

**STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION**

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RESPONSE TO COMMENTS

for

**Draft Order No. R8-2016-0001
NPDES Permit No. CAS618030**

**Orange County Flood Control District, the County of Orange
And
The Incorporated Cities therein within the Santa Ana Region**

Area-wide Urban Storm Water Runoff

August 24, 2016

Response No.	Comment Date	Commenter	Comment Summary	Response
1.1	12/7/2015	City of Anaheim	The commenter is opposed to the restrictions in Section XII.N. limiting trading of storm water treatment credits to the same common ownership and between properties that discharge to the same nearest receiving water. The commenter believes that these restrictions virtually preclude trading.	<p>The credit program in Section XII.N. is not designed specifically to promote regional or sub-regional storm water treatment facilities, although this is a potential outcome. The credit program is designed to allow a property owner to leverage low-cost treatment opportunities on their properties to count towards treatment of storm water from their projects where on-site treatment is more costly. Because a project may be a sub-area of a larger property where a facility is installed, such facilities may not always be regarded as regional or sub-regional in scale.</p> <p>The commenter is reminded that the limitations in both Section XII.M. and Section XII.N. apply only in the context of how the New Development Program as managed by the Co-permittees. They do not apply to regional and sub-regional facilities that are proposed as part of Watershed Management Plans or other initiatives.</p> <p>The commenter is advised to look to Section XII.M. to allow the development of regional and sub-regional facilities through the New Development Program. In Section XII.M. there are no limits on project or property ownership. The main limitations are that the facility is available for use by the project (physically and legally) and that the facility is planned and approved by a public agency. The funding mechanisms are not described but could include a credit system of some form. Here, the market for trading such credits is limited to the tributary or service area of the facility. This limit is in keeping with other practices for funding other forms of infrastructure in new development, such as storm drains, lighting, traffic signals, and sewers where the user ultimately pays for construction and long-term operation and maintenance.</p> <p>Regional Board staff recognizes that the draft Permit does not adequately communicate the relationship between Sections XII.M. and XII.N. The latter Section is not intended to impose limitations on the former. This miscommunication may have affected the commenter's remarks. Changes have been made to the revised draft accordingly.</p>
1.2	12/7/2015	City of Anaheim	The commenter asserts that the public was not provided adequate notice of the addition of Attachment A to the third draft and requests additional 60-days for review.	The announcement circulated for the third draft Permit states in part "comments on the THIRD draft will be accepted only on those changes in strike-out and underline, on the new Attachment A, and on changes related to State Water Resources Control Board Order No. WQ 2015-0075." A reading of the announcement provides plain notice of the new Attachment A. The notice did include Attachment A within its scope.
1.3	12/7/2015	City of Anaheim	The commenter objects to Section V.C. of Attachment A where the amount of discharged water that is put to a beneficial use is required to be reported. This information is not necessary for the protection of receiving waters, misdirects the dischargers' resources, and creates liability for performing a good deed.	<p>As stated in Section I of Attachment A, the provisions there are based on those found in Regional Board Order No. R8-2015-0004 (commonly known as the <i>De Minimis</i> Permit), NPDES Permit No. CAG998001, and State Board Order No. WQ 2014-0194-DWQ (Statewide NPDES Permit For Drinking Water System Discharges To Waters Of The United States), General Order No. CAG140001. In the absence of authorization under the new MS4 permit, certain Co-permittees would be required to obtain coverage under WQ 2014-0194-DWQ. The reporting requirement cited by the commenter comes from Order No. WQ 2014-0194-DWQ. It and many other provisions in Attachment A are designed to provide regulation of discharges from drinking water systems that is comparable to this Order. Attachment A allows certain Co-permittees to submit a Notice of Non-applicability to the State Board for Order No. WQ 2014-0194-DWQ because the regulated discharges would be already authorized under the new MS4 permit.</p> <p>The reporting requirement in Section V.C. of Attachment A is comparable to Section II.C. of Attachment E of WQ 2014-0194-DWQ. Finding VI of WQ 2014-0194-DWQ establishes an interest in avoiding wasteful discharges from drinking water systems. This interest is supported by Section 2, Article X of the California Constitution and California Water Code section 100, and consequently the monitoring requirements related to avoiding the wasteful use of water are in accordance with this section. For comparison, we note that information collected on beneficial use of the discharge is to be provided to the State Water Resources Control Board annually and the volume of the</p>

				discharge must be based on estimates, not metered discharges. These features should make the level of effort to collect the data reasonable.
1.4	12/7/2015	City of Anaheim	The commenter objects to submitting separate reports to the State Water Resources Control Board and the Santa Ana Regional Water Quality Control Board. This level of reporting is excessive and is not commensurate with the threat to water quality. Reports should be submitted annually on a fiscal year basis as has been done for years.	Section VI of Attachment A requires an annual report, by March 1 of every year, to the State Water Resources Control Board consistent with WQ 2014-0194-DWQ. Section VI also requires a quarterly report to be submitted to the Regional Board consistent with R8-2015-0004. The current and previous term MS4 Permits have required reporting that complies with R8-2015-0004 and its earlier versions. That Co-permittees have not been submitting the reports quarterly may be attributed to a lack of compliance, not a change in reporting requirements. The only change is the additional reporting to the State Board. The reports need to be made to separate offices, as required by Section VI of Attachment A, in accordance with the SWRCB WQ 2914-0194 DWQ. Although the reports need to be sent separately, there is no reason these reports can't be substantially similar.
1.5	12/7/2015	City of Anaheim	Attachment A contains multiple erroneous references to Attachment B.	The errors have been corrected.
2.1	12/7/2015	Commercial Real Estate Development Association	The commenter objects to the inclusive language regarding non-priority project plan requirement for certain non-priority projects in Section XII.B.2. The commenter recommends the inclusion of a minimum square footage requirement and the exclusion of categories of projects.	The language of Section XII.B.2. gives broad discretion to each Co-permittee to identify non-priority projects that would require non-priority project plans within the context of their independent permit programs. As discussed at the November 5, 2015 public workshop and elsewhere in Responses 3.8 and 7.10, Regional Board staff intends to examine the non-priority project plan process to identify best practices and develop a unifying approach in future Permit iterations. The reasons for this include that the independent and variable nature of these programs makes completion of an adequate examination impractical; Co-permittee staff are in the best position to examine their own programs and develop best practices; and that, by definition, non-priority projects are not expected to pose a significant water quality threat during the upcoming permit term. The approaches recommended by the commenter would not conflict with the underlying strategy of Section XII.B.2. and could be considered by the Co-permittees without objection from Regional Board staff so long as it is not evident that the "maximum extent practicable" standard is not undermined.
3.1	12/7/2015	Construction Industry Coalition on Water Quality	The commenter offers suggested language to improve the clarity of language concerning the equal consideration of off-site and on-site treatment of the design capture volume, subject to certain other requirements.	Regional Board staff has considered the suggested language and made changes to the revised draft Permit to improve clarity.
3.2	12/7/2015	Construction Industry Coalition on Water Quality	The commenter offers suggested language to clarify the relationships between Sections XII.M. and XII.N.	Regional Board staff has considered the suggested language and made changes to the revised draft Permit to improve clarity.
3.3	12/7/2015	Construction Industry Coalition on Water Quality	The commenter offers suggested language and other edits that place requirements related to the location of structural treatment controls in Section XII.C., General Requirements for Priority Projects.	Regional Board staff agrees that the suggested ordering is more logical. We have inserted a requirement indicating the allowable locations of structural treatment controls into Section XII.C. and deleted the similar requirement in Section XII.H.
3.4	12/7/2015	Construction Industry Coalition on Water Quality	The commenter asserts that the limitations on credit trading in Section XII.N. "decreases permit compliance flexibility for private property development rather than encourage it, limits and constrains opportunities...on potential stormwater runoff retention locations...and applies to only a very few cases."	The reasons for the limitations in Section XII.N. have been described in Response 1.1. The commenter's assertion that the limitations decrease compliance flexibility is reasonable, but it does not mean that developers will experience hardship in complying. This is evidenced by the industry's performance, as reported in the Co-permittees' Annual Reports and their Report of Waste Discharge. In addition, a credit trading system without appropriate limitations could be easily mismanaged, which could encourage violations of receiving water limitations.

3.5	12/7/2015	Construction Industry Coalition on Water Quality	The commenter points to support by various Co-permittees and other public entities for a wider credit program involving inter-party and inter-watershed credit trading.	<p>The reasons for the limitations on a credit program have been described in Response 1.1. Regional Board staff respects the experience of many of the Co-permittees and other public entities in funding and developing infrastructure for new development. These practices should fit well into the requirements of Section XII.M. for regional and sub-regional facilities. However, Regional Board staff is not confident that the Co-permittees can effectively regulate a new, potentially complex market system in the form requested without jeopardizing water quality.</p> <p>In addition, USEPA's Water Quality Trading Policy Statement supports implementation of water quality trading programs, but only within a watershed to help ensure water quality standards are maintained. An inter-watershed program could create a scenario where discharges from a credit buyer inadvertently cause a localized pollution problem where the credits are being applied. Therefore, an approval of an inter-watershed credit trading system could essentially be approving the right to degrade water quality in the watershed where the credit is being taken.</p>
3.6	12/7/2015	Construction Industry Coalition on Water Quality	The commenter offers to build upon the Alternative Compliance methods described in the 2011 Model WQMP and Technical Guidance Document as a means to more fully develop an inter-party, inter-watershed credit trading system.	Regional Board staff does not object to this approach as applied within the confines of Subsection XII.M. of the draft Permit. As applied to Subsection XII.N, we will not support a program that allows a discharger to transfer credits between watersheds, potentially creating a situation in which water quality degrades in the watershed that the credit is being taken from (see USEPA's Water Quality Trading Policy Statement). See also Responses 1.1, 3.4, and 3.5.
3.7	12/7/2015	Construction Industry Coalition on Water Quality	The commenter asserts that there is some confusion regarding participation relative to the watershed area and receiving water body. A summary of their understanding is provided.	Regional Board staff believes that a comparison between facilities developed pursuant to Subsection XII.M. and Subsection XII.N. will shed some light. For regional and sub-regional facilities developed pursuant to Subsection XII.M., the unit of trade may consist of any form suitable. This could be units of design capture volume or flow or cash payments via property assessments, impact fees, bond payments, or other forms. The physical limits of the market for trading consist of the drainage area for the facility. There are no limits on who can participate in the trades. For a credit program developed pursuant to Subsection XII.N., the unit of trade is design capture volume or flow. The physical limits of the market for trading are the nearest common receiving water; the facility generating the credit and the project using the credit must be in the same nearest receiving watershed. And participation is limited to common ownership of the facility generating the credit and the project using the credit. Where it is unclear, Regional Board staff has made changes to the revised draft Permit.
3.8	12/7/2015	Construction Industry Coalition on Water Quality	The commenter supports the concerns of the Co-permittees regarding the desire to set uniform thresholds that define non-priority projects that require a non-priority project plan.	The commenter's support is noted. Regional Board staff will consider the Co-permittees' proposal in our Response to the Co-permittee comments.
4.1	12/7/2015	City of Fullerton	The commenter expresses concern about the use of credit system as proposed in Section XII.N. The commenter is concerned that the proposed requirement for trading among "common owners" and within the same receiving watershed would limit trading opportunities (comment is essentially the same as 1.1 above).	See Response 1.1 above.
5.1	12/7/2015	City of Lake Forest	The commenter supports and joins in the submission of comments by the County of Orange.	The comment is noted. Regional Board staff addresses those comments from the County in Responses 7.1 through 7.25.
5.2	12/7/2015	City of Lake Forest	The commenter supports the "adaptive management approach in Section XI, Watershed Management Plans".	The commenter's support is appreciated.

5.3	12/7/2015	City of Lake Forest	Sections IV.D. and IV.E. differ in how they describe the options to demonstrate that a discharge does not cause or contribute to an exceedance of water quality standards. Section IV.D. seems to require that all of the listed factors need to be demonstrated. Section IV.E. seems to allow only one factor to be demonstrated.	The commenter notes an important, unintended distinction between the two Sections. Section IV.D. has been amended as recommended and allows any one of the factors to be used to make the demonstration in the same manner as Section IV.E.
5.4	12/7/2015	City of Lake Forest	Section IV.E. should be renumbered to Section IV.D. for clarity.	Regional Board staff disagrees. Section IV.E. addresses a broader description of discharges. Section IV.D. addresses a subset of discharges that are composed of urban runoff that is comingled with that from other Co-permittees and where the pollutant may be violating Provision IV.A. Subsection IV.D.2. does refer to Section XI., Watershed Management Plans, contrary to the commenter's assertion that it does not. Subsection IV.D.1. is principally a declaration of who is the responsible Co-permittee for the discharge; it does not diminish the availability of Section XI or conflict with other methods to demonstrate compliance. Consequently, adding a reference to Section XI is not necessary.
5.5	12/7/2015	City of Lake Forest	The commenter requests changes to Section XVIII.A.1. to mirror the language in the Designation Agreement for the City of Lake Forest.	Regional Board staff generally agrees. Changes have been made to the revised draft Permit accordingly.
5.6	12/7/2015	City of Lake Forest	The commenter raises objections to requirements for the use of the Test of Significant Toxicity in Section II.F. of the Monitoring and Reporting Program.	These objections have already been addressed in previous Responses and are not within the scope of the solicitation for comments on the Third draft Permit. See Response to Comments on First Draft, Comment/Response 16.82.
5.7	12/7/2015	City of Lake Forest	The commenter objects to the limitations on the credit system in Section XII.N.	See Response 1.1.
6.1	12/7/2015	City of Orange	The commenter's introductory remarks include their support of the comments provided by the County of Orange.	The commenter's support is noted. Regional Board staff addresses the County's comments elsewhere in these Responses starting at 7.1.
6.2	12/7/2015	City of Orange	The commenter notes that the organization of the provisions in Attachment A – Provisions for Certain Non-Storm Water Discharges from Sources Owned or Operated by Co-permittees – may be misconstrued to apply equally to potable drinking water discharges.	This overlap is intentional and is consistent with the scope of Order No. R8-2015-0004 commonly known as the De Minimis Permit. Order No. R8-2015-0004 includes discharges associated with drinking water systems.
6.3	12/7/2015	City of Orange	The commenter points out that field instruments cannot measure with the sensitivity required for residual chlorine in Provision III.E. of Attachment A. This matter is addressed in the State Board's Order WQ 2014-0194-DWQ by setting the limitation at 0.1 mg/L.	Regional Board staff has amended Attachment A - Provision III.E. to include the action level of 0.1 mg/L for field instruments.
6.4	12/7/2015	City of Orange	A reference in Section V of Attachment A creates conflicts between the monitoring program described in Attachment A and the Monitoring and Reporting Program in Attachment B.	The reference to Attachment A is an error and has been corrected to reference Attachment B.

6.5	12/7/2015	City of Orange	In Attachment A, the commenter recommends grouping requirements according to drinking water system discharges and other de minimis discharges similar to Sections VII. and VIII.	Regional Board staff disagrees. Unless the provisions note that they apply to a subset of discharges, they should be read as being broadly applicable as is done by the commenter. The organization recommended by the commenter is appreciated, but we note that approximately 8 provisions would be affected. We note that the provisions that apply to subsets of discharges are sufficiently specific to avoid confusion and the subsets are not repeated enough to warrant grouping under separate subheadings.
7.1	12/7/2015	County of Orange	The County acknowledges the key changes made to the third draft Permit but points to several key issues of significant concern.	The commenter's acknowledgements are appreciated. The commenter's specific concerns are addressed as presented in the subsequent responses.
7.2	12/7/2015	County of Orange	The County asserts that the Report of Waste Discharge is the "technical basis/substantial evidence for the regulations and activities that will be required".	Regional Board disagrees with the implication that the Co-permittees Report of Waste Discharge should be given consideration to the exclusion of other information that would form the "technical basis/substantial evidence" for the Permit's requirements. This is further discussed in the response to comments on the second draft Orange County MS4 Permit in Responses 6.1, 6.2, 6.7, 6.39, and 6.40.
7.3	12/7/2015	County of Orange	The assessment of the "State of the Environment" provided in the Report of Waste Discharge identifies, in summary, fecal indicator bacteria, nutrients, and toxicity as priorities for the permit.	The requirements of the draft Permit do not direct the Co-permittees to act in a manner that contradicts the priorities that they have identified in their Report of Waste Discharge (ROWD). Various modifications have already been proposed that will free resources to be redirected to other priorities, either related or unrelated to water quality protection. These include reductions in the inspection obligations for construction, industrial, and commercial sites and reductions on the frequency of inspector training. Regional Board staff has endeavored to respect the priorities identified in the ROWD, while assuring adequate protection of water quality and implementation of the Basin Plan.
7.4	12/7/2015	County of Orange	Section B of the Findings are not appropriate if they do not acknowledge the activities and accomplishments to date. The Report of Waste Discharge should serve as a foundational document as it is reporting on the long-term successes of the very program that is being permitted. As such, the findings from the Report of Waste Discharge should be included in the Permit and be the principal technical justification for any permit modifications.	While the Co-permittees' Report of Waste Discharge describes water quality improvements, the Co-permittees have notably avoided directly asserting that their storm water program is the principal cause of those improvements and have not presented evidence in their Report that is sufficient to support such a claim. Regional Board staff has explained that other factors, such as the drought, waste discharge requirements on nurseries and other entities, and new industrial and construction permit requirements, may also have had an impact on water quality. The Regional Board must reach its own independent conclusions, with due consideration given to the Co-permittees' Report of Waste Discharge and other relevant factors. If the Regional Board were to enter into a pattern where water quality improvements were rewarded with reductions in effort, absent a firm understanding of the relationship between those actions and improvements in water quality, the Board could potentially undo those improvements.
7.5	12/7/2015	County of Orange	An omission of any consideration of the significant water quality outcomes creates a false case for increasing regulatory requirements. Without support from specific findings and other evidence, a number of requirements may be perceived as arbitrary and capricious.	This comment does not specify what requirements have been 'increased' in contradiction of "significant water quality outcomes". Where the commenter provides the necessary specifics, Regional Board staff will address them.
7.6	12/7/2015	County of Orange	The County requests a total of 40 months of time, starting with the submittal of a notice of intent to develop a Watershed Management Plan (WMP), to prepare a final WMP. The County includes a schedule in support of the request.	<p>The draft Permit establishes a deadline that is 12 months from the date of submission of the notice of intent to provide a draft WMP. While a review schedule is provided, the schedule for reviewing and approving a final WMP has not been fixed as a permit requirement. Therefore, the notable difference between the commenter's request and the draft Permit language is that the County's request effectively establishes a deadline for submitting a draft WMP that is 32 months from the submission of the notice of intent. Much of this schedule is dominated by two steps as described by the County.</p> <p>The first of these steps, production of a preliminary "Assessment and Prioritization" and a related approval process, total 8 months. There is no requirement in the draft Permit for approval of the priorities. Priorities are driven by the risk of violating receiving water limitations or waste load allocations. This risk is informed by the Co-permittees' long-standing monitoring program. Priorities should be well understood by the Co-permittees considering the confidence they've expressed in the Co-permittees' Report of Waste Discharge and following 25-years of experience in water</p>

				<p>quality monitoring. Sufficient evidence has not been presented to justify the extensive period requested for this step.</p> <p>The second dominating steps are the identification of “water quality improvement strategies/actions” and development of the reasonable assurance analysis. The Co-permittees allot 15 months for their completion along with another 2 months for review and approval for a total of 17 months. Again, there is no requirement that strategies, actions, or RAA runs receive approval prior to submittal of a draft Plan. Additionally, it would be logical to prioritize pollutants and strategies and actions for their reduction concurrently. The sequential approach does not appear justified and greatly exaggerates the time to produce a draft WMP. Sufficient evidence has not been provided by the Co-permittee that the extra time is necessary.</p>
7.7	12/7/2015	County of Orange	<p>“The Permit should be revised to allow a TSO to be a viable compliance pathway for the Receiving Water Limitations and the WQBELS where final WLA deadlines have passed, so long as the Permittee is in compliance with the TSO.” The commenter includes specific language changes for this purpose.</p>	<p>The commenter’s request would allow a Co-permittee to be regarded as being in compliance with receiving water limitations and WQBELS during the period in which a Time Schedule Order (TSO) for a violation of the same is being prepared. This request is inconsistent with the purpose of a TSO – to allow additional time to comply with WQBELS or RWL. Further, the proposed language is inconsistent with State Board Order WQ-2015-0075. See also Response to Comment 7.25.</p>
7.8	12/7/2015	County of Orange	<p>“The Permit should reflect the support of the Regional Board for pollutant trading, which is supported by US EPA. This is particularly needed for the Nutrient TMDL and Organochlorine TMDLs.”</p>	<p>The Regional Board supports actions that restore and maintain water quality. The Regional Board has previously supported pollutant trading in concept. Pollutant trading is referenced in Appendix B concerning the Nutrient TMDL, as this TMDL specifically stated that pollutant trading was an acceptable method of compliance. This is in accordance with 40 C.F.R. § 122.44(d)(1)(vii)(B) which states that effluent limitations in NPDES permits developed to achieve water quality standards must be consistent with the assumptions and requirements of any available wasteload allocation for the discharge. Other TMDLs listed in the appendices do not specifically condone the use of pollutant trading, therefore this has not been added as a compliance pathway for those TMDLs. However, the Co-permittees are free to develop TMDL specific pollutant trading programs that could be reviewed for Regional Board approval and referenced in the MS4 permit as appropriate.</p>
7.9	12/7/2015	County of Orange	<p>Some of the waste load allocations identified in the TMDL Appendices are not directly from the Basin Plan and introduce potential confusion and or inconsistencies with the adopted TMDLs. The County provides corrections to the TMDL WLA tables.</p>	<p>Where the commenter points out specific instances of confusion or inconsistencies, Regional Board staff has made those corrections. Board staff notes that among the suggested edits to the WLA tables, the Commenter believes the allocations for all identified sources should be included in the MS4 permit. Board staff believes that it is inappropriate to include the allocations assigned to sources other than the MS4 dischargers (e.g., agriculture, open space) as this would imply the MS4 dischargers are accepting responsibility for those additional sources and allocations, when this is not always the case.</p>
7.10	12/7/2015	County of Orange	<p>The draft Permit should define what constitutes a Non-priority Project (Section XII.O). The current threshold of ‘may be sources of pollution in urban runoff’ is so vague that it will result in more projects being required to submit a non-priority project plan than necessary and would impose requirements where there is no legal basis to do so.</p>	<p>The language of the draft Permit purposefully gives each Co-permittee the discretion to identify non-priority projects that require a non-priority project plan. The expectation is that the manner in which that discretion is exercised would be scrutinized in order to develop a more unifying approach in future iterations of the Permit. The proposed language fits with this approach and has been generally included. However, we note that the current 2009 Permit’s stance on structural treatment control for non-priority projects (structural treatment controls are not categorically excluded) is consistent with proposed footnote 19.</p>
7.11	12/7/2015	County of Orange	<p>Section XII.N. should allow credit trading between different parties and between watersheds of receiving waters consistent with US EPAs Water Quality Trading Policy.</p>	<p>See Responses 1.1 and 3.5. Regional Board staff has reviewed the Water Quality Trading Policy. The Water Quality Trading Policy is not a blanket acceptance of trading programs. It recommends a number of controls to govern trades. The proposed draft permit limitations are consistent with the Water Quality Trading Policy.</p>

7.12	12/7/2015	County of Orange	Toxicity testing requirements in the Monitoring and Reporting Program should be aligned with federally-promulgated test methods. The County has performed toxicity testing using the TST approach and the multi-concentration dilution method and concluded that TST indicated violations where no such violation occurred. TST does not performance equivalent to methods promulgated by EPA in 2002. Test methods used to determine compliance with NPDES permits must be formally promulgated by the EPA.	The legal and technical validity of the TST has been addressed in Response 16.82 for the first draft Permit.
7.13	12/7/2015	County of Orange	The inspection approach recommended in the ROWD for industrial sites is recommended.	Regional Board staff's discussion in the Technical Report and the response to comments on the second draft Orange County MS4 Permit in Responses 6.2 and 6.39 regarding bias in inspection outcomes; the reliability of using rates of detection for violations as an indicator of program performance; and the deterrent and educational value of a highly-visible inspection program are equally applicable to inspections of industrial sites as they are to commercial sites. Nonetheless, provisions have been modified that allow Co-permittees to propose an alternative inspection schedule for all categories of sites.
7.14	12/7/2015	County of Orange	Co-permittees should not be required in Section IV.D.b.iii. to demonstrate that their discharge did not cause or contribute to an exceedance by showing that there is an alternative source of the pollutant; that the pollutant is not associated with MS4 discharges; and that the pollutant was not discharged from the MS4.	Regional Board staff agrees. Modifications have been made to the revised draft Permit accordingly.
7.15	12/7/2015	County of Orange	Restaurant inspection program results from Orange County Health Care Agency are submitted to the respective Co-permittees once per month. In the absence of the efficacy of this inspection program, Provision X.C.2. should be stricken to maintain consistency with the existing process.	Provision X.C.2. requires that known or suspected violations of local requirements related to the control of the discharge of pollutants to an MS4 be referred to the Co-permittee within two business days of the inspection. In comparison, the commenter reports that the referral occurs up to 30 days later. Under either approach, a referral occurs, but the draft requirement allows a more timely response. Regional Board staff sees no benefit by delaying a referral. The commenter's argument of consistency is not sufficient to outweigh the benefit of a timely response.
7.16	12/7/2015	County of Orange	The New Development (Including Significant Redevelopment) language of Provision XII.B.18.d. is unclear. The commenter offers alternative language.	Regional Board staff agrees that the provision could be more direct. The provision has been amended.
7.17	12/7/2015	County of Orange	The New Development (Including Significant Redevelopment) requirement in Section XII.C.2. to maximize retention is directly contrary to later sections requiring systematic consideration of factors that may preclude on-site retention.	The later referenced requirements apply to selection and siting of infiltration LID structural treatment control BMPs and not to site design and source control BMPs. The requirements are not contrary since they address different subjects. With respect to the hazards shared in common, the phrasing for the latter category of BMPs, "unless such measures pose an unmitigatable environmental hazard" invite Co-permittees to use common sense to address hazards such as those discussed by the commenter.
7.18	12/7/2015	County of Orange	New Development (Including Significant Redevelopment) Provision XII.J.1.d. should be modified to clarify the meaning of "schedule" and if an impact fee or service are the same as an <i>in lieu</i> fee.	Modifications have been made to the provision for clarity. The basis for the fee or service may take any suitable form acceptable to the Executive Officer but should generally be for the purpose of benefiting water quality. An <i>in lieu</i> fee may fit within the purpose of the Provision.
7.19	12/7/2015	County of Orange	The commenter requests language changes to Municipal Facilities/Activities Provision XIV.B.1.g. to distinguish potable water distribution facilities from the distribution system.	Regional Board staff agrees and has made the requested change.

7.20	12/7/2015	County of Orange	In the Monitoring and Reporting Program, modifications are recommended to Sections II.D.4.a and II.D.4.b. to clarify the differences.	Regional Board staff believes that these two sections are readily understood as referring to two distinct kinds of wet-weather sampling events. Each set of events is subject to different parameter testing as noted by the commenter. No changes to the language are needed.
7.21	12/7/2015	County of Orange	Changes are requested to Section II.D.5. of the Monitoring and Reporting Program in order to clarify that it is referring to outfall monitoring.	Regional Board staff has made changes accordingly.
7.22	12/7/2015	County of Orange	Specific technical changes are requested to Section II.D.6. to clarify the type of event sampling and the frequency.	Regional Board staff has made the requested changes.
7.23	12/7/2015	County of Orange	Pesticide monitoring in Section II.D.7.a. should not be performed according to the general TMDL requirements.	Regional Board staff agrees. In some instances, pesticide monitoring would inadvertently be required solely to support TMDL development. TMDL development is not within the scope of the Monitoring and Reporting Program. However, nothing in the Permit or the Monitoring and Reporting Program should be construed as limiting the use of collected monitoring data for other regulatory, academic and scientific purposes.
7.24	12/7/2015	County of Orange	The commenter requests that the language in their Attachment A to their comments be incorporated as Finding B in the final Permit.	Regional Board staff has considered the proposed language. The language largely consists of various conclusions and assertions that are attributed to the "Orange County Stormwater Program." They are more appropriately the conclusions and assertions of either the County of Orange or the Co-permittees collectively. After further discussion with the commenter, the proposed language in their Attachment A has been revised to address these matters. The revised language has been inserted in Finding 19 of the revised draft Permit and replaces most of the previous language.
7.25	12/7/2015	County of Orange	The commenter requests that various changes, as presented in Attachment B to their comments, be made to Section XVIII Total Maximum Daily Loads and the associated TMDL Appendices B through H.	<p>Regional Board staff has considered the language and incorporated changes that we believe represent improvements that better communicate the current intent. The requested language also includes substantial changes that we have rejected for various reasons. In some cases, though the language appears consistent with the underlying TMDLs, the language is not suitable for a Permit where concrete actions and measurable and verifiable requirements are a necessity to determine compliance. In other cases, the language constitutes policy statements or versions of policy statements that generally appear in the TMDLs in the Basin Plan. It is not necessary to reinforce policy statements in the Basin Plan within the body of a permit. Here again, the absence of such policy statements does not signal that the Permit will be enforced in a way that is contrary to the Basin Plan.</p> <p>In the Appendices, the commenter has requested that total Load Allocations be included as a means to comply. Load Allocations include all sources of a pollutant to a receiving water, not just a category such as MS4s. Follow-on discussions with the commenter illustrate that the purpose of including the Load Allocations would be to allow Co-permittees to direct resources to lower-cost reduction strategies for non-MS4 sources of certain pollutants. 40 C.F.R. § 122.44(d)(1)(vii)(B) states that effluent limitations in NPDES permits developed to achieve water quality standards must be consistent with the assumptions and requirements of any available wasteload allocation for the discharge. The sediment TMDL allows for total allocations to be the responsibility of the Co-permittees, therefore Appendix D has been amended to include the total Load Allocations to be consistent with the assumptions of the TMDL. Other applicable TMDLs included in the appendices do not indicate that total Load Allocations are a viable compliance pathway, so this change has not been made elsewhere in order to be consistent with the assumptions in these TMDLs.</p> <p>The language provided by the commenter also includes more explicit requirements on the contents of a proposed TSO. Regional Board staff appreciates the effort and we acknowledge that the Fact Sheet notes our expectation that a TSO would be as rigorous as a WMP. The recommended changes are supportive of these expectations. However, a TSO is comparable to a last-action effort and flexibility may be necessary under certain circumstances. For example, a threat to human health may mean that a TSO must be issued without some information needed to</p>

				<p>guide corrective action. The collection of that information may be a required element of complying with the TSO rather than a prerequisite for its preparation.</p> <p>There is also language provided by the commenter that creates a notice of intent to request a TSO. This new construct would be part of a larger process to issuing a TSO. During this process, the responsible Co-permittees would be considered in compliance with water quality standards and waste load allocations with which they are demonstrably in violation of. The Regional Board needs to preserve its authority to take whatever enforcement action necessary to compel compliance. This new construct creates an obstacle to that authority.</p>
8.1	12/7/2015	Orange County Coastkeeper	The draft Permit presents a critical opportunity to meaningfully address urban runoff, which continues to impact human health and impair water quality. It is time for this problem to be addressed in a way that will reduce pollutant loading and guarantee attainment of water quality standards.	Regional Board staff appreciates the commenter's opinions.
8.2	12/7/2015	Orange County Coastkeeper	The commenter supports the State Water Resources Control Board's and Regional Board's desire to promote storm water capture to augment local water supplies and address water quality concerns. The draft Permit fails to adequately promote storm water capture and instead provides safe harbors that do not embrace a watershed approach, do not capture meaningful amounts of storm water runoff, or guarantee compliance with water quality standards.	<p>The commenter's support for storm water capture is noted. There is no federal NPDES regulation that requires storm water capture itself. Permit requirements can create incentives or disincentives that incidentally promote storm water capture; to this extent, the draft Permit does so. Permits can encourage activities, but without meaningful incentives, such encouragement amounts to an expression of a sentiment. More importantly, the draft Permit minimizes disincentives for storm water capture and creates value for design capture volume or flow by allowing intra-watershed trading.</p> <p>To the extent that the commenter alleges that the draft Permit does not embrace a watershed approach, the allegation is not supported. TMDLs are inherently developed and implemented in a watershed approach. The draft Permit implements TMDLs through Watershed Management Plans and program performance is driven in part by monitoring at the watershed scale.</p>
8.3	12/7/2015	Orange County Coastkeeper	Without the financial and human resources necessary, the volume and complexities of the "WQMPs" are likely to overwhelm the Regional Board. The commenter later offers language to "provide staff with the appropriate guidance to properly review documents". Clear, specific, and measureable permit requirements will help alleviate public, Co-permittee, and staff confusion regarding Permit requirements.	Regional Board staff believes that the commenter is referring to the Watershed Management Plans (WMPs) in Section XI of the draft Permit. Regional Board staff recognizes that reviewing the WMPs will require a significant commitment of staff resources. However, we are confident that, with appropriate prioritization, we will be able to provide adequate review of the WMPs. We welcome suggestions to improve the language of the Permit and will consider specific recommendations as they appear in the commenter's letter.
8.4	12/7/2015	Orange County Coastkeeper	The commenter provides a broad outline of the basis of their subsequent comments. The commenter "believes that the Regional Board can achieve the mutual goals of water quality protection and stormwater capture by embracing compliance with [water quality standards] while retaining critical enforcement discretion. Enforcement is a proven tool to drive success and can be used to motivate compliance where other regulatory methods have failed over the past two decades."	Regional Board staff has previously provided our assessment of the root causes of the alleged failures in regulatory methods to motivate compliance in Response 7.1 in our Response to Comments on the second draft Permit. We add here that achievement of water quality standards is a complex goal that requires careful planning for a successful outcome. The draft Permit establishes execution of critical elements of Watershed Management Plans as means for planning and a measure of compliance. We have acknowledged that compliance and performance (achievement of water quality standards) are not necessarily the same things, particularly when forging a pathway for the first time and the relationship between the two is not well understood. The iterative process or adaptive management is an important feature of this Permit that allows continual alignment of compliance with performance. The draft Permit consequently establishes a clear and enforceable iterative process to be practiced by the Co-permittees. This approach will lead to faster improvements in water quality while still providing the necessary enforcement discretion. Enforcement without an effective process that aligns compliance with performance does not necessarily achieve water quality standards. We believe that our recognition and accommodation of this is a strength of this Permit.

8.5	12/7/2015	Orange County Coastkeeper	The commenter incorporates by reference previous comment letters from themselves and the Natural Resources Defense Council.	Regional Board staff has provided our responses to those comments. (See Responses to First Draft of Permit, Response Nos. 8.1-8.8 and 10.1-10.5).
8.6	12/7/2015	Orange County Coastkeeper	The commenter expresses their "frustration with the slow pace of water quality improvements as a result of these complex regulatory mechanisms." The commenter repeats their assertion that "the iterative process has been underutilized and ineffective to date".	See Response 8.4.
8.7	12/7/2015	Orange County Coastkeeper	The commenter provides a discussion of the economic and social significance of receiving waters and the economic consequences of exceedances of water quality standards.	Regional Board appreciates the commenter's discussion, which highlights the economic and social importance of the draft Permit.
8.8	12/7/2015	Orange County Coastkeeper	The commenter warns against the inclusion of "counterproductive Receiving Water Limitation ('RWL') language sought by the Co-permittees" in favor of the "clear, appropriate, and enforceable language" in the current 2009 Permit. The commenter points to statements by U.S. EPA staff expressing reservations with the approach in Water Quality Order 2015-0075 and asserting that it's application state-wide would be "premature and inappropriate".	The receiving water limitation language is consistent with the approach described in precedential Water Quality Order 2015-0075.
8.9	12/7/2015	Orange County Coastkeeper	The commenter asserts that the draft Permit is inconsistent with Water Quality Order 2015-0075. The commenter provides a synopsis of the principals of the Order and the features it calls for in MS4 permits.	Regional Board staff has thoroughly considered Water Quality Order 2015-0075 and we believe that the draft Permit is consistent with it. The draft Permit does not "include requirements for specifically for multi-benefit projects or stormwater resource projects" because the Order does not actually require these; these are encouraged (see Response 8.2 for a discussion regarding how 'encouragement' translates into permit provisions). However, the draft Permit does encourage similar regional and sub-regional facilities instead of on-site structural treatment control BMPs in Section XII.M if certain conditions are met. The provisions in Section XII.M remove some of the barriers to implement regional and sub-regional facilities in Order No.2009-0030 by removing the barrier that on-site structural treatment control BMPs be demonstrated to be infeasible before allowing the use of an off-site facility.
8.10	12/7/2015	Orange County Coastkeeper	The commenter alleges that the draft Permit violates the Clean Water Act's anti-backsliding provisions on the basis (in summary) that it provides "safe harbor" during the preparation of Watershed Management Plans, that it fails to incorporate waste load allocations consistent with applicable TMDLs, and that the reasonable assurance analysis is legally insufficient.	Regional Board staff addresses each of the specific allegations as presented in more detail in subsequent comments below.
8.11	12/7/2015	Orange County Coastkeeper	The commenter cannot support the draft Permit so long as it provides compliance upon notification that the Co-permittees intend to develop a plan. The commenter notes similar reservations expressed by the U.S. EPA.	Regarding responsible Co-permittees as being in compliance while preparing a Watershed Management Plan is consistent with Water Quality Order 2015-0075. The draft Order contains provisions that motivate work towards completion of the Watershed Management Plans principally by: 1) establishing a deadline for submittal of the draft plan; 2) requiring compliance with receiving water limitations or waste load allocations in the event that critical milestones are not met; and 3) providing deadlines to respond to Regional Board review of the draft Plans. This process is not accurately characterized as "safe". The regulatory risks are different, but they do not provide less motivation to achieving water quality standards or waste load allocations. Regional Board staff acknowledges that it will take time to develop and implement appropriate plans, but feel that it is entirely appropriate to allow Co-Permittees to be in compliance during development if all provisions are met. See also Response 8.4.

8.12	12/7/2015	Orange County Coastkeeper	The draft permit unlawfully fails to incorporate waste load allocations for fecal coliform bacteria for water-contact recreation (REC-1) beneficial uses consistent with the TMDL for Newport Bay. It is not within the discretion of the Regional Board to simply omit TMDLs from MS4 permits using as justification the effective use of resources. The Regional Board is not complying with the mechanisms necessary to revise or withdraw a TMDL according to federal law.	In lieu of using fecal coliform as a pathogen indicator, we have inserted <i>Enterococcus</i> WQBELs in Appendix C for the protection of REC-1 beneficial uses. This approach is consistent with the guidance provided in USEPA's comment letter. The WQBELs are based on the <i>Enterococcus</i> criteria for marine waters, promulgated by the USEPA in 2004 in the Water Quality Standards Bacteria Rule for Coastal and Great Lakes Recreation Waters (40 CFR 131.41). We believe, based on the guidance provided by the USEPA, that <i>Enterococcus</i> is a more suitable indicator of pathogens than fecal coliform to protect REC-1. Studies have shown that levels of enterococci in marine recreational waters more accurately predict acute gastrointestinal illness than levels of fecal coliforms. In addition, fecal coliform have been detected where there is no fecal contamination present. Due to this evidence, we have changed the pathogen indicator for the WQBELs instead of removing it. Requiring Co-permittees to comply with <i>Enterococcus</i> standards to protect REC-1 beneficial uses instead of fecal coliform only changes the indicator for bacteria contamination of Newport Bay, the not pollutant itself. Therefore, the change is consistent with assumptions of waste load allocations for the Fecal Coliform TMDL and will better protect REC-1 beneficial uses.
8.13	12/7/2015	Orange County Coastkeeper	The reliance on the performance of a reasonable assurance analysis (RAA) as a rationale for authorizing an alternative compliance pathway for receiving water limitations and waste load allocations fails to ensure that the requirements of the Clean Water Act will be met. The requirements for an RAA are vague, create loopholes, and are little more than a plan to develop a plan. The commenter raises specific critiques of language in Section XI.	<p>The RAA requirement in Section XI of the draft Permit is an appropriate approach to validating the likelihood of success of a WMP. Regional Board staff has included specific provisions that generally outline what we expect, and this will be rigorous and stringent. This approach is consistent with the guidance provided in WQ Order 2015-0075.</p> <p>Regional Board staff concedes that an RAA is a new construct whose refinement into a defined process is being led by staff at the Los Angeles Regional Water Quality Control Board and elsewhere. We have purposefully avoided adopting the term on the simple basis of its three words and have instead worked to define it variously in the body of the draft Permit and the draft Technical Report. Others are evidently leaning towards a definition where an RAA is a technical analysis that validates the performance of a set of theoretical best management practices in a watershed to meet water quality standards and waste load allocations. An RAA is of state-wide interest and we believe that it would be prudent to employ emerging best practices as they are developed rather than attempting to do so before an RAA, as a construct, is fully defined. The commenter's recommendations are welcome for this purpose and can be considered as part of the public review process for WMPs.</p> <p>Regional Board staff has also included requirements for managerial matters, such as the performance of a SWOT analysis, a process for ensuring the validity of performance measures, and inclusion of a financing strategy. It is apparent that non-technical matters pose a significant threat to achieving water quality standards and waste load allocations. Technical threats, such as modeling uncertainty, and non-technical threats, such as unreliable funding sources, need to be identified and managed as part of the WMPs. This is the reason why the use of peer-reviewed models can only <i>partly</i> support an RAA. We have already explained our reluctance to blindly require the use of peer-reviewed models in Response 7.3 of the Response to Comments on the second draft Permit.</p>
8.14	12/7/2015	Orange County Coastkeeper	The commenter alleges that the draft Permit fails to include an adequate anti-degradation analysis. The permit regime allows the degradation of receiving waters to continue and triggers an anti-degradation analysis. At a minimum, the "existing Permit maintains the existing failed program implementation for over a year during WMP development" and months longer during review.	<p>Regional Board staff believes that the commenter is referring to the proposed draft Permit instead of the "existing Permit". Regional Board staff wholly disagrees with the allegation that the proposed draft Permit "allows" degradation of receiving waters. The commitment of resources necessary to achieve water quality standards and waste load allocations is significant. A significant commitment of resources deserves a well-considered plan to maximize the probability of success. The cost of failure to date is evident by the commenter's lack of support; can only be exacerbated if failure continues during the term of this upcoming permit; and further justifies efforts in planning.</p> <p>Regional Board staff has carefully examined the current 2009 Permit and the mechanisms employed by the Permittees to comply during audits. We believe that we have identified key factors that have posed barriers to the success of the current 2009 Permit and described them in the draft Technical Report. We have proposed specific changes at all levels to the draft Permit to address those barriers. Although we understand their skepticism, the commenter's implication that the draft Permit is business-as-usual is unfounded. All aspects of the draft Permit have been designed to not allow degradation.</p>

8.15	12/7/2015	Orange County Coastkeeper	The revised draft Permit fails to implement a proper and adequate prohibition on the discharge of trash pursuant to Water Quality Order 2015-0019.	The current draft is not required to implement the prohibition at this time. The Regional Board intends to implement the Trash provisions through issuance of Water Code section 13267 or 13383 orders requiring the Co-permittees to provide notice of which compliance pathway they have chosen within 3 months of the effective date of the order.
8.16	12/7/2015	Orange County Coastkeeper	The revised draft Permit fails to reference the Sector Specific General Permit for Storm Water Runoff Associated with Industrial Activities from Scrap Metal Recycling Facilities within the Santa Ana Region (Sector Specific Permit) in Section IX.	Regional Board staff agrees and have added reference to the Scrap Metal Recycling facilities regulated under the Region's Scrap Metal Permit as justification for including these facilities as high priority under the Industrial inspection program.
8.17	12/7/2015	Orange County Coastkeeper	The commenter seeks clarification on changes to Provision XII.E.c. where the number of non-conforming structural treatment control BMPs was changed from 3 to 10.	This change is explained in our Response 2.3 in our Response to Comments on the second draft Permit.
8.18	12/7/2015	Orange County Coastkeeper	The commenter seeks clarification on changes to Subsection XII.G.2. where the language describing where hazards posed by BMPs cannot be mitigated. This language differs from that in Section XII.F.2.c.	Section XII.G.2. refers to hazards posed by source control, site design and structural treatment control BMPs. Section XII.F.2.c. refers to hazards posed specifically by retention LID BMPs. Public health hazards fall within the meaning of "environmental hazard" as used by CEQA practitioners. The language of both sections is functionally the same. Hazard mitigation here is expected to follow CEQA practices and grants Co-permittees discretion to determine what is acceptable mitigation accordingly. The term "substantial evidence" is used specifically to align with CEQA practices.
9.1	12/7/2015	Orange County Water District	The commenter's opening remarks establish their interest and basis of concern with the requirements of the draft Permit.	Regional Board staff recognizes the interests of the commenter.
9.2	12/7/2015	Orange County Water District	The commenter notes that infiltration of the design capture volume may not always replenish aquifers that are used for drinking water supplies. The commenter advocates for the expansion of alternatives to on-site infiltration supports Provision XII.H.5. and the use of regional or subregional off-site LID BMPs without the requirement for analysis of the feasibility of on-site retention.	The commenter's support is acknowledged and appreciated.
9.3	12/7/2015	Orange County Water District	The commenter supports the use and expansion of credit programs, specifically Section XII.N. to improve water quality and increase drinking water supplies. The provisions of Section XII.N. severely limit achievement of the latter. The commenter supports related comments made by the Construction Industry on Water Quality and by the County of Orange.	See Responses 1.1, 3.4, 3.5, 3.6, 3.7, and 7.11.
9.4	12/7/2015	Orange County Water District	The commenter recommends that the existing protections for groundwater quality contained in the 2009 permit and the 2011 Model WQMP and Technical Guidance Document be preserved in the draft Permit.	Regional Board staff has considered the recommendation. We note that since the adoption of some of those protections, various studies have shown that, under normal operating conditions, infiltration does not pose a significant threat to groundwater quality. This has caused us to reconsider the prohibition on the infiltration of storm water associated with industrial activity in Provision XII.K.9. See Response 10.1 below.

9.5	12/7/2015	Orange County Water District	The commenter requests that the same level of groundwater protection that is afforded by permit requirements on infiltration BMPs be applied to biotreatment control BMPs.	Regional Board staff disagrees with the implication that biotreatment control BMPs pose the same risks to groundwater quality as infiltration BMPs. The hierarchy in Section XII generally means that biotreatment control BMPs would not be used in soils with the same characteristics as those associated with infiltration BMPs. As the commenter notes in their response, we have previously described in our Responses characteristics of biotreatment control BMPs that allow more ready detection of problems. Consequently, we do not believe that blanket restrictions on the use of biotreatment control BMPs are warranted and the commenter has not provided any specific supporting evidence. However, this does not mean that we encourage the blind application of these facilities. The specific circumstances should be considered. Revisions have been made that would allow biotreatment or maximization of infiltration to be excluded if there are hazards that cannot be mitigated to an acceptable level based on the specific circumstances of a proposed application.
10.1	12/7/2015	Timothy Simpson	The commenter urges reconsideration of prohibiting infiltration of storm water runoff associated with industrial activities. The commenter cites studies by The Council for Watershed Health in Los Angeles as evidence that the risk to soil and groundwater is low.	The referenced prohibition is in Provision XII.K.9. This prohibition was carried over from the 2009 Permit where it is found in Provision XII.B.5.f. In re-reading this Provision, Regional Board staff notes Footnote 54, limiting the restriction “only to sites that are known to have soil and/or groundwater water contamination”, and pointing to studies supporting the commenter’s request. The language of the current draft Permit is overly restrictive in consideration of Footnote 54. A more suitable restriction relative to contamination in general (including soil contamination and regardless of the land use) is found in Provision XII.K.8. of the draft Permit. To better align with the current 2009 Permit, we have removed the prohibition in the draft Permit in favor of the broader restriction and replaced it with a requirement to address the risk of accidental spills and releases entering facilities.
11.1	12/7/2015	U.S. Environmental Protection Agency	The permit must incorporate effluent limitations consistent with the fecal coliform waste load allocations (WLAs) for the water-contact recreation beneficial use (REC-1). The commenter describes various ways to accomplish this without necessarily directly incorporating the fecal coliform WLA for REC-1 as a numeric water quality-based effluent limitation (WQBEL). The commenter does not support the rationale shown in the draft Technical Report.	Regional Board staff has elected to employ <i>Enterococcus</i> as a surrogate and also to rely on the more stringent fecal coliform WLA for shellfish harvesting beneficial use (SHEL) as suggested by US EPA. <i>Enterococcus</i> has been chosen to replace fecal coliform as the pathogen indicator for REC-1 for the following reasons: The best available science no longer supports the use of Fecal Coliform as a reliable and appropriate indicator of the presence of pathogens and public health risk associated with water contact recreation. Studies have demonstrated that levels of enterococci in marine recreational waters more accurately predict acute gastrointestinal illness than levels of fecal coliforms. Fecal coliforms have also been detected where there is no fecal contamination. USEPA now recommends the use of an alternative bacteria indicator, <i>Enterococcus</i> , in marine and estuarine waters. In addition, fecal coliform is only an indicator organism to protect people from gastrointestinal illness in recreational waters. <i>Enterococcus</i> is also an indicator of pathogen contamination in recreational waters, but more accurately predicts acute gastrointestinal illness in marine waters. Requiring Co-permittees to comply with <i>Enterococcus</i> standards to protect REC-1 beneficial uses instead of fecal coliform only changes the indicator for bacteria contamination of Newport Bay, the not pollutant itself. The change of pathogen indicators is consistent with the Fecal Coliform TMDL and will better protect REC-1 beneficial uses rather than using fecal coliform as an indicator. See Response 8.12 for further details.
11.2	12/7/2015	U.S. Environmental Protection Agency	If it is the Regional Board’s intent to include compliance schedules in the permit for any of the pollutants addressed, the fact sheet should provide specific justification for the schedule and demonstrate how the specific regulatory requirements (40 CFR 122.47) have been met.	Compliance schedules are not proposed as part of this regulatory action by the Regional Board. In the event that a compliance schedule is issued, the commenter’s remarks will be considered.
11.3	12/7/2015	U.S. Environmental Protection Agency	US EPA supports the inclusion of sediment WQBELs in this permit, even if the WLAs appear to be met.	The commenter’s support is noted and appreciated.

11.4	12/7/2015	U.S. Environmental Protection Agency	US EPA generally supports the inclusion of Watershed Management Plans in Section XI of the draft Permit. The commenter has specific objections described later.	The commenter's support is noted and appreciated. The objections are addressed later in these Responses.
11.5	12/7/2015	U.S. Environmental Protection Agency	US EPA strongly recommends changing the time when a Co-permittee would be deemed in compliance; this time should be only after approval of a WMP. "Establishing a 'safe harbor' during the planning phase is not warranted, since permittees have been required to meet [receiving water limitations] for many years prior to this proposed permit cycle." US EPA has commented on this matter to the State Board on January 20, 2015.	The timing found in Section XI of the draft Permit is consistent with that in the State Board's precedential Water Quality Order 2015-0075. We are compelled to produce an MS4 permit that is consistent with that Order.
11.6	12/7/2015	U.S. Environmental Protection Agency	"Part A.(1) should further describe that milestones are 'based on measurable water quality criteria or indicators or other specific water quality endpoints'. Please clarify what is meant by a milestone."	<p>The commenter appears to be referring to Section XI. The term "milestone" has the same meaning as used in common language. Regional Board staff declines to narrowly define this term as recommended. In order to achieve water quality standards, the Co-permittees are required to undertake a program of projects. This requires careful planning in order to maximize the probability of success through the Watershed Management Plans. The relationship between the projects and improvements in water quality will be evaluated as part of the Reasonable Assurance Analysis. The current state of knowledge may not allow this relationship to be known with certainty (We expect this to be a common conclusion of many of the Co-permittees' SWOT analyses.). Because of this, it would be prudent for "milestones" to include the performance of work as part of a larger work breakdown structure. It is entirely possible for a project to fail to produce the expected water quality endpoint, but it may be necessary to perform the work to learn this. In addition, advancement in storm water knowledge may be necessary in order to manage program risks associated with the commitment of valuable resources. The completion of studies should also be allowed to fall within the meaning of a "milestone". Consequently, a "milestone" should include the performance of work in a general sense.</p> <p>Milestones are not used in this permit in isolation. They are used as a system of methods to measure progress towards achieving water quality objectives. Pursuant to Section I, the effectiveness of that work must be evaluated against performance metrics. Receiving Water Limitations and the Monitoring and Reporting Program firmly establish receiving water outcomes as the ultimate objective and will define methods to measure achievement using receiving water and outfall monitoring. Provision XI.E.6. requires a final date by which the program is expected to achieve water quality standards.</p>
11.7	12/7/2015	U.S. Environmental Protection Agency	"Part A. should also describe that 'time between milestone dates shall not exceed one year' to be consistent with federal regulations regarding compliance schedule in NPDES permits.	As used in this draft Permit and in the commenter's context, "milestones" are required as part of WMPs. WMPs are prepared where final compliance dates have not yet passed. If a determination is made that urban discharges are causing or contributing to exceedances of water quality standards or WLAs are being violated, then the commenter's recommended language will be needed. Consequently, Subsection XI.A. has been amended to include the recommended restriction.
11.8	12/7/2015	U.S. Environmental Protection Agency	US EPA recommends the consistent use of the term "reasonable assurance analysis" as used elsewhere in the draft Permit and by other regional boards.	Regional Board staff agrees. The draft Permit has been amended accordingly.

11.9	12/7/2015	U.S. Environmental Protection Agency	"Part R. should also be revised to require a periodic 'comprehensive' update of the reasonable assurance analysis on a specified schedule."	Regional Board staff agrees with including the term "comprehensive" but we disagree that a schedule should be specified for performing updates. We do not presume that this is a light undertaking or that it is the sole method of analyzing the performance of a program. As such, the comprehensive update of a reasonable assurance analysis should be done judiciously as opposed to an arbitrary pre-defined schedule. The Regional Board reserves its authority to require an update through California Water Code section 13267 if needed.
11.10	12/7/2015	U.S. Environmental Protection Agency	US EPA disagrees that "non-LID BMPs" should be the third priority consideration if on-site LID BMPs cannot be accommodated. This is inconsistent with earlier term versions and other regions' MS4 permits. Instead, off-site LID BMPs should be used if available.	Regional Board staff agrees. The draft Permit has been revised so that the hierarchy is blind as to the location of LID BMPs. LID BMPs, whether on site or off site, are prioritized over non-LID BMPs.
11.11	12/7/2015	U.S. Environmental Protection Agency	US EPA recommends that the ordinal classification of non-LID BMPS as "high", "medium", or "low" level of pollutant removal be made numeric.	Regional Board staff agrees. This is accomplished by Provision XII.H.1.c.
11.12	12/7/2015	U.S. Environmental Protection Agency	US EPA supports the use of offsite LID projects where there is a greater benefit for groundwater replenishment versus on-site.	The commenter's support is noted. The draft Permit has been designed to minimize regulatory obstacles for this objective.
11.13	12/7/2015	U.S. Environmental Protection Agency	US EPA recommends inclusion of language so that off-site LID BMPs will be correctly designed, regularly maintained, financially and legally viable, and subject to corrective action if they do not yield expected pollution control effectiveness.	Regional Board staff agrees. The draft Permit has been revised so that the related requirements apply to structural treatment controls regardless of their location.
11.14	12/7/2015	U.S. Environmental Protection Agency	US EPA encourages the removal of the "blanket" prohibition on the infiltration of storm water associated with industrial activity.	See Response 10.1.
11.15	12/7/2015	U.S. Environmental Protection Agency	The draft Permit should be modified so that its provisions are consistent with the recent Amendment to the Water Quality Control Plan for Ocean Waters of California (Ocean Plan) to Control Trash and Part 1 Trash Provisions of the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California.	See Response 8.15.
12.1	12/7/2015	Orange County Business Council	The commenter contends that "the future of water quality control throughout southern California is focused on regional treatment. Unfortunately, there appears to be Permit restrictions that would inhibit the planning, funding, and use of such systems.	See Response 1.1, 3.4, 3.5, 3.7 and 7.11.

12.2	12/7/2015	Orange County Business Council	The limitation in Section XII.N.1.c. for common ownership of properties where structural LID BMPs generate credits and properties receiving the benefit of those credits in the draft Permit should be struck. The limitation restricts the use of credits to a very limited drainage area. Credit systems would be most beneficial if they can be utilized across an entire watershed.	This limitation is in place for good cause. See Responses 1.1, 3.4, and 3.5. We add here that the credit system, in the form advocated by this commenter and others, creates a potential disconnect between the responsibilities and authorities of Co-permittees administering it. For example, a credit-generating structural LID BMP could be located outside of the jurisdiction of the Co-permittee authorizing the use and trade of the credit. The Co-permittee would have the authority to authorize the use and trade and would take on the liability of overseeing the trade and ensuring that the BMP is effective over the life of the project. But they would potentially lack sufficient authority to remedy failures in operation and maintenance that occur outside of their jurisdiction.
12.3	12/7/2015	Orange County Business Council	The commenter is concerned that large changes proposed in the draft Permit, such as the change to the credit system, impedes the progress that the cities and County are achieving under the existing program.	The commenter's allegation is general. The commenter alludes to changes in the Model WQMP and Technical Guidance Document. We have addressed objections to changes in these program documents in Responses to Comments on the Second Draft Permit; see Responses 6.13, 6.42, and 6.43. The commenter also alludes to the limitations in the proposed credit system. We have addressed their objections in Responses 12.1 and 12.2.
12.4	12/7/2015	Orange County Business Council	The commenter urges the Regional Board to concur with their comments on credit trading systems and stay focused on ensuring the effective use of public resources in order to achieve the shared goal of improving water quality.	While Regional Board staff disagrees with the commenter's objections to the limited credit trading system in Section XII.N., we believe that, overall, the draft Permit provides a better balance of flexibility and accountability necessary to use both public and private resources to effectively achieve water quality standards.
13.1	4/18/2016	Recupero and Associates, Inc.	The commenter requests that changes, as presented in a redline version submitted to Regional Board staff, be made to Section XII.N: Credit Programs to remove the common ownership requirement and to establish a credit system authorized by the Regional Board to promote regional treatment facilities.	The commenter has proposed to delete the limitation in Section XII.N.c that requires that the credit must be generated by a BMP that is located on a property which is owned or controlled by the proposed project proponent. This deletion is intended to facilitate credit trading between multiple parties to promote regional treatment BMP implementation. As stated in Response 1.1, the purpose of Section XII.N was to allow a property owner to leverage low-cost treatment opportunities on their properties to count towards treatment of storm water from their projects where on-site treatment is costlier. This subsection was not designed specifically to promote regional or sub-regional storm water treatment facilities. Section XII.M would be a more appropriate provision to allow development of regional and sub-regional facilities due to the fact that there are no limits on project or property ownership. Although the commenter has suggested language to place limitations on the use of the credit system, the suggestions do not adequately address significant issues, such as which party has the responsibility for maintaining the BMP that the credit was issued for, how the credit system would be managed and by what organization, and what the price of the credits would be. The commenter does not sufficiently address these issues in the suggested language, potentially creating a complex credit system without appropriate oversight that could jeopardize water quality. Limiting the credit trading to properties that are owned or controlled by the project proponent prevents this complicated system of trading credits between multiple entities. Without an adequate proposal of how this credit system would be managed and enforced, Regional Board staff disagrees with the proposed changes to remove the limitations on trading credits.

