Santa Clara Valley
Urban Runoff
Pollution Prevention Program

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February 29, 2008

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

Subject: Comments from the Santa Clara Valley Urban Runoff Pollution Prevention Program on the Municipal Regional Permit Tentative Order

Dear Mr. Wolfe:

Thank you for the opportunity to submit comments on the Regional Water Board's Municipal Regional Permit (MRP) Tentative Order dated December 14, 2007. These comments were prepared by the Santa Clara Valley Urban Runoff Pollution Prevention Program (Santa Clara Program) on behalf of its 15 Co-permittee agencies. Key concerns and issues are summarized in this letter, and detailed comments on each section of the Tentative Order are provided in an attachment. You will also be receiving separate letters from individual Co-permittees with comments that are specific to their jurisdictions. In addition, the Santa Clara Program supports and incorporates by reference the comments submitted by the Bay Area Stormwater Management Agencies Association (BASMAA) and Robert Falk (Morrison and Foerster).

Introduction

The Santa Clara Program has been focused on local and regional challenges and opportunities for improving the quality of urban runoff that flows to our creeks and the San Francisco Bay for nearly 20 years. In that time, we have received numerous local and national awards for our leadership and efforts to manage and minimize stormwater related impacts on water quality. For example, we received two EPA First Place National Stormwater Management Awards, one in 1993 and the second in 2006. We also recently received two additional national awards, one in 2006 from the National Association of Flood and Stormwater Management Agencies (NAFSMA) for Excellence in Communication and the second in 2007 from the National Association of Environmental Professionals (NAEP) for Education Excellence. Further, when our monitoring and assessment program was recently audited by representatives of EPA, they not only praised the program but recognized the Santa Clara Program as "a leader in the development and evolution of similar programs and permits across the country."

To ensure that our Co-permittees are implementing permit requirements to the maximum extent practicable, the Santa Clara Program has developed performance standards for nearly every

element of our current permit. The performance standards were developed consistent with the requirements of the current NPDES permit, were approved by Water Board staff and have effectively served as guiding principles for our Program. The performance standards have been incorporated into the Co-permittees' local Urban Runoff Management Plans and integrated into the standard operating procedures of many municipal departments. Significantly, because of this, recent EPA audits did not find any major deficiencies in Co-permittee performance. No justification is provided in the Tentative Order that supports the jettisoning of our effective locally-driven approach to award-winning stormwater management practices and programs or their replacement with the top-down, inflexible prescriptions that do not reflect experience with program implementation.

At the start of the MRP development process, we supported the opportunity to achieve consistency in municipal performance throughout the Bay Area and understood that some additional requirements may need to be added to address the TMDLs in our region. After three years of work on the MRP with your staff, we are disappointed and concerned that the draft permit attempts to "raise the bar" and add new requirements in almost every section of the permit, without establishing the need for the new requirements or setting priorities among them and/or allowing phasing-in over several permit cycles to take into consideration limited municipal resources. Accordingly, we believe the TO needs to be re-written to only focus on the following priority areas:

- Consistent implementation of current performance standards (as provided to your staff in the BASMAA document dated September 22, 2006 and incorporated by reference into these comments);
- Phased-in implementation of measures consistent with currently adopted pesticide, mercury, and PCB TMDLs;
- Focused and cost-effective efforts to address trash in or likely to be conveyed by stormwater into our waterways, with assessment work and data analysis informing the nature and location of the measures to be implemented and with structural control measures being tied into receipt of State funding such as bond moneys; and,
- Limited and cost-effective monitoring linked to relevant management questions.

The following provides our summary of comments on the draft permit (i.e., the Tentative Order). Our more detailed comments are contained in Attachment A. In some ways the draft permit shows improvement over the administrative draft released in May 2007. However, much of the draft permit's 190 pages still reflect unnecessary, disjointed and unprioritized requirements forcing municipalities to reinvent their existing stormwater pollution prevention and control programs at great expense[1] and without predictable benefit (if any). The draft permit also proposes to impose an unnecessarily prescriptive and inflexible approach to stormwater regulation that represents a radical departure from past Region 2 permits and those issued by U.S. EPA.

[1] Preliminary estimates of the additional cost for Santa Clara Valley communities to implement the five-year permit as proposed are in excess of $75M excluding the costs associated with the provisions for treatment controls on trails and during road rehabilitation; the capital costs of rehabilitation of bridge crossings and culverts in rural areas; and the unpredictable cost of additional studies or activities that may be triggered by monitoring results.

Key Concerns

The Santa Clara Program has the following key concerns about the Tentative Order:

- Monitoring -- The new monitoring requirements represent a very significant increase in resource commitment above current monitoring efforts and will require a very significant expenditure of public resources. In addition, as currently drafted, many of the monitoring requirements are: 1) not based on sound science; 2) too prescriptive for allow for adaptive monitoring; 3) not necessary (data for data's sake and/or focused beyond pollutants subject to regulation under a federal permit); and, 4) not prioritized so as to allow monitoring resources to be focused on the most pressing water quality issues. As routinely permitted by U.S. EPA and upheld by the Ninth Circuit in the *Divers*' decision, the permit should allow municipalities to collectively develop a monitoring plan that addresses relevant management questions and describes the type, interval, and frequency of monitoring that would be conducted to yield high quality, representative data that will assist Co-permittees and Water Board staff in assessing the condition of water bodies and determining trends over time.

- New Development and Redevelopment -- We appreciate the Water Board staff's willingness to work with us on changes to the Santa Clara Program's hydromodification management requirements and incorporate mutually acceptable language into the Tentative Order. However, other proposed changes in/expansions of the application of stormwater treatment requirements to new and redevelopment projects have not been justified and there remains no reason to make any additional changes in the C.3. Program at this time since it is still relatively in its infancy. With a lower impervious surface threshold, many more project applications would have to be reviewed, placing a greater burden on municipal planning staff, and no nexus between a lower square footage threshold for regulated projects in a heavily urbanized area and significant water quality improvement has been shown so as to justify such the increased staffing and resource burden. In addition, it is not worthwhile investing municipal staff resources in collecting impervious surface data for small sites because the regulation of these small projects can be handled appropriately under the proposed permit's site design and source control requirements. In sum, it appears that decisions about regulatory thresholds are being made arbitrarily in lieu of proper analysis of impervious surface data and water quality impacts.

  There are several other new requirements in Provision C.3. of the Tentative Order that will require an expenditure of additional funds with no commensurate water quality benefit. For example, the requirements for treatment of runoff from impervious trails greater than 10 feet wide or within 50 feet of a creek should not be required since it will have the effect of discouraging trails along creeks, which we want to encourage in order to promote pedestrian and bicycle use and help the public appreciate the value of creeks. The additional data collection and reporting requirements go well beyond that which has already been developed working with various Water Board staff and will provide no additional benefit. The need to redo alternate compliance programs that have already been already adopted by City Councils following public notice and hearing procedures again provides no water quality benefit and should be deleted from the Tentative Order.

- Trash -- The Santa Clara Program concurs with the need for systematically assessing trash accumulation areas potentially associated with stormwater (and our Co-permittees are

already conducting these assessments) and enhanced actions to better address controllable sources and/or conveyance of stormwater-related trash affecting such areas. However, the draft permit contains an overly-prescriptive approach that specifies the implementation of expensive municipal stormwater program actions and mandates huge investments in structural control measures without providing resources for them before the nature of the problem and its causes are even assessed. A more flexible approach should be allowed which takes into account true sources of trash and cost-effective ways to address them. Furthermore, any requirements mandating investments in structural control measures should be tied to the receipt of State bond moneys for them.

- Pollutants of Concern (POC) -- The POC-related requirements of most concern to the Program are 1) the PCBs pilot studies (which also include mercury as an ancillary concern); and, 2) the requirement to abate sources on private property.

    1) The pilot study provisions are too prescriptive and have overly extensive scopes of work. Pilot testing of controls is required in an excessive number of locations and as a result may not be cost-effective. Furthermore, the scope of the pilot study work is too extensive to reasonably accomplish during the five year permit term, and pilot testing the diversion of stormwater runoff flows to POTWs (especially in advance of an assessment of East Bay MUDs experience with the Ettie Street project in Alameda County) is premature. The PCBs TMDL describes an adaptive and phased implementation plan for municipal stormwater agencies that envisions full implementation of PCB controls following a ten year period of pilot studies and strategic implementation. The permit provisions should be scaled back and timelines extended in keeping with the TMDL's implementation plan. It is also important to note that as with many pollution problems, controlling sources of PCBs should receive priority relative to addressing downstream areas. If source areas are left unabated then downstream areas may require periodic abatement *ad infinitum*. A source control strategy would primarily entail abating properties where soils and/or sediments with PCBs may be migrating off-site into stormwater conveyances. Abatement would include site cleanup and/or prevention of off-site migration of PCBs. Recent results from the Ettie Street PCB study may support this type of strategy.[2]

    2) The requirement for a local agency to abate sources of PCBs on private property is beyond local agency authority and has been the subject of several BASMAA comment letters. The current language needs to be modified to place the responsibility for effecting cleanup actions on private properties on the agencies (including the Water Board itself and CUPAs) that possess the primary legal authorities to impose such requirements, as suggested in several BASMAA comment letters that were previously submitted to the Water Board.

- Pump Stations -- The draft MRP contains requirements for pump stations in three different sections of the permit that are not coordinated and do not provide for a systematic and thoughtful analysis of how to address issues with dry weather pump station discharges.

[2] Public right-of-way areas adjacent to top priority PCB properties in the study watershed were abated via hydroblasting and removal of associated liquid and solid wastes. However, sediment samples collected in the right-of-way pre-abatement and post-abatement had similar PCB concentrations. One likely explanation for this finding is that additional soils/sediments with elevated PCBs migrated from source areas (i.e., unabated high priority properties) to the public right-of-way after the hydroblasting work was completed. Thus abating the downstream public right-of-way before abating the source properties may have been an ineffective approach to reducing PCBs in stormwater.

Consistent with the BASMAA letter dated February 28, 2008, we recommend that the proposed series of diversion requirements contained in the MRP, including in provisions C.8.e.iii.(3) (Dry Weather Discharges & First Flush Investigations), C.11.f, C.12.d (Conduct Pilot Projects to Evaluate and Enhance Municipal Sediment Removal and Management Practices), and C.12.f, be replaced with a single more integrated and effective requirement for the permittees to work with the sanitary sewer agencies to assess existing information where diversions have previously been assessed and the results of the Ettie Street pilot project and develop a work plan, in accordance with a time schedule, to better characterize the possible stormwater pollutant related problems with stormwater pump station discharges that identifies a range of possible and recommended solutions depending on the types of problems that are identified.

Together with BASMAA, we would prefer to work with Water Board staff collaboratively to develop specific permit language for the MRP that would specify parameters for this effort so as to ensure it is the best use of public resources to meet the program objectives of protecting our creeks from development impacts. We propose that the following approach is most effective at this point:

1) develop (Bay Area wide) an inventory of municipally owned stormwater pump stations,
2) characterize operations,
3) collect general water quality data sufficient to characterize potential water quality issues, and
4) identify criteria to evaluate potential solutions and to develop recommended guidance to prioritize and implement appropriate solutions.

In the context of the collaborative and better informed approach, we are also willing, during the term of the permit, to initiate the identification of several additional pilot tests and work on developing a standard reporting format for O&M.

- Conditionally Exempted Discharges -- The draft MRP contains numerous new requirements associated with conditionally exempted discharges. It is unclear what specific problems have arisen to give rise to these proposals for changes in the existing municipal program, and some of the proposed changes do not seem to have thoroughly been thought through. The amount of tracking and reporting of these relatively minor discharges will be huge burden on municipalities. While we agree that the implementation of BMPs on certain types of discharges to protect receiving waters are important, requirements for such implementation need to be flexible so as to be scaled to the nature of the threat posed and subject to a municipality's discretion to require as appropriate and necessary given the threat posed. In all events, such requirements should not take precedence over public health and safety issues. The draft permit also includes very prescriptive monitoring and reporting requirements for planned, unplanned, and emergency discharges of potable water, many of which are unnecessary and should, in any event, be made the responsibility of private water companies. We recommend that our current effective program, based on the Conditionally Exempted Discharges Report submitted and approved by Water Board staff in 2000, be grandfathered and remain in full effect.

- Tracking and Reporting -- The draft MRP includes requirements for the development of numerous databases, use of specific types of reporting formats, and significant additional reporting, all in the context where currently required reports are rarely reviewed in a timely

manner. The intended usefulness and practicability of the revisions are not clear and do not consider the significant incremental burden to be placed on municipalities with little, if any, resulting benefit to water quality. The Report Form is 110 pages in length, not including the supplemental reporting tables to summarize business, construction site, and pump station inspections. In addition, the Report Form is in many instances inconsistent with the Tentative Order reporting provisions and often requires more information than what is required to be reported for a specific provision.

In summary, the Tentative Order includes many potential new or significantly expanded requirements within the discretion of the Regional Board that (1) are not mandated by law or reflected in US EPA-issued municipal stormwater permits, (2) would represent a significant expenditure of public resources that are not available at the local level, and (3) with a few notable exceptions involving pollutants of concern (which still need to be fine tuned to avoid wasting resources) are unlikely to produce a significant return in terms of increased water quality benefits. It is essential that the MRP requirements be prioritized to address identified, significant water quality problems (TMDLs and trash) and phased over time based on a realistic assessment of municipal resources and the other burdens being placed on Bay Area cities, counties and special districts at this time.

Detailed comments on each section of the Tentative Order and recommended changes are provided in Attachment A. We appreciate your consideration of these comments on the MRP Tentative Order, and we look forward to your specific responses.

Very truly yours,

Original Singed By

Adam W. Olivieri, Dr. PH, P.E.
Program Manager

Attachment – A Santa Clara Program's Detailed Comments on the MRP Tentative Order – February 29, 2008

Cc: SCVURPPP Management Committee
BASMAA Executive Board
Robert Falk, Morrison Forester
Gary Grimm
Dale Bowyer, RWQCB

Attachment A
Santa Clara Program's Detailed Comments on the MRP Tentative Order

The Santa Clara Program requests that Water Board staff provide specific responses to each of the comments provided below.

A. Discharge Prohibitions

A.2 – Because it is not expressly tied to the permit's Provisions, as drafted, this component of the permit could expose municipalities to enforcement actions including citizens' suits for certain conditions in receiving waters even where they otherwise are in full compliance with the Permit's specific requirements. It also does not comply with State Board precedent (see Morrison & Forester Legal Comment No.2). SCVURPPP requests that language be added paralleling that in Discharge Prohibition A.1 so as to state "Compliance with this prohibition shall be demonstrated in accordance with Provisions C.1 through C.17 of this Permit."

C.1. Water Quality Standards Exceedences

The initial paragraph of Provision C.1 also fails to link the Permit's Discharge Prohibitions (in this case both A.1 and A.2) to the specific requirements the Permit imposes on municipalities and essentially creates the same potential liability exposure problem for municipalities as that described above and likewise violates State Board precedent (see Morrison & Foerster Legal Comment No.2). SCVURPPP requests that express references to "Discharge Prohibitions A.1 and A.2 and" be added in both places in the first paragraph of C.1 where the term "Receiving Waters Limitations B.1 and B.2" appears.

C.2. Municipal Operations

- C.2.a – Street and Road Sweeping and Cleaning:
    - Map designated streets and roads with sweeping frequency - It is unclear why the Water Board requires these maps to be developed and submitted. Municipalities cannot afford to develop maps that have no purpose. The SCVURPPP suggests that this proposed permit requirement be deleted.
    - Sweeping Frequency - Most cities have already developed a frequency of sweeping that meets local needs and increasing the frequency may represent a significant increase in expenditures for some municipalities. Furthermore, it is unclear that there is a water quality benefit to increasing the frequency of street sweeping as proposed in the Tentative Order. The fact sheet does not describe the technical basis for the sweeping frequencies proposed and what impact these frequencies will have on improving water quality. Additionally, many studies have concluded that increasing the frequency of sweeping from 1x per month to 2x per month has no significant water quality benefit. The SCVURPPP recommends the deletion of this requirement and replacement with a requirement that allows municipalities to continue the currently allowed frequency of sweeping per current performance standards and BMPs.
- C.2.b – Sweeping Equipment Selection and Operation – The Tentative Order requires that 75% of replaced street sweepers shall have particulate removal of regenerative air sweepers or better. Municipalities need to consider all of their operational needs and local conditions when deciding on the purchase of street sweepers. Regenerative air sweepers are not good for all situations. The SCVURPPP requests that the Tentative Order requirement be modified to state that the Water Board encourages municipalities to consider the water quality benefits when purchasing new sweepers.

- C.2.d – Sidewalk/Plaza Maintenance and Pavement Washing – As written, the Tentative Order prohibits wash water from entering storm drains even if effective BMPs allowed by BASMAA mobile surface cleaner program are implemented. We request that the language be revised to allow the discharge of washwaters to storm drains as described in BASMAA's BMPs for Mobile Surface Cleaners.
- C.2.f – Catch Basin or SD Inlet Inspection and Cleaning: The language in the Tentative Order is currently unclear and should be clarified so that it is clear that municipalities are only required to inspect and clean inlets that they own or operate. Also, the language should be changed to only require inlet cleaning when an inspection shows that cleaning is needed. Additionally, the Tentative Order should have language added to clarify that the identification of inlets with high accumulations of trash/litter is for the purpose of identifying high trash and litter impact catchments per Provision .c.10.a.i. Furthermore, we request that the Tentative Order allow for other alternatives to increasing inspection and maintenance frequencies to twice a year, as long as the alternatives help to lessen the accumulation of sediment, trash or debris.
- C.2.g – Stormwater Pump Stations – SCVURPPP strongly supports enhanced stormwater pollution prevention measures for the pollutants found to be impairing local waterways (e.g., mercury, PCBs). We appreciate the leadership role taken by the Water Board in this endeavor. However, it is essential that the new initiatives proposed in the Tentative Order be:

    - focused on identified receiving water quality problems, and
    - practical, understandable, within the control and jurisdiction of the municipal stormwater agencies, and allow for needed flexibility to cost-effectively solve water quality problems.

    Consistent with the BASMAA letter dated February 28, 2008 we recommend that the proposed series of diversion requirements proposed in the MRP, including in provisions C.8.e.iii.(3) (Dry Weather Discharges & First Flush Investigations), C.11.f, C.12.d (Conduct Pilot Projects to Evaluate and Enhance Municipal Sediment Removal and Management Practices), and C.12.f, be replaced with a single more integrated and effective requirement for the permittees to work with the sanitary sewer agencies to assess existing information where diversions have previously been assessed and the results of the Ettie Street pilot project and develop a work plan, in accordance with a time schedule, to better characterize the possible stormwater pollutant related problems with stormwater pump station discharges that identifies a range of possible and recommended solutions depending on the types of problems that are identified.

    Together with BASMAA we are available to work with Water Board staff to develop specific permit language for the MRP that would specify parameters for this collaborative effort so as to ensure it is implemented. We are collectively willing to:

    1) develop (Bay Area wide) an inventory of municipally owned stormwater pump stations,
    2) characterize operations,
    3) collect general water quality data sufficient to characterize potential water quality issues, and
    4) identify criteria to evaluate potential solutions and to develop recommended guidance to prioritize and implement appropriate solutions.

In the context of the collaborative and better informed approach, we are also willing, during the term of the permit, to initiate the identification of several additional pilot tests and work on developing a standard reporting format for O&M

- C.2.h – Rural Public Works:
    - The language in the Tentative Order appears to expand existing BMPs to cover ALL rural roads during construction AND post-construction (no restrictions on who maintains). The SCVURPPP recommends that the Tentative Order be clarified to only require that municipalities be responsible for BMPs on rural roads that they own or operate.
    - The Tentative Order is currently unclear on the scope of the increased maintenance requirements for stream crossings and drainage culverts. The SCVURPPP recommends that these additional requirements be conditioned to only apply where the additional maintenance and rehabilitation of stream crossings and culverts is needed and part of a MS4 owned or operated by a municipality covered under the permit.
    - The Tentative Order includes increased maintenance requirements for rural roads near creeks, regardless of impacts to water quality. We request that the Tentative Order be revised to only require increase maintenance for rural roads adjacent to streams and riparian habitat if there is a known MS4-related water quality problem that requires attention.
- C.2.i – Corp Yard BMP Implementation:
    - The Tentative Order currently requires Co-permittees to develop SWPPPs for non-NOI corporation yards/facilities. SWPPP development can be a costly process and may not useful in protecting water quality. Alternatively, the SCVURPPP recommends that the language be modified to require that municipalities use appropriate BMPs to control potential pollutant sources at corporation yards that they own or operate, but not to be required to prepare Stormwater Pollution Prevention Plans that may not be useful
    - The Tentative Order currently requires Co-permittees to retrofit all wash areas to plumb to sanitary sewer. Some relatively rural corporation yard-type of facilities are not accessible to sanitary sewers, and the Tentative Order should allow wash waters to flow to vegetated areas or other areas that do not impact water quality. The SCVURPPP recommends that the language be revised to allow for this alternative.

C.3. New Development and Redevelopment

- C.3.a.(6) and (7) – We request that Water Board staff add language to clarify that "all new development and redevelopment projects not regulated by C.3" means all projects that are subject to Co-permittee development project review. Otherwise, this is a new requirement that extends to a much larger group of projects and would be a significant burden on municipal staff resources, as well as impossible to implement by July 1, 2008. Language changes are also needed to clarify that site design and source control measures are "encouraged" at these sites and not required.
- C.3.b. Regulated Projects – Although this is an improvement over the May 2007 Administrative Draft MRP, the Santa Clara Program still does not support the lowering of the impervious surface threshold for Regulated projects by July 2010. There is no clear justification for this, other than that these thresholds appear in another permit, nor is there

a nexus with improvement in water quality benefits. We request that the threshold for all regulated projects remain at 10,000 square feet of impervious surface.

- C.3.b.i.(1)(iv.) – Parking lots that are covered (e.g., underground or a lower level in a parking structure) should not have to have stormwater treatment controls because there is no exposure. We request that covered parking lots be exempt from the requirements.
- C.3.b.i.(4) – Impervious trails greater than 10 feet wide or within 50 feet of a creek should not be required to have stormwater treatment. This provision will have the effect of discouraging trails along creeks, which we want to encourage in order to promote pedestrian and bicycle use and help the public appreciate the value of creeks. Trails must be greater than 10 feet wide in some cases to accommodate ADA requirements, and there is often no opportunity to drain the trail to a pervious surface because of concerns about bank erosion. We request that trails be removed from the list of regulated projects.
- C.3.b.i.(5) – Including rehabilitated arterial streets and roads in the list of regulated projects that require stormwater treatment will create a significant burden on municipalities and could result in street repairs being delayed and creating a public safety hazard. In cases where the street is being replaced within the same "footprint" and there is development on both sides of the street, there is usually very little right-of-way in which to install treatment BMPs. We request that that the current permit language describing the exclusion of " …pavement resurfacing, repaving and road pavement structural section rehabilitation, within the existing footprint, and any other reconstruction work within a public street or road right-of-way where both sides of that right-of-way are developed" (current Provision C.3.c.i.3) continue to be used in the new permit.
- C.3.c.i.(1) and (2) – Regulated projects should only be required to implement source control and site design measures that are appropriate to the site conditions and type of development. The language in these sections should be changed to require these measures "where applicable" (the Fact Sheet uses this language in describing this provision).
- C.3.d.iv. Infiltration Devices -- Because of the concern for protection of groundwater quality in the Santa Clara Basin, we recommend that the MRP more clearly define "infiltration devices" in order to distinguish infiltration devices from other infiltration measures that are desirable site design and treatment features, and recognize that specific infiltration devices such as dry wells may have greater potential impacts to groundwater quality than others. The Santa Clara Program's *C.3. Stormwater Handbook* provides definitions and guidelines for use of infiltration devices, developed by a work group in which Water Board staff participated.
- C.3.e. Alternative Compliance -- The Tentative Order proposes significant constraints on compliance alternatives to numeric sizing for regulated projects. In implementing the Santa Clara Program's 2001 NPDES stormwater permit, several Santa Clara Co-permittees adopted Alternative Compliance programs following substantial dialogue with Water Board staff and the Executive Officer. The MRP should be consistent with these already adopted programs and/or allow for their ongoing implementation under this MRP. No basis has been provided for invalidating established programs. We do not expect that alternative compliance will be a common technique but it is an important tool for some projects. We request that this provision allow existing alternative compliance programs to remain in effect.
- C.3.e.i.(1) – Why is the alternative compliance option limited to new development projects that are less than one acre? We request that this option be available to all new development and redevelopment projects that are regulated under C.3.

- C.3.e.i.(4) – Requiring that offsite alternative compliance projects be completed by the end of construction of the regulated project will limit alternative compliance options because, in reality, it is difficult to control construction schedules. We request more flexibility in this requirement, say completion within 2-3 years, similar to the completion date for regional projects.
- C.3.h.ii.(6). -- The current permit requires that permittees "inspect a subset of prioritized treatment measures for appropriate O&M, on an annual basis" (Provision C.3.e.i). What is the basis for significantly increasing the required level of effort, specifically that the number of inspections be a minimum of 20% of the total number (or all BMPs within 5 years)? As the number of installed BMPs increases over time, this will be an increasing burden to municipalities. In addition, what is the basis for a separate requirement for inspecting 20% of installed vault-based or proprietary systems? The process for prioritizing BMPs for inspection involves a consideration of many factors, including type of maintenance agreement, whether the owner is using a contractor to maintain the BMP, maintenance history, etc. The permit should continue to allow municipalities the flexibility on the types of BMPs inspected and the exact number of treatment controls inspected in a given year provided that the municipality has an effective program (i.e., continue with the current O&M inspection requirements).
- C.3.h.ii.(5), iii.(1) and iii.(3) – The reporting requirements for BMP O&M inspections are excessive. Why does Water Board staff need this level of detail on each and every BMP inspection? We believe that submittal of a summary of the total number and types of BMPs inspected and categories of problems found should be sufficient to evaluate a permittee's inspection program, and that detailed records can be kept locally for review upon request. Also, in recording information on BMP inspections, it should not be the role of the permittees to judge the compliance status of the owner or BMP; rather it should be sufficient to record the inspection findings and appropriate enforcement and/or follow-up actions. Similarly, in subsection (3), the summary statistics for comparing program effectiveness are all based on "compliance rates/percentages." The effectiveness of a permittee's program should not be evaluated based on the "compliance" of the BMPs or their owners, but on the efforts of the permittee to conduct inspections, provide education, and take appropriate enforcement and/or follow-up actions.
- C.3.j. Collection of Impervious Surface Data for Small Projects – The Santa Clara Program is strongly opposed to this requirement, as we question the usefulness of the data and we believe the requirement will create an additional tracking/reporting burden on selected municipalities on top of all of the other tracking/reporting requirements in the permit. We appreciate that Water Board staff reduced the requirement from one applying to all municipalities to a "regional pilot study." However, Board staff have not sufficiently explained how the data will be used to determine regulatory thresholds in the future. The Fact Sheet implies that the data will be used to determine whether the "current" (i.e. as proposed in the Tentative Order) size thresholds are appropriate. We went through this data collection exercise before, and in the end, the decision to reduce the threshold to 5,000 square feet was made based on what is in other permits in the state, because that is now considered "MEP." In addition to the overall concern regarding the goal of this exercise, the time frame for developing a pilot study plan is too short and the implementation requirements do not say how long the data will need to be collected. We request that Board staff remove this requirement, and instead, provide grant funds for someone to study the costs of C.3. compliance for small sites to determine if in fact the current thresholds are practicable.

C.4. Industrial and Commercial Site Controls

- C.4.a – Legal Authority - The SCVURPPP recommends that the proposed requirements in the Tentative Order regarding violation responses be clarified such that these are violations of local municipal stormwater ordinances. In addition, Tentative Order Footnote 9 should further clarify that to be a discharger for purposes of this permit, the discharge must flow to an MS4 owned or operated by a municipality covered by the permit. Additionally, levying citations or administrative fines is not always the most effective method of enforcement, and the SCVURPPP suggests that the permit allow municipalities the flexibility to choose from a variety of enforcement tools that may include one or both of these alternatives.
- C.4.b – Business Inspection Plan:
    - As written, the Tentative Order proposes a very prescriptive business inspection program that does not allow for flexibility based on local agency experience. The language should allow Co-permittees to have flexibility in what types businesses are inspected and the frequency of inspections. Businesses to be inspected should be limited to ones that discharge to a MS4 that is owned or operated by the municipality that has coverage under the permit similar to what is described in the fact sheet.
    - The requirement under Provision C.4.b.ii(2)- Prioritization of Facilities, requires Co-permittees to identify if coverage under the state's Industrial General Permit is needed for inspected facilities. Considerable judgment is needed to determine which facilities need coverage and the SCVURPPP believes that the Water Board staff is in the best position to make these decisions. Municipalities have been willing to forward information about businesses that might need to obtain Industrial General Permit coverage when Water Board staff has requested this type of information. We request that the Tentative Order not require Co-permittees to determine if coverage is needed for ALL businesses inspected.
    - The Tentative Order requires the inspection of mobile sources with both a fixed base and field activities in their jurisdictions. Mobile sources are very difficult to track, specifically if they are based out of another jurisdiction. Therefore, we request that the requirement to inspect mobile businesses be removed. Outreach to these business to provide best management practices, and enforcement response when illegal discharges are identified is the most efficient way to address these businesses.
- C.4.c – Enforcement Response Plan – The Enforcement Response Plan is a very extremely prescriptive requirement that does not leave flexibility for Co-permittees to use their best professional judgment or experience. It is in essence, a "cookie cutter" approach to enforcement that will not be effective in reducing pollutant in stormwater. Additionally, it is redundant with many requirements in other Provisions (C.5 and C.6). The following changes to the language in the Tentative Order are requested:
    - The Enforcement Response Plans required in Provisions C.4, C.5 and C.6, should be combined into one integrated and consistent set of requirements.
    - The inclusion in the definition of a Tier Two violation of "evidence of potential or threatened polluted discharge" is vague, unnecessary, and should be deleted.
    - The Tentative Order requirements that "verbal warnings are allowed only for the first observed Tier Two offense within a yearly period" provides too little flexibility for inspectors to identify the optimum use of their limited time to obtain compliance with local municipal stormwater ordinances.

- The requirements for electronic databases of inspections in various Tentative Order provisions should be consistent with each other and allow the flexibility of using alternative means of recordkeeping to document compliance with local municipal stormwater ordinances.
- The requirements for an ongoing discharge may be overly restrictive if the discharge does not pose a significant threat to water quality. The SCVURPPP suggests that the language be modified to allow inspectors to use their judgment.
- The up-to-45-day response to threatened discharge should be made more flexible because some threats are more serious than others, and businesses should not be inspected if they do not pose at least some threat to discharge. The SCVURPPP suggests that the Tentative Order be changed to allow this flexibility.
- The technical rationale for using a three-year rolling window to track violations is not explained in the fact sheet. This type of detail should be left to each municipality to decide as part of the development of its Enforcement Response Plan.

C.5. Illicit Discharge Detection and Elimination

- C.5.a – Legal Authority – Throughout the Tentative Order, there are a range of dates for when adequate legal authority should be established. The SCVURPPP recommends that at least one year from permit adoption be provided for municipalities to make any improvements that might be needed to control discharges to their MS4. Allowing 4 months for the legal authority in this Provision is unrealistic. Additionally, the SCVURPPP recommends that any legal requirements in the Tentative Order for controlling "significant trash/litter generating activities" be limited to these activities that affect the quality of water in the MS4 system owned or operated by a municipality with coverage under the permit.
- C.5.b – Enforcement Response Plan:
  - An adequate amount of time is needed to develop an ERP, and based on our experience, the SCVURPPP recommends that the Tentative Order allow for at least one year after adoption of the permit. The ERP needs to be supported by local ordinances that require adequate time to draft, allow public review comment, and adopt. Additionally, the permit should allow one year to complete training on the ERP in order for the training to fit into an annual training workshop.
  - The Tentative Order needs to allow flexibility in responding to discharges and threatened discharges. This comment is expressed above under the similar permit requirement for Industrial and Commercial Site Controls.
  - The Tentative Order currently requires Co-permittees to notify the Water Board within 48 hours of a Tier One violation, even if when there is no discharge to the MS4. The reporting is overly cumbersome and not beneficial to water quality. The SCVURPPP recommends that the permit be modified to delete the requirement that Co-permittees will notify the Water Board within 48 hours of a Tier One violation where there is a discharge to the MS4.
- C.5.d – Collection System Screening:
  - The fact sheet does not provide the technical basis for why municipalities need to survey strategic collection system check points at a density of one screening point per square mile. It is unnecessary to specify the minimum number of checkpoints if municipal staff is trained to check for illicit discharges while

performing other routine maintenance activities. The SCVURPPP recommends that the one check point per square mile requirement be deleted from the permit because it may unintentionally divert municipalities' efforts from effectively prohibiting non-stormwater discharges to the MS4.

- The draft permit's requirement to make MS4 maps available to the public would require a substantial amount of work without any clear benefit to water quality. All of the municipalities' maps are public documents that are available upon request. The SCVURPPP requests that this requirement should be deleted and substituted with a recommendation to use the Oakland Museum of California maps of creeks and storm drains. These maps provide information that would be useful to the public.
- It is unclear how video inspections of storm drains would count toward meeting the Tentative Order's requirements to do "above ground check points." This should be explained or the inclusion of video inspections deleted from the Tentative Order.

C.6. Construction Inspections

- C.6.a. Legal Authority – The Tentative Order states that Permittees shall have "sufficient legal authority to require effective stormwater pollutant control at construction sites," then goes on to describe the specific legal mechanisms that must be employed. SCVURPPP Co-permittees have been implementing construction site inspection programs for years with sufficient legal authority. Some do not have the ability within their municipal codes to impose fines, and others do not have the ability to stop work for various reasons, yet they are able to achieve compliance through other mechanisms. Why must the permit require specific mechanisms if current ones are working? We request that more flexibility be provided in this section. Furthermore, if Co-permittees are forced to change the structure of their legal authority, they will need more than five months to accomplish this[1].
- C.6.b. Enforcement Response Plan (ERP) – Similar to the comment on C.6.a., the Tentative Order requires "adequate follow-up and enforcement" and "an ERP that ensures effective site management," and then lists specific steps that must be included in the ERP. Co-permittees can have different approaches to enforcement, based on their size and community characteristics, and still be effective. Some Co-permittees are not able to give inspectors the authority to levy citations and fines, but they are able to conduct effective enforcement. Again, we request more flexibility in this section to allow municipal agencies to incorporate in their ERPs the enforcement tools that they feel are necessary and effective to achieve compliance with their municipal stormwater ordinances. And again, if Co-permittees are forced to make changes to their ERPs, they will need more than 5 months. Also, why is the implementation date November 30, 2008 when the ERP does not need to be submitted to the Water Board until October 2009?
- C.6.c. Minimum Required Management Practices – Most of the minimum required management practices are reasonable, accepted practices but they are not applicable to every site. The language is confusing in that permittees are required to "identify a minimum set of BMPs … for all construction sites that shall include" the whole list of BMPs. It would make more sense to identify a minimum set of BMPs for each type of construction activity or site condition (i.e. potential for erosion), say as part of a checklist to be used by permittee staff. In addition, the language in section C.6.c.iii. requires submittal

[1] Note: Different sections of the Tentative Order have different implementation schedules for when legal authority should be established, ranging from four months in the Illicit Discharge Controls section to one year in the Industrial/Commercial Controls section. The same discrepancy occurs with the implementation of ERP changes. We request a minimum of one year in all sections of the permit to make changes in legal authority and enforcement procedures.

of the list of designated BMPs for all sites greater than one acre disturbed area, which appears to be in conflict with C.6.c.i. ("all sites subject to a building or grading permit"). We recommend that the language be changed to clarify that BMPs are required as appropriate for the site and to clarify the reporting requirement.

- C.6.c.(3) Advanced Treatment -- The requirements for advanced treatment for sediment removal are similar to those in the draft Construction General Permit. Sites that are a significant threat to water quality will need coverage under the General Permit and will address this requirement in their SWPPPs, and thus this provision is duplicative. Advanced treatment is not economically feasible for sites less than one acre of disturbed area. We recommend that these requirements for advanced treatment be deleted from the Tentative Order.
- C.6.f. Inspection Frequency -- The municipalities should have more flexibility in deciding the inspection frequency that makes best use of their inspectors and resources, depending on the weather and the types of construction projects underway at certain times of year. For large municipalities, the scheduling of inspections, follow-up/enforcement, and responses to complaints during the wet season can be very complicated and it may be difficult to meet specific frequency requirements. We recommend that inspection frequencies for construction sites be stated as goals and not requirements. In addition, the requirements for pre-wet season notification and inspections will be very burdensome for large municipalities. We recommend pre-wet season notification and inspections as resources allow, with the goal being inspection of all active sites greater than one acre, and that the methods allowed to notify construction site owners or operators about pre-wet season inspections be expanded to also include emails, faxes, or telephoned messages.
- C.6.h. Reporting -- The permit should not require tracking of stormwater-specific inspections that identify a threatened discharge. We recommend that the permit limit tracking to significant violations of municipal stormwater ordinances.

C.7. Public Information and Outreach

- C.7.a. Storm Drain Inlet Marking – We agree that storm drain inlet marking is an important form of public education. However, it will be difficult for some permittees to inspect and maintain 90% of them within the permit term, especially considering all of the additional maintenance requirements imposed on municipal staff in Provision C.2. We request that this percentage be reduced to 75%, or alternatively the 90% be used as a goal.
- C.7.e.ii. Public Outreach Events – The number of required outreach events is a concern because footnote 10 states that permittees may only claim credit for up to half of the number of countywide program events. The purpose of forming the countywide programs was to be able to collaborate regionally to address some permit requirements, such as public outreach and monitoring, in a more cost-effective way. The SCVURPPP currently conducts about 4-8 outreach events per year, and usually the events are staffed by volunteers from the co-permittee agencies, so it is truly a joint effort. This footnote would have the affect of discouraging collaboration and coordination within the county. We request that footnote 10 be revised to allow permittees to claim credit for all countywide program events that they either fund or participate in.
- C.7.g.ii. Citizen Involvement Events – Again, the number of required citizen involvement events is a concern because footnote 12 says that permittees can claim credit for a Program activity only if the activity is in their jurisdiction. This makes no sense, since watersheds and creeks do not follow jurisdictional boundaries, and citizens that want to participate in an event may do so outside of the city in which they live. The SCVURPPP

funds a number of events at the San Francisco Bay Wildlife Refuge's Environmental Education Center in Alviso which benefit all of the cities in the South Bay. This is an important place where many citizens learn about connection of their watersheds to the Bay and where they can participate in protecting the Bay ecology even if they live in the foothills. We request that footnote 12 be revised to allow permittees to claim credit for all Program-sponsored citizen involvement events in the Program area.

C.8. Water Quality Monitoring

General Comments

- Unwarranted Significant Increase in Effort - The Tentative Order proposes monitoring requirements that will require a significant increase in resource expenditure by the SCVURPPP. Much of the proposed monitoring goes beyond what is appropriate to yield data that are representative of the monitored activity (i.e., local agency stormwater pollution prevention and control under a MS4 NPDES permit). Recommendations on how the Water Board can make the proposed monitoring requirements more cost-effective, realistic and scientifically-based are included in our more specific comments below.
- Lack of Consideration of Existing Monitoring Data - The Tentative Order does not give credit for monitoring work recently completed under current and previous stormwater permits. The Program believes that previous monitoring should be taken into account and credited toward compliance with provisions in the Tentative Order. It would be a wasteful use of public resources to assume that stormwater programs should "start from ground zero" and disregard valuable data that have been previously collected. This is especially true for SCVURPPP in that Bruce Wolfe has publicly stated that "…the MRP will just move everyone else to the level at which SCVURPPP is currently at with regards to monitoring". In addition, the Tentative Order is at odds with the US EPA audit that found that SCVURPPP *"has been a leader in the development and evolution of similar programs and permits across the country."* We request that the Water Board include a provision in the TO that allows a stormwater program to reduce monitoring requirements contained in the Tentative Order to the extent that it can certify that it has already completed a substantially similar body of monitoring work under previous stormwater permits.
- Need for a Program Based on Sound Science - The Program is concerned that the proposed regional monitoring effort and its population-based allocation among countywide municipal stormwater programs are not scientifically-based. Factors such as local conditions and existing monitoring data were not taken into consideration during specification of the monitoring program in the Tentative Order. Recommendations for a robust science-based regional monitoring collaboration are included in our more specific comments below.
- Requirements for Triggers of Stressor Identification Monitoring Projects are Too Prescriptive and Open-ended - The Program believes that monitoring and stressor identification should follow a stepwise progression from screening through source identification, and that existing data should be used to prioritize and guide monitoring and data collection region-wide. However, the monitoring requirements as written are too prescriptive and allow little room for each program to tailor its monitoring efforts based on previous work and local conditions. For example, the Tentative Order not only include triggers for monitoring projects (Table 8.1 and 8.3) that are based on single-lines-of-evidence, but in some instances, the projects themselves (i.e., follow-up studies) are also defined, leaving no latitude for programs to design and prioritize cost-effective and site-specific follow-up studies. One example is monitoring projects triggered by toxicity tests. If the results of a toxicity test indicate survival of less than 50% of the test organisms (compared to control samples) a "Toxicity Identification Evaluation (TIE)" is required.

Based on the experience of the RMP and other local dischargers (i.e., POTWs), TIEs are extremely expensive and rarely successful in identifying causes of toxicity. Therefore, Co-permittees would be required to conduct a study "to comply with the permit" rather than conducting a monitoring project that actually identifies the causes of toxicity. In this example, an alternative approach would be to evaluate additional lines of evidence, such as chemical analyses of samples collected synoptically with the toxicity samples to determine if there is sufficient exceedance(s) of water quality standards to explain the observed toxicity. If so, a TIE would likely be unnecessary. The SCVURPPP requests that the trigger column in Tables 8.1 and 8.3 be replaced with a reference to performance of monitoring projects designed and implemented in accordance with Provision C.1. It should be noted that a financial resource cap is needed for such monitoring projects.

- C.8.a - Compliance Options
  - C.8.a (i) - As you know, the SCVURPPP has been the leader in watershed monitoring in the Bay Area through the implementation of our Multi-Year Receiving Waters Monitoring Program. Based on our Fiscal Year 2008-09 Draft Work Plan, we currently plan to continue the implementation of this program through a regional monitoring collaborative (RMC). Therefore, we appreciate the option for developing an RMC as described in the first paragraph of C.8.a(i). However, further clarification is needed regarding this option. Most importantly, the regional monitoring collaborative option should allow for the development of a scientifically robust monitoring plan that is designed to answer the core monitoring questions described in Provisions C.8.c through C.8.f (excluding Pump Stations- C.8.e.iii). The RMC's monitoring plan would replace the requirements in these provisions but would require a very similar level of effort when each program's past monitoring efforts are accounted for (see our above comment). The Tentative Order's overly prescriptive requirements disregard the adaptive nature of well designed monitoring programs, where, for example, initial results may inform the next year's monitoring design. Specifically, the SCVURPPP seeks the option to collaborate with other Bay Area stormwater programs and SWAMP in developing an RMC that is similar to the Stormwater Monitoring Coalition (SMC) that has been successfully implemented in Southern California. Through the RMC, a scientifically-based experimental (sampling) design would be developed which would include the selection of watersheds and sites to be sampled; and, parameter types, frequency and intervals that are supported by scientific panels and/or expert reviewers. We also would encourage the participation of SWAMP staff and other interested parties/organizations. To allow this option to be fully realized, the language in the last sentence of C.8.a(i) must be revised to allow for science-based deviations in the types and quantities listed in the Provisions (C.8), based on the agreement of participants in the RMC and/or scientific panels/reviewers. Add some of Gary Grimm's language here or somewhere else about how high specificity in monitoring plans is not legally required?
- C.8.c – Status Monitoring/Rotating Watersheds (comments provided below are made notwithstanding comments previously made on provision C.8.a. For example, it is possible that some of the below comments would not be relevant or appropriate to a new monitoring program designed by the RMC).
  - C.8.c(i)/Table 8.1:
    - General Comments - As implied in the core monitoring questions for "status" monitoring, the goal of the "status" monitoring program is to provide information that will assist stormwater programs in better understanding the status/condition of beneficial uses in local creeks. Given the number of creeks

and creek miles in the Bay Area, the myriad of parameters that can be sampled, and the limited public resources that can be applied to monitoring, the SCVURPPP supports a water quality indicator-based approach. Per the SWRCB's SWAMP program, considerations for water quality indicators must not only be scientifically valid, but their application must be practical when placed within the constraints of a monitoring program. Constraints on the SCVURPPP are mostly resource related, necessitating the selection of a small set of robust "status" indicators that integrate both space and time, and thus provide the most "bang for the (SCVURPPP) buck". Many of the parameters (indicators) listed in Table 8.1 do not meet these criteria and therefore their utility in providing information to assess the "status" of creeks is questionable (see specific comments below).

- "Dry" and "spring" sampling are synonymous and one term should be chosen (preference is dry).

1. Biological Assessment – The SWAMP procedure referenced in Footnote 18 currently requires that "…*ambient macroinvertebrate sampling should include collection of both reachwide (RW) samples and richest targeted habitat (TR or MCM) samples at every site."* This procedure would require that two samples be collected at each site, likely doubling the current SCVURPPP level of effort and cost per site. Based on the SCVURPPP experience in conducting numerous bioassessments and closely following and participating in the development of the SWAMP bioassessment procedure, the benefit of this effort is questionable. We request that clarification of the footnote to state that "based on the aquatic habitat available during the time of sampling, either the RW or richest targeted habitat field method may be used". Additionally, to-date SWAMP has not published a protocol/procedure for periphyton biological assessment. Until such a protocol is developed, bioassessments for periphyton should not be considered in stormwater permits. We request that periphyton bioassessments are excluded during this permit term.
2. Chlorine - Although the intent of the "status" monitoring requirements included in Table 8.1 is to answer the stated core monitoring questions, it should be made clear that stormwater monitoring programs are conducting receiving water monitoring to assess the status of water bodies with regard to stormwater-associated impacts. Therefore, monitoring parameters in Table 8.1 that are associated with non-stormwater stressors (e.g., riparian and aquatic habitat degradation) should be removed. Chlorine is generally associated with potable water discharges (e.g., water line breaks) rather than any stormwater impacts. This parameter should therefore be excluded.
3. Nutrients – SCVURPPP has collected and analyzed samples for nutrients in Santa Clara Valley Creeks since 2002 during dry weather periods. Although concentrations are generally greater than USEPA recommended criteria for total nitrogen and total phosphorous, excess algae is rarely seen and there is little to no evidence of eutrophication of local creeks. Therefore, based on the SCVURPPP monitoring data, the extremely large sampling effort for nutrients that is currently required by the TO is not supportable. We request the following: 1) "storm event" monitoring be deleted as it is redundant with requirements in Table 8.5; 2) "spring" monitoring be reduced to a level commensurate with our current level of concern; and, 3) "dry weather" monitoring be removed.

4. General Water Quality at 15-Minute Intervals – This effort is significant in that it will require programs to purchase, operate and maintain field monitoring equipment that measure parameters that generally are not directly related to stormwater impacts. Additionally, continuous monitoring of temperature, dissolved oxygen, pH and conductivity will yield results with limited potential for spatial extrapolation. We request that this requirement be removed.
5. Temperature at 15-Minute Intervals – Changes in temperature are typically associated with impacts not related to stormwater runoff such as water diversions and lack of riparian canopy cover. This parameter should therefore be excluded. (Note that routine measurements of temperature are made during grab water sampling and bioassessments).
6. Toxicity, Diazinon and Chlorpyrifos – The SCVURPPP requests that toxicity and organophosphate pesticide monitoring during "storm events" be moved to provision C.8.f (Pollutants of Concern Monitoring) and conducted at a frequency commensurate with the current level of understanding of impacts associated with these pollutants. Water column toxicity and diazinon concentrations in Santa Clara creeks have dramatically decreased since the phase-out of diazinon. Therefore, the frequency of sampling should be minimal and we recommend that diazinon and water column toxicity be sampled at the same frequency that "Category 2" pollutants are sampled.
7. Pollutants – Bedded Sediment – In Footnote 25, we request removal of the word "all" from the second sentence since some contaminants reported in MacDonald may not be high priority in the Bay Area.
8. Trash Assessment – Trash accumulates at specific sites in creeks due to a combination of factors such as proximity to source, hydrologic conditions and instream conditions. Although not stated, the objectives of conducting trash assessments are likely to include 1) assess the current status of specific sites in creeks, 2) detect changes over time as a result of factors such as BMP implementation, in concert with other approaches (e.g., loads reduced calculations) and 3) identify sources of trash to the assessment site. Based on these objectives, trash assessments would be best conducted at trash accumulation sites in creeks sites, and, if appropriate, directly downstream of where BMPs will be implemented. There is no basis for the assumption that trash accumulates at sites where toxicity and pollutants in bedded sediment are sampled. For this reason, we request that the text "…and additionally at the toxicity and pollutants in bedded sediment (6/4/1) sites" be removed.

   Additionally, it is unclear what scientific basis was used to establish the frequency of 2 times per year, every year for trash assessments. Based on the numerous trash assessments conduct by SCVURPPP Co-permittees, we believe that this frequency could be drastically reduced (e.g., every year of the permit term) and still achieve the objectives stated above. Specifically, we recommend that trash assessments be conducted the first year of the permit to establish baseline conditions and at a frequency of every two years thereafter.

- C.8.c(ii) - Locations: It is currently unclear what criteria were used to select the water bodies listed in this subprovision. It appears that the selection was not based on a review of previously collected monitoring data or a need for additional data to fill priority data gaps. Rather, it appears that these water bodies were selected arbitrarily. Additionally, the criterion in the Tentative Order for selecting monitoring sites that reads: "Samples shall be collected in reaches where the

contributing catchment area is 60 percent or more urban or suburban land use" is too prescriptive and will likely eliminate many sites of interest in "urban" sections of creeks, including many of those in the water bodies listed. Sampling locations should be chosen scientifically to help address specific monitoring questions. There is no legal requirement for the permit to specify monitoring locations. We therefore request that the language in the Tentative Order be revised to state that "Sampling locations shall be selected to produce data that meet the objectives of the monitoring program."

- C.8.d - Long Term Trends Monitoring: As currently written, this provision is confusing and appears to have significant overlap with C.8.c and C.8.f. Therefore, the SCVURPPP requests that this provision be significantly revised. Suggested new language could include: 1) an incorporation of "long-term trends" into C.8.c by requiring that a portion of the sites sampled under status monitoring be considered long-term trend sites where routine sampling occurs; and, 2) an incorporation of storm event sampling into C.8.f.
    - C.8.e – Monitoring Projects
        - C.8.e(i) – Stressor Identification – The SCVURPPP appreciates the Water Board staff attempt to integrate stressor ID and Provision C.1. However, to avoid duplication of effort where an exceedance has previously been established and a follow up plan (such as a TMDL or other program in this permit) has already been created to address it, the "cap" set forth in Provision C.8.e.1.(3) should also integrate the language in the last paragraph of Provision C.1 that states that Permittees "do not have to repeat the same procedure for continuing or recurring exceedances of the same receiving water limitation." As to other situations where monitoring results trigger the need for a new program, additional State funding should be provided as a condition on the initiation of such efforts, and the regional cap should be reduced from 10 to 5 projects, with each countywide program (including SCVURPPP) required to initiate no more than 1 project.
        - C.8.e(ii) – BMP Effectiveness Investigation – Structural treatment BMP investigations are currently required in Provisions C.10, C.11 and C.12. It is unclear how this requirement is related to those Provisions. Given the high priority of TMDL/POC-related studies included in C.10, C.11 and C.12, we request that this requirement be removed from the Tentative Order.
        - C.8.e(iii) – Dry Weather Discharges & First Flush Investigations: See comments and recommendations in C2.g.
        - C.8.e(iv) – Geomorphic Project – While the Water Board may have an admirable objective in mind with respect to this proposed requirement (i.e., restoration of degraded creek banks and prevention of their collapse), it is beyond the scope of the federal Clean Water Act's NPDES permit program (as distinct from its Section 319 *grant* program) to require MS4s to conduct these investigations[2]. Further, both this Water Board and the State Board are in the process of developing regulatory policy on this issue. Inclusion of this requirement is therefore premature relative to current policy development by the State. Therefore, we request that this requirement be deleted from the TO or, at a minimum, its application to SCVURPPP's municipalities should be made conditional on their receipt of a section 319 (or other) grant to fund the work.

[2] *S.D. Warren Co. v. Maine Bd. of Environmental Protection*, 547 U.S. 370, 126 S.Ct. 1843, 1847-49 (2006); *see also*, 65 Fed. Reg. 43,586 (July 13, 2000) (withdrawn for unrelated reasons at 68 Fed. Reg. 13,608 (Mar. 19, 2003).

- C.8.e(v) – Monitoring Project Reports - The numerous required dates for submittals throughout the Tentative Order make reporting schedules overly cumbersome and confusing. We request that monitoring project reports are included either in the Annual Urban Creeks Monitoring Report or in the Annual Report.

- C.8.f.(i-iv) - Pollutants of Concern Monitoring: There are two main concerns with the pollutant of concern monitoring design as it is currently written in the Tentative Order. First, monitoring requirements in this provision represent a significant undertaking by SCVURPPP and other stormwater programs. The logistics of conducting science-based "storm event" monitoring makes this type of activity highly resource intensive. Therefore, we request that additional time be granted to "phase-in" POC monitoring stations. For example, one for each applicable countywide program could go "on-line" in year 2 and the other in year 4. This would allow programs to learn from monitoring conducted at a single site before adding an additional site. Additionally, considering that POC monitoring is likely to continue beyond the 5-year permit term to assess TMDL progress, a one to two year phasing process would not significantly impact the intent of this monitoring requirement. Our second concern is related to the methodologies and protocols used to conduct POC monitoring. The USEPA protocols cited are now 16 years old and much has been learned over that time about monitoring contaminant loads from creeks. Similar to our request with regards to C.8.a, the language in the Tentative Order should be revised to not only allow for the use of alternate stations where POC monitoring will occur, but to also allow for science-based deviations in the POC monitoring design, including sampling frequency and interval listed in Table 8.5, based on the agreement of participants in the RMC and/or scientific panels/reviewers.
- C.8.f(v) – Sediment Delivery Estimate/Budget – As you know, the RMP (which stormwater programs fund) is currently conducting a special study to develop preliminary estimates of sediment delivery to the Bay from local tributaries (i.e., creeks). We request that the Tentative Order language be revised to explicitly acknowledge that this RMP study will satisfy this requirement or alternatively delete the requirement since it is redundant.
- C.8.h(i) – Annual Urban Creeks Monitoring Report- The reporting timelines in the Tentative Order are unrealistic and inappropriate. The annual Urban Creeks Monitoring Reports should have a due date of a minimum of at least 6 months after the Electronic Data Reports as originally written in the Administrative Draft. The Tentative Order's November 30 due date for both reports has several detrimental effects. It would effectively require completion of sample processing, lab analysis and QA/QC several months before the November due date for Electronic Data Reports. This increases the likelihood of resource scheduling problems and added rush costs for analysis and QA/QC of data collected in spring and summer. Additionally, it will greatly reduce opportunities for creek groups, local managers or other stakeholders to review the data or have input to the Monitoring Reports. Based on these factors, we request that the due date for the Annual Urban Creeks Monitoring Report be moved back to at least 6 months after the Electronic Data Reports are due (currently November 30th).
- C.8.h(iii) – Integrated Monitoring Report – It is unclear why a "budget summary for each monitoring requirement…" is needed. Please remove this requirement.

- C.8.i. – Monitoring Protocols and Data Quality – As previously pointed out, some monitoring parameters required in the Tentative Order do not have SWAMP comparable methods/protocols. Additionally, data quality objectives for studies conducted via this permit may exceed those in the SWAMP QAPP. Therefore, we request that the language in this Provision be revised to state that "Monitoring data shall be SWAMP comparable *where applicable*…."

All POC Provisions (C.9 – C.14)

- During recent years, Bay Area stormwater programs have conducted or participated in many studies of pollutant of concern (POC). These studies have drastically improved our collective knowledge of the distribution of POCs, types and potential locations of sources, and control measures that may reduce POC-associated impacts. Additionally, the SCVURPPP has continued to implement control programs for copper/nickel, pesticides, mercury, PCBs trash and dioxins. These studies and programs have culminated in many submittals to the Water Board, some of which meet the intent of requirements proposed in the Tentative Order. Therefore, as agreed by Water Board staff in meetings with BASMAA (including SCVURPPP staff) in the summer of 2007, the opening paragraph for each Provision pertaining to Pollutants of Concern Control Programs, should include a statement that such as: "The Permittees may address the requirements in this Provision by building upon their prior submissions to the Water Board."
- Additionally, similar to the language included in Provision C.8a, the opening paragraph for Provisions C.9 through C.14 should include a statement that allows Co-permittees to have the option of "utilizing regional studies for which the Co-permittee is involved" to comply with POC provisions. For example, a Proposition 50 study to investigate concentrations of PCBs in building material is currently underway and BASMAA member agencies (including SCVURPPP) are actively participating in this project. The scope is very similar to Provision C.12.b and therefore, BASMAA agencies should have the option of complying with this Provision via participation in the Prop 50 study. We request that this option should be made more explicit in an introductory paragraph to each POC provision.

C.10 Trash Reduction

Provision C.10 requires each Co-permittee to identify high trash and litter catchments totaling at least 10% of the urbanized area within its jurisdiction and implement control actions to reduce the level of trash in creeks and the San Francisco Bay. Two types of control actions are required: 1) the use of "enhanced trash management control measures" in the entire identified area (i.e., 10% of urbanized area); and 2) the installation of "full trash capture devices" in at least half (i.e., 5% of the urbanized area) of the area where enhanced trash management control measures are being implemented. Enhanced trash management control measures would be implemented as interim controls in the areas where "full capture devices" would eventually be installed. Required types of enhanced trash management control measures are listed and include enhanced street sweeping, catch basin cleaning, dumping site cleanup and public outreach requirements. Additionally, "full capture devices" are defined.

As demonstrated by the numerous trash-related pollution prevention programs, creek trash assessments, and pilot demonstration projects implemented by Co-permittees, the SCVURPPP is dedicated to reducing the amount of trash entering creeks from municipally owned or operated storm drainage systems in the Santa Clara Valley. Additionally, the SCVURPPP has created a trash management and assessment strategy designed to assist Co-permittees in: 1) identifying trash problem areas and sources; 2) selecting and implementing appropriate control measures at high priority problem areas; and, 3) assessing the effectiveness of control measure

implementation. Based on this experience and direction the SCVURPPP has undertaken to effectively reduce the amount of trash in creeks, we have the following major concerns on the proposed requirements for trash reduction:

1. Trash in urban areas and creeks is a complex problem for which public agencies have already expended extensive public resources to help solve. On March 14, 2007 the Water Board heard a status report on the Municipal Regional Stormwater Permit that solicited many comments on the need to improve trash and litter control. Some of the commenters pointed out the variety of societal problems, such as homeless encampments, that in some locations contribute significantly to garbage and hazardous material being dumped along creeks. Several Board members recognized that the issue was bigger than just "stormwater" and suggested that it would be worthwhile to form a multi-agency team to help improve the control of trash and litter. The SCVURPPP supported this idea and eagerly waited to participate in this effort. After nearly one year following the Water Board hearing, we are unaware of any effort the Water Board staff has made to form a multi-agency team to develop a more comprehensive public policy to deal with trash and litter. Rather, it appears that solving all trash issues in creeks and the Bay has been put on the back on municipalities via the requirement in Provision C.10.

2. The proposed approach to reducing trash in creeks is overly prescriptive, and it does not recognize the variety of possible trash sources and transport pathways to creeks and the Bay. For example, based on numerous creek trash assessments and local agency knowledge, the SCVURPPP has identified four general trash transport pathways to creeks. These include stormwater, wind, direct dumping and downstream transport. Based on numerous creek trash assessments conducted by SCVURPPP Co-permittees, it is clear that each creek site where trash is deposited has its own unique set of sources and pathways, which may or may not include stormwater. Therefore, successful strategies to reduce trash in creeks would best be tailored to address specific sources and pathways at specific sites, rather than a "one size fits all approach" as required in the Tentative Order. The approach in the Tentative Order includes identifying an arbitrary amount of municipal land area and blindly implementing "full trash capture devices" and very prescriptive "enhanced trash management control measures."

3. The proposed trash requirements would require significant public resources to implement with an unknown benefit to water quality. Preliminary capital costs for SCVURPPP co-permittees to implement "full capture devices" in 5% of their urbanized area are estimated to be between $2.6 and $84.6 million (average $40.9 million)[3]. Additionally, annual (ongoing) operation and maintenance costs for these devices are estimated to be between $1.7 and $6.6 million (average $4.2 million). Including "enhanced trash management measures" in an additional 5% of urbanized areas would likely significantly increase these costs. Based on these significant anticipated costs, unless the Water Board ties the application of the MRP Tentative Order's (full capture device) requirements to co-permittee's receipt of funding from the State, SCVURPPP requests that the Tentative Order be modified to allow flexibility in addressing trash and litter controls problems so that cost-effective solutions may be implemented that are tailored to solving particular problems

Based on these significant concerns and anticipated costs, unless the Water Board ties the application of the T.O.'s (full capture device) requirements to co-permittee's receipt of funding from the State, SCVURPPP requests that Tentative Order be modified to allow flexibility in addressing trash and litter controls problems so that cost-effective solutions may be

[3] See attachment to BASMAA's comment letter on Tentative Order dated February 28, 2008.

implemented that are tailored to solving particular problems. It is specifically recommended that the Tentative Order be rewritten to require that each co-permittee and/or program conduct the following steps during this permit term: 1) identify trash sources and transport pathways to trash hot spots in creeks within their municipalities; 2) select one creek site that is impacted by trash transported via the municipal storm drain system; 3) identify high trash impact catchments where trash is entering the storm drain system; 4) implement an appropriate solution or require the responsible parties to implement a solution (e.g., full capture treatment devices and/or enhanced trash management measures); 5) demonstrate measurable reductions in trash and litter to these sites; 6) develop along-term plan to significantly reduce trash in high impact trash catchments; and 7) work with the Water Board and other interested parties during the term of the permit to secure resources (such as from previously approved State Bond measures) to fund the implementation of the long term plan developed above.

C.11. Mercury Load Reduction

- C.11.c, d and e. Ancillary Mercury Studies During PCB Pilot Studies – We request that these provisions are revised to state clearly that mercury is ancillary and that PCBs will be the main consideration during design and implementation of these pilot studies.
- C.11.f. Diversion of Dry Weather and First Flush Flows to POTWs – We request replacement of this provision per the below discussion under C.12.f.
- C.11.h. Fate and Transport Study of Mercury - Studies aimed at better understanding the fate, transport, and biological uptake of mercury discharged in urban runoff should primarily be conducted by the Regional Monitoring Program (RMP). We request revision of this requirement to specify that compliance will be achieved through participation in the RMP.

C.12. PCBs

- C.12.a. Industrial Inspections for PCBs – This provision incorporates identification of PCBs and PCBs equipment into existing industrial inspections throughout the region without pilot testing. We request that it is revised to require performance of pilot programs in two communities to identify cost-effective and efficient ways to implement this type of program. This approach would be consistent with the PCBs TMDL Basin Plan Amendment, which specifies that PCBs actions during the five-year permit term should consist of cost-effective pilot studies.
- C.12.b. Pilot Projects to Manage PCB Materials during Building Demolition and Renovation – The requirements for these pilot projects, as discussed above, are overly prescriptive and do not allow for consistency with the scope and stakeholder process of an ongoing Proposition 50 grant-funded project that addresses the objectives of this provision. We request that these requirements are replaced with a requirement that BASMAA continues to participate in the Proposition 50 project as a stakeholder and project partner. In addition, it is extremely important to note that the sampling required by this provision would possibly lead to immediate abatement orders to protect human health at some sampling sites. This possibility will make it difficult or impossible to obtain permission to sample due to the potential liability to property owners. The Proposition 50 project is currently working with USEPA and other parties to explore ways to resolve this issue, but an easy resolution is not anticipated. It is possible that any program to identify and abate PCBs in buildings will initially be driven by on-site human health risks rather than water quality concerns.
- C.12.c. Pilot Studies to Investigate and Abate On-land PCBs Sites – This provision requires identification of five pilot study drainage areas by November 30, 2008. We

request extension of this unreasonably short time frame by at least 12 months (subsequent due dates would not need to be pushed back) after the approval of the TO by the Water Board. In addition, the language in C.12.c.iii. appears inconsistent with the language in C.12.c.v. Based on recent discussion with Water Board staff we understand that staff will revise these provisions to make it clear that municipalities are not responsible for abating PCB contamination on private properties. Thus, we request revision of these provisions to clarify that municipalities are not responsible for abating PCB contamination on private properties. It should also be noted that on-site human health risk may become an important factor during planning and implementation of PCB site cleanups.

- C.12.d. Pilot Studies to Evaluate and Enhance Municipal Sediment Management Practices – The scope of this requirement is too extensive. Pilot testing in an excessive number of locations is not cost-effective. We request revision to specify an initial feasibility study and cost analysis of enhanced sediment management practices, including street sweeping, using existing information. This requirement should further be revised to require pilot testing of appropriate enhanced sediment management practices (selected based on the results of the feasibility study) in up to two drainages, contingent on the availability of grant funding for this pilot work. Depending on site conditions and other factors, one or two of the five pilot drainages specified in C.12.c may or may not be appropriate locations for the pilot testing. In addition, this provision specifies implementation actions beginning July 1, 2011. We request removal of this requirement since the PCBs TMDL Basin Plan Amendment specifies that PCBs actions during the five-year permit term should consist of cost-effective pilot studies.
- C.12.e. Conduct Pilot Projects to Evaluate On-site Stormwater Treatment via Retrofit – The scope of this requirement is too extensive. Pilot testing in an excessive number of locations is not cost-effective. We request revision to require pilot testing of appropriate on-site stormwater treatment retrofits at up to three sites, contingent on the availability of grant funding for this pilot work. Depending on site conditions and other factors, one or more of the five pilot drainages specified in C.12.c may or may not be appropriate locations for the pilot testing.
- C.12.f. Diversion of Dry Weather and First Flush Flows to POTWs – These requirements are premature, overly prescriptive and require actions outside of the jurisdiction and control of municipal stormwater agencies. Please see the comments and recommendations contained above under C.2.g.
- C.12.g. Monitor Stormwater PCB Pollutant Loads and Loads Reduced – Please see our comments and concerns in the above section C.8., Water Quality Monitoring.
- C.12.h. Fate and Transport Study of PCBs in Urban Runoff – Studies aimed at better understanding the fate, transport, and biological uptake of PCBs discharged in urban runoff should primarily be conducted by the Regional Monitoring Program (RMP). We request revision of this requirement to specify that compliance will be achieved through participation in the RMP.
- C.12.i. Development of a Risk Reduction Program Implemented throughout the Region – We request revision of this provision to make it more specific. The revised provision would require that BASMAA participates in public outreach and education efforts conducted in cooperation with BACWA, OEHHS, and Department of Public Health to address PCB-related risks from consuming fish caught in San Francisco Bay.

C.13. Copper

- C.13.b – Pools, Spas and Fountains – The Tentative Order states that "permittees shall require installation of a sanitary sewer discharge connection for pools, spas, and

fountains." The SCVURPPP recommends that this requirement be modified to indicate that this requirement should not be imposed in areas of the county that rely on septic systems. In addition, SCVURPPP developed an educational flyer and program to promote discharge to the sanitary sewer where feasible. The TO should incorporate flexibility where discharge to the sanitary sewer is not feasible.

- C.13.c – Vehicle Brake Pads – The SCVURPPP requests that the Tentative Order remove the proposed "desktop study to evaluate the implementation of enhance treatment system design, operation and maintenance efforts" to "minimize the amount of brake pad-associated copper from reaching the Bay." The SCVURPPP does not control the amount of copper that is used in brake pads, although it has contributed funds for many years to the Brake Pad Partnership to help solve the copper brake pad wear debris problem. The Water Board may want to consider requiring that the manufacturers of these products conduct these types of studies. [oh no, they're too scary]
- C.13.e – Copper Study – Based on water quality data collected via SCVURPPP studies and monitoring programs, the Water Board delisted copper as impairing the Bay. Based on this delisting, copper is a considered a lower priority than other POCs included in the Tentative Order. To assess trends in copper concentrations in the Bay, the SCVURPPP continues to provide significant funds and technical support to the RMP and continues to monitor copper (and nickel) in the south bay consistent with the Water Board approved action plans. Therefore, it is unclear why Co-permittees would be required to conduct additional studies to investigate copper impacts on the Bay. The SCVURPPP recommends that this requirement be deleted since there are numerous other high priority requirements.

C.14. PBDE, Legacy Pesticides and Selenium

This provision requires characterizing the distribution of PBDEs, legacy pesticides and selenium in urban areas of the Bay Area, calculating loads of these pollutants to San Francisco Bay from urban runoff conveyance systems, and identifying control measures and/or management practices to eliminate or reduce discharges of these pollutants conveyed by urban runoff conveyance systems. We request revision of this provision to clarify that 1) data collected through the Water Quality Monitoring, Pollutants of Concern Monitoring provision (C.8.f.), 2) existing BASMAA agency data on concentrations of legacy pesticides in bedded sediments and/or 3) other existing data will provide a sufficient basis for completion of these tasks. We also request revision of the C.14 schedule to make it consistent with the C.8.f. data collection efforts by specifying that the results of the C.14 tasks will be summarized in a report submitted with the October 2012 Annual Report.

C.15. Exempted and Conditionally Exempted Discharges

The Tentative Order's Exempted and Conditionally Exempted Discharges section (Provision C.15) would require Co-permittees to meet very detailed and prescriptive requirements on discharges of certain conditionally exempted discharges to storm drain systems and watercourses within their respective jurisdictions. These requirements would apply regardless of whether the discharge flows through the municipal separate storm sewer system or whether the discharges are under the control of local municipalities. The Tentative Order would require that, regardless of the nature of the potential pollution threat they pose, municipalities be ultimately responsible for discharges of pumped groundwater, foundation drains, water from crawl space pumps, and footing drains meeting "water quality standards consistent with the existing effluent limitations in the Water Board's NPDES General Permits..." (Provision C.15.b.i.(1)(c)). This would include the municipality being responsible for assuring expensive water quality testing of suspended solids, total petroleum hydrocarbons, volatile organic compounds, and metals

regardless of how necessary they think such testing is. Furthermore, the municipalities would be required to "maintain records that these discharges, BMPs implemented, and any monitoring data collected demonstrate that the discharges meet the unprohibited criteria" (Provision C.15.b.i.(2)).

The Tentative Order also includes detailed requirements for planned, unplanned, and emergency discharges of potable water (Provision C.15.b.iii). The proposed requirements include very prescriptive monitoring and reporting requirements. In some cases the potable water dischargers would be different agencies than the Co-permittees, but the requirements would be imposed on the Permittees. Some municipalities have their own local water utilities, but the rest will be reluctant to take on the oversight responsibility for large water utilities' compliance with the overly prescriptive and expensive requirements proposed in the draft permit.

SCVURPPP recommends that this provision be rewritten to provide municipalities with flexibility in determining where BMPs and/or monitoring are necessary to ensure that conditionally exempt non-stormwater discharges do not result in adverse impacts to receiving waters and further flexibility in determining which BMPs and/or monitoring requirements should be imposed in specific situations. SCVURPPP developed a Conditionally Exempted Discharges Report (June 2000) which lists appropriate BMPs for control of these minor types of non-stormwater discharges. It incorporates by reference the SCVURPPP Water Utility O&M Discharge Pollution Prevention Plan (1997), which contains BMPs for planned and unplanned potable water discharges of various quantities and chlorine concentrations. Both of these documents were reviewed and approved by Water Board as part of issuance of the current NPDES permit in 2001 and should be grandfathered in this Permit. (Other Bay Area municipalities should be given permission to utilize the approach the Water Board previously approved for SCVURPPP or given the opportunity to develop an alternative if they are willing to submit it for Water Board approval.) If this recommendation is not acceptable, we request that the Water Board staff provide specific factual evidence relevant to SCVURPPP co-permittees that supports the need for the TO requirements in lieu of the current SCVURPPP program.

Attachment F: Santa Clara Permittees' Hydromodification Requirements

We appreciate Board staff incorporating agreed upon changes into Attachment F and we have no additional comments on this section.

Attachment L: Reporting

The Report Form is highly prescriptive, and the amount of reporting and recordkeeping would require a significant amount of staff resources that provides little benefit to protecting water quality. In addition, the Report Form is in many instances is inconsistent with the Tentative Order reporting provisions and often requires more information than what is required to be reported for a specific provision.

We request that the reporting form be removed from the Tentative Order and re-developed in coordination with BASMAA during the first year of the permit cycle following the adoption of the permit. The inclusion of the form within the Tentative Order also sends the wrong message to municipalities and stakeholders that the contents of the permit have already been decided, regardless of the comments submitted on the Tentative Order. If the reporting requirements are not reduced from their current form, reporting will certainly result in a wasteful use of limited municipal staff resources. Some examples are noted below:

- Page L-14 - Types of sweeper used- The MRP requires reporting on the sweeper type rather than sweeper name. The summary table provides the sweeper name. The type of sweeper (e.g., regenerative air, broom, etc.) will give more information regarding targeted pollutant removal effectiveness.
- Page L-15 - Total Roadway length swept at the curb, free of parked cars- The MRP does not require the collection of this data point. In addition, it is highly impractical to collect this data point since a sweeper operator cannot stop sweeping to calculate the length of road which is free of parked cars. Recommend deleting this data point from the summary table.
- Page L-15-Area of public parking lots swept- The MRP does not require the collection of this data point. In addition, it is not possible to collect this data point in square miles. It is possible to collect the total length (in miles) of parking lots swept.
- Page L-16 - Sweeper maintenance record- What is the significance of collecting this item? The MRP does not require the collection of this data point.
- Page L-20- Frequency of inspections (high accumulation areas) - Unclear why this frequency needs to be reported since the MRP requires an increase to twice a year. The identification of high accumulation areas is used to prioritize areas where BMPs or other trash and litter abatement actions should be instituted.
- Page L-21- Pump station trash racks and oil absorbent booms inspection and maintenance frequency- Unclear why this frequency needs to be reported since the MRP requires inspection during or within 24 hours of significant storm events.
- Page L-22 - Length of rural public roads in jurisdiction- Unclear why the total length (numeric value) of rural roads is relevant in the protection of water quality. General location within a jurisdiction maybe more appropriate. The MRP does not mention/require reporting the length of rural roads. Suggest deleting this data point from the summary table.
- Table C.2.i:
    - Type of Operation - This column is not needed. Tracking inspection results from each specific corporation yard activity is burdensome since numerous activities are conducted. Tracking at this level of detail will increase: 1) the time needed to conduct an inspection; and 2) data collection and reporting requirements. The comments field will capture inspection result details and problematic locations.
    - Compliance Status- It is unclear why it is necessary to assign compliance status to describe inspection results. A better approach to indicate compliance is to report if any violations were noted. If so, provide a standardized description of the violation. The Program would prefer this approach because: 1) you have the ability to learn what violations may be common; and 2) you can tailor personnel trainings based on inspection results. Assigning compliance status unless you know the problems limits the determination of BMP effectiveness.
- Table C.3.b:
    - Name of Developer – The name of the developer is not needed for compliance with Provision C.3. However, this field could be tracked and placed within Table C.3.b if absolutely necessary.
    - Project Watershed – The information provided within this column is inconsistent (e.g., overly detailed) with the MRP reporting requirement of C.3.b.iii. The MRP requires that the project watershed be provided NOT the tributary or creek that

urban runoff may flow to from the project. It is suggested that the project watershed be provided in accordance with the MRP.

- Status of Project- It is not necessary to provide the application submitted date. Tracking the application deemed complete date is the more useful way to track project approvals. The request to report/track the construction completed date is not necessary and inconsistent with the MRP reporting requirements of C.3.b.iii. In accordance with the MRP, the application date, application deemed complete date and project approval date are only required. In addition, Planning Departments do not track construction. As a result, tracking this date would be burdensome and difficult. Currently, approved projects are only reported in the fiscal year in which they were approved.
- HM Controls- The request to provide why HM controls are not required is overly burdensome. Providing information that they are not required should suffice.

- Table C.3.h:
  - Facility/Site Inspected and Responsible Party for Maintenance- The name of the responsible party is not needed to determine compliance or the effectiveness of an operation and maintenance verification program. It is mainly used to correspond with the responsible operator regarding inspection results. It is unclear why it should be provided. As a result, it is suggested that the request to provide the responsible party be removed from Table C.3.h.
  - Compliance Status- It is unclear why it is necessary to assign compliance status to describe inspection results. A better approach to indicate compliance is to report BMP O&M inspection results. This approach shows if a treatment BMP is working as designed and maintained. To ensure standardization when describing inspection results, the Program developed a list of potential inspection result categories in November 2005. Co-permittees use these categories to report inspection results within their Annual Reports. The Program would prefer to provide inspection results rather than a compliance designation because: 1) you have the ability to learn what inspection results are common with certain BMPs; 2) you may determine the performance and/or effectiveness of a specific BMP; and 3) you can measure a change in results over time. Assigning compliance status is too narrow of a designation if you trying to determine BMP and O&M verification program effectiveness.
- Page L-28 - Request for Compliance Rates- Since any problem with a treatment BMP suggests non-compliance, providing compliance rates of the O&M verification program and specific stormwater treatment systems is not the best way to indicate if a BMP is performing as designed. A better approach to determine BMP performance and/or effectiveness is to report BMP O&M inspection results. This approach will show what problems exist and may encourage improved BMP management and/or maintenance. It is suggested that the request for compliance rates be removed from the summary table.
- Table C.3.j:
  - Name of Responsible Party; Project Type; and Description – The name of the responsible party is not needed for compliance with Provision C.3.
  - Project Watershed – The information provided within this column is inconsistent (e.g., overly detailed) with the MRP reporting requirement of C.3.b.iii. The MRP requires that the project watershed be provided NOT the tributary or creek that

urban runoff may flow to from the project. It is suggested that the project watershed be provided in accordance with the MRP.

- Application Date and Project Approval Date (if known) - It is not necessary to provide the application submitted date. Tracking the application deemed complete date is the more useful way to track project approvals. The request to report/track the construction completed date is not necessary and inconsistent with the MRP reporting requirements of C.3.b.iii. In accordance with the MRP, the application date, application deemed complete date and project approval date are only required. In addition, Planning departments do not track construction. As a result, tracking this date would be burdensome and difficult. Currently, approved projects are only reported in the fiscal year in which they were approved.

- Table C.4.b:
  - Local Facility Operator- This column is not needed. The tracking/reporting of local facility operator is not useful and is problematic since: 1) local ownership/operators constantly change, especially with restaurants and automotive services; 2) overly burdensome due to constant database updates/facility tracking; and 3) not necessary to determine compliance or program effectiveness. It is suggested that this column be eliminated.
  - SIC Code- Several limitations exist when using SIC codes to document IND facilities. They include the following:
    - Facility owners often report incorrect SIC codes;
    - SIC codes do not always adequately describe industrial and commercial businesses in terms of potential stormwater impacts;
    - SIC codes do not always provide clear classifications; some industries fall under multiple SIC codes (e.g., Automotive) and some SIC codes are very broad (e.g., Services);
    - Not all cities document SIC codes for all of their inspections or include SIC codes in their databases; and
    - It will be an onerous task to assign SIC codes to all potential IND facilities and will result in very little benefit.
    - It is suggested that SIC Code be eliminated. Business description is adequate to describe a facility type.
  - Required Inspection Frequency- This column is not necessary since the requirement is clearly defined within Provision C.4.b (5). A footnote attached to the Inspection Priority column will suffice in describing the required inspection frequency.
  - Compliance Status- This column is not necessary since the Table C.4.b is a list of IND facilities. The proposed table entitled Industrial and Commercial Inspections and Enforcement Actions (i.e., Table C.4.c) would capture observed violations. As a result, this column is redundant.

- Table C.4.c:

- SIC Code- See comments regarding C.4.b Reporting Form (above). In addition, the MRP does not require that the SIC Code be provided to describe the type of business.

- Type of Pollutant Source or BMP Inspected- The information provided in this column is too specific since there are numerous types of pollutants sources and possible BMPs to inspect during a facility inspection. It is suggested that standardized facility categories (e.g., automotive, food service, paint facilities, etc.) be used to describe a potential pollutant source. This approach is consistent with the Program's current IND data collection process

- Summary Table Page L-33 - The MRP requires the reporting of the number of attendees at each training versus total number of inspectors NOT percentage of total number of inspectors on staff trained during corresponding session, as requested.
- Table C.5.e:
  - Location (Street Address) - A location (street address) may not adequately capture the location of an illicit discharge incident. For example, the vast majority of the Water District's illicit discharge incident responses are at creek sites which do not have physical addresses. As a result, it is suggested that the location (street address) column add a physical location descriptor (e.g., Coyote Creek at Old Julian Street Bridge) in addition to the street address.
  - Details of Incident/Violations(s) - Information provided within this column should be standardized. One approach is to continue to use the ICID Incident Types provided in the Program's ICID Performance Standard (dated February 17, 2005) to describe possible illicit discharge incidents. The Program has used thirty possible ICID incident types to describe illicit discharges since 2002. As a result, it is recommended that this standardized approach continue to describe illicit discharges
  - Resolution and Date- It is recommended that this column be separated into the following separate columns: Resolution and Resolution Date.
- Table C.6:
  - Weather Conditions – Tracking weather conditions observed during an inspection is not needed for compliance with Provision C.6. In addition, this request is inconsistent and not required in accordance with MRP requirements.
  - Compliance Status- It is not necessary to assign compliance status to describe construction inspection results. A better approach is to indicate what problems were observed during the inspection. It is suggested that this column be eliminated and that information provided in the Problems Observed column be enhanced to include standardized categories. The Program would prefer to provide problems observed rather than a compliance designation because: 1) you have the ability to learn what problems are common at construction sites; and 2) you can measure changes in specific results over time. Assigning a compliance designation is also too narrow of an approach if you are trying to determine if construction sites are improving over time.
  - Problem(s) Observed – The Program would prefer to provide problems observed to describe construction site inspection results. Results would be described using standardized categories. To ensure standardization when describing inspection results, the Program will develop a list of common problems.

- Resolution – The Program would prefer to report resolution as a standardized category. A text field does not limit how the information is reported. As a result, the possibility of extreme variation of responses exists leading to difficulty in determining if resolution is similar between Co-permittees.

- Comments – The column is not needed since all information can be provided within the following other C.6. Table columns: Problems Observed and Resolution.

- Summary Table Page L-51- Level of effort devoted to implementation of outreach efforts - The suggestion to review coordinator timesheets to determine the level of effort is overly burdensome and unreasonable since many individuals contribute to outreach efforts. A better approach is to track the total number and/or hours of training and performances given.

- Summary Table Page L-54- Level of effort devoted to implementation of outreach efforts - The suggestion to review coordinator timesheets to determine the level of effort is overly burdensome and unreasonable since many individuals contribute to outreach efforts. A better approach is to track the total number and/or hours of training given.

- Summary Table Page L-55 - Conducting research surveys, studies and focus groups after a campaign is conducted is an extremely onerous and expensive task. In addition, large amounts of data need to be collected to determine message effectiveness. It is suggested that this task be performed once during the permit cycle and reported in the Annual Report the year after it is conducted.

- Description of Provision C.15- The proposed level of regulation presented within Provision C.15 represents an over zealous approach to managing minor types of non-stormwater discharges that pose a limited threat to water quality, if any. These requirements would apply regardless of whether the discharge flows through the MS4 or whether the discharges are under the control of local municipalities. SCVURPPP recommends that this provision be rewritten to correspond to the content of SCVURPPP's Conditionally Exempted Discharges Report (June 2000) and Water Utility O&M Discharge Pollution Prevention Plan (1997). Both of these documents were reviewed and approved by Water Board as part of re-issuance of the NPDES permit in 2001 and should be used for this Permit.

- Summary Table Pages L-104- L109 (Various places) - Number of discharges of a specific discharge type and the number of monitoring reports submitted to Regional Water Board for a specific discharge type - It is unclear what Water Board staff plans on doing with this information The collection and reporting of this data is extremely burdensome, and in some cases, absurd, since it requires a significant amount of staff resources that provides little benefit to protecting water quality. An example is the tracking and reporting of minor, uncontaminated discharges (e.g., emergency discharges of the potable water system). As a result, it is recommended that the collection and reporting of this data be deleted from the Annual Report Summary Table.