

Tentative Order No. 01-20, Orange County Municipal Separate Storm Sewer System (MS4)
Permit, Comment Letters Received as of September 21, 2001 (revised
September 27, 2001)

Natural Resources Defense Council (NRDC) – May 29, 2001
City of Garden Grove (Garden Grove) – May 30, 2001
City of Lake Forest (Lake Forest) – May 30, 2001
City of Los Alamitos (Los Alamitos) – May 30, 2001
City of Santa Ana (Santa Ana) – May 30, 2001
City of Westminster (Westminster) – May 30, 2001
City of Anaheim (Anaheim) – May 31, 2001
City of Tustin (Tustin) – May 31, 2001
City of Yorba Linda (Yorba Linda) – May 31, 2001
County of Orange (County) – May 31, 2001
City of Irvine (Irvine) – June 1, 2001
Irvine Ranch Water District (IRWD) – June 13, 2001
U.S. EPA (USEPA) – June 29, 2001
City of Westminster (Westminster) – July 3, 2001
Western States Petroleum Association (WSPA) – July 5, 2001
Building Industry Association of Southern California (BIA) – July 6, 2001
County of Orange (County) – July 6, 2001
The Irvine Company (TIC) – July 6, 2001
Orange County Sanitation District (OCSD) – July 9, 2001
Richard R. Horner, Ph.D. – July 19, 2001
Lawyers for Clean Water (LFCW) – July 20, 2001
Natural Resources Defense Council (NRDC) – July 20, 2001
Department of Health Service, Vector-Borne Disease Section (Vector Control) – July 31, 2001
Building Industry Association of Southern California (BIA-8/22) – August 22, 2001

The comments from these letters are summarized below and responses are included.

1. Comment - The requirements for new development as they pertain to compliance with 303(d) listed waters (Section XII.B.2.b) are inappropriate. The approach of limiting listed pollutant loads to pre-development levels pre-empts the development of the TMDL and its implementation plan, is inconsistent with Porter-Cologne (where post-development discharges are above pre-development concentrations, but are still below Basin Plan Objectives), and will result in the expenditure of large sums of money without a significant benefit to water quality. (Garden Grove, Lake Forest, Los Alamitos, Santa Ana, Westminster, Anaheim, Tustin, Yorba Linda, County, Irvine)

Response – The proposed Permit will be modified dropping the language holding post-development pollutant discharges to pre-development levels. Instead, the proposed Permit will prohibit post-development pollutant discharge loads which cause or contribute to an exceedance of receiving water quality objectives.
2. Comment - The requirement that permittees control discharges “into” and from the MS4 (Sections II and X) goes beyond the mandate of the Clean Water Act. (Garden Grove, Lake Forest, Los Alamitos, Santa Ana, Westminster, Anaheim, Tustin, Yorba Linda, County, Irvine, BIA)

Response – The permittees are responsible for both. US EPA guidance states that by not controlling pollutant loads into their MS4s, permittees are enabling the water quality impairment. Federal Regulations require municipalities to have legal authority to control discharges to their MS4.

3. Comment - It is inappropriate to require municipal storm water agencies to take the lead in controlling leaks and spills from sanitary sewers and mechanisms to address failing septic systems do not belong in a storm water permit. (Garden Grove, Lake Forest, Los Alamitos, Santa Ana, Westminster, Tustin, Yorba Linda, County, Irvine, IRWD)

Response – Where municipalities do not control the sanitary sewer in their jurisdiction, the permit requires that a co-operative effort between the municipality and the local sewerage agency results in an inspection, maintenance and reporting program designed to eliminate or minimize sanitary sewer spills and exfiltration. In the case of septic systems, where failure may result in discharges of waste to the MS4, those systems must be controlled.

4. Comment - The municipal permit is not the appropriate mechanism to stipulate conditions for groundwater protection (Sections IV.1 and XII.B.4). (Garden Grove, Lake Forest, Los Alamitos, Santa Ana, Westminster, Anaheim, Tustin, Yorba Linda, County, Irvine)

Response – This Permit does not require infiltration, but presents it as an option. If there are concerns regarding the impacts to groundwater as a result of infiltrating storm water and non-storm water runoff, other structural and/or non-structural control options should be considered. However, where structural BMPs approved for a project include infiltration, groundwater must not be impacted. Please note that similar requirements are included in both the Los Angeles Region's SUSMP and San Diego Region's Order WQ 2000-11, the MS4 permit for San Diego County and both have been upheld by State Board.

5. Comment - The tentative order appears to require permittees to monitor, inspect and enforce construction and industrial sites that are already under State oversight through separate NPDES permits. Is the Regional Board transferring this responsibility to the cities? (Westminster, Tustin)

Response – Federal regulations require the permittees to control the discharge of pollutants from industrial, including construction sites. 40 CFR 122.26(d)(2)(i) states that the permittees must demonstrate that they have adequate legal authority to control “the contribution of pollutants to the municipal storm sewer by storm water discharges associated with industrial activity and the quality of storm water discharged from sites of industrial activity,” prohibit “illicit discharges to the municipal storm sewer,” control “the discharge to a municipal separate storm sewer of spills, dumping or disposal of materials other than storm water,” and “carry out all inspection, surveillance and monitoring procedures necessary to determine compliance and non-compliance with permit conditions including the prohibition on illicit discharges to the municipal separate

storm sewer.” Please note that implementation and enforcement of the State’s General Permits will continue to be the responsibility of the Regional Board. However, at a number of these sites, the daily changes in site conditions and practices and the potential for discharges from these sites to cause or contribute to exceedances of water quality objectives require this extra level of local inspection and enforcement.

6. Comment - While there is discussion in the Fact Sheet (Section V.I.d) regarding local sewerage agencies accepting dry weather flows on a limited basis, IRWD notes that they discourage using the sanitary sewer system to collect and treat urban runoff and is working to develop a program to build and maintain wetlands intended to treat urban runoff (IRWD).

Response - Regional Board staff agrees that the diversion of dry weather flows to the sanitary sewer is at best, a temporary solution. Diversion solutions can only handle dry weather flow volumes, do not address the problem of source control and can give the public the false message that “business as usual” is acceptable, since the diversion will handle it downstream. Staff is encouraged by IRWD’s proposals for regional solutions, including wetlands treatment systems.

7. Comment – While the Fact Sheet (Section IX.8) discusses sewer leaks and spills and septic system failures as being responsible for a number of beach closures, there is no mention of other contributing factors such as vessel waste, wildlife and recreation activities themselves (IRWD).

Response - Section IX.8 of the Fact sheet is not an all-inclusive list of the contributing factors for beach closures. It points out that addressing sewage spills and exfiltration is a major requirement of the proposed Permit.

8. Comment - Finding 5 identifies the San Joaquin Marsh as a single unit. The upper portion is in fact owned by IRWD and is being used to remove nitrogen from the watershed with continuous flow-through, and the lower portion is owned by the University of California Natural Reserve and is operated as a wetland sink with only occasional flow-through. (IRWD)

Response – While there may be different owners and uses for the upper and lower San Joaquin Marsh, those aspects are not specifically identified in Finding 5, therefore no revision will be made.

9. Comment – Finding 5 identifies lakes and reservoirs within Orange County, but only identifies those south of the 55 and 91 freeways. (IRWD)

Response – Anaheim Lake is the only lake listed in the Basin Plan that lies generally north of the 55 and 91 freeways and will be added to the Permit.

10. Comment - Section VI.6.a-j of the permit requires the permittees to prohibit (or allow with adequate controls) a number of non-storm discharges to the MS4. If discharge to the MS4 is not allowed, there will be considerable pressure placed on sewer agencies to accept these flows. (IRWD)

Response – There is nothing within the proposed Permit that suggests that any of these discharges should be diverted to the sanitary sewer. There are adequate BMPs, other than diversion, that can address these discharges.

11. Comment - The commenter requests that the permittees be required to accept wastes that are not acceptable for sanitary sewer discharge. (IRWD)

Response – The Regional Board does not have the authority to require the municipalities to accept wastes that the local sewerage agency does not deem acceptable for the sanitary sewer. There is nothing in this Permit that suggests that the wastes identified by the commenter should be diverted to the sanitary sewer. There are adequate BMPs that may be implemented to control these discharges other than diversion.

12. Comment - The requirement that local sewer agencies inspect and maintain sewer lines will require some agencies to spend substantial funds and the Regional Board should assist the agencies in securing grants to complete the work. (IRWD)

Response – It is understood that the activities that are required of municipalities by this Permit and requirements, which may be imposed through the issuance of Waste Discharge Requirements for local sewerage agencies, will result in additional expenditures by these agencies. Please note that OCSD has a program that provides matching funds and grants for some of these programs (also see 33). To the extent possible, staff will assist these entities in the investigation of and application for low-interest loans and grants.

13. Comment - As part of the toxics Total Maximum Daily Loads (TMDLs) being developed for Newport Bay and San Diego Creek, USEPA has identified a number of priority pollutants and other adverse analytes, which may be contributing to the impairment (Ag, As, Cd, Cu, Zn, DDT, PCBs, Chlordane, Dieldrin, Toxaphene, and Dicofol). The storm water permit should ensure that ambient monitoring plans include the analysis of these analytes. (USEPA)

Response - Comment is noted. The 9/12/01 draft of the Monitoring and Reporting Program (M&RP) requires the permittees to update their monitoring plan by June 15, 2002. Further, both the Permit and M&RP include modification and reopener clauses especially designed to address the needs of the on-going TMDL program.

14. Comment - The monitoring program associated with the MS4 permit must be modified to ensure that the proper procedures are carried out to eliminate or minimize matrix interferences and improve method detection limits. (USEPA)

Response - Comment is noted. The 9/12/01 draft of the Monitoring and Reporting Program (M&RP) requires the permittees to update their monitoring plan by June 15, 2002. Staff will confer with US EPA in reviewing this plan to ensure that it properly addresses these issues.

15. Comment - Sampling methods employed in the collection of water and sediment samples be enhanced to ensure that samples are representative of ambient conditions. (USEPA)

Response - Comment is noted. The 9/12/01 draft of the Monitoring and Reporting Program (M&RP) requires the permittees to update their monitoring plan by June 15, 2002. Staff will confer with US EPA in reviewing this plan to ensure that it properly addresses these issues.

16. Comment – While the approach the Santa Ana Regional Board has taken is to encourage the permittees to develop practical programs that meet their respective needs, rather than across-the-board requirements imposed by the Regional Board, the commenter believes that a uniform guidance on Retail Gasoline Outlets (RGOs) would be helpful. It is suggested that the March 1997 California Stormwater Quality Task Force BMP Guide for RGOs be used as the guide to BMP requirements for RGOs. (WISPA)

Response – While the 1997 BMP Guide for RGOs should be used as a starting point in drafting BMP requirements for RGOs, it should also be noted that sufficient time has passed that these guideline require updating. As the principal permittee is a member of the California Stormwater Quality Task Force and is aware of the aforementioned document, no revision to the permit is necessary.

17. Comment - The permit's focus on ensuring that urbanization does not significantly change the hydrology would seem to encourage sprawl and spreading development, at the expense of open space. In addition, this hydrological focus combined with other provisions which force an 'upstream' focus; such as regulating pollutants entering the MS4 appear to impede the use of watershed-based or regional solutions. (TIC, BIA)

Response – The current draft Permit no longer requires maintaining pre-development site hydrology, but instead requires maintaining or minimizing downstream erosion and maintenance of stream habitat. However, maintaining pre-development hydrology to reduce the effects of urbanization on runoff flow and velocity will not directly lead to sprawl. The use of BMPs, such as infiltration galleries, semi-pervious surfaces and strategically placed regional BMPs should suffice. As to the upstream focus created by regulating pollutants entering the MS4, there needs to be a focus on source control. An end-of-pipe regional BMP cannot be the primary treatment/control BMP when that results in urban streams and channels (receiving waters), upstream of the regional BMP, not supporting their beneficial uses.

18. Comment – The Regional Board should consider revising the permit to clarify that the review and approval of watershed-based BMPs would not be a permit modification, but would rather be part of the permit implementation by including an approval process and standards to be used by the Executive Officer in evaluating watershed-based or regional alternatives. (TIC, BIA)

Response – The language of the current draft Permit will be further analyzed to ensure that adequate standards are written into Section XII.B, for use by the Executive Officer in the review of the submitted plan(s).

19. Comment - Inclusion of water-quality based effluent limits (WQBELs), namely the receiving water limitations (Section IV) and waste load allocations (Section XVI) are inappropriate in a public storm drain permit. (TIC)
- Response – This issue has arisen over the past several years due to the wording of the Clean Water Act section 402(p) that states that industrial dischargers must meet both Best Available Technology (BAT) and applicable water quality standards, but that municipal discharges must meet Maximum Extent Practicable (MEP) and “such other provisions that the Administrator or the State determines appropriate for the control of such pollutants.” U.S. EPA, the State Board and Regional Boards have maintained that municipal discharges must meet water quality standards. While nothing prohibits the State and Regional Boards from requiring compliance with water quality standards through the application of numeric effluent limits, at this time the Boards have maintained that water quality standards may be met through the use of the iterative BMP process in place of numeric effluent limits.
20. Comment – The commenter notes that California has 9 of the nation's 10 least affordable housing markets and states that an Irvine preschool teacher would need a salary increase of \$80,200 to afford a median-priced, Irvine home. It is implied that water quality regulations play a major role in the high price of housing. (BIA)
- Response – The fact that homes in many areas of Riverside County have a median price in the low \$100,000's and homes in Irvine have a median price in the mid \$300,000's, while both are subject to largely the same environmental regulations points out the absurdity of this stance.
21. Comment - The requirement that the MS4 discharge not 'cause or contribute' to exceedances of receiving water standards and the requirement that the permittees implement control measures in a timely manner to comply with the 'cause of contribute' requirement will result in immediate non-compliance by all dischargers from day one of the Order. (BIA)
- Response – The ultimate goal of this proposed Permit, as well as the municipal storm water program as a whole, is for MS4 discharges to meet water quality objectives. However, where discharges do not meet water quality objectives, the permit allows for compliance through the implementation of an iterative BMP process.
22. Comment – Language within the permit, such as 'minimize', 'limit', 'maximize', and 'preserve' are subject to wide discretion and problematic enforcement. (BIA)
- Response – The terminology throughout this proposed Permit is specifically designed to allow the permittees the maximum flexibility in the implementation of the permit, while maintaining water quality.
23. Comment - The requirements to reduce runoff flows should not be included since this is a water quality permit and that there are no studies that have shown that increased runoff flows automatically contribute to exceedances of water quality standards. (BIA)

Response – The current draft Permit no longer requires maintaining pre-development site hydrology, but instead requires maintaining or minimizing downstream erosion and maintenance of stream habitat. However, no increase in post-development runoff flow and velocity remains a goal. U.S. EPA guidance points out that impacts on receiving waters due to changes in hydrology can often be more significant than those attributable to the contaminants found in storm water discharges.

24. Comment – The commenter points out that while the proposed permit requires the municipalities to review the CEQA and General Plan process, there does not appear to be language in the proposed permit to reflect the goal of increasing the housing supply. (BIA)

Response – There are many issues that require consideration in formulating and implementing regulations. Commonly, collective terms are used for those issues that are not the major focus of the regulation. In this case, the goal of providing an adequate housing supply would fit under the category of “societal benefits.”

25. Comment - The commenter suggests the following changes to new development categories (Section XII.B): set the residential threshold (10+ units) to the same as the commercial threshold (10,000 ft²); eliminate hillside development as a category; and eliminate the environmentally sensitive area category, as the findings do not support such a category. (BIA)

Response – Residential land use and commercial land use are sufficiently different, such that different thresholds are appropriate. A 10-unit residential tract can have 20-50 people living there full-time. Residences typically have many pollutant-generating activities and more importantly, are under less regulatory oversight. In the case of hillside development, even though the highest potential for erosion exists during construction, there exists a sufficiently high post-construction erosion potential to require additional protection. Finally, when the State Board withdrew Environmentally Sensitive Areas (ESAs) as a priority development project category from the LARWCB SUSMP in Order WQ 2000-11, Regional Boards were given the discretion of adding Environmentally Sensitive Areas in future permits as long as a size threshold is provided. Section XII.B.g of the proposed Permit provides a size threshold of 2,500 feet.

26. Comment - The commenter questions the practicality of reverting to a SUSMP policy similar to Regions 4 and 9, if the permittees are unable to produce an acceptable alternative plan by the deadline. They go on to state that since Region 9 has admitted that it will take 10 – 20 years to see water quality improvements as a result of SUSMPs, they are ineffective and may not even be worth a nominal cost. (BIA)

Response – It is understandable that improvements in water quality may not be seen for 10-20 years. The whole intent of requiring structural control BMPs in new development and substantial redevelopment is to prevent water quality & aquatic habitat degradation from getting worse. Further, the SUSMP or WQMP process allows these controls to be gradually implemented as new

areas develop and old areas redevelop. The alternative would be a program of retrofitting existing homes and businesses with these controls.

27. Comment - The decision in the Ninth Circuit Court of Appeals in *Defenders of Wildlife V. Browner* preempts the inclusion of Water Quality Based Effluent Limits (WQBELs), such as the requirement that the MS4 discharges do not violate water quality standards. (BIA)

Response - The provisions in this proposed Permit do not require strict compliance with numeric effluent limits, only that the addition of MS4 discharges do not cause or contribute to violations of water quality standards. Further, permit language providing for iterative BMP implementation compliance with the Permit negates this claim.

28. Comment - Since the permit includes provisions that are not required by the Clean Water Act, such as WQBELs, the exemption from CEQA, provided by the California Water Code, does not apply. (BIA)

Response - All provisions within the proposed permit implement or clarify specific federal regulations. The requirement that the permittees not violate water quality objectives is found in the federal NPDES regulations, is required by the Clean Water Act and is therefore exempt from CEQA.

29. Comment - Water quality objectives relied upon in the proposed permit's receiving water limitation section (Section IV), come from the Basin Plan and as such may not reflect all current statutory factors, such as economics and the need to develop housing in the region. (BIA)

Response - When many of the water quality objectives were established in early Basin Plans, there were no requirements to consider these statutory factors and they may or may not have been considered. As new water quality objectives are established, these factors will be taken into account. There is no requirement, however, to immediately revisit all water quality objectives in the Region.

30. Comment - The proposed permit's definitions of BMP as "... practices that are maximized in efficiency for the control of storm water runoff pollutants" and Maximum Extent Practicable (MEP) as "... the maximum extent possible, taking into account ... gravity of the problem, [technical feasibility,] fiscal feasibility, public health risks, societal concerns, and social benefits" are not supported by the Federal Regulations. (BIA)

Response - The federal storm water regulations do not have a definition for MEP. We are reviewing other related documents to determine the need to change the above definitions.

31. Comment - By requiring local authorities to implement land use controls, the Regional Board is attempting to encroach on the local government's jurisdiction. (BIA)

Response - The requirements in the proposed permit require that the permittees consider water quality in making zoning decisions and CEQA reviews. This in no way encroaches on the permittees jurisdiction, but attempts to find the best solution.

32. Comment – Where permittees do not have any control over their sanitary sewer systems, the permittees should work cooperatively with the sanitation districts to develop acceptable solutions to the problems of spills and infiltration of sewage to the MS4. (OCSD)

Response - Comment noted.

33. Comment – The commenter has in place, four programs to address inflow, infiltration, exfiltration and spills. These programs include matching funds and grants to local collection agencies to address inflow and infiltration; extensive training on spill reporting and response; use of closed circuit television to inspect lines; and, a contingency plan to prevent spills during high flow wet-weather conditions. (OCSD)

Response - Comment noted.

34. Comment – Draft language referring to sanitary sewer lines that are “24-inches or larger” may not address the current problems, as blockages are far more likely to occur in the smaller sewer lines. Therefore, draft language should include sewer lines down to 4-inches. (OCSD)

Response - Section XI.1 of the proposed Permit stipulates that a mechanism must be developed to address ‘exfiltration’ from all sanitary sewer lines that are 24 inches or larger. While blockages may be more prevalent in smaller lines, exfiltration from lines smaller than 24 inches are not expected to contribute as significantly as those 24 inches and larger. Regional Board staff is also proposing to address this issue through a separate General Waste Discharge Requirements issued to the sewage collection agencies.

35. Comment – While individual agencies will likely want to tailor specific actions to their own systems and capabilities, a set of uniform principles in response and reporting activities would help to reduce impacts to the MS4 and receiving waters due to sewage spills. (OCSD)

Response - Comment noted. The proposed General Waste Discharge Requirements for sewage collection agencies includes these criteria.

36. Comment – The commenter recommends a greater future role for the permittees in ocean surf zone monitoring. Since the shoreline is predominantly impacted from land sources of bacteria and wet-weather events, the storm water permit should cover this area. (OCSD)

Response - Comment noted.

37. Comment - Commenter states that the DAMP is wholly inadequate to stem the diminishment of water quality and aquatic ecosystems associated with the growth of population and its support structure in Orange County. (Dr. Richard Horner)

Response - Please note that the DAMP is only one component of the Orange County storm water program. The DAMP, proposed MS4 permit requirements, and Report

of Waste Discharge (ROWD) combined with major revisions and evaluations of many MS4 storm water components including, the Monitoring Program, New and Significant Re-Development, and SUSMPs, are expected to provide the required water quality and aquatic ecosystem protection.

38. Comment – The Storm Water Five-Year Workplan requires the Regional Board's to inspect and audit each municipal entity at least once during every year of the permit term. Due to inadequate funding, the Regional Board's enforcement and audit program are virtually non-existent during the last ten years. (NRDC)

Response - The five-year workplan established a framework and setup goals and objectives for the State's storm water program. The goals and objectives were predicated upon full funding to implement this program. One of the program goals was to evaluate the municipal program annually through offsite and onsite audits. During the last eleven years, even with the limited resources allocated for the storm water program, we conducted both offsite and onsite audits and have taken a number of enforcement actions against municipalities for violations of the MS4 permits. A recent audit of the Regional Board's NPDES program by US EPA (p. 16-17) states, "RB8 conducts annual compliance inspections of their MS4 permittees" and on page 25 it states, "RB8 has developed a protocol for in-depth audits for the MS4 permittees". Therefore, NRDC's assumptions are not based on facts. Last year, the storm water program budget has been augmented. A review of our files will indicate that frequency of our municipal program audits and our enforcement activities have significantly increased with the budget augmentation.

39. Comment - The permit is half as short as the draft Los Angeles permit.

Response - We believe that the quality of a permit cannot be ascertained based on its size alone.

39. Comment – Waste load allocations for each permittee should be included in the permit for each TMDL that has been adopted by the Board. The permit fails to adequately implement and coordinate TMDLs and water quality standards for impaired waterbodies. (NRDC/LFCW)

Response - Waste load allocations for each TMDL developed and approved are addressed and in place in the proposed MS4 permit.

40. Comment – There is no evidence to support the Permit's statement that it is anticipated that the goals and objectives of the storm water management regulations will be met or that significant progress has been made by the permittees during the past two permit cycles. The DAMP is not doing its part in improving water quality standards to the MEP. (NRDC)

Response - The ROWD and the annual reports provide information on the progress the permittees have made since the start of the MS4 program in Orange County and Volume I of the ROWD has information on water quality improvements in Orange County.

41. Comment – The Permit should discuss particular pollutants of concern as identified in current monitoring efforts by the permittees. (NRDC)

Response - The ROWD and the annual reports include a discussion on pollutants of concern. In additions, the revised (9/12/01) draft includes new requirements for revisions of the monitoring program. The revised monitoring program will include discussions on pollutants of concern based on current monitoring efforts.

42. Comment – There is a lack of anti-degradation analysis, which is required if a permit will allow an overall lowering of surface water quality. (NRDC, LFCW)

Response - The storm water monitoring results for Orange County for the last ten years indicate no degradation of water quality resulting from discharges regulated under this permit. Volume I of the ROWD discusses the water quality improvements from implementation of the programs and policies related to the storm water program. The proposed Permit includes additional requirements to control the discharge of pollutants. Based on available evidence and additional requirements specified in this Permit, there is no reason to believe that water quality degradation will take place upon implementation of the provisions of the proposed Permit and other programs (DAMP, monitoring program) and policies of the Orange County storm water program. NRDC's assertion that WQ 90-5 is applicable to this Permit is invalid because unlike the permits discussed in WQ 90-5, this Permit does not allow the discharge of toxic pollutants in greater quantity than had been allowed in previous permits. Therefore, no further anti-degradation analysis is necessary.

43. Comment – The deferral of compliance is unacceptable, especially with regards to permit elements that have been required since the 1990 Permit, such as a program to prevent illegal and illicit discharges. This is in violation of 40CFR 112.47 and 124(i). (NRDC, LFCW)

Response - The requirements specified in the 1990 and 1996 Permits have been met and the permittees have a program in place to prevent illegal and illicit discharges. There are time schedules included in the Permit for further improvements to these programs. This is not a deferral of compliance. Sections 122.47 and 124(i) apply to the issuance of permits to "new sources". As recognized by the State Board, the issuance of a MS4 permit to a municipality does not constitute an issuance to a "new source".

44. Comment – There is no evidence to support findings 36 and 37, no additional time is needed to determine if storm water discharges are causing or contributing to violations of water quality standards, and there is no evidence that the "iterative" process to assess the contribution of storm water has been implemented or that additional BMPs have been designed or implemented to correct violations. (NRDC, LFCW)

Response - These two findings refer to the receiving water limitations. The receiving water limitations included in the Permit are consistent with the language approved by the US EPA and the State Board and is the same as other MS4 permits.

45. Comment – Under 40 CFR Section 122.44, numeric effluent limits are mandatory since storm water has the reasonable potential to cause or contribute to the violation of water quality standards. (NRDC, LFCW)

Response - The issue of numeric effluent limits in MS4 permits have been appealed and decided by the State Board and the courts. Both the State Board (Memorandum from Craig Wilson to Edward C. Anton dated 03/15/01) and the Ninth Circuit Court of Appeals (9th Cir. 1999, 191 F.3d 1159) have determined that numeric effluent limits are not required in MS4 permits.

46. Comment – Permit Section III.4 is unclear where it refers to “written clearances issued by the Regional or State Board”. (NRDC)

Response - That reference has been removed in the revised draft.

47. Comment – There is no evidence that the DAMP is designed to assure compliance with receiving water limitations and therefore, references to the DAMP should be stricken and the permittees should be directed to implement a storm water management program that is designed to assure that MS4 discharges do not cause or contribute to water quality violations and meet MEP. (NRDC)

Response - The 2000 DAMP in itself does not contain all the elements of the current Orange County storm water program elements. It appears that NRDC's comments are solely based on a cursory review of the 2000 DAMP. The first DAMP for the Orange County program was developed and approved in 1993. This is a dynamic document and has undergone a number of changes and additions. The proposed Permit includes receiving water requirements as agreed upon by the US EPA and the State Board and these requirements are designed to assure that discharges from the MS4s do not cause or contribute to a violation water quality standards and also meet the MEP standard as per 40 CFR 122.44.

48. Comment – Permit Section X.1 should indicate that municipal construction and industrial activities that require NPDES Section 402(p) permits must meet technology standards. (NRDC, LFCW)

Response - Comment noted.

49. Comment – Permit Section XII, New Development is inconsistent with MEP because it fails to include a program requiring the installation of structural best management (SUSMPs) per the express direction of the Chief Counsel of the State Board. (NRDC, LFCW)

Response - The Permit language has been revised. SUSMPs or equivalent programs are required to be implemented for all new developments and significant redevelopments. However, we disagree with the commenters that the Chief Counsel directed all regional boards to have the same SUSMP requirements. A requirement to implement nothing but SUSMP will be contrary to the MEP standards intended by federal regulations.

50. Comment – Permit Section XIII, Public Education and Outreach identifies that 100% of the residents will be targeted but because multiple impressions are necessary to effect change of behavior, the number of impressions should be included. (NRDC, LFCW)

Response - The permittees are required to review and revise their public outreach program. The public awareness survey required under Section XI. 1 of the Permit should be able to determine the level of efforts needed for this element of the program to develop a future action plan including the number of impressions needed.

51. Comment – The catch-basin cleaning requirement of the Permit (80% per year) is inadequate. Since Los Angeles County and others have cleaned 100% per year, that sets the MEP standard. (NRDC)

Response - What is appropriate for Los Angeles County may not be appropriate for Orange County. The MEP standard for Orange County should be based on what is appropriate for Orange County.

52. Comment – The permittees should be required to undertake an inspection program of USEPA Phase I industrial facilities, automotive facilities and restaurants, per 40 CFR Sections 122.26(d)(iv)(A)(5) and (B)(1). (NRDC)

Response - The revised draft permit now has requirements for municipal inspection of construction, industrial, and commercial sites.

53. Comment – The permit's monitoring and reporting program is not adequate. (NRDC)

Response - The monitoring and reporting program has been revised.

54. Comment - BMPs that hold standing water (infiltration systems), even for a short period of time, may pose a nuisance and public health threat by providing vector habitat, especially for mosquitoes. We would like for BMP plans to be submitted to the local vector control agency for review and approval. (Vector Control)

Response - Section XII.A.6.d of the proposed Permit requires the permittees to consult with the local vector control agency to ensure that water quality wetlands, biofiltration swales, watershed-scale retrofits, etc. are designed to minimize the potential for vector breeding.

55. Comment - Orange County has a long history of water quality regulation that should not now be compromised by borrowing from other regions without the same track record. (BIA-8/22)

Response - If the Orange County program can benefit from BMPs and other measures developed by other entities, it can only further improve the program. There should not be any hesitation in borrowing from other programs as long as the Orange County program itself is not compromised.

56. Comment - Water quality in Orange County is clean by comparison to its neighbors. Los Angeles County has 168 impaired waters, San Diego County has 36 impaired

waters and Orange County has 28 impaired waters, of which only eight lie within Region 8. With regard to addressing these impairments, Region 8 has three approved TMDLs, Los Angeles has one and San Diego, none. (BIA-8/22)

Response - Comments noted.

57. Comment - Since the late 1990's, approximately 1,000 new projects representing 10,000 acres, have been constructed in Orange County in accordance with the Water Quality Management Plan (WQMP) requirements. (BIA-8/22)

Response - While these projects may have been completed in accordance to their WQMPs, it is clear many of these developments were not required to implement structural BMPs intended to reduce pollutant loads in runoff from the projects. The requirements specified in Section X of the proposed Permit are intended to provide water quality protection equivalent to that afforded by the SUSMP requirements specified by other regional boards.