Board should disclose the other size limitations that the Regional Board considered and its reasons for implementing them in the Draft CII Permit. | The tentative CII Permit applies to facilities subject to U.S. EPA's preliminary designation. These comments are related to U.S. EPA's preliminary designation memo and are outside the scope of the action before the Los Angeles Water Board. |
| 2.17 | Compliance Option 1 for Water Quality-Based Effluent Limitations. Compliance Option 1 for water quality-based effluent limitations (Agreement with Local Watershed Management Group to Fund Regional Project) states that "[a]t a minimum, the regional project shall be adequately sized to address the NSWD and stormwater volume that would otherwise need to be addressed onsite under Compliance Options 2 or 3, and the funding level must be proportional to the NSWD and onsite stormwater volume to be addressed/total regional project stormwater capacity." Is there a minimum funding requirement for this compliance option? Will the Regional Board review the agreement before it is executed to confirm that, if signed, the agreement will satisfy the discharger's obligations under Compliance Option 1? If not, what will happen to a discharger that enters into an agreement intending to comply with Compliance Option 1, but which the Regional Board subsequently rejects? Will a discharger be responsible for any flaws or liabilities related to implementation of a stormwater capture project that the discharger funds under Compliance Option 1? Which objective standards will the Regional Board use to determine whether the project is "adequately sized" and funding is "proportional to the NSWD and onsite stormwater volume to be addressed/total regional project stormwater capacity"? CII Permittees would greatly benefit from availability of a model Agreement that has been approved by EPA and the Regional Board, and which could be used for Compliance Option 1. | The Los Angeles Water Board has responded to each individual question posed by the commenter in order below:<br><br>The funding level requirement for CII permittees to participate in Compliance Option 1 will be developed by the WMGs because they are responsible for selecting projects and have the most relevant knowledge necessary to allocate funding among CII permittees. To ensure transparency and clarity for CII permittees, the tentative CII permit has been revised to provide guidance to the permittees and direction to the WMGs about how to set minimum funding levels. The funding level should be proportional to the expected pollutant discharge from the CII facility determined using the volume of the stormwater and non-stormwater discharge, and a pollutant factor based on land use. Other metrics such as imperviousness can be used in lieu of runoff volume. The pollutant factor assigned to land use is based upon the model supporting U.S. EPA's preliminary designation. Section 8.1 of the tentative CII Permit has been revised to further clarify this requirement.<br><br>The Los Angeles Water Board will not review the agreement before it is executed. WMGs undergo a separate process to |

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| | | incorporate regional projects into their WMPs. All regional projects listed within the WMPs that have already received the Los Angeles Water Board's approval are eligible for CII facility participation under Compliance Option 1. Additional information regarding regional projects in the watersheds is available on the Board's Watershed Management Program page (https://www.waterboards.ca.gov/losangeles/water_issues/programs/stormwater/municipal/watershed_management/baseline_permittees/index.html).<br><br>The Los Angeles Water Board is not a party to the agreement but will verify that the agreement is in place and complies with Compliance Option 1 as part of the initial submittal of the Permit Registration Documents and annually thereafter as a reporting requirement in the CII Permit. It is the permittee's responsibility to ensure that they are funding a regional project that has received Board approval under the WMP as a part of their agreement with the WMG.<br><br>Regarding responsibilities related to implementation of a stormwater capture project, WMGs will be responsible for implementing and managing the regional projects, while the Discharger will be responsible for the terms explicitly set forth in the Discharger's legally binding agreement with the WMG. The Los Angeles Water Board's review and approval of the WMPs included a determination that the pollutant reduction estimates for the measures to be implemented, including any regional project to be funded via the CII permit, were adequately sized to attain permit requirements by the TMDL compliance dates. Regarding the proportionality of the funding, clarifying language has been added to section 8.1 of the tentative CII Permit as described above.<br><br>The Compliance Options are intended to provide Permittees with flexibility. This intention is reflected in the current Compliance Option 1 language: WMGs and Permittees can currently implement any funding terms they can reach agreement on. Los |

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| | | Angeles Water Board staff will review the agreements made under Compliance Option 1 annually.<br><br>Staff can consider the possibility of preparing a guideline for agreements after adoption of the CII Permit but prior to the deadline for Permittees to submit a notice of intent to enroll under the CII Permit. |
| 2.18 | "Impervious." The Draft CII Permit should include a comprehensive list of materials and surfaces that are deemed "impervious" for the purpose of determining applicability of the Draft CII Permit. As drafted, it is unclear exactly how impervious surfaces are characterized. For instance, the Draft CII Permit suggests that "parking lots and rooftops" are "impervious areas," but it is unclear whether this is still the case for gravel parking lots (as opposed to paved parking lots), parking lots with permeable pavers, landscaped areas within parking lots, rooftop gardens, etc. Clarification is needed here. | A definition for impervious surface has been added to the revised tentative CII Permit. It states: "Any surface in the urban landscape that cannot effectively absorb or infiltrate rainfall; for example, driveways, sidewalks, rooftops, roads (including gravel roads), compacted soils and parking lots." |
| 2.19 | Building and Pavement Cleaning. The Draft CII Permit includes BMPs for discharges, including that dischargers shall "prevent disposal of any rinse/wash water or materials into the stormwater conveyance system." Does this BMP prohibit building and/or sidewalk cleaning? If not, how does the Regional Board recommend going about such activities while preventing rinse/wash water from entering the stormwater conveyance system in a way that is technologically feasible and economically practicable for all dischargers? | The referenced BMP in section 6.5.1.8 of the tentative CII Permit does not prohibit building and/or sidewalk cleaning. However, discharge from the facility due to building and/or sidewalk cleaning is prohibited by the tentative CII Permit (section 4.2) and must either be eliminated or authorized by a separate permit. This is a standard BMP. Several publications such as the CASQA Handbook for Commercial and Industrial Activities have recommendations to prevent disposal of any rinse/wash water or materials into the stormwater conveyance system. Examples include use of a perimeter drain or slope pavement inward with drainage to a sump where the wash water can be pumped if not connected to the sewer, use of temporary containment methods for proper disposal or reuse if appropriate, directing wash water to a grassed area if appropriate, etc. Dry methods of cleaning such as regular broom dry sweeping or vacuum sweeping are other recommendations. |
| 2.20 | Sites With Multiple Operators. The Draft CII Permit applies to "Dischargers" and "Facilities." The Draft CII Permit defines "Discharger" as a "person, company, agency, or other entity that is the operator of the CII site or facility covered by this General Permit." How will the Draft CII Permit apply to CII sites with multiple parcels owned and/or operated by different entities? | The definition of Discharger in the revised tentative CII Permit now reads:<br><br>The discharger is the owner or operator of the CII facility, whoever has the authority and operational control to |

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| | Does ownership of a portion of a CII site by a public agency impact applicability of the Draft CII Permit to the site? Further, how will a private owner of a parcel without control over day-to-day operations taking place on the parcel satisfy the compliance options under the Draft CII Permit? The Draft CII Permit should address these, and other potential issues pertaining to sites with multiple owners, or sites with owners that differ from operators. | comply with all conditions of this General Permit, including preparing and implementing the SWPPP and either (1) entering into a legally binding agreement with a local Watershed Management Group, (2) operating and maintaining stormwater controls to address the volume of runoff produced by an 85th percentile 24-hour storm event, or (3) implementing monitoring and reporting requirements and stormwater controls to directly demonstrate compliance with water quality based effluent limitations. The owner is the owner of the parcel subject to this General Permit. The operator is the lessee of the parcel subject to this General Permit.<br><br>When a parcel is leased to multiple lessees, the owner of the parcel shall serve as the Discharger. Where multiple qualifying parcels owned by different entities are forming a common development, the owner and/or operator of each parcel that is subject to this General Permit must obtain separate permit coverage. |
| 2.21 | Comingled Stormwater. The Draft CII Permit does not describe how comingled stormwater will be addressed for CII sites with multiple parcels owned or operated by different entities. | See response to comment #2.20. |
| 2.22 | Housing Impact. The Draft CII Permit states that the Order helps address the need for developing housing within the region by boosting water resiliency in the region and increasing the region's capacity to support increases in population. However, compliance with the Draft CII Permit will likely increase costs of operations for businesses and other organizations within the permitted region, which may, in turn, increase the cost of living in the locale. Has the Regional Board considered how the costs of complying with the Draft CII Permit will impact housing supply or the cost of living within the permitted region? | The housing impact analysis in the tentative CII Permit focuses on the need for developing housing, as required by CWC section 13241, rather than the potential impacts on the cost of housing. Section 3.11.5 of the Fact Sheet has also been revised to include additional analysis with respect to housing. |
| 2.23 | Calculating Acreage for Designation. In its rulemaking materials, EPA has not clarified why areas of a site that may currently have NPDES permit coverage are also considered in determining applicability of the 5-acre size threshold under the Draft CII Permit. | This comment pertains to U.S. EPA's preliminary designation memorandum and is outside the scope of the action before the Los Angeles Water Board. |

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| 2.24 | As mentioned above, consideration of the Draft CII Permit is premature because the EPA has not yet executed its residual designation authority in support of the Draft CII Permit and has not properly engaged in notice and comment rulemaking. In addition, the Draft CII Permit itself poses numerous concerns as pointed out above. In light of this, we respectfully request that the Regional Board not adopt the Draft CII Permit, or, at a minimum, stay the adoption of the Draft CII Permit pending further EPA action. If, despite these concerns, the Regional Board elects to proceed with adoption of the Draft CII Permit, we respectfully request consideration of the recommendations below.<br><br>Phased Implementation In the event that the Regional Board refuses to provide analysis of alternative acreage limitations for purposes of the applicability of the Draft CII Permit, the Regional Board should consider a phase implementation schedule for unpermitted CII sites with ten or fewer acres of impervious surface and permitted CII sites with ten or fewer acres of total area. We suggest the following language changes to section 3.1.1 to the Draft CII Permit in order to implement this approach:<br><br>Discharges covered under this General Permit include stormwater and authorized NSWDs from unpermitted CII sites with ten (10) or more acres of impervious surface and permitted CII sites with ten (10) or more acres of total area in the Dominguez Channel/Greater Los Angeles and Long Beach Harbor Watershed and the Los Cerritos Channel/Alamitos Bay Watershed. All publicly owned facilities, including airports and seaports, and CII sites at hospitals, churches, schools, and institutes of higher education are not required to obtain coverage under this permit. Five years from the effective date of this General Permit, upon the designation of the Executive Director, this General Permit may be extended to include stormwater and authorized NSWDs from unpermitted CII sites with five (5) or more acres of impervious surface and permitted CII sites with five (5) or more acres of total area in the Dominguez Channel/Greater Los Angeles and Long Beach Harbor Watershed and the Los Cerritos Channel/Alamitos Bay Watershed. CII sites at airports are excluded from coverage under this permit. | With respect to phasing or timing of adoption and how it relates to U.S. EPA's preliminary designation and adoption of its final designation memorandum, see response to comment #2.2.<br><br>With respect to phased implementation, the revised tentative CII Permit includes a two-year phase-in period for existing dischargers to select their Compliance Option, which will provide flexibility to all CII Permittees. However, additional phasing by size of CII facility is unnecessary given the scope of tentative CII permit across only two watersheds. |
| 2.25 | In November 2018, Los Angeles County voters approved Measure W (the Safe Clean Water Program). Measure W provides cities, watershed areas, and Los Angeles County with funds to capture, treat, and recycle stormwater through a parcel tax of 2.5 cents per square foot of impermeable land area. It is estimated that Measure W will raise approximately $285 million *annually* for clean water projects in Los Angeles County.30 This amount will more than double the annual amount spent by all permittees on stormwater projects in Los Angeles County since December 2012. In the few years since Measure W was adopted, a total of 195 | U.S. EPA's preliminary designation and the Los Angeles Water Board's tentative CII Permit are intended to comply with the U.S. District Court's order to permit CII facilities separately from the MS4 Permit. Los Angeles County's Safe Clean Water Program was adopted to comply with the MS4 permit. Therefore, payment |

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| | infrastructure projects, technical resources, and scientific studies have been funded or are currently under consideration for funding across LA County to increase the region's water resiliency.<br><br>Measure W generally applies to any real property situated within the Los Angeles County Flood Control District that is a tributary to a receiving water identified in the Water Quality Control Plan for the Los Angeles Region. If the Draft CII Permit is adopted, many CII facilities will be required to both pay the Measure W parcel tax and implement any applicable requirements under the Draft CII Permit.<br><br>Given that the purpose of Measure W is to "provide funding for Programs and Projects to increase Stormwater and Urban Runoff capture and reduce Stormwater and Urban Runoff pollution," it would be unreasonable to subject CII facilities to separate compliance requirements of the Draft CII Permit, which are intended to achieve a similar goal. As such, we recommend instituting a fourth compliance option to the Draft CII Permit, which allows for a permittee to comply with its requirements under the Draft CII Permit through payment of the Measure W parcel tax.<br><br>We suggest including the following language as section 8.4 to the Draft CII Permit in order to implement this change:<br><br>8.4 Compliance Option 4 – Demonstration of Payment of Parcel Tax Under the Los Angeles Region Safe, Clean Water Program.<br><br>8.4.1 The Discharger shall provide to the Los Angeles Water Board on an annual basis, proof of payment of the full amount of the special parcel tax required of the Discharger under The Los Angeles Safe, Clean Water Program (Los Angeles County Flood Control District Code, Chapter 16). | of Measure W parcel tax cannot be used to demonstrate compliance with this separate NPDES Permit. |
| 2.26 | The Draft CII Permit does not consider that industrial facilities may also be covered by other NPDES permits. Section 3.1.2 of the Draft Permit states: "where a portion of the facility's impervious surface is covered by another permit must still obtain coverage under this General Permit for the remaining portion of the impervious surface (e.g., rooftops and parking lots)." The Regional Board has not demonstrated that dual coverage is always appropriate or necessary. In some instances, such as industrial facilities already covered by General Permit for Stormwater Discharges Associated with Industrial Activities, dual coverage may not result in any additional water quality benefit. Accordingly, the Draft CII Permit should be revised to include an exemption for facilities covered by any existing permit unless the Regional Board | The tentative CII Permit must accurately reflect U.S. EPA's preliminary designation in order to provide permit coverage for the designated facilities. U.S. EPA's preliminary designation memorandum clearly identifies any unpermitted portion of a privately owned industrial facility. Therefore, the tentative CII Permit applies to any unpermitted portion of a privately owned industrial facility as well. Furthermore, the Fact Sheet for the tentative CII Permit describes the nature of impervious surfaces as a source of pollutants, including their impact on receiving |

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| | determines on a case-by-case basis that dual coverage would provide a measurable water quality benefit. | waters, and the rationale for the permit requirements for CII facilities. Please also note that comments pertaining to U.S. EPA's preliminary designation are outside the scope of the action before the Los Angeles Water Board. |
| 2.27 | As drafted, it is unclear whether CII Permittees may use multiple Compliance Options to satisfy their permit obligations. This ambiguity should be resolved, and the Draft CII Permit should be amended to clarify that CII Permittees may utilize multiple Compliance Options to fulfill permit requirements. | The tentative CII Permit does not allow for the mixing of Compliance Options anywhere in the document. Allowing mixed usage of Compliance Options will greatly increase the administrative burden for both Los Angeles Water Board and WMG staff, and there is not enough justification for implementation of mixing Compliance Options at this time. |
| 2.28 | Under Water Code section 13300, "whenever a regional board finds that a discharge of waste is taking place or threatening to take place that violates or will violate requirements prescribed by the regional board, or the state board . . . the board may require the discharger to submit for approval of the board, with such modifications as it may deem necessary, a detailed time schedule of specific actions the discharger shall take in order to correct or prevent a violation of requirements." The requirements of the Draft CII Permit could lead to numerous violations by entities whose stormwater were not previously regulated. This will have significant adverse impacts on small businesses that cannot afford compliance consulting services or the penalty fees. The Regional Board should preemptively adopt a Time Schedule Order that CII sites can enter with this Draft CII Permit to better transition the regulated community into the Draft CII Permit requirements. | Issuance of a TSO at this point in time would be premature. Although California Water Code sections 13300, 13308, and 13385 allow the development of terms for Time Schedule Orders, the Los Angeles Water Board is not required to adopt such orders. Moreover, when the Board considers issuance of an individual TSO (or any permit-specific TSO, including a general TSO to extend compliance deadlines under the whole NPDES Permit) for compliance with effluent limitations, the TSO must satisfy CWC section13385(j)(3) at the time of the issuance. Here, CII permittees will have two years to enroll in the permit after its adoption, reflecting the phase-in period for Dischargers to select their Compliance Option. If, after the period of two years, any particular permittee or group of permittees need a TSO, the Los Angeles Water Board will consider the specific facts and determine whether a TSO is necessary at that time. |
| 2.29 | The Draft CII Permit should incorporate No Exposure Certifications (NEC) and Notice of Non-Applicability (NONA). Under current regulations, if a condition of no exposure exists at industrial facilities regulated under the Storm Water Program, then permits are not required for storm water discharges from the facilities.32 Generally, industrial facilities wishing to take advantage of the permitting exclusion must submit an NEC or NONA to the permitting authority attesting to the condition of no exposure. Dischargers that meet the requirements of the NEC are exempt from the SWPPP, sampling requirements, and monitoring requirements of an Industrial General Permit. The purpose of the no exposure exclusion is to provide all industrial facilities regulated under the NPDES Program, whose industrial activities and | The Los Angeles Water Board notes that U.S. EPA's preliminary designation has explicitly identified rooftops as an impervious surface. Rooftops and sealed storage containers are common methods of obtaining No Exposure Certifications through the IGP. Both methods currently fall under U.S. EPA's definition of impervious surfaces. U.S. EPA's preliminary designation also explicitly identifies currently permitted sites with NECs as CII Permittees. |

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| | materials are completely sheltered, with a simplified method for complying with the Clean Water Act.<br><br>Here, the regulated CII facilities should also be allowed to submit an NEC or NONA as there are many locations that have impervious surfaces that are not exposed to vehicle traffic or other pollutant sources. These CII facilities should not be overburdened with compliance costs when their stormwaters are clean. The Draft CII Permit should also provide more clarity as to existing industrial facilities that have submitted an NEC or NONA. It does appear that the Regional Board has included these sites on the spreadsheet of affected facilities, but the Draft CII Permit does not provide clarity with respect to when these types of sites would require coverage. For NONA sites, the Draft CII Permit should be consistent with EPA's Preliminary Designation Memo and only require CII coverage for portions of the site that are not covered by the NONA and if those uncovered areas are 5 acres or greater. | The Los Angeles Water Board appreciates the commenter for identifying the gap in coverage for Notice of Non-Applicability sites. Section 3.1 of the tentative CII Permit has been revised to reflect permit applicability consistent with U.S. EPA's preliminary designation. |
| 3.1 | EPA must First Adequately Promulgate the Residual Designation Prior to CII Permit Adoption.<br><br>The Draft CII Permit relies on the narrow U.S. Environmental Protection Agency's (EPA) NPDES stormwater permitting authority and Residual Designation Authority (RDA) provided under the Clean Water Act Sections 402(p)(2)€; 40 C.F.R. § 122.26(a)(9)(i)(D); 33 U.S.C. §1342(p)(2)€. EPA released their Preliminary Designation of Certain Commercial, Industrial, and Institutional Stormwater Discharges in the Alamitos Bay/Los Cerritos Channel Watershed and the Dominguez Channel and Los Angeles/Long Beach Inner Harbor Watershed in Los Angeles County" (Preliminary Designation) on July 2022. EPA must first promulgate their Final Designation prior to any process initiated by the LA Water Board; thus, the Draft CII Permit is entirely premature and parallel processes by the federal and regional agencies is inappropriate.<br><br>PMSA has many legal concerns with the Preliminary Designation attempt by EPA, including nonadherence to federal administrative requirements, exceedance of the statutory authority for Residual Designation, and inadequate and insufficient evidence to support the initial modeling and designations proposed. Details on these justified concerns are offered below, and were also submitted directly to EPA under a separate comment letter dated October 24, 2022.<br><br>[See comment letter from the Pacific Merchant Shipping Association for subsequent 28 comments, which are outside the scope of the action before the Los Angeles Water Board.] | See response to comment #2.2. Please note that the subsequent 28 comments in this letter are related to U.S. EPA's preliminary designation memo and are outside the scope of the action before the Los Angeles Water Board. |

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| 3.30 | The Draft CII Permit is lacking necessary modeling. The EPA data includes Zinc and Copper only, yet the LA Water Board has attempted to include 15 additional pollutants, not discussed in the preliminary Designation nor the original petitions, with water quality and sediment based effluent limitations. Reference Tables 1 – 4 of the Draft CII Permit. The agency is required to conduct modeling and provide an analysis for all pollutants. Pursuant to 40 C.F.R. 124.8, the LA Water Board must publish "significant factual, legal, methodological and policy questions considered in preparing the draft permit." These parameters must be shared with stakeholders prior to moving forward with Permit adoption. | The Los Angeles Water Board is not required to conduct modeling for all pollutants. See response to comment #2.3. |
| 3.31 | Terminal operators at the Ports of Long Beach and Los Angeles (Ports) have proven to be environmental stewards by investing millions of dollars in storm water management, including deploying Best Management Practices (BMPs) and new technologies to reduce pollutants. These investments and strategies have improved water quality in the Harbor waters. PMSA affirms that the Draft CII Permit need not apply to the Ports based on measures and permit coverage already implemented. Further, marine terminals are highly valuable property with unique operations in a dense but substantial facility footprint within the Port complex. It would be impossible to deploy particular infrastructure and storm water technologies, which are largely not cost effective. It is also unclear if such technologies for adequate capture, infiltration and/or evapotranspiration are readily available or proven to be successful for a marine terminal environment. These matters must be considered by the LA Water Board prior to adopting a permit with effluent limitations. 33 U.S.C. 1314(b)(4); 40 C.F.R. 125.3(d). It is clear that the LA Water Board did not consider practical feasibility in drafting the Draft CII Permit, nor the EPA in its Preliminary Designation, in endeavoring to incorporate publicly-owned seaports and marine terminals. The Ports of long Beach and Los Angeles handle 40% of all US containerized cargo; unintended consequences from such untenable and costly storm water obligations could further exacerbate market share loss from west coast and Californian ports, increase and shift congestion and also be detrimental to union labor. | U.S. EPA's preliminary designation includes the unpermitted portions in the Ports' commercial or industrial areas discharging to the inner and outer harbors that must be regulated by the tentative CII Permit.<br><br>The tentative CII permit offers Permittees three Compliance Options. Permittees should characterize their sites, select BMPs that are well-suited to facility characteristics and determine the most feasible and cost-effective compliance option to meet the requirements of the tentative CII Permit. Since the volume reduction measures (Compliance Option 2) and direct demonstration of compliance (Compliance Option 3) are also included in the IGP, information and experience should be available to determine costs, performance and feasibility of these options for a CII facility. |
| 3.32 | The Draft CII Permit proposes three Compliance Options, all of which are not feasible for marine terminals, or, in the very least, do not provide adequate details to even analyze feasibility. | As stated above, Compliance Options 2 and 3 are also allowed as compliance options for the IGP and include standard practices to comply with stormwater and NPDES permits; therefore, information is plentiful to perform a feasibility analysis. To allow a cost comparison with Compliance Option 1, the Los Angeles Water Board is working with the WMGs to identify a fee structure for CII facilities to participate in regional BMPs in the WMGs' approved WMPs. Information regarding the fee structure |

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| | | developed by the WMGs will be provided prior to the deadline for Permittees to submit Permit Registration Documents specifying the selected Compliance Option. |
| 3.33 | Compliance Option 2 calls for the discharger to "design, implement, and properly operate and maintain stormwater controls (structural and/or non-structural BMPs) with the effective capacity to capture and use, infiltrate, and/or evapotranspire all NSWDs and the volume of runoff produced up to and during an 85th percentile 24-hour storm event." Draft CII Permit § 8.2. This is entirely impractical for marine terminals based on the sheer size, dense location at the terminus of the watershed and large volume of runoff. The County of Los Angeles Department of Public Works estimates that marine terminals are estimated to receive an average of 0.30 inch of rainfall depth, which equates to millions of gallons of rainfall to be captured, based on the impervious land acreage. There is no technology that would meet these requirements for the storm event described.<br><br>Irrespective of the unsuitability for marine terminals, the following issues are identified. The basis for the volume-based requirement in Attachment I of the Draft CII Permit is unclear and appears to align with the requirements in Attachment I of the IGP, which requires Dischargers have the capacity to eliminate discharge from the volume of runoff generated by the 85$^{th}$ percentile 24-hour storm event on a daily basis. The modeling performed to establish this requirement in the IGP was designed for the Los Angeles River Watershed only, thus, the LA Water Board cannot rely on the same justification. Similar modeling for the two Watersheds identified would first need to be conducted to justify this requirement.<br><br>This is a significantly larger standard than the volume of runoff generated from the one-time 85$^{th}$ percentile, 24-hour storm event required under the MS4 Permit new development or redevelopment program Low Impact Development (LID) design requirements. Many facilities have implemented site-specific BMPs to satisfy LID requirements for new development or redevelopment standards using the 85$^{th}$ percentile, 24-hour storm event and the current language would likely require these facilities to redesign/reconstruct many of these BMPs. The design storm retention standards in the Draft CII Permit should remove the daily basis requirement and align with existing design storm retention standards. It should also be noted that the design criteria referenced in Attachment I is a volume-based standard and not a flow-based standard, as described in Attachment F, § 4.9. | Please see response to comments #3.31 and #3.32, which explain that Compliance Option 2 is one of three choices for marine terminals. Also, in addition to onsite infiltration, Compliance Option 2 allows for a combination of approaches to reduce the volume of runoff from a site including diversion to a sanitary sewer treatment facility, to an on-site facility for on-site use, or to a regional reclaimed water distribution system. (Attachment I, section 1.1.2).<br><br>Attachment I, section 1.1.4 presents the 85th percentile, 24-hour storm event volume requirement and it specifies a 24-hour drawdown time consistent with the IGP. As with the IGP, the design storm standard for the onsite compliance option is the volume of runoff produced up to and during the 85th percentile 24-hour precipitation event based upon local, historical precipitation data and records. To demonstrate the technical rationale for the IGP onsite compliance option (IGP, Fact Sheet, page 33), the modeling performed in the IGP used the Burbank Airport rain gauge to determine an appropriate statewide approach for BMP volume calculation method for the 85$^{th}$ percentile 24-hour runoff volume (Straight Calc method) and the storm water samples from the Los Angeles River Watershed to determine the most appropriate drawdown time (24 hours) prescribed in the IGP, Attachment I. The statewide IGP design storm standard and the 24-hour drawdown time in the tentative CII Permit considers local conditions and is appropriate for application statewide, including the CII watersheds.<br><br>While the Straight Calc method and the 24- hour drawdown requirement yield a greater design volume as compared to the performance requirements in the MS4 Permit's new development or redevelopment program, the IGP's design storm approach is |

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| | | more appropriate to use for the tentative CII permit because the MS4 new development/redevelopment requirements are not strictly intended to achieve WQBELs like the tentative CII Permit Compliance Option 2 and the IGP onsite compliance option.<br><br>The reference to a flow-based standard has been deleted in section 4.9.2.1 of the Fact Sheet. |
| 3.34 | The requirement to meet Maximum Contaminant Levels (MCLs) outlined in Attachment I §1.4.6 et al. at the point of infiltration discourages use of infiltration as a BMP, especially for facilities located in areas with deep vadose zones. As stormwater infiltrates through the vadose zone, the soil acts as a natural treatment media to remove pollutants such as heavy metals. Several studies demonstrate that metals are retained in the upper soil layers via adsorption. The restriction for not allowing monitoring devices such as lysimeters to demonstrate compliance with MCLs for drywells is without merit, especially for drywells located in areas where there is significant vadose zone present (e.g., the depth to groundwater is greater than 10 feet from the base of the drywell). Instead, the use of monitoring devices such as lysimeters should be encouraged to demonstrate compliance with MCLs. | Attachment I specifies groundwater protection measures by requiring a demonstration that all influent entering or exiting the infiltration BMP meets MCLs.<br><br>While we recognize the treatment capability of soil, pre-treatment is necessary to limit the amount of gross pollutants passed into the infiltration system, which can be damaged by sediment and oil. It is also not good practice to exhaust soil treatment capability for primary treatment of pollutants entrained in stormwater from CII activities. At decreased soil pH, heavy metals can become mobile in soil and impact groundwater quality. The requirement to demonstrate compliance with the MCLs, including secondary MCLs, via pretreatment controls prior to infiltration or via lysimeter is necessary to protect groundwater quality and is necessary to meet Basin Plan requirements.<br><br>The restriction on the use of monitoring devices such as lysimeters to demonstrate compliance with MCLs for drywells is consistent with the IGP requirements and this approach to groundwater protection. Storm water capture and infiltration dry wells are considered Class V wells. The Discharger must register under the U.S. EPA Underground Injection Control Program as operating a Class V well if storm water is disposed of via storm water capture and infiltration dry wells or another BMP with a direct discharge to groundwater. |
| 3.35 | In addition, secondary MCLs are established as guidelines to assist public water systems in managing their drinking water for aesthetic considerations, such as taste, color, and odor. Thus, it is recommended to remove the requirement to meet secondary MCLs. | The State Water Board adopted the Sources of Drinking Water Policy (State Water Board Resolution No. 88-63) in May 1988. This policy states that all surface waters and groundwater in the State are considered suitable, or potentially suitable, for |

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| | | municipal or domestic water supply and should be so designated by the regional water boards with certain exceptions. Except beneath the Ports, groundwater underlying most of the 2 watersheds (West Coast and Central subbasins in the Coastal Plan of Los Angeles) are identified with existing MUN beneficial uses. To protect MUN beneficial uses, the Basin Plan identifies water quality objectives including secondary MCLs. |
| 3.36 | As described in detail in the deficiency data and modeling sections above, EPA alleges in the Preliminary Designation that all CII facilities contribute to impairment and only Zinc and Copper have been modeled. The agencies have not provided the legally required analysis for all pollutants, as identified in Tables 1 – 4 of the Draft CII Permit, and this absence of an appropriate pollutant source assessment process makes Option 3 untenable. The limited data do not support the requirement for CII facilities to monitor for every parameter, including Polychlorinated Biphenyls (PCBs), Polycyclic Aromatic Hydrocarbons (PHAs), pesticides, and bacteria. Most facilities would not have an understanding of baseline concentrations of these parameters and, more likely, are not sources. Zinc is being considered as the "limiting pollutant" and the LA Water Board states that if the discharge of zinc is controlled, then the discharge of other pollutants would be controlled. The approach of utilizing zinc as a surrogate parameter to examine the discharge of all pollutants of concern is insufficient and the LA Water Board must conduct the necessary technical modeling and sufficient justification prior to devising Option 3. | Please see response to comment #2.3 regarding inclusion of WQBELS for pollutants in addition to zinc and copper. |
| 3.37 | Additional issues remain for Option 3. Tables 2 and 4 of the Draft CII Permit include a requirement to collect "stormwater-borne sediment" for comparison to interim concentration-based sediment allocations. The sampling methodologies and volume of stormwater necessary to collect sufficient mass of sediment for analysis is not feasible. The State Water Resources Control Board (State Water Board) performed a detailed analysis of these same sediment allocations during the development of the IGP and stated the following:<br><br>"For the pollutant concentrations to be measured, a sufficient volume of stormwater must be collected to obtain suitable quantities of Total Suspended Solids (TSS) to analyze the filtered bulk sediment. These methods require from 30 grams (30,000 milligrams) of suspended solids or up to 100 grams (100,000 milligrams) to accommodate for potential re-analysis or for quality control."<br><br>And | Attachment E, Monitoring and Reporting Program, section 2.2.2.2.6, has been added to the tentative CII Permit to provide an alternative process to determine compliance with the sediment-based effluent limitations that would not require the collection of large volumes of stormwater. |

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| | "Directly implementing the interim sediment targets would be impractical, costly, and not aligned with the monitoring requirements in this General Permit…"<br><br>Therefore, based on our own analysis, if the TSS concentration in stormwater is 100 mg/L, between approximately 80 gallons (30 grams of sediment) and 265 gallons (100 grams of sediment) would need to be collected and filtered for *each* sample location. To address the impracticability of this approach, the SWRCB relied on the meeting a numeric action level (NAL) of 100 mg/L for TSS in stormwater discharge samples.<br><br>The State Water Board further explained the rationale used to establish a NAL for TSS, rather than a numeric effluent limit (NEL) as:<br><br>"Because these [Total Maximum Daily Load] TMDLs associate receiving water bed toxicity targets to discharges of OC pesticides, PAHs, PCBs, and metals bound to sediment control measures so that sediment-bound particulates do not leave an industrial facility's property and settle in the receiving water bed via storm water discharges and authorized NSWDs." And "since these [wasteload allocations] WLAs are assigned to be met in the receiving water and are intended to control sediment pollutant loading into the impaired water, compliance with this General Permit's TSS annual and instantaneous maximum NALs is sufficient for compliance with the WLAs." | |
| 3.38 | Further, Table 3 of the draft CII permit incorporates effluent limitations which are inconsistent with TMDL final allocations for Dominquez Channel Estuary and Greater Harbor Waters in the IGP. Table 3 includes WLAs for copper at 3.73 µg/L and zinc at 85.6 µg/L. However, "the concentration-based WLAs are translated to instantaneous maximum [Numeric Action Level] TNALs because the WLAs are assigned to be met at the receiving waters and not at the point of discharge. The assigned WLAs of copper, lead, and zinc are based on the Criteria Chronic Concentration, and is inappropriate to assign to stormwater discharges. Therefore, the California Toxics Rule (CTR) Criterion Maximum (acute) Concentration is applied to Responsible Dischargers." The CII Permit should include a similar approach as the IGP and allow NALs rather than effluent limits at the point of discharge if a WLA is assigned to be met at the receiving water. | The tentative CII Permit focuses on effluent limits rather than NALs.<br><br>The tentative CII Permit is being issued to implement the adopted TMDLs in response to ongoing water quality impairments in the watersheds. TMDLs are not self-implementing. The tentative CII permit incorporates the WLAs in the Harbors Toxics TMDL in accordance with the TMDL implementation language. The tentative CII Permit does not include an iterative BMP improvement approach for exceedances of NALs; it requires onsite implementation of minimum BMPs as TBELS and strict compliance with the WQBELS, expressed as numeric effluent limitations translated from the WLAs in the TMDLs. Put differently, all WQBELs are consistent with the WLAs in the TMDLs. |

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| | | Finally, to the extent that the commenter is concerned about IGP overlap, please note that any overlap with the IGP has been removed. See response to comment #1.18. |
| 3.39 | The lack of a design storm standard for treatment control further makes Compliance Option 3 unsound. In order to comply with the NELs, Dischargers may need to consider treatment control BMPs. Without any design criteria, Dischargers could potentially install treatment controls using a wide variety of designs that may be either deficient in achieving compliance with the water quality standards, or unnecessarily stringent and expensive. | Not specifying a design storm for treatment control BMPs for Compliance Option 3 allows for site-specificity in design and flexibility in demonstrating compliance with effluent limits.<br>Flexibility in choosing and implementing appropriate treatment control BMPs on site may result in a variety of design and cost considerations for dischargers to make in order to effectively comply with WQBELs. |
| 3.40 | Additionally, sampling all discharge locations is not feasible at marine terminals. Some facilities are hundreds of acres and have dozens of sampling locations. The Draft CII Permit should include provisions to allow for selection of alternative sampling locations and to reduce sampling locations based on representativeness, similar to the IGP. The strict provision to collect samples for all discharge locations does not recognize many of the conditions that exist at Port facilities and conditions that make the requirement infeasible to implement, including:<br>• Many outfall locations at the Ports are either submerged or commingle with stormwater from numerous upstream, off-site sources prior to discharge. To the extent a representative sample cannot be collected or is inaccessible at the point of discharge, identifying and sampling upstream catch basins and trench drains is the only method to collect a representative discharge sample. This may require larger facilities to collect samples from 50 or more locations to meet current draft Permit requirements.<br>• Some discharge locations are not within facilities' boundaries and are not accessible for sampling.<br>• Many marine terminals also have hundreds of scupper/over-water drains with small tributary areas draining directly to the Harbor. These drains cannot feasibly be sampled. | The tentative CII Permit does not allow for sampling and analysis reduction contingencies. However, section 9.3.2.9 of the tentative CII Permit allows for considerations of safety and accessibility when identifying alternative sampling locations. |
| 3.41 | Regarding Compliance Option 1, the Draft CII Permit offers little by way of particulars for a CII facility to securely select an option of contracting with a Local Watershed Management Group. It was discouraging that the concept of a mitigation fund paid into by dischargers on a level determined by a fair calculation, which PMSA and terminal operators discussed with both LA Water Board and EPA staff during a March 22, 2022 meeting, was not included as an option. It would likely be less onerous on both the regulated communities and the | The Los Angeles Water Board is working with the WMGs on ways to promote transparency with Compliance 1 to enable CII permittees to cost compare among compliance options.<br>Compliance Option 1 requires a formal agreement with a local WMG to fund a regional project that shall be uploaded to |

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| | administrator of such a fund while still accumulating considerable funds to address storm water quality, rather than entering into a formal agreement with a Local Watershed Management Group to fund regional projects. Many valid concerns surround this Option: | SMARTS. The primary goal of this Compliance Option is to partner with a WMG to tackle the overall improvement of water quality in the two impaired watersheds -- the Los Cerritos Channel and the Dominguez Channel --based on WMPs approved by the Los Angeles Water Board. |
| 3.42 | The total 640 facilities identified could all opt for Compliance Option 1, and as marine terminals incorporate an immense impervious footprint and the projects must be sizable enough to treat the equivalent stormwater discharge (§ 8.1), there very well could not be enough projects for all dischargers. Further questions surround who determines the size and proportion adequacy of the project. | As part of the reasonable assurance analysis, the WMPs predicted the pollutant reductions to be achieved with various watershed control measures, including low impact development, nature-based solutions, and regional projects, to meet effluent limits and receiving water limits by the TMDL compliance dates. By requiring that regional projects under Compliance Option 1 be included in Board-approved WMPs, the permit ensures that the regional projects will be designed, constructed, and maintained to attain effluent and receiving water. There are several existing regional BMPs and others in planning, design or construction phases. These regional BMPs are intended to operate in perpetuity and will require proper operation, maintenance and upgrades, as needed. See also response to comment #12.12. |
| 3.43 | Regarding Compliance Option 1, no calculation is offered on how funding amounts are determined, nor a minimum funding amount. Can the Local Watershed Management Groups determine different rules, such that facilities in one Watershed area could have an unfair advantage and lower cost of compliance? | Los Angeles Water Board staff are coordinating with Watershed Management Group representatives to determine an equitable fee schedule considering the pollutant contribution factors in the tentative CII Permit. The funding level or participation fee must consider the volume of stormwater and NSWDs, and pollutant contribution from the CII facility as indicated in Section, 8.1 of the tentative CII Permit. However, since the WMGs will administer and incur costs in program management, details of the funding terms of the legally binding agreement to participate in Compliance Option 1, including the schedule of payments, should be developed by the WMGs as they are subject matter experts on the costs and various funding sources available to implement the WMPs.<br><br>The Los Angeles Water Board has updated the Fact Sheet, Section 4.9.1.2 with regards to Compliance Option 1. The term “funding” was clarified to explicitly include initial capital cost, |

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| | | operations and maintenance, project revision and enhancement, and any other supplemental work. |
| 3.44 | Under Compliance Option 1, Does the LA Water Board need to review the agreement before execution to then verify a discharger is in compliance with the CII Permit obligations? Can the LA Water Board reject an agreement that the Local Watershed Management Group and regulated party find agreeable? | The Los Angeles Water Board is not a party to the agreements and will not have a role in reviewing or rejecting agreements. CII Permittees will need to enter into an agreement with the WMG for participating in regional BMPs in an approved WMP and upload a fully executed agreement into SMARTS. The CII Permittee, in conjunction with the WMG, should ensure all requirements are met prior to submittal of documents. |
| 3.45 | Under Compliance Option 1, does one-time funding for a project meet the obligations going forth, or how is compliance determined over time for permittees? | The terms of the agreement with the WMGs will specify the duration of the funding and may vary according to both parties' needs. For Compliance Option 1, CII Permittees need to report annually any changes in the agreement with the WMG as specified in the tentative CII Permit. |
| 3.46 | Under Compliance Option 1, what are the basic BMPs that the Watershed Group could require, as currently proposed in the Draft CII Permit, and does the cost of implementing those stacks with the project funding amount? | Section 8.1.2.3 of the tentative CII Permit, which required the agreement between the Discharger and the WMG to include site-specific pollutant control measures required by the WMG, has been removed in the revised tentative Order. |
| 3.47 | Under Compliance Option 1, if the areas currently covered under the IGP are moved under jurisdiction of the CII Permit and Option 1 is chosen, what are the obligations for those specific areas? What if the BMPs identified by the Watershed Group are less stringent than those already deployed at the area in question? | The revised tentative CII Permit no longer allows current IGP facilities with unpermitted CII areas to obtain full site coverage under the tentative CII Permit. |
| 3.48 | The Draft CII Permit requires clarity regarding the types of facilities the permit seeks to regulate as well as the entity that will be subject to regulation for each facility. The draft Permit language lacks clarity with respect to applicability and is inconsistent when referencing applicable sites. The unique facility types, beyond 'industrial,' must be defined for those that the LA Water Board seeks to regulate and whom the responsible party is. The LA Water Board and EPA are urged to coordinate to develop clear definitions and scenarios related to private ownership, private operation, public ownership of facilities and clear responsibility for permit compliance. | The types of facilities (CII Sites) and the Legally Responsible Party (LRP) who may apply for permit coverage are defined in Attachment A, "Acronyms and Definitions".<br>Additionally, applicability of the permit has been updated to reflect the U.S. EPA's designation memo in Section 3 "Applicability" and clarifies private ownership, private operation and public ownership of facilities. |
| 3.49 | Additionally, utilizing Standard Industrial Classification (SIC)/North American Industry Classification System (NAICS) codes would follow in similar fashion as the IGP and reduce | U.S. EPA's preliminary designation of CII parcels that must be permitted in the two watersheds do not specify SIC/NAICS like |

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| | confusion to whom and what is attempting to be regulated, as 'commercial, industrial, and institutional' terminology is extremely vague and potentially subjective. | the IGP. Rather, the designation is based on parcel and land use information within the watersheds. |
| 3.50 | Notwithstanding the practicality and availability of such best conventional pollutant control technology (BCTs) and best available technology economically achievable (BATs), the economic impacts and cost-benefit factors are required to be analyzed when considering Permit requirements. Permit writers, under 40 C.F.R. 125.3(d)(2), are compelled to analyze "the comparison of the cost and level of reduction of such pollutants from the discharge from publicly owned treatment works to the cost and level of reduction of such pollutants from a class or category of industrial sources" from BCTs and "the cost of achieving such effluent reduction" for BATs. 40 C.F.R. 125.3(d)(3). Attachment F § 3.11.4 of the Draft CII Permit attempts to palm off two paragraphs as its Economic Consideration while lacking any monetary context with the pardon that the "the costs of the BMPs will vary by facility." The LA Water Board must conduct a factual economic analysis prior to attempting to adopt technological requirements. | BAT and BCT guidelines apply to the minimum BMPs that define the TBELs for this order. As stated in Fact Sheet section 4.5.2:<br><br>> The Los Angeles Water Board has selected minimum BMPs (section 6.1.5 of the Order) that are generally applicable at all facilities. Due to the diverse CII sites covered by this General Permit, the development of a more comprehensive list of minimum BMPs is not currently feasible. The selection, applicability, and effectiveness of a given BMP is often related to facility-specific facts and circumstances.<br><br>Although the Permittee may select Compliance Options 2 or 3, which may require that the Permittee implement BMPs beyond the minimum, these compliance options are for WQBELs, not TBELs.<br><br>See also response to comment #2.10 and #2.12. |
| 3.51 | While the LA Water Board has indicated sites with a No Exposure Certification (NEC) under the IGP and those submitting a Notice of Non-Applicability (NONA) are required to obtain coverage under the Draft CII Permit, the Permit does not provide clarity with respect to when these types of sites would require coverage. For NONA sites, the Draft CII Permit should be consistent with the Preliminary Designation. | The tentative CII Permit has been updated to clarify and include facilities with an NEC and a NONA consistent with the U.S. EPA preliminary designation. Please refer to section 3.1 Applicability of the revised tentative Permit.<br><br>For purposes of timing for submittal of enrollment under section 3.4, existing dischargers, including dischargers with an NEC or NONA, applying for coverage under this Order must submit an NOI and SWPPP within one (1) year and Compliance Option Documents within two (2) years of the effective date of the tentative CII Permit. |
| 3.52 | As an EPA Designation, and a subsequent National Pollutant Discharge Elimination System (NPDES) permit, of this scope has never been attempted, it is imperative that all necessary procedures and technical, economic and environmental analyses are appropriately and faithfully conducted and publicly available. While Governor Newsom ultimately vetoed Assembly Bill 2106, expansion of a CII Permit statewide may potentially be reintroduced in | Comment acknowledged. All necessary procedures and technical, economic and environmental analyses have been appropriately and faithfully conducted and made publicly available before the Los Angeles Water Board acted on the tentative CII Permit. |

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| | the future. Of note, the veto was accompanied by the justification that "the Water Board has existing authority to set priorities, make findings, and determine the necessity of new storm water regulations. This bill would result in significant new costs in the millions of dollars." | |
| 4.1 | As you well know, the Western States Petroleum Association (WSPA) members who have facilities in the designated watersheds already work with the LA Regional Board and State Water Resources Control Board (SWRCB) to ensure they are compliant with their established permit requirements for stormwater and non-stormwater discharges for a variety of pollutants. Under the draft CII Permit, it would require these WSPA members to also obtain coverage under the draft CII Permit irrespective of whether the already permitted portion of the facility that is not covered by the Industrial General Permit (IGP), or another site-specific permit meets the 5-acre impervious surface threshold that the non-permitted facilities would trigger for coverage. In this regard, the draft CII Permit would impose yet another layer of regulatory burden on permitted facilities even if the non-permitted portions of the facility property are not impervious, which is the basis of applicability for other CII entities. This seems to raise an issue of equity between currently regulated facilities where the scope of regulation would be expanded regardless of the imperviousness of the property at 5-acres or more and those that have 5-acre impervious surface that have not shared in the responsibility for their pollutant loading. Ultimately, the draft CII Permit should only apply to regulated facilities that have 5-acres of unpermitted impervious surface, not to all facilities with a 5-acre parcel that is already covered by a permit irrespective of impervious surface acreage that is not covered by current permitting.<br><br>Additionally, those properties with greater than 5-acres that may have unpermitted wildlife/natural/wetland area should not have these natural areas count towards their 5-acre threshold. As currently drafted, the draft CII Permit is not clear about the scope and applicability, much less obligations for portions of a facility property that are natural and not "impervious." Facilities should not be evaluated for compliance based on wildlife/natural/wetland areas where CII activity is not demonstrated to have an effect or leakage onto these portions of a facility property. Further, these portions of a facility property, especially for already regulated sites, should not count towards the facility's 5-acre threshold for required draft CII Permit coverage. | The applicability of the tentative CII Permit is based upon U.S.EPA's preliminary designation. Prospective CII Permittees have been explicitly identified in U.S. EPA's preliminary designation memo as significant contributors to pollutant loading in the receiving waters. U.S. EPA's preliminary designation defines the applicable threshold of either imperviousness or total acreage of the parcel for facilities subject to regulation under the tentative CII Permit, regardless of their being subject to another permit.<br><br>Order section 3.1 has been revised and expanded to clarify applicability and better align with the language used in U.S. EPA's preliminary designation. The tentative CII Permit will provide coverage for the portion that is not permitted by the IGP. A facility with no impervious surface meeting the applicable threshold is not subject to the tentative CII Permit.<br><br>Based on comments received from other interested parties, the tentative CII Permit has been revised to exclude the option for facilities permitted under the IGP to be covered under the tentative CII Permit. Those industrial facilities that submitted an NEC and those excluded from IGP regulation with an NONA will be regulated consistent with U.S. EPA's final designation memo. NEC and NONA facilities that have at least 5 total acres are required to be regulated under the tentative CII Permit.<br><br>The tentative CII permit applies to 5-acre or greater parcels that discharge stormwater associated with CII activities and does not apply to discharges from wildlife/natural/wetland that are separate from CII activities and associated imperviousness. |
| 4.2 | Overarching these points is the lack of clarity regarding what the draft CII Permit considers "impervious surface." Traditional interpretation would suggest such surfaces would be paved | To clarify what is considered as an impervious surface, definitions of impervious surface and imperviousness have been |

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| | with concrete or asphalt; however, the interpretation for the purpose of draft CII Permit coverage is unclear if "imperviousness" is limited to just these forms of non-natural surfaces or if the intent is to be broader to incorporate gravel portions of a property, as an example. This is particularly important for facilities that may have pipelines or rail lines coming to/from facility properties that are considered "contiguous." It is not clear if such lines would subject facilities to draft CII Permit coverage, whether or not the area around the pipeline is considered in the traditional "impervious" sense (concrete and asphalt paved). Ultimately, WSPA strongly urges the LA Regional Board to clarify that surface area for the purpose of pipelines and rail lines that are not asphalt or concrete paved do not count towards, nor are subject to, a facility's 5-acre threshold scope for draft CII Permit coverage. Similarly, areas that have pipelines, rail lines, and utilities that are considered "rights of way" or "easements" should not be in scope for draft CII Permit coverage and compliance obligations. | added to the tentative CII Permit. Graveled areas around pipelines and rail lines are considered "impervious" under the newly added definitions.<br><br>If the surface area for the contiguous pipelines or rail lines are owned or operated by the facility, this area should be considered for coverage under the tentative CII Permit. However, the responsibility for areas that are "rights of way" or "easements" in the County Assessor's record will be based on the easement/right of way agreement. |
| 4.3 | Finally, the draft CII Permit does not appear to contain any exemptions other than if a facility is less than 5-acres. In this regard, it is unclear whether a facility that has a site-specific permit from the LA Regional Board is required to also obtain coverage under the CII Permit. If the facility with such a permit has incorporated the non-industrial portions of the facility into their site-specific permit, they should not be required to also obtain the CII Permit coverage; these facilities should be exempt from the draft CII Permit. For any such facility with a site-specific permit that has not incorporated the non-industrial portions of the facility into the permit, the facility should be provided the option to incorporate the additional requirements of the draft CII Permit into their site-specific permit rather than having to obtain separate coverage. Such site-specific permits are often highly customized for that facility based on the facility characteristics and agreement already in place with the regional board. | Section 3.1.4 of the Order specifies that a facility with an individual NPDES permit with more specific requirements that include discharges from CII activity and associated impervious areas can be covered under the individual permit. The applicability of the tentative CII Permit to that discharge shall automatically terminate upon the effective date of the individual permit. |
| 4.4 | WSPA and its members encourage the Board to direct staff to define key terms within the regulation for clarity of scope, impact, and compliance. As previously suggested, such an example should include a definition of "impervious surface" so as to provide greater clarity for regulated facilities, external stakeholders, and regulators. We strongly urge such a definition not include gravel areas where infiltration can occur and be limited solely to concrete and asphalt paving where infiltration cannot occur. | To clarify what is considered as an impervious surface, definitions of impervious and imperviousness have been added to the revised tentative CII Permit. Please see Attachment A – Acronyms and Definitions. |
| 4.5 | As it relates to the scope of pollutants covered, the draft CII Permit lacks clarity on how naturally occurring background, aerial deposition, and run-on pollutants from other sites are treated and whether there is a mechanism to demonstrate they are not a result of CII activity on the facility site. The draft CII Permit should provide a mechanism for facilities to be able to demonstrate and avoid noncompliance for pollutants that are deemed to be background | Since discharges covered under the tentative CII Permit consist of runoff generated from impervious areas, there will be no need to determine background sources. Impervious surfaces allow |

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| | sources or from other facilities/properties. Additionally, clarity should also be provided relative to compliance obligations associated with aerial deposition of pollutants on rooftops, paved surfaces that may have no relationship to the CII activity of the facility site. | little or no infiltration, pollutants can build up and run off CII facilities during rain events.<br><br>However, the Los Angeles Water Board will evaluate on a case by case basis any demonstration that run-on from a neighboring property caused or contributed to a CII Permittee's exceedance of the NELs. |
| 4.6 | Specific to zinc, we urge the Board to review and align the threshold requirements for zinc under the draft CII Permit with the IGP for consistency and feasibility. It is WSPA's understanding that there may be a discrepancy in the thresholds between the two that, if accurate, will make it nearly impossible for CII facilities to comply. Additionally, as the SWRCB continues its work relative to the Biotic Ligand Model for zinc and copper and to the extent changes are determined appropriate for such constituents, the draft CII permit should be clear that such changes will become applicable automatically for CII permittees irrespective of any formal update to the draft CII Permit. | The zinc effluent limitations in the tentative CII Permit are consistent with the adopted TMDLs.<br><br>In response to the comment on the Biotic Ligand Model, the tentative CII Permit will consider the most current data available during the 5-year permit renewal cycle. |
| 4.7 | Given many regulated facilities in the designated watersheds and statewide have been working to comply with permit requirements via best management practices (BMP) and treatment systems for various pollutants for decades, it is important that the draft CII Permit take such efforts into account for the purpose of facility compliance. At minimum, the draft CII Permit compliance options should be revised to provide credit for BMPs / treatment systems that have already been in place for compliance purposes for the relevant pollutants. | The tentative CII Permit requires a SWPPP and minimum BMP implementation to meet TBELs and Compliance Options to meet WQBELs. If the BMPs already installed meet or exceed the minimum BMPs requirements for TBELs as well as the Compliance Option provisions for the WQBELs in the tentative CII Permit, there is no need for any further onsite BMP implementation to be in compliance. |
| 4.8 | In terms of the compliance options provided within the draft CII Permit, WSPA and its members appreciate the Board's efforts to provide for different means to ensure compliance. That said, with regard to Compliance Option #1, the draft CII Permit is silent as to the details and expectations for Watershed Management Groups (WMG) in working with CII permittees. Can they be denied participation or is the WMG required to take all who wish to participate? What guides the WMG's setting of fees? What assures permittees the WMG will invest the agreement fees for the purpose of ensuring compliance with the draft CII Permit provisions? Is the permittee who enters into an agreement with a WMG deemed in compliance automatically? For those facilities who pay into a WMG that are also subject to the Measure W Tax, should their level of contribution to the agreement be lower than a facility who is not | Sections 3.2.1 and 8 of the tentative CII Permit provide general requirements and guidelines for the WMGs and the Discharger regarding participation in funding a regional BMP (Compliance Option 1) including a fee structure that considers stormwater volume and pollutant contribution from the facility. We expect the WMGs will develop a fee structure that incorporates the requirements in the tentative CII Permit and considers their administrative cost and other sources of funding to plan, construct or operate the regional BMPs. Funding status and sources and amount of funding secured for the regional BMPs are reported regularly by the WMGs as part of their approved WMP. These reports are published on our website |

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| | contributing to avoid double dipping for the same stormwater and non-stormwater discharge projects and purposes? | (https://www.waterboards.ca.gov/losangeles/water_issues/programs/stormwater/municipal/watershed_management/baseline_permittees/index.html) and/or available upon request.<br><br>WMGs cannot be compelled to broadly accept all CII Permittees. Both parties need to agree to the terms of a legally binding agreement that are acceptable to both parties.<br><br>Entering into an agreement with a WMG is one of the Compliance Options to comply with the tentative CII Permit. CII Permittees who enter into an agreement with a WMG are deemed in compliance with the tentative CII Permit.<br><br>Los Angeles Water Board staff applaud Los Angeles County for its Measure W tax initiative, which demonstrates alignment with the Board's values and stated mission. However, the Los Angeles Water Board is a State entity. County measures are solely within the jurisdiction of Los Angeles County and have no relationship with a State or federal NPDES Permit. |
| 4.9 | WSPA can appreciate it may be difficult to dictate in the scope of the draft CII Permit the details and expectations of WMGs, but to offer a compliance option that lacks clarity and that can be different from one to the next seems ripe for challenges with participation. In this regard, the Board could consider incorporating intent language into its adopting resolution, if not the draft CII Permit itself, to clarify the key issues and questions. Further, the Board could also consider directing staff to work with stakeholders to develop WMG guidance. To this end, WSPA would recommend the following issues be provided explicit clarity whether through intent language in the adopting resolution or through detailed guidance:<br><br>– CII permittees who wish to join and work towards compliance on a regional scale through a WMG should be permitted entry, presuming they are willing to abide by the WMG's requirements and cost structure.<br><br>– CII permittees who have entered into WMG agreements should be deemed in compliance explicitly, based on it being a formal compliance option.<br><br>– The requisite fees paid by a CII permittee to participate in a WMG shall be invested in approaches that help ensure compliance with the draft CII Permit provisions. | We appreciate the suggestions. Los Angeles Water Board staff has coordinated with the WMG on various occasions during permit development and provided guidance should they choose to administer a program that allows CII Permittees to fund a regional project in their approved WMP.<br><br>The 5 suggestions listed are addressed in our response to comment #4.8 above. |

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| | – For those facilities paying into a WMG who are also subject to the Measure W Tax, clarity should be provided about what level of contribution is expected and needed to avoid double dipping for the same stormwater and non-stormwater discharge projects and purposes.<br>– Language should be incorporated to clarify how fees/funding are expected to be assessed, which should be based on volume of stormwater/non-stormwater discharged to the WMG not on a business or facility's value. | |
| 4.10 | WSPA also would note we are aware that a few facilities in the relevant watersheds are already coordinating with an MS4 and/or wastewater treatment facility to take and manage a facility's stormwater and non-stormwater discharges. The draft CII Permit should provide further clarity that such coordination is applicable for being deemed in compliance under Compliance Option #1. We are also aware of facilities in the relevant watersheds that have an agreement with a local municipality to take stormwater and non-stormwater discharges from municipal property during large storm events. For these coordination efforts, credit should be provided towards the facility's compliance with the draft CII Permit, and language should be included in the agreement with the WMG to provide a funding credit equal to the volume associated with the municipal property discharge. | Section 8.1.2.3 of the tentative Order allows discharger participation in a privately developed and/or managed stormwater project identified in the Watershed Management Group's approved WMP. The approved WMP implements a watershed approach to attain water quality objectives in the receiving water by the TMDL compliance date. As mentioned in response to comment #4.2, this structure provides accountability and transparency via the monitoring and reporting requirements in the MS4 Permit. |
| 4.11 | For facilities that are covered by the IGP, clarity should be provided about how the IGP coverage and compliance is impacted (or not) by participating in this compliance option for merely the non-industrial portions of their facility. | Please see response to comment #4.1. |
| 4.12 | Relative to Compliance Option #2, while we appreciate additional compliance options, we note that retention of the 85$^{th}$ percentile storm event is not a realistic compliance option in this watershed for the vast majority of facilities. In this regard, clarity should be included in the language that this compliance option may be met not only simply with capture, but a combination of capture, reuse, retention, treatment, and/or sending to sewer system. | Please see response to comment #3.33. |
| 4.13 | Finally, relative to Compliance Option #3, it is important to note that BMPs that have been implemented for the purpose of other permits are often designed for specific flow thresholds and as such may not be able to accommodate additional flow capacity as would be required by the expansion of coverage to all portions of a facility site. As such, those BMPS that have been in place should be grandfathered in and credit should be provided for the pollutant those BMPs are addressing. | If the installed BMPs meet or exceed the requirement of the CII Permit, it would not be necessary to replace or add to them.<br>The concentration-based limits in the Order originate from and are consistent with the assumptions in the adopted TMDL developed on a watershed and sub-watershed basis. Additionally, mass-based limits are typically a less effective means of regulating discharges where the operator has limited |

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| | Additionally, for evaluating discharges, compliance with pollutant thresholds for the purpose of the draft CII Permit should be based on a mass basis rather than a concentration basis for discharges that are episodic (not regular).<br><br>Lastly, for pesticides where a facility contracts with an external company, consideration should be given and flexibility provided where Mosquito Abatement and Vector Control requirements by a municipality require usage for health and safety considerations that could impact pollutant loading in the watersheds. | control over the volume of the discharge, which for this permit is directly a function of the amount of precipitation falling on the site. Dischargers do, however, have control over pollutant sources that could come into contact with precipitation and directly affect the concentration of pollutants in stormwater; therefore, concentration-based limits are also typically better for evaluating the effectiveness of pollutant abatement activities for stormwater discharges.<br><br>For the Mosquito abatement and Vector control comment, there is a vector control permit 2016-0039-DWQ administered by the State Water Board to regulate vector control related discharges. Also, design consideration with respect to drawdown of accumulated stormwater in retention or detention BMPs will prevent or minimize vector issues. |
| 4.14 | Finally, rather than having the effective date of the permit and timelines for CII coverage be different for non-regulated and already regulated facilities, the draft CII Permit should be clear that the effective date and timelines for coverage are the same for permitted and non-permitted facilities in scope. Permitted facilities should not be required to expedite coverage a year earlier purely because they already have some semblance of coverage for industrial activity as compliance for the non-industrial portion of their facility may require all new BMPs and/or compliance options that may take time to assess, develop and implement. | Section 3.4 of the Order has been revised. Existing Dischargers applying for coverage under this Order must submit an NOI and SWPPP within one (1) year and Compliance Option Documents within two (2) years of the effective date of the Order. Existing dischargers are those facilities that have been built and are operational. New Dischargers must submit an NOI and Compliance Option Documents at least forty-five (45) days prior to commencement of the authorized discharge. |
| 5.1 | We recommend that the LA Water Board provide the CII Permittees with additional potential funding mechanisms beyond agreements with local WMGs. For example, a CII Permittee should be able to enter into an agreement for a regional project (identified in a Watershed Management Program) with project proponents that are not affiliated with a WMG. | The tentative CII Permit is intended to give Permittees flexibility in terms of compliance. The Los Angeles Water Board agrees with the commenter and has revised section 8.1.2.3 of the tentative CII Permit. CII Permittees will be allowed to fund privately managed projects that have been documented and incorporated into the WMP framework. However, a CII Permittee's agreement must still be made with the WMG. |
| 5.2 | We recommend including a provision that CII Permittees must also contribute a proportional share of the regional project O&M and administration costs. This may require that the CII Permittee participate in a separate O&M Agreement. | The Los Angeles Water Board has updated the tentative CII Permit with regards to Compliance Option 1. The allowable use of funding has been clarified in section 4.9.1.2 of the Fact Sheet to explicitly include initial capital cost, operations and |

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| | | maintenance, project revision and enhancement, administrative costs, and any other supplemental work. The details of the funding terms of the legally binding agreement should be developed between the WMG and the CII Permittee. |
| 5.3 | A regional project funded in part by an upstream CII Permittee will capture pollutants from the CII site's discharges in perpetuity. However, some time after the CII Permittee provides the funding, it may terminate coverage and transfer site operations to another entity. We recommend including clarification as to how the WMG Agreement will address the management of fees paid by a former CII Permittee when they transfer operation of the CII site to another entity. | As stated in section 3.6 of the tentative CII Permit, upon change of ownership, the new Permittee shall apply for coverage under the tentative CII Permit by submitting Permit Registration Documents. As part of the Permit Registration Documents, the new Permittee must choose a compliance option and provide a legally binding agreement with the local WMG if Compliance Option 1 is chosen. The details of the funding terms of the legally binding agreement should be developed between the WMG and the new Permittee. However, the Los Angeles Water Board suggests that the agreement with the CII Permittees include provisions for early termination and transferability of participation under Compliance Option 1 during the term of the agreement. |
| 5.4 | There may be instances where a CII Permittee seeks to enter into an Agreement with a WMG, but the two parties fail to come to terms. We recommend including clarification that in these instances, the WMG is not liable for a CII Permittee's potential noncompliance with its effluent limitations. | The tentative CII Permit covers stormwater and authorized non-stormwater discharges from CII sites. Since WMGs are third parties and are not subject to coverage under the tentative CII Permit, they are not liable for a CII Permittee's failure to meet the effluent limitations of the tentative CII Permit. If an agreement between the CII Permittee and a WMG is not feasible, the CII Permittee must select one of the other two compliance options specified in the tentative CII Permit. |
| 5.5 | We recommend that the LA Water Board provide CII Permittees with additional effluent limitation compliance options. For example, prior to selecting a compliance option, Permittees should have a timeframe to implement new and existing BMPs— including the Minimum BMPs in Draft CII Permit Section 6.1.5 and any structural BMPs in Section 6.1.6—and determine through the monitoring required by Section 9 as to whether they are meeting effluent limitations. If they do not meet effluent limitations after this timeframe, they would not yet be noncompliant, however they would then have to select either compliance options 1 or 2. | The tentative CII Permit provides three different compliance options that a Permittee can choose to comply with the water quality-based effluent limitations in section 7.2. The minimum BMPs are a separate requirement as part of the SWPPP in section 6.1. the Permittee may choose Compliance Option 3 and demonstrate direct compliance with the effluent limitations before considering Compliance Option 1 or 2. The additional time for filing Permit Registration Documents specified in the tentative permit is intended to provide permittees time to evaluate which compliance option is feasible for their facility and plan for its |

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| | | implementation. Section 3.2 of the tentative permit has been revised to clarify that the SWPPP is required to be filed with the NOI and an updated SWPPP submitted as part of the Permit Registration Documents. The numbering has also been revised in the tentative CII Permit. |
| 5.6 | We recommended clarifying whether regional projects that receive funding must be new, or whether CII Permittees can also contribute to existing projects. | The WMG should establish a fee structure for CII Permittees' participation that would include funding both new and existing regional projects. The allowable use of funding in section 4.9.1.2 of the fact sheet has been clarified to include cost for initial construction, maintenance and operation, regional project revision and enhancement, administrative and other supplemental work. |
| 5.7 | Regarding the permit adoption date, as well as Fact Sheet Section 5.2 on the Notification of Interested Parties: As of the date of this letter, the LA Water Board is planning to hold a public hearing to consider issuance of the Draft CII Permit on December 8, 2022. We recommend that the LA Water Board postpone the hearing date, so that they (and the State Water Board) can provide for more local and statewide stakeholder outreach and involvement prior to Permit adoption. The CII Permit introduces significant hardships to its Permittees (e.g., in terms of compliance costs, implementation, and administration). At the same time, many commercial and institutional site owners and operators may not be familiar with the NPDES Permit program in general. We expect that these site owners and operators will need outreach and assistance in understanding why they are now compelled by the LA Water Board to comply with such intensive NPDES requirements. | Comment is noted. The due date for written comments on the tentative CII Permit was extended to October 24, 2022 and the public hearing date to consider issuance of the tentative CII Permit was postponed. The extension was to allow extra time for potential CII Permittees to become more familiar with the tentative CII Permit so they could submit their written comments. Additionally, the tentative CII Permit provides one year for submittal of an NOI. During that time, Los Angeles Water Board staff has and will continue to reach out to potential CII Permittees to ensure that they understand why and how to enroll in the tentative CII Permit. |
| 5.8 | During the LA Water Board's August 30, 2022, staff workshop on the Draft CII Permit, LA Water Board staff defined the CII Permittee as the entity that has responsibility and control over the runoff that leaves the site, and that this could be the property owner or the business operator, or both. When the site owner is not the business operator, this might result in a conflict as to who will enroll. If this enrollment option will remain in the Permit, to prevent conflict and uncertainty, we recommend including a process that will identify a unique entity that has responsibility and control over the runoff. | Please see response to comment #2.20. |
| 5.9 | The EPA's public notice documentation on the Preliminary Residual Designation state that airports are excluded from the designation because they, "…are not controlled by private entities, but rather by municipal departments and as such, are already regulated under | Please see response to comment # 2.20. The tentative CII Permit has been revised to clarify the basis of airports' exclusion from the facilities that U.S.EPA is designating for NPDES |

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| | Regional Municipal Separate Sewer System NPDES Permit Order No R4-2021-0105." Following this reasoning, if 1) a site owner of a CII site is a municipality and the business operator is a private entity, and 2) both parties consider the municipal property owner to have responsibility and control over the runoff that leaves the site, then it is difficult to determine who—if anyone—must enroll in the Permit. (Since the Municipal NPDES Permit regulates municipal departments and as such exempts them from the CII Permit.) We recommend providing clarification to this in CII Permit Section 3.1. We also recommend including the reasoning behind the airport exclusion in the CII Permit Fact Sheet (Attachment F). | permitting. Please refer to Fact Sheet section 1.4, Permit Scope, for specific language. Please note that comments related to U.S. EPA's preliminary designation memo are outside the scope of the action before the Los Angeles Water Board. |
| 5.10 | For larger developments like shopping centers that have many parcels within the development, the Draft CII Permit is not clear as to whether it applies to 1) only those CII parcels with greater than or equal to 5 acres impervious, or 2) the entire development. The former case would result in scenarios where only some CII parcel owners in a larger common development are subject to the CII Permit. We recommend providing clarification to this in CII Permit Section 3.1. | Section 3.1, Applicability of the tentative CII Permit has been revised consistent with the U.S. EPA preliminary designation. U.S. EPA's preliminary designation applies to any privately owned and unpermitted CII parcel with five or more acres of impervious surface.<br><br>The Discharger for the parcel subject to the tentative CII Permit has to arrange for controls for the runoff from the 5 acre and greater parcel only. Private owners and operators of smaller parcels within a common plan of development are not required to file an application. See also comment 2.20. |
| 5.11 | Section 3.5 of the Draft CII Permit states that a request to terminate coverage is applicable "…if (a) operation of the facility has been transferred to another entity, (b) the facility has ceased operations, or (c) the facility's operations have changed and are no longer subject to the General Permit." It is not clear from (c) whether the LA Water Board would accept an NOT request if a CII site:<br><br>1) reduced its impervious area to less than 5 acres, or<br>2) divides its 5+ acre parcel into parcels of less than 5 acres.<br><br>We recommend clarifying these scenarios within this CII Permit section. | Clarifying language has been added to section 3.5, Notice of Termination. Los Angeles Water Board staff will evaluate requests for termination of coverage individually. Reduction of impervious area, although a desired condition, is not an acceptable basis for termination of coverage of an enrolled facility. Similarly, subdivision of parcels to avoid Permit requirements is not an acceptable basis for Permit termination. |
| 5.12 | We recommend providing clarification that—through the CII Permit, Municipal NPDES Permit, or other means—the LA Regional Board will not require municipalities to identify and compel unenrolled CII site operators to enroll in the CII Permit. Such responsibilities would pose a significant and unfunded administrative burden to municipalities. | During implementation of the tentative CII Permit, the Los Angeles Water Board will continue to reach out to potential CII Permittees using available data. The tentative CII Permit does not require municipal permittees to identify and compel owners and operators of unenrolled CII Sites to apply for permit coverage. |

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| 5.13 | During the LA Water Board's August 30, 2022, staff workshop on the Draft CII Permit, USEPA staff stated that USEPA selected 5 impervious acres as the area-based trigger for applicability—over 10 acres, 1 acre, or no minimum area—to balance pollutant load reduction with administrative burden. We recommend including this explanation as a statement in the CII Permit Fact Sheet (Attachment F). | Sections 2.2 and 2.3 of the Fact Sheet provide a summary of the basis for U.S. EPA's preliminary designation at a level of detail appropriate for permit findings to support permit requirements. U.S. EPA's preliminary designation memo and supporting information provides the full rationale for designating the parcel size(s) to be regulated. |
| 5.14 | The method to determine funding is described as, "…the funding level must be proportional to the NSWD and onsite stormwater volume to be addressed/total regional project stormwater capacity". We recommend expressing this statement as a formula or equation, as the forward slash "/" in the statement may not be immediately recognized as a division sign. | The issue has been addressed in Section 8 of the tentative CII Permit and is now expressed as a formula for additional clarity. Additional text is added to allow for differences in approach and to provide flexibility for establishing a fee structure related to volume or similar metric and potential pollutant contribution on a regional project level, multiple drainage areas, or watershed scale. |
| 5.15 | Add the Long Beach Nearshore WMP to H-1. | The Los Angeles Water Board has added the Long Beach Near Shore WMP to the tentative CII Permit, Attachment H-1, as well as the Board webpage. CII Permittees within the Long Beach Near Shore boundaries may choose to participate in projects for this WMP. |
| 6.1 | Option 1 needs to be more fully explained in the Permit. It appears that most facilities subject to the new CII Permit will chose this Option since it appears more feasible and cost-effective than Options 2 and 3. | Details on Compliance Option 1 requirements have been updated and added to section 3.2.1, and details on funding levels for Compliance Option 1 have been added in section 8. |
| 6.2 | To improve the consistency in implementation of Option 1, the Regional Water Board should develop one or more agreement templates in consultation with Watershed Groups and potential permittees. | Template agreements could limit flexibility between WMGs and potential CII Permittees to develop agreements under Compliance Option 1. However, staff can consider the possibility of preparing a guideline agreement after adoption of the tentative CII Permit prior to the deadline for Permittees to submit a notice of intent to enroll under the tentative CII Permit. |
| 6.3 | Option 1 should be revised to eliminate preferences for funding assistance for *downstream* stormwater capture facilities. The Los Cerritos Channel Watershed, for example, has already constructed four water capture projects, and has a fifth project funded for construction, that are not at the bottom of the watershed area, but that have large tributary areas ranging from | While the existing projects higher in the watershed will reduce pollutant loading in the watershed overall, they will not directly address the runoff from a downstream CII facility. Thus, the tentative CII Permit prioritizes participation in downstream projects. See also response to comment #7.21. |

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| | 1,650 acres to over 3,200 acres. The significant progress our Watershed Group has already been making in water capture necessitates flexibility in a partner project's location. | |
| 6.4 | Option 1 should be revised to clearly state that an agreement may be structured to cover a portion of long-term O&M or a structural revision to an existing water capture project to improve its operation. | See response to comment #5.2. |
| 6.5 | Options 2 and 3 should be revised to make them more flexible alternatives in order to reduce the pressure on Watershed Groups to enter into agreements with Permittees. | The tentative CII Permit is flexible as it offers three Compliance Options. Permittees are given these options to comply both directly and indirectly and are free to choose the one that is most feasible. |
| 6.6 | Section 3.5 of the CII Permit should be revised to specify that dischargers may also request termination of coverage if a change in water quality standards results in a receiving water no longer being in violation of copper and/or zinc water quality standards. | All Permittees are expected to follow and meet all permit provisions, including compliance with water quality based effluent limitations, and must continuously maintain coverage under the tentative CII Permit regardless of if the water is no longer impaired, or until otherwise directed.<br><br>Section 3.5 of the revised tentative CII Permit has been revised to clarify that Dischargers shall request termination of coverage under this General Permit only if either (a) ownership or operation of the facility has been transferred to another entity, (b) the facility has ceased operations, or (c) the facility's operations have changed and are no longer subject to the General Permit. |
| 6.7 | The permit should acknowledge that SB 346 (the Brake Pad bill) is currently being implemented and provides for a copper content for most vehicle brake pads of 0.5% copper or less by January 1, 2025. | At this time, the implementation of SB 346 has no effect on the applicability of the tentative CII Permit and Permittees should continue to follow monitoring and reporting requirements. |
| 6.8 | The permit should acknowledge that the California Stormwater Quality Association (CASQA) submitted a petition to the California Department of Toxic Substances Control (DTSC) to regulate zinc in tires and that DTSC plans to act on that petition in 2023. | At this time, the petition submitted by the California Stormwater Quality Association (CASQA) has no effect on the applicability of the tentative CII Permit. |
| 6.9 | The permit should acknowledge that the Regional Water Board agreed during the 2017-2019 Triennial Review to adopt the Biotic Ligand Model standards for copper and is considering adopting the Biotic Ligand Model or the multiple linear regression standards for zinc. | At this time, the potential development of the Biotic Ligand Model or the multiple linear regression standards for zinc has no effect on the applicability of the tentative CII Permit. |

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| 6.10 | Implementation of the CII Permit should be delayed to provide sufficient time to work with Watershed Groups and potential Permittees to clarify the Permit and incorporate the above suggestions into the Permit. | See response to comment #2.1. In addition, the tentative CII Permit allows Dischargers applying for coverage one year to submit an NOI and SWPPP and two years to select their Compliance Option, which allows for additional time to coordinate with WMGs. |
| 6.11 | Separate workshops should be scheduled for each watershed to bring municipalities, potential Permittees, and Regional Board staff members together to work out the details of implementing Option 1. | Staff will continue outreach after permit adoption to educate potential permittees about the Compliance Options, which may include workshops or other outreach activities. |
| 6.12 | The Regional Water Board should expedite the adoption of Biotic Ligand Model standards for both copper and zinc to bring standards up to date with current science before the CII Permit becomes effective. | The suggestion is outside the scope of the action before the Los Angeles Water Board. |
| 6.13 | The Regional Water Board should commit to two years of experience with implementation of the Permit before similar permits are adopted for other watersheds. | The tentative CII Permit is the first permit of its kind in the region and in the State of California. It is possible for the permit to be expanded in the future with no specific timeline at this time. |
| 7.1 | As many participants noted during the virtual Workshop held on August 30, 2022, there is widespread confusion as to which sites and facilities would be subject to the CII Permit, as well as who (which entity) is the discharger / Permittee.<br>Provision 3.1 Applicability of the Draft CII Permit includes the following:<br>3.1.1. Discharges covered under this General Permit include stormwater and authorized NSWDs from unpermitted CII sites with five (5) or more acres of impervious surface and permitted CII sites with five (5) or more acres of total area in the Dominguez Channel/Greater Los Angeles and Long Beach Harbor Watershed and the Los Cerritos Channel/Alamitos Bay Watershed. CII sites at airports are excluded from coverage under this permit.<br>3.1.2. Facilities where a portion of the facility's impervious surface is covered by another permit must still obtain coverage under this General Permit for the remaining portion of the impervious surface (e.g., rooftops and parking lots).<br>"CII sites" are defined in Attachment A of the Draft CII Permit as:<br>Privately-owned unpermitted commercial, industrial, and institutional sites or facilities with greater than or equal to five (5) acres of unpermitted impervious cover, excluding | See revisions in section 3.1 of the revised tentative CII Permit clarifying Permit applicability in alignment with U.S. EPA's revised preliminary designation. See also response to comment #2.20. |

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| | airports, and permitted CII sites with five (5) or more acres of total area that are subject to the requirements of this General Permit.<br>"Discharger" is defined in Attachment A of the Draft CII Permit as:<br>A person, company, agency, or other entity that is the operator of the CII site or facility covered by this General Permit.<br>None one of the above quoted provisions and definitions elaborates on what is considered a commercial, industrial, or institutional facility. Clarity on who is regulated under the Draft CII Permit, both in terms of a facility as well as who is the Permittee, is critically important for successful implementation. Specific impacts, suggestions, and questions related to applicability include the following. | |
| 7.2 | The language in Provision 3.1.1 needs be consistent with the "CII sites" definition in Attachment A. Clarification is needed to note that the Permit is applicable to privately-owned unpermitted CII sites and privately-owned permitted CII sites, per the EPA residual designation. | See revisions in section 3.1 and Attachment A of the revised tentative CII Permit clarifying Permit applicability in alignment with U.S. EPA's revised preliminary designation. |
| 7.3 | EPA's public notice documentation on the Preliminary Residual Designation states that airports are excluded from the designation because they, "...are not controlled by private entities, but rather by municipal departments and as such, are already regulated under Regional Municipal Separate Sewer System NPDES Permit Order No R4-2021-0105." We recommend including this explanation in the CII Permit Fact Sheet. | The tentative CII Permit has been revised to clarify the basis of airports' exclusion from the facilities that U.S. EPA is designating for NPDES permitting. Please refer to Fact Sheet, section 1.4, Permit Scope, for specific language. |
| 7.4 | Following the reasoning for the exclusion of airports, if a site owner CII site is a municipality and the business operator is a private entity, it is unclear who, if anyone, must enroll in the Permit. Municipal facilities are exempt, as they are regulated under the MS4 Permit, but the CII Draft Permit is unclear on its applicability to private lessees on municipal properties. | See response to comment #2.20. |
| 7.5 | The definition of "Discharger" needs clarification. The current definition does not clarify whether a property owner or respective lessee/tenant is considered the "discharger". In the workshop on August 30, 2022, Regional Water Board staff defined the CII Permittee as the entity that has responsibility and control over the runoff that leaves the site, and that the Permittee could be the property owner or the business operator, or both. However, in situations when the site owner is not the business operator, this ambiguity might result in a conflict as to who will enroll or both parties may assume the other to be responsible for enrollment with neither one proceeding to enroll. A clear determination is especially important for situations with multiple facilities on the same property, e.g., a shopping center with | See response to comment #2.20. |

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| | multiple lessees/tenants and a common parking lot. A clear determination is also important for assigning responsibilities under the three compliance options proposed in the Draft CII Permit. | |
| 7.6 | EPA's presentation during the workshop on August 30, 2022, stated that 5 acres was selected as the coverage trigger (in lieu of other options, e.g. >10 acres, 1 acre, or no minimum area) in order to balance pollutant load reduction with administrative burden. We recommend including this statement in the fact sheet as an explanation as to why 5 acres was selected. | The tentative CII Permit accurately reflects U.S. EPA's preliminary designation memo. |
| 7.7 | On the issue of 5 acres, the Draft CII Permit is unclear who should be the enrollee for larger developments like shopping centers that have many parcels within the development. One possible interpretation is that only those parcels with 5 or more acres of impervious area enroll in the permit; another interpretation is that the entire development is covered by the CII Permit and, presumably, the owner of the entire site is the applicable Permittee. Clarity is needed. | See response to comment #2.20. |
| 7.8 | On the same issue of facility size, the Permit can be interpreted as applying the 5-acre threshold inconsistently to facilities already enrolled in the IGP. As currently written, the threshold for enrollment in the CII Permit is 5 acres of total area versus 5 acres of impervious area for facilities not already enrolled in the IGP (see Provision 3.1.1 quoted above). Moreover, facilities where a portion of the facility's impervious surface is covered by another permit must still obtain coverage under this General Permit for the remaining portion of the impervious surface (e.g., rooftops and parking lots), with no specification as to the size of that remaining portion. An IGP-enrolled facility would need to enroll any pervious surface not already enrolled in the IGP, into the CII Permit, regardless of the size (see Provision 3.1.2 quoted above). Clarity is needed. | See response to comment #4.1. |
| 7.9 | Also related to the IGP, the EPA Residual Designation makes clear that the designation applies to IGP facilities with No Exposure Certifications (NEC) and Non-Applicability Notices (NONA). However, there is no specific mention of NEC or NONA facilities in the Draft CII Permit. CASQA recommends that the Draft CII Permit explicitly state whether the CII Permit applies to these types of facilities, portions thereof, none at all. | See revisions in section 3.1 of the revised tentative CII Permit clarifying Permit applicability in alignment with U.S. EPA's revised preliminary designation. |
| 7.10 | To address issues of applicability for facilities, the Draft CII Permit should list specific North American Industry Classification System (NAISC) codes that identify the sites intended for regulation such as specific NAISC codes for institutional, commercial, and industrial activities. Taking this a step further, CASQA recommends the CII Permit include a list of facilities that need to enroll in the permit; in other words, the CII Permit should include a list of the | U.S. EPA's preliminary designation is based upon the Los Angeles County Tax Assessor's property use classification codes, not NAICS codes. It follows that the tentative CII Permit must similarly reference the Los Angeles County Tax Assessor's |

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| | "estimated 640 dischargers" noted in the Draft CII Permit Fact Sheet. This approach is similar to the Phase II Permit approach (whereby all Permittees are identified) and would go a long way to minimize confusion around the permit's applicability. | property use classification codes when identifying the residual facilities now being designated.<br><br>Per 40 CFR § 122.28, a general NPDES permit can be issued to categories or subcategories of dischargers within a geographic area (such as the Los Cerritos and Dominguez Channel Watersheds) and may be written to regulate a category or subcategory of discharges within that area, such as stormwater point sources. However, a general NPDES permit need not specify specific facilities subject to the general permit. Therefore, the Los Angeles Water Board will not be providing a list of NAICS codes or parcels that are subject to the tentative CII Permit.<br><br>Additionally, the estimated 640 dischargers noted in the tentative CII Permit is just an estimate of parcels that meet the size parameter. However, parcel size is not the only determinant of who should enroll. It would, therefore, not be appropriate to provide a list of facilities that need to enroll in the CII Permit since the Permit scope and applicability necessitates the potential discharger make an initial determination and provide facility information such as such as degree of imperviousness and for NEC and NONA facilities, the presence of unpermitted impervious areas to support enrollment. |
| 7.11 | To address issues related to who is a discharger / Permittee, Attachment A must clearly define "Discharger," especially for properties with individual facilities/ operators and shared portions of property, such as parking lots. To prevent conflict and uncertainty, we recommend including a process that identifies a unique "entity that has responsibility and control over the runoff". For reasons detailed in Comment #2, CASQA recommends defining "Discharger" as the CII site property owner. | The definition of Discharger has been revised in Attachment A, section 2, Definitions, in the revised tentative CII Permit. |
| 7.12 | Add a clarification in the permit noting that it does not apply to private commercial and institutional facilities that are lessees on municipal properties. | The revised tentative CII Permit accurately reflects U.S. EPA's preliminary designation memo. |
| 7.13 | Add information to the Fact Sheets related to the selection of 5 acres as the applicability threshold and the exclusion of airports. | Sections 2.2 and 2.3 of the Fact Sheet provide a summary of the basis for U.S. EPA preliminary designation at a level of detail |

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| | | appropriate for tentative CII Permit findings to support Permit requirements. See also response to comment # 7.3. |
| 7.14 | Address issues of clarity, as identified in the suggestions above under Comment #1, including:<br>• Who is the Permittee for facilities with multiple parcels?<br>• What is the acreage threshold / determination for facilities enrolled under the IGP, with portions of a facility covered by the CII Permit?<br>• How does the permit apply to NONA / NEC facilities?<br>• If a facility reduces its impervious area below 5 acres (e.g., decreases the imperviousness), can it terminate coverage under the CII Permit? | See individual responses to comments #7.5, #7.6, and #7.9 above. See also revisions in section 3.1 of the tentative CII Permit clarifying Permit applicability in alignment with U.S. EPA's revised preliminary designation. See also response to comment # 5.11. |
| 7.15 | Specific examples to address several of the issues and recommendations in Comment #1 include, but are not limited to, the following:<br>• Revise Section 3.1.1 as follows:<br>○ 3.1.1. Discharges covered under this General Permit include stormwater and authorized NSWDs from privately-owned unpermitted CII sites with five (5) or more acres of impervious surface and from privately-owned permitted CII sites with five (5) or more acres of impervious surface not already covered by the IGP in the Dominguez Channel/Greater Los Angeles and Long Beach Harbor Watershed and the Los Cerritos Channel/Alamitos Bay Watershed. CII sites at airports are excluded from coverage under this permit.<br>• Revise Section 3.1.2 as follows:<br>3.1.2. Facilities where a portion of the facility's impervious surface is covered by another permit must still obtain coverage under this General Permit for the remaining portion of the impervious surface (e.g., rooftops and parking lots) if the remaining unpermitted portion is greater than or equal to five (5) acres.<br>• Revise "CII Sites" definition in Attachment as follows:<br>○ Privately-owned unpermitted commercial, industrial, and institutional sites or facilities with greater than or equal to five (5) acres of unpermitted impervious surface, excluding airports, and privately-owned permitted CII sites with five (5) or more acres of impervious surface not already covered by the IGP. | See revisions in section 3.1 of the revised tentative CII Permit clarifying Permit applicability in alignment with U.S. EPA's revised preliminary designation. |

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| 7.16 | The Draft CII Permit provides Permittees with three options to demonstrate compliance with water-quality based effluent limits (WQBELs). Compliance Option 1 allows Permittees to enter into legally binding agreements with a local Watershed Management Group (WMG) to fund a regional project. CASQA supports the intent of Compliance Option 1 in that it incentivizes stormwater capture and promotes public-private partnerships. Such incentives are critical not only to achieving water quality goals, but also to addressing issues of drought and providing other important benefits, such as improving local communities through green spaces and new parks. This approach also supports the goals of *The California Water Supply Strategy: Adopting to a Hotter, Drier Future*, as it recognizes the critical need to maximize and increase stormwater capture. Compliance Option 1 also advances two of CASQA's critical goals to maximize stormwater capture and provide funding for that infrastructure (see CASQA's Vision, Principles 1 and 4).<br><br>However, as currently proposed in the Draft CII, we are concerned that the approach will not be viable, based mostly on the proposal to structure this option on a legally binding agreement between the CII facility and the WMG. To achieve the goals of Compliance Option 1, an approach similar in concept to a mitigation bank / offset program / regional stormwater capture fund should be considered and further developed. For ease of reference, this concept is referred to a Regional Fund throughout the remainder of the letter. The Regional Fund would distribute money to plan, build, and maintain regional projects within the CII Permittee's applicable watershed.<br><br>In addition, there are issues related to the timing / determination of compliance, as well as who determines the pricing and discharge volume, that apply regardless of the structure of Compliance Option 1. Each question / concern is detailed below, with applicable recommendations. | Comment summary acknowledged. Please see specific responses below. See also response to comment #1.7. |
| 7.17 | Impact of Entering Into a Legally-Binding Agreement: Most WMGs are not separate legal entities that can enter into such agreements. This approach would impose significant administrative burden for each WMG and would place the WMGs in a position that impacts the ability for CII Permittees to comply. The timing of entering into complex agreements may impact the timing and feasibility for CII Permittees to use Compliance Option 1. WMGs also may not be inclined to enter into legally-binding agreements with all CII Permittees, placing those municipal Permittees in a difficult scenario (e.g., denying a compliance pathway to a CII Permittee). | At this stage of the CII program, water quality improvement will be more effectively achieved by investing in the already-existing regional WMP programs rather than developing a new regional fund program. The WMGs have the necessary information regarding their respective projects and administration costs to, and would be in the best position to, determine the most effective funding administration approach. Therefore, the Los Angeles Water Board defers implementation of funding administration for CII participation to the WMGs. |

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| | A Regional Fund approach would eliminate these issues entirely. The CII Permittee would pay their applicable fees to the Regional Fund, removing the WMGs from providing the link / availability to Compliance Option 1, yet still ensuring the same funding is available for regional stormwater capture projects. | The comment that "Most WMGs are not separate legal entities that can enter into such agreements" is inaccurate. Staff will coordinate with WMGs on a process to accommodate CII permittee participation under Compliance Option 1. The Los Angeles Water Board is also coordinating with WMGs in order to meet applicable Order effective dates. |
| 7.18 | Impact of Entering Into a Legally-Binding Agreement: Not all projects are the same from a cost perspective. How is equitability considered? Meaning, the cost may be higher for Project X vs Project Y for the same volume of captured water. Which CII facility has access to the lower priced project?<br><br>The Regional Fund would eliminate equity issues between facilities and projects. The Permittee's fee would be based on their discharge volume, and that fee would be deposited in the Regional Fund, to be allocated to that watershed's projects. | See response to comment #3.43. |
| 7.19 | Requirement to Fund One Project via a Legally-Binding Agreement: This approach may result in many projects being partially funded via legally-binding agreements, without any of the projects reaching the threshold to finance the construction. For example, a CII Permittee needs to fund Y amount for a project to comply. Project 1 needs only a small portion to reach the funding threshold, but does not adequately provide enough capacity for the CII Permittee to comply. Now, the CII Permittee must fund Project 2. Instead of one project being fully funded, two projects are partially funded. Even if this requirement is lifted and a CII Permittee can fund two projects, now the CII Permittee has the administrative burden of negotiating two separate agreements.<br><br>The Regional Fund approach would eliminate this issue and could prioritize the most effective project and ensure it is fully funded, before proceeding to the next project. The Regional Fund approach also eliminates the administrative burden for all CII Permittees and the WMGs from negotiating agreements. | The WMPs include strategies for obtaining financing for projects necessary to achieve pollutant reductions and strategies to complete a number of projects in the required timeframes. See also response to comment #7.16.<br><br>Further information about WMG funding sources, allocation of funds, and individual regional project administrative records is publicly available at the Los Angeles Water Board's WMP page. (https://www.waterboards.ca.gov/losangeles/water_issues/programs/stormwater/municipal/watershed_management/baseline_permittees/index.html)<br><br>With regards to the comment about potential administrative burden on WMGs limiting their participation in administering Compliance Option 1, Fact Sheet section 4.9.1.2 has been revised to clarify that WMGs may direct funding received from Dischargers as part of their Compliance Option 1 obligations towards initial construction, maintenance and operation, regional project revision and enhancement, and administrative and other supplemental work. These considerations will ease the |

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| | | administrative burden of Compliance Option 1 on WMGs while simultaneously preserving it as a compliance pathway. |
| 7.20 | Requirement to Fund One Project via a Legally-Binding Agreement: Another limitation is if the demand for entering into legally-binding agreements is greater than the availability of projects to fund. WMGs may not be able to meet the demand, even administratively for the agreements, in the timeframe in which CII Permittees need to demonstrate their compliance via Compliance Option 1. In this case, some CII Permittees may be forced to comply using Option 2 or Option 3, which in turn brings up unintended equity issues among CII Permittees. All compliance options need to be available to all CII Permittees.<br><br>This issue would be resolved under the Regional Fund approach. Each Permittee would pay their annual portion into the Regional Fund. Projects would then be funded as needed from the pooled resources in the fund, eliminating the capacity and timing barriers, as well as ensuring Option 1 is equally available to all CII Permittees. | There is no Permit requirement that regional project capacity must be available upon adoption of the tentative CII Permit. The overall goal of Compliance Option 1 is to facilitate the CII permittees' involvement in watershed-scale improvements by helping fund multi-benefit stormwater control projects, identified in approved WMPs, that could be in various stages of planning and design, construction, operation and maintenance, or BMP rehabilitation or enhancement. Since eligible projects for CII permittee participation would not be limited to only those already built, the availability of projects should not be a limiting factor that would force CII permittees to select other options. See also response to comment 12.12. |
| 7.21 | Impact of Requiring Each Project to Be Downstream of the Discharge: The requirement for projects to be downstream of the discharge unless technically infeasible will functionally prioritize projects at the base of each watershed, without allowing for other factors to be considered (e.g., which project should be built in which order and why). Funds should be allocated to the projects with the highest benefit within each watershed rather than simply downstream of the discharge. Given the number of facilities, the practical implementation of this requirement may also be quite administratively burdensome. Further, as the cost of stormwater capture projects typically are in the $10-$15M range, it is advantageous to pool these funds and move projects as expeditiously as possible. The downstream requirement by its very nature limits the availability of funds for projects by only allowing upstream funds to be utilized.<br><br>CASQA Recommendation: Remove the downstream requirement and allow the WMGs to prioritize the order of building the capture projects, based on all relevant considerations. | The Regional MS4 Permit, and therefore the WMPs, require WMGs to prioritize projects based on water quality impairments. Sources of impairments in each watershed tend to be distributed across the watersheds, not just the base of each watershed. Therefore, the regional projects that stand to generate the highest benefit will likely be most prioritized. Additionally, WMGs would likely consider the strategies in their WMPs necessary to achieve pollutant reductions by the required timeframes when distributing funding. See also response to comment #7.19.<br><br>With regards to the comment about expediting the pooling of funds, the tentative CII Permit provides WMGs flexibility for the schedule of payments that are developed between the WMG and the CII Permittee. This flexibility allows for advance capital for expediting regional project construction and also helps to account for unplanned, unforeseen, or uncontrollable project impacts such as inflation, labor, and supply issues. |
| 7.22 | Impact of Lack of Clarity on Who Must Enroll in the CII Permit on Compliance via a Legally-Binding Agreement: As the applicability of the Permit is unclear (see Comment #1), as proposed in the Draft CII Permit, it is unclear whether the property owner or the CII facility | See response to comment # 2.20 and #5.3. |

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| | operator is responsible for entering into the legally-binding agreement with the WMG. If the legally binding agreement and a discharger's compliance status are associated with the property, then the agreement can be recorded as such and become part of the parcel deed. If that's not the case, then the legally binding agreement becomes a contract between the WMG and the facility operator. If the property ownership does not change, but the facility operator changes, how does that impact the legally-binding agreement?<br><br>The Regional Fund would eliminate the ongoing issue as it would not require a legally-binding agreement. Rather, the CII Permittee would demonstrate compliance by funding (annually?) their required contribution to the Regional Fund. If ownership or operators change for a facility, there would not be a related agreement issue to resolve, as the requirement to comply with the permit would not involve an agreement.<br><br>If Compliance Option 1 is included in the adopted permit utilizing the legally-binding agreement approach, CASQA suggests that the legally binding agreement be between the WMG and the property owner so that the agreement runs with the land. This recommendation also implies that the Discharger / Permit Enrollee is the property owner (see previous comment). | |
| 7.23 | Timing of Compliance under a Legally-Binding Agreement: As written in the Draft CII Permit, the timeframe for compliance when a CII Permittee opts for Compliance Option 1 is unclear. The Draft CII Permit does not specify whether the contribution to a WMG project is to be made on an annual basis or whether it is a one-time contribution. If a one-time contribution, it is unclear if it would demonstrate compliance for a set period of time such as the duration of the permit (5 years) or the lifetime of the funded project. This lack of clarity is a material issue for the WMGs and places them in a position to negotiation / define compliance, which must remain with the Regional Water Board.<br><br>CASQA Recommendation: Clearly specify the timeframe for compliance. Further, utilize the Regional Fund approach, which removes many administrative issues related to timing, and removes the WMGs from a role of impacting compliance for CII Permittees. By demonstrating they have contributed to the Regional Fund (each year?), the regulated facility can demonstrate its compliance. | See response to comment #1.11. |
| 7.24 | Timing from Effective Date of the Permit: Under either the legally-binding agreement approach, or the Regional Fund approach, there will be lead time necessary to develop the agreements / the Regional Fund. Will CII Permittees be expected to comply immediately? If so, Compliance Option 1 would likely not be available. Is the time needed to negotiate and | See section 3.4 of the revised tentative CII Permit, which contains the compliance timeframes applicable to prospective CII permittees. Effectively, CII permittees will demonstrate compliance with the effluent limits in section 7.1 upon submittal |

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| | enter into legally binding agreements factored into the permit? What is the compliance implication between the time of the permit effective date until legally binding agreements are executed?<br><br>CASQA Recommendation: Clearly provide for and define compliance timeframes from the effective date of the permit for these brand new permittees in a brand new permit. | of the NOI and SWPPP, and the effluent limits in section 7.2 upon submittal of the Compliance Option Documents. |
| 7.25 | Determination of Discharge Volume: Who determines the NSWD and onsite stormwater volume to be addressed? If it is the WMGs, municipalities may functionally be placed in a compliance role (determining what the CII Permittee must contribute) that must be retained by the Regional Board.<br><br>CASQA Recommendation: Clearly identify who is responsible for determining the discharge volume for each CII facility. | Consistent with the CII Permit's SWPPP requirements, the Discharger is responsible for identifying all NSWDs and performing site characterization as part of their PRDs. Los Angeles Water Board staff will perform site inspections as needed to verify PRD accuracy as part of permit oversight. |
| 7.26 | Determination of Funding: As proposed, the method to determine funding is described in Section 8.1 as, "...the funding level must be proportional to the NSWD and onsite stormwater volume to be addressed/total regional project stormwater capacity". This approach presumes from the start of the permit that there will be capacity available. It also does not address a cost per volume unit (e.g., acre foot). It is also unclear where pricing is considered when comparing a discharge volume and stormwater capture capacity. What is the cost factor? Is the cost factor (as opposed to the discharge volume) the same for each CII facility? What is a reasonable basis (per acre? per unit of discharge?) to ask of each CII facility to ensure this option is reasonable and achievable? The proposed formula also does not factor in other critical needs, such as long-term operations and maintenance of these facilities.<br><br>CASQA Recommendation: At a minimum, we recommend expressing this statement as a formula or equation, as the backslash "/" in the statement is not readily recognized as a division sign.<br><br>CASQA Recommendation: The issue of pricing is an extremely important aspect of ensuring Compliance Option 1 is viable. Given the other issues raised in this comment letter, CASQA is not yet in a position to offer a constructive suggestion. We are willing to bring together many organizations to brainstorm and develop a viable pricing mechanism approach, to ensure Compliance Option 1 is viable. Resolving this question is critical before the CII Permit can be adopted.<br><br>CASQA Recommendation: The Regional Fund approach would resolve issue of operations and maintenance, as CII Permittees would (in theory) contribute annually based upon their | See response to comments #7.20, #3.43, #5.14, and #12.12. |

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| | discharge volume. In addition to funding construction of the regional capture projects, the Regional Fund could also invest in the operations and maintenance of these facilities. | |
| 7.27 | For Compliance Option 3, dischargers must develop a site-specific monitoring and reporting program to demonstrate compliance with the WQBELs. For sites where non-industrial portions share a common drainage area and discharge point with IGP-covered portions of the facility, the common discharge point will potentially be subject to two different permits (the IGP and the CII). Also, unlike allowances in the IGP, the Draft CII Permit does not make accommodations for stormwater sampling for difficult circumstances. In light of these considerations, CASQA recommends that discharge points monitored under the IGP not be covered under the CII Permit. CASQA also recommends that the CII Permit incorporate more of the sampling accommodations included in the IGP (for example representative sampling reduction). | Permittees who are subject to both IGP and CII Permit obligations will need to comply with all requirements in both Permits. Where possible, separate sampling points could be chosen prior to the confluence of the drainage areas. Common drainage areas and common discharge points should also be clearly marked on the facility's site map.<br>With regards to sampling reduction and sampling under difficult circumstances, see response to comments #10.3 and #3.40. |
| 7.28 | Time needed for compliance: Provision 7.2 of the Draft CII Permit states that all dischargers will immediately be required to comply with effluent limitations on the effective date of the permit. This conflicts with other permit provisions which note that existing dischargers have a year to file a Notice of Intent and, in the case of Compliance Option 1, two years to file the Permit Registration documents, including the WMG agreements (Provision 3.4.1). Provision 7.2 needs to be revised to be consistent with the compliance options provided elsewhere in the Permit. | Section 3.4 of the revised tentative CII Permit specifies one year to file a NOI and two years to submit a complete Permit Registration Document package. The 2 years reflect the built-in phase-in period for Dischargers to select a compliance option to fully comply with the permit. |
| 7.29 | Provision 1 includes a statement that EPA has determined that discharges subject to this permit have reasonable potential to cause or contribute to an in stream excursion above objectives. This is an incorrect statement. Reasonable potential is the standard for determining if a WQBEL is necessary. The standard for use of RDA is contributing to violation of a water quality standard (see page 10 of the EPA Memorandum). While similar, reasonable potential is a term of law under 122.44. The text in Provision 1 needs to be corrected to remove references to reasonable potential and be consistent with the language in the EPA Memorandum. | Section 1 of the Order has been updated in the revised tentative CII Permit to reflect the language in U.S. EPA's preliminary designation memo. |
| 8.1 | The draft CII Permit defines CII Sites as "Privately-owned unpermitted commercial, industrial, and institutional sites or facilities with greater than or equal to five (5) acres of unpermitted impervious cover, excluding airports, and permitted CII sites with five (5) or more acres of total area that are subject to the requirements of this General Permit." The EPA's public notice documentation on the Preliminary Residual Designation states that airports are excluded from the designation because they, "...are not controlled by private entities, but rather by | See response to comment #7.3. |

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| | municipal departments and as such, are already regulated under Regional Municipal Separate Sewer System NPDES Permit Order No R4-2021-0105." We recommend including this explanation in the CII Permit Fact Sheet to provide clarification as to why airports are excluded. | |
| 8.2 | Despite the explanation provided in the EPA's public notice documentation on the Preliminary Residual Designation regarding the exclusion of airports in the CII Permit, clarification is needed on the applicability of the Permit on privately owned CII businesses operating at an airport. If a site owner of a CII site is a municipality and the business operator is a private entity, clarification is needed as to whether the site is covered by the MS4 Permit or whether the CII Permit would apply. If the CII Permit applies, clarification is needed as to the party who would need to enroll (i.e., the municipal site owner or the private business operator). | Per section 3.1 of the revised tentative CII Permit. "CII sites at airports are excluded from coverage under this General Permit." In other words, all CII sites at airports are excluded. Please note that comments related to U.S. EPA's preliminary designation memo are outside the scope of the action before the Los Angeles Water Board. |
| 8.3 | Clarification is needed regarding municipalities' roles, if any, on the enrollment of CII sites within their jurisdictions and whether municipalities will be required to refer "non-filers" to the Regional Board. | During the development of the tentative CII Permit, the Los Angeles Water Board reached out to the potential CII Permittees using the available data. At this time, the Board does not anticipate that any municipalities will be required to report unpermitted CII facilities. |
| 8.4 | For compliance through Option 1, a provision that Permittees must also contribute a proportional share of the regional project operations and maintenance costs should be included. | See response to comment #5.2. |
| 8.5 | The Long Beach Nearshore Watershed Management Program (WMP) should be included in Table H-1 of Attachment H. The Nearshore WMP includes areas that are designated in the Dominguez Channel and Los Cerritos Channel Watersheds. These areas include Long Beach Harbor and the lower portion of the Los Cerritos Channel Watershed that is solely City of Long Beach (i.e., generally south of the 405 Freeway). | The Long Beach Nearshore Watershed Management Program has been added to Table H-1 of Attachment H. |
| 9.1 | For clarity, the Order should reference the watershed management programs or enhanced watershed management programs by which these watershed areas are managed.<br>Suggested text revisions (added as a footnote in Section 1 Facility/Discharge Information, at end of first sentence) are as follows:<br>"For reference, watersheds listed in this Order are addressed in three separate WMPs or EWMPs, including the Los Cerritos Channel WMP, portions of the City of Long Beach | See Attachment H where the City of Long Beach Nearshore WMG has been added to the table of WMPs in the Dominguez Channel/Inner and Outer Los Angeles and Long Beach Harbor watershed and the Los Cerritos Channel/Alamitos Bay watershed. Attachment H also provides a link to the Los Angeles Water Board website for further information about WMPs and WMG jurisdictional boundaries. |

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| | Nearshore WMP that discharge to Alamitos Bay and Long Beach Inner Harbor, and the Dominguez Channel EWMP." | |
| 9.2 | The Order indicates that USEPA has exercised RDA pursuant to 40 CFR section 122.26(a)(9)(i)(D) for certain CII sites in the Alamitos Bay/Los Cerritos Channel Watershed and the Dominguez Channel and Los Angeles/Long Beach Harbor Watershed. However, the USEPA RDA Memorandum recommends discretionary authority is exercised to designate discharges from CII sites in the Alamitos Bay/Los Cerritos Channel Watershed and the Dominquez Channel and Los Angeles/Long Beach Inner Harbor Watershed in Los Angeles County [bold added for emphasis]. The Ports of Los Angeles and Long Beach are geographically separated into Inner Harbor and Outer Harbor waters. Discharges may occur to both areas; however, the USEPA RDA Memorandum specifically states "Inner Harbor Watershed." Please clarify if this Order only pertains to discharges to Inner Harbor waters. If the RWQCB intends the Order to apply to discharges to Inner and Outer Harbor waters (i.e., Los Angeles/Long Beach Harbor Watershed, collectively), please clarify how the USEPA RDA Memorandum authorizes regulation of discharges to Outer Harbor waters. If the Order does indeed only apply to discharges to Inner Harbor waters, please update all occurrences of "Los Angeles/Long Beach Harbor Watershed" to "Los Angeles/Long Beach Inner Harbor Watershed." | All instances of "Inner Harbor" have been clarified to "Inner and Outer Harbor". Consistent with U.S. EPA's clarifications in the revised preliminary designation, the revised tentative CII Permit now refers to the Dominguez Channel/Inner and Outer Los Angeles and Long Beach Harbor watershed and the Los Cerritos Channel/Alamitos Bay watershed where applicable. |
| 9.3 | There has been insufficient outreach to potentially affected parties during the establishment and after the release of the draft CII Permit. Simply notifying potentially affected parties through the RWQCB's website (as described in Section 5.2) is insufficient for facilities that are new to the NPDES Permitting and do not regularly interact with the RWQCB. Based on our analysis of the watershed, we believe the RWQCB's list of affected facilities is significantly underestimated, and additional outreach is needed before considering the Permit for adoption. For example, for just the Port of Long Beach, there appear to be more than 20 facilities that meet the CII applicability criteria, with only nine identified by the RWQCB. In addition, after plotting the RWQCB's list of potentially affected sites (provided following the August 30, 2022 workshop), numerous other facilities appear to exceed the criteria established in the CII Permit but have not been specifically identified. The RWQCB should closely coordinate with municipalities in the affected watershed to assist in identification of affected sites and to identify appropriate contacts for outreach efforts before considering the Permit for adoption. | The list that Los Angeles Water Board staff provided upon request was not a list of affected facilities; it was a paper address mailing list for the initial outreach effort. There is no definitive list of designated facilities at the time of this response. Please see USEPA's revised designation for more information regarding property use classification codes in support of the designation. See also response to comment #7.10.<br><br>The Notice of Opportunity for Public Comment, Staff Workshop, and Public Hearing was sent to each address on file on the aforementioned mailing list, which included owners of potential CII parcels larger than 5 acres within the Dominguez Channel/Inner and Outer Los Angeles and Long Beach Harbor watershed and the Los Cerritos Channel/Alamitos Bay watershed. Stakeholders were advised to subscribe to the Board's email subscription list for all future communications. Two stakeholder outreach meetings were held on December 6 and |

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| | | December 17, 2021. Stakeholder input was solicited on August 30, 2022, during the Los Angeles Water Board CII staff workshop. Section 5 and subsections of the Fact Sheet has been revised to reflect opportunities for public participation to date. Over the past year since the tentative CII Permit was publicly noticed, staff have met multiple times with municipalities and will continue to coordinate with municipalities regarding Compliance Option 1 participation. |
| 9.4 | The draft Permit lacks clarity with respect to applicability and is inconsistent when referencing applicable sites. The RWQCB should develop clear definitions with respect to Permit applicability to avoid confusion. While the RWQCB defines discharger in the draft CII Permit as, "A person, company, agency, or other entity that is the operator of the CII site or facility covered by this General Permit," the term "operator" is not defined and could lead to additional confusion.<br><br>The RWQCB should also provide examples/scenarios related to private ownership, private operation, and public ownership of facilities and responsibility for CII Permit compliance. It is unclear how a private owner of a parcel, with no direct responsibility for operations (i.e., property owner leases warehouse to private business solely responsible for operations), can comply with provisions outlined in the CII Permit, particularly Compliance Options 2 and 3.<br><br>It should be noted that the lists of potentially affected CII sites provided by the RWQCB included numerous parcels and sites that are publicly owned or publicly owned and operated, which does not appear appropriate based on Permit provisions or USEPA's Preliminary Designation.<br><br>The RWQCB's exemption language with respect to airports does not appear consistent with USEPA Preliminary Designation Memo. USEPA stated the following on page 11, footnote 33: "The proposal does not include facilities permitted under the Industrial Stormwater General Permit at airports in these watersheds. Most impervious surfaces at the airports are not controlled by private entities, but rather by municipal departments and as such, are already regulated under the Regional Municipal Separate Sewer System NPDES Order No R4-2021-0105."<br><br>The RWQCB appears to have expanded USEPA's footnote in Section 3.1.1: "CII sites at airports are excluded from coverage under this permit." To avoid confusion, the RWQCB | Section 3.1 of the tentative CII Permit has been revised to clarify the conditions for Permit applicability and to align with U.S. EPA's revised preliminary designation. Attachment A, section 2, has been revised to include a definition for "Discharger". The revised Discharger definition includes examples to guide identification of Dischargers responsible for obtaining permit coverage and responsible for permit compliance.<br><br>Regarding the comment about lists provided by the Los Angeles Water Board, see response to comment #9.3.<br><br>Regarding the comments about airports' exclusion, see response to comment #7.3.<br><br>Regarding the comment about Port facilities, see response to comment #2.20. |

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| | should clarify that privately operated facilities covered under the Industrial Stormwater General Permit at municipally operated airports are exempted under the CII Permit.<br><br>To the extent that all Port properties are publicly owned and covered under provisions of the MS4 Permit, Port- owned properties, other than those portions covered under the IGP, should be exempted under the CII Permit. | |
| 9.5 | To avoid confusion, the RWQCB should further clarify the who is responsible for obtaining coverage under the CII Permit through the Legally Responsible Person definition. Similar to the IGP and CGP, the CIII Permit should describe who is responsible for obtaining permit coverage. For example, Section I.A of the IGP states: “This General Permit regulates operators of facilities subject to storm water permitting (Dischargers), that discharge storm water associated with industrial activity (industrial storm water dischargers).” The current LRP definition does not clearly associate the person or entity to either the operator or owner of the CII facility. | Signatory and certification responsibilities have been clarified in Attachment D section 5.2 and subsections. See also definition for Discharger in Attachment A section 2. |
| 9.6 | Though the RWQCB has indicated during workshops that sites with an NEC under the IGP and those submitting a NONA may also be required to obtain coverage under the CII Permit, the CII Permit is silent on both types of sites. It does appear that the RWQCB has included these sites on the spreadsheet of affected facilities, but the Permit does not provide clarity with respect to when these types of sites would require coverage.<br><br>For NONA sites, the CII Permit should be consistent with USEPA’s Preliminary Designation Memorandum and only require CII coverage for portions of the site that are not covered by the NONA if those uncovered areas are 5 acres or greater. | See response to comment # 7.9. |
| 9.7 | Though not specifically excluded in the draft Permit, the RWQCB should clarify that CII Permittees can utilize more than one compliance option to meet their obligations under the Permit. For example, if a site can infiltrate 75% of required volume for Compliance Option 2, they can choose to purchase additional capacity needed through Compliance Option 1. There are several facilities at the Port that have invested significant resources to implement BMPs to comply with the IGP, and where applicable, should be able to utilize those BMPs in conjunction with other CII Permit Compliance Options. Additional discussion and examples should be included in the Fact Sheet, and SMARTS should be programmed to allow for selection of multiple compliance options.<br><br>Suggested Permit Revisions:<br><br>3.2. Notice of Intent (NOI) and Permit Registration Documents | See response to comment #2.27. |

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| | "To be authorized to discharge under this General Permit, the Discharger shall certify and submit an NOI and the following Permit Registration Documents for the applicable selected compliance option or multiple compliance options, as described in section 8 of this Order, via the Stormwater Multiple Application and Report Tracking System (SMARTS).1"<br><br>8. Compliance Options for Water Quality Based Effluent Limitations<br><br>"In complying with the water quality-based effluent limitations in section 7.2, the Discharger must choose one or more of the following three options:" | |
| 9.8 | To allow for sufficient time for CII Permittees to gather information and select an appropriate option, the effective date of the Permit should be a minimum of 1 year after adoption of the Permit. This will allow facilities the additional time necessary to coordinate with Watershed Management Groups, evaluate site conditions and stormwater discharge quality, and select the most appropriate compliance option.<br><br>In addition, the timing for submittal of the NOI and PRDs for existing Dischargers covered under the IGP should be consistent with the NOI and PRD submittal requirements for existing Dischargers that are not covered under the IGP. The unpermitted, nonindustrial portions of sites under the IGP are no different than other CII sites, in that the unpermitted, nonindustrial areas have never been evaluated to understand stormwater discharge quality, and extensive information and data gathering will be necessary to select and implement the appropriate compliance option.<br><br>With limited rain events in Southern California, sites (or portions of sites) that have never been required to collect or characterize stormwater discharge must be provided sufficient time to collect representative stormwater samples and perform appropriate feasibility analyses to make an informed decision on the appropriate compliance option. This can be a lengthy process and for many Dischargers it may involve pilot testing, design, permitting, construction, and verifying operations. Providing sites the ability to appropriately characterize discharges, select BMPs, and make improvements to those BMPs where necessary, similar to the exceedance response action process in the IGP, should be considered.<br><br>In addition, the CII Permit should include a provision to allow Dischargers to request additional time for submittal of PRDs, with appropriate justification and approval by the RWQCB. | It is not necessary to extend the effective date of the permit because the timing for submittal of enrollment documents allows one year for submittal of the NOI and SWPPP and two years for submittal of Compliance Option Documents. This is ample time to coordinate with WMGs and evaluate site-specific conditions.<br><br>Section 3.4 of the revised tentative CII Permit contains equal timeframes for submittal of enrollment documents for all Dischargers.<br><br>Regarding the comment about Time Schedule Orders, including provisions about additional time for PRD submittal, see response to comment #2.28. |

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| | The RWQCB should also acknowledge that the Time Schedule Order process is available should there be unavoidable delays implementing on-site BMPs or completing agreements with Watershed Management Groups. | |
| 9.9 | Based on the definition of a New Discharger in Attachment A, many “Existing Dischargers not covered under the IGP” described in Section 3.4.1 also appear to meet the definition of a “New Discharger” and would be subject to compliance with CII Permit requirements 45 days prior to commencement of discharge. The RWQCB should clarify that existing facilities subject to the CII Permit are not considered New Dischargers.<br><br>Suggested Permit Revision:<br><br>“3.4.2. ~~New Dischargers~~ Owners/Operators of newly constructed facilities applying for coverage ~~under this~~ after the effective date of this Order must submit an NOI and Permit Registration Documents at least forty-five (45) days prior to commencement of the authorized discharge.”<br><br>The CII Permit should also include a provision for additional time for NOI and PRD submittal if a facility has completed design and permitting and/or is under construction at the time the Permit is adopted.<br><br>The RWQCB should also engage with the development community and local municipalities to ensure there is sufficient awareness and a process to identify and notify potential CII Dischargers prior to design and permitting. | See revisions in section 3.1 of the tentative CII Permit clarifying Permit applicability in alignment with U.S. EPA's revised preliminary designation.<br><br>A New Discharger is defined in Attachment A Section 2 of the revised tentative CII Permit as follows:<br><br>> "A facility from which there is a discharge, that did not commence the discharge at a particular site prior to August 13, 1979, which is not a new source as defined in 40 CFR section 122.29, and which has never received a finally effective NPDES permit for discharges at that site. See 40 CFR section 122.2."<br><br>Note that a Discharger must meet all of the above criteria to be defined as a New Discharger. Existing Dischargers’ facilities are not new sources as defined in 40 CFR § 122.29.<br><br>Regarding the comments about outreach to facilities that are under construction at this time, Los Angeles Water Board staff will continue to reach out to this subset of Dischargers on a case-by-case basis as the revised tentative CII Permit approaches adoption. The recommendation to identify and implement a process to notify future new dischargers is acknowledged. |
| 9.10 | There are several clarifications needed with respect to agreements and funding under Compliance Option 1, including the following:<br><br>• The RWQCB should clarify how the fees paid through agreements established in Compliance Option 1 are managed when there is a transition of the operating entity or owner of the CII permitted site. To the extent the costs associated with Compliance Option 1 could be significant, it is unclear how the fees paid to a Watershed Management Group will be accounted for when there are ownership or operational changes and if there is potential for duplicative fees paid for certain CII parcels and | Regarding the comments about permit coverage transferability, see response to comment #5.3.<br><br>Regarding the comments about development of a model agreement and Discharger responsibilities under Compliance Option 1, see response to comment #2.17.<br><br>Regarding transferal of operating entity or owner status of a CII permitted site, see section 3.6 of the revised tentative CII Permit. For early termination of a legally binding agreement with a WMG, |

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| | sites. To ensure consistency in application of the CII Permit, the RWQCB should clarify how these funds would be credited to an owner or operator if they relocate or if they would be permanently associated with the applicable site or parcel.<br>• Before the CII Permit is adopted, the RWQCB should work with the Watershed Management Groups and CII Dischargers to develop a model Agreement that can be used by those CII facilities selecting Compliance Option 1. The model Agreement should also include guidance on procedure for development of fees. This will streamline the process and provide consistency among the various Watershed Management Groups.<br>• The RWQCB should clarify that once the CII Permittee has complied with their obligations under Compliance Option 1, they are not responsible or liable for deficiencies related to the design, operation, or maintenance of the regional stormwater capture project by the Watershed Management Group.<br>To the extent there does not appear to be a robust data set that represents stormwater discharge quality from CII facilities and additional monitoring/studies could provide valuable information to support TMDL compliance, the RWQCB should include an option for Dischargers to pay into coordinated monitoring programs and/or special studies that further the understanding of discharges from CII facilities as part of Compliance Option 1. | see section 8.1.3 of the revised Permit. Other terms such as proration or forfeiture of fees paid to a WMG for early termination or ownership/operational transfer should be addressed in the agreement between the parties.<br>See response to comment #2.17 regarding a model agreement. See also revised section 8.1 regarding provisions for legally binding agreements.<br>CII permittees are not responsible or liable for deficiencies related to the design, operation, or maintenance of the regional stormwater capture project by a WMG since the stormwater capture projects are part of WMPs, which are regulated under the Regional MS4 Permit, not the tentative CII Permit. See also response to comment #2.17.<br>The tentative CII Permit does not include provisions for funding coordinated monitoring program under Compliance Option 1. The intent of Compliance Option 1 is to support regional storm water projects to facilitate attainment of surface water quality objectives within the two watersheds. See also response to #9.22. |
| 9.11 | Based on our analysis and the size of many of our Port tenant facilities, it does not appear there are sufficient existing regional stormwater capture projects available for Compliance Option 1. To provide flexibility and assure the RWQCB's preferred Compliance Option is utilized, the following provisions should be considered: | Comment summary acknowledged. See responses to individual comments below. See also response to comment #7.20 regarding sufficient existing regional storm water capture projects. |
| 9.12 | Compliance Option 1 should not require a CII Discharger be specifically associated with an existing regional project or a project in the design or construction phase. The CII Permit should allow for the Watershed Management Groups, or even other groups formed by entities such as the Port, to establish an in-lieu fee or mitigation fund (and associated agreement) that CII Permittees can participate in and pay into to identify, design, and construct future regional capture or water quality improvement projects. Compliance Option 1 should also allow the flexibility to partner with multiple Watershed Management Groups (or other groups such as the Safe Clean Water Program) to support multiple projects, should additional capacity be needed by a Discharger. | Regarding the comment about the capacity of regional projects, see response to comment #7.20.<br>Regarding the comment about the establishment of an in-lieu fee for designing and constructing new regional projects, see response to comment # 7.17.<br>Regarding the comment about partnerships between a permittee and multiple WMGs or other groups, see responses to comments #1.7 and 12.14. |

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| 9.13 | To add flexibility for compliance, the RWQCB should clarify that Dischargers can utilize multiple regional projects to meet their equivalent 85$^{th}$ percentile 24-hour storm event volume. There are several hundred acre sites at the Port and will require additional volume that isn't necessarily available from a single regional BMP. | Section 8.1 of the revised tentative CII Permit clarifies situations when CII permittees may direct funds towards multiple regional projects under Compliance Option 1. |
| 9.14 | Allow for agreements to participate in other regional stormwater quality improvement projects (e.g., Long Beach MUST project) or off-site capture or infiltration projects that may not be associated with a Watershed Management Group (other privately owned land or Cities not participating in one of the designated Watershed Management Groups). | See response to comment #1.7. |
| 9.15 | Allow for facilities, particularly those located at the bottom of the Dominguez Channel Watershed (e.g., facilities located in the Port of Los Angeles and Port of Long Beach), to participate in any of the upstream Watershed Management Groups, including Lower Los Angeles River Watershed, Upper Los Angeles River Watershed, and the Lower San Gabriel River Watershed. This would expand upstream regional BMP opportunities for facilities to utilize for Compliance Option 1, particularly when these watersheds have the potential to impact Harbor receiving waters. | See response to comment #1.4. |
| 9.16 | The Outer Harbor and the Port of Long Beach also receive contribution from the Los Angeles River Watershed. Facilities subject to the CII at the Port should be eligible under Compliance Option 1 to come into an agreement with Los Angeles River Watershed Management Groups if there are no regional projects available in the upstream watershed groups identified in the CII Permit. | See response to comment #1.4. |
| 9.17 | The Port of Long Beach participates in the Nearshore Watershed Management Group under the City of Long Beach MS4 Permit. This watershed group is not identified in the CII Permit but should be added to provide additional flexibility under Compliance Option 1 for affected Port facilities. | See response to comment #9.1. |
| 9.18 | The basis for the volume-based requirement in Attachment I of the CII Permit is unclear and appears to align with the requirements in Attachment I of the IGP, which requires Dischargers have the capacity to eliminate discharge from the volume of runoff generated by the 85$^{th}$ percentile, 24-hour storm event *on a daily basis*. The modeling performed to establish this requirement in the IGP was focused on the Los Angeles River Watershed. It is not clear the RWQCB performed similar modeling for the watersheds subject to the CII Permit. | See response to comment #3.33. |

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| | This is a significantly larger standard than the volume of runoff generated from the one-time, 85th percentile, 24- hour storm event required under MS4 Permit new development or redevelopment program LID design requirements.<br><br>Many CII facilities have implemented site-specific BMPs to satisfy LID requirements for new development or redevelopment standards using the 85th percentile, 24-hour storm event, and the current language would likely require these facilities to redesign or reconstruct many of these BMPs. The design storm retention standards in the CII Permit should remove the "daily basis" requirement and align with existing MS4 design storm retention standards.<br><br>It should also be noted that the design criteria referenced in Attachment I is a volume-based standard and not a flow-based standard as described in Attachment F, Section 4.9. | |
| 9.19 | Similar to the IGP, USEPA's MSGP, and California's recently adopted Construction General Permit, this CII Permit should allow Dischargers to perform pollutant source assessment to identify if the facility is a source of the parameters in Tables 1 through 4, especially for those parameters for which modeling was not performed to identify CII facilities as sources (e.g., bacteria, legacy pesticides, etc.).<br><br>Although USEPA concluded that CII facilities are contributors of pollutants and water quality standards violations, the studies that arrive at that conclusion focused on contributions of zinc and copper and did not review the other pollutants in detail.<br><br>The modeling does not support the requirement for CII facilities to monitor for all the parameters required within their watershed, including PCBs, PAHs, pesticides, and bacteria. Instead, the CII Permit should require each Discharger to perform a pollutant source assessment and identify the appropriate monitoring parameters based on activities and sources on site.<br><br>Alternatively, or in combination with a source assessment, the CII Permit should allow Dischargers to screen (i.e., monitor for all required parameters) at some frequency (i.e., once every 3 years during the first significant storm event of the water year) and discontinue monitoring for those parameters that are at or below the reporting level until the next screening assessment.<br><br>Suggested Example Permit Addition:<br><br>"The pollutant source assessment shall include identification of CII Permit pollutants likely to be present in stormwater discharges and authorized NSWDs." | Limiting permit applicability to pollutants resulting from pollutant sources from within the facility, similar to the IGP and U.S. EPA's Multi-Sector General Permit, would not be consistent with U.S. EPA's preliminary designation. The tentative CII Permit regulates pollutants that accumulate on impervious surfaces within the CII facility that could have come from a variety of sources, including tire and brake pad wear, leaking automotive fluids, litter, and air deposition. As explained in the Fact Sheet, pollutant discharge increases with increasing impervious area. Thus, in the context of the pollutant source assessment process, the impervious surfaces themselves are pollution sources that must be managed.<br><br>Regarding the comment about the contribution of other pollutants and the need for modeling, see response to comment #2.3. |

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| 9.20 | Tables 2 and 4 of the CII Permit include a requirement to collect “stormwater-borne sediment” for comparison to interim concentration-based sediment allocations. The sampling methodologies and volume of stormwater necessary to collect sufficient mass of sediment for analysis is not feasible. See Items 14a, 14b, 14c and 14d from Port of Long Beach comment letter for full text. | See response to comment #3.37. |
| 9.21 | Table 3 of the draft CII Permit incorporates effluent limitations which are inconsistent with TMDL final allocations for Dominquez Channel Estuary and Greater Harbor Waters in the IGP.<br><br>For the Greater Los Angeles and Long Beach Harbor Waters, CII Table 3 includes WLAs for copper at 3.73 µg/L and zinc at 85.6 µg/L. However, based on the IGP fact sheet, “the concentration-based WLAs are translated to instantaneous maximum TNALs because the WLAs are assigned to be met at the receiving waters and not at the point of discharge. The assigned WLAs of copper, lead, and zinc are based on the Criteria Chronic Concentration, and is inappropriate to assign to stormwater discharges. Therefore, the California Toxics Rule (CTR) Criterion Maximum (acute) Concentration is applied to Responsible Dischargers.”<br><br>The CII Permit should include a similar approach as the IGP and allow NALs (rather than effluent limits) at the point of discharge if a WLA is assigned to be met at the receiving water. | The tentative CII Permit does not include NALs and TNALs. See response to comment #3.38. |
| 9.22 | Sampling all discharge locations is not feasible at many facilities, including many of our large container terminal tenants. These terminals, and many other Port properties, are hundreds of acres and have dozens of sampling locations. The strict provision to collect samples for all discharge locations does not recognize many of the conditions that exist at large Port facilities and conditions that make the requirement infeasible to implement, including the following:<br><br>• Many outfall locations at the Ports are either submerged or commingle with stormwater from numerous upstream, off-site sources prior to discharge. To the extent a representative sample cannot be collected or is inaccessible at the point of discharge, identifying and sampling upstream catch basins and trench drains is the only method to collect a representative discharge sample. Based on our review, this could require larger Port facilities to collect samples from 50 or more locations to meet current draft Permit requirements.<br><br>• Some discharge locations are not within facilities’ boundaries and are not accessible for sampling. | Regarding the comments about alternative and reduced sampling locations, see responses to comments #3.40 and #10.3.<br><br>Regarding the comment about the coordinated monitoring plan for the Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters TMDL: because the WLAs assigned to “any future NPDES dischargers” are applied to CII permittees, it is inappropriate to extend the implementation alternatives for MS4 permittees’ WLAs to CII permittees. Therefore, the revised tentative CII Permit requires sampling at the point of discharge for CII sites participating in Compliance Option 3. |

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| | • Most container terminals at the Ports also have hundreds of scupper or over-water drains with small tributary areas draining directly to the Harbor. These drains cannot be feasibly sampled.<br><br>Similar to the IGP, the draft CII Permit should include provisions to allow for selection of alternative sampling locations and to reduce sampling locations based on representativeness.<br><br>Furthermore, requiring the sampling location to only be at the point of discharge is inconsistent with the TMDL for toxic pollutants in the Dominguez Channel and Greater Los Angeles and Long Beach Harbor waters (Harbor Toxics TMDL). The Harbor Toxics TMDL allows Dischargers to participate in coordinated compliance monitoring efforts and indicates the compliance point may be a point in the receiving water that suitably represents the combined discharge of cooperating parties. It is recommended that Dischargers be provided the same opportunity to join or develop coordinated compliance monitoring efforts and be able to sample a representative point in the receiving water. | |
| 9.23 | The RWQCB has not established treatment system design criteria for sites installing treatment systems to meet Compliance Option 3. To comply with the NELs, Dischargers pursuing Compliance Option 3 will likely need to consider treatment control BMPs. Without a design storm standard, Dischargers can install treatment controls using a wide variety of designs that may be either deficient in achieving compliance with the water quality standards or unnecessarily stringent or expensive.<br><br>We recommend including flow-based and volume-based design storm standards, similar to those in Section X.H.6 of the IGP and require treatment control BMPs be designed by a California-licensed Professional Engineer. In addition to the flow-based and volume-based standards, the Professional Engineer should have flexibility to design the treatment control BMP(s) using a combination of a flow-based treatment system and additional storage (also referred to as surge detention, equalization, or attenuation) to capture peak flows. For example, “a flow-based treatment control BMP can be augmented with additional storage capacity to attenuate peak flows to treat at a lower design flow rate. If so, the BMP must be designed by a California-licensed Professional Engineer to satisfy the equivalent of the 85$^{th}$ percentile, 24-hour design storm volume and peak flows.” | Compliance Option 3 requires that discharges from the facility meet applicable WQBELs. Permittees have discretion when implementing control measure(s) on their property, so long as the control measure(s) achieve the WQBELs outlined in section 7.2 of the tentative CII Permit. Any combination of BMPs and treatment system design and capacity that demonstrate compliance is adequate. |
| 9.24 | The existing IGP requires Dischargers to submit an Annual Report no later than July 15 following each reporting year. The proposed CII Permit requires Dischargers to submit an Annual Report by December 15. Because Dischargers may opt to continue to manage a | The December 15 due date allows permittees that choose Compliance Option 2 and 3, adequate time (5.5 months) to compile the required annual report, which includes data for |

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| | portion of their facility under the IGP and manage the remaining portion of impervious surface under the proposed CII Permit, it is recommended that reporting schedules be made consistent with the already approved IGP reporting schedule. | sampling and analysis during qualifying storm events (QSEs) for the reporting period (July 1 to December 31 of preceding year and January 1 to June 30 of the current year). Compliance Option 1 requires permittees to submit an annual report by December 15 each year, which is the same due date for the annual reports required by the Regional MS4 NPDES Permit. Thus, the December 15 reporting deadline is reasonable for all Dischargers. |
| 10.1 | The U.S. Environmental Protection Agency Region 9 (EPA) developed a Residual Designation Memorandum (Memo) in response to petitions brought by environmental groups dating back to 2013. A process needs to be developed to incorporate new data into the Memo and Commercial, Industrial, and Institutional (CII) Permit as it becomes available. Additional regional monitoring data, such as data gathered from municipal separate storm sewer system (MS4) monitoring programs and collected by industrial facilities for compliance with the Industrial General Permit (IGP) as well as the Dominguez Channel and Greater Los Angeles and Long Beach Waters Toxic Pollutants Total Maximum Daily Load (Harbor Toxics TMDL), have been developed over the last nine years that should be included in both the Memo and CII Permit. It is not clear what the process is for inclusion of currently available and future available data. | This comment pertains to USEPA's preliminary designation memo and is outside the scope of the action before the Los Angeles Water Board. |
| 10.2 | An iterative approach to compliance should be provided in the Draft CII Permit. The Industrial General Permit (IGP), in Section XII, requires that baseline conditions initially be monitored, followed by a process to refine and adapt Best Management Practices (BMPs) coupled with the development of an Exceedance Response Action plan. This process repeats for two years, and based on subsequent monitoring results, compared with numeric action levels, allows for the permitted discharger to adapt through data collection. The Harbor Department suggests that the iterative process established in the IGP be applied in the Draft CII Permit.<br><br>The CII Permit will bring on hundreds of new dischargers who for the first time will develop a SWPPP and have minimum BMPs. If industrial dischargers have historically been the most likely contributors of pollutants, it stands to reason that the CII Permit should follow a similar approach to the IGP. Without this iterative approach and adaptive management, dischargers are not given an appropriate amount of time to develop a SWPPP, implement the BMPs, install full trash capture, and then observe what the impact is to the watershed may remain. Additionally, immediately selecting and implementing Option 1 or 2 does not ensure that the | The tentative CII Permit does not include an iterative BMP approach and Exceedance Response Action processes. The permit requires compliance with water quality based effluent limits, not action levels. Please see response to comment #1.19.<br><br>Regarding the timing for submittal of documents, see response to comment #6.10. |

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| | CII Permittees will appropriately target listed TMDL pollutants or legacy hotspots. IGP facilities are considered more of an environmental threat than CII facilities. | |
| 10.3 | An approach similar to the watershed management group approach outlined in the MS4 permit and the compliance group option in the IGP permits would encourage collaboration and improve the quality of stormwater runoff. Working with adjacent businesses and/or forming compliance groups, as are allowed in the MS4 permit and IGP, would encourage collaboration between dischargers/owners/operators by collecting information (e.g., regional monitoring efforts, source tracking studies, hot spot identification studies), identifying watershed-based opportunities and prioritization of projects and options specific to the pollutants identified.<br><br>Under Option 1, capturing water upstream of CII facilities does not ensure that the pollutants found lower in the watershed are removed. Option 2 will not be feasible to most dischargers in the Port Complex as space is extremely limited, nor would groundwater replenishment be achieved south of the Dominguez Gap. Option 3 presents several compliance issues. First, most outfalls cannot be sampled as they are inaccessible under wharfs and piers; further, tidal inundation will skew sampling results; and additionally, there are not enough laboratories to process the amount of sampling events proposed in the Draft CII Permit.<br><br>Therefore, amending the CII Permit to include mechanisms allowed in the MS4 and IGP (e.g., representative outfall sampling and forming compliance groups) would lead to more meaningful data collection and a better chance that dischargers will be able to comply. | The formation of Compliance Groups, which is an IGP compliance option, is not a compliance option in the tentative CII Permit. A Permittee who chooses Compliance Option 3 must collect and analyze discharges from their own facilities in addition to meeting all other Compliance Option 3 requirements to demonstrate compliance with the revised tentative CII Permit.<br><br>Regarding the basis for allowing participation in upstream regional storm water projects, please see response to comment #1.4.<br><br>Please see response to comments #3.31 and #3.32, which explain that Compliance Option 2 is one of three choices for marine terminals.<br><br>Regarding the comment about Compliance Option 2, please see response to comment #3.33.<br><br>Regarding sampling under Compliance Option 3, please see response to comment #3.40. Failure to provide analytical results due to lack of laboratories to process the amount of sampling events or other reasons will be evaluated on a case by case basis. |
| 10.4 | Section 3.1: Consistent with the IGP, the Draft CII Permit should be amended to cover facilities with a total of five acres of impervious area not currently covered under existing permits, and not five total acres of area, as currently written. Section 3.1.1 of the Draft CII Permit states that, “Discharges covered under this General Permit include stormwater and authorized non-stormwater discharges (NSWDs) from unpermitted CII sites with five or more acres of impervious surface and permitted CII sites with five or more acres of total area…”<br><br>Section 3.1.3 further states that, “Dischargers of stormwater and NSWDs from privately owned CII sites with five or more acres of total area that are covered under the General Permit for Stormwater Discharges Associated with Industrial Activities. . . may apply for coverage under this Order as an alternative.” | Please see response to comment #4.1. |

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| | Facilities enrolled in the IGP are now covered by this Draft CII Permit if they have five or more total acres, while other facilities are only covered if they have five or more acres of impervious area. Without data to demonstrate that there is a difference between industrial sites and other CII sites, the Draft CII Permit should be amended to only cover industrial facilities with a total of five acres of impervious area not already covered under existing permits.<br><br>Further, the statement (in Section 3.1.1) "from unpermitted CII sites…" is unclear as no one is permitted under the CII Permit as of yet. This language should be changed to "area not currently under existing permits | |
| 10.5 | The Harbor Department supports the requirement for CII facilities to write a Stormwater Pollution Prevention Plan (SWPPP) and implement minimum control measures (MCMs). This requirement would create consistency between Public Agency requirements in the MS4 Permit and the IGP. The MCMs outlined in facilities' SWPPPs, combined with the recommended targeted identification of pollutant sources allowed by a tiered, iterative approach (see Comment 2) as well as appropriate time period to implement these changes, along with the trash capture requirements that are part of the MS4 Permit, would go a long way toward sediment-based pollutant load reduction and capturing pollutants from dischargers who currently have no pollution control requirements. | Comment noted regarding MCMs which are referred to in the tentative CII Permit as minimum BMPs required in the facility's SWPPP. The tiered, iterative approach is not a part of the revised tentative CII Permit. Please see response to comment #10.2. |
| 10.6 | Section 4.3. Discharges of Trash: this requirement will be very expensive and difficult to implement as written. This requirement calls for full capture systems anywhere that trash may be discharged into receiving waters, without specifying how this requirement would be implemented. Further, because the Residual Designation is directly associated with the Harbor Toxics TMDL, the Draft CII does not appear to be the appropriate vehicle to require trash compliance, as not all permittees discharge into waterbodies with trash TMDLs.<br><br>If this requirement remains, full trash capture devices should be prioritized in areas that can then be designed into BMPs in and around inlets to capture targeted pollutants based on sampling results. If an iterative, adaptive management approach were allowed (see Comment 2), this would then be an effective additional means towards targeting and controlling pollutants. | Section 4.3 of the tentative CII Permit specifies that Permittees may comply with the trash prohibition using any lawful means, including the implementation of certified full capture systems. Attachment A further defines full capture systems. |
| 10.7 | Section 9.3.2.12. Sampling Event Visual Observations: oil and grease are not included. It is recommended this be added, consistent with the IGP. | The Discharger is responsible for visual observations of oil and grease as part of the Order section 9.3.3.3.4 and Attachment E |

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| | | Monitoring and Reporting Program, section 2.2.4.3.4., Sampling Event and Visual Observations. |
| 10.8 | Section 3.1 Applicability: The Draft CII Permit fails to adequately define the discharging entity. Clarification is needed as to whether the owner or lessee is considered the discharger. As municipal Harbor Departments are public agencies as well as owners of land in the Port Complex, it is unclear what their role is, as it is our understanding that the Draft CII Permit is intended to cover privately-owned facilities that point to the lessee being the discharger. The IGP in section XXI.K.5.b identifies the "operator" as the Duly Authorized Representative. The Construction General Permit in Attachment A, Section E.17 identifies the property owner as the Legally Responsible Person. The Regional Phase I MS4 National Pollutant Discharge Elimination System Permit (MS4 Permit) in Section I identifies the 99 listed municipalities as the dischargers.<br><br>The Draft CII Permit fails to clarify this point, leading to confusion on the part of regulators and the regulated community. The legally responsible party will differ depending on whether a facility has one or multiple users, as in a commercial shopping center or an industrial facility with subleasors. This adds further confusion without clear definitions. The Draft CII Permit should clearly identify the legally responsible parties for compliance with the permit. | Permit Applicability in Section 3.1 has been revised to align with U.S. EPA's revised preliminary designation. Publicly owned and privately operated CII facilities in ports are included in the U.S. EPA's preliminary designation memo and are subject to the tentative CII Permit.<br><br>A definition for Discharger has been added to clarify who may be responsible for enrollment and compliance with the tentative CII Permit. The revised tentative CII Permit also includes a revised section 5.2.2 of Attachment D to clarify who qualifies as a Legally Responsible Party. |
| 10.9 | Provide clarifying language on whether a CII site can terminate coverage by reducing impervious area to <5 acres. For larger developments such as shopping centers that have many parcels within the development, the CII Permit is unclear on whether only those CII parcels with ≥5 acres impervious are considered Permittees. This would result in scenarios where only some CII parcel owners in a larger common development are subject to the Permit. The permit should provide clarification on this. | See response to comment # 5.11. |
| 10.10 | Following the same logic outlined in Comment 9, provide clarifying language regarding status of permit coverage if a CII site subdivides, subleases, or downsizes their ≥5 acres parcel to <5 acres. | See response to comment # 5.11. |
| 10.11 | Section 8.1, Compliance Option 1, needs to be further developed to encourage collaboration for developing meaningful and implementable pollutant reduction strategies and projects. Targeting legacy pollutants is a regional problem and therefore requires a regional solution. The Harbor Department applauds the Los Angeles Regional Water Quality Control Board's (LARWQCB) effort to reduce watershed loading, but valuable opportunities to tackle legacy | Please see response to comment #1.7, #1.8, #7.17, and #12.14 regarding the comment to expand Compliance Option 1 to include other groups outside of approved WMGs or use an in-lieu fee or mitigation fund.<br><br>Regarding the comment about the capacity of regional projects, please see response to comment #7.20 and #12.12. |

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| | pollutants in the watershed and in bedded sediments, the underlying cause for the majority of the Harbor Toxics TMDL impairments, have not been adequately addressed.<br><br>As proposed, Option 1 provides a mechanism for addressing watershed loading through the existing Watershed Management Groups. While a good step, we believe expanding Option 1 to include other existing groups, such as the Regional Monitoring Coalition (as required in individually issued NPDES permits), or allowing formation of new groups of dischargers will increase options for compliance and allow for resource pooling to address impairments in bedded sediment in the Dominguez Channel and Greater Harbor Waters. Pooling resources could assist with prioritized source control within the watershed based on source investigations, similar to the Load Reduction Strategy Adaptation for the Upper Los Angeles River bacteria TMDL.<br><br>Based on our ten year collaboration with the Dominguez Channel Watershed Management Group and quantity of our ≥5 acre parcels, it does not appear there are sufficient existing regional stormwater capture projects available for Compliance Option 1. Additionally, there is no requirement for Watershed Management Groups to include a CII-driven Compliance Option 1 Regional Project. Without a mechanism requiring this, this option would be difficult to implement.<br><br>To provide flexibility and assure the LARWQCB's preferred Compliance Option is utilized, the following provisions should be added:<br><br>1. Compliance Option 1 should not require a CII Discharger be specifically associated with an existing regional project or a project in the design or construction phase. The CII Permit should allow for the Watershed Management Groups, or the formation of a new compliance group with a MOU (analogous to the WMGs or RMC), to establish an in-lieu fee or mitigation fund that CII Permittees can participate in and pay into to identify, design, and construct future regional capture, remediation or water quality improvement projects.<br>2. Allow for agreements to participate in other stormwater quality improvement projects or off-site capture or filtration projects that may not be associated with a Watershed Management Group, such as on privately owned land or in concert with development projects.<br>3. Build on existing Low Impact Development Ordinances to target pollutants in the TMDL listings (and expand the focus from water collection to pollutant reduction). | The tentative CII Permit regulates discharges from CII facilities, not WMGs formed to comply with the Regional MS4 Permit. Hence, the tentative CII permit does not require WMGs to administer CII facility's participation in Compliance Option 1.<br><br>Regarding the last comment, low impact development (LID), Can be used to comply with the Planning and Land Development and Watershed Control Program provisions of the Regional MS4 Permit. The tentative CII Permit has additional requirements beyond the Regional MS4 LID provisions. The tentative CII Permit is intended to implement U.S. EPA's preliminary designation. As stated in the preliminary designation memo, U.S. EPA estimates that the designation would shift approximately 41.5% of the load reduction responsibility from the MS4 to CII sources. |

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| 10.12 | As written, there is not enough direction, structure, or flexibility to ensure that Option 1 can be an effective and equitable compliance option. Option 1 lacks specificity, and without a developed framework, may unwittingly overlook soil and sediment hot spots and exclude historically marginalized communities lower in the Dominguez Channel Watershed. See Comment 11 for a proposed solution to this issue. | Section 8.1 of the revised tentative CII Permit has been revised for additional clarity and specificity. It is not clear from the comment how the alleged lack of framework for Compliance Option 1 would overlook sediment or soil hot spots. Regarding the comment about the exclusion of marginalized communities, Please see response to comment #1.14. |
| 10.13 | Option 1 should allow for both concentration-based and load-based pollutant reduction activities to be consistent with the compliance options within the TMDLs. Currently, as written, Compliance Option 1 requires volume-based (load-reduction based) regional BMP sizing with no Reasonable Assurance Analysis (RAA), and does not allow for concentration-based pollutant reduction design. Without a RAA and source investigations, it is likely that volume capture projects will be expensive and overbuilt to capture the required volumes but will not actually achieve the goal of targeting and abating the most polluting areas and runoff. Additionally, not every land use associated with a project site can provide the same benefit to a watershed and may not be welcomed in a Watershed Management Group without substantial financial contributions. It is recommended Section 8.1 be revised to allow for both sizing options, consistent with TMDL compliance options. | Please see response to comment #3.42 and #3.43. Additionally, Section 8.1 of the revised tentative CII Permit has been revised to clarify that a pollutant level factor may be used to modify the funding level developed by WMGs. |
| 10.14 | The LARWCB should clarify whether participation in a regional project will apply to a parcel or to an operator in the case of a change of ownership or at least allow for the possibility of transfer if agreeable to the parties involved. Compliance Option 1 states that “Dischargers shall enter into a legally binding agreement with the local Watershed Management Group to fund, or partially fund, a downstream regional project included in a Watershed Management Program developed to implement requirements of the Regional MS4 Permit and approved by the Los Angeles Water Board.” From this language, if a 10-acre CII-permitted facility selected Option 1 for compliance, it is unclear whether the compliance through the regional project applies to the 10-acre site itself (the land) or for the facility operating on the site. If the operator moves the facility, it is unclear whether the compliance remains with the land or if the operator can apply the participation in the regional project at the new facility cite. Please provide clarification in the permit. | Please see response to comment #2.20. In the situation described, compliance through the regional project applies to the site itself (see response to comment #1.4). |
| 10.15 | All language for Compliance Option 1 refers to a single offsite project. Update to “project(s)” throughout to allow discharges to fund multiple projects to obtain compliance for the facility (85$^{th}$ percentile 24-hour storm equivalency). | Please see response to comment #9.13. |

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| 10.16 | The Harbor Toxics TMDL is sediment-based and does not include water column impairments. The Draft CII Permit should be revised to encourage collaboration with regional monitoring efforts, source tracking studies, and remediation projects targeting sediment impairments. BMPs and compliance options that target volume-reduction and upstream regional BMPs designed to reduce water-column-based impairments may reduce pollutant sources, but do not specifically target Harbor Toxics TMDL attainment in sediments. | The sediment-based waste load allocations are translated into water column equivalents in accordance with the Harbor Toxics TMDL implementation language (compliance option c) as described in Section 4.6.3.1 in the Fact Sheet. The WLAs assigned to "any future NPDES dischargers" are applied to CII Permittees. These WLAs are intended to address ongoing loading of pollutants and have different implementation requirements than those for other responsible parties assigned load allocations and waste load allocations in the TMDL. |
| 10.17 | Compliance Option 3 should be expanded to include all compliance options associated with the TMDLs, not just Waste Load Allocations. For example, Sediment Quality Provisions are alternative means of demonstrating attainment of the beneficial uses within marine sediments and should be included within the footnotes for Table 2 and Table 3 for the Greater Los Angeles and Long Beach Harbor Waters. | Effluent limitations for Compliance Option 3 are intended to be complied with at the discharge points from the facility. Please also see response to comment #9.22. |
| 10.18 | Section 3.1.2: Rooftops should not be included in the CII without supporting data. The basis for inclusion of rooftops in this Draft CII Permit has not been provided. Section 3.1.2 of the Draft CII Permit states that, "Facilities where a portion of the facility's impervious surface is covered by another permit must still obtain coverage under this General Permit for the remaining portion of the impervious surface (e.g., rooftops and parking lots)."<br><br>Rooftops are not uniform in construction and therefore pollutant loads in runoff from rooftop material itself cannot generally be assumed. One major and consistent source of pollutants to rooftops is atmospheric deposition, which is excluded from Total Maximum Daily Loads (TMDL) Waste Load Allocations (WLAs) calculations. Because the stated intent of the permit is to address point sources through WLAs, rooftops should not be included without supporting data. Please identify the data used to support the finding that stormwater discharges from rooftops are point sources and clarify why stormwater discharges from rooftops are covered under this Draft CII Permit. If data do not exist to support this conclusion, the specific reference to include stormwater discharges from rooftops should be removed from this Draft CII Permit. | This comment pertains to U.S. EPA's preliminary designation memo and is outside the scope of the action before the Los Angeles Water Board. |
| 10.19 | No direct mention of applicability to No Exposure Certification (NEC) or Notice of Non-Applicability (NONA) facilities is provided in the Draft CII Permit language or fact sheet. Applicability should be explicitly stated in the CII Permit. It would appear that facilities that | Please see response to comment #2.29. The tentative CII Permit is not intended to penalize Dischargers for preventing exposure of pollutants from industrial activities but to require them to focus |

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| | moved their pollutants under a roof and received an NEC under the IGP are essentially being penalized. | on the pollutants from the impervious surfaces that are causing or contributing to impairment to the receiving water. |
| 10.20 | Should rooftops be included in the Draft CII Permit, a list of appropriate treatment BMPs should be provided and an iterative approach used to assess treatment success and modified as needed. This will allow for a more implementable approach, with acceptable BMPs clearly outlined and a stepped process and appropriate timeline for implementation. | Please see response to comment #10.2. |
| 10.21 | Section 9.3. Compliance Option 3: The CII Permit should provide realistic accommodations for difficult to sample conditions. Further, it is recommended that the CII Permit incorporate more of the sampling accommodations included in the IGP. The IGP provides certain accommodations for stormwater sampling. For example, the IGP allows a facility to identify and sample at alternative discharge locations if a facility cannot sample at a certain location because of uncontrolled run-on or the discharge location is not accessible. (See IGP Permit Section. XI.C.3.a.) The IGP permit also allows facilities to reduce the number of samples collected if the facility has multiple discharge locations, but the operations and stormwater treatment implemented are the same in those locations. (See IGP Permit Section XI.C.3.4.) The IGP also allows facilities in Compliance Groups to reduce the amount of sampling that they perform. (See IGP Permit Section XI.B.3.).<br><br>Conditions lower in the watershed, such as seawater intrusion due to submerged or comingled areas, make many sampling locations difficult or infeasible. End of pipe discharges are often under wharfs or piers or impossible to access landside and often subject to tidal inundation.<br><br>Similar to the IGP, the CII Permit should include provisions to allow for selecting alternative sampling locations and to reduce sampling locations based on representative facility conditions. Selecting representative samples is critical to a successful, efficient and effective monitoring program as this focuses resources (financial burden, laboratory availability, etc.) and helps focus sampling and analyses to provide useful data points. | Please see response to comment #3.40 and #10.3. |
| 10.22 | Section 9.3. Compliance Option 3: Pollutants being monitored under the Draft CII Permit need to be consistent with those monitored under the IGP. The constituents monitored under the IGP are a different suite of pollutants than those outlined in Section 9.3 of the Draft CII Permit. As many IGP facilities may be able to transfer their properties to the Draft CII Permit, and commercial, industrial, and institutional facilities will have new stormwater requirements never before implemented, the Harbor Department suggests ensuring that pollutants in the | The tentative CII Permit has been revised to remove overlap with the IGP. Therefore, any permittees who are currently enrolled in the IGP must also enroll in the tentative CII Permit if their facilities meet the eligibility criteria of the tentative CII Permit. |

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| | IGP are also in the CII Permit along with the new CII Permit sample requirements to inhibit a decrease in the quality of stormwater discharge. | |
| 10.23 | Section 6.1.3.1.6: The term “waste” needs to be clearly defined and “washing” needs to be added to this list of potential pollutant sources. | As part of the SWPPP, section 6.3.1.7 of the revised tentative CII Permit requires the Discharger to identify potential pollutant sources in the facility including “…waste treatment and disposal area…”.<br><br>The definition of “Waste” in Attachment A of the revised tentative CII Permit” has been revised to be consistent with the definition in section 13050 of the Water Code.<br><br>Washing (vehicle washing areas, as implied by this comment) has been added to the list of potential pollutant sources. In Section 6.3.1.7. For more information on "washing" please refer to the Fact Sheet Section 4.4, Non-Stormwater Discharges: “Unauthorized NSWDs can be generated from various pollutant sources. Depending upon their quantity and location where generated, unauthorized NSWDs can discharge to the storm drain system during dry weather as well as during a storm event (comingled with stormwater discharge). These NSWDs can consist of but are not limited to; (1) waters generated by the rinsing or washing of vehicles, equipment, buildings, or pavement, or (2) fluid, particulate or solid materials that have spilled, leaked, or been disposed of improperly”. |
| 10.24 | Section 9.3.2.3.2: The term “contained stormwater” needs to be more clearly defined. “Associated with the discharge of contained stormwater” is unclear – the term “contained stormwater” needs to be more clearly defined. | "Contained stormwater" has been defined in Attachment A – Definitions as the stormwater discharges or runoff from NSWDs or QSEs that have been contained and/or prevented from entering drainage systems |
| 11.1 | We have a number of concerns about the suitability and implementation of the Draft CII Permit. In particular, although the perceived need for the Permit is driven by zinc and copper, as presently drafted, the Permit does not optimally target the most significant sources of zinc and copper. The primary sources of zinc and copper pollution are tire wear and brake pad usage, respectively, indicating that the Draft CII Permit should focus on parking lots and other areas with regular vehicular traffic. However, the Draft CII Permit broadly covers all “unpermitted CII sites with five (5) or more acres of impervious surface” and “permitted CII | The tentative CII Permit accurately reflects U.S. EPA’s preliminary designation memo. In addition, the Fact Sheet for the tentative CII Permit describes the nature of impervious surfaces as a source of pollutants and states, “pollutants can come from tire and brake pad wear, leaking automotive fluids, litter, and air deposition.” The tentative CII Permit thus focuses on parking lots and areas with vehicular use, but also other impervious surfaces |

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| | sites with five (5) or more acres of total area" in the target watersheds, regardless whether there is any vehicular use. Draft CII Permit, § 3.1.1. The Draft CII Permit therefore proposes to regulate many facilities which do not contribute meaningful copper or zinc pollution. Additionally, the Draft CII Permit appears to exclude publicly owned CII sites from coverage, which are also large contributors of copper and zinc due to high traffic flow. As drafted, the Permit is ineffective, inconsistent with the underlying purpose, and overly burdensome on facilities which do not pose any risk to water quality. | such as rooftops, which can accumulate pollutants from air deposition.<br><br>Please note that comments related to U.S. EPA's preliminary designation of sites to be regulated under this NPDES Permit are outside the scope of the action before the Los Angeles Water Board. |
| 11.2 | The Draft CII Permit should therefore be revised to provide Permit exclusions for low risk facilities which have five or more acres of impervious surface, but do not contribute to zinc and copper pollution because an insignificant portion (such as one or fewer acres, or fewer than 20 vehicle trips per day on average) of the impervious surface is open to parking or vehicular traffic. We therefore propose that the Draft CII Permit be revised to state the following:<br><br>3.1.1. Discharges under this General Permit include stormwater and authorized NSWDs from unpermitted CII sites with five (5) or more acres of impervious surface and permitted CII sites with five (5) or more acres of total area in the Dominguez Channel/Greater Los Angeles and Long Beach Harbor Watershed and the Los Cerritos Channel/Alamitos Bay Watershed. CII sites for which less than one acre of impervious surface is routinely utilized for parking or vehicular traffic are excluded from coverage under this permit. CII sites with an average of 20 or fewer vehicle trips per day are excluded from coverage under this permit. CII sites at airports are excluded from coverage under this permit from coverage under this permit. | The tentative CII Permit will be consistent with U.S. EPA's final designation of CII facilities in the two watersheds. See response to comment 11.1. |
| 11.3 | As presently drafted, the Draft CII Permit is poorly matched to its mission and will be unnecessarily burdensome to both administer and implement. In fact, Governor Newsom recently vetoed Assembly Bill 2106, which would have developed a similar statewide permit. Governor Newsom correctly determined that such permitting "would result in significant new costs" and that "[c]hanges to stormwater management would be best addressed in [the] budget process, working with existing authorities, and [as] outlined in the Water Supply Strategy implementation steps." Sept. 28, 2022 Veto of Assembly Bill 2106. Given the permitting schemes and measures already in place, the Draft CII Permit is neither necessary nor the best use of government resources. However, if it is to go forward, it should be tailored to focus on those areas driving copper and zinc concerns by excluding sites with minimal vehicular parking or traffic. | The sites regulated under the tentative CII Permit will be consistent with U.S. EPA's final designation. The Governor's veto of Assembly Bill 2106 has no effect on the applicability of the tentative CII Permit. |

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| 11.4 | The Draft CII Permit is intended to minimize stormwater and non-stormwater discharges of zinc and copper from CII sites. The primary sources of zinc and copper pollution are tire wear and brake pad usage, respectively from transportation sources. Thus, in order to achieve its intended purpose, a Draft CII Permit should be narrowly focused on regulating parking lots and other areas with significant vehicular traffic. As currently drafted, the Permit broadly covers all "unpermitted CII sites with five (5) or more acres of impervious surface" and "permitted CII sites with five (5) or more acres of total area" in the target watersheds. Draft CII Permit, § 3.1.1. The Draft CII Permit therefore proposes to regulate many facilities which do not contribute meaningful copper or zinc pollution, contrary to its intent. Additionally, the Draft CII Permit appears to exclude publicly owned CII sites from coverage, which are also large contributors of copper and zinc due to high traffic flow. The Permit is therefore ineffective, inconsistent with its intent, and overly burdensome on facilities which do not contribute to zinc and copper pollution. The Draft CII Permit should therefore be revised to provide for Permit exclusions for facilities which have five or more acres of impervious surface, but an insignificant portion of this impervious surface is used for parking or vehicular traffic. The Draft CII Permit should be revised to state the following:<br><br>3.1.1. Discharges covered under this General Permit include stormwater and authorized NSWDs from unpermitted CII sites with five (5) or more acres of impervious surface and permitted CII sites with five (5) or more acres of total area in the Dominguez Channel/Greater Los Angeles and Long Beach Harbor Watershed and the Los Cerritos Channel/Alamitos Bay Watershed. <u>CII sites for which less than one acre of impervious surface is routinely utilized for parking or vehicular traffic are excluded from coverage under this permit. CII sites with an average of 20 or fewer vehicle trips per day are excluded from coverage under this permit.</u> CII sites at airports are excluded from coverage under this permit. | Please see response to comment #11.1. |
| 11.5 | It appears that the U.S. Environmental Protection Agency (EPA) has only used the Residual Designation Authority (RDA) section of the Clean Water Act (CWA) one time in Los Alamos County, New Mexico, where unpermitted undeveloped areas of a Municipal Separate Storm Sewer System (MS4) were identified as impacting receiving waters. Based on inquiry and responses from EPA (R9RDA@EPA.gov), RDA's were also petitioned in 2013 and 2015 in Regions 1, 3, and 9 for CII Facilities specifically. Regions 3 and 9 declined to designate the stormwater discharges for NPDES permitting. Region 1 neither granted nor denied the petition, but committed to evaluate specific watersheds to determine whether site specific information will support such designations. As a result of the Region 9 Petitioner's challenge in 2018, EPA is now moving forward with the RDA and related CII Permit in Los Angeles. The | Please note that comments related to U.S. EPA's preliminary designation memo are outside the scope of the action before the Los Angeles Water Board.<br><br>Regarding the comment that release of the tentative CII Permit is premature in light of U.S. EPA's residual designation process, please see response to comment #2.2. |

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| | Regional Board released a Draft CII Permit for public comments on July 26, 2022 and intends to consider this permit on December 8, 2022. However, this is premature. EPA must comply with the Administrative Procedure Act (APA) (5 USC §551 et seq. (1946)) when implementing the RDA. The APA requires that agencies publish notices of proposed and final rulemaking in the Federal Register and provides opportunities for the public to comment on notices of proposed rulemaking. In support of its plans to exercise its RDA, EPA has circulated a Preliminary Designation Memorandum, which was not published in the Federal Register. EPA has not made any indication that it plans to prepare separate proposed or final documents which it intends to publish in the Federal Register. EPA has therefore failed to comply with the public notice procedures required by the APA. | |
| 11.6 | The Draft CII Permit lacks much of the specificity needed to implement an effective Storm Water Permit. Job losses impacting underserved communities as a result of medium and large business closing as a result of the cost to comply with the CII Permit, or businesses simply moving to other watersheds not subject to this CII Permit, can be expected. As is evident with the recently adopted Industrial General Stormwater Permit (IGP) (Order No. 2014-0057-DWQ as amended by Order 2015-0122-DWQ and Board Adopted amendments on November 6, 2018 (effective July 1, 2020)), the role out of Total Maximum Daily Load (TMDL) requirements which became effective July 1, 2020, and a Finalized IGP Document still not being made available is another example of a Regional Board with too few resources and too many Permits to be effective. The role out of TMDLs in the current IGP was new and difficult for Permitted dischargers to comply with and which businesses are still adapting their facilities to meet these lower compliance objectives Region wide (Los Angeles). To release an entirely new CII Permit that lacks specificity needed to ensure compliance will grossly overwhelm all businesses affected by this new CII Permit, is irresponsible, ill-timed, and needs greater consideration and review before releasing to the public or for presentation at a Board hearing at this time. | The tentative CII Permit is one of the Los Angeles Water Board's tools to improve water quality in multiple impaired waterbodies within the two watersheds subject to the permit. While there will be costs to implement the permit, the residents in the two watersheds, including those living in disadvantaged communities, will also benefit. Please see a discussion of economic considerations in the Fact Sheet, Section 3.11.4 of the revised tentative CII Permit.<br><br>The revised tentative CII Permit clearly defines options and path to compliance with TBELS and WQBELs. |
| 11.7 | The EPA's Residual Designation Authority and roll out of this CII Permit will not give the Regional Phase I MS4 Permit (Order No. R4-2021-0105) adequate time for the watershed groups to implement their Enhanced Watershed Management Programs (EWMPs). The Dominguez Channel EWMP (DC-EWMP) was approved by the LARWQCB on June 1, 2016 and lays out the requirements and programs that include oversight, inspection, and controls for Commercial, Industrial, and Institutional facilities within each Jurisdiction within the watershed. The EWMP lays out the pathway for the watersheds to meet the TMDLs timelines which are explained in the Reasonable Assurance Analysis (RAA) section of the DC-EWMP. | The development of the tentative CII Permit is timely and necessary to provide permit coverage for CII facilities that will be designated by U.S. EPA. Please also see response to comment #2.26 and #11.1. |

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| | Since the LARWQCB has approved the DC-EWMP and adopted the new MS4 Permit, Jurisdictions should be allowed to continue managing and implementing the inspection and oversight of Commercial and Institutional businesses within their controls. The IGP is sufficient as a standalone Permit targeting TMDLs in these watersheds. Additionally, Measure W (Safe Clean Water Impervious Parcel Tax Program) is already moving forward with the funding of projects needed to meet the water quality goals in each watershed. | |
| 11.8 | The American Rivers, the Natural Resources Defense Council (NRDC), and the Los Angeles Waterkeeper (Petitioners) claim that "currently unpermitted stormwater discharges from privately owned commercial, industrial, and institutional (CII) sites are contributing to violations of water quality standards" occurred on September 17, 2015, just shortly after the new IGP (See Comment 3) was rolled out. The subsequent denial by EPA and then the legal challenge that was lost and resulted in the rollout of this CII Permit doesn't seem to have adequately considered the new IGP, the new LA Region MS4 Permit, the EWMPs, and Measure W which was passed in a parallel timeline as the Petitioners legal challenge occurred. | The tentative CII Permit has adequately considered the IGP, the Regional MS4 Permit, WMPs, and Measure W through its applicability, provisions, and Compliance Options. See section 2.3 of the Fact Sheet for comments related to U.S. EPA's preliminary designation memo are outside the scope of the action before the Los Angeles Water Board. |
| 11.9 | As noted in Comment #4, Measure W was approved by the voters in 2018 (effective in December 2019). Measure W, called the "Safe, Clean Water Program", provides local, dedicated funding to increase Los Angeles County's local water supply, improve water quality, and enhance communities. The program generates up to $285 million each year to fund multi-benefit stormwater and urban runoff capture projects. Projects that assist in achieving municipal separate storm sewer system (MS4) permit compliance, utilize Nature Based Solutions, and/or provide benefits to Disadvantaged Communities are prioritized to receive funding to the extent feasible. The funding also helps watershed management programs implement their MS4 Permit obligations which were inadequately funded in the past. The CII Permit is likely to impede, rather than further, Measure W's aims. | The tentative CII Permit will not impede Measure W's aims. The tentative CII Permit will further Measure W's aims by shifting the burden of compliance from MS4 Permittees to CII Permittees, either by reducing loading from CII facilities on site through Compliance Options 2 and 3, or by providing funding to MS4 Permittees for regional multi-benefit projects through Compliance Option 1. MS4 Permittees can use the funding from Compliance Option 1 as a match when applying for funding from the Safe Clean Water Program, which will increase the competitiveness of their applications. By participating in Compliance Option 1, CII Permittees will support implementation of the multi-benefit projects in the WMPs to comply with water quality standards by TMDL compliance dates. Please also see response to comments #2.26 and #11.1. |
| 11.10 | The U.S. EPA concluded that CII facilities are contributors of pollutants and water quality standard violations based on modelling data performed for zinc and copper. The modelling did not review other pollutants in detail. These two pollutants have two primary sources: 1) copper from brake pads and 2) zinc from tire wear, both of which are transportation sources and present a regional constant input to any developed urbanized area. Additionally, | Please see response to comment #11.1.<br>Regarding the comment that the modelling did not review other pollutants, see response to comment #2.3. |

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| | atmospheric deposition from local and regional sources likely are comprised of transportation related sources. To force CII facilities to target all pollutants this permit seeks to address, presents a significant burden to those facilities which have no exposure and only have impervious surfaces to address. | |
| 11.11 | The Draft CII Permit classifies discharges covered under the Permit as minor discharges. Please provide a definition of “minor discharges” and how this is related to the CII Permit. | For discharges from non-publicly owned treatment works (non-POTW), several criteria, including toxic pollutant potential, flow volume, and water quality factors such an impairment of the receiving water or proximity of the discharge to coastal waters are evaluated to determine whether the discharge is a major or minor. Based on these criteria, the discharges covered under the tentative CII Permit have been classified as minor discharges consistent with the procedure in the NPDES Permit Writer’s Manual and the Basin Plan. |
| 11.12 | Under the premise of the modelling data stating impervious surfaces being the primary source of copper and zinc, and facilities with five or more acres of impervious surface needing to be regulated, suggests that the CII Permit also apply to Publicly owned facilities. The permit does not make clear whether the permit applies to public lands leased to private operators. | The revised tentative CII Permit has been revised for clarity. See the Order, section 3.1 and Fact Sheet, section 2.1 of the revised tentative CII Permit. |
| 11.13 | Because the RDA is intended for sites not covered by an NPDES Permit, the CII Permit should only apply to Commercial or Institutional sites. Industrial sites are already covered by the IGP and are already addressing the TMDLs in these watersheds. Additionally, the No Exposure Certification also covers industrial facilities by demonstrating they don’t contribute industrial pollutants of concern because of the nature of their covered business operations. Additionally, if the argument is that impervious surface is causing copper and zinc exceedances in receiving waters, the issue suggests that non-point sources are the problem. If a facility simply covers their entire property so no-exposure to pollutants exists, the only source would be buildup and washoff from local and regional atmospheric deposition (suggesting that other source control methods targeting transportation sources should be investigated as opposed to issuing a CII Permit to control impervious surfaces). | Regarding the comment that industrial sites are already covered by the IGP, including sites with an NEC, please see response to comment 2.26 and 2.29.<br><br>The comment that the buildup and wash off of pollution from atmospheric deposition is a nonpoint source is incorrect. A point source is defined in CWA section 502(14) and 40 CFR § 122.2 to include any discernible, confined, and discrete conveyance from which pollutants are or may be discharged. Once pollutants from the air are deposited on the land surface, and are conveyed through a storm drain, they are point sources. According to the TMDLs included in the tentative CII Permit, atmospheric deposition is only considered a nonpoint source in the specific situation where airborne pollutants are deposited directly on the receiving water, not where pollutants are deposited on the land and washed off into the receiving water. See for example the Los |

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| | | Cerritos Channel Metals TMDL, which states, “Once metals are deposited on land under the jurisdiction of a stormwater permittee, they are within a permittee’s control.” (page 25 of TMDL). |
| 11.14 | Section 5.3 on page F-49 of the Fact Sheet incorrectly states that a public hearing was conducted on October 13, 2022. | Comment noted. The October 13, 2022 date will be updated to reflect the actual date of a public hearing. |
| 11.15 | This statement should be clarified to state which portion of the site triggers coverage. For example, if a 5 acre impervious site has 2.5 acres covered under the IGP, the remaining area is only 2.5 acres, would that trigger CII coverage? | The answer to the example is yes. The remaining area that is not covered by the IGP would need to be covered by the tentative CII Permit. Areas such as rooftops, parking lots, driveways, etc. not currently covered under the IGP would require coverage under the tentative CII Permit. |
| 11.16 | The NOI requirement for Option 1 specifies that a copy of the agreement between the Discharger and the applicable local Watershed Management Group listed is in Attachment H, Table H-1. However, Attachment H provides little to no information on Watershed Management Groups (WMGs) or each of the Legally Responsible Persons (LRP) in each WMG. It provides no information about the specific contacts, the legal documentation, the timeline, process, etc. needed for filing an NOI for Compliance Option 1. Additionally, Attachment H provides no example agreement or standard contract. Based on recent WMG Meetings, the WMGs were not aware of this Permit and the WMGs are struggling to better understand how to develop agreements with well over several hundred private entities. They currently do not have an example agreement or process for this option.<br><br>Compliance Option 1 requires that the agreement “be signed by both the Discharger and the Legally Responsible Person for each member of the Watershed Management Group or the group’s fiduciary agent if the fiduciary agent is a Duly Authorized Representative for each member of the Watershed Management Group, and meet the minimum requirements established in section 8.1 of this Order.” Please provide a definition for a “fiduciary agent” and the contact information for the fiduciary agent of each applicable WMG. | Los Angeles Water Board staff are coordinating with WMGs on key program implementation needs, including identifying contact information that will be available to facilitate the enrollment process. Los Angeles Water Board staff will consider the commenter’s concern regarding an example agreement and determine an appropriate level of guidance for specifying terms in Compliance Option 1.<br><br>A definition of fiduciary agent as “the person acting for the benefit of another party as a bona fide trustee, executor, or administrator” has been added to the revised tentative CII Permit. |
| 11.17 | The Notice of Termination process in Section 3.5 implies that the coverage of the Permit applies to operators and not owners of the land. Yet, Section 3.6 seems to apply to owners of the applicable properties. This is why a clear definition is needed for the term “Permitted Discharger.” | Please see response to comment #2.20. |

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| 11.18 | The Petitioners claims for not meeting water quality standards was based on modelling data specific to copper and zinc. The modeling does not support the requirement for CII facilities to monitor for all the parameters required within their watershed, including PCBs, PAHs, pesticides, and bacteria. As such, the CII Permit should allow Dischargers to perform pollutant source assessments specific to their facilities. It should not require a facility to monitor for all parameters listed in Table 1 and Table 2. | Please see response to comment #2.3. |
| 11.19 | The requirement for CII Facilities to assess Toxicity should be removed. Toxicity assessments are applicable to receiving waters. TIEs/TREs are applicable to Individual Permittees with Waste Discharge Requirements where a process involving treatment and discharge to a receiving water would be used. If toxicity is included in the Permit, the toxicity test species should be listed. | There are currently two TMDLs for impaired waterbodies in the Alamitos Bay/Los Cerritos Channel Watershed and five TMDLs for impaired waterbodies in the Dominguez Channel/Greater Los Angeles and Long Beach Harbor Watershed. These TMDLs are for pollutants classified into the categories of bacteria, metals, nutrients, PAHs, PCBs, pesticides, toxicity, and trash. As documented in Fact Sheet section 2.4.2, various waterbodies in the Dominguez Watershed Management Area are on the 2018 CWA section 303(d) list of impaired waterbodies due to metals, DDT, PCBs, PAHs, historic pesticides, indicator bacteria, toxicity, and sediment toxicity. Therefore, the requirement for toxicity monitoring is retained in the revised tentative CII Permit. Toxicity testing requirements have been added to Attachment E of the revised tentative CII Permit. |
| 11.20 | It is unclear if the Watershed Management Groups (WMGs) will have sufficient project or area capacity to satisfy the private CII demand looking to fund Compliance Option 1 projects, as the WMGs already have projects identified to meet their existing municipal TMDL obligations. All compliance options should be open for permittees, and the Permit should provide the necessary flexibility in that regard.<br><br>Additionally, the dischargers should be allowed to partner directly with a City, County, Special District, or other entity beyond just WMGs. This will allow these jurisdictions better control the long-term agreements required to be managed.<br><br>Finally, the process of selection of regional projects is unclear. Will the regional watershed project be selected by EPA or the RWQCB? Please clarify which agency will have regulatory oversight of the project. | Regarding the availability of sufficient project or area capacity to satisfy the demand to participate in Compliance Option 1, please see response to comment #7.20.<br><br>Regarding the suggestion that Permittees mix Compliance Options, please see response to comment #2.27.<br><br>Regarding partnering with other entity beyond the WMGs, please see response to comment #1.7 and #7.17. |

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| 11.21 | Please specify the formula for funding an Option 1 Project. | Refer to section 8 in the revised tentative CII Permit for a funding level formula. |
| 11.22 | It is unclear which site-specific pollutant control measures are intended to apply to. Please specify if this is for the Regional Project or the Discharger's site. | This provision has been removed from section 8.1 of the revised tentative CII Permit. |
| 11.23 | How will dischargers reporting on Option 1 be able to verify the WMGs Projects are meeting the effluent limitations? Once a discharger enters into an agreement with the WMG, the WMG should bear the responsibility for compliance, as they are accepting the funds and operating these systems. There will need to be a structure in place or the Phase I MS4 Permit will need to be revised to ensure WMG Projects meet their objectives. Again, this presents a significant burden on both the Permit writers and the Municipal Agencies who are already developing projects to meet their municipal obligations. | There is no requirement for CII Permittees who chose Compliance Option 1 to verify that the WMG projects are meeting the effluent limitations. Compliance with the WMP timelines for project completion is the MS4 Permittees' responsibility. As long as the CII Permittee complies with the requirements of the agreement with WMGs and the requirements of the tentative CII Permit, the CII Permittee will be deemed in compliance with the tentative CII Permit. |
| 11.24 | Compliance reporting dates should align with the current Industrial Permit. Agreement renewals should be completed by June 30$^{th}$ each year to align with most cities' fiscal years, which are generally July through June of each year. | Please see response to comment #9.24. |
| 11.25 | There is no mention of reporting dates in section 9.2 (every two reporting years is all that is mentioned). Annual monitoring to verify functionality should be required.<br>Also, there is no discussion of bypass and whether bypass from Option 2 systems are required to be monitored. | The tentative CII Permit has been revised to clarify that annual reporting and visual observation of discharges and minimum BMP implementation apply to all CII facilities regardless of the Compliance Option chosen. The tentative CII Permit has also been revised to clarify that, under Compliance Option 2, visual observation of any bypass is required. Please see also specific requirements in Attachment I for CII facilities choosing Compliance Option 2. |
| 11.26 | Section 9.3.1.1.2.2 appears to reflect that dischargers selecting Option 3 have the ability to conduct a Pollutant Source Assessment (PSA) based on the facilities activities and not monitor all pollutants. Please list the required pollutants to be monitored or explicitly state that a PSA is permissible. | The section referenced in the comment requires the dischargers to develop a Site-Specific Monitoring and Reporting Plan. It requires the discharger to include a list of the pollutants that the discharger is required to monitor. These pollutants are based on the watersheds that the facilities are located within. Additionally, this section does not mention a Pollutant Source Assessment. |
| 11.27 | Southern CA has a limited number of storm events each year, making the requirement to sample four storms per year overly burdensome, particularly given the date constraints. | The storm water sampling frequency for discharges from CII facilities within the two watersheds is the same as for IGP facilities. Additionally, the sampling programs for the Regional |

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| | Phase I MS4 programs are only required to sample three storms per year. CII Permit holders should not be expected to meet more restrictive sampling requirements. | MS4 Permit include additional TMDL-specific monitoring, so the overall monitoring frequency is comparable. |
| 11.28 | Dischargers with multiple similar discharge locations should be allowed to perform a representative sample reduction justification for similar discharge types and operational areas. To require all discharge locations to be monitored is extremely costly. Run-on locations from other facilities should also be identified and described in this section. Additionally, Section 9.3.2.3 should either be cross-referenced or be merged with the discussion in Section 9.3.2.10 (alternative locations). | This permit requires that all discharge locations be sampled whether the discharges are substantially similar or not. Regarding run-on discharges from other facilities, please see response to comment 4.6. No cross reference is necessary because Sections 9.3.2.3 and 9.3.2.10 appear under the same sub-heading. |
| 11.29 | Because Option 2 employs volume based BMPs designed to the 85$^{th}$ percentile 24 hour storm event, most will be designed with bypass for larger storms. It appears that this statement presents a potential compliance concern for any discharger entering into Option 2. Also, in the definitions section on Page D-3 it states … "1.7.3. Prohibition of bypass. Bypass is prohibited, and the Los Angeles Water Board may take enforcement action against a Discharger for bypass, unless (40 CFR § 122.41(m)(4)(i)): it is not clear why this definition is included. | As clarified in the revised tentative CII Permit, the visual observation requirements in Section 9.3.3 are intended to implement the bypass prohibition in Section 1.7.3. |
| 11.30 | Please specify what the term "use" refers to in Section 10.1.2.2. Is this a requirement for all facilities to report their chemical inventories? | The interpretation that the provision refers to chemical inventories is partially correct. Section 10.1.2.2 states in full "Prior to use, the Discharger shall submit for Executive Officer's approval the list of chemicals and proprietary additives that may affect the discharge, including rates/quantities of application, compositions, characteristics, and material safety data sheets, if any." |
| 11.31 | Section 10.1.2.5 appears to suggest that all facilities covered under this CII Permit would be required to conduct a climate change assessment. Will facilities be deemed out of compliance if they do not perform this assessment? | Section 10.1.2.5 does not require submittal of a climate change impact assessment plan or report, however, if the facility location is not protected against extreme wet weather events, flooding, storm surges, and projected sea level rise, the facility would be out of compliance with this provision. Refer to Fact Sheet section 3.15 for information on measures to mitigate and adapt to climate change. |
| 11.32 | Dischargers should be granted a similar Exceedance Response Action process to the IGP, which allows for iterative BMP assessment and improvements. Otherwise, the new CII Permit will put nearly all facilities in jeopardy of instant compliance risks, mandatory minimum penalties, and have significant impacts on operating budgets. Additionally, the money spent | Please see response to comment #1.19. |

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| | on mandatory minimum penalties could instead be used to pay for additional BMPs on site. The lack of an ERA Process also puts the Regional Board at risk of resource-draining third party litigation. | |
| 11.33 | Section 10.5.2 states, "Upon reissuance of a new order, Dischargers authorized under this Order shall file an NOI or a new Report of Waste Discharge within 60 days of notification by the Executive Officer." Please provide additional information regarding the ROWD process. | The NOI process for dischargers wishing to enroll in the general permit is described in section 3.2 of the tentative CII Permit. The ROWD process applies to dischargers who wish to apply for NPDES permit coverage as an individual. The process for filing an ROWD is explained on the Los Angeles Water Board's website. (https://www.waterboards.ca.gov/losangeles/publications_forms/forms/) |
| 11.34 | Bacteria sampling requirements should be removed from this Permit. As evidenced by the recent CASQA three day summit on bacteria, this requirement would put an undue burden on all CII facilities. Due to the short holding times required by bacterial analyses, and lack of adequate laboratories to manage the number of samples that will be generated from this Permit, the costs will be exorbitant for Dischargers. Nor will bacterial analyses provide any value to CII Permittees.<br>If the Regional Board insists upon requiring bacterial analyses, Idexx methods should be allowed. | The tentative CII Permit reflects currently effective water quality standards and TMDLs. The California Stormwater Quality Association three-day summit on bacteria has no effect on this the tentative CII Permit.<br>Please refer to Attachment E for sampling collection and analysis procedures. |
| 11.35 | There are several definitions that are not described within the text of the Permit (e.g., Flow through BMPs and Green Roofs), and several definitions which could be more thorough (e.g., [insert]). It is recommended that the Regional Board review and thoroughly vet the definitions section of this CII Permit. | The Los Angeles Water Board appreciates this comment and the definition section of the tentative CII Permit has been updated. |
| 11.36 | The definitions of Bypass and subsequent Prohibition of Bypass needs to be considered in light of the Option 2 design standard of the 85$^{th}$ percentile, 24-hour storm event. Any storm event beyond that design criteria will result in Bypass to prevent flooding. If Bypass occurs, would this be a violation of the Permit? | Please see the response to comment #11.29. |
| 11.37 | Is Bypass allowed above the Option 2 design standard of the 85$^{th}$ percentile, 24-hour storm event? See comment above. | Please see the response to comment #11.29. |

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| 11.38 | Section 2.2.3.9 should be revised to state “Do not overfill sample containers that include preservatives, as this can affect analytical results.” | The tentative CII Permit has not been revised in response to this comment. Overfilling any sample container can affect analytical results. |
| 11.39 | Section 2.2.4.2: Because Bypass would occur above or beyond the 85$^{th}$ percentile, 24-hour storm event design storm or flow rate. Most dischargers will simply schedule their visual observations when Bypass would be unlikely. The Permit should require monitoring of Bypass when it is likely to occur or require monitoring data to support how often Bypass occurs and how much volume is released beyond the Bypass condition. | The concept of bypass only applies to Compliance Option 2, so it has been removed from Section 2.2.4.2 of Attachment E, which contains requirements for Compliance Option 3. |
| 11.40 | The entire Permit seems to have a disjointed discussion and absence of treatment control BMPs. Where Option 1 and Option 2 is not feasible for capturing, storing or infiltrating on site, a treatment system and subsequent discharge of treated stormwater will likely be needed by some dischargers as their only option for compliance. Not until the Fact Sheet page F-15 do we see this come up. Specifically, on Page F-43, the Fact Sheet states ” 4.9.2.1. The intent of this compliance option is to minimize the regulatory uncertainty and costs concerning treatment control BMPs. Section 9.2 of the Order and Attachment I specify a design storm standard for use when stormwater capture and treatment BMPs are installed….” However, Option 2 assumes no discharge will occur and is therefore prohibited (see I-1, 1.2). However, for Option 3, it assumes that if effluent limitations are not met, a treatment system will be employed and as such, a more thorough discussion of treatment control BMPs is needed. Pg. F-44 has a brief discussion on mosquito breeding issues related to standing water. | With Compliance Option 2, the Permittee shall design, implement, and properly operate and maintain storm water controls (structural and/or non-structural BMPs) with the effective capacity to capture and use, infiltrate, and/or evapotranspire all NSWDs and the volume of runoff produced up to and during an 85$^{th}$ percentile 24-hour storm event. The tentative CII Permit does not require capture of the volume exceeding the design standard nor does it prohibit discharges. When designing structural and/or non-structural BMPS, public health should be considered. |
| 11.41 | It is recommended that the Permit utilize the North American Industrial Classification System (NAICS) codes as opposed to SIC Codes. Please provide a specific list of facility codes, based on the NAICS codes, which would require coverage under the CII Permit. | Facilities subject to the tentative CII Permit are not based on NAICS or SIC Codes. Please see response to comment #3.49. |
| 11.42 | Most sanitary sewer agencies prohibit stormwater discharges. The Regional Board and EPA should pursue measures to secure access to sanitary sewers for stormwater discharge as BMPs. The IGP Permittees and Industrial Trade Groups have been trying to get sanitary agencies educated over the past 8 years to accept excess stormwater to comply with the IGP. However, the sanitary agencies are reticent when it comes to addressing stormwater. It is therefore unlikely that the numerous dischargers affected by this CII Permit will be successful at using sanitary sewer connections as an option. | When choosing Compliance Option 2, the Permittee may include BMPs that capture and divert the required storm water runoff volumes to a publicly owned sanitary sewer treatment facility, to an on-site facility for on-site use, to a regional reclaimed water distribution system, or a combination thereof. Sanitary sewer agencies have their own process to determine and issue sanitary sewer permits to accept certain discharges and volumes. Proposed discharges to a publicly owned sanitary sewer treatment facility or reclaimed water distribution system to comply with Compliance Option 2 shall be supported by a permit |

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| | | or by authorization in writing from the system's agency that specifically allows the proposed storm water flow rates. The minimum required storm water volume to be diverted shall be in accordance with section 8.2.1.1 of the tentative CII Permit. The diverted volume of storm water is not authorized to discharge into an MS4 or receiving surface waterbody from the facility. |
| 11.43 | Implementing infiltration projects has the potential to affect and alter plume conditions for active sites and sites that have obtained closure. Has the RWQCB's groundwater unit reviewed and identified sites where infiltration could affect ongoing remediation efforts in these watersheds? | When developing a SWPPP, the Permittee must disclose applicable information on any preexisting contamination in the soil or groundwater for any industrial or non-industrial pollutants at the facility that may be discharged or mobilized through infiltration to meet the protections. Please refer to Attachment I for additional information. |
| 12.1 | As an initial matter the Draft Permit fails to provide adequate definitional clarity regarding the types of facilities the permit seeks to regulate as well as the entity that will be subject to regulation for each facility.<br><br>The Draft Permit fails to provide any adequate definition for what constitutes a regulated industrial facility. While not clearly stated, the Draft Permit seems to imply that all facilities with SIC codes identified in Attachment A of the Industrial General Permit that have a total footprint of five or more acres will be subject to the Draft Permit. Commentors are concerned that applicability of the Draft Permit based on total area versus impervious area, as applied to Commercial and Institutional CII facilities is not supported by the facts regarding the sources of pollutants and conflicts with the State's goals of conserving and utilizing storm water as an asset through infiltration. Commenters suggest that industrial facilities be classified in the same way as commercial or institutional facilities as it pertains to consideration of triggering acreage. | The applicability of the tentative CII Permit is based upon U.S. EPA's preliminary designation. Please see response to comment #3.49 and #4.1. |
| 12.2 | The Draft Permit does not specify whether the definition of industrial CII facilities includes facilities with No-Exposure Certifications ("NEC") or Notices of Non-Applicability ("NONA"). Requiring coverage for facilities that have applied for and obtained an NEC or NONA creates a disincentive for industrial facilities to reduce pollution discharges through source control or to capture and use stormwater as a resource. Commenters suggest that the Draft Permit clearly exempt industrial facilities that have obtained either a NEC or a NONA. | Please see the response to comment #2.29. |

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| 12.3 | Finally, the Draft Permit appears to exempt industrial, commercial, and institutional CII sites on municipal airport properties such as big box stores, warehouses, car rental agencies, hotels, private life flight services and CalFire but fails to provide any basis for the exemption while, at the same time, failing to exempt other industrial facilities located on publicly owned land. Commentors suggest that the Draft Permit be amended to treat all private industrial, commercial, and institutional dischargers on public lands consistently. | The applicability of the tentative CII Permit is based upon U.S. EPA's preliminary designation. Please also see response to comment 7.3. |
| 12.4 | While it may be possible to imply the scope of industrial facilities that the Board seeks to cover under the Draft Permit, it entirely fails to address the situation for "commercial" or "institutional" facilities. In its July 15, 2022, Preliminary Designation Memo ("Memo"), EPA estimates that approximately 640 parcels would be included in its preliminary designation. However, neither the Memo nor the Draft Permit explain how the EPA arrived at this estimate. This lack of definition is exceedingly problematic for two reasons. First, it fails to define which commercial or institutional properties are the targets of the Draft Permit in a way that provides adequate notice to the discharger of its obligations. Second, it leaves to the imagination of the regulators and citizen suit enforcers who the "discharger" might be. | The applicability of the tentative CII Permit is based upon U.S. EPA's preliminary designation. To summarize:<br>EPA's methodology here, EPA used the Watershed Management Modeling System (WMMS) 2.0 model developed by the Los Angeles County Flood Control District, which uses the Los Angeles County Tax Assessor's parcel database. EPA used the County property use classification codes to "tag" the land use categories of all parcels within each watershed as commercial, institutional, or industrial.<br>For further information about U.S. EPA's methodology in estimating of the number of sites subject to the designation, please see the following files in the modeling package released at U.S. EPA's website (https://www.epa.gov/npdes-permits/residual-designation-authority-address-stormwater-quality-problems-epas-pacific) on August 16, 2022:<br>all_parcels_loads.xlsx<br>Paradigm Environmental Parcel Tagging Classification Scheme.pdf<br>Procedure for Estimating the Zinc Loads.pdf<br>Please also see response to comment #7.10. |
| 12.5 | Regarding the first issue, we assume that the EPA used North American Industrial Classification System ("NAISC") codes or a similar tool to arrive at its estimate that Draft Permit coverage would be limited to approximately 640 parcels. Commenters suggest that the permit incorporate a specific list of NAISC codes (like Attachment A of the IGP) that identifies the specific categories of commercial and institutional facilities that would be the | See response to comment # 7.10. |

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| | subject to the Draft Permit and a list of parcels by APN number that are proposed to be the subject of this Draft Permit. Providing a specific list of covered NAISC codes and parcels would avoid confusion as to who is covered and who is not. | |
| 12.6 | The second issue, while related to the first, concerns how to identify the Discharger once a parcel is determined to be subject to the Draft Permit. The Draft Permit defines Discharger as "A person, company, agency, or other entity that is the operator of the CII site or facility covered by this General Permit". However, the Draft Permit fails to define what is meant by "operator". The failure to define the term "operator" will lead to confusion and potential gaps or overlaps in Draft Permit coverage. | Please see response to comment #2.20. |
| 12.7 | Take for example a 25-acre shopping center with multiple stores. The owner of the property who extends leases to the stores and grants certain rights to use the common areas is engaged in commercial activities (NAISC code 531120) and has control over the entire parcel. The shop owners who lease the stores and, have rights to the use of the common areas such as parking lots, also engage in commercial activities (NAISC codes 45XXXX). The leases can run twenty to thirty years making it a challenge for various cost reimbursements to occur because of this permit. Assuming that the Draft Permit is intended to regulate the individual lessees as "operators", the Draft Permit fails to address how to calculate common area acreage such as shared parking lots, sidewalks, and other amenities for the purpose of determining if the individual lessee is large enough to be subject to regulation under the Draft Permit. Moreover, it is likely that the individual lessees will lack the authority to make major structural changes that would be necessary to implement either Option 2 or Option 3 as currently described in the Draft Permit and discussed below. Many of these shared or common area parking lots are tied up in long-term leases and will complicate how the responsible parties pay their fair share towards Option 1, 2 or 3. | Please see the response to comment #2.20. |
| 12.8 | Commenters suggest that the Draft Permit incorporate tables like the table in Attachment A of the IGP that identifies the types of "commercial" and "institutional" facilities subject to the Draft Permit by NAISC code. Moreover, commenters suggest that the Draft Permit make clear that the property owner is the "operator" for Commercial or Institutional facilities | Please see the response to comment #7.10. |
| 12.9 | The question of how to identify the discharger also impacts the issue of permit coverage on public lands that are then leased to private operators. The EPA Memo states:<br>"The proposal does not include facilities permitted under the Industrial Stormwater General Permit at airports in these watersheds. Most impervious surfaces at the airports are not controlled by private entities, but rather by municipal departments and | U.S. EPA's revised preliminary designation does not include any CII facilities at airports. The revised tentative CII Permit accurately reflects the revised preliminary designation. |

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| | as such, are already regulated under Regional Municipal Separate Sewer System NPDES Permit Order No R4-2021-0105" ("MS4 Permit")".<br><br>However, the language in the Draft Permit appears to exempt all commercial, industrial, and institutional dischargers at airports including those controlled by private entities.<br><br>"This Order regulates stormwater runoff and authorized NSWDs from unpermitted, privately owned commercial, industrial, and institutional (CII) facilities with greater than or equal to five (5) acres of impervious cover excluding airports and from permitted CII sites with five (5) or more acres of total area."<br><br>It Is not clear whether the drafter's Intended to exempt all commercial, industrial, or institutional discharges at airports or only those that are controlled by a public agency. However, if the drafters intended this broad exemption for airports, the same logic appears to apply to other publicly owned properties such as port facilities. Port facilities, like airports, are regulated by the MS4 Permit fence line to fence line. Port facilities, like airports may have industrial tenants that are subject to the IGP as well as other commercial and institutional dischargers. Neither the Memo nor the Draft Permit provide any information to support the proposition that public airports are somehow unique when it comes to MS4 Permit coverage for public property. Commenters request that all transport facilities on public land be treated consistently and in the same manner as proposed for airports. | |
| 12.10 | The Draft Permit allows for three compliance options. These are:<br><br>• Compliance Option 1 – Agreement with Local Watershed Management Group to Fund Regional Project<br><br>• Compliance Option 2 – Facility-Specific Design Standard to Reduce Stormwater Runoff<br><br>• Compliance Option 3 – Direct Demonstration of Compliance with Water Quality Based Effluent Limitations<br><br>Based on information available to commenters at this time the cost of compliance appears to range from a low-end estimate for Compliance Option 1 of $25,000 per impervious acre to a high-end estimate for Option 3 of $250,000 per impervious acre. Commenters are hopeful that these costs can be further refined and justified through the permit development process. | Comment noted. The Los Angeles Water Board is also developing a cost memo to provide more information to Dischargers when selecting a compliance option. |

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| 12.11 | Compliance Option 1. The Draft Permit provides the following description of Option 1 at section 8.1:<br><br>> Dischargers shall enter into a legally binding agreement with the local Watershed Management Group to fund, or partially fund, a downstream regional project included in a Watershed Management Program developed to implement requirements of the Regional MS4 Permit and approved by the Los Angeles Water Board. If a downstream regional project is not technically feasible in the Watershed Management Program, the applicable Watershed Management Group shall identify an upstream project with the Watershed Management Group's area. Specific details related to the funded project shall be documented in the agreement and submitted as described in section 9.1 of this Order. At a minimum, the regional project shall be adequately sized to address the NSWD and stormwater volume that would otherwise need to be addressed onsite under Compliance Options 2 or 3, and the funding level must be proportional to the NSWD and onsite stormwater volume to be addressed/total regional project stormwater capacity.<br><br>Unfortunately, this provision and those that follow it fail to provide adequate information for the prospective permittees to determine the cost or feasibility of compliance under this option. | Section 8 of the revised tentative CII Permit has been revised to provide a more detailed definition of the funding level. Please also see response to comment #12.10. |
| 12.12 | As an initial matter, it is unclear whether the Watershed Management Groups have the legal authority to enter into binding agreements or will have sufficient project capacity to satisfy the demand.<br><br>It appears that many of the Watershed Management Groups are more of the nature of ad hoc committees that identify and make recommendations on possible watershed projects than legally constituted entities with the power to enter into binding agreements. Commenters recommend that the RWQCB review the legal authority of the Watershed Management Groups to confirm their ability to execute contracts or, in the alternative, expand the scope of entities with which a discharger could contract to include all public agencies including, but not limited to, cities, the County, or Joint Powers Authorities | Watershed Management Groups have the legal authority to enter into binding agreements with CII Dischargers. They are more than ad hoc committees.<br><br>WMGs groups recognized by the Los Angeles Water Board as the entity representing various MS4 Permittees within one or more watersheds or subwatersheds located in a watershed management area and whose purpose is to improve the condition or prevent further degradation of a watershed or watersheds. WMGs are the administrators of the regional projects because they have the best understanding of their respective watersheds. WMGs are comprised of MS4 Permittees, which are counties and municipalities in the Los Angeles Region. The counties and municipalities certainly have the legal authority to enter into binding agreements with CII Permittees (who must be able to enter into such agreements as |

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| | | well), and cities and municipalities in WMGs will be able to determine project capacity.<br><br>The Los Angeles Water Board understands that WMGs have sufficient project capacity to satisfy the demand for regional projects. There are dozens of projects identified in current watershed management programs for the two watersheds (see Att. H). Dischargers can enter into an agreement to fund a new or existing regional project, and the permit has been revised to explain that funding can include the cost for initial construction, maintenance and operation, regional project revision and enhancement, administrative and other supplemental work (see section 4.9.1.2). In the unlikely event that there are no qualified projects in which to participate, there are alternative ways to comply with the tentative CII Permit.<br><br>Finally, the tentative CII Permit already includes the alternative of entering into a legally binding agreement with the WMG's fiduciary agent. |
| 12.13 | EPA's RDA memorandum estimates that there are approximately 640 parcels that would be the targets of the Draft Permit. Taking this estimate on face value and assuming that each parcel is only five acres, the likely demand for mitigation coverage would be in the range of 3,200 acres. However, commenters are aware of multiple parcels that could exceed 100 acres. Thus, commenters estimate the total mitigation acreage demand could be an order of magnitude higher or closer to 32,000 acres. Moreover, it is not clear that the mitigation projects currently being proposed by the Watershed Management Groups represent a 1:1 correlation with the impervious areas to be mitigated on a volumetric basis. Commentors believe that a more realistic ratio would be in the range of two acres of mitigation property for every one acre of impervious area. Thus, assuming EPA's estimate of 640 parcels to be correct, discharger demand for mitigation project would conservatively be in the range of 64,000 acres or approximately 96 square miles. The total area of the two watersheds that are the subject of the Draft Permit is approximately 170 square miles. | The U.S. EPA-conducted stormwater modeling is described in response to comments # 7.10 and #12.4.<br><br>For more information, please refer to Appendix 1 Table A of the United States Environmental Protection Agency *Request for Preliminary Designation of Certain Commercial, Industrial, and Institutional Stormwater Discharges in the Alamitos Bay/Los Cerritos Channel Watershed and the Dominguez Channel and Los Angeles/Long Beach Inner Harbor Watershed in Los Angeles County* Memorandum for the number of unpermitted CII parcels and total parcel area across the watershed.<br><br>The assumption of a 1:1 or 1:2 mitigation demand is not applicable to this permit. The intent of Compliance Option 1 is to reduce the pollutants from the stormwater runoff on a watershed basis. Compliance Option 1 is dealing with volume of stormwater runoff and pollutant reduction. The area of regional projects needed to reduce pollutant loadings are a fraction of the size of |

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| | | the area to be treated. Based on U.S. EPA's modeling, there are 5,164 acres of CII facilities with 5 acres or more of impervious surface comprising 0.00165% of the Dominguez Chanel watershed and 1,387 acres impervious surface comprising 0.00144% of the Los Cerritos Channel watershed. The area of the projects needed to treat the runoff from these facilities would be even less than that.<br><br>The Los Angeles Water Board expects that the addition of new funding streams for WMPs, such as funding from CII facilities, should help WMGs implement a greater variety of multi-benefit regional projects, in turn allowing broad Permittee participation in Compliance Option 1. From the Los Angeles Regional Water Quality Control Board Watershed Management Programs page, a common factor discouraging the implementation of regional projects is a lack of funding. (https://www.waterboards.ca.gov/losangeles/water_issues/programs/stormwater/municipal/watershed_management/baseline_permittees/index.html) |
| 12.14 | Commenters suggest that dischargers be permitted to enter into binding agreements with other public entities including, but not limited to, cities, the County, and sanitation districts. | The requirement in Compliance Option 1 that agreements be entered into with WMGs ensures transparency, accountability, and oversight. As part of the WMGs' reasonable assurance analyses, the watershed management programs predicted the pollutant reductions to be achieved with various watershed control measures to meet effluent and receiving water limitations. By requiring that agreements are with WMGs, the tentative CII Permit ensures that the regional projects will be designed, constructed, and maintained to attain effluent and receiving water limitations. See also response to comment 7.17. |
| 12.15 | Once again, the failure to define "owner" as part of the definition of Discharger, makes Option 1 vague, ambiguous, and consequently unenforceable. Who is responsible for entering into a binding agreement, the property owner, or the business operator? Does the legally binding agreement and the mitigation rights run with the land as a recorded document? Or is the legally binding agreement a contract between the Watershed Management Group and the lessee, which the lessee can then transfer to other properties or sell if it is no longer | Please see response to comment #2.20. |

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| | operating at the location for which the mitigation agreement was originally negotiated? Commenters suggest that the legally binding agreement be between the Watershed Management Group and the property owner so that the agreement runs with the land and the property owner be denominated as the Discharger on both public and private lands | |
| 12.16 | The Draft Permit appears to link sizing to project capacity specified on Options 2 and 3. Option 2 appears to calculate a compliance volume as the "effective capacity to capture and use, infiltrate, and/or evapotranspire all NSWDs and the volume of runoff produced up to and during an 85th percentile 24-hour storm event". However, Option 3 does not appear to have an effective design volume. Rather it appears to require treatment of all stormwater and NSWDs from the site. Commenters recommend that the Draft Permit provide a consistent compliance volume for all three options equal to all NSWDs and the volume of runoff produced up to and during an 85th percentile 24-hour storm event. | Compliance Option 3 does not have any design volume because dischargers choosing Compliance Option 3 shall demonstrate direct compliance with the water quality based effluent limitations established in section 7.2 of the tentative CII Permit by implementing the monitoring and reporting requirements described in section 9.3 of the tentative CII Permit. |
| 12.17 | As written, dischargers that select compliance Option 2 would receive an additional benefit in that they would be exempted from at least a portion of the Measure W Parcel Tax as they would no longer be discharging storm water or non-storm water up to the 85th percentile storm event. Commenters suggest that the Draft Permit clarify that dischargers who adopt Option 1 would also be eligible for the parcel tax reduction based on the fact the Watershed Management Group projects in which dischargers are investing achieve the same goal. | See response to comment #2.25. |
| 12.18 | Finally, Option 1 fails to define any of the terms or conditions to be included in the "legally binding agreement" between the discharger and the Watershed Management Group. This omission can only lead to confusion and, or contracts of adhesion. The California Legislature recognized this problem when they included the following language in AB-2106.<br><br>"The state board shall contemporaneously develop a model memorandum of understanding to issue with the publication of the draft statewide order for public comments that details the necessary components of an agreement between commercial, industrial, and institutional permittees and local municipalities for achieving offsite stormwater capture and use within the adopted final statewide commercial, industrial, and institutional NPDES order."<br><br>Commenters suggest that the Draft Permit follow the guidance provided by the state legislature and include a model memorandum of understanding that details the necessary components of any agreement between a discharger and a Watershed Management Group. The model memorandum should provide the total cost of a fully designed project and the total acreage of the project to establish a cost per acre value. The funding level should be based | The referenced language in regards to AB 2106, which did not become law, was intended for a potential statewide CII NPDES order, and not this tentative regional CII Permit. Furthermore, the referenced language is unnecessary. The tentative CII Permit includes several terms that can be included in any legally binding agreement that satisfied Compliance Option 1 (see, Sections 8.1. and 8.1.2). The Los Angeles Water Board recognizes that many Watershed Management Group projects are different, and that any such agreements require flexibility necessary to ensure that the needs of each particular Watershed Management Group's project are met, so that Compliance Option 1 for a particular CII Permittee will be satisfied. However, staff may consider if necessary the possibility of preparing a guideline agreement after adoption of the tentative CII Permit prior to the |

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| | on the acreage contribution by the regulated facility multiplied by the cost per acre of the regional project. This formula makes it fair and equitable for all parties and makes the funding burden consistent across all agreements. | deadline for Permittees to submit a notice of intent to enroll under the tentative CII Permit.<br><br>Additionally, the tentative CII Permit was revised to clarify the funding level for Compliance Option 1. The tentative CII Permit now states that the funding level must be proportional to the sum of NSWD volume and onsite stormwater runoff volume to be addressed relative to the total regional project, drainage area or water watershed stormwater capacity modified by pollutant level potential based on activity type. A formula has been included in Section 8.1 of the tentative CII Permit to determine what funding level is proportional to the sum of NSWD and onsite stormwater runoff volume of a particular Discharger. |
| 12.19 | Compliance Option 2. Under this option, dischargers can comply with the Draft Permit if they "design, implement, and properly operate and maintain stormwater controls (structural and/or non-structural BMPs) with the effective capacity to capture and use, infiltrate, and/or evapotranspiration all NSWDs and the volume of runoff produced up to and during an 85th percentile 24-hour storm event." However, the obligations placed on the Discharger in Section 2 Additional Requirements require the discharger to prove a negative when proposing infiltration. That is that the infiltrated stormwater and NSWD will never cause or contribute to the exceedance of a water quality objective or impair a beneficial use. Thus, for most dischargers, Option 2 is only viable where discharge to the sanitary sewer is both technically and economically feasible. While commenters support this option, we are concerned that it will have limited applicability unless dischargers are allowed to enter into binding agreements with sanitary sewer districts to accept the discharge at a cost that fairly reflects the cost to treat and recycle the water like Option 1 or, alternatively to delete Section 2 Additional Requirements and instead rely on MCLs. | The additional requirements listed under section 2 of Attachment I are to prevent any factors that may degrade receiving waters. These requirements are placed to ensure that the BMPs implemented under Compliance Option 2 will address the water quality of the stormwater runoff generated and to protect the water quality of receiving waters and groundwater resources. Therefore, this section 2 of Attachment I will remain in the tentative CII Permit. |
| 12.20 | Option 3 requires Dischargers to capture and treat storm water to exceedingly stringent contaminant levels prior to discharge. Best estimates of the capital costs to design, permit, and build stormwater conveyance and treatment systems that can achieve the required contaminant levels range between $100,000 and $250,000 per impervious acre serviced. Based on a conservative estimate of 32,000 acres as described above, regional capital cost of this alternative would be in the range of $320,000,000 and $800,000,000. Commenters base these cost estimates on treatment systems that have been installed at industrial facilities to achieve the Numeric Effluent Limits set forth in the Industrial General Permit in | The revised tentative CII Permit has analyzed the impacts of compliance costs in these specific watersheds, which include lower income communities.<br><br>Notably, the Los Angeles Water Board has also considered the impact of water quality pollution in these communities. As explained in the workshop during the development of this permit, the Los Cerritos Channel and Dominguez Channel/Harbors |

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| | Region 4. Moreover, based on experience in the industrial sector, Commentors anticipate that operations and maintenance costs of such systems will range between $10,000 and $25,000 per year per impervious acre serviced or a regional cost of between $32,000,000 and $80,000,000 per year. These costs do not account for the Measure W Property Tax that started in 2019 (or 2020). A typical 18–20-acre commercial property (Costco, Target, Home Depot, etc.) is already paying on average an additional $17-$20K per year in property tax per store for these same watershed objectives. It is not clear how smaller minority owned businesses, private schools, churches, and hospitals will be able to absorb these costs in lower income communities. Commenters suggest that these costs and their impacts on environmental justice be carefully analyzed prior to the adoption of this permit. | watersheds include highly impacted, underserved communities faced with disproportionate amounts of pollution. The tentative CII Permit will address one source of pollution by reducing the discharge of polluted runoff from CII facilities to receiving waters located within these communities. In addition, the types of implementation projects can yield multiple benefits, such as greener communities, improved water resilience, reduced flooding, and a lower heat island effect. |
| 12.21 | For the RWQCB to promulgate the Draft Permit as a NPDES permit, EPA must first use its residual designation authority pursuant to section 402(p)(2)(E) and (6) of the Clean Water Act (CWA), and 40 C.F.R. § 122.26(a)(9)(i)(D). However, as stated by the 9th Circuit Court of Appeal in *Environmental Def. Center., Inc. v. EPA* , the authorizing statutory provision (CWA § 402(p)(6)) is not a blank check but is designed to allow designation of individual or categories of discharges that may have a local impact. Such designation is an action that implicates the federal Administrative Procedure Act.<br><br>The Administrative Procedure Act (APA) (5 USC §551 et seq. (1946)) governs the process by which federal agencies develop and issue regulations. It includes requirements for publishing notices of proposed and final rulemaking in the Federal Register and provides opportunities for the public to comment on notices of proposed rulemaking. In addition to setting forth rulemaking procedures, the APA addresses other agency actions such as issuance of policy statements, licenses, and permits. It also provides standards for judicial review if a person has been adversely affected or aggrieved by an agency action.<br><br>Commenters believe that strict compliance with APA is a necessary precursor to any residual designation for the effected watersheds in the Los Angeles region. Commentors note that the Regional Water Boards or the State Water Board are free to promulgate Waste Discharge Requirements pursuant to the California Water Code. However, such an act would not provide citizen suit enforcers the authority to bring an action in either state or federal court. | As the commenters acknowledge, the Los Angeles Water Board need not wait until U.S. EPA issues a final designation to release the CII Permit, since it has authority to issue permits pursuant to the California Water Code. However, in this case, U.S. EPA has chosen to exercise its residual designation authority, and the Los Angeles Water Board is working in tandem with U.S. EPA to ensure that the CII Permit will be considered for adoption by the Board only after the residual designation is finalized. To the extent that the commenter is concerned about U.S. EPA's residual designation process, that comment is outside the scope of the action before the Los Angeles Water Board. |
| 12.22 | The Fact Sheet at 4.9.1.3 provides that: "The regional project shall be adequately sized to address the stormwater volume that would otherwise need to be addressed onsite under Compliance Options 2 or 3, and the funding level must be proportional to the onsite stormwater volume to be addressed/total regional project stormwater capacity". Commenters | Please see response to comment #12.16 regarding the volume standard. |

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| | note that Options 2 and 3 have different stormwater volume standards. Commenters request that the Draft Permit be clarified as to which volume standard is to be applied. Commenters further request clarification on what is meant by "the funding level must be proportional to the onsite stormwater volume to be addressed/total regional project stormwater capacity". | Please see response to comment number #12.18 regarding the funding level. |
| 12.23 | Draft Permit Provision 8.1.2.3. This provision provides: "Signed agreements submitted for purposes of permit coverage as described in section 3.2.1 of this Order shall at a minimum include: . . . [a]ll site-specific pollutant control measures required by the Watershed Management Group". Commenters seek clarification regarding the intent of this provision. Does it refer to the site-specific pollutant control measures associated with a downstream regional project or does this refer to the site-specific pollutant control measures located at the discharger's site? If the latter, commenters request clarification as to exactly how the Watershed Management Group would determine and communicate these requirements to the discharger. | Please see response to comment #11.22. |
| 13.1 | Section 8.1. Compliance Option 1 comment:<br><br>This section provides dischargers with the option of entering into an agreement with local watershed management group to fund a regional project in lieu of onsite mitigation. The section states: "At a minimum, the regional project shall be adequately sized to address the NSWD and stormwater volume that would otherwise need to be addressed onsite under Compliance Options 2 or 3." However, the requirement to "address" stormwater runoff does not necessarily mean that the runoff volume will be retained since some of the regional projects under Measure W utilize biofiltration or other management approaches which treat and release stormwater. This is a fundamentally different level of treatment than retention.<br><br>Recommended Change:<br><br>No change to this section is needed. However, Section 8.2 should be expanded to also include stormwater treatment BMP options that are at least as effective as systems used to "address" stormwater runoff by regional projects. These treatment BMPs should be allowed as a BMP based compliance pathway that does not require ongoing water quality sampling provided that they are properly sized and maintained. | The comment regarding Section 8.1, Compliance Option 1 is noted. The regional projects in approved WMPs (regardless of funding source) may not all be sized for the required volume retention, but these regional projects contribute to volume reduction and they comprise the WMGs' watershed strategies to reduce pollutant discharges and attain compliance with the water quality objectives by the TMDL compliance dates. Please see also response to comments #1.7 and #3.42.<br><br>Section 8.2 pertains to Compliance Option 2 and requires the Permittee to effectively capture and use, infiltrate, and/or evapotranspire all NSWDs and the volume of runoff produced up to and during an 85th percentile 24-hour storm event.<br><br>The tentative CII Permit has no constraints on the use of onsite effective treatment systems that treat and release to improve storm water discharge quality. Effective treat and release BMPs that can demonstrate compliance with numeric effluent limits would be appropriate under Compliance Option 3 instead of Compliance Option 2, which requires volume reduction. |
| 13.2 | 8.2. Compliance Option 2 comment: | The tentative CII Permit offers three compliance options for water quality based effluent limits. The discharger may choose |

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| | This section requires retention of the design storm. This may not be feasible for a variety of reasons, including high groundwater, low infiltration rate soils, contaminated soils, contaminated groundwater, or structural concerns. Constraining issues are more likely to be present in dense urban environments and in retrofit situations which will be typical of sites regulated under the proposed CII permit. Where full retention of the design storm is infeasible, another BMP based compliance option should be given that represents BAT/BCT and that can be implemented without triggering ongoing monitoring requirements. This would make the CII permit more consistent with municipal NPDES permit requirements which are applied on similar sites.<br><br>The best available technology for treating urban stormwater runoff that is also technically feasible on virtually all sites is biofiltration or media filtration that meets the Washington State Department of Ecology standards for Basic Treatment, Phosphorus Treatment and Dissolved Metals Treatment. There are currently several biofilters and media filters that are approved to meet all three standards. Systems meeting these performance standards are more effective at reducing discharged concentrations of common stormwater pollutants than conventional biofiltration which is commonly approved for use under the current Los Angeles Region MS4 permit. Conventional biofiltration is typically comprised of sand and compost materials and is known to be ineffective for nutrient removal and to have insignificant removal of dissolved copper . Therefore, specification of TAPE approved treatment systems provides better treatment than would be required on sites governed by the Los Angeles Region MS4 Permit. Following the logic in the current Los Angeles Region MS4 permit, treating 1.5 times the stormwater quality design volume with conventional biofiltration will produce similar pollutant load reduction as retention of the stormwater quality design storm. Therefore, treating 1.5x the stormwater quality design volume with treatment systems meeting the TAPE basic treatment, phosphorus treatment and dissolved metals treatment performance standards will provide better pollutant removal as compared to retention of the design storm.<br><br>The Draft CII Permit discussion in the fact sheet supports the inclusion of treatment controls. For example, footnote 25 of the fact sheet states that evaluation of best practicable treatment or control method should include assessment of “existing proven technology” and “the method currently used by the discharger or similarly situated dischargers”. This analysis should include among “similarly situated dischargers” those sites that are currently regulated by the Los Angeles Region MS4 permit. Allowing the use of effective stormwater treatment systems as a BMP based compliance pathway would provide CII permittees with similar post | the most feasible compliance option to implement at their site. We support the use of reliable and effective stormwater treatment systems that can address pollutants causing impairments in the watersheds, including metals. Where onsite infiltration is infeasible, volume reduction can be achieved by diversion to a publicly owned sanitary sewer treatment facility or to a regional reclaimed water distribution system with authorization from these agencies, for onsite use, or a combination thereof. The BAT and BCT standards apply the technology-based effluent limits in the tentative CII Permit and are not appropriate for the implementation of the water quality-based effluent limits. |

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| | construction mitigation options as would be available to them under the local municipal MS4 permit.<br><br>Recommended Change:<br><br>Amend Section 8.2 to allow stormwater treatment systems that have received General Use Level Designation for Basic, Dissolved Metals and Phosphorus treatment as a BMP based compliance pathway that does not require additional water quality monitoring on sites where retention of the design storm is infeasible onsite. Require demonstration of adequate initial sizing of these treatment systems and adequate ongoing operation and maintenance documentation to confirm that the Best Available Technology has been employed. | |
| 13.3 | Section 4.9.2.1 comment:<br><br>This section references treatment control BMPs and treatment BMPs in describing the intent of Section 8.2 of the Order. However, treatment BMPs are not currently a compliance option under Section 8.2 of the order. Pretreatment controls may be required in combination with infiltration BMPs as described in Appendix I. This section also states: “There is both a volume-based and flow-based design storm standard for this compliance option.” However, there is only a volume-based standard give in Section 8.2 of the Order.<br><br>Recommended Change:<br><br>Amend section 8.2 as requested in the previous comment to allow certain TAPE approved BMPs where onsite retention is infeasible. With that change, this section would not need to be changed. | Compliance Option 2 in Order Section 8.2 is intended to reduce volume of discharges to reduce the amount of pollutants in stormwater discharged from the CII facility, hence the volume-based standard. Treatment control BMPs may be used in Compliance Option 3.<br><br>The reference to a flow-based standard has been deleted from section 4.9.2.1 of the Fact Sheet. |
| 13.4 | Attachment I Section 1.4.6.1 comment:<br><br>This section provides water quality requirements for sites pursuing compliance under option #2. However, there is very little detail about what frequency of monitoring is required to demonstrate adequate quality of stormwater runoff prior to infiltration or of water that has been infiltrated. This section applies drinking water maximum contaminant levels to stormwater runoff and groundwater quality which is far beyond what is required by municipal or industrial stormwater NPDES permits. These drinking water MCLs are likely to be more stringent than the existing groundwater concentrations, especially for Total Dissolved Solids and Specific Conductance. If there are exceedances, treatment will likely require media filtration or active treatment methods to reduce dissolved constituent concentrations. This presents a potentially very high cost burden for sites that have any exceedance. It is also | Dischargers choosing Compliance Option 2 must meet MCLs for infiltrated water. As stated in Attachment I, section 1.1.4.6.3 "For influent not meeting MCLs, the Discharger shall pretreat the infiltration BMP(s) influent to comply with the State Water Board’s Division of Drinking Water MCLs referenced in Table I-1".<br><br>Attachment I, section 1.4 has been revised to provide additional details on monitoring and reporting requirements for the influent to infiltration BMPs. |

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| | possible that stormwater that comingles with groundwater and is monitored as required in section 1.4.6.1.2. will exceed MCLs for dissolved constituents.<br>Recommended Changes:<br>Remove references to drinking water MCLs. Clarify the frequency of sampling required and the basis for demonstrating compliance at the point of influent to an infiltration system. | |
| 13.5 | Attachment A comment:<br>This definition section appears to be very similar to the Los Angeles Region Municipal NPDES permit and includes terms like Biofiltration, Bioretention, Bioswale, Green Roof, Full Capture System, Nature Based Solution that are not included in this order. Additionally, terms like “dry well” that do appear in the order or attachments are not defined in the Attachment A.<br>Recommendation:<br>Review the definitions in Attachment A and revise to be consistent with the draft CII Permit. | Attachment A now contains definitions for all mentioned terms: Biofiltration, Bioretention, Bioswale, Green Roof, Full Capture System and is consistent with the MS4 and IGP Permit definitions as applicable. |
| 14.1 | First, TraPac has concerns as to why port terminals are included under this Permit, while other publicly owned properties such as airports and POTWs are not. Many other public facilities have similar land use and large amounts of impervious surfaces that result in similar discharge volumes and are both operated on publicly owned land. It should also be recognized that it is largely impossible to alter the infrastructure of the port complexes and may result in unanticipated, negative environmental impacts. The compliance options provided in the regulation for marine terminals are not cost effective and are infeasible given the location and size of these facilities. Because of the lack of viable compliance alternatives, the port complexes should not be included under the designation of the Permit. | This comment pertains to U.S. EPA's preliminary designation memo and is outside the scope of the action before the Los Angeles Water Board. |
| 14.2 | Compliance Options 2 and 3 are not feasible options for facilities in the Ports. Due to the geographic location of the Port Terminals and available infrastructure, it would not be possible to “design, implement, and properly operate and maintain stormwater controls (structural and/or non-structural BMPs) with the effective capacity to capture and use, infiltrate, and/or evapotranspire all NSWDs and the volume of runoff produced up to and during an 85th percentile 24-hour storm event” as described in Compliance Option 2. According to the *85$^{th}$ Percentile 24-hour Rainfall Isohyetal Map* provided by the County of Los Angeles Department of Public Works on the “Analysis of 85$^{th}$ Percentile 24-hour Rainfall Depth Analysis Within the County of Los Angeles”, the Port Terminals are expected to receive an average of 0.30 in of rainfall depth. Due to the acreage of impervious lands, one storm event can accumulate | Please see response to comment #3.33. |

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| | millions of gallons of rainfall to be captured. There is no technology that meets the additional design requirement of a "24-hour drawdown period" for the full 85$^{th}$ percentile volume. | |
| 14.3 | The design, construction, and continued maintenance of a project to comply with Compliance Option 2 would require more land than is available at the terminal and adjacent property. Even if it were possible to acquire additional land, the construction and maintenance requirements would negatively impact TraPac's business and create a ripple effect in the global supply chain. | Please see response to comment #3.33. |
| 14.4 | The lack of pollutant source assessment process is also a primary concern for Compliance Option 3. Under the current IGP, TraPac has identified its industrial areas on the facilities, the point pollutant sources associated with each location, and has continuously implemented best management practices (BMPs) to ensure our compliance. Additionally, TraPac has continuously used state of the art regenerative air sweepers over the entire terminal to reduce pollutants in the non-industrial, impervious areas. | Please see response to comment #9.19. |
| 14.5 | The Permit has a comprehensive list of pollutants that are required to be controlled at each facility. Some pollutants listed in the proposed CII Permit are not generated by TraPac's operations, rather by other operations. Thus, TraPac may be held responsible for pollutants outside of our control. Therefore, TraPac believes it would be necessary to have a pollutant source assessment process like that of the IGP that would require TraPac to control pollutants it has generated to the best degree possible to meet compliance standards. | Please see response to comment #2.3 and #9.19. |
| 14.6 | In addition, the Option 3 of the CII Permit should include a provision to reduce the number of monitoring locations similar to what is allowed under the IGP (e.g. Representative Sampling Reduction). Throughout TraPac's terminal, there are many additional discharge points that would require sampling which are in high-traffic and hazardous areas where people are not permitted to enter for safety reasons. Additionally, many outfall locations at the TraPac terminal receive stormwater from upstream/off-site sources prior to discharge. As a terminal, safety is the most important priority, and we would not want to put our contractors in danger to complete sampling at all locations such as these. | Please see response to comment #3.40 and #10.3. |
| 14.7 | Furthermore, the terminal infrastructure includes hundreds of catch basins and discharge points. Given it would be a requirement to sample at all discharge locations, large amounts of water would collectively need to be sampled and tested for stormwater-borne sediment parameters listed on Tables 2 and 4 of the Permit. Please provide insight and clarification that | An alternative analytical procedure method has been added in Attachment E Monitoring and Reporting Program section 2.2.2.2.7 of the revised tentative CII Permit. Using this alternative analytical method, the volumes of stormwater to be collected will |

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| | the Water Board has considered the availability of sampling contractors and laboratories have confirmed they would have the capacity to conduct all the necessary testing | be significantly reduced compared to the conventional analytical procedure.<br><br>The Los Angeles Water Board believes there will be sampling contractors and laboratories to be able to conduct sampling and analysis. A full list of accredited laboratories can be found at https://www.waterboards.ca.gov/drinking_water/certlic/labs/ |
| 14.8 | Lastly, TraPac has continuously invested in our terminal's BMPs and implemented new technologies that have been proven to reduce pollutants from entering discharge systems and the ocean. However, the limitations described above for Options 1 and 2 under the CII Permit would make many of these additions and financial investments obsolete. | The tentative CII Permit covers the non-industrial portions of the facilities (e.g., parking lots, rooftops, certain industrial areas) that are not covered by the IGP. The facilities who currently have coverage under the IGP for the industrial portions of their facilities must continue to comply with the IGP and separately enroll in the tentative CII Permit for the non-industrial portions of its facility. |
| 14.9 | While TraPac appreciates premise of Compliance Option 1, we have concerns that this option lacks sufficient detail and may not result in a feasible option. Given that there are at least 640 businesses that will be affected by this Permit who could also be interested in selecting Compliance Option 1, thus limiting TraPac's access to this compliance option. | Please see also response to comments #3.42, #7.20, and #12.12. |
| 14.10 | In addition, a primary concern of TraPac is whether or not there will be enough projects sizable enough to treat the equivalent stormwater discharge and authorized NSWDs for our facility based on the acreage of impervious land. | Please see response to comment #14.9. |
| 14.11 | Furthermore, based on the language of the Draft Permit it is unclear how compliance is expected to be reached year to year under Compliance Option 1.<br><br>For projects that take multiple years to complete and can potentially require continued funding for general maintenance, will the initial agreement with a Local Watershed Management Group be able to qualify for compliance for an extended period of time? Also, can the agreement itself be extended when applicable for continued compliance to be met by the permittee?<br><br>Additionally, what will be the monitoring expectations and reporting responsibilities of the permittee for the areas currently under the IGP if they were to be moved under the jurisdiction of the CII Permit under this compliance option? | The tentative CII Permit requires the Permittee to submit an annual report detailing their participation in the legally binding agreement with the Watershed Management Group through SMARTS by December 15th of each reporting year.<br><br>The Agreement must specify the timeframe of the agreement. Since the WMPs include multi-year strategies for obtaining financing for projects necessary to achieve pollutant reductions in the required timeframes to attain water quality objectives in the watershed, the timeframe of the agreement can be short term or extended. The CII Permittee may update their agreement with the Watershed Management Group, if necessary, by December 15th of each reporting year. |

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| | | The tentative CII Permit has been revised to remove the provision that allows permit coverage of IGP discharges under the tentative CII Permit. Therefore, any permittees who are currently enrolled in the IGP must also enroll in the CII Permit if their facilities meet the eligibility criteria of the tentative CII Permit. The monitoring requirements under Compliance Option 1 are specified in Permit section, 9.1 and Attachment E. |
| 14.12 | The Watershed Management Group independently holds plans and timelines of projects that we understand can fluctuate. However, if the specified timeframe or scope of the agreement changes outside of the permittees' control, what protections will be made for the permittees to remain in compliance with the Permit? Also, because the agreement with the Water Management Group would be made in good faith to meet effluent standards, if they are not able to produce the desired results or outcomes what would be the impact on facility compliance? | Please see the response to comment #14.11 regarding timeframe and scope of the agreement with a WMG.<br>If the WMGs are not able to produce the desired results or outcomes under the MS4 Permit, there is no impact on the compliance status of CII facilities that participated in funding regional stormwater projects. |
| 14.13 | Lastly, Section 8.1 states, "If a downstream regional project is not technically feasible in the Watershed Management Program, the applicable Watershed Management Group shall identify an upstream project with the Watershed Management Group's area." Due to the geographic location of the Port Terminals, a downstream regional project would not be possible. Please provide clarification on the meaning of what would be considered "technically feasible" and "unfeasible" to ensure Port Terminals will be able to select an upstream project under Option 1 for compliance. | Please see response to comment #1.4. |
| 15.1 | Does Compliance Option 1 include any onsite requirements that are not currently discussed in Order R4-2022-XXXX? | On-site requirements, such as minimum BMPs, are listed in section 6.5 of the revised tentative CII Permit and apply to all Dischargers. The requirement under Compliance Option 1 that Dischargers must implement any on-site measures set forth in their legally binding agreement with the Watershed Management Group (section 8.1.3.3) has been removed from the revised tentative CII Permit. |
| 15.2 | Will there be authorization for funding Watershed Management Program projects under Compliance Option 1, outside of the Discharger's/Permittee's specified Watershed? | There will not be authorization for funding projects outside of a Discharger's watershed. See also response to comment #1.4. |
| 15.3 | Additional Clarifications/Recommendations for Compliance Option 1 — Agreement with Local Watershed Management Group to Fund Regional Project | Dischargers must comply with the technology based effluent limitations and the SWPPP requirements regardless of the Compliance Option selected for the water quality based effluent |

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| | There are three items required as part of the application to be authorized to discharge under Compliance Option 1, including:<br>• 3.2.1.1. A completed NOI and signed certification statement;<br>• 3.2.1.2. A site-specific Stormwater Pollution Prevention Plan that meets the minimum requirements established in Section 6 of this Order; and<br>• 3.2.1.3. A copy of the agreement between the Discharger and the applicable local Watershed Management Group listed in Attachment H, Table H-1….<br>Under Section 6 — Requirements for Stormwater Pollution Prevention Plans, and stated in 6.1.6.2.5., Corrective actions the Discharger will take if a BMP is determined, or presumed to be, ineffective. Corrective actions will, at a minimum, include the requirements listed in Section 10.2.6 of this Order.<br>Under Section 10.2.6, Corrective Actions, 10.2.6.1 states that if there is an exceedance, or presumed exceedance, of an effluent limitation listed in Section 7 of this Order, the Discharger shall perform the following actions: (1) initiate an investigation for the cause of the exceedance, (2) implement appropriate BMPs to reduce the pollutant concentration to below the applicable limitation, and (3) evaluate the appropriateness of using alternative or additional BMPs. These corrective actions do not absolve the Discharger of liability for any violation of this General Permit related to the exceedance. However, failure to comply with these corrective actions will constitute an additional violation of this General Permit.<br>The RWQCB should clarify how the minimum BMPs and corrective actions will be determined to be sufficient for the CII Permittees which have been authorized with their obligations under Compliance Option 1. | limitations. For dischargers who have selected Compliance Option 1, the corrective actions do not apply to water quality based effluent limitations because they are deemed in compliance with those. Instead, the corrective action would apply to any presumed exceedance of a technology based effluent limitation. For example, if a BMP is not effective and causing a presumed exceedance, as determined through visual observations, then the discharger must take corrective action. |
| 15.4 | Additional Clarifications/Recommendations for Compliance Option 1. Sections 8 and 9.1<br>There are several additional clarifications needed with respect to agreements under Compliance Option 1, including the following:<br>• The RWQCB should clarify the term of the agreement established in Compliance Option 1, and if the CII Permittees have the options to select different Watershed Management Groups to participate, as needed, at different times.<br>• The RWQCB should also provide the CII Compliance Option 1 Permittees with the flexibility to switch to either Compliance Options 2 or 3 if these become feasible options to the facilities to better comply with the CII permit requirements | Regarding the comment about the term of the agreement, details of the term of the agreement should be developed between the WMG and the CII permittee. See section 8.1.2.3 of the revised tentative CII Permit.<br>Regarding the comment about selecting a WMG to work with, see responses to comments #1.4 and #15.2.<br>Regarding the comment about switching out of Compliance Option 1, see section 8.1.3 of the revised tentative CII Permit. |

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| 15.5 | There are three submittal schedules for the dischargers to be enrolled under the Compliance Options for the permit to discharge, including:<br>• 3.4.1. — Existing Dischargers that are not covered by the IGP who are applying for coverage under this Order must submit an NOI within 1 year and Permit Registration Documents within 2 years of the effective date of this Order.<br>• Existing Dischargers that are covered under the IGP who are applying for coverage under this Order as an alternative must submit an NOI along with permit registration documents within 1 year of the effective date of this Order. Existing Dischargers that are covered under the IGP, shall not apply to terminate coverage and shall continue to comply with their existing permit until coverage under this Order is obtained.<br>• 3.4.2. — New Dischargers applying for coverage under this Order must submit an NOI and Permit Registration Documents at least 45 days prior to commencement of the authorized discharge.<br>The RWQCB should allow sufficient time for the dischargers to evaluate, select, design, and implement a feasible Compliance Option at the facility, as Option 1 will require significant collaborations with the Watershed Management Groups on developing the proper project and selecting and drafting the compliance agreement. Also, Option 2 requires significant facility-wide design, implementation, and maintenance efforts to ensure permit compliance to the effluent limitations. | See section 3.4 and subsections of the revised tentative CII Permit, which contain the compliance timeframes that apply to prospective permittees. See also response to comment #6.10. |
| 15.6 | Compliance Option 1 — Agreement with Local Watershed Management Group to Fund Regional Project<br>What designates a project as “technically feasible”?<br>Do Dischargers/Permittees at the most downstream point of the Watershed (Port tenants), automatically qualify for an upstream project? | See response to comment #1.4. |
| 15.7 | Compliance Option 1 — Agreement with Local Watershed Management Group to Fund Regional Project<br>How do does a Discharger/Permittee determine the NSWD and stormwater volume to ensure an “adequately sized” project is funded? | Please refer to section 5 and subsections of the revised tentative CII Permit for information on NSWDs. As part of the SWPPP development and implementation at the site (section 6 and subsections of the revised tentative CII Permit), the Discharger must evaluate and identify pollution sources including NSWDs from its operations. |

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| | | Section 8.1 of the tentative CII Permit has been revised to clarify factors affecting funding level requirements for Compliance Option 1, including NSWD and stormwater runoff volume. See also response to comment #2.17. |
| 16.1 | Initially, for the first option (Off-site Compliance) to be realistic and feasible, the permitting process needs to take into account the documentation that a facility will need to develop in order to pursue this option. Under the current version of the permit, additional time will be required for the negotiation of any agreement including the fees to be paid, thus leaving the facility in a state of uncertainty as to whether this option for compliance will ultimately be viable. Moreover, while this process is on-going, the draft CII Permit would require compliance with its effluent limitations, forcing the facility to default to either the second or third option (On-site Compliance), and potentially making pursuit of this "option" less attractive than it should otherwise be.<br><br>Consequently, Union Pacific believes that, in order to facilitate making this "option" more workable, it should be permitted for a regulated party to contribute financially to the watershed management group toward a project or projects in the watershed, as opposed to identifying a specific project. Additionally, the terms of an agreement with the local watershed management group and either a fee structure or the methodology for a fee structure should be worked out in advance, so that a regulated entity has some idea of what they will be signing onto. Any fee structure should take into account the engineering design and review work that would need to be performed in order to calculate the fee. The agreement itself should be developed as a template by the Los Angeles Regional Water Quality Control Board (or the California State Water Resources Control Board) so the need to draft and negotiate an individual site agreement with the corresponding watershed management group is eliminated. Additionally, in order to avoid the need for on-site compliance pending finalizing any such agreement, the regulated community should be afforded some measure of a grace period for bringing the facility into compliance with the terms of the permit. | The two-year timeframe for submittal of Compliance Option Documents allows permittees time to negotiate their legally binding agreements with WMGs and provides time for permittees to increase their knowledge and evaluate their existing site infrastructure's capability to meet revised tentative CII Permit requirements. A permittee who selects Compliance Option 1 is not required to monitor or sample stormwater from their site during the interim period before the agreement takes effect. During the interim authorization period prior to submittal of Compliance Option Documents, all CII facilities must implement their SWPPP including required implementation of minimum BMPs and visual monitoring and reporting of discharges and BMPs in place.<br><br>The WMG will identify the project(s) that the permittee will contribute funds towards in their agreement. See also response to comment #9.13.<br><br>Language clarifying the required funding level has been added to section 8.1 of the revised tentative CII Permit. See also response to comment #6.2 regarding a template agreement and #3.43 regarding a fee structure. |
| 16.2 | With respect to sampling activities, sample collection for bacteria analysis is required for dischargers to the Dominguez Channel Estuary in the draft CII Permit. The analytical method hold time is very short (2 hours) and the analytical method identified requires that the samples must be collected from 6-12 inches below the water surface. No provision is made for surface runoff sample collection (EPA Method 1106.1). It will be difficult and expensive, if not impossible, for certain members of the regulated community to comply with these requirements both due to the logistical constraints of the hold times for samples taken in the | Permittees are not required to use EPA Method 1106.1. Permittees should select corresponding analytical test methods provided in 40 CFR Part 136 (see Attachment E section 2.2.2.2.6, Sampling and Analysis). For analyzing Enterococcus in non-potable water, as for Dischargers to the Dominguez Channel |

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| | LA Basin, as well as site specific issues concerning the depth at which samples must be taken.<br><br>The permit should specify a process for removing a parameter from a facility's monitoring requirements if sampling results show routine compliance with permit limitations or the facility, by its nature, is not reasonably calculated as a source for such a contaminant (e.g., bacteria). | Estuary, federal guidelines recommend standard method 9230.[1] Standard method 9230 recommends standard method 9060 for sample collection,[2] and standard method 9060 presents provisions for surface water sampling in 9060 A.3.c[3]. Dominguez Channel Estuary is a non-potable water body, so the maximum allowable holding time is 8 hours after sample collection[4]. Furthermore, a sample that cannot be analyzed within the 8-hour timeframe may be filtered in the field and stored on dry ice for later analysis through standard method 9230 E[5].<br><br>The tentative CII Permit does not provide a process for removing a parameter from monitoring if sampling results show routine compliance with Permit limitations or the facility determines it is not a source for such a contaminant. See response to comment #2.3 regarding CII facilities as a source of indicator bacteria and #9.19 regarding site-specific pollutant source assessment. |
| 16.3 | Additionally, the origin or basis for the metals loading estimate used in the permit is not clear. It appears that the metals loading estimate is derived from similar modeling performed for the LA River metals TMDL development. However, that loading estimate was based on industrial discharger sample results from facilities which may not be reflective of the entirety of the facilities to be covered by the draft CII Permit. | The metals loading estimate is consistent with U.S. EPA's preliminary designation. See response to comment #12.4. |
| 16.4 | Finally, it is unclear under the draft CII Permit how a facility is to demonstrate compliance for the sediment-associated effluent limitations, since this is presented as a 3-year average value in "mg/kg sediment" instead of a standard unit of measurement for stormwater of mg/L. | Determination of compliance for the 3-year average sediment-associated effluent limitations is determined yearly beginning the first year that a three year average data becomes available. Please see Section 11.2.6 of the CII Permit regarding compliance determination with a 3 year average effluent limitation. Further guidance regarding sampling and reporting |

[1] 40 CFR Part 136 (https://www.ecfr.gov/current/title-40/chapter-I/subchapter-D/part-136)

[2] 9230 FECAL ENTEROCOCCI - Standard Methods for the Examination of Water and Wastewater

[3] 9060 SAMPLES - Standard Methods for the Examination of Water and Wastewater

[4] 9230 FECAL ENTEROCOCCI - Standard Methods for the Examination of Water and Wastewater

[5] Id.

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| | | analytical results for sediment-associated samples has been provided in Attachment E, Section 2.2.2.2.7, Sampling and Analysis in the revised tentative CII Permit. |
| 17.1 | At the outset, we note that federal (National Pollutant Discharge Elimination System ("NPDES")) stormwater program regulates some stormwater discharges from three potential sources: municipal separate storm sewer systems ("MS4s"), construction activities, and industrial activities. Industrial activities are those that are specifically defined in 40 C.F.R. § 122.26(b)(14)(i)-(xi), and most of the categories included are determined by an operation's standard industrial classification ("SIC") code. Marine terminals are included in the broader category of "transportation facilities" in sub-paragraph viii. According to those regulations:<br><br>Transportation facilities classified as Standard Industrial Classifications 40, 41, 42 (except 4221–25), 43, 44, 45, and 5171 which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, airport deicing operations, or which are otherwise identified under paragraphs (b)(14) (i)–(vii) or (ix)–(xi) of this section are associated with industrial activity.<br><br>See 40 C.F.R. § 122.26(b)(14)(viii) (emphasis added). Based on the foregoing, generally for a marine terminal, only those (uncovered) areas where vehicle maintenance and equipment cleaning are covered under an NPDES permit. This is a relatively small area.<br><br>There is only one state that we are aware of that has expanded the area at marine terminals subject to NPDES permitting beyond vehicle maintenance and equipment cleaning and that is the State of Washington. Washington included this requirement in a general permit that was not challenged, largely because the industry was unaware of the potential regulatory impacts of the proposed permit language. The result has been disastrous for marine terminals there—requiring most to implement costly (exceeding tens of millions of dollars) best management practices ("BMPs") and treatment, which has largely been ineffective in improving water quality. We do not want the same mistake repeated here. Marine terminals have a significant portion of their facilities that are paved and as a result generates an incredible volume of stormwater. Given the location of marine terminals (at the waterfront), there is little land or ability to capture and effectively treat the stormwater. Thus, the cost of capture and treatment generally far outweighs the environmental benefit. | Comments related to U.S. EPA's preliminary designation memo are outside the scope of the action before the Los Angeles Water Board.<br><br>The Los Angeles Water Board recognizes the concerns regarding costs of implementation, and the unique location and land cover in marine terminals. The tentative CII Permit offers Permittees the flexibility of choosing one of three compliance options.<br><br>In the Fact Sheet, section 3.11.4 Economic Considerations has been added to the revised tentative CII Permit to present information on associated costs. Costs will vary per Discharger for their implementation of BMPs. |

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| | We understand that federal regulations at 40 C.F.R. § 122.26(a)(4) allows “the Director, or in States with approved NPDES programs, either the Director or the EPA Regional Administrator,” to regulate a discharge that they determine will “contribute to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States.” However, the EPA and Director have failed to show that the marine terminals impacted by this proposed permit will “contribute to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States.” They have failed perform an adequate analysis of the financial impact of this proposal on the facilities subject to this proposed designation and permit. | |
| 17.2 | Compliance Option 1 – Agreement with Local Watershed Management Group to Fund Regional Project. It is uncertain if local Watershed Management Groups have enough regional stormwater capture projects available for all Dischargers impacted by the Draft CII permit and seeking compliance under Compliance Option 1. We understand Compliance Option 1 is Regional Water Quality Control Board’s (“RWQCB’s”) preferred Compliance Option and we suggest RWQCB provide more flexibility and clarification for Compliance Option 1. Instead of making a legally binding agreement with a local Watershed Management Group to fund a regional stormwater capture project, RWQCB should allow facilities to work with any upstream Watershed Management Groups or other regional stormwater capture/improvement projects to establish a funding mechanism to identify, design, and construct stormwater capture or stormwater quality improvement projects. | Please see response to comments #7.20, #12.12, and #12.14. |
| 17.3 | Based on the Draft CII Permit Section 3.4 Timing for Submittal of Enrollment Documents, "Existing Dischargers that are covered under the IGP who are applying for coverage under the CII Permit as an alternative must submit both an NOI and Permit Registration Documents within one (1) year of the effective date of this CII Permit”. The Draft CII Permit does not provide sufficient time to allow Dischargers to work with local Watershed Management Groups for Compliance Option 1 to establish and resolve specific details related to the funded project including design storm size, captured storm volume, payment terms, applicable fees, timeframe of the agreement, site-specific pollutant control measures required by the Watershed Management Group, and etc. It’s also not clear if a Discharger can select a combination of Compliance Options 1, 2, and/or 3 for the CII Permit. Additional time and clarification is needed from the RWQCB. | Timelines have been updated in the tentative CII Permit. All existing Dischargers will have 1 year to submit their NOI and 2 years to submit SWPPP and Compliance Option Documents. The agreement with a local WMG shall be part of the Compliance Option Documents. Regarding the comment about combining Compliance Options, see response to comment #2.27. |
| 17.4 | In addition, according to paragraph 8 of the draft permit: “In complying with the water quality-based effluent limitations in section 7.2, the Discharger must choose one of the following three options…” The RWQCB should clarify that a permittee can utilize more than one | Permittees must choose only one of three Compliance Options. Please see response to comment #2.27. |

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| | compliance option to meet their obligations under the CII Permit. For example, if a site can infiltrate 70% of required volume for Compliance Option 2, they can choose to purchase additional capacity needed through Compliance Option 1. Additional discussion and examples should be included in the Fact Sheet, and SMARTS should allow for selection of multiple compliance options. | |
| 17.5 | Compliance Option 3 - Direct Demonstration of Compliance with Water Quality Based Effluent Limitations. Most of our outfalls are located alongside and under our pier. It is not feasible to sample from all outfalls and it's a challenge to comply with Compliance Option 3 due to safety concerns. These outfalls also receive off-site stormwater run-on that TTI does not control. Our facility has hundreds of discharge points through catch basins or trench drains and most of these discharge points are located in high-traffic areas, sampling from all these discharge points is also not feasible considering the required cost, time, and safety concerns. In addition, the CII permit should allow Dischargers to perform pollutant source assessment, a provision incorporated in the IGP and USEPA's Multi-Sector General Permit ("MSGP"), to identify if the facility is a source of the parameters in the CII Permit Tables 1 – 4 and allow Dischargers to implement effective control measures to control their respective pollutants generated from the facilities. | Please see response to comments #3.40, #10.3, and #9.19. |
| 17.6 | For certain parameters, significant volumes of stormwater must be collected from all discharge points. It's not clear that laboratories have the capacity to process stormwater samples collected from all discharge points after a storm event. Option 3 should allow selection of alternative sampling locations and allow representative sampling reduction as similar provisions to the IGP. | Assuming that this comment is referring to parameters that have sediment associated effluent limitations, there is an alternative procedure provided in Attachment E – Monitoring and Reporting Program section 2.2.2.2.7 of the revised tentative CII Permit that would require significantly reduced stormwater sample volume compared to the conventional procedure.<br>Regarding alternative sampling locations and sampling reduction, see responses to comments #3.40 and #10.3. |
| 17.7 | The CII Permit should include a similar BMP approach as the IGP and allow numeric action levels ("NALs") rather than effluent limits at the point of discharge. TTI has already implemented improved and additional BMPs to reduce pollutants generated from the facility. TTI purchased and utilizes two state-of-the-art air regenerative sweepers along with a scrubber sweeper throughout our facility including our industrial activity areas and non-industrial areas. TTI continues investing in BMPs to improve site's stormwater discharge quality. An additional regenerative sweeper is being procured and expected to be onsite and utilized during the 2022-2023 reporting year. TTI has worked with Waste Management to | NALs will not be incorporated in the tentative CII Permit. The Permittee will be responsible for complying with WQBELs. Please see response to comment #1.19.<br>The BMPs that have already been implemented to reduce pollutants from non-industrial areas of the facility, in addition to the minimum BMPs, would still contribute to pollution reduction |

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| | purchase dumpsters with lids to minimize exposure to stormwater. TTI teams send a prep checklist to all departments to assist in preparing our facility for storm events. Annual stormwater training is conducted for both day and night shifts. TTI also continues improving our sweeping effectiveness by evaluating our regenerative sweepers' efficiency, implementation frequency/timing, and training employees on proper maintenance for our sweeper machines. TTI deploys these BMPs throughout our terminal and stormwater discharge quality has continued to improve throughout the years. | regardless of Compliance Option selected for the tentative CII permit. |
| 18.1 | Definitions. As currently constructed, the draft CII Permit lacks definitions for key terms to help better understand the scope, applicability and other provisions. In this regard, we urge the Board to consider what additional definitions should be incorporated into such a new permit framework to assist with clarity of scope, impact and compliance.<br><br>CCEEB recommends that a definition of "impervious surface," in particular, be developed and incorporated into the draft CII Permit. The scope of what the Board deems "impervious" is unclear. Does this include gravel areas? Solely those asphalt and concrete "paved" areas where infiltration cannot occur? CCEEB urges the Board to include such a definition in the draft CII Permit that does not include gravel or other non-paved areas where infiltration can occur. | Attachment A, section 2, of the tentative CII Permit has been revised to include explicit definitions for "impervious" and "imperviousness," as follows:<br><br>Impervious Surface<br>Any surface in the urban landscape that cannot effectively absorb or infiltrate rainfall; for example, driveways, sidewalks, rooftops, roads (including gravel roads), compacted soils, and parking lots.<br><br>Imperviousness<br>The percentage of impervious cover by area within a development site or watershed, often calculated by identifying impervious surface from aerial photographs or maps.<br><br>These definitions are consistent with U.S. EPA's preliminary designation. |
| 18.2 | SECTION 1 – Facility / Discharge Information. Although the language suggests the draft CII Permit is intended to apply to stormwater and authorized non-stormwater discharges from privately-owned CII sites, the matrix of facilities the Board believes to be in scope includes some public entities. Further, the operational provisions of the draft CII Permit do not appear to again note the applicability to solely privately-owned facilities. In this regard, CCEEB urges the Board to include additional language throughout the draft CII Permit – in addition to the background and supporting documents – to further clarify and be explicit in the operational provisions of the draft CII Permit that it applies solely to privately-owned sites and does not apply to publicly owned sites. If it is the Board's intention that the draft CII Permit would also apply to certain publicly owned sites, CCEEB requests that the criteria for including these facilities be explained. CCEEB further requests that the notice for the permit be revised and | Consistent with U.S. EPA's preliminary designation, the tentative CII Permit applies only to privately-owned parcels in all portions of the Dominguez Channel/Inner and Outer Los Angeles and Long Beach Harbor Watershed and the Los Cerritos Channel/Alamitos Bay Watershed, except for the Ports of Los Angeles and Long Beach. In the Ports of Los Angeles and Long Beach, the CII Permit applies to privately operated CII facilities on publicly owned Port parcels.<br><br>See section 3.1 of the tentative CII Permit, which has been revised to clarify Order applicability. |

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| | reissued accordingly, so that publicly owned sites are provided clear notice to be able to evaluate the potential impacts to their facilities and operations and to provide comments. | The revised tentative CII Permit is being recirculated for public comment. |
| 18.3 | SECTION 2.4 – Scope & Applicability. While we can appreciate the interest in spreading the responsibility to non-permitted facilities who are deemed to be reasonably causing or contributing to pollutant loading in the designated watersheds, the expansion of scope to permitted facilities who are – and have been – doing the work to address water quality associated with their discharges irrespective of the specific threshold for non-permitted entities of 5-acres of impervious surface seems unfounded and unfair. In this regard, the draft CII permit, for permitted facilities, should only apply to those that have 5-acres of *unpermitted* impervious surface, not to all facilities with a 5-acre parcel that is already covered in some respect by a permit.<br><br>Additionally, the draft CII Permit is unclear as to the scope and applicability relative to sites greater than 5-acres that may have unpermitted wildlife/natural/wetland area. For such sites, the wildlife/natural/wetland area where there is no impact from the CII portion of the facility site should not count towards a responsible entity's 5-acre threshold for applicability.<br><br>For facilities that may have utility, pipeline, or rail lines coming to/from CII property that are not paved/impervious surfaces, the draft CII Permit is unclear as to whether such "contiguous" areas are subject to the draft CII Permit provisions. More specifically, the draft CII Permit is unclear whether or not the contiguous area for these purposes that are considered "rights of way" or "easements" are in scope. If they are in scope under the draft CII Permit, the Board should provide further clarity as to who is deemed the "responsible entity" for compliance and/or whether there is an obligation to obtain CII coverage for these areas if they are not associated with "impervious surfaces." | See response to comment #4.1. |
| 18.4 | Pollutants. CCEEB notes that water quality standards apply in the receiving water, not at the point of discharge. Further, CCEEB remains concerned – as it has been with efforts to include NELs in other permit structures – about permittees' ability to comply with NELs, as best management practices (BMP) may not exist to sufficiently address the relevant pollutant thresholds.<br><br>Also of concern, the draft CII Permit fails to provide any mechanism for facilities to demonstrate and avoid noncompliance for pollutants that are deemed to be background sources or from other facilities/properties. The draft CII Permit should incorporate clear parameters and processes by which permittees can evaluate background and regional sources to assess whether they are reasonably responsible for causing or contributing to | Attainment of water quality standards is measured in the receiving water. Effluent limits in permits that implement TMDLs, such as the tentative CII permit, generally apply at the point of discharge. The requirement that NPDES permits must contain effluent limits and conditions consistent with the requirements and assumptions of the WLAs in TMDLs is explained in section 4.6.3.1 of the Fact Sheet. Permittees must comply with all applicable effluent limits required by the TMDL(s) that apply to their site. |

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| | pollutant loading. In this regard, the draft CII Permit should address compliance obligations – or the lack thereof – associated with aerial deposition of pollutants on rooftops, paved surfaces, etc., where the permittee is not reasonably responsible for causing or contributing to the impairment associated with that pollutant.<br><br>Finally, CCEEB recommends the Board review the limits within the draft CII Permit relative to zinc. We have heard concerns about the limits in the draft CII Permit not aligning with those in the IGP, which are already incredibly challenging if not impossible to meet. | Fact Sheet, sections 3.11.4.1.1, 3.11.4.1.2, 3.11.4.1.3, 3.11.4.1.4 and all subsections therein, provide published data evaluating the effectiveness of some of the BMPs that could be implemented to comply with the tentative CII Permit.<br><br>U.S. EPA's exercise of its residual designation authority, that requires regulation of the highly impervious CII facilities, stemmed from a court ruling that these facilities are significant sources of pollutants causing or contributing to impairments in the two watersheds. However, the tentative CII Permit does not preclude any demonstration that a facility's exceedances are caused by other facilities, i.e., run-on. With respect to regional, background or depositional sources, impervious surfaces regulated in the tentative CII Permit have a proven link to heightened pollutant accrual and run-off during storm events because heightened imperviousness prevents the natural infiltration and removal of pollutants from stormwater. See Fact Sheet section 2.3 and all cited studies therein for further information.<br><br>Regarding the comment that the zinc effluent limits do not align with those in the IGP, please see response to comment #1.32. |
| 18.5 | Compliance Options. CCEEB appreciates the incorporation of compliance options for permittees subject to the draft CII Permit. However, we urge the Board to incorporate language to provide that discharges shall be deemed in compliance with water quality standards when the Permittee is:<br><br>• In full compliance with permit conditions, including maintaining the facility SWPPP and conducting required sampling, monitoring, reporting, and recordkeeping;<br>• Fully implementing the facility's SWPPP, including site- and activity-appropriate minimum best management practices;<br>• In compliance with implementation requirements related to exceedances of TMDL-based limitations, including advanced BMPs where indicated; and<br>• Such language can/should be adapted from Washington State's 2020 NPDES Industrial Stormwater General Permit as relevant for the draft CII Permit. | No change is necessary. The CWA requires stormwater NPDES permits to include technology-based requirements at a minimum. (See, e.g., 33 USC § 1342(p)(3)(A).) Creating and implementing the facility's SWPPP, sampling, monitoring, reporting, and recordkeeping constitute technology-based effluent limits, as described in section 4.6.2 of the Fact Sheet. The tentative CII Permit additionally contains numeric water quality based effluent limitations because CII facilities have the reasonable potential to cause or contribute to an exceedance of a water quality standard in the receiving water, as described in section 4.6.3 of the Fact Sheet. If the minimum requirements are not sufficient to comply with the water quality based effluent limitations, additional onsite BMPs may be implemented, or the facility can participate in an offsite regional BMP. Permittees may choose among the onsite |

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| | Additionally, the draft CII Permit compliance options should be revised to provide credit for BMPs / treatment systems already in place for compliance purposes. | Compliance Options 2 or 3 or offsite Compliance Option 1 to comply with the Order's water quality based effluent limitations. Because the permittee is in compliance with the chosen compliance option by – among other things – either funding part of a regional project in an approved WMP (Compliance Option 1); reducing a specified volume of stormwater runoff by onsite infiltration (Compliance Option 3); or showing compliance via monitoring, this presumption of being deemed in compliance is unnecessary.<br><br>Moreover, incorporating the suggested actions to be deemed in compliance is incompatible with the adopted TMDLs and would not guarantee compliance with the water quality based effluent limitations. However, the tentative CII Permit offers onsite and offsite compliance options that rely on advanced BMP implementation and do not require onsite demonstration of compliance with effluent limits. |
| 18.6 | SECTIONS 3.2.1; 8.1 – Compliance Option #1. Is the expectation that WMGs accept all permittees who request to participate and are willing to enter into a formal agreement, including coverage of reasonable costs? Language should be included in the adopting resolution, if not the permit itself, to set the expectation that if a permittee wishes to join a Watershed Management Group they should be accepted. | WMGs are not subject to coverage under the tentative CII Permit. WMGs cannot be compelled to broadly accept all CII Permittees. However, section 8.1 and subsections of the tentative CII Permit provide general requirements and guidelines for the WMGs and the Discharger regarding participation in funding a regional BMP (Compliance Option 1) including a fee structure that considers stormwater volume and pollutant contribution from the facility |
| 18.7 | The presumption is that fees levied on participating permittees by the WMG will be used to support implementation measures to address water quality issues associated with the discharge for the purpose of compliance with the draft CII Permit. In this regard, language should be included in the draft CII Permit, or at minimum in the adopting resolution and/or guidance, to set the expectation that if permittees enter into a regional agreement and pay the requisite fees to do so, the funding invested as part of the agreement will go towards ensuring compliance with the draft CII Permit, including provisions that once the permittee that has entered into the agreement, the permittee is deemed in compliance explicitly. | The revised tentative CII Permit states that dischargers selecting and in compliance with Compliance Option 1 shall be deemed in compliance with water quality based effluent limitations. Permittees who select Option 1 must therefore comply with all applicable Order requirements, including any additional terms agreed upon within the legally binding agreement that Permittees create with the WMG. |

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| 18.8 | For those facilities paying into a Watershed Management Group who are also subject to the Los Angeles Regional Measure W Tax, the Board should clarify what level of contribution towards the WMG is expected of permittees to avoid double dipping for the same stormwater and non-stormwater discharge projects and purposes. | See response to comment #2.25. |
| 18.9 | Language should be incorporated to provide clarity and key guidance to WMGs regarding how fees/funding are expected to be assessed on permittees entering into the regional agreements. CCEEB urges the Board in this regard to base – or at minimum provide clear guidance via the adopting resolution or formal guidance – fees on volume of stormwater/non-stormwater discharges to the WMG, not on a business or facility's value. | See response to comment #5.14. |
| 18.10 | If a permittee already has an agreement with an MS4 and/or wastewater treatment facility to take and manage the permittee's discharges, the facility should be deemed in compliance under Compliance Option #1; such facilities should not be burdened with an added layer of compliance. CCEEB urges to the Board to specifically provide for this in the draft CII Permit. | The Compliance Options, including Compliance Option 1, are for compliance with water quality-based effluent limitations, which are specific to the tentative CII Permit. An established agreement with a WMG may be used to comply with the CII Permit if it incorporates the minimum requirements set forth in section 8.1 and subsections of the tentative CII Permit. |
| 18.11 | CCEEB members already covered by the IGP should be provided clarity about how their IGP coverage and compliance is impacted (or not) by participating in this compliance option via a WMG for merely the non-industrial portions of their facility. | Please see response to comment #4.1. |
| 18.12 | Permittees who have an agreement with a municipality to receive discharges from municipal property during large storm events should be provided compliance credit under the draft CII Permit. To this end, language should be explicitly included in the agreement with the WMG to provide a funding credit equal to the volume associated with the municipal property discharge – something the Board should incorporate into the draft CII Permit, or at least the adopting resolution and/or formal guidance. | The current Compliance Option 1 language is intended to allow permittees flexibility when negotiating their legally-binding agreements with a WMG. The Los Angeles Water Board will review the unique terms of this subset of agreements on a case-by-case basis as they arise. |
| 18.13 | SECTION 3.2.2; 8.2 – Compliance Option #2. Similar to the IGP, the draft CII Permit requires retention of the 85th percentile storm event in order to utilize despite the fact that such a threshold is not a realistic compliance option in the designated watersheds for the vast majority of sites. Given this, it is important that the Board provide additional clarity that this compliance option not only encompasses mere capture, but also includes a combination approach of capture, reuse, retention, treatment, and/or sending to sewer system. | The 85th percentile storm event is a realistic threshold. As explained in section 4.9.2 and subsections of the Fact Sheet, the $85^{th}$ percentile design storm standard is based on optimizing stormwater runoff volume diversion/retention for water quality treatment against economic considerations, where the $85^{th}$ percentile standard can be summarized as the cut-off point of diminishing returns for runoff treatment. Furthermore, the Compliance Option 2 language specifies that a structural BMP should have the "effective capacity to capture and use, infiltrate, |

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| | | and/or evapotranspire all NSWDs and the volume of runoff produced up to and during an 85th percentile 24-hour storm event" (Section 8.2.1 in the tentative CII Permit). Attachment I, sections 1.1.1 and 1.1.2 also include a combination approach as commented. |
| 18.14 | SECTION 3.2.3; 8.3 – Compliance Option #3. The most difficult of the compliance options, this provision would require straight compliance with permit provisions and requirements. However, it should be noted that BMPs that have been implemented for the purpose of other permits are often designed for specific flow thresholds and as such may not be able to accommodate additional flow capacity. In this regard, permittees who have established BMPs in place should be grandfathered in and credit should be provided for the pollutant(s) those BMPs are addressing.<br><br>Finally, the draft CII Permit should be revised to incorporate flexibility relative to requirements associated with Mosquito Abatement and Vector Control requirements. More specifically, for pesticides used at a site where a facility contracts with an external company, consideration should be given and flexibility provided where Mosquito Abatement and Vector Control requirements by a municipality require usage for health and safety considerations. | The revised tentative CII Permit allows permittees up to two (2) years to implement any site changes necessary to achieve the pollutant load reductions necessary to comply with Permit requirements that may be greater than those required by other NPDES Permits (Section 3.4.1 in the tentative CII Permit). Compliance Option 3 was included to provide permittees who do not choose Options 1 or 2 with the opportunity to comply with the CII Permit. The current Compliance Option 3 language is consistent with this intent of providing flexibility.<br><br>The tentative CII Permit must comply with the Basin Plan. As such, it contains a prohibition of discharges that contain any substances in concentrations toxic to human, animal, plant, or aquatic life. To the extent that a facility contracts with a company for mosquito abatement and vector control, it is the facility's responsibility to ensure that applied pesticides are not discharged from the facility. |
| 18.15 | SECTION 3.4 – Timing for Submittal of Enrollment Documents & Effective Date. CCEEB notes the inequitable application of timelines for submission of enrollment and the effective date under the draft CII Permit between non-permitted sites and those sites already covered by a permit. Already-permitted facilities should not be required to expedite coverage a year earlier than non-permitted sites purely because they already have some semblance of coverage for the industrial portion of their facility. The expansion of scope and coverage the draft CII Permit will entail for such already-permitted facilities is likely to require new BMPs, treatment systems and/or new/additional compliance options that may take time to assess, develop and implement. In this regard, it is not appropriate nor is there appropriate justification to bifurcate and set different timelines for permittees, particularly when all covered permittees are the focus of the draft CII Permit for their impervious surfaces not already permitted. | See section 3.4 and subsections of the revised tentative CII Permit, which contains equal timeframes for submittal of enrollment documents for all existing dischargers. |

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| 19.1 | For consistency across permits, use the two-word term storm water/non-storm water, not one word stormwater/non-stormwater. | There has been a recent trend in the State's stormwater program to use the one-word term stormwater. |
| 19.2 | Clarify the basis of the exclusion of airports. | Please see response to comment #7.3. |
| 19.3 | To avoid duplicate coverage, replace "total area" with "impervious surface not already covered by another permit." | The tentative CII Permit reflects U.S. EPA's preliminary designation. |
| 19.4 | Remove "where a portion of the facility's impervious surface is" and insert at the end "if that remaining portion is five (5) or more acres."<br><br>New suggested wording to read "Facilities covered by another permit must still obtain coverage under this General Permit for the remaining portion of the impervious surface, if that remaining portion is five (5) or more acres" | The tentative CII Permit reflects U.S. EPA's preliminary designation. |
| 19.5 | Current Notice of Termination (NOT) procedures for the Industrial General Permit (IGP) require a permit number and date of coverage for NOT approval if regulated by another permit. Please confirm that State Water Board staff for the IGP have been consulted and will approve NOT for IGP-covered sites that want to apply for coverage with the CII as an alternative. | The tentative Permit has been revised to exclude the option for facilities covered under the IGP to be covered under the tentative CII Permit. |
| 19.6 | Details of requirements for Options 2 and 3 are provided; so, in order to evaluate the feasibility of Option 1, include details such as a template agreement that will provide additional details on the terms and conditions required for the Regional Project Agreement. Include responsibility for water quality monitoring in the regional project and indemnity for the CII entities who contribute funds to the project but may not necessarily be contributing runoff to the project (i.e., downstream CII entities paired with upstream projects). Include how the frequency of contribution to a project will be determined. Clarify if the funded project has to exist in the same watershed. Clarify if companies are allowed to fund their own projects within the watershed. Confirm that the project does not have to be contiguous to the property subject to the permit. | Comment noted. The Los Angeles Water Board is working with WMGs on a transparent and equitable fee structure and process for Compliance Option 1 participation. See response to comment #6.2 regarding the suggestion to develop a guideline agreement with the WMGs. With regards to the comment about the terms of the agreement, please see response to comment #15.4. With regards to the comment about indemnity for CII facilities who contribute to a regional project, see response to comment #9.10.<br><br>Please refer to section 8.1 in the revised tentative CII Permit for additional information.<br><br>If a company wants to fund their own projects within the watershed, they can do so by choosing Compliance Option 2. This project must be located within the company's property within the same watershed that the facility is located in. |

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| 19.7 | Clarify how the annual fee for CII will be administered e.g., a flat fee, or based on acreage. This determination will affect decision for regulatory compliance options (e.g., IGP and CII or CII-only coverage). | The annual fee will be determined by the factors identified in Section 8.1 of the revised tentative permit. |
| 19.8 | Consider inserting the words “maintenance contractors” at the end of the sentence. | The suggested text has not been added. The provision refers to the systems themselves. |
| 19.9 | For consistency across permits, include the following as a listed authorized non-storm water discharge:<br>“Irrigation drainage and landscape watering provided all pesticides, herbicides and fertilizers have been applied in accordance with the manufacturer’s label.” | For CII facilities, the suggested discharge is controllable onsite and therefore, not listed as authorized non-storm water discharge under the tentative CII Permit. |
| 19.10 | Facility Name and Contact Information details often change, thus requiring administrative burden to update the Stormwater Pollution Prevention Plan (SWPPP). Reduce information required for this section to include position within the organization. Confirm what details will be required if the facility is defined as the facility/property owner, as opposed to facility operator. | The SWPPP can identify solely the positions in the organization responsible for implementing the SWPPP. However, the SWPPP onsite and in SMARTS must identify and keep current the contact information for the individual(s) implementing the SWPPP.<br>The definition of Discharger in Attachment A has been revised. Please see also response to comment #2.20. |
| 19.11 | For the Site Map, it may be difficult to identify facility information when there are shared areas, such as boundary, storm water collection and conveyance systems, parking and waste storage when there are shared areas. Consider revising definition of facility/discharger/operator in order to clarify Site Map requirements. | Please see response to comment #2.20. |
| 19.12 | Include the following regarding Minimum Best Management Practices (BMPs) requirements: “to the extent feasible” and include the following footnote:<br>For the purposes of this General Permit, the requirement to implement BMPs “to the extent feasible” requires Dischargers to select, design, install, and implement BMPs that reduce or prevent discharges of pollutants in their storm water discharge in a manner that reflects best industry practice considering technological availability and economic practicability and achievability.<br>This is supported by the statement on Page F-26 that the CII sites are diverse and “the selection, applicability, and effectiveness of a given BMP is often related to facility-specific facts and circumstances” such that requiring all the minimum BMPs is not feasible. | Please see response to comment #23.17. |

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| 19.13 | For compliance Option 1, to allow for flexibility in identifying projects to participate in, consider adding “or other available existing or planned regional project(s)” to the Local Watershed Management Group. | Please see response to comment #9.3. |
| 19.14 | To help make Option 3 feasible, allow for samples to be collected at discharge locations to be representative of the drainage area discharge characteristics by including a phrase to allow exception for Representative Sample Reduction and include Representative Sample Reduction requirements in the CII consistent with the IGP. | Please see response to comment #3.40 and #10.3. |
| 19.15 | Keep this clause that alternative discharge locations can be identified in the Monitoring Plan | Comment noted. |
| 19.16 | Replace “effluent limitation” with “Numeric Action Level” (NAL) and include iterative process for action in the CII, not immediate non-compliance. Include additional training requirement for sites that exceed NALs. Replace existing sampling regime with “indicator parameters” of pH, TSS, & O&G, with additional parameters, when indicated, by the Site’s SWPPP Pollutant Source Assessment. | NALs from the IGP are not incorporated in the tentative CII Permit. The approach to regulating stormwater pollution has evolved over time, and the tentative CII Permit constitutes a different approach from the IGP. Instead of the iterative methodology used in the IGP, the tentative CII Permit is focused on immediate application of numeric effluent limitations along with three compliance options. The compliance options in the tentative CII Permit are designed to directly require CII sites to attain water quality standards regardless of their history of compliance or noncompliance with numeric action levels. |
| 19.17 | Discharger—Due to the nature of common or shared areas that may be present at a CII site, clarify the definition of discharger. If the discharger is defined as the operator, there are liability issues due to run-on at shared areas. If the discharger is defined as the property owner, the requirements for onsite compliance Options 2 and 3 are not feasible to implement where property owners are not onsite for operational activities. | Please see the revised definition of Discharger in Attachment A of the revised tentative CII Permit. |
| 19.18 | Run-on–Definition only addresses industrial activity; replace the word industrial with the abbreviation CII. | Comment noted. Run-on definition now reads:<br>“Discharges that originate offsite and flow onto the property of a separate facility or property or, discharges that originate onsite from areas not related to the CII facility and flow onto areas on the property with CII facility.” |
| 19.19 | Legally responsible party is defined as a responsible corporate officer; however, the requirements of the CII are tied more to the landowner, than the potential shared operations | Please see revised definition for Discharger in Attachment A and response to comment #2.20. Section 5 of Attachment D has also |

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| | of multiple businesses/corporations on one CII Site. Clarify the discharger, legally responsible person (LRP), property owner, and Site operator responsibilities. | been revised to clarify who can serve as a Legally Responsible Person. |
| 19.20 | Table 1 includes annual reports for Compliance Options 1 and 2 that do not correspond to IGP reporting schedule, which may cause compliance burden and confusion for sites that are covered by both IGP and CII. Compliance Option 3 does not appear to have an Annual Report requirement, please confirm. | Please see Table E-1 of Attachment E in the revised tentative CII Permit for Annual Report requirements. |
| 19.21 | Reword to state that effluent from infiltration BMP(s) demonstrate compliance with NALs (instead of influent to infiltration BMPs demonstrate compliance with maximum contaminant levels [MCLs]). Remove monthly sampling requirement and replace with quarterly to generally correspond to IGP and QSEs. | Monthly sampling of influent to the infiltration BMP(s) to demonstrate compliance with Compliance Option 2 also considers potential discharges of NSWDs in addition to frequency of QSEs. The sampling frequency is consistent with the IGP. |
| 19.22 | For consistency with the IGP and for this option to be reasonably achievable, replace Table 1 MCL values with NALs from IGP. | NALs from the IGP are not incorporated into the tentative CII Permit. Please see response to comment #19.16. |
| 19.23 | In addition, specific recommendations for revisions include:<br>Revise Section 3.1.1 as follows:<br>3.1.1. Discharges covered under this General Permit include stormwater and authorized NSWDs from privately-owned unpermitted CII sites with five (5) or more acres of impervious surface and from privately-owned permitted CII sites with five (5) or more acres of impervious surface not already covered by the IGP in the Dominguez Channel/Greater Los Angeles and Long Beach Harbor Watershed and the Los Cerritos Channel/Alamitos Bay Watershed. CII sites at airports are excluded from coverage under this permit. | Section 3.1.1 of the tentative CII Permit has been revised to clarify its applicability. Please also see response to comment #4.1. |
| 19.24 | Revise Section 3.1.2 as follows:<br>3.1.2. Facilities where a portion of the facility's impervious surface is covered by another permit must still obtain coverage under this General Permit for the remaining portion of the impervious surface (e.g., rooftops and parking lots) if the remaining unpermitted portion is greater than or equal to five (5) acres. | See revisions in section 3.1 of the revised tentative CII Permit clarifying Permit applicability in alignment with U.S. EPA's revised preliminary designation. |
| 19.25 | Revise "CII Sites" definition in Attachment A as follows:<br>Privately-owned unpermitted commercial, industrial, and institutional sites or facilities with greater than or equal to five (5) acres of unpermitted impervious surface, excluding airports, | See revisions in section 3.1 of the revised tentative CII Permit clarifying Permit applicability in alignment with U.S. EPA's revised preliminary designation. |

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| | and privately-owned permitted CII sites with five (5) or more acres of impervious surface not already covered by the IGP. | |
| 20.1 | CalChamber supports and echoes the detailed comments and concerns set forth by the Los Angeles County Business Federation (BizFed). | Please refer to the detailed responses to the Los Angeles County Business Federation's comment letter. |
| 20.2 | CalChamber primarily weighs in on matters of statewide concern, and although the Draft CII Permit would directly apply only two CII facilities in two Los Angeles-area watersheds, this permit would have statewide impacts. Specifically, the Draft CII Permit would be the first of its kind in California. As such, it may serve as a model for other regions or may induce other regions to enact a similar permit. For this reason, it is imperative that the Regional Board carefully consider the practical implications of the Draft CII Permit alongside the comments raised by the regulated entities. | The tentative CII Permit has been specifically drafted to address issues unique to the two watersheds. However, the Los Angeles Water Board recognizes the comment's greater point that the tentative CII Permit is the first NPDES Permit of its kind, and therefore subject to heightened public interest. Stakeholders have been invited to workshops and given the opportunity to comment on the tentative CII Permit. Through the same process, stakeholders will be invited to provide comments on any future regional or statewide expansion of the CII Program during applicable public comment periods. |
| 20.3 | As set forth in detail in BizFed's letter, the current Draft CII Permit contains vague and unsupported requirements. | The referenced comment letter does not contain the terms "vague" or "unsupported" permit requirements. |
| 20.4 | In addition, the Draft CII Permit and accompanying documents fail to even attempt to estimate the cost impacts of the proposed requirements. | Section 3.11.4 and subsections of the Fact Sheet have been revised to include a discussion on stormwater BMP implementation and cost of compliance. |
| 20.5 | For these reasons, we support the comments made by BizFed and urge the Regional Board to adjust course accordingly. | Please refer to the detailed responses to the Los Angeles County Business Federation's comment letter. |
| 21.1 | SCADA is highly concerned that the expansion the draft CII Permit would impose on permitted auto dismantlers will exacerbate the loss of licensed auto dismantlers in California and cause significant disruption in the recycling marketplace and for environmental and public health. Operating costs and regulatory burden for licensed dismantlers have skyrocketed in the past twenty years, including for permit coverage under the Industrial General Permit (IGP), resulting in countless operators closing their operations or moving their dismantling activities underground without the regulatory oversight to ensure environmental, public health, workplace and tax laws are addressed. | The tentative CII Permit is intended to give the Permittee flexibility in terms of compliance. The focus of this Permit is to improve water quality within the two watersheds. As noted in section 2 of the Fact Sheet, CII facilities are a significant source of pollutants to receiving waters and their regulation plays an important role in the achievement of water quality objectives. As an example, U.S. EPA found that CII facilities included in the designation are responsible for approximately 32% of the total zinc load in the Dominguez Channel/Inner and Outer Los Angeles and Long Beach Harbor Watershed and the Los Cerritos Channel/Alamitos Bay Watershed. To not regulate |

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| | | discharges from CII facilities would place an undue burden on other types of discharges, particularly the MS4, to which CII facilities discharge. Notably, in its preliminary designation, U.S. EPA estimates that the designation of CII sources would shift approximately 41.5% of the load reduction responsibility from MS4 permittees to CII sources in the two watersheds. |
| 21.2 | In terms of the expansion of requirements associated with the scope of pollutants covered, the draft CII Permit is unclear about how background pollutants, aerial deposition, and run-on pollutants from other sites are assessed. SCADA urges the Board to include a mechanism to demonstrate such pollutant sources are not a result of CII activity on the facility site. We also would note that we are aware of work and evaluation by the State Water Resources Control Board (SWRCB) around the Biotic Ligand Model for the purpose of evaluating and considering different treatment and possible thresholds for metals such as zinc and copper, which can be particularly challenging for auto dismantlers, in such permits. Under the current limits for zinc in the draft CII Permit, the limits will be incredibly challenging to meet – if not impossible – exacerbating the underground activity for those who are unable to comply. | Regarding the comment on how background pollutants, aerial deposition, and run-on pollutants from other sites are assessed, please see response to comments #4.5, #9.19 and #23.1. The zinc effluent limitations in the tentative CII Permit are consistent with the adopted TMDLs.<br>Regarding the comment on the Biotic Ligand Model, please see response to comment #4.6.<br>Regarding challenging permit limits for zinc, the tentative CII Permit offers three paths to compliance. Compliance Options 1 and 2 do not require direct compliance with the effluent limits. |
| 21.3 | Additionally, compliant auto dismantlers in the designated watersheds and statewide have been working to comply with permit requirements via best management practices (BMP) and treatment systems for various pollutants for decades. In this regard, it is important that the draft CII Permit take such efforts into account for the purpose of facility compliance under any expanded coverage, specifically revising the draft CII Permit to provide credit for BMPs and treatment systems that have already been in place for compliance purposes for the relevant pollutants. | Please see response to comment #4.7. |
| 21.4 | Also related to BMPs in the context of Compliance Option #3, it is important for the Board to understand that BMPs that have been implemented by auto dismantlers for the purpose of the IGP are typically designed for specific flow thresholds and as such may not be capable of accommodating additional flow capacity as would be required by the expansion of coverage to all portions of a facility site. As such, those BMPS that have been in place should be grandfathered in and credit should be provided for the pollutant those BMPs are addressing. For the evaluation of discharges, compliance with pollutant thresholds for the purpose of the draft CII Permit should be based on a mass basis rather than a concentration basis for discharges that do not occur regularly. | Please see response to comment #4.13. |

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| 21.5 | Ultimately, since unlicensed dismantlers are unregulated, do not comply with the law and face minimal, if any, enforcement for their non-compliance, they will ignore any new requirements that this draft CII Permit will impose. As such, it is imperative to streamline any new requirements and expansion of permit coverage to be as efficient as possible; ensure the least burdensome requirements; include credits for current BMPs and treatment processes; avoid significant permit fee increases for the expansion of coverage; ensure the compliance options are robust and workable for all permittees; ensure the effective date and timelines for coverage are aligned for all permittees; and account for currently permitted facilities possible need to institute all new BMPs and/or compliance options for the expanded scope that may take time to assess, develop and implement. | The Los Angeles Water Board is developing tools to facilitate enrollment, compliance and disburse information to newly regulated facilities. |
| 22.1 | Local Watershed Management projects that would fall under Compliance Option 1 would be limited in nature and would not be available for all dischargers impacted by the CII permit. To make it fair and equitable, has the Water Board/local Watershed Management Groups considered allowing facilities to pay into a mitigation fund? Monies generated within this fund can be used to issue grants, with minimum match funding requirements, for applicants looking to implement on-site capture and use or infiltration projects at their facility (i.e. Compliance Option 2). As a result, there would be a larger pool for participation into Compliance Option 1 while also creating a grant funding program that would reduce the capital burden for facilities choosing to implement Compliance Option 2 as their means towards compliance with CII requirements. | See response to comments #7.20 and #12.12 regarding regional project availability.<br>See response to comments #1.7 and #7.17 regarding privately developed stormwater projects on private lands and the suggested mitigation fund. See also response to comment #3.43 regarding the equitable fee schedule. |
| 22.2 | Should a facility greater than 5 acres have existing permit coverage under the Industrial General Permit, can one choose to modify their SWPPP in order to cover stormwater discharge from parking lots and rooftops under the Industrial General Permit as opposed to the CII Permit? | Any permittees who are currently enrolled in the IGP must also enroll in the tentative CII Permit if their facilities meet applicability criteria because the IGP requirements will not ensure compliance with the tentative CII Permit requirements. |
| 22.3 | Will the CII permit include “Sampling and Analysis Reduction” contingencies? This will allow facilities to reduce the number of qualifying sampling events required to be sampled each year when the Discharger demonstrates: (1) consistent compliance with the CII Permit, (2) consistent effluent water quality sampling, and (3) analysis results that do not exceed effluent limitations. | Please see response to comment #10.3. |
| 22.4 | Will formation of Compliance Groups be allowed under CII permit? Additionally, would Compliance Groups be afforded a reduction in annual sampling requirements? For example, Compliance Group Participants would only be required to collect and analyze storm water | Please see response to comment #10.3. |

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| | samples from one (1) QSE within the first half of each reporting year (July 1 to December 31) and one (1) QSE within the second half of the reporting year (January 1 to June 30). | |
| 23.1 & 24.1 | IP Carson is subject to an array of environmental regulations, including air, water, and waste requirements. We believe that environmental stewardship is of the upmost importance, and we invest staff and financial resources into ensuring that our operation is conducted with the minimal environmental impact possible. In doing so, we feel that environmental regulation must be effective and focused on the source of pollutants. Our non-industrial areas are not significant sources of storm water pollution and as such, this permit will serve as an additional burden on our business without meaningful environmental impact. For example, much of zinc, copper, and other toxic metals are from aerial deposition coming from roads and freeways1. Therefore, more effective regulations should be focused on pollutant sources such as road and freeways; passing the burden onto businesses such as IP Carson simply because we are located in an urban area is ineffective, unfair, and it hurts our business.<br><br>Gold Bond is subject to an array of environmental regulations including air, water, and waste requirements. We believe that environmental stewardship is of the upmost importance, and we invest staff and financial resources into ensuring that our operation is conducted with minimal environmental impact possible. In doing so, we feel that environmental regulation must be effective and focused on the source of pollutants. Our non-industrial areas are not significant sources of stormwater pollution and as such, this permit will serve as an additional burden on our business without meaningful environmental impact. For example, much of zinc, copper, and other toxic metals are from aerial deposition coming from roads and freeways. Therefore, more effective regulations should be focused on pollutant sources such as road and freeways; passing the burden onto businesses such as Gold Bond simply because we are located in an urban area is ineffective, unfair, and it hurts our business. | This comment pertains to U.S. EPA's preliminary designation memo off CII facilities and is outside the scope of the action before the Los Angeles Water Board.<br><br>Regarding the comment on more effective regulation of road and freeways, road, and freeways within the two watersheds are regulated under the Caltrans Permit or the Regional MS4 Permit. |
| 23.2 & 24.2 | The CII Permit is a Significant Challenge for our Business and Does Properly Not Address Pollutant Sources. Our storm water discharges are already subject to the industrial general permit. The CII permit overlaps significantly with the IGP and as described in our comments below, the separation between the two is unclear and confusing. The CII permit adds an entirely new layer of challenges to the difficult web of regulations businesses in CA already have to contend with. Resources to ensure compliance, such as additional staff, consultants, fees, and potential for implementing advanced Best Management Practices (BMPs), present yet another challenge to remaining profitable in the Southern California regulatory environment. | The Los Angeles Water Board has removed any and all requirements that overlap with the IGP from the tentative CII Permit in response to this and other comments (see, Section 3.1, Applicability of the CII Permit), thereby requiring all IGP permittees who may also be subject to this Order to maintain separate coverage under the IGP. The Los Angeles Water Board finds that removal of the overlapping requirements simplifies the overall permitting approach to stormwater in the Region and ensures that water quality will be protected by requiring industrial |

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| | | facilities subject to the IGP to continue complying with the requirements in the IGP. |
| 23.3 & 24. | Additional Clarity is Needed Regarding CII Applicability of Non-Industrial Areas. The statement in Section 3.1.2 is confusing because the IGP requires entire site boundaries to be included, regardless of whether they are considered industrial or non-industrial (e.g., refer to IGP site map requirements in Section X). Areas that are solely non-industrial are not required to be sampled, but they may be covered by other compliance activities such as visual monitoring and Best Management Practices (BMPs). In other words, an entire site is included in an IGP SWPPP, even though not all drainage areas may be sampled. Therefore, the language requiring coverage for the "remaining portion of the impervious surface (e.g., rooftops and parking lots)" is unclear. | Enrollment under the IGP provides regulatory coverage for the storm water discharges associated with industrial activity depending on the facility's SIC code. However, the IGP does not provide coverage for non-industrial areas, such as rooftops, parking lots, roads and driveways that would produce runoff during a storm event. This is when coverage is required under the tentative CII Permit for those unpermitted areas in accordance with U.S. EPA's preliminary designation.<br><br>The tentative CII Permit requires site boundaries to be clearly defined as indicated in the SWPPP requirements on section 6.3 as part of the Site Map. Please see section 6.3.1.5 of the revised tentative CII Permit, which was added to clarify the requirement where locations of industrial and non-industrial areas of the facility must be clearly marked on the Site Map. These non-industrial areas require coverage under the tentative CII Permit. |
| 23.4 & 24.4 | The Section 3.1 applicability of "unpermitted CII sites with five (5) or more acres of impervious surface and permitted CII sites with five (5) or more acres of total area…" is not appropriate. Specifically, permitted IGP sites are already sampling and including industrial areas of their property. The applicability acreage should match the non-industrial acreage that will be subject to monitoring under the CII permit. | Please see response to comment #4.1. |
| 23.5 & 24.5 | There should be a lower limit of 1 acre of non-industrial area in order to be subject to the CII permit. Some facilities have a 500 square foot parking lot, for example, that would produce negligible discharge and would therefore be infeasible to implement any one of the three compliance options. | The tentative CII Permit will still require coverage for unpermitted CII sites with five (5) or more acres of impervious surface and permitted CII sites with five (5) or more acres of total area in accordance with U.S. EPA's preliminary designation. |
| 23.6 & 24.6 | Under the IGP, drainage areas boundaries are subjective, unclear, and one drainage area may flow into another drainage area. Therefore, it is not always clear how to delineate an industrial drainage area versus a non-industrial drainage area. The permit needs to provide clarity on how to make this assessment. | Section 6.3 of the tentative CII Permit requires that drainage areas within the facility boundary should be identified in the SWPPP. |
| 23.7 & 24.7 | Many non-industrial areas flow into industrial areas. The CII permit is not clear on how to handle this situation. For example, a site may have a large non-industrial roof with downspouts that flow to an industrial area. Their comingled discharge will be covered under | This level of detail is not appropriate for a general permit and examples such as this one can be reviewed on a case-by-case basis. |

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| | the IGP. The CII permit needs to provide clarity on how to handle situations where non-industrial areas flow into industrial areas prior to discharge from the property. | |
| 23.8<br>&<br>24.8 | The CII permit must provide clarity on how to assess permit applicability for non-industrial areas that flow into pervious areas. In these situations, a discharge may not occur, and sampling may not be feasible. | Please see response to comment #23.7. |
| 23.9<br>&<br>24.9 | Clarity and Resources are Needed to Adequately Follow and Implement Compliance Option 1. Based on discussions during the August 30 CII workshop, Compliance Option 1 is the Water Board's preferred compliance pathway and many facilities may be interested in this option, including IP Carson. However, there is a need for clarity regarding this compliance pathway, including the following:<br>The process for communicating with Watershed Management Groups (WMGs) must be equitable and CII permittees must have adequate resources to register under this option. All facilities under the CII permit should have access to Compliance Option 1, and the process must be public and transparent. This is to avoid situations where only facilities "in the know" or with special connections can get access to this option.<br>Clarity and Resources are Needed to Adequately Follow and Implement Compliance Option 1<br>Based on discussions during the August 30 CII workshop, Compliance Option 1 is the Water Board's Preferred compliance pathway, and many facilities may be interested in this option, including Gold Bond. However, there is a need for clarity regarding this compliance pathway, including the following:<br>The process for communicating with Watershed Management Groups (WMGs) must be equitable and CII permittees must have adequate resources to register under this option. All facilities under the CII permit should have access to Compliance Option 1, and the process must be public and transparent. This is to avoid situations where only facilities "in the know" or with special connections can get access to this option. | The tentative CII Permit intends to be transparent and flexible to Permittees, with three choices of Compliance Options. Compliance Option 1 will be accessible to all CII facilities located in the WMP area. Table H-1 of Attachment H provides a list of Watershed Management Groups for each of the two watersheds. Please consult with the applicable WMGs for more information prior to submitting Permit Registration Documents. Please see also response to comments #3.42 and #3.43. |
| 23.10<br>&<br>24.10 | Not all watershed projects are the same from a cost perspective. How is equitability considered? Meaning, the cost may be higher for certain regional projects, and lower for others. The permit must establish conditions to ensure a level of equity among fees for various projects implemented under Compliance Option 1. | The Los Angeles Water Board is working with WMGs to provide a transparent and equitable fee structure for potential CII permittees who choose to comply with the tentative CII Permit through funding contribution to regional stormwater projects specified in an approved Watershed Management Plan. Please see response to comments #2.17 and #3.43. |

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| 23.11<br>&<br>24.11 | The requirement in Section 8.1 for projects to be downstream of the discharge unless technically infeasible will functionally prioritize projects at the base of each watershed, without allowing for other factors to be considered (e.g., which project should be built in which order and why). Funds should be allocated to the projects with the highest benefit to the entire watershed rather than simply downstream of the discharge. We suggest removal of this requirement in order to ensure the entire watershed received the most benefit. | Please see response to comment #7.21. |
| 23.12<br>&<br>24.12 | If the Permit is amended, and a legally binding agreement is in place with a watershed group, how would that impact the agreement and compliance for the CII Permittee? | If an agreement is in place with a WMG, both the agreement and compliance determination shall remain valid for the effective term of the tentative CII Permit. If a reissuance, renewal, or modification to the tentative CII Permit is proposed, it will be public noticed for any public comments, and the Discharger will have enough time to comply with any new requirements. |
| 23.13<br>&<br>24.13 | CII Permit Section 3.4 states the timeline for enrolling for coverage. Permit Registration Documents (PRDs) must be submitted within two years of the effective date for non-IGP sites, and within one year of the effective date for IGP sites (see Section 3.4 for complete language). This does not appear to be enough time to implement Compliance Option 1. IP Carson is not aware of any mechanisms or framework by which facilities can apply to fund a regional watershed project that exist currently, therefore an entirely new system must be developed. We suggest a 5-year implementation period if choosing Compliance Option 1.<br><br>CII Permit Section 3.4 states the timeline for enrolling for coverage. Permit Registration Documents (PRDs) must be submitted within two years of the effective date for non-IGP sites, and within one year of the effective date for IGP sites (see Section 3.4 for complete language). This does not appear to be enough time to implement Compliance Option 1. Gold Bond is not aware of any mechanisms or framework by which facilities can apply to fund a regional watershed project that exist currently, therefore an entirely new system must be developed. We suggest a 5-year implementation period if choosing Compliance Option 1. | The two-year phased enrollment in the tentative CII Permit considers the time needed for existing dischargers to select a compliance option to fully comply with the permit including Compliance Option 1. |
| 23.14<br>&<br>24.14 | The permit requires clarity on situations regarding how facilities should proceed if choosing to implement Compliance Option 1, but WMGs are not prepared to accept funding by the PRD deadline in Section 3.4 of the CII permit. | The Los Angeles Water Board is working with WMGs and understands that they will be prepared to enter into agreements for Compliance Option 1 within two years of the effective date of the Permit. See also response to comment #3.32. |

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| 23.15 & 24.15 | The method to determine funding is described in Section 8.1 as, "…the funding level must be proportional to the NSWD and onsite stormwater volume to be addressed/total regional project stormwater capacity". We recommend expressing this statement as a formula or equation, as the backslash "/" in the statement may not be immediately recognized as a division sign. | The funding level in the tentative CII Permit and is now expressed as a formula for additional clarity. See also response to comment #5.14. |
| 23.16 & 24.16 | Section 8.1.3 contains a typo: "Dischargers selecting and in compliance with Compliance Option 3 1 shall be…" | Comment noted. The correction has been made in the revised tentative CII Permit. |
| 23.17 & 24.17 | Section 6.1.5 provides a number of Minimum BMPs. This section states that "all of the following minimum BMPs" shall be implemented. Some of these BMPs are not feasible, such as the requirement to "divert run-on" in Section 6.1.5.2.4, and others. We suggest including feasibility language similar to the IGP, including IGP Footnote 14. | All minimum BMPs are required. The SWPPP may specify why any BMP is infeasible and should propose an equally effective BMP. |
| 23.18 & 24.18 | Representative Sample Reduction should be included in the Section 9 monitoring requirements. For impervious, non-industrial areas where sample quality is expected to be similar sampling multiple locations may not be necessary or feasible. For example, many buildings have numerous downspouts. Sampling each downspout would be unnecessarily burdensome and costly. | Please see response to comment #3.40 and #10.3. |
| 25.1, 30.1, & 31.1 | Clarify permit applicability and definition of Commercial, Industrial, and Institutional Sites. In the workshop on August 30, 2022, Regional Board staff defined the CII Permittee as the entity that has responsibility and control over the runoff that leaves the site, and that this could be the property owner or the business operator, or both. When the site owner is not the business operator, such as in our case where the properties may be leased, this could result in a conflict as to who must or will enroll. If this enrollment option will remain in the Permit, to prevent conflict and uncertainty, we recommend including a process to identify the responsible party. | Please see response to comment #2.20. |
| 25.2, 30.2, & 31.2 | For large shopping centers like ours that may have many parcels within the development, applicability of the CII permit needs to be clarified - are only those CII parcels with ~5 acres impervious considered Permittees? This would result in scenarios where only some CII parcel owners in a larger common development are subject to the Permit. If so, can a CII site terminate coverage if their ~5 parcel is divided into parcels of <5 acres based on tenant occupancy? | Please see response to comment #2.20 and #5.11. |

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| 25.3, 29.1, & 31.3 | As also observed at the forementioned workshop, the definition of "discharger" needs clarification. The Draft CII Permit currently reads as follows:<br>A person, company, agency, or other entity that is the operator of the CI/ site or facility covered by this General Permit.<br>This current definition does not clarify whether a property owner or respective lessee/tenant is considered the "discharger." A clear determination is especially important for situations with multiple facilities on the same property, e.g., a shopping center with multiple lessees/tenants and a common parking lot. | Please see response to comment 2.20. |
| 25.4, 26.1, & 29.2 | More clarity is needed for Compliance Option 1. The process for communicating with Watershed Management Groups (WMGs) must be equitable and CII permittees must have adequate resources to register under this option. All facilities under the CII permit should have access to this Compliance Option 1, and the process must be public and transparent. | Please see response to comment #23.9. |
| 25.5, 26.2, & 29.3 | The permit requires clarity on situations where facilities should proceed if choosing to implement Compliance Option 1, but WMGs are not prepared to accept funding by the PRD deadline in the CII permit. | Please see response to comment #23.14. |
| 25.6, 26.3, & 29.4 | There is concern that Watershed Management Groups do not have approved WMPs in the system and may not within the first year of the permit, when sites are required to draft their stormwater pollution prevention plans (SWPPPs). Without approved WMPs, it's unclear how a permittee would enter into an agreement that includes timelines and fees to satisfy Option 1 requirements. | All WMPs within the two watersheds have received conditional approvals. |
| 25.7, 26.4, & 29.5 | Not all projects are the same from a cost perspective. How is equitability considered? Meaning, the cost may be higher for Permittee X vs Permittee Y for the same volume of captured water. | Please see response to comment #23.10. |
| 25.8, 26.5, | The requirement for projects to be downstream of the discharge unless technically infeasible will functionally prioritize projects at the base of each watershed, without allowing for other factors to be considered (e.g., which project should be built in which order and why). Funds | Please see response to comment #7.21. |

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| &<br>29.6 | should be allocated to the projects with the highest benefit rather than simply downstream of the discharge. | |
| 25.9,<br>26.6,<br>27.1,<br>&<br>28.1 | More flexibility is needed for monitoring requirements under Compliance Option 3. For Compliance Option 3, dischargers must develop a site-specific monitoring and reporting program to demonstrate compliance with the water quality based effluent limitations (WQBELs). The Draft CII Permit does not make accommodations for stormwater sampling for difficult or redundant circumstances. For example, the CA Statewide General Permit for Stormwater Discharges Associated with Industrial Activities, Order 2014-0057-DWQ (Industrial General Permit or IGP) allows a facility to identify and sample at alternative discharge locations if a facility cannot sample at a certain location due to uncontrolled run-on or the discharge location is not accessible (IGP Section. XI.C.3.a.). The IGP also allows facilities to reduce the number of samples collected if the facility has multiple discharge locations, but the operations and stormwater treatment implemented are the same in those locations (IGP Permit Section XI.C.3.4.). The IGP also allows facilities in Compliance Groups to reduce the amount of sampling conducted (IGP Permit Section XI.B.3.). The CII permit should allow for similar provisions. | Please see response to comment #3.40 and #10.3. |
| 25.10,<br>27.2,<br>28.2,<br>&<br>30.3 | Amend Minimum BMPs to include Feasibility. Language within the BMP requirements does not appear to allow for feasibility exemptions, which implies that all minimum BMPs are mandatory. Alternative methods should be allowed for each of the listed BMPs in cases of demonstrable infeasibility; for example, in many cases it will not be feasible to divert all run-on (6.1.5.2.4). | Please see response to comment #23.17. |