RESPONSE TO COMMENTS

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

Comments submitted by December 18, 2023, tentative permit.

Letter Number	Commenter (Click to go to location)
--	Acronyms List for Response to Comments
1	Los Angeles Waterkeeper, American Rivers, the Natural Resources Defense Council, the California Coastkeeper Alliance, and Heal the Bay
2	California Stormwater Quality Association
3	Dominguez Channel Watershed Management Group
4	Los Cerritos Channel Watershed Management Group
5	City of Los Angeles Harbor Department
6	Port of Long Beach
7	City of Lakewood
8	City of Santa Fe Springs
9	City of Downey
10	City of Bellflower
11	City of Cerritos
12	California Chamber of Commerce & California Business Properties Association
13	National Association for Industrial and Office Parks SoCal Chapter
14	Carson Chamber of Commerce
15	Los Angeles County Business Federation
16	Western States Petroleum Association
17	California Council for Environmental & Economic Balance
18	Industrial Environmental Association and the Building Industry Association of San Diego County

Letter Number	Commenter (Click to go to location)
19	Industrial Environmental Coalition of Orange County
20	Construction Industry Coalition on Water Quality
21	Pacific Merchants Shipping Association
22	Atlas Capital Group, LLC
23	Macerich Lakewood LP
24	BNSF Railway
25	Total Terminals International, LLC
26	Costco Wholesale
27	Union Pacific Railroad
28	Long Beach Container Terminal
29	Relativity Space, Inc.
30	TraPac, LLC
31	Alta Environmental, LP an NV5 Company
32	Ashworth Leininger Group
33	Brash Industries
34	TECS Environmental
35	York Engineering, LLC

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

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

Comment Number	Comment	Response
1.1	We commend staff of the Regional Board and EPA for their thoughtful revisions to the CII Permit in response to comments received. In particular, we are pleased that the Revised Draft Permit no longer allows facilities partially covered under the statewide Industrial General Permit ("IGP") to fully enroll under the CII Permit, instead requiring facilities to obtain partial coverage under each permit separately. We also greatly appreciate the many changes made to Compliance Option 1 with the intent to improve accountability for permittees selecting that compliance option, and to ensure clarity in the scope of agreements between permittees and Watershed Management Groups ("WMGs") operating under the regional municipal separate storm sewer system ("MS4") stormwater permit. Finally, we support the improved economic analysis included in the Revised Draft Permit, which shows that investments in getting CII facilities to comply with the Revised Draft Permit will be instrumental in improving water quality for zinc and other pollutants throughout the Watersheds for the benefit of ecological health and our communities in the region (most of which are disadvantaged and experience high pollution burdens). These changes make the Revised Draft Permit much improved from the initial draft released in 2022, and we generally support the Regional Board's Revised Draft Permit and EPA's Residual Designation, which together represent a new regime of regulating stormwater from historically unpermitted sites causing and contributing to impaired waterways in the Los Angeles region.	Comment acknowledged. The tentative revised CII Permit preserves the changes mentioned in the comment. Additionally, the economic analysis and other sections in the Fact Sheet have been further expanded to improve clarity and transparency for potential CII Permit compliance costs.

Comment Number	Comment	Response
1.2	Our comments in this letter reiterate crucial suggestions we previously included in our comment letter on the previous draft of the CII Permit and Residual Designation that have not been adequately addressed. We offer the following additional recommendations to further strengthen the requirements in the Revised Draft Permit and ensure the Revised Residual Designation results in the maximum possible reduction in pollutant loading throughout the Watersheds: (I) Expand coverage under the Revised Residual Designation to apply to all CII facilities greater than five acres in size, including airports; (II) Add a requirement to upload photographic evidence to SMARTS for visual monitoring required for Compliance Option 1; (III) Further clarify the scope and contents of Compliance Option 1 funding agreements; and (IV) Make other small clarifications or typographical changes we have identified throughout the Revised Draft Permit. These recommendations are explained further below.	Comment summary noted. The first portion of this comment pertains to U.S. EPA's designation memo and is outside the scope of the action by the Los Angeles Water Board. Please see specific responses below regarding the other three portions of this comment summary.
1.3	EPA Should Expand the Scope of the Revised Residual Designation to Apply to All CII Facilities Greater than Five Acres in Size, Including Airports. [See comment letter from Los Angeles Waterkeeper, American Rivers, the Natural Resources Defense Council, the California Coastkeeper Alliance, and Heal the Bay for full comment text.]	This comment pertains to U.S. EPA's designation memo and is outside the scope of the action by the Los Angeles Water Board.

Comment Number	Comment	Response
1.4	The Regional Board Should Require Compliance Option 1 Permittees to Upload Photographic Evidence of Visual Monitoring to SMARTS. Turning to the Revised Draft Permit, we thank Regional Board staff for incorporating many of our suggestions on how to improve accountability and transparency under Compliance Option 1, and we appreciate the detailed responses to comments on those points. We support the following changes proposed for Compliance Option 1 in the Revised Draft Permit intended to prevent a worsening of water quality in the Watersheds during the implementation period: • Limiting Compliance Option 1 to permittees within an area modeled by a reasonable assurance analysis supporting a WMG's Watershed Management Program under the Regional MS4 Permit, and removing the discussion of funding upstream projects only when downstream projects are not "technically feasible"; • Requiring both the permittee and the WMG to attest that no downstream projects are available through a Watershed Management Program before reaching agreement to fund an upstream stormwater project, and excluding cost considerations from whether a downstream project is "available"; and • Requiring all permittees, regardless of the compliance option selected, to submit annual reports including visual observations of discharges from the site, identification and assessment of minimum BMPs implemented, and any corrective action(s) performed. With these improvements, in particular the visual observation requirement, we believe the Revised Draft Permit contains more guardrails to ensure that Compliance Option 1 permittees will implement the minimum BMPs during the time that they provide funding to WMGs for regional projects. As a result, the new scheme under Compliance Option 1 should be more effective in achieving watershed-scale benefits to water quality.	Comment acknowledged. The tentative CII Permit has been revised to increase detail and accountability for Compliance Option 1. SMARTS development for CII Permit implementation is in process. Photographic documentation requirements have been added as part of visual monitoring requirements in section 6 and 9 and Attachment E of the tentative revised CII Permit.

Comment Number	Comment	Response
1.5	Nevertheless, Compliance Option 1 may still create new hotspots of high pollution near facilities that are providing funding to upstream stormwater projects, to the extent the facilities do not implement the minimum BMPs effectively. This remains of great concern to us due to the high prevalence of disadvantaged communities already facing disproportionately high pollution burdens in the vicinity of such facilities, and the need to clean up their waterways as soon as possible. The Regional Board cannot discount the tough task ahead in following through to hold Compliance Option 1 permittees accountable for failing to implement required minimum BMPs. In our 2022 comment letter, we called for the Regional Board to require Compliance Option 1 permittees to monitor and sample their stormwater discharges to provide public transparency about whether minimum BMPs are being implemented effectively during the permit term. We understand the Regional Board's reasoning behind the decision not to include such monitoring requirements in the Revised Draft Permit. However, the lack of robust monitoring means it will be up to the Regional Board's inspection staff to track annual reports submitted by Compliance Option 1 permittees and to conduct site inspections of facilities of concern. We have some comfort that there will be three dedicated inspectors on staff at the Regional Board to oversee CII Permit compliance, as Regional Board staff have indicated to us in a prior meeting. However, we believe the most effective permitting structure also includes more public transparency about which facilities are lagging behind, which helps establish a role for the general public (including our groups) to assist the Regional Board in identifying such facilities and decrease the Regional Board's administrative burden of ensuring compliance. In order to improve public transparency in this manner, we urge the Regional Board to include a requirement in Section 9 of the Revised Draft Permit for permittees to upload photographic evidence of the required visual monitoring to SMARTS. Visual evidence of visual monitoring will help our groups, and concerned community members, better understand which facilities have dirty stormwater discharges and may be disregarding their minimum BMPs. Such a requirement is a reasonable means to validate the written observations about the nature of stormwater discharges and will not impose meaningful additional costs on permittees.	Hotspots of high pollution loads are accounted for in Compliance Option 1. See section 8.1 of the tentative revised CII Permit, where a footnote has been added to explain the pollutant level factor. This factor is intended to account for site-specific factors in the funding level equation. A Discharger whose site is contributing to high pollutant loads must pay proportionally greater amounts into a regional project. The suggestion requiring photographic evidence has been incorporated into the tentative revised CII Permit.

Comment Number	Comment	Response
1.6	We also note that the new language added to Section 9 is a bit confusing. We do not know what it means to report on “visual observations of discharges, identification, and assessment of minimum BMPs implemented, and any corrective action performed.” It appears that “identification” is its own item in the list, but it is unclear whether there are words missing from what is to be identified or if that word is included in reference to identifying the minimum BMPs implemented, which is what appears in the next clause. We request clarification of this sentence through revisions to make clear what each clause in the list articulated in Section 9 means.	Section 9 has been revised to clarify the language. As part of this requirement, the Discharger shall submit an annual report containing visual observations of discharges, identification and assessment of minimum BMPs implemented, and any corrective action performed.
1.7	The Regional Board Should Further Clarify the Scope and Contents of Compliance Option 1 Agreements. In addition to improving accountability under Compliance Option 1, we acknowledge that the Revised Draft Permit contains additional improvements to Compliance Option 1 that provide more clarity regarding how agreements between permittees and WMGs should be structured. These changes include: • Adding a preliminary formula for calculating fee structures for such agreements, intended to be a ratio based on a permittee’s contribution of pollutants relative to the total pollutant loading addressed by a regional stormwater project or in the watershed; • Clarifying that a permittee selecting Compliance Option 1 must contribute funding to a WMG for as long as the permittee continues to select that compliance option, rather than through a single up-front payment; and • Adding a requirement to notify the Regional Board’s Executive Officer whenever a Compliance Option 1 funding agreement terminates early due to a permittee’s decision to select a different compliance option.	Comment acknowledged.

Comment Number	Comment	Response
1.8	However, we still have significant uncertainty as to how the agreement negotiation process will look, and what the agreements ultimately will look like. We recognize that, in response to our comments requesting a shortened timeline for submission of Permit Registration Documents for Compliance Option 1, Regional Board staff noted the need to allow sufficient time for permittees and WMGs to enter funding agreements to avoid imposing "undue administrative burden" on WMGs. We agree with the need for sufficient time to enter agreements. Staff also indicated they are considering our request to issue formal guidance on such funding agreements, including templates, which would help streamline the negotiation process. We repeat here that Regional Board staff should provide more formal guidance, whether in the CII Permit itself or via a separate guidance document, regarding the scope and contents of Compliance Option 1 funding agreements.	Los Angeles Water Board staff met with representatives for potential CII Permittees and Watershed Management Groups several times since the close of the comment period on the previous tentative permit and prior to the release of the latest tentative revised permit. During these meetings, it was determined that the Watershed Management Groups and CII Permittees are in a better position to negotiate terms of an agreement for Compliance Option 1 on their own than to have the Board adopt a template agreement for them to follow. However, Los Angeles Water Board staff will provide guidance for the preparation of Compliance Option Documents to Dischargers, including how to enter into Compliance Option 1 agreements, to ensure the process will be straight-forward, transparent and will not require extensive negotiations. See also response to comment #2.4.
1.9	From comments received on the initial draft CII Permit, it is clear that more guidance is necessary to assist both WMGs and permittees to ensure the negotiation process goes smoothly. As we previously commented, the Regional Board must provide CII permittees and WMGs with template agreements, forms that CII permittees must complete to identify information about the facilities' volume of stormwater discharges and pollutant loads, and other clear guidance that (1) will ensure permittees understand the limitations on the funding agreements and (2) will preserve sufficient flexibility and discretion for WMGs regarding the use of those funds for regional stormwater BMPs when entering into these agreements. There are four important topics the Regional Board still must address and clarify in guidance on Compliance Option 1 agreements, each of which is explained below.	See responses to comments #1.8 and #2.4 for more information.

Comment Number	Comment	Response
1.10	First, we are uncomfortable with the thought that a permittee may be denied the option to select Compliance Option 1 for reasons out of their control. The Revised Draft Permit seems to give WMGs discretion to deny Compliance Option 1 to permittees for any reason, even for permittees that are willing to comply with all requirements under that compliance option and otherwise are in agreement with the most important substantive terms of such an agreement (mainly, the funding amount). For this reason, the Regional Board should clarify in the CII Permit, or in other formal written guidance, what authority a WMG has to deny Compliance Option 1 agreements in certain circumstances or, conversely, how permittees can be guaranteed to benefit from Compliance Option 1 if they meet specific enumerated pre-requisites. We do not think it would be appropriate to give WMGs excessive bargaining power to be able to make permittees agree to any terms desired by the WMGs. Many permittees will have immense difficulty making expensive short-term improvements to their facilities that would be necessary under the other compliance options to achieve final compliance with capture and infiltration or treatment requirements. This reality makes Compliance Option 1 a necessary incentive to facilitate the development of more efficient regional stormwater BMP projects. Thus, Compliance Option 1 should be available to any permittee meeting all enumerated requirements, leaving WMGs with discretion on key terms related to how the funding under the agreement will be spent and other terms that are specific to participating facilities, watersheds, and BMP projects. More certainty on how a permittee can be guaranteed to select Compliance Option 1 will be instrumental in giving permittees sufficient time to work toward their preferred compliance option during the enrollment period under the CII Permit in a predictable and transparent manner.	The Los Angeles Water Board disagrees that the revised text of Compliance Option 1 may give Watershed Management Groups excessive bargaining power in drafting agreements. Compliance Option 1 is available to any Discharger who can meet all minimum requirements set forth in section 8.1 of the tentative revised CII Permit, and section 8.1.2.5 only stipulates that both the Discharger and Watershed Management Group may establish additional provisions beyond the minimum requirements if necessary. Since both parties must agree upon the terms, the Discharger and Watershed Management Groups are jointly interested in developing mutually beneficial terms. That being said, a portion of CII Permittees will be first-time NPDES permittees and thus may be uncertain about how to participate in Compliance Option 1. Development of guidance, as described in response to comment 1.8, may alleviate some of these concerns. The Fact Sheet has been expanded with further analysis regarding BMP performance, and an economic analysis memo has been posted on the CII Permit web page to help Permittees navigate their choice of compliance options.

Comment Number	Comment	Response
1.11	Second, the Regional Board must clarify that the fee structure in Section 8.1 is not tied to the actual implementation cost of the specific regional BMPs contemplated for funding in the agreement, but rather based on the average implementation cost of regional stormwater BMPs. We do not believe it would be appropriate for CII permittees to be responsible to fund 100% of the actual capital improvement and implementation costs of regional stormwater BMP projects, which can be highly variable depending on unpredictable factors. Fundamentally, implementing those projects is still the responsibility of the municipalities as permittees under the Regional MS4 Permit, so the municipalities should have to bear the volatility of such costs rather than imposing the high uncertainty on CII permittees. Rather, we think the better approach is for the fee structure to apply a fixed cost based on the average price of implementing regional stormwater BMPs of similar types. Those costs could be expressed as an amount per acre treated, volume of stormwater treated, or other generally accepted metric for regional BMPs. CII permittees would then be able to predict what the cost of compliance under Compliance Option 1 would look like for their corresponding pollutant load being addressed by the identified regional BMP project, and WMGs would be responsible to implement projects at that average cost rate or else shoulder the additional costs themselves as their own compliance requirement. The alternative of tying CII permittee funding to the actual implementation cost of the regional BMPs would make the cost of Compliance Option 1 highly variable and unpredictable, deterring many permittees from even considering it.	Under Compliance Option 1, a CII Site must pay into a regional project(s) in an amount proportional to the volume of stormwater runoff and facility type (and therefore amount of pollution). This amount is calculated pursuant to a formula in the Order, and the total discharge from the CII Sites have been included in the reasonable assurance analysis for a Watershed Management Program to ensure that the pollutant load contributed by that CII Site is offset and captured in a proportional amount. However, the Watershed Management Groups may consider using the proposed fixed fee structure proposed in this comment as allowed for under section 8.1 of the tentative revised permit: “The funding level or regional project participation fee structure for participation under Compliance Option 1 may be determined on a project basis or larger scale (e.g., watershed or subwatershed basis) consistent with the estimated pollution reduction from regional projects in the Watershed Management Programs. The funding level must be proportional to the sum of NSWD volume and onsite stormwater volume relative to the total regional project(s), watershed, or subwatershed stormwater capacity, modified by pollutant level potential based on activity type…” The Watershed Management Groups are in the best position to determine the most effective funding approach because they have the necessary information regarding their respective projects and administration costs. Please note that the formula in Section 8.1 is already a function of volume or another equivalent metric as suggested in this comment. Furthermore, a footnote has been added to the formula clarifying that the pollutant level factor parameter must be consistent with the model inputs to the reasonable assurance analysis. These parameters may vary for each facility, but they are not unpredictable.

Comment Number	Comment	Response
1.12	Third, the fee structure in Section 8.1 must explain how WMGs should calculate operation and maintenance costs and apportion those costs among permittees. Operation and maintenance costs are more predictable and typically experience less volatility than implementation costs, so we believe it would be appropriate for permittees selecting Compliance Option 1 to be responsible for their proportion of the actual costs of operation and maintenance for a regional project they are funding. As such, the fee structure should be expressed differently for operation and maintenance costs relative to implementation costs to provide permittees with certainty about the funding they will be responsible to provide over the long term. Additionally, the Regional Board should clarify whether it is appropriate for WMGs to apply Compliance Option 1 funding to existing regional BMP projects that have been implemented and require additional funding for operation and maintenance moving forward.	Given the variable capital/operation and maintenance cost ratios seen in section 3.12.4 of the Fact Sheet and considering the availability of other funding sources for the regional projects, the CII Permit will not dictate how funding should be portioned between capital and operation and maintenance costs. The Compliance Option 1 language now explicitly states that both existing and planned regional projects are available for funding.
1.13	Fourth, the Regional Board must include guidance on whether and how funding agreements under Compliance Option 1 might terminate as a matter of course, and what happens following termination. The Revised Draft Permit contemplates that if a permittee terminates an agreement "prematurely," the permittee will have to select either Compliance Option 2 or Compliance Option 3 moving forward. But what will happen if a funding agreement is contemplated to last for 10 years to ensure suitable funding to implement a regional BMP project, but the agreement says nothing about ongoing funding of operation and maintenance costs? This is particularly relevant for permittees agreeing to fund an upstream BMP project—as we previously commented, at a certain point after upstream projects are already completed, onsite structural BMPs will become the only mechanism for permittees truly without an available downstream stormwater project option to prevent polluted discharges from entering the receiving waters. We do not believe funding agreements under Compliance Option 1 should be allowed indefinitely for permittees funding upstream projects, in lieu of making necessary onsite improvements. A permittee's deemed compliance for upstream project funding under Compliance Option 1 should therefore be limited to a defined term under each agreement with a WMG. Regardless, for all funding agreements, the Regional Board should explain how a permittee can comply with the CII Permit after the funding agreement runs its course.	Regional projects implemented would require operation and maintenance, including periodic repair, replacement, or upgrades to achieve or maintain watershed compliance. The tentative revised CII Permit, in section 8.1.2.2, requires the agreement to identify the project funded. This may include operation and maintenance costs for the identified project. The agreements must continue in perpetuity for a Discharger to continue to comply with its effluent limitations via Compliance Option 1.

Comment Number	Comment	Response
1.14	The Regional Board Should Make Other Small Clarifications or Typographical Changes Throughout the Revised Draft Permit. Lastly, in addition to the substantive points raised above, we have identified several areas in the Revised Draft Permit with typographical changes or other confusing language requiring clarification and correction in further revisions: Section 3.1.1 includes a new footnote explaining that covered facilities under the CII Permit will be determined based on the Los Angeles County Assessor's Office property use tax classification codes "1000 through 2900, 3000 through 3920, 6000 through 6910, 7000 through 7710, and 8100 through 8400 (8100 through 8900 at the Ports of Los Angeles and Long Beach)." This information is vital for permittees to understand which facilities are covered, and this information should be emphasized far more in the CII Permit for the regulated community's understanding. We request this information to be included in the body of Section 3.1.1, rather than in a footnote. We also request a fulsome explanation in the Attachment F Fact Sheet as to why the Regional Board and EPA have opted to identify regulated facilities based on the Los Angeles County's property use tax classification codes rather than through a more nationally-recognized coding system such as Standard Industrial Classification (SIC) codes or the North American Industry Classification System (NAICS) codes.	U.S. EPA's final designation of CII parcels that must be permitted in the two watersheds does not specify SIC/NAICS like the Statewide Industrial General Permit. The information in the referenced footnote has been moved to the definitions in Appendix A in the tentative revised CII Permit.
1.15	Section 3.2.1.3.2 should clarify what "tasks associated with the selected [compliance] option" means. We presume this includes all requirements in Section 6 of the Revised Draft Permit applicable to Compliance Option 1, at minimum.	The typo in Section 3.2.1.3.2 has been corrected. "Tasks associated with the selected compliance option" refers to any Compliance Option 1 related tasks in Section 6 or any other part of the CII Permit.
1.16	Section 6.3.1.5 contains redundant references to "clearly marked" locations of industrial and non-industrial areas of a permittee's facility.	The typo in Section 6.3.1.5 has been corrected, and any redundancy has been eliminated.
1.17	Section 6.5, outlining minimum BMPs required for all facilities, should include some component of regular sweeping to remove accumulation of pollutants on impervious areas exposed to stormwater.	Section 6.5.2.2 has been added to address this comment.

Comment Number	Comment	Response
1.18	Section 8.1.3 still mistakenly refers to “Compliance Option 3” which should be changed to “Compliance Option 1.” We had requested this change in our previous comments, and staff’s responses to comments state this error was fixed in the Revised Draft Permit, but we do not see such a change in either the clean version or the track changes version of the Revised Draft Permit, both of which still refer to Compliance Option 3.	The correction in section 8.1.3 has been made.
1.19	The numbering of current Sections 9.1.4.5 and 9.1.4.6 is somewhat confusing. These sections are included as sub-sections to Section 9.1.4, acting as part of a list of what a Discharger is responsible to visually observe and record at the facility. However, Section 9.1.4.5 does not specify a requirement for something that must be visually observed and reported—instead, it acts as a clarification of what a Discharger must record when a discharge location is not visually observed. The same is true for Section 9.1.4.6, which requires a Discharger to provide an explanation for uncompleted visual observations. We believe these two sections should be renumbered to be separated from the list of sub-sections identified under Section 9.1.4. Section 9.1.4.5 should become Section 9.1.5, and Section 9.1.4.6 should become Section 9.1.6.	Sections 9.1.4.5 and 9.1.4.6 have been separated from Section 9.1.4 and have been renumbered to Sections 9.1.5 and 9.1.6, respectively.
1.20	In the Fact Sheet for the Revised Draft Permit, Section 4.9 is intended to provide an explanation of how the three compliance options are intended to function. However, Section 4.9.1, describing Compliance Option 1, lacks any explanation or analysis about how the compliance option is intended to function regarding permittees that provide funding for upstream regional BMP projects. We believe this explanation is critical to explain why the CII Permit will not cause any worsening of water quality due to pollution in those permittees’ stormwater discharges, whether there will be a time limitation on providing funding for upstream projects, and other points of clarification raised in response to these comments and previous comments received on this topic.	Dischargers choosing Compliance Option 1 must first consult with Watershed Management Groups to identify a downstream regional project. Only when a downstream project is not available, upstream projects will be considered on a case-by-case basis. In addition, a project is upstream or downstream of a CII Site, the funding level must be proportional to the sum of NSWD volume and onsite stormwater volume relative to the total regional project(s), watershed, or subwatershed stormwater capacity, modified by pollutant level potential based on activity type. In this way, the funding will account for the pollution that the CII Site contributes to the watershed or subwatershed. The overall goal of the Compliance Options remains the same, which is to improve overall water quality within the watershed.

Comment Number	Comment	Response
1.21	In summary, we support the changes made to the Revised Draft Permit and Revised Residual Designation, which will further improve the regulatory process to reduce stormwater pollution from CII facilities. This effort is the result of a petition to EPA Region 9 brought 10 years ago by LA Waterkeeper, American Rivers, and NRDC to designate CII sites in the Watersheds for Clean Water Act permits. Following the favorable District Court ruling in 2018, we have continued to support EPA and Regional Board staff in their collaboration on the CII Permit and Residual Designation, and we are overall immensely pleased with the results seen in the Revised Draft Permit and Revised Residual Resignation. We sincerely hope the Regional Board and EPA meaningfully consider our comments that are meant to further improve the effectiveness of this critical regulatory action, which will accelerate progress in achieving clean waterways in two historically polluted watersheds encompassing numerous disadvantaged communities. However, these efforts cannot cease after adopting the CII Permit for the Dominguez Channel and Los Cerritos Channel watersheds. As we previously commented, stormwater pollution from CII facilities is a pervasive issue throughout the State of California, and we will continue to advocate for EPA and the Regional Board to support the development of additional CII stormwater permits in other California watersheds, or a statewide CII Permit, to protect all of our waterways and communities.	Comment acknowledged.

Comment Number	Comment	Response
2.1	Comment #1: PERMIT APPLICABILITY Based on discussions that CASQA has had with its industrial, non-traditional, and municipal members, as well as other organizations, there is still significant confusion as to which sites and facilities would be subject to the Revised Draft CII Permit and the language in the Revised Draft CII Permit appears to conflict with EPA's Memorandum regarding this issue. While the modifications clarified some of the issues that CASQA raised in the October 2022 comment letter, this issue has not been fully resolved. For example, section 3.1.1. of the Revised Draft CII Permit states that discharges subject to the permit include stormwater and authorized NSWDs from privately owned CII sites in the two watersheds. It then further includes sub-categories for which this includes. However, as currently worded, it could be read to mean that all privately owned CII sites in the two watersheds are subject to the requirements without regard to acreage. This is because the acreage limitation language does not appear to be a limiting factor as EPA intended. While we presume that the permit is intended to be consistent with EPA's Memorandum, the current language is confusing and should be revised. CASQA Recommendation: Section 3.1.1 should be revised to be consistent with EPA's memorandum and clarify that the permit only applies to sites greater than 5 acres.	This section has been revised for clarification. The sections in the tentative revised CII Permit are consistent with U.S. EPA's final designation.
2.2	Moreover, there is still uncertainty regarding publicly-owned parcels under the Revised Draft CII Permit. The Revised Draft CII Permit includes new language defining the Discharger in Attachment A that creates confusion for publicly-owned parcels. "When a parcel is leased to multiple lessees, the owner of the parcel shall serve as the Discharger. Where multiple qualifying parcels owned by different entities are forming a common development, the owner and/or operator of each parcel that is subject to this General Permit must obtain separate permit coverage." It is not clear how this would be handled for publicly-owned parcels. CASQA Recommendation: The Revised Draft CII Permit needs to explicitly clarify who, if anyone, must enroll in the CII Permit when a parcel with multiple lessees is publicly-owned since publicly-owned entities are already regulated under another NPDES Permit.	Publicly owned parcels are not included in U.S. EPA's final designation, and the tentative revised CII Permit has been revised accordingly. The Discharger is the owner or operator of the CII Site, whoever has the authority and operational control to comply with all conditions of the tentative revised CII Permit.

Comment Number	Comment	Response
2.3	Comment #2: Compliance Option 1 We reiterate our support for the intent of Compliance Option 1 as it incentivizes stormwater capture and promotes public-private partnerships. Such incentives are critical not only to achieving water quality goals, but also to addressing issues of water availability and providing other important benefits, such as improving local communities through green spaces and new parks. This approach also supports the goals of *The California Water Supply Strategy: Adapting to a Hotter, Drier Future*, as it recognizes the critical need to maximize and increase stormwater capture. Compliance Option 1 also advances two of CASQA's critical goals to maximize stormwater capture and provide funding for that infrastructure (see CASQA's Vision, Principles 1 and 4). However, the approach for Compliance Option 1 likely remains unviable as there are many significant details still unresolved. While some of the language has been clarified in the Revised Draft CII permit, the fundamental approach to Compliance Option 1 remains the same. As a result, the fundamental challenges and questions regarding implementing Compliance Option 1 as outlined in our October 2022 letter remain.	The Los Angeles Water Board appreciates the general support of Compliance Option 1. Please see individual responses to comments below.

Comment Number	Comment	Response
2.4	Watershed Management Groups (WMGs) would take on an administrative burden to develop agreements that meet the Revised Draft CII permit requirements, coordinate all of the agreements to meet the established timelines, establish equitable mechanisms for determining which CII Permittees can enter into an agreement with the WMG, and update all agreements to address future permit revisions.	Watershed Management Groups are aware of the upcoming CII permit and are continuing dialogue with Los Angeles Water Board staff regarding their role in implementing Compliance Option 1, including management of the administrative burden and necessary components of the agreements. Los Angeles Water Board staff met with CASQA, representatives for potential CII Permittees, and Watershed Management Groups several times since the close of the comment period on the previous tentative draft and have worked out some details about implementation of Compliance Option 1. During these meetings it was determined that the Watershed Management Groups and CII Permittees were in a better position to negotiate terms of an agreement on their own than to have the Board adopt a template agreement for them to follow. The Los Angeles Water Board will develop guidance for Dischargers that will define the process and timelines for how CII Permittees may participate in Compliance Option 1. The tentative CII Permit has been revised to allow 3 years from the permit effective date for CII Permittees to submit their agreements with Watershed Management Groups. This will allow time for CII Permittees to decide on their compliance option and for Watershed Management Groups and CII permittees to enter into agreements.
2.5	The Revised Draft CII permit does not provide sufficient clarity on the elements of the required agreements to address the numerous questions that are likely to arise (e.g. how does the funding need to be structured for a Discharger to be considered in compliance, what is a reasonable timeframe for the agreement, what happens when the parcel changes ownership, etc.). This effectively places the WMGs in the position of defining what needs to be in an agreement to comply with the Revised Draft CII permit, rather than having the program established by the permit itself.	Please see response to comment #2.4.
2.6	Requirements to fund one downstream project (or upstream if no downstream project is available) could result in funding agreements for portions of multiple projects that may not align with the priorities of project implementation for the WMG.	Please see response to comment #2.4. Additionally, the Watershed Management Groups will likely allocate funds to regional projects in alignment with the strategies and priorities set in the approved Watershed Management Programs (WMPs).

Comment Number	Comment	Response
2.7	While the Regional Board notes in their response to comments that they understand that there is sufficient project capacity, if sufficient project capacity is not available within an existing Watershed Management Plan (WMP), WMGs will need to either tell CII Permittees that they cannot comply through Compliance Option 1 or update their WMP at the WMG's cost to include additional projects.	During the meetings with CII Permittee representatives and Watershed Management Groups after the close of the comment period on the tentative revised permit, the uncertainty about the availability of projects in the two watersheds was resolved. There are plenty of projects with sufficient capacity to treat the volume or load from CII facilities in the two watersheds. The list of regional projects available in the two watersheds can be viewed from the links below: Los Cerritos Channel/Alamitos Bay Watershed: Watershed Reporting Adaptive Management & Planning System Dominguez Channel/Los Angeles and Long Beach Inner Harbor Watershed: LA Stormwater Partners
2.8	It is not clear how Compliance Option 1 will be used once a project is built. The response to comments (RTC comment number 7.23) indicates that CII Permittees will need to "participate in a funding agreement with the WMG for as long as the Discharger chooses to employ Compliance Option 1."	Section 4.9.1.2 of the Fact Sheet was revised to clarify that the funding may include costs for initial construction, maintenance and operation, regional project revision and enhancement, and administrative and other supplemental work. Once a project is built, funds can be redirected from initial construction to operation and maintenance, enhancement, replacement and other ongoing costs of the regional projects.
2.9	The method for determining funding remains unclear by introducing an undefined term "pollutant level factor" that will be determined at a later date through conversations with the WMGs. (see RTC comment number 3.43). The method also does not appear to account for considering the results of the analysis to determine if the calculated cost is reasonable and achievable for a Discharger to pursue this compliance option.	See responses to comments #4.4 and #5.8 and the new footnote in the tentative revised CII Permit for more information regarding the pollutant level factor. The Fact Sheet has been expanded with further analysis regarding BMP performance, and staff's economic analysis memo has been posted on the CII Permit web page to help CII Permittees navigate their choice of compliance option.

Comment Number	Comment	Response
2.10	The lack of clarity may place municipal agencies in a position to define the bar for compliance. The Regional Water Board's RTC (for example, comment numbers 3.43 and 7.17), notes Board staff are currently meeting with WMGs to work out details for Compliance Option 1. Until the specific operational details for Compliance Option 1 are developed, it is difficult to understand how it can viably function. Regional Water Board should finalize the details of Compliance Option 1 and include them in the CII Permit, prior to the permit adoption. CASQA Recommendation The issues and challenges presented in our October 2022 letter and summarized above should be addressed and additional clarity regarding implementation of Compliance Option 1 should be provided prior to permit adoption	Los Angeles Water Board staff have been working with Watershed Management Groups on an equitable fee schedule for Compliance Option 1, but the exact terms of an agreement should be set by the Watershed Management Groups and CII permittees. The requirements regarding Compliance Option 1 have been revised to reflect the concerns raised by CASQA, representatives for CII permittees, and Watershed Management Groups in their comment letters and in meetings held after the close of the comment period. Also see response to comment #2.4.

2.11	Comment #3: OTHER COMMENTS Revise Section 11.7 Three Year Average Effluent Limitations. We encourage the Regional Water Board to consider the impact from potential Mandatory Minimum Penalties applied on a daily basis over a three-year compliance period (the equivalent of 1095 days) when assessing compliance with the three-year average limits in the CII Permit. Given the potential for arid conditions in the CII Permit watersheds, it is possible for a facility to incur excessive penalties based on monitoring results from one qualifying storm event and inability to conduct further sampling because of the infrequent occurrence of such events. We request that this section be deleted or modified to provide flexibility in interpreting the sample results when compared to the limitations.	The tentative revised CII Permit has been modified in response to this comment. Mandatory Minimum Penalties (MMPs), assessed pursuant to California Water Code section 13385(h), are issued for serious violations of effluent limitations and are only assessed on the day when the sample is taken, not on a daily basis. If the average of discharge samples over any three water year period exceeds the three-year average effluent limitation for a given parameter, this will represent a single violation. If only a single sample is collected during a given three water year period and the analytical result for that sample exceeds the three-year average, this will represent a single violation for each effluent limitation at issue. For any three-year period during which no sample is collected **due to no discharge occurring**, no compliance determination can be made for the three-year average effluent limitation. Section 11.6 (not 11.7) has been modified to make this clear that the scenario set forth in the comment will not occur. The scenario in the comment would only result in one violation. With respect to flexibility in interpreting sample results, any flexibility is constrained by the methods of testing allowed by 40 CFR part 136 and in the Order, and by State Water Boad Plans and Policies (such as the Bacteria Provisions and the Toxicity Provisions). The three year averaging provisions are designed to give flexibility to the operation of the CII Facility, and to take actions to correct the activities over a three year period. Finally, to the extent this comment is requesting flexibility in interpreting defined terms within section 13385(h) of the Water Code, including the term “serious” violation, no such flexibility was intended by the Legislature and no such flexibility is allowed in the Water Code.

Comment Number	Comment	Response
2.13	Correct Section 8.13 typo: Correct typo in section 8.13, Compliance Option 1 not 3 should be cited. “Dischargers selecting and in compliance with Compliance Option 3 1 shall be deemed in compliance …”	The correction in section 8.1.3 has been made.
2.14	Update WOTUS definition: The definition of Waters of the United States (WOTUS) included in Attachment A, needs to be updated to reflect US EPA’s August 2023 Revised Definition of WOTUS and the November 2023 Conforming Rule.	The term “Waters of the United States” is defined in 40 CFR §§ 122.2 and 120.2. The definition in the Order has been updated to reflect this fact and to take into account any further updates to the Waters of the United States definition that may occur as a result of court cases interpreting the rule or additional revisions to the rule from the US EPA.
2.15	Revise introductory text to Appendix 4: The introductory text in Appendix 4 needs to be consistent with footnotes 35 and 37 on Page 12 of the Revised Draft CII Permit. A clarification is needed that land use codes 8500-8900 are only designated at the two named port facilities.	This comment pertains to U.S. EPA's designation memo and is outside the scope of the action before the Los Angeles Water Board.
3.1	Within this focus, some primary concerns with the Draft CII Permit still remain: 1. Include language in the Revised Draft CII Permit to specify the permittee is responsible for selecting an alternative compliance option in the event that an agreement between a permittee and a WMG cannot be reached. 2. Include language in the Revised Draft CII Permit to specifically state that existing projects in the WMP can be used for compliance with Option 1. 3. Include language in the permit to clarify municipal-owned properties and their exemption from the CII Permit. The following are our specific comments for your consideration:	Comment summary acknowledged. Please see individual responses to comments below.

Comment Number	Comment	Response
3.2	Dominguez Channel Watershed Group Comment: (#5.4) There may be instances where a CII Permittee seeks to enter into an Agreement with a WMG, but the two parties fail to come to terms. We recommend including clarification that in these instances, the WMG is not liable for a CII Permittee's potential noncompliance with its effluent limitations. LA Water Board Response: The tentative CII Permit covers stormwater and authorized non-stormwater discharges from CII sites. Since WMGs are third parties and are not subject to coverage under the tentative CII Permit, they are not liable for a CII Permittee's failure to meet the effluent limitations of the tentative CII Permit. If an agreement between the CII Permittee and a WMG is not feasible, the CII Permittee must select one of the other two compliance options specified in the tentative CII Permit Response to Comment: Comments noted, the group advises the permit to clearly define that it is the responsibility of the permittee to have a Compliance Option selected, even if Option 1 was preferred but an agreement with the WMG was unable to be reached.	Section 8 of the tentative revised CII Permit is clear that the Discharger must choose one of the Compliance Options. Therefore, if the Discharger can't reach an agreement with a WMG, a regional project is not available, or the WMP's Reasonable Assurance Analysis model does not address the source, they must choose either Compliance Option 2 or 3.
3.3	Dominguez Channel Watershed Group Comment: (#5.6) We recommended clarifying whether regional projects that receive funding must be new, or whether CII Permittees can also contribute to existing projects. LA Water Board Response: The WMG should establish a fee structure for CII Permittees' participation that would include funding both new and existing regional projects. The allowable use of funding in section 4.9.1.2 of the fact sheet has been clarified to include cost for initial construction, maintenance and operation, regional project revision and enhancement, administrative and other supplemental work. Response to Comment: Comment addressed, the group advises that clarification be made that a project can be new or existing and the WMG will establish the fee structure for participation.	Section 8.1 of the Order and section 4.9.1.2 of the Fact Sheet have been revised to clarify that the Discharger can fund an existing or planned regional project.

Comment Number	Comment	Response
3.4	Dominguez Channel Watershed Group Comment: (#5.6) The EPA's public notice documentation on the Preliminary Residual Designation state that airports are excluded from the designation because they, "…are not controlled by private entities, but rather by municipal departments and as such, are already regulated under Regional Municipal Separate Sewer System NPDES Permit Order No R4-2021-0105." Following this reasoning, if 1) a site owner of a CII site is a municipality and the business operator is a private entity, and 2) both parties consider the municipal property owner to have responsibility and control over the runoff that leaves the site, then it is difficult to determine who—if anyone—must enroll in the Permit. (Since the Municipal NPDES Permit regulates municipal departments and as such exempts them from the CII Permit.) We recommend providing clarification to this in CII Permit Section 3.1. We also recommend including the reasoning behind the airport exclusion in the CII Permit Fact Sheet (Attachment F). LA Water Board Response: Please see response to comment # 2.20. The tentative CII Permit has been revised to clarify the basis of airports' exclusion from the facilities that U.S.EPA is designating for NPDES permitting. Please refer to Fact Sheet section 1.4, Permit Scope, for specific language. Please note that comments related to U.S. EPA's preliminary designation memo are outside the scope of the action before the Los Angeles Water Board. Response to Comment: Comment was addressed in Response in Comments and in 2.20 for just airports. However, the group advises providing similar language to reflect the response to comments in the Draft Revised Permit specifically for municipalities.	The applicability of the tentative revised CII Permit is based upon U.S. EPA's final designation. Prospective CII Permittees have been explicitly identified in U.S. EPA's final designation memo as significant contributors to pollutant loading in the receiving waters. Order section 3.1 has been revised and expanded to clarify applicability and better align with the language used in U.S. EPA's final designation. Publicly owned CII sites were not included in U.S. EPA's preliminary designation or the previous tentative CII permit unless they were privately operated at the Ports of Los Angeles and Long Beach. Thus, this comment was already addressed in the previous drafts. Note that this comment is further addressed by the removal of **any** publicly owned CII sites from U.S. EPA's final designation and the tentative revised CII Permit.

Comment Number	Comment	Response
4.1	As we noted in our 24 October 2022 comment letter, we believe that most facilities subject to the new CII Permit will want to opt for Compliance Option 1. However, despite the changes that have been made to Option 1, many of the key implementation elements have not yet been structured. In fact, Staff appears to think we can wait until right before permittees will be required to submit Notices of Intent indicating their choice of Compliance Option to have the cost implementation structure in place. We do think that the changes that have been made to Option 1 substantially improve this first-of-a-kind permit required to implement the court-ordered residual designation. However, we believe still more work is needed to make the permit workable since it is precedential and will impact other watersheds throughout the Region and the State.	Please see response to comment #2.4., The phased implementation of the permit allows CII Permittees time to continue dialogue with the Watershed Management Groups regarding implementation tools for Compliance Option 1, including the fee structure and agreement. In addition, the tentative CII Permit has been revised to extend the time to submit compliance option documents from 2 years to 3 years, to provide lead time for CII Permittees to evaluate compliance options and enter into the appropriate agreements.
4.2	Comment on Changes to Permit As noted above, we think your staff has made a few changes to Option 1 that make it more workable, especially for watersheds like ours that have already planned, designed, and constructed multiple regional watershed water quality improvement and water supply projects. The first of these important improvements to Compliance Option 1 is the option in Section 8.1 to allow permittees to help fund an upstream project if no downstream regional project is available, although the provision may need further clarification.	Comment noted. Section 8.1.2.4 of the tentative revised CII Permit sets forth the conditions governing upstream regional project funding.
4.3	The second important improvement to Option 1 is the option explained in Section 4.9.1.2 of the Fact Sheet that the funding “may include costs for the initial construction, maintenance, and operation, regional project revision and enhancement, and administrative and other supplemental work performed by the Watershed Management Group.” This provision is a great improvement that will strengthen the implementation of Watershed Management Programs. However, there needs to be additional clarification of how the provisions may be implemented because of the many unknowns related to individual project implementation.	Watershed Management Groups may direct funding received through Compliance Option 1 towards direct project implementation per section 4.9.1.2 of the Fact Sheet.

Comment Number	Comment	Response
4.4	A third major improvement relates to the level of funding for implementation of Option 1. Section 4.9.1.3 of the Fact Sheet clarifies that the "funding level must be proportional to the sum of NSWD volumes and onsite stormwater volumes to be addressed relative to the total regional project stormwater volume capacity, drainage area or watershed stormwater capacity modified by pollutant level potential based on actual type and can be addressed by the following formula." However, the formula contains an undefined term - "Potential level factor" - that must be defined. In addition, the explanation of how to use the formula needs to be clarified and expanded. This improved explanation should be reviewed with the Watershed Groups and permittees before the Permit is adopted to ensure mutual agreement and understanding in order to avoid future disputes related to interpretation of the footnote. Furthermore, Section 4.9.1.2.3 does not address costs that watershed groups and municipalities will incur to develop and administer the required legally binding agreements with dischargers contributing to funding for a regional project. These costs could be substantial but are unknown because the variable long-term costs of 30+ year regional projects have not been adequately analyzed nor forecasted. Agreement templates need to be developed and reviewed before the CII Permit is adopted in order for Option 1 to be viewed as a viable Option for both the Dischargers and the Watershed Management Groups.	Staff met with Watershed Management Groups after the close of the public comment period and discussed the definition of "pollutant level factor." A footnote has been added to section 8.1 of the tentative revised CII Permit with a definition. Determination of the pollutant level factor's value must be consistent with the assumptions and model inputs used for analysis to the reasonable assurance analysis supporting the most recent WMP. Regarding development of template agreements, please response to comment #2.4. With respect to administrative costs that watershed management groups (WMGs) and municipalities will incur to develop and administer the agreements, the WMGs may need to cover the costs of administering their Compliance Option 1 programs until they can execute enough agreements with Dischargers to reimburse the administrative costs. Please see section 4.9.1.3 of the Fact Sheet which has been revised to reflect this understanding.
4.5	However, there is a change to the Draft Permit that worsens rather than improves Option 1. In fact, it worsens all three compliance options. We had commented that "Section 3.5 of the CII Permit should be revised to specify that dischargers may also request termination of coverage if a change in water quality standards results in a receiving water no longer being in violation of copper and/or zinc water quality standards." Instead of modifying Section 3.5 to allow dischargers to submit a Notice of Termination based on receiving waters no longer being in violation of water quality standards, staff revised the Draft Permit to allow dischargers to request a Notice of Termination only if either (a) ownership or operation of the facility has been transferred to another entity, (b) the facility has ceased operations, or (c) the facility's operations have changed and are no longer subject to the General Permit. If the reason for the new permit is to improve water quality in receiving waters, dischargers should be able to request termination of coverage under this Permit if receiving waters are no longer in violation of water quality standards.	The proposed change would not comply with the Clean Water Act. Any point source that discharges or proposes to discharge pollutants into waters of the United States is required to obtain an NPDES permit. As such, Dischargers must continue to maintain permit coverage unless the conditions of Section 3.5 (a), (b) or (c) are met.

Comment Number	Comment	Response
4.6	Concerns with Responses to Comments In 2022, the LCC Watershed Group made thirteen (13) specific comments consisting of nine (9) suggestions and four (4) recommendations. The staff made changes to the Permit in response to five (5) of our suggestions and were open to our recommendation regarding separate workshops in the watersheds subject to the Permit. In addition, they explained why they did not agree with three (3) of our comments. However, Staff's response to three (3) other comments was that at this time the suggestion has no effect of the applicability of the tentative CII Permit. Two of these comments were suggestions that the Permit acknowledge state source control regulatory actions. One related to SB 346 (the brake pad bill) that has an important requirement that becomes effective on January 1, 2025. The other related to the pending regulatory actions by the Department of Toxic Substances Control. These two regulatory actions are important source control measures that will keep a substantial amount of copper and zinc out of the environment. Since regulatory source control is the most effective best management practice, we were disappointed that staff did not even want to acknowledge the existence of these important measures.	The Los Angeles Water Board appreciates other agencies' adoption of regulatory measures that control sources of pollution that will contribute to water quality improvements in impaired waterbodies statewide. Those measures are important. In the spirit of simplifying and permit streamlining, the Fact Sheet contains language that focuses on the tentative revised CII Permit's rationale and requirements in the two watersheds.
4.7	The third comment that Staff chose not to accept was that the Regional Water Board agreed during the 2017-2019 Triennial Review to adopt the biotic ligand model standards for copper and is considering adopting the biotic ligand model or the multiple linear regression standards for zinc. This was extremely disappointing, especially Staff's not acknowledging the previous discussions regarding copper. As most Board Members know, the Los Cerritos Channel Watershed Group strongly believes that water quality standards should be based on best available current science. Lastly, Staff said that one of our comments "is outside the scope of the action before the Los Angeles Water Board." This comment was our recommendation that "The Regional Board should expedite the adoption of Biotic Ligand Model standards for both copper and zinc to bring standards up to date with current science before the CII Permit becomes effective." Technically, staff is correct – our recommendation is beyond the scope of action before the Board. However, it is not beyond the timing of adoption of the proposed order. Furthermore, it could prevent the unnecessary expenditures of vast amounts of money by some of the entities being directly permitted for the first time, especially entities with large parking lots such as shopping malls. This is particularly important because of the precedential nature of the Permit.	The tentative revised CII Permit is an NPDES General Permit that must be consistent with the assumptions and requirements of waste load allocations in TMDLs (40 CFR § 122.44(d)(1)(vii)(B).). Any potential future revisions to water quality objectives or TMDLs are outside of the scope of the current action before the Los Angeles Water Board, which is adoption of an NPDES permit. The commenter is encouraged to continue to participate in the Basin Plan review process to bring forth any concerns regarding adoption of the biotic ligand model in the Los Angeles Region. See the Board's 2023-2025 Triennial Review for further information regarding the status of the biotic ligand model.

Comment Number	Comment	Response
5.1 and 6.1	The Harbor Department has been part of the Harbor Technical Working Group (HTWG), along with the Port of Long Beach, LARWQCB, SWRCB, and the Southern California Coastal Water Research Project. The HTWG designed and directed a host of special studies and state-of-the-art modeling that resulted in the development of the State sediment quality objectives/provisions (SQOs/SQPs) that was tested and ultimately adopted. The Harbor Department and Port of Long Beach spent several million dollars on this effort, resulting in a peer-reviewed model supported by the HTWG members as well as alternative methods to assess TMDL compliance. The studies and models have helped to understand how management actions taken by the Harbor Department and the Port of Long Beach may improve water, sediment, and fish tissue quality and restore beneficial uses of the harbor waters. As a result of this effort, the LARWQCB incorporated the new science into the Harbor Toxics TMDL Reconsideration Staff Report, Appendices, and a revised draft Basin Plan Amendment. SWRCB will consider adopting a resolution approving the LARWQCB's amendment to the Basin Plan to revise the Harbor Toxics TMDL on January 17, 2024. USEPA approval is expected some months following SWRCB adoption. Unfortunately, the advances gained over the last 11 years have not been incorporated into the USEPA's Preliminary Designation Memorandum (PD Memo) or the LARWQCB's proposed CII Permit. The current understanding of contaminant transport in the Greater Harbor area is documented in published reports and the Harbor Toxics TMDL Reconsideration. The draft CII Permit assumes Port facilities are grossly contributing to violations of water quality standards as they pertain to zinc and copper in the Inner and Outer harbor, yet receiving water conditions continue to improve with most of the Harbor demonstrated to be protective of all beneficial uses. As described in the Harbor Toxics TMDL Reconsideration, the Inner and Outer Los Angeles and Long Beach Harbor waterbodies meet the protective condition for all beneficial uses related to metals. Water column concentrations meet the Harbor Toxics TMDL waste load allocations, and sediment quality meets the SQO/SQPs. USEPA's Preliminary Designation and LARWQCB' proposed CII Permit are both based on and heavily reliant on the original Harbor Toxics TMDL. It is premature for the CII Permit to be adopted prior to adoption and approval of the TMDL Reconsideration and it is inconsistent for LARWQCB to consider current conditions in the TMDL, but not for the CII Permit.	U.S. EPA's final designation does not include CII sites at the Ports of Los Angeles and Long Beach. Accordingly, the tentative revised CII Permit doesn't apply to these sites either. While the CII Permit no longer applies to CII Sites in these ports, it is important to correct some of the assertions in this comment. The numeric target for zinc in sediment is not being met in the Inner Harbor, Consolidated Slip, or Fish Harbor. Thus, the 2022 Harbor Toxics TMDL retains the waste load allocations for zinc. The TMDL also retains the three compliance options for the zinc waste load allocations, one of which is a qualitative demonstration that sediment conditions protect the benthic community, in recognition of the Harbor Technical Working Group's research. The removal of CII sites from the ports does not change the findings of the Harbors Toxics TMDL or its assignment of waste load allocations to point sources. Notably, a recent review of annual reports in SMARTS finds that 30 out of the approximately 70 facilities located in the ports enrolled in the statewide industrial general permit showed that 70% of the facilities exceeded the effluent limit for zinc.

Comment Number	Comment	Response
5.2 and 6.2	Many of the Port's tenants operate industrial facilities that discharge under the Industrial General Permit (IGP) or an individual NPDES permit. The majority of the Port's tenants would be impacted by the proposed CII permit, with potentially several hundred acres of additional facility space currently falling under the Regional MS4 permit requirements reverting to coverage under the proposed CII Permit. USEPA specifically included privately operated facilities on public land at the Ports of Los Angeles and Long Beach, but nowhere else in the two proposed regulated watersheds. In doing so, and with the LARWQCB including the need for structural Best Management Practices (BMPs) in compliance options, the Harbor Department believes USEPA and LARWQCB have a critical misunderstanding of the responsibilities between our tenants and us. The Harbor Department constructs, operates and maintains infrastructure on our property, regardless of whether it is leased or not. The draft CII Permit may negate the utility of stormwater protection measures that have been required under City of Los Angeles Low Impact Development requirements or those under other stormwater permits. The draft CII Permit has implementation challenges and compliance options appear infeasible for our tenants. Compliance Option 1 for marine terminals is infeasible at this time due to a lack of clear information, fee structures, compliance timelines, and the availability of regional capture projects of significant size to meet the needs of 300+ acre terminals. Compliance Option 2 is infeasible for the majority of Port properties due to their geographic location and adequate capture and infiltration of runoff during an 85th percentile 24-hour storm event. Compliance Option 3 will require installation of extremely expensive treatment systems to treat large volumes of water prior to release, making this financially infeasible.	Please note that U.S. EPA removed CII sites at the Ports of Los Angeles and Long Beach from the designation, and the tentative revised CII Permit reflects the change.

Comment Number	Comment	Response
5.3 and 6.3	As written, the draft CII Permit is not feasible to implement at most of the Port facilities. The Harbor Department recommends the LARWQCB consider and respond to the following implementation solutions to provide a more workable path and effective use of resources: • Link the CII Permit to the Harbor Toxics TMDL for which it was developed. It should incorporate similar monitoring requirements and compliance strategies. • Include regional monitoring in the receiving water as a method of assessing compliance and attainment of protective condition of beneficial uses, as recommended in the Harbor Toxics TMDL • Include increased flexibility of compliance options, consistent with the Harbor Toxics TMDL. For example, consider alternative means to demonstrate attainment of effluent limits through demonstration of meeting water quality objectives in the receiving water. • Compliance Option 1 should allow funding for projects that provide the most benefit to the Harbor, where listings are sediment-based, not related to water column impairments. These funds could contribute to projects addressing legacy contaminated hot spots identified the in Harbor Toxics TMDL. • Allow Port facilities to use a combination of compliance options such as treatments, regional programs, and/or site-wide BMPs, which can be effective in reducing loads during rain events. • Allow 12 months of coordination among LARWQCB, WMGs and Dischargers to further develop Option 1 before permit adoption. More time is also needed to allow the formation of cooperative agreements. • Allow sufficient time (3 years after the Permit's effective date) to allow Dischargers to characterize their site conditions, develop their SWPPP and implement identified BMPs, and select their Compliance Option. • Provide public workshops on implementing feasible compliance options of the permit.	Comment summary acknowledged. As the tentative revised CII Permit no longer applies to facilities at the Ports of Los Angeles and Long Beach, many of the summarized comments are no longer applicable. However, they are summarized and responded to for completeness.

Comment Number	Comment	Response
5.4 and 6.4	CII Permit Effective Dates/Timing The Los Angeles Regional Water Quality Control Board (LARWQCB) should delay adoption of the draft commercial, industrial, and institutional (CII) Permit, extend the effective date, and provide additional time between adoption and selection of a Compliance Option for the following reasons: • Compliance Options are not fully developed to allow for viable selection of the appropriate Compliance Option. The viability of Compliance Option 1 is unclear, with significant uncertainty from both Watershed Management Groups (WMGs) and Dischargers. Additional time is needed for Dischargers and other stakeholders to coordinate with WMGs in the development of a viable path forward for Compliance Option 1. This option is particularly critical because Compliance Options 2 and 3 will be infeasible for many Dischargers, particularly those located at the Ports. We suggest the LARWQCB allow 12 months of coordination and further development of Option 1 before permit adoption. • Given the limited rain events in Southern California, sites (or portions of sites) that have never been required to collect or characterize stormwater discharge should be afforded sufficient time to collect representative stormwater samples, after implementation of minimum BMPs, and perform appropriate feasibility analyses. This is essential to make an informed decision on the appropriate Compliance Option. This process can be lengthy, and for many Dischargers, it may involve pilot testing, design, permitting, construction, and verifying operations. Providing sites with the capability to appropriately characterize discharges, select best management practices (BMPs), and make necessary improvements to those BMPs is necessary. It is imperative the LARWQCB provide sufficient time (3 years after the Permit's effective date) to allow Dischargers to characterize their site conditions, select their Compliance Option, and continue implementing BMPs identified in the SWPPP.	See responses to comments #2.4 and #4.1.

5.5 and 6.5	Revised Draft CII Permit / Response to Comment (RTC) 9.2 The watershed terminology and areas covered in draft CII Permit is not consistent with USEPA's Preliminary Designation Memorandum (PD Memo). The Order indicates that USEPA has exercised RDA pursuant to 40 CFR section 122.26(a)(9)(i)(D) for certain CII sites in the Alamitos Bay/Los Cerritos Channel Watershed and the Dominguez Channel and Los Angeles/Long Beach Harbor Watershed. However, the USEPA's PD Memo recommends discretionary authority is exercised to designate discharges from CII sites in the Alamitos Bay/Los Cerritos Channel Watershed and the Dominquez Channel and Los Angeles/Long Beach Inner Harbor Watershed in Los Angeles County [bold added for emphasis]. The Ports of Los Angeles and Long Beach are geographically separated into 6 different waterbodies, including Inner Cabrillo Beach, Fish Harbor, Consolidated Slip, Inner Harbor and Outer Harbor. The USEPA PD Memo specifically states "Inner Harbor Watershed." Clarification of the applicability of this permit to specific waterbodies is critical. These waterbodies are the basis for TMDLs WLAs in which this permit is intended to address. The properties within the Port that are subject to the CII permit drain to the Inner and Outer Harbor waterbodies. The Inner Harbor waterbody, while listed for copper and zinc, has been demonstrated via the Toxics TMDL monitoring program to be in attainment of beneficial uses within the receiving waters. In addition, the Outer Harbor waterbody has no 303(d) listing for metals, meets all California Toxics Rule criteria (CTR), and has been demonstrated to obtain beneficial uses. We believe the USEPA avoided the inclusion of the Outer Harbor waterbody because there has never been a limit for metals applied because these areas do not have metals on the 303(d) list. We believe the RWQCB is overextending the USEPAs interpretation and including areas that should not be included. This permit includes areas that do not have exceedances of the receiving water quality standards. This permit includes areas where the receiving waters have demonstrated water quality conditions are protective of all beneficial uses. With most waterbodies within the Greater Los Angeles and Long Beach Harbor currently in attainment of the TMDL compliance limits, please clarify how the USEPA's PD Memo authorizes the RWQCB to regulate discharges to the Outer Harbor and Inner Harbor waterbodies when these waterbodies are not in violation of water quality standards. Therefore, there is no basis to include CII facilities that discharge to the Inner Harbor and Outer Harbor.	This comment pertains to U.S. EPA's designation memo and is outside the scope of the action before the Los Angeles Water Board. The tentative revised CII Permit applicability section has been revised to be consistent with the U.S. EPA's final designation. In addition, U.S. EPA's designation and associated modeling analysis are intended to identify and designate the CII sites for NPDES Permitting. Once U.S. EPA has designated a facility as needing an NPDES permit, the WQBELS in the permit must be consistent with the assumptions and requirements of waste load allocations in TMDLs applicable to the discharges at issue. The 2022 Harbor Toxics TMDL retains the waste load allocations for zinc. See also response to comment #5.1.

Comment Number	Comment	Response
5.6 and 6.6	Compliance Option 1 – Agreement with Local Watershed Management Group to Fund Regional Project, Section 8.1 The has performed very little outreach to the WMGs or Dischargers since comments were received on the last draft CII Permit (well over a year), which is evident based on the general confusion from Dischargers and WMGs over the Compliance Option 1, as well as the lack of clarity provided in permit revisions associated with the Compliance Option 1. This is particularly troubling because Compliance Option 2 and Compliance Option 3 will not be viable options for many Dischargers, including the majority of affected Port facilities. Additional time is needed for Dischargers and WMGs to engage and develop an approach that makes Compliance Option 1 viable. We suggest the LARWQCB allow 12 months of coordination and further development of Option 1 before permit adoption.	Staff has conducted various outreach to Dischargers, Discharger representatives, Watershed Management Groups, and interested parties prior to and after the release of the previously revised tentative CII Permit. Staff has also met specifically with Watershed Management Groups and potential CII Permittee representatives regarding implementation of Compliance Option 1.
5.7	Compliance Option 1 – Agreement with Local Watershed Management Group to Fund Regional Project, Section 8.1 It is not possible for a Discharger to make an informed decision on what Compliance Option to choose if Compliance Option 1 is not fully developed. If Dischargers do not have hard costs associated with this option by the time the Permit is adopted, or an understanding of what the legally binding agreement entails, it is unclear how anyone can choose Compliance Option 1. Dischargers will not be able to define the financial and legal agreements with the information currently provided. The work to develop a scope and fee for legally bound agreements is a significant effort. The LARWQCB needs to provide models for the development of these agreements and the WMGs need to coordinate with the LARWQCB and work directly with Dischargers and other stakeholders during the fee development process. Without more time, it is unlikely Compliance Option 1 will be viable before important technical and financial decision must be made by Dischargers. Additional time (12 months) is needed for Dischargers and WMGs to engage and develop an approach that makes Compliance Option 1 viable.	See response to comments #5.8, #2.4 and #4.1.

Comment Number	Comment	Response
5.8 and 6.7	Compliance Option 1 – Agreement with Local Watershed Management Group to Fund Regional Project, Section 8.1; Response to Comment (RTC) 12.18; RTC 12.10 While the LARWQCB indicated they have provided clarification regarding the funding level for Compliance Option 1, the Funding Level equation included in the draft CII Permit requires additional clarification. This equation represents a proportional relationship between the total volume of captured stormwater and non-stormwater, and the total stormwater capacity of a regional BMP or the overall capacity of regional BMPs. This proportion would then be multiplied by a "pollutant level factor" that is not defined in the draft CII Permit. How a Discharger or a WMG can use this equation to quantify a potential cost is unclear and illustrates that complexities associated with Compliance Option 1 have not been considered and additional time is needed. It is also unclear why the RWQCB has not finalized the cost memo referenced in RTC 12.10 and provided to Dischargers struggling to understand the implications of the CII Permit. The Funding Level equation will only be meaningful once a corresponding fee structure is developed, either for existing regional BMPs or for future planned BMP costs that can be used with the equation. We recommend the RWQCB engage with WMGs and Dischargers to understand the legal and technical issues related to developing a defined fee structure before the CII Permit is adopted.	See response to comment #4.4. Section 8.1 of the tentative revised CII Permit describing the Funding Level equation has been clarified with the addition of a footnote that defines the pollutant level factor. The Fact Sheet section on economic considerations, including cost of compliance, have been significantly revised to help Permittees navigate their choice of compliance option. Additionally, an economic analysis memo has been posted on the CII Permit web page. Regarding the Compliance Option 1 fee structure, see response to comment #1.11.

Comment Number	Comment	Response
5.9 and 6.8	Compliance Option 1 – Agreement with Local Watershed Management Group to Fund Regional Project, Section 8.1 While the LARWQCB believes there are sufficient projects available for Dischargers interested in Compliance Option 1, multiple comments and discussions by the WMGs suggest there are not sufficient projects for the properties that cannot comply with Compliance Options 2 and 3. It will take years to identify, design, permit and build these projects. To ensure flexibility, the LARWQCB should not mandate that a CII Discharger be specifically linked to an existing regional project or one in the design or construction phase. The CII Permit should allow WMGs to establish an in-lieu fee or mitigation fund (and associated agreement) to accept funding to support future projects, operations and maintenance (O&M) of current projects, and structural improvement to existing regional BMPs to enhance performance. This would allow for a streamlined process where CII Permittees contribute towards identifying, designing, and constructing future regional capture or water quality improvement projects. Furthermore, Compliance Option 1 should offer the flexibility to collaborate with multiple WMGs (or other groups like the Safe Clean Water Program) to support various projects, if a Discharger needs additional capacity.	See response to comment #2.7 regarding the available capacity of regional projects. The tentative revised CII Permit allows Watershed Management Groups to accept funding to support future projects, operations and maintenance, and improvements to existing regional projects. See response to comment 1.11 regarding the ability for Watershed Management Groups to establish fixed fee structures. However, please note that the CII Site must be linked to specific regional project(s) that has been included in the reasonable assurance analysis for a Watershed Management Program to ensure that the pollutant load contributed by that CII Site is offset and captured in an amount proportional to the amount paid by the CII Permittee to the Watershed Management Group. Similarly, Compliance Option 1 cannot allow for collaboration with multiple Watershed Management Groups or other groups because the regional projects must be within the same watershed as the CII Site, and the pollutant load from each CII Site must be included in the reasonable assurance analysis conducted by a Watershed Management Group for either the Los Cerritos Channel or Dominguez Channel Watersheds.

Comment Number	Comment	Response
5.10 and 6.9	Compliance Option 1 – Agreement with Local Watershed Management Group to Fund Regional Project, Section 8.1 The CII Permit should allow for participation in other regional stormwater quality improvement projects, including regional stormwater treatment projects or off-site capture or infiltration projects that are not linked to a WMG (such as privately owned land or Cities not involved in one of the designated WMGs). Municipalities within a WMG should have the ability to establish their own regional projects, independently but in coordination with the WMG. This is especially pertinent for privately operated CII facilities at the Port of Long Beach (POLB) and Port of Los Angeles (POLA). Compliance Option 1 is intended to address projects on a watershed scale and collaboration across WMGs, tenant groups, and municipal led programs should be encouraged.	CII Permittees cannot be allowed to participate in regional projects or off-site capture or infiltration projects that are not linked to a Watershed Management Program in the watershed in which they are located. By requiring that regional projects under Compliance Option 1 be included in Board approved Watershed Management Programs for one of these two watersheds included in this tentative revised CII Permit, the tentative revised CII Permit ensures that the pollutant loads contributed by CII Sites are offset and captured in a proportional amount. This is the only way to ensure that the CII Permittees choosing Compliance Option 1 can demonstrate compliance with their effluent limitations. Please note that Watershed Management Groups may include municipal projects and privately developed projects in their Watershed Management Programs. Additionally, section 8.1.2.1. of the tentative revised CII Permit provides flexibility in payments of fees and/or alternative means of compensation such as easements or property exchanges.
5.11 and 6.10	Compliance Option 1 – Agreement with Local Watershed Management Group to Fund Regional Project, Section 8.1 Compliance Option 1 should allow funding projects that provide the most benefit to the Harbor, where listings are sediment-based, not related to water column impairments. These funds could contribute to projects addressing legacy contaminated hot spots identified the in the Dominguez Channel and Greater Los Angeles and Long Beach Harbor Toxics Total Maximum Daily Load (TMDL) thereby, aiding in achieving sediment based load allocations in the Dominguez Channel Estuary, Consolidated Slip, and Fish Harbor.	Compliance Option 1 is for compliance with effluent limits that are based on TMDL *waste load* allocations for ongoing sources of pollutants to TMDL receiving waters. Thus, projects that would be focused on achieving *load* allocations for legacy contaminated hot spots are not qualified regional projects under Compliance Option 1.

Comment Number	Comment	Response
6.11	Facilities, especially those at the lower end of the Dominguez Channel and Lower Los Angeles River Watersheds (like those in the Port of Los Angeles and Port of Long Beach), should be allowed to participate in any upstream WMGs even when not specifically modeled in the Reasonable Assurance Analysis (RAA). This includes the Lower Los Angeles River Watershed, Upper Los Angeles River Watershed, and the Lower San Gabriel River Watershed. This would provide more upstream regional BMP opportunities for facilities to use for Compliance Option 1, especially since Dischargers in these watersheds can affect Harbor receiving waters.	The requirement for CII facilities' inclusion in the reasonable reassurance analysis ensures that the pollutant load contributed by each CII facility is offset and captured in a proportional amount. See also response to comments #5.9 and #5.10.
5.12 and 6.12	Compliance Option 1 – Agreement with Local Watershed Management Group to Fund Regional Project, Section 8.1 The LARWQCB should support Dischargers need for multiple regional projects, including regional stormwater treatment systems, as well as capture systems to meet their equivalent 85th percentile 24-hour storm event volume. Given the size of port terminals, many in excess of several hundred-acre, multiple projects are likely needed for one Discharger to address the volume of stormwater generated.	The tentative revised CII Permit does not preclude funding multiple regional projects under Compliance Option 1. Language in section 8.1 of the tentative revised CII Permit has been updated to explicitly clarify situations when CII Permittees may direct funds towards multiple regional projects under Compliance Option 1.
5.13 and 6.13	Compliance Option 2 – Facility-Specific Design Standard to Reduce Stormwater Runoff Requirements There are regional regulations, such as the City of LA Low Impact Development (LID) Ordinance, that provide well-thought-out and stringent water quality requirements. LID measures are very similar to Option 2. For example, the City of Los Angeles requires stormwater treatment for all development and redevelopment with more than 500 square feet of impervious area. There are mechanisms in the LID Ordinance that allow feasible methods of compliance in areas where infiltration, capture, and reuse of water are infeasible. Since many facilities have invested significant funds to ensure that they are already in compliance with LID standards, if a facility can demonstrate that they are in compliance with LID standards, they should be deemed in compliance with Compliance Option 2.	The MS4 LID provisions and CII Permit Compliance Option 2 are some of the tools that the Water Boards use to ensure water quality protection. They work together but are different. The MS4 provisions for LID implementation are focused on new development and significant redevelopment projects to reduce pollutant source increases and hydromodification resulting from urbanization and require the infiltration and/or treatment and release of stormwater equivalent to the 85th percentile storm event. CII Permit Compliance Option 2 focuses on reducing pollutants from stormwater runoff from impervious surfaces at CII facilities, which could be existing or new, by infiltrating, capturing, or diverting a daily volume produced from the 85th percentile storm event. However, to the extent a CII Permittee can achieve compliance through previously installed control measures according to LID standards, this can be reflected in the permittee's compliance option documents.

Comment Number	Comment	Response
5.14 and 6.14	Compliance Option 3 – Direct Demonstration of Compliance with Water Quality Based Effluent Limitations Compliance Option 3 requires a site-specific monitoring and reporting plan. The CII permit should include monitoring strategies that are consistent with the TMDL. Where, “The Dominguez Channel responsible parties are each individually responsible for conducting water, sediment, and fish tissue monitoring. However, they are encouraged to collaborate or coordinate their efforts to avoid duplication and reduce associated costs. Dischargers interested in coordinated monitoring shall submit a coordinated [monitoring reporting program] MRP that identifies monitoring to be implemented by the responsible parties. Under the coordinated monitoring option, the compliance point for the stormwater WLAs shall be storm drain outfalls or a point(s) in the receiving water that suitably represents the combined discharge of cooperating parties.” Consistent with the intent of the TMDL, it is the receiving water condition of meeting water quality standards is the ultimate goal. This approach is appropriate for waterbodies that are in attainment of water quality standards, which is the current condition for most of the harbor. LARWQCB should allow for a coordinated monitoring option of receiving waters to demonstrate compliance.	Table 4 has been removed from the tentative revised CII Permit as those effluent limits strictly apply to the MS4 permit. Coordinated monitoring is appropriate to determine attainment of water quality objectives in the receiving water where multiple pollutant sources and the interaction of those sources need to be evaluated. Since coordinated monitoring of receiving water is only appropriate for MS4s because the nature of sources is different, the tentative revised CII Permit has been drafted to improve water quality and to address issues unique to the two watersheds. To achieve this, site-specific monitoring at the point of discharge is appropriate to demonstrate compliance with effluent limits under Compliance Option 3.

Comment Number	Comment	Response
5.15 and 6.15	Compliance Option 3 – Direct Demonstration of Compliance with Water Quality Based Effluent Limitations The absence of a design storm standard is problematic for Dischargers intending to comply with Compliance Option 3. To comply with the Numeric Effluent Limitations (NELs), Dischargers may need to consider treatment control BMPs. However, without specific design storm criteria, Dischargers could potentially install treatment controls using a wide range flow and volume based designs standards in order to meet permit schedule requirements. These designs might either be insufficient to achieve compliance with water quality standards or unnecessarily stringent and costly. We recommend the inclusion of both flow-based and volume-based design storm standards, similar to those in Section X.H.6 of the Industrial General Permit (IGP). Additionally, treatment control BMPs should be designed by a California-licensed Professional Engineer. Beyond the flow-based and volume-based standards, the Professional Engineer should have the flexibility to design the treatment control BMP(s) using a combination of a flow-based treatment system and additional storage. This storage, also referred to as surge detention, equalization, or attenuation, would capture peak flows. For instance, a flow-based treatment control BMP could be enhanced with additional storage capacity to attenuate peak flows, allowing treatment at a lower design flow rate. In such cases, the BMP must be designed by a California-licensed Professional Engineer to meet the equivalent of the 85th percentile, 24-hour design storm volume and peak flows.	Not specifying a design storm for treatment control BMPs for Compliance Option 3 allows for site-specificity in design and flexibility in demonstrating compliance with effluent limits. Flexibility in choosing and implementing appropriate treatment control BMPs on site may result in a variety of design and cost considerations for dischargers to make in order to effectively comply with WQBELs. Compliance Option 3 requires that discharges from the facility meet applicable WQBELs. Permittees have discretion when implementing control measure(s) on their property, so long as the control measure(s) achieve the WQBELs outlined in section 7.2 of the tentative revised CII Permit. Any combination of BMPs and treatment system design and capacity that demonstrate compliance is adequate.

5.16	Compliance Option 3 – Direct Demonstration of Compliance with Water Quality Based Effluent Limitations Depending on their location, CII facilities (even those completely enclosed and not exposed to stormwater) are required to analyze for a variety of parameters, including Polychlorinated Biphenyls (PCBs), Polycyclic Aromatic Hydrocarbons (PAHs), pesticides, toxicity, and bacteria. Most facilities likely lack an understanding of the baseline concentrations of these parameters and more importantly do not have on-site sources of these compounds. Zinc is considered the 'limiting pollutant,' with the RWQCB asserting that controlling zinc discharge would also control the discharge of other pollutants. However, using zinc as a surrogate parameter to assess the discharge of all pollutants of concern is technically inadequate, and the LARWQCB must undertake the necessary comprehensive analysis.	The CWA and its implementing regulations require development of WQBELs when technology-based effluent limitations alone will not achieve applicable water quality standards. (NPDES Permit Writer's Manual, Ch. 6 at p. 61; CWA section 301(b)(1)(C)) Inclusion of WQBELs is based on a reasonable potential analysis, which does not require technical modeling. As explained in section 4.6.3 of the Fact Sheet, the tentative revised CII Permit includes WQBELs for pollutants in addition to zinc and copper because those pollutants have reasonable potential to cause or contribute to an excursion above water quality standards. This reasonable potential has been demonstrated through (1) the TMDL development process and (2) the presence of pollutants on the CWA section 303(d) list in combination with an analysis of national and local land use studies that demonstrated that CII facilities are a source of pollutants such as bacteria, ammonia, pH, and PAHs. These methods for determining reasonable potential have long been recognized by U.S. EPA. In this regard, it should be noted that 40 CFR § 122.44(d)(1)(vii) does not require or contemplate a separate reasonable potential analysis at the permitting stage if a TMDL has been developed. The TMDL development process is an in depth and comprehensive process involving extensive research, data analysis and modeling of various pollutants that cause impairment. TMDLs identify and allocate the amount of pollutants that can be discharged from identified sources in the watershed into receiving water bodies to achieve water quality objectives. The WQBELs listed in the tentative revised CII Permit section 7.2 implement the adopted TMDLs for the watersheds included in U.S. EPA's preliminary designation. The other means of determining reasonable potential was based on the presence of a 303(d) listing and a literature review. In U.S. EPA's preliminary designation, it determined that CII facilities contribute to violations of water quality standards.

Comment Number	Comment	Response
		Because the 303(d) list reflects the standards that have been violated, U.S. EPA's preliminary designation implicitly applies to the specific pollutants on the 303(d) list. The literature review supporting this conclusion was based on national and local land use studies that showed that CII facilities are a source of TSS, PAHs, PCBs, pH, and indicator bacteria. Finally, the modeling used by U.S. EPA to support its preliminary designation focused on zinc because it is commonly considered a "limiting pollutant", which means that zinc requires the greatest reduction of all pollutants to achieve water quality standards. If the discharge of zinc is controlled, then the discharge of other pollutants is controlled too, making zinc a useful surrogate for examining the discharge of all pollutants of concern from CII facilities.
5.17	Compliance Option 3 – Direct Demonstration of Compliance with Water Quality Based Effluent Limitations RTC 9.19, the LARWQCB responded: "…the modeling used by the U.S. EPA to support its preliminary designation focused on zinc because it is commonly considered a "limiting pollutant", which means that zinc requires the greatest reduction of all pollutants to achieve water quality standards. If the discharge of zinc is controlled, then the discharge of other pollutants is controlled too, making zinc a useful surrogate for examining the discharge of all pollutants of concern from CII facilities." There is a fundamental, scientific disconnect between the CII permit and the TMDL, in which it is designed to support. First, there are no exceedances of zinc in harbor. Therefore, there is no need to apply further control of zinc in stormwater discharge within the Port. The TMDL was designed to limit sediment loading, but this CII centers on attainment of dissolved pollutants by using the CTR for the basis of compliance. The Inner and Outer Harbor waterbodies are currently in attainment of water quality standards, both for dissolved constituents (CTR) and bedded sediments Sediment Quality Provisions (SQP).	See response to comment #5.1.

Comment Number	Comment	Response
5.18 and 6.16	Compliance Option 3 – Direct Demonstration of Compliance with Water Quality Based Effluent Limitations The CII permit should align with the TMDL methods for demonstrating compliance with the water quality standards. • Allow Dischargers to establish monitoring parameters based on a site-specific pollutant source assessment. • Allow Dischargers to participate in coordinated monitoring program that assess [sic] receiving water quality. Allow Discharges to demonstrate receiving waters are protective of beneficial uses through the TMDLs alternative compliance, through numeric targets, CTR, waste load allocations, or SQP.	Allowing Dischargers to establish monitoring parameters based on a site-specific pollutant source assessment would not be consistent with U.S. EPA's designation. See also response to comment #5.16. Regarding the comment about a coordinated monitoring program, see response to comment #5.14. See also response to comment #5.25 regarding alternative compliance.
6.17	Compliance Option 3 – Direct Demonstration of Compliance with Water Quality Based Effluent Limitations; Interim Concentration-Based Sediment-Associated Effluent Limitations (Tables 2 and 4) and Sampling Methodology The alternative equation/process included in Attachment E is not explained and appears to be problematic. Sensitivity analysis was performed for zinc on the alternative equation/process included in Attachment E and based on the analysis we recommend the LARWQCB re-evaluate the appropriateness of the proposed alternative. Assuming that the Total Suspended Solids (TSS) concentration is equivalent to the Suspended Sediment Concentration (SSC), the table below includes real-world data and additional examples used to test the sensitivity of the alternative method. As illustrated, there are many scenarios where a Discharger will exceed the sediment-associated effluent limitations in Table 2, even when total zinc concentrations in stormwater are well below the effluent limitations (ex. 85.6 µg/L) in Table 3 and SSC concentrations are low. In many cases, the equation will result in effluent limitation exceedances regardless of how low the SSC or zinc concentration is in stormwater discharges. There are also scenarios where elevated concentrations of zinc and SSC will result in compliance with sediment-associated NELs. BMPs are typically designed to prioritize sediment removal, but this equation suggests that lesser sediment removal could result in compliance with sediment-associated effluent limitations.	Los Angeles Water Board staff reviewed the analysis in this comment and found two major disagreements. First, TSS is not a direct analogue for SSC, which has strict procedural constraints per ASTM D3977-97 (19) Test Method B-Filtration. Notably: > Test Method B can be used only on samples containing sand concentrations less than about 10 000 ppm and clay concentrations less than about 200 ppm. The sediment need not be settleable because filters are used to separate water from the sediment. Correction factors for dissolved solids are not required. Test Method B was selected in part because the assumption that all undissolved analyte amounts are bound to the sediment-transport model is appropriate for the constituents of concern listed in section 7.2 of the tentative revised CII Permit. Second, the equation provided in Attachment E, section 2.2.2.2.6 is consistent with all assumptions of this TMDL. For a constant value of C_T as assumed within this comment and a decreasing amount of filtered sediment, and assuming 100% analyte uptake

Comment Number	Comment	Response
	[See comment letter from Port of Long Beach for table.] The State Water Resources Control Board (SWRCB) translated the same TMDL requirement into the IGP and explained their rationale as follows. "These [Total Maximum Daily Load] TMDLs link receiving water bed toxicity targets to discharges of OC pesticides, PAHs, PCBs, and metals bound to sediment. Control measures ensure that sediment-bound particulates do not leave an industrial facility's property and settle in the receiving water bed via stormwater discharges and authorized Non-Stormwater Discharges (NSWDs). And since these [Waste Load Allocations] WLAs are to be met in the receiving water and are intended to control sediment pollutant loading into the impaired water, compliance with this General Permit's TSS annual and instantaneous maximum NALs is sufficient for compliance with the WLAs." We recommend the LARWQCB remove the two current approaches in the draft CII Permit and adopt the same approach as established in the IGP above. In addition, the LARWQCB should be consistent with the Harbor Toxics TMDL and include the three other demonstration options provided to show compliance with the interim concentration-based sediment allocations (see comment 14)	by solid particulate matter, the inverse relationship described by the equation means that less filtered sediment is associated with increasing estimated amounts of the constituent of concern. To portray this relationship with one of the hypothetical examples provided in this comment, for: • A sample where the concentration of undissolved analyte CA = 5 µg/L is attributable to 5 mg/L of sediment; and • A sample where the concentration of undissolved analyte CA = 5 µg/L is attributable to 1 mg/L of sediment; It mathematically follows that the second sample's makeup must include a relatively higher SSC of the constituent of concern than that of the first. This relationship is consistent with the TMDL's numeric targets, which establish water quality objectives for pollutant concentration in sediments carried by stormwater runoff. Furthermore, the tentative revised CII Permit does not preclude the possibility that sediment, or any other constituents of concern, may be discharged in runoff from CII sites. As such, WLAs applicable to CII facilities were translated into numeric WQBELs to be met at the point of discharge from a CII site to help Dischargers identify clear and measurable targets for compliance. The language about sediment-based monitoring remains unchanged in the tentative revised CII Permit. Regarding the request to include additional compliance demonstration methods from the Harbor Toxics TMDL, see response to comment #5.25.

Comment Number	Comment	Response
5.19 and 6.18	Compliance Option–3 - Direct Demonstration of Compliance with Water Quality Based Effluent Limitations, Sections 11.6 and 11.7; Monthly Average Effluent Limitations and Three Year Average Effluent Limitations The revised draft CII Permit includes Sections 11.6 and 11.7, which outline monthly average effluent limitations and three-year average effluent limitations, respectively. These sections state that exceedances of either the average monthly effluent limitation or the three-year average limitation, whether determined by averages or by a single sample collected, will result in non-compliance for that calendar month or for the entire three-year period. This provision is unreasonable and will likely lead to failure when selecting Compliance Option 3. For example, a Discharger with one elevated sample result or one year with an elevated result could be deemed non-compliant for 1,095 days, even if no further qualifying storm events (QSEs) occur during the three-year averaging period. We recommend the LARWQCB include alternative compliance determination methods for this type of situation.	Monthly and three-year averaging periods provide the basis for calculating a single value for comparison with the effluent limitation value. Consistent with the TMDL implementation language, calculations for sediment-based WQBELs should consider all recorded sampling events over the three-year period. Dischargers who determine that a sampling result is noncompliant should take corrective action and sample their resultant stormwater to demonstrate their site's return to compliance for the subsequent rolling average. Regarding the provided example, averaging periods do not predict future compliance and serve only to evaluate past performance over that period of time. Therefore, the tentative revised permit includes no alternative compliance determination methods in response to this hypothetical scenario .

Comment Number	Comment	Response
5.20 and 6.19	Compliance Option–3 - Direct Demonstration of Compliance with Water Quality Based Effluent Limitations, Section 9.1.4, 9.3.2.2 Sampling all discharge locations is not feasible at many facilities, including many large container terminals at the Ports of Los Angeles and Long Beach. These terminals, along with many other Port properties, span hundreds of acres and have dozens of sampling locations. The strict requirement to collect samples from all discharge locations fails to recognize the unique conditions at large Port facilities, making this requirement impractical to implement. This includes the following challenges: o Many outfall locations at the Ports are either submerged or commingle with stormwater from numerous upstream, off-site sources before discharging. o Where a representative sample cannot be collected or is inaccessible at the point of discharge, the only method to collect a representative discharge sample is by identifying and sampling upstream catch basins and trench drains. Based on our review, this could require larger Port facilities to collect samples from 50 or more locations to meet the current draft Permit requirements. o Some discharge locations are outside the facilities' boundaries and are not accessible for sampling. Although the LARWQCB's responses indicate, "The tentative CII Permit does not allow for sampling and analysis reduction contingencies. However, section 9.3.2.9 of the tentative CII Permit allows for considerations of safety and accessibility when identifying alternative sampling locations," the definitions of safety and accessibility are unclear. The majority of Port Terminals' outfalls to the Harbor are either submerged or commingle with stormwater from numerous upstream, off-site sources before discharging. This makes sampling either infeasible or unrepresentative of facility discharges.	In the case of submerged or off-site outfall sampling, considerations for safety and accessibility allow for sampling before the point of intake into the submerged conveyance. Similar considerations are provided for high flow rate and enclosed space sampling. In the case of commingled stormwater sampling, the same standard provisions applicable to other NPDES Permits also apply to tentative CII permittees. Dischargers should endeavor to sample upstream of the point where flow becomes miscible with off-site channeled flow. The sampling and analysis plan in the SWPPP should document and provide rationale where alternative sampling locations are chosen based on accessibility and safety constraints.

Comment Number	Comment	Response
5.21 and 6.19	Compliance Option–3 - Direct Demonstration of Compliance with Water Quality Based Effluent Limitations, Section 9.1.4, 9.3.2.2 Sampling from all the upstream catch basins would be very expensive and also unsafe. The estimated annual cost for sampling from all the upstream catch basins (based on 50 catch basins), including laboratory and labor costs, is approximately $250,000 for using the alternative method analyzing sediment-associated parameters. Laboratory analytical costs alone are estimated to be close to $200,000/year. This represents an irresponsible waste of resources that should be directed at BMP implementation rather than redundant monitoring. This cost estimate does not consider potential sampling associated with hundreds of scupper drains or over-water drains with small tributary areas draining directly to the harbors at the wharf areas, which is not feasible during a storm event.	The tentative revised CII Permit addresses stormwater discharges from CII facilities, and it is expected that site operational costs and profitability alike will scale with parcel size. See section 3.12.4.2 of the Fact Sheet for further information about economic characteristics of regulated entities. Regarding the point that financial resources should be devoted towards BMP implementation rather than effluent monitoring, this is the purpose of Compliance Options 1 and 2. Compliance Option 3 provides permittees who do not choose Options 1 or 2 with an alternative to comply with the CII Permit.
5.22 and 6.19	Compliance Option–3 - Direct Demonstration of Compliance with Water Quality Based Effluent Limitations, Section 9.1.4, 9.3.2.2 Similar to the IGP, the draft CII Permit must include provisions for selecting alternative sampling locations and reducing the number of sampling locations based on representativeness. Operations across large non-industrial areas of container terminals are the same and are likely to result in similar discharge quality.	The tentative revised CII Permit requires that all discharge locations be sampled under Compliance Option 3 and does not allow alternative or reduction of sampling. However, section 9.3.2.9 of the tentative revised CII Permit allows for considerations of safety and accessibility when identifying alternative sampling locations.
5.23 and 6.19	Compliance Option–3 - Direct Demonstration of Compliance with Water Quality Based Effluent Limitations, Section 9.1.4, 9.3.2.2 Since this TMDL is the justification for the USEPA's designation, it is appropriate that Dischargers be given the same opportunity to join or develop coordinated compliance monitoring efforts and be able to sample a representative point(s) in the receiving water. Requiring the sampling location to be only at the point of discharge is inconsistent with the TMDL. The TMDL allows Dischargers to participate in coordinated compliance monitoring efforts and indicates that the compliance point may be a point in the receiving water that suitably represents the combined discharge of cooperating parties.	Coordinated TMDL monitoring is appropriate to determine attainment of water quality objectives in the receiving water where multiple pollutant sources and the interaction of those sources need to be evaluated. Site-specific monitoring is appropriate to demonstrate compliance with effluent limits under Compliance Option 3. Notably, the WLAs assigned to other point sources in the Harbors Toxics TMDL are incorporated as effluent limits with discharge point/outfall monitoring to evaluate compliance with effluent limits. Regarding the comment about coordinated compliance monitoring, see response to comment #5.18.

Comment Number	Comment	Response
5.24 and 6.20	Compliance Option Alternatives Analysis for Marine Terminals or Facilities located within Port of Los Angeles (POLA) and Port of Long Beach (POLB) Under the current draft CII Permit, as discussed above, the eligibility of Compliance Option 1 for marine terminals remains uncertain due to a lack of clear information, fee structures, compliance timelines, and the availability of regional capture projects. Compliance Option 2 is not feasible for the majority of Port properties due to their geographic location and infeasibility associated with capture an infiltration of the volume of runoff produced up to and during an 85th percentile 24-hour storm event, as described in Compliance Option 2. Without providing other viable options, Port facilities may be forced to use Compliance Option 3. The following example illustrates the potential impacts and technical/financial implications of the Compliance Option 3 for a large Port facility. Example Site: 200-acre Port container terminal. Because collection of samples at the major outfalls from the facility to the Harbor is infeasible for a number of reasons (e.g. submersion, inaccessibility, safety, commingling with off-site flows), we have assumed 50 upstream sampling locations will be required to meet the current CII monitoring obligations based on inaccessibility and commingling at Harbor discharge locations. The table below provides a summary of projected costs associated with Compliance Option 3. [See comment letter from City of Los Angeles Harbor Department for table.]	Regarding the financial impact for Dischargers, see section 3.12.4.2 of the Fact Sheet, Characterization of Regulated Entities. For further information about BMP costs, pollutant removal efficiencies, and expected lifespan, please refer to revised section 3.12.4, Economic Considerations of the Fact Sheet to help Permittees navigate their choice of compliance option.

5.25 and 6.21	Revised Draft CII Permit Section 7.2 Summary of TMDL compliance requirements presented in the CII permit is not consistent with the Basin Plan Amendment. Table 2 in the Draft Permit is taken from Table 10 in the Harbor Toxics TMDL, Section 7.1.2 Dominguez Channel Estuary and Greater Harbor Waters Interim Allocations. Text in Section 7.1.2 states: ○ Interim concentration-based sediment allocations are assigned to stormwater dischargers (MS4, Caltrans, general construction and general industrial stormwater dischargers) and other NPDES dischargers. Interim sediment allocations are based on the 95th percentile of sediment data collected from 1998-2006. The use of 95th percentile values to develop interim allocations is consistent with NPDES permitting methodology. For waterbodies where the 95th percentile value has been equal to, or lower than, the numeric target, then the interim allocation is set equal to the final allocation. Regardless of the interim sediment allocations below, permitted dischargers shall ensure that effluent concentrations and mass discharges do not exceed levels that can be attained by performance of the facility's treatment technologies existing at the time of permit issuance, reissuance or modification. ○ Compliance with the interim concentration-based sediment allocations may be demonstrated via any one of four different means: ▪ 1. Demonstrate that the sediment quality condition is such that aquatic life and human health protection is assessed as i) Unimpacted, Likely Unimpacted, and no station within the site is assessed as clearly impacted, and ii) the total percent area categorized as Possibly Impacted and/or Likely Impacted is less than 15% of the assessment site area and no station within the site is assessed as Clearly Impacted, as defined in the SQP. The demonstration shall be made with Assessment Units as specified in section 10, Monitoring Plan; ▪ 2. Meet the interim allocations in bed sediment over a three-year averaging period; ▪ 3. Meet the interim allocations in the discharge over a three-year averaging period; or ▪ 4. For irregular non-MS4 dischargers only, meet water column effluent limits determined at the time of permit renewal. By including only Table 2 in the Draft CII Permit (Table 10 of TMDL), the draft permit eliminates three of the four means of compliance and is therefore inconsistent with the TMDL.	In characterizing the effluent discharged from CII sites' impervious surfaces, the tentative revised CII Permit has determined that translation of the sediment-based WLAs into concentration-based numeric WQBELs in the storm-borne sediment discharge, consistent with compliance option 3 of the TMDL, is appropriate for CII discharges. The tentative revised CII Permit was written with an emphasis on clarity and ease of implementation in accordance with 40 CFR 122.44(d)(1) is consistent with the Harbors Toxics TMDL. Discharges from CII sites are runoff attributable to impervious surface coverage, and thus are best characterized at the point of discharge from the CII site's impervious areas. The sediment-based WQBELs in Table 2 will help CII Dischargers easily measure compliance at their point of discharge. Furthermore, the manner of compliance chosen here is consistent with the assumptions and requirements of any available wasteload allocation for the discharge. (40 CFR § 122.44 subd. (d)(1)(vii). Indeed, one of the assumptions of this TMDL was that it allowed several different compliance pathways for interim concentration-based sediment allocations, and did not require one or all of them to be implemented. The permit writer has the flexibility, considering all of the facts and circumstances before it, to choose the compliance method that best fits the discharge at issue. Here, the pollutants that the CII Permit is designed to control are pollutants that are present in stormwater discharging from CII Sites, and the Los Angeles Water Board determined that the best way to implement compliance with the TMDL is to include Table 2 compliance options. There is no law requiring that the Los Angeles Water Board pick any particular compliance option from its implementation plan to put into a permit, or that it allows all compliance methods in a particular permit. Rather, the best option to allow for compliance is the one chosen in the permit – it is clear, specific, and measurable. (See, e.g., U.S. EPA Memorandum, "Revisions to the November 22, 2002 Memorandum 'Establishing Total Maximum Daily Load

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	To be consistent with the TMDL, we suggest that the LARWQCB allow any of these four methods as a mechanism to demonstrate compliance.	(TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those TMDLs'," Nov. 26, 2014, (guidance establishing that WQBELs such as TMDLs should be clear, specific and measurable in NPDES stormwater permits).
5.26 and 6.26	Revised Draft CII Permit, Attachment A While the LARWQCB indicated in their response to comments that they have clarified the New Discharger versus Existing Discharger definitions, as currently drafted, it appears the majority of newly regulated CII Dischargers could meet the definition of a New Discharger. For example, a 10-acre warehousing facility built in 1987 that has never been covered under a National Pollutant Discharge Elimination System (NPDES) Permit and is not subject to new source requirements in 40 CFR 122.29 would meet the definition of a new Discharger. While the LARWQCB RTC number 4.14 appears to indicate the intent of the LARWQCB is not to consider existing sites that become subject to the CII Permit as New Dischargers, the definition of Existing Discharger in the draft CII Permit (below) is inconsistent with the RTC. CII Definition of Existing Discharger: Any Discharger that is not a new Discharger. As written, it appears many newly designated CII Dischargers could be subject to impossible timelines (45-days prior to discharge) for submittal of the Notice of Intent (NOI), Storm Water Pollution Prevention Plan (SWPPP), and Compliance Option Documents. We recommend the LARWQCB revise the Existing Discharger definition to clearly identify that existing Dischargers are those that been built and are operational at the time the CII Permit is adopted.	The definitions for New and Existing Discharger have been further revised in the tentative revised CII Permit.

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5.27 and 6.23	Revised Draft CII Permit, Attachment A The LARWQCB needs to provide further clarification related to the definition of impervious surface. Specifically, "effectively absorb or infiltrate rainfall" should be clarified to avoid confusion. The current definition of impervious surface includes gravel roads and compacted soils, which appears to be inconsistent with the USEPA's modeling efforts. Properly constructed gravel roads are effective in detaining stormwater to minimize discharge and should not be considered the same as paved surfaces in the CII Permit.	The definition of impervious surface has been revised to clarify that these surfaces include "compacted gravel roads that don't allow percolation," in the tentative revised permit. The purpose of U.S. EPA's modeling is to estimate the pollutant loadings based on the land use and its imperviousness. The model doesn't differentiate between gravel roads or gravel areas that are used as stormwater BMPs. Thus, the tentative revised CII Permit is consistent with the modeling used to support U.S. EPA's designation. Compacted gravel roads and compacted soils restrict the natural absorption and/or infiltration of stormwater into the groundwater table. This distinction is consistent with footnote #5 of U.S. EPA's residual designation memo. Therefore, compacted gravel roads that don't allow percolation and compacted soils are included as examples of impervious surfaces in the tentative revised CII Permit.
5.28 and 6.23	Revised Draft CII Permit, Attachment A The draft CII Permit refers to impervious cover and impervious surface interchangeably. This should be updated to refer to impervious surface be consistent with the USEPA's Preliminary Designation Memo.	This consistency issue has been clarified in the tentative revised CII Permit.
5.29 and 6.24	Revised Draft CII Permit, Applicability of the CII Permit As drafted, the CII Permit requires any portion of an existing IGP facility that is 5 acres or larger or a facility with any area not covered by a notice of non-applicability (NONA) to obtain coverage under the CII Permit. For example, as written the CII Permit would require a 1,000 square foot employee parking area (outside the coverage area of the IGP or a NONA) to obtain separate coverage under the CII Permit. It would be inconsistent with modeling performed by USEPA that established the 5-acre threshold and creates administrative burden and potentially significant costs to regulate small areas with little benefit to water quality and no technical justification.	This comment pertains to U.S. EPA's designation memo and is outside the scope of the action before the Los Angeles Water Board.

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5.30 and 6.25	Revised Draft CII Permit, Section 4.3 To the extent this Discharge Prohibition applies to all CII Discharges, regardless of Compliance Option selected, we request the RWQCB clarify what options fall under the "lawful means" of compliance with the trash provisions. While the LARWQCB appears to direct Dischargers toward full capture systems in draft CII Permit, it would be beneficial for all Dischargers, most of which are not familiar with trash provisions, to understand what the options and expectations of the LARWQCB are for management of trash. A similar comment on the previous draft CII Permit did not result in a response that provided clarification for Dischargers.	The tentative revised CII Permit does not restrict Dischargers on the means of complying with standard trash provisions. It only requires that Dischargers comply with all other federal, state, and county regulations applicable to their site location.
5.31 and 6.26	Revised Draft CII Permit, Section 3.5 Notice of Termination (NOT) The LARWQCB has added a clarification that a Discharger will not be permitted to file a Notice of Termination (NOT) if any reduction in parcel size results in the total impervious surface area being less than 5 acres. The updated NOT language is not consistent with the USEPA's modeling and does not incentivize a Discharger to increase pervious surfaces. This provision should be removed to provide an incentive to reduce pervious surfaces. At a minimum, the LARWQCB should set a threshold for pervious surface reduction that would be eligible for an NOT.	In reducing the total acreage of impervious surface attributable to a given facility, this hypothetical Discharger will reduce the volume of stormwater runoff and its associated pollutant load discharged from its site, thereby complying with the tentative revised CII Permit. U.S. EPA is designating CII sites as point sources necessitating NPDES oversight, so Dischargers will need to continue maintaining permit coverage to ensure continued protection of water quality and compliance with their NPDES permits.

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5.32 and 6.27	Revised Draft CII Permit, Section 6.5 Minimum Best Management Practices (BMPs) The revised draft of the CII Permit has refined the definition of Technology Based Effluent Limitations (Section 7.1). Compliance with these effluent limitations will be determined through the implementation of the Stormwater Pollution Prevention Plan (SWPPP) as described in Section 6 of the Permit. Section 6.5 of the revised draft CII Permit includes a list of minimum BMPs but does not contain a provision, similar to the IGP (Section X.H.4.c), that BMPs can also be implemented in lieu of any of the minimum or applicable advanced BMPs. For some Dischargers, there may be instances where compliance with a minimum BMP is not feasible, but alternative BMPs can be implemented that are at least as effective or more effective than the minimum BMP. A common example is the minimum BMP (section 6.5.1.6) requiring a Discharger to cover all stored materials that can be readily mobilized by contact with stormwater. There are sites where it is not feasible to cover all stored materials (often related to the extent or height of an area). Under the IGP, these Dischargers have the option to implement alternative or in-lieu BMPs that are as effective or more effective than the minimum BMP. Examples of in-lieu BMPs could be localized containment/management of stormwater or installation of downstream passive or active treatment BMPs. We recommend the CII Permit include an in-lieu BMP option for minimum BMPs.	The Fact Sheet Section 4.6.2 states that: > The TBELs in this Order represent the BPT (for conventional, toxic, and non-conventional pollutants), BCT (for conventional pollutants), and BAT (for toxic pollutants and non-conventional pollutants) levels of control for the applicable pollutants. Where U.S. EPA has not promulgated ELGs for a particular discharge, this Order includes TBELs established **on best professional judgment**. TBELs in this Order are expressed as requirements for implementation of effective BMPs. (40 CFR § 122.44(k).) This General Permit (Section 6) requires all Dischargers to develop and implement Stormwater Pollution Prevention Plans (SWPPPs), including minimum BMPs. In addition, this General Permit requires Dischargers to implement more advanced BMPs that are necessary to adequately reduce or prevent pollutants in discharges to achieve WQBELs. These requirements, together, ensure that the BCT/BAT standards are achieved consistently with the TBELs in section 7.1.1 of the Order. Consistent with the Fact Sheet, Section 6.5 of the tentative revised CII Permit also states in part "… implement and maintain, all of the following minimum BMPs to reduce or prevent pollutants in stormwater discharges and authorized NSWDs **to the extent feasible**. The Discharger can therefore exercise best professional judgement and document in the SWPPP if any of the minimum BMPs are not feasible. In addition to feasible minimum BMPs, the Discharger may implement any additional BMPs it deems necessary.

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7.1	The City believes the Draft CII Permit will negatively impact our ability to meet the State imposed regional housing requirements. On September 16, 2022, the City of Lakewood received final certification of its 2021-2029 Housing Element. The California Department of Housing and Community Development (HCD) found that the Housing Element was in full compliance with State Housing Element Law (Article 106 of the Gov. Code), and that it addressed all of the statutory requirements imposed by HCD. Achieving compliance with the Housing Element was the culmination of three years of planning, research and analysis to develop land use policies to address the housing crisis that is crippling California.	The tentative revised CII Permit will not negatively impact housing; it does not apply to residential facilities of any type. The permit has been revised to provide this clarification.

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7.2	As you are aware, the California housing crisis is the result of lack of supply and affordability. The overall scarcity of supply has led to skyrocketing home and rental prices, making it extremely difficult for most residents to find decent and affordable housing. Increasing numbers of Californians, who can no longer afford the cost of housing, are forced into homelessness. This crisis has also resulted in "super commutes," as people drive further away from job centers in search of housing, which exacerbates environmental pollution and human health concerns. To address this housing crisis, HCD has implemented a multi-step process, known as the Regional Housing Needs Assessment (RHNA), to allow cities and counties to plan for housing needs. Cities within the Southern California Association of Governments (SCAG) region were required to plan for the development of over 1.3 million new homes. Lakewood's RHNA allocation was 3,922 housing units, which increased to 4,510 to account for additional statutory requirements. To accommodate this large number of units, Lakewood employed a multi-pronged strategy that included the creation of a mixed-use overlay zone within the C-3, C-4 and M-1 zones, and the development of the 217-acre Lakewood Center Mall property. As currently drafted, the Draft CII Permit would constrain housing by including new and existing mixed-use properties greater than five acres as subject to the CII Permit, and many of these sites would be obligated to utilize Compliance Option 2 or Compliance Option 3, as there are not sufficient regional projects for all the affected properties in the watersheds to fund. Compliance Options 2 and 3 would both require significant site infrastructure with potentially significant physical footprints. The infrastructure footprints would be largely dictated by existing site drainage patterns which cannot typically be altered on existing sites.	The tentative revised CII Permit does not constrain housing because it does not apply to residential parcels of any type. For parcels with land use code 1210 (mixed use commercial and residential) and 1720 (mixed use office and residential), the term CII Site only applies to the commercial, institutional, or industrial portion of the mixed land use parcel. This Order does not apply to residential facilities of any type, including those located within a parcel assigned the land use category of mixed use. The permit, including Attachment A, Definitions, has been revised to provide this clarification. Also, please see Permit Section 3.5, Notice of Termination for the addition of the conversion of an existing permitted parcel with commercial land use to residential use (full or partial) as a basis for termination.

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7.3	In addition, with only a two-year time frame in which to comply with the Draft CII Permit, property owners would not be able to properly plan for the future development of housing, as the development timeframe for housing development of this magnitude would be well beyond the two-year timeframe. In summary, we would like to thank the Regional Board for providing this opportunity to comment on the Draft CII Permit. Achieving compliance with this Permit will be a complex, long-term and an extremely costly effort.	The tentative revised CII Permit will not affect future development of housing; it does not apply to residential facilities of any type. The permit has been revised to provide this clarification.
.8.1, 9.1, 10.1, 11.1	We will limit our comments to the Response to Comments regarding Option 1 of the Draft Permit. Option 1 allows the applicable CII facilities to partner with Watershed Groups. The Option as it currently stands is vague, and critical concerns should be worked out before the Permit is adopted, which is tentatively scheduled on February 22, 2024. Among our concerns are: In response to Comment 2.25, it clearly states that payment of the Measure W parcel tax cannot be used to demonstrate compliance with the CII Permit. What is not clear is if these facilities are entitled to credits for the funds they have paid into the Safe Clean Water Program.	The tentative revised CII Permit will not incorporate credits for the funds paid into the Safe Clean Water Program for compliance.

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8.2, 9.2, 10.2, 11.2	Regarding Comment 1.4 and other comments regarding stormwater projects, the Lower San Gabriel River WMG has spent considerable time identifying suitable project sites for Safe Clean Water funding. Through these site identifying efforts, the WMGs have discovered that there are limited sites which are suitable for a stormwater project. The requirement of the CII Program that project sites be directly upstream or downstream is not feasible. Any funds paid to a WMG should have the option to be assigned to any Regional Project within that Group without restrictions.	The Lower San Gabriel River Watershed Management Group is not located in the two watersheds subject to the tentative revised CII Permit. Los Angeles Water Board staff have met with the Watershed Management Groups located in the two watersheds, including the Los Cerritos Channel and Dominguez Channel groups, which are the largest groups, and have been assured that there are plenty of available regional stormwater projects in their watershed management areas. Furthermore, the tentative revised CII Permit doesn't require that project sites be *directly* upstream or downstream. To clarify, CII Dischargers choosing Compliance Option 1 will fund, or partially fund existing or planned downstream regional project(s) included in the area modeled by the reasonable assurance analysis supporting the group's watershed management program. If there is no existing or planned downstream regional project, the Watershed Management Group shall identify an upstream regional project.
8.3, 9.3, 10.3, 11.3	Fact Sheet Section 4.9.1.2 indicates that funding from the CII sites can be used for operations and maintenance. It is not clear as to how these will be funded in perpetuity if this funding is a one-time payment.	This funding is not a one-time payment. CII Permittees must participate in the funding agreement with the Watershed Management Group for as long as they choose to participate in Compliance Option 1.
12.1, 13.1	The Draft CII Permit creates unacceptable housing impacts as currently written. In addition, Compliance Option 1 should be expanded to clarify site eligibility and provide a means to avoid significant business operation impacts associated with the retrofit of existing CII facilities to confirm with Compliance Options 2 and 3. Several NAIOP SoCal member companies own commercial and industrial properties in affected watershed areas, including in the cities of Long Beach, Bellflower, Carson, Gardena, Hawthorne, Lakewood, Los Alamitos, San Pedro and Torrance, and in the unincorporated community of Rancho Dominguez. All three compliance options in the Draft CII Permit would pose considerable distress for our member companies and their respective tenants' maintenance and compliance costs and overall operations.	The tentative revised CII Permit will not constrain housing. See response to comment #7.2. Please see individual responses to comments regarding potential impacts to business operations below.

12.2, 13.2	Impacts to Regional Housing Needs California is suffering from a housing crisis concerning both supply and affordability. Senate Bill 330 (SB 330) was adopted in 2019 to help address these issues. The SB 330 legislative fact sheet states: California is experiencing an extreme housing crisis. Rent and purchase prices have skyrocketed, super commutes are normal, and increasing numbers of Californians, who can no longer afford the cost of housing, are living in their cars or on the streets. The fact sheet further goes on to state, “With just a few years as an exception, annual housing construction in the state has not kept pace with population and job growth since the 1970s.” The fact sheet focuses particularly on the development of multifamily housing, “the cost of building a single unit of housing in a multi-unit complex climbed from $265,000 in 2000 to $425,000 in 2016 – a 60 percent increase.” In the context of California’s housing crisis, measures that significantly impact the cost of delivering additional housing, particularly affordable housing, and constraining the land available for residential development will exacerbate the State’s housing issues. As part of a jurisdiction’s General Plan, California State law requires the adoption of a Housing Element to identify and address the community’s housing needs. Unlike the General Plan, however, the Housing Element must be updated every eight years to reflect changing conditions, community objectives, and goals. The City of Carson of one of the cities affected by the Draft CII permit. The Carson Housing Element states: Carson is nearly entirely developed and there are few vacant sites available for residential development. Generally, non-vacant sites in Carson do not contain historic buildings and are characterized by cheaper structures with high redevelopment potential. The City has a significant track record in encouraging and assisting infill development projects…In particular, the City has successfully converted gas stations, strip malls, and underutilized retail or commercial uses. The City of Carson acknowledges that the conversion of commercial properties into housing sites is a key mechanism for reaching its housing goals. The constraints to residential development outlined in the Carson Housing Element are common to all the affected cities in	The tentative revised CII Permit will not constrain housing. See response to comment #7.2.

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	the Draft CII Permit area. All of the cities are nearly entirely developed with little to no free land for new housing developments. As currently drafted, the Draft CII Permit would constrain housing by including new and existing mixed-use properties greater than five acres as subject to the CII Permit. EPA's Revisions to the 2022 Preliminary designation states: "For purposes of the designation of CII parcels, designated commercial, industrial, and institutional parcels are parcels with land use codes used by the Los Angeles County Assessor's Office of 1000 through 2900, 3000 through 3920, and 6000 through 6910, 7000 through 7710 and 8100 through 8400. See Appendix 4 for additional information concerning land use codes." Per the County of Los Angeles' Real Property Handbook on page 6 and attached to the EPA designation: "Improved properties with both commercial and residential use are coded "1210" if each use is represented by a significant improvement value." Thus, a CII property that is converted to mixed-use remains subject to the CII or an existing mixed-use property greater than five acres would be subject to CII based on this analysis.	
12.3, 13.3	As currently drafted, many of the sites that would qualify for the Draft CII Permit would be obligated to utilize Compliance Option 2 or Compliance Option 3, as there are insufficient regional projects for all of the affected properties in the watersheds to fund. Compliance Options 2 and 3 would both require significant site infrastructure with potentially significant physical footprints. The infrastructure footprints would be largely dictated by existing site drainage patterns which cannot typically be altered on existing sites. The placement of additional infrastructure on CII sites will significantly limit the ability to plan and construct housing on CII sites that are already partially developed with housing or are eligible to be partially developed or redeveloped with housing in the affected Draft CII Permit communities. The obligation to treat the runoff from commercial uses within mixed-use sites will reduce the already scarce land available for residential development. When endeavoring to redevelop commercial property with a mix of uses, it is critical to maintain site planning flexibility. Compliance Options 2 and 3 would require permanent stormwater infrastructure, likely located at the existing discharge points. Such infrastructure could come into direct conflict with residential development footprints under consideration.	The tentative revised CII Permit does not apply to residential facilities. See response to comment #7.2 regarding applicability of the tentative revised CII Permit to mixed use parcels. With respect to the comment that there are insufficient regional projects for all affected properties in the watershed to fund, there are plenty of regional projects located in the Los Cerritos Channel and Dominguez Channel watersheds available for funding. See also response to comment #2.7. In addition, dischargers will be able to fund regional projects under Compliance Option 1 for initial construction, maintenance and operation, regional project revision and enhancement, and administrative and other supplemental work.

12.4, 13.4	The Draft CII Permit addresses housing development needs through a California Water Code section 13241 analysis. The Permit claims that the beneficial reuse and infiltration of stormwater would better secure water supplies and encourage future housing development. Most of the Draft CII Permit area is served by West Basin Municipal Water District, a water wholesaler that supplies several retail water districts in the area. The District authored a 2020 Urban Water Management Plan (UWMP) that: Provides the Department of Water Resources (DWR) with a detailed summary of present and future water resources and demands within West Basin's service area. It also assesses West Basin's water resource needs. Specifically, the UWMP provides water supply planning for a 25-year planning period in five-year increments and identifies water supplies needed to meet existing and future demands. The demand analysis identifies supply reliability under three hydrologic or rainfall conditions: an average (or normal) year, a single-dry year, and multiple-dry years. The UWMP goes on to state: West Basin projects to have sufficient supplies to meet demands under normal year supply and demand conditions as well as single-dry year conditions. West Basin also projects sufficient supplies to meet projected demands in multiple-dry years due to its diversified supply and conservation measures and Metropolitan's supply reliability investments. As a result, there are no anticipated shortages under the single-dry year or multiple-dry year scenarios, and West Basin service area demands are assumed to be unconstrained in each reliability scenario. The water wholesaler for the majority of the Draft CII Permit area has confirmed a reliable water supply through 2045, accounting for multiple drought years in its modeling. Water supply is not the constraint to housing development in the Draft CII Permit area; the lack of available land is. Based on the potentially significant housing impacts due to the Draft CII Permit, the Board should exempt the following sites from the Draft CII Permit: 1. All existing sites with mixed-use SIC codes that include residential in the mix of uses; 2. All sites with zoning or general plan designations that allow residential and/or mixed-use development and/or redevelopment;	The tentative revised CII Permit regulates stormwater discharges from CII sites, not residential parcels. See response to comment #7.2 regarding applicability of the CII Permit to mixed use parcels. As discussed in Section 3.11.5 in the Fact Sheet, the tentative revised CII Permit helps address the water needs associated with the need for housing by controlling the quality and quantity of stormwater discharges and providing compliance options that encourage the use of stormwater as a water resource. These approaches can reduce demand for potable water through beneficial use of stormwater, augment the supply of water for advanced treatment and recycling, and preserve and augment local groundwater resources thereby reducing imported water needs and increasing local water resiliency. Local water resiliency increases the region's capacity to support increases in population and the accompanying need for housing.

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	3. All sites located in planning areas within specific plans that allow housing and/or mixed-use development and/or redevelopment; 4. Sites located within zoning overlays that allow housing and/or mixed-use development and/or redevelopment; 5. Sites listed as housing opportunity sites in a city or county housing element.	
12.5,13.5	Clarification of Compliance Option 1 to Prevent Business Disruption The Draft CII Permit outlines the process for entering into a legally binding agreement with the applicable local Watershed Management Group to fund or partially fund a downstream regional project. In the absence of downstream regional projects, the Watershed Management Group may identify an upstream project. As of the time of the permit, only a select number of regional projects have been identified by the relevant Watershed Management Groups. Given the short timeline to comply with the Draft CII Permit, two years, it is likely that many CII sites would be forced into compliance options 2 and 3.	Compliance Option 1 will not be limited due to insufficient regional projects in the area. See response to comment #2.7.
12.6, 13.6	Collectively, Compliance Options 2 and 3 offer the following compliance design options; typical constraints and challenges associated with these measures are listed below: Option 2: Infiltration of the 85th percentile 24-hour storm event. Soil type and areas of soil contamination will limit the feasibility of infiltration throughout Draft CII Permit areas. Owners have little to no control over the feasibility of infiltration. Those owners who can retrofit a site with infiltration systems will experience significant construction timelines that materially interfere with the business operation of CII sites. Site access and parking would be affected for significant amounts of time due to the significant physical footprints required for infiltration; this would result in business revenue losses in addition to the costs of implementation.	The tentative revised CII permit offers Permittees three Compliance Options. Permittees should characterize their sites, select BMPs that are well-suited to facility characteristics and determine the most feasible and cost-effective compliance options to meet the requirements of the tentative revised CII Permit. Section 3.12.4 of the Fact Sheet has been expanded with further analysis regarding BMP performance and an economic analysis memo has been posted on the CII Permit web page to help Permittees navigate their choice of compliance option.
12.7, 13.7	Option 2: Evapotranspiration of the 85th percentile 24-hour storm event. There will be few, if any evapotranspiration opportunities due to standing water and vector control issues associated with standing water.	Evapotranspiration is only one of several allowable means of achieving the facility-specific design standard in Compliance Option 2. In addition, the tentative revised CII Permit has been revised to add diversion to the sanitary sewer along with capture and use, infiltration, and evapotranspiration to the list of potential stormwater controls.

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12.8, 13.8	Option 2: Capture and reuse of the 85th percentile 24-hour storm event. Typical CII sites are highly impervious and do not have adequate landscape coverage to disperse the 85th percentile runoff as irrigation in a reasonable timeframe. Some sites are already irrigated with reclaimed water. Site capture and reuse, similar to site infiltration, will materially interfere with business operations and result in business revenue losses in addition to the costs of implementation due to site impacts during construction. Retrofit of building plumbing systems for capture and reuse of stormwater would require an overhaul of building plumbing systems, leading to potential partial or even full building closures. Building closures would cause significant business revenue losses	See response to comment #12.7.
12.9, 13.9	Option 3: Discharge of 85th percentile 24-hour storm event runoff treated to numerical effluent limits with monitoring and reporting requirements. There is a lack of currently commercially viable treatment systems that can treat the volumes of stormwater generated by CII sites to the level prescribed in the Draft CII Permit. Such systems would likely have a storage component and potentially complex mechanical systems and filtration systems. The storage component would cause similar temporary business disruptions during construction as infiltration systems and capture and reuse systems themselves would cause due to footprint size. In addition, the filtration systems would likely consist of above-ground components that would have permanent impacts on site access, circulation, and parking. The obligation of CII owners to monitor and maintain potentially complex systems is a significant burden and creates an increased risk of system failure due to the lack of CII owner expertise in the maintenance and operation of advanced stormwater filtration facilities.	There is no design storm specified for Compliance Option 3. Compliance Option 3 requires that discharges from the facility meet applicable WQBELs. Permittees have discretion when implementing control measure(s) on their property, so long as the control measure(s) achieve the WQBELs outlined in section 7.2 of the tentative revised CII Permit. Any combination of BMPs and treatment system design and capacity that demonstrate compliance is adequate. See also response to comment #12.6.

Comment Number	Comment	Response
12.10, 13.10	Many CII sites are operated by a single maintenance and operating entity that serves multiple owners. The operating entity is oftentimes established in a Covenants, Conditions, and Restrictions (CC&R) document or a Reciprocal Easement and Operating Agreement (REOA). These documents also typically set forth to access, park, place utilities, and drain stormwater across property lines and for an operating entity to operate and maintain those systems. Drainage across property lines in multiple-ownership sites is particularly common and the collection of stormwater is typically not conducted on a parcel-by-parcel basis. CC&Rs and REOAs have mechanisms for addressing and assessing maintenance costs with multiple owners; however, they do not typically have mechanisms for the funding of retrofits to common facilities for unanticipated code changes. These documents will require renegotiation in many cases on multiple ownership sites under common maintenance if CII facilities are compelled to pursue Compliance Option 2 or 3. The renegotiation process can be quite lengthy and costly, and the Draft CII Permit only allows 2 years to demonstrate compliance.	The tentative revised CII Permit has been revised such that existing Dischargers applying for coverage under this order must submit an NOI and SWPP within one (1) year and Compliance Option Documents within three (3) years of the effective date of the Order. Existing Dischargers are those facilities that have been built and are functional. New Dischargers must submit a NOI and Compliance Option Documents at least forty-five (45) days prior to commencement of the authorized discharge. This is ample time to negotiate with multiple ownership sites and evaluate site specific conditions.
12.11, 13.11	CII sites under multiple ownership may have a property owner that opts to fund off-site projects under Compliance Option 1 but the property drains to an adjacent parcel under common maintenance. No clarity or provision in the Draft CII Permit addresses the incremental drainage from a property that has already paid a fee for an off-site project. There is typically no feasible way to isolate drainage on a parcel-by-parcel basis on multi-parcel sites under common maintenance and operation. In addition, many CII sites utilize triple-net leasing that passes through maintenance and compliance costs to tenants. For retrofits as part of Compliance Options 2 and 3, triple net lessors may have retrofit costs passed through from the owner.	A CII site that choses Compliance Option 1 or 2 is only required to address non-stormwater discharges and the stormwater runoff generated from an 85th percentile 24-hour storm event for the site. Therefore, incremental drainage from an adjacent property should not have any impact. For Dischargers choosing Compliance Option 3, the Los Angeles Water Board staff will evaluate, on a case-by-case basis, any demonstration that incremental drainage from a neighboring property has caused or contributed to a Discharger's exceedance of an effluent limit.

Comment Number	Comment	Response
12.12, 13.12	The Draft CII Permit also does not consider the potential impact on food security in the permit area. Many of the listed CII sites include grocery stores and other businesses that sell fresh food. The USDA maintains a database of areas that are poorly served by grocery retailers. A map of the food desert areas in the South Bay area is attached to this letter. There are significant food deserts throughout both Draft CII permit watersheds, and implementation of Compliance Options 2 and 3 could further reduce the access to food due to temporary constriction site impacts and permanent site impacts.	The tentative revised CII Permit is not required to consider the potential impact on food security in the permitted area, but it is designed to improve water quality and the quality of life for the people living in the area. The purpose of the tentative revised CII Permit is to reduce pollution in local waterbodies that provide recreational opportunities, fishing resources, and a proximity to nature and wildlife for the communities in the watersheds. The impact of the tentative revised CII Permit on grocery store operations will vary depending on which compliance option each Discharger selects and what kind of BMPs each Discharger chooses to employ. The three compliance options included in the Order provide flexibility to Dischargers in determining how to achieve permit requirements.

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12.13, 13.13	Given the myriad challenges and impacts of implementing Compliance Options 2 and 3, the applicability of Compliance Option 1 should be expanded to include all CII properties covered under the Draft CII Permit. In essence, a region-wide fund could be established that permittees could pay into if they choose Compliance Option 1. These funds could then be funneled to the Watershed Management Groups resulting in professionally designed and managed stormwater projects that would have lower chances for failure due to improper design or maintenance. If no projects were available to fund, then Compliance Option 1 funding could help to identify more high-benefit regional projects and then fund them once identified.	See response to comment #2.7 regarding the available capacity of regional projects. The Los Angeles Water Board has determined that water quality improvement will be more effectively achieved by investing in the already existing regional Watershed Management Programs rather than developing a new regional funding program. Through numerous conversations with Watershed Management Groups, the Los Angeles Water Board has also determined that Watershed Management Groups are in the best position to determine which project or projects are best suited for each CII Permittee, because Watershed Management Groups have the necessary information regarding their respective projects generally, the location of projects in relation to each CII Site, and administration costs. In addition, Compliance Option 1 cannot allow for a general regional fund because qualifying regional projects must be within the same watershed as the CII Site. Under Compliance Option 1, a CII Site must pay into an upstream regional project(s) that has been included in the reasonable assurance analysis for a Watershed Management Group to ensure that the pollutant load contributed by that CII Site to the watershed is offset and captured in a proportional amount. By requiring regional projects under Compliance Option 1 to be included in Board approved WMPs, the tentative revised CII Permit ensures that the regional projects will be designed, constructed, and maintained to attain effluent and receiving water limitations. See also response to comment #5.9.

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12.14, 13.14	In addition to the availability of viable projects to fund under Compliance Option 1, a second key question is cost. How much will it cost for owners or operators to participate in this compliance option? This question is critical for businesses of all sizes, but especially for small businesses that simply happen to have a footprint in excess of 5 acres. Pooling permittee contributions across the watersheds may allow for fees per facility to be much lower, while still achieving meaningful water quality improvements through regional projects. In addition, the Board should consider fee reduction or other cost-conscious measures to help ensure that small businesses can comply with the Draft CII Permit without going out of business.	The funding level for each CII Permittee choosing to participate in Compliance Option 1 must be proportional to the sum of NSWD volume and onsite stormwater volume relative to the total regional project(s), watershed or subwatershed stormwater capacity, modified by pollutant level and based on activity type. There is a formula in section 8.1 of the Permit. In addition to the cost as expressed in section 8.1 of the Permit, section 3.12.4 of the Fact Sheet regarding economic considerations has been revised and a memorandum estimating potential costs for Compliance Options 2 and 3 and the implications on Option 1 has been posted to the Los Angeles Water Board's website..

Comment Number	Comment	Response
12.15, 13.15	The Dominguez EWMP and Los Cerritos WMP have published funding requirements for their respective implementations. Per the Los Cerritos Channel WMP: For cost estimation purposes, this WMP initially assumes that the Watershed could ultimately require the capacity to capture and infiltrate or use 592 AF of water. This estimate is based on the Reasonable Assurance Analysis performed to demonstrate that the activities and control measures proposed in this WMP will achieve compliance with applicable compliance deadlines during the permit term. Based on cost estimates for constructing underground compact concrete stormwater capture facilities with a capacity of eight acre-feet, such a requirement could cost $332 million for construction of these facilities between now and September 30, 2026. This represents an average cost of $18,745 per acre. For instance, a few WMPs have cost estimates for their respective projects. The Dominguez Channel Watershed EWMP identifies a capital cost of $1,249,637,410 to implement the EWMP over its 50,857 acres. This simplifies to a per acre cost of $24,572. It is crucial that Compliance Option 1 be a real option for permittees to choose. It must be both affordable and available for permittees, regardless of their location within a watershed. In addition, the Board should consider a change to the permit that allows a fee paid under the Draft CII Permit to constitute compliance with the Permit through Compliance Option 1 and run with the land in perpetuity.	When choosing Compliance Option 1, fee structures will be determined in the agreement with the Watershed Management Groups using the funding formula in Section 8.1 of the revised permit. Please also see response to comments #12.13 and #12.14.

Comment Number	Comment	Response
12.16, 13.16	Definition of “Discharger” Still Needs Clarity The Draft CII Permit attempts to reduce some of the lack of clarity regarding who is responsible for obtaining permit coverage: the owner or the operator/tenant. However, the definition still makes compliance confusing for property owners, particularly of multi-tenant properties. This creates significant compliance hurdles, because oftentimes a property owner does not have the kind of immediate access to a facility that would be required for sampling storm events, for example. Similarly, many lease agreements limit an owner’s ability to do certain things, like implement BMPs and inspect. Further, an owner may be unaware of storm events, especially if the owner is not local to the property. These are questions with legal implications and the definition of “discharger” should be refined to delineate more clearly as to who bears responsibility to obtain permit coverage, particularly given that physical access to a property is not the same between an owner and operator/tenant.	Under such a situation, while the property owner is the Discharger, they could assign another person to conduct monitoring and implement other requirements of the permit.
12.17	Applicability to Other NPDES Permittees Given the diversity of sectors that would be impacted by the Draft CII Permit, including those in the manufacturing sector who may already be covered by an individual NPDES permit, we appreciate the revisions that ensure an individual NPDES permit may be sufficient to be considered compliant with the draft Permit. However, we must raise issue and concerns with the language that requires those with an individual NPDES permit with more specific requirements and that covers the discharges under the Permit in lieu of requiring a CII Permit to also ensure the individual NPDES permit is more stringent. We object to such a provision that would require an individual NPDES permit that covers the discharges and provisions under the draft Permit to be more stringent than the Draft CII Permit’s provisions. The Board has not explained or cited any authority as to why an individual NPDES would have to be more stringent than the requirements associated with the draft CII Permit. The individual NPDES permit should be at least as stringent as the draft CII Permit, but should not be required to be more stringent, as the language provides, in every case.	The tentative revised CII Permit has been revised to clarify that the individual NPDES permit should be at least as stringent, not more stringent, than the draft CII Permit to be exempt from the CII Permit.

Comment Number	Comment	Response
12.18	Additionally, we appreciated the flexibility the prior version of the draft Permit provided permittees who may already be covered by the statewide Industrial General Stormwater Permit (IGP) but who would also be in scope for the Draft CII Permit related to non-industrial portions of their facility. Unfortunately, the revisions remove the flexibility of a permittee to decide for itself whether it would be more efficient to maintain an IGP and the new Draft CII Permit for the portions of the site not covered by the IGP or if it would be more efficient to seek coverage for the entire property under the draft Permit. Much discussion has been had in the past few years across the Water Boards, especially at the State Water Resources Control Board, regarding the need to institute efficiencies wherever possible that do not compromise water quality and the environment. The removal of this flexibility seems to run counter to such efficiency. While additional refinements may be necessary to provide such flexibility in a manner that ensures protection of water quality and the environment within the provisions of state and federal requirements, it is an important and worthwhile exercise given the complexity and significant cost increases the Draft CII Permit will impose on permittees across all sectors.	The removal of the overlapping requirements in the tentative revised CII Permit and the Industrial General Permit simplifies the overall permitting approach to stormwater in the Region and ensures that water quality will be protected by requiring industrial facilities to continue complying with the requirements in the Industrial General Permit.
12.19, 13.17	Delayed Implementation is Critical for Compliance As described above, it is clear that the Draft CII Permit has significant issues that must be addressed before it is adopted. Even if all of these issues are resolved, this permit represents a sea change in both stormwater regulation and commercial business operations. The Compliance Options each involve costs and risks, and thus must be fully evaluated by permittees. Accordingly, permittees need sufficient time before they must comply with the Draft CII Permit to ensure that they have an opportunity to achieve compliance. A delayed implementation beyond 2 years will help commercial and industrial businesses understand their options and weigh the relative costs of the different compliance options. We request a delayed implementation of at least 5 years.	The tentative revised CII Permit has been revised to provide three years from the effective date of the permit, which will allow sufficient time to submit compliance option documents. Recognizing that a number of CII Permittees will be first-time NPDES permittees, the Fact Sheet has been expanded with further analysis regarding BMP performance, and an economic analysis memo has been posted on the CII Permit web page to help Permittees navigate their choice of compliance options. Additionally, the Los Angeles Water Board will develop guidance for Dischargers that will clearly define the process and timelines for how CII Permittees may participate in Compliance Option 1.

Comment Number	Comment	Response
14.1	The Carson Chamber of Commerce is pleased to provide a summary of comments regarding the proposed Commercial, Industrial, and Institutional NPDES Permit (CII Permit). To be brief, the draft CII is not adoptable for the reasons explained more fully on Attachment A. At the top of the list is that there is no definition of a commercial, industrial, and institutional facility that meets the five or more acres of impervious surface criterion. Beyond this, the draft CII Permit was not properly publicly noticed; and providing a 30-day notice to respond with comment is too short. Our members are expressing confusion over what the permit does and how it works. Given the complexity and confusion, the CII Permit should be discussed at a workshop and materials explaining in detail how it would apply to various sites and situations. It is understood that the CII Permit is the first of its kind and presents a challenge to Regional Board staff. The Chamber proposes to meet with staff to offer suggestions on how the CII can be revised to address its concerns.	Comment summary acknowledged. See individual responses below. On January 23, 2024, Board staff met with the President of the Carson Chamber of Commerce and shared links to the 2021 Stakeholder Meeting and 2022 Workshop recordings on the CII Program webpage.

14.2	The draft CII Permit does not clearly state to whom it applies. It references commercial, industrial, and institutional properties that are five acres or more of impervious surface, but provides no clear definition of a commercial, industrial, and institutional facility. Under the definition section of the permit, Attachment A, Acronyms and Definition. It simply says: Commercial, Industrial, and Institutional Sites (CII)Sites are classified as commercial, institutional, and industrial according to Los Angeles County Tax Assessor land use codes: (https://portal.assessor.lacounty.gov(CII)). However, the site shows no reference to CII land codes. It searches by AIN or address. Supporters of the CII Permit point to USEPA's *Revisions to 2022 Preliminary Designation Memorandum*, Attachment 4, which is not attached to the draft CII and therefore has no effect. In the *Assessor of Los Angeles County, Real Property Handbook,* note that commercial, industrial, and institutional properties are strewn throughout the handbook, making it impossible to determine whether these properties are subject to the CII Permit. • Using these vague and elusive codes will also conflict with the classification codes required by USEPA, based on federal regulations1, codes that include the Standard Industrial Classification Code (SIC) and its alternative, the North American Industry Classification System (NAICS), used by businesses that do not use SIC. This will effectively throw a monkey wrench into the works. All other general NPDES permits (viz., General Industrial Activity Stormwater [GISP]; General Construction Activity Stormwater [GCASP]; and Individual NPDES Permits, all use SIC or NAICs to identify subject dischargers. A conflict that will most assuredly arise is the CII's requirement to eliminate the No Exposure Certification (NEC) for GISPs. GISPs are typed using SIC/NAICS codes. The CII Permit would eliminate those areas of the GISP that fall under the 5 acre-plus impervious area and require that they be treated. But how would the CII permit, based on some other code type, apply to the GISP that is SIC/NAICS typed? Another question is how can the CII Permit encroach on a GISP? It cannot because it does not have the authority to override another NPDES permit.	The applicability of the tentative revised CII Permit is based upon U.S.EPA's final designation. Land use codes were included in the definition of a CII site in Section 3.1, Applicability, in the previous version of the tentative revised CII Permit. The land use codes have been moved to Attachment A, Acronyms and Definitions, in the tentative revised permit. Regarding Los Angeles County Tax Assessor website functionality: please look up any parcel by AIN or address then click a result. The subsequent page will display the parcel's assessed use code under the "Building & Land Overview" section. The claim that U.S. EPA's residual designation and associated materials do not have effect on the tentative revised CII Permit is incorrect. See U.S. EPA's background on the administrative and legal processes leading to the Los Angeles Water Board's current consideration of the tentative revised CII Permit. Regarding the comment that the CII Permit would eliminate those areas of the Industrial Stormwater Permit that fall under the 5 acre-plus impervious area and require that they be treated, that approach is intentional. While a facility subject to the Industrial Stormwater Permit can be approved for a No Exposure Certification because exposure of their SIC/NAICS type industrial activities have been placed under a storm shelter, stormwater discharges from the impervious cover or surfaces from that industrial site are pollutant sources subject to the CII Permit and must be reduced. The CII Permit does not encroach on nor override the Industrial Stormwater Permit. Industrial facilities that have approved No Exposure Certification are not required to comply with the Industrial General Permit if the condition of no exposure is maintained. An industrial site with land use and other specifications as designated by U.S. EPA, regardless of SIC/NAICS classification requires CII Permit coverage.

Comment Number	Comment	Response
14.3	Another problem will arise when CII Permit applications (viz., NOIs) are submitted to SMARTS. NOI application forms clearly call for SIC/NAICS codes to type the discharger requiring permit coverage. The State Board, which manages SMARTS, will not be able to process the NOIs as a result. Because of this problem, the Regional Board should notify the State Board's Industrial Permitting Section that this is an issue that needs to be resolved.	SMARTS is being updated to include the CII stormwater program as part of a multi-program collaborative effort but separate from other general stormwater permits. Identification of SIC/NAICS is not a requirement of the CII Permit and will not be a requirement for enrollment under the CII SMARTS module.
14.4	It would make things easier by simply using SIC/NAICS for the commercial, industrial, and institutional categories. But in order for this to happen, the Regional Board needs to specifically identify the discharge categories instead allowing the CII Permit to make that determination.	U.S. EPA's final designation of CII parcels that must be permitted in the two watersheds does not specify SIC/NAICS. U.S. EPA's final designation has determined that discharges from specified commercial, industrial and institutional sites be subject to the CII Permit.
14.5	The CII Permit also invites the question: what if the facility is publicly owned, such as a corporate yard owned by a municipality, (e.g., Carson, Torrance or Long Beach), that occupies an area five acres or more of impervious surface, but is covered under a GISP? Which permit, controls, the CII or the GISP?	Publicly owned CII sites were not included in U.S. EPA's preliminary designation or the draft CII permit unless they were privately operated at the Ports of Los Angeles and Long Beach. Thus, this comment was already addressed in the previous drafts. Note that this comment is further addressed by the removal of **any** publicly owned CII sites from U.S. EPA's final designation and the CII Permit.

Comment Number	Comment	Response
14.6	The CII Permit does not identify cities and unincorporated areas of the county that are impacted by it. However, according to USEPA's *Revisions to 2022 Preliminary Designation Memorandum* (which again has not been placed in to the CII Permit), the municipalities listed in the below table are referenced under Appendix 2. However, the list for the Dominguez Channel is not accurate. Question marks indicate that they may be in the Santa Monica Bay Watershed. In any case, these municipalities should be contained in the CII Permit and not apart from it. Referencing the municipalities is important because they will need to know the CII permittees within their jurisdictions. **Dominguez Channel Watershed** Carson, Compton (partially), El Segundo (?), Gardena, Hawthorne, Inglewood (partially), Lawndale, Lomita (?), Long Beach, Los Angeles City (partially), Los Angeles County (?), Los Angeles County Flood Control District (partially), Manhattan Beach (?), Palos Verdes Estates (?), Rancho Palos Verdes (?), Redondo Beach (?), Rolling Hills (?) Rolling Hills Estates (?), and Torrance (?) **Los Cerritos Channel Watershed** Bellflower, Cerritos, Downey, Lakewood Long Beach, Los Angeles County, Los Angeles County Flood Control District, Paramount, Signal Hill	The list of cities in the Dominguez Channel Watershed is correct. For example, the City of Lomita lies entirely within the Dominguez Channel Watershed and is a member of the Dominguez Channel Watershed Management Group. It is unclear why the commenter suspects that Lomita is in the Santa Monica Bay Watershed. Every city in the two watersheds subject to the CII Permit has been notified, either directly or indirectly through its Watershed Management Group, of the CII Permit. To help Dischargers seek the appropriate Watershed Management Groups for their site location, the tentative revised CII Permit lists Watershed Management Groups in each watershed in Attachment H. Additionally, the Board is developing interactive tools that would help individual dischargers identify if their site is located with the watersheds subject to the CII Permit and the appropriate Watershed Management Group and contact information.
14.7	The CII Permit fails to recognize that under the GCASP, any construction project that is one acre or more must install low impact development controls to meet the 85th percentile design storm requirement. In other words, these projects could already meet the CII Permit, and would not have to install treatment controls because they already exist.	The LID requirements for construction projects subject to the General Construction Permit are for new development and redevelopment projects and do not fully meet the CII Permit requirements. However, to the extent a CII Permittee can achieve compliance through previously installed control measures, this can be reflected in the permittee's Compliance Option Documents.
14.8	The CII Permit does not identify who would be responsible for conducting inspections to determine compliance with its provisions, including the proper functioning of on-site treatment controls. Will it fall to the Regional Board or to a city or county as an MS4 permittee?	In addition to the self-monitoring and reporting requirements in the CII Permit, Los Angeles Water Board staff will be conducting verification, compliance and enforcement of permit requirements to promote successful program implementation.

Comment Number	Comment	Response
14.9	There is also no detail regarding how compliance with the CII Permit's water quality standards and total maximum daily loads (TMDLs) will be determined. Will compliance be determined at the nearest downstream outfall, at an on-site sampling station, or at the nearest downstream catch basin? This is a serious question that must be addressed.	The CII Permit explains the three options for compliance with water quality based effluent limitations in Sections 3.2, 8, 9, 11 and Attachment E.
14.10	There is also a problem with what total maximum daily loads (TMDLs) for certain water body reaches that require compliance. The GIP does not provide any insight on how this is to be achieved because the Regional Board has not provided guidance. A TMDL waste load allocation for this category of dischargers must be established, It should be noted that for Carson, which drains to the Dominguez Channel Estuary, there is no valid TMDL for pollutants including metals, pesticides, and other toxics because one has not been developed for the estuary. An estuary is special because it includes fresh and salt water. TMDLs, however, are based exclusively on fresh water.	The effluent limits derived from TMDLs are identified in section 7.2 of the CII Permit. See section 4.6.3.1 of the Fact Sheet for information about pollutants in TMDLs and WLA translation. The Harbors Toxics TMDL is valid and is the effective regulation. It includes the Dominguez Channel Estuary. TMDLs are not based exclusively on freshwater, including the Harbors Toxics TMDL. The WLAs assigned to "any future NPDES dischargers" in the Harbor Toxics TMEL are incorporated into the CII Permit as water quality based effluent limits.
14.11	Adoption of the draft CII Permit should be postponed until these and issues raised by others are addressed. It is clear that the time line for processing adoption of the permit was far too short. The draft CII Permit was posted on November 2, 2023 and November 15, 2023. The way it was posted, however, did not inform potential dischargers (or the public) that they are subject to the CII Permit. The Regional Board's website did not facilitate the location of the draft CII in a conspicuous manner. Locating the CII permit required going to Tentative Orders/Permits, as shown below, and then to General NPDES, which would then list CII and other NPDES permits. The question is how would one know where to search for the CII Permit?	See section 3.3 of the Fact Sheet regarding stakeholder outreach performed to date. In 2021, the Los Angeles Water Board initially mailed every owner of a potential CII parcel about the proposed permit. The Board set up an e-mail subscription and provided links to the e-mail list. The Los Angeles Water Board both mailed and e-mailed the initial release of the tentative permit in July 2022. Further notices, including the public workshop in August 2022 and tentative revised CII permit on November 2, 2023, were then distributed via the e-mail list.

15.1	The Regional Board's Process Should Delay Consideration of the Draft CII Permit Until EPA Has Exercised Its Residual Designation Authority As an initial matter, consistent with our prior comments, the Regional Board's consideration of the Draft CII Permit ahead of EPA's preliminary designation is premature. EPA is currently in the midst of public comment in its residual designation process and its decision to exercise residual designation authority is still subject to change. Consequently, the parallel process deprives the public of understanding and evaluating a complete EPA residual designation process and understanding and evaluating how that EPA decision and administrative record affects the Draft CII Permit and its underlying justification. The current sequencing of the Draft CII Permit vis-à-vis the EPA process also means that the Regional Board lacks complete information to adequately perform its regulatory function. The public also lacks complete information. Questions from commenters regarding how the EPA's residual designation affects the Regional Board's permitting decision remain unaddressed. For example, concerns raised about the interplay between EPA's process and its effect on the CII Permit led to a number of Regional Board responses to a number of commenters that their particular concerns are "outside of the scope of this action" due to it "pertaining to U.S. EPA's preliminary designation." This underscores why the Regional Board needs to wait for EPA to complete its process. Because the Regional Board cannot fully respond to public comments until EPA's final designation is complete, it should delay adopting the Draft CII Permit pending completion of the EPA process rather than focus on "immediate implementation" of the permit. This would be a fairer and more transparent approach. Further, any change to the underlying EPA designation will require the Regional Board to update the Draft CII Permit, which will likely require significant additional scientific and legal analysis. In turn, the regulated community would need to expend significant resources to evaluate any updates to the Draft CII Permit which the Regional Board may never adopt if EPA does not make a final designation, if a final designation is inconsistent with the Draft CII Permit or if EPA's residual designation authority is successfully challenged. Accordingly, we urge the Regional Board to delay the CII Permit process until after EPA has finalized its designation.	The coordinated public notice of U.S. EPA's preliminary designation memo and the Los Angeles Water Board's tentative revised CII Permit allowed potential permittees to see the tentative permit requirements at the same time as the preliminary designation. The parallel process also allows more immediate implementation of the permit, thus benefiting water quality sooner. However, the Los Angeles Water Board will not adopt the permit before the designation becomes final.

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15.2	The Regional Board Must Support the Draft CII Permit with Sufficient Technical Information and Data The Regional Board's reliance on generalized studies and other data fails to reflect the current state of CII facilities, and as such, does not adequately analyze the proper scope of the Draft CII Permit. Moreover, the Draft CII Permit broadly categorizes CII facilities on parcel data which includes sites that contribute little to pollutant loads and fails to include sites that do (like publicly owned sites, roads, etc.). Without incorporating contemporary, site-specific data that accurately represents facility specific-conditions and technological capabilities of CII facilities, the Regional Board's final CII Permit will be both overbroad and underinclusive. In light of the above, we respectfully request the Regional Board preform additional modeling and analysis to supplement the current analysis provided.	U.S. EPA conducted the modeling, which demonstrates that CII facilities are a significant source of pollution to impaired waterbodies and is the basis of the residual designation. The Los Angeles Water Board supplemented this modeling with a reasonable potential analysis documented in the Fact Sheet. Therefore, it is not necessary for the Los Angeles Water Board to perform additional modeling.

15.3	The Regional Board Must Support the Draft CII Permit with Sufficient Cost Analysis Our original comment letter raised concerns due to potentially stringent requirements that may not take into account the economic feasibility for the regulated community. The Draft CII Permit imposes mandates without providing clear guidance on the technology that meets these mandates or an adequate calculation and analysis of the costs associated with compliance. Pointing out that a permittee can select its own BMPs does not address compliance costs. The Regional Board references the "diverse CII sites covered by this General permit" to justify its limited compliance cost analysis. It then cites to a Ninth Circuit case for the proposition that it need only develop a "rough idea" of costs to the industry or a "reasonable estimate" of costs. While the Regional Board acknowledges, as it must, that it is required to take compliance costs into account by providing a "rough idea" or "reasonable cost estimate," BizFed strongly believes additional analysis is needed to develop a reasonable cost estimate. The narrative descriptions of costs in Fact Sheet section 3.11.4 for Compliance Option 2 and Compliance Option 3 reference costs as being, for example, "generally low" or "generally high". How does one calculate a "generally low" plus a "generally high" cost? BizFed is not asking for a "precise calculation" and acknowledges precision is not required. However, the information provided to date does not amount to a "rough estimate" or a "reasonable calculation." The terms and phrases that describe BMP costs add little meaning to the actual dollar cost of compliance. Absent a more "reasonable estimate" of compliance costs, decision-makers cannot adequately understand the economic consequences of this proposed action on the regulated community, economics of the region, and economics nationally considering the major impact on ports and other businesses that move goods regionally, nationally and internationally. The Draft CII Permit impacts the nation's largest port system and its associated rail system which could have a substantial economic impact on jobs in the region. The target watersheds contain many disadvantaged communities who depend on future CII permittees for jobs. The public deserves to know how the cost of compliance could affect their livelihood. In addition, the Regional Board should meaningfully assess the potential impacts the Draft CII Permit may have on housing. In our original comment letter, we noted that "compliance with the Draft CII Permit will likely increase costs of operations for businesses and other organizations within the permitted region, which may, in turn, increase the cost of living in the locale." (Comment 2.22.) The Building Industry Association of San Diego County ("BIASD") and the Industrial Environmental Association ("IEA") raise similar concerns. (*See*	Section 3.12.4 of the Fact Sheet has been expanded with further economic analysis and an economic analysis memo has been posted on the CII Permit web page to help Permittees navigate their choice of compliance options. The tentative revised CII Permit will not have any impact on housing. The requirements for CII facilities in the two watersheds will not significantly impact the cost of delivering additional housing, nor constrain the land available for residential development. The tentative revised CII Permit is not applicable to residential facilities of any kind. See response to comments #7.1 and #7.2.

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	BIASD and IEA comment letter, pg. 3-4) BIASD and IEA note that "measures that significantly impact the cost of delivering additional housing, particularly affordable housing, and constraining the land available for residential development will exacerbate the State's housing issues. (*Id*. at pg. 4)	
15.4	Compliance Option 1 Requires Refinement to Ensure it is a Viable Option for Permittees We anticipate a significant portion of the regulated community will look to Compliance Option 1 in order to avoid cost prohibitive and potentially infeasible capital improvement projects, which otherwise may be necessary to achieve permit compliance. However, the lack of an established fee structure, standardized agreements, and potential unavailability of regional projects make Compliance Option 1 potentially untenable for dischargers. Moreover, negotiating with Watershed Management Groups ("WMGs") and reporting annually on agreements requires significant transaction costs, as many permittees (several of which have not been subject to similar regulation in the past) will need to hire legal counsel to negotiate the agreements with the WMGs and engineering experts given the technical nature of the Draft CII Permit. Also, the absence of defined funding levels and meaningful guidance regarding regional project agreements creates uncertainty, potentially leading to disproportionate financial obligations for different CII sites. We respectfully request that the Regional Board consider and evaluate these concerns to improve the viability of Compliance Option 1.	Please see response to comment #2.4, #2.7, and #2.10.

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15.5	Template Agreement Would Streamline and Reduce Costs Under Compliance Option 1 The regulated community would benefit substantially from a template regional project agreement provided by the Regional Board. A template agreement would benefit Dischargers, WMGs and the Regional Board by cutting transactional costs associated with drafting and negotiating agreements and streamlining the approval process (reducing administrative expenses for the Regional Board). A template agreement would also clarify what responsibilities, if any, Dischargers will be required to assume under regional project agreements, a matter that Regional Board staff has not meaningfully responded to in its comments. Concerns regarding costs of drafting and negotiating regional project agreements are heightened due to the Regional Board's post-hoc sequencing of review. If after reviewing an executed regional project agreement the Regional Board rejects the agreement, what then? Will a Discharger receive additional time to comply with the Draft CII Permit by renegotiating the agreement, selecting another regional project to fund, or selecting Compliance Options 2 or 3 instead? In order to avoid these issues and costs associated with renegotiating agreements that are subsequently denied by the Regional Board, the Regional Board staff should publish a template agreement and guidance and review agreements prior to execution by the parties.	Please see response to comment #2.4.
15.6	A General Fund Alternative Would Meaningfully Enhance and Expand Compliance Option 1 In light of concerns raised regarding the availability of, and costs associated with, regional projects, the Draft CII Permit should include an option for permittees to pay into a general fund as an alternative to paying WMGs and entering into regional project agreements. The fund should be administered by the Regional Board and used to finance projects for the purpose of improving stormwater quality. Providing this alternative would give permittees the ability to meaningfully reduce costs and burdens associated with Compliance Option 1. It would also guarantee the availability of a payment-based compliance option, which is not currently the case.	Please see response to comment #12.13.

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15.7	Payment of Measure W Parcel Tax Should be a Compliance Option or Offset Option Costs In our original comment letter, we recommended addition of a new compliance option allowing a permittee to comply with its requirements under the Draft CII Permit through payment of the Measure W parcel tax. (See comment 2.25.) As we previously noted, it would be unfair to subject CII facilities to separate compliance requirements under the Draft CII Permit, and also to pay the Measure W parcel tax, which are both intended to improve stormwater quality. For the same reasons, we believe that payment of the Measure W parcel tax should allow a permittee to comply with its requirements under the Draft CII Permit. In the alternative, a permittee should be allowed to offset costs under Compliance Option 1 in the amount of the Measure W parcel tax that it pays.	U.S. EPA's designation and the Los Angeles Water Board's tentative revised CII Permit are intended to comply with the U.S. District Court's order to permit CII facilities separately from the MS4 Permit. Los Angeles County's Safe Clean Water Program was adopted to comply with the MS4 permit. Therefore, payment of Measure W parcel tax cannot be used to demonstrate compliance with this separate NPDES Permit. For the same reasons, the tentative revised CII Permit cannot incorporate credits for the funds paid into the Safe Clean Water Program for compliance.

15.8	Permittees Require Additional Time to Select and Implement a Compliance Option Much of the regulated community will require additional time to adequately select and implement a compliance option. The two-year phase-in period is insufficient for permittees to undertake compliance option selection and implementation. The complexity of the compliance options, coupled with the transaction costs to negotiate with WMGs and the possible need for significant infrastructure changes, underscores the impracticality of the two-year enrollment period. The two watersheds cover a significant area of Los Angeles County that represents a substantial portion of regional economic activity. For many permittees, the process of determining which compliance option to select will involve consultants, engineers, architects, and other specialists for data gathering, design, testing, engineering, modeling, construction, etc. Further, evaluating if owners or operators have the "authority" and/or "operational control" will require significant diligence regarding leasing and operational structures. Accordingly, we once again suggest the following language changes to section 3.1.1 to the Draft CII Permit: 3.1.1. Discharges covered under this General Permit include stormwater and authorized NSWDs from unpermitted CII sites with ten (10) or more acres of impervious surface and permitted CII sites with ten (10) or more acres of total area in the Dominguez Channel/Greater Los Angeles and Long Beach Harbor Watershed and the Los Cerritos Channel/Alamitos Bay Watershed. All publicly owned facilities, including airports and seaports, and CII sites at hospitals, churches, schools, and institutes of higher education are not required to obtain coverage under this permit. Five (5) years from the effective date of this General Permit, upon the designation of the Executive Director, this General Permit may be extended to include stormwater and authorized NSWDs from unpermitted CII sites with five (5) or more acres of impervious surface and permitted CII sites with five (5) or more acres of total area in the Dominguez Channel/Greater Los Angeles and Long Beach Harbor Watershed and the Los Cerritos Channel/Alamitos Bay Watershed. CII sites at airports are excluded from coverage under this permit. If the Regional Board is unwilling to consider phased implementation (which we continue to believe it should), it should at a minimum, allow requesting permittees to obtain time schedule orders and publish a template time schedule order and application guide with the adoption of the CII Permit. As discussed above, significant time and resources will be required to evaluate technologies available, and costs associated with selecting and complying with compliance options. Accordingly, we respectfully request that the Regional Board publish a	See response to comment #12.19 regarding additional time. The suggested changes to section 3.1.1 cannot be applied because the applicability of the tentative revised CII Permit is based on EPA's modeling data supporting the residual designation and does not include a phased implementation. Similarly, the suggested changes cannot be made because USEPA's final designation applies to privately owned and unpermitted CII Sites with five (5) or more acres of impervious surface – not ten (10) or more impervious acres. (EPA 2024 Final Designation Memorandum: Alamitos Bay/Los Cerritos Channel Watershed and the Dominguez Channel and Los Angeles/Long Beach Inner Harbor Watershed in Los Angeles County.) Issuance of a TSO at this point in time would be premature. As an initial matter, the requirements at issue here do not go into effect immediately, but rather, 3 years after the adoption of the Order. Similarly, when the Board considers issuance of an individual TSO (or any permit specific TSO, including a general TSO to extend compliance deadlines under the whole NPDES Permit) for compliance with effluent limitations, the TSO must satisfy CWC section13385(j)(3) at the time of the issuance. Again, CII permittees will have three years to enroll in the permit after its adoption, reflecting the phase in period for Dischargers to select their Compliance Option. If, after the period of three years, any particular permittee or group of permittees need a TSO, the Los Angeles Water Board will consider the specific facts and determine whether a TSO is necessary at that time. However, Dischargers should remember that, while California Water Code sections 13300, 13308, and 13385 allow the development of terms for Time Schedule Orders, the Los Angeles Water Board is not required to adopt such orders.

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	template time schedule order ("TSO") and make available a TSO application guide clearly describing how permittees may obtain a TSO if reasonably requested.	
15.9	Without Amendment the Draft CII Permit Could Impose Severe Societal Costs and Unintended Economic Consequences Moreover, the Draft CII Permit could impose severe societal costs, as it would subject a wide range of organizations—including non-profits, religious institutions, universities, and hospitals—to the threat of frivolous lawsuits. This concern is underscored by the United States Department of Justice's observations, discussed in our previous comments, regarding the vague and unclear allegations in numerous NPDES citizen suits. The financial burden of defending against such lawsuits, which could run into hundreds of thousands of dollars, must be factored into the overall cost of compliance. The potential for the Draft CII Permit to drive divestment in the applicable watersheds, particularly those serving disadvantaged communities, cannot be overlooked. The risk of litigation could deter small business, essential services and economic drivers, such as trade through ports, from operating in these areas, exacerbating issues like economic disparities. To mitigate these risks, it is imperative that the Regional Board adopt a permit that includes compliance options that are feasible and economically sustainable.	U.S. EPA's residual designation requires the Board to issue an NPDES Permit to address water quality issues in the two watersheds. The tentative revised CII permit offers a clear path to compliance, with three Compliance Options for WQBELs, to give permittees more opportunities to achieve the terms of the tentative revised CII Permit. These Compliance Options are largely the same as all other point source dischargers of stormwater that are subject to NPDES Permits in the Los Angeles Region. Accordingly, the litigation risks in this permit are the same as all other NPDES Permits – if the Discharger fails to comply, the Discharger could be subject to administrative or judicial civil liability, citizen suits, and any other remedies afforded to citizens or the Los Angeles Water Board under the CWA and/or the California Water Code. Please see section 3.11.4 in the Fact Sheet of the tentative revised CII Permit for more information regarding economic considerations. This Permit will benefit the two affected watersheds as well as disadvantaged communities residing within these two watersheds by improving water quality.
15.10	BizFed Wants to Work with the Regional Board BizFed appreciates the efforts that the Regional Board is undertaking to protect water quality Southern California. We understand the steep challenges the Regional Board faces in balancing the interests of the regulated community with the purposes of the Draft CII Permit. We also appreciate the Regional Board's commitments to engage stakeholders through public comment, which we believe is key to crafting a final permit that is effective, feasible, and economical. That said, BizFed believes strongly the Regional Board should pause the process pending EPA's final action, and then reengage with the public prior to bring the Draft CII Permit to the Board.	The Los Angeles Water Board appreciates BizFed's cooperation and participation in permit development, including the facilitation of meetings with CII permittee representatives and Board staff after the close of the public comment period. The tentative CII permit has been revised in several ways based on BizFed's input. The tentative revised CII Permit will not be adopted until U.S. EPA issues the final residual designation.

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16.1	Section 3.1.2. Applicability While WSPA appreciates the Board's acceptance of an individual NPDES permit with more specific requirements and that covers the discharges under the Permit in lieu of requiring a CII Permit, we are concerned that the language has been revised to require the individual NPDES permit to be more stringent. It is unclear why an individual NPDES would be required to be more stringent than the requirements associated with the draft CII Permit. The individual NPDES permit should be at least as stringent as the draft CII Permit, but not be required in every case to be more stringent as the language provides. What is the rationale and authority for requiring the individual NPDES permit to be more stringent?	See response to comment #12.17.
16.2	Section 8.1.3. Compliance Option 1 WSPA respectfully suggests a correction needs to be made to the language in this section to ensure it applies to Compliance Option 1 rather than the error that cites to Compliance Option 3. 8.1.3. Dischargers selecting and in compliance with Compliance Option 3 Compliance Option 1 shall be deemed in Compliance with the water quality based effluent limitations established in section 7.2 of this Order.	The correction in section 8.1.3 has been made in the tentative revised CII Permit.
16.3	Additionally, it would be helpful for the Water Boards to provide guidance and examples of Local Watershed Agreements for Compliance Option 1 for the discharger community to review and evaluate.	See response to comments #1.8 and #2.4.
16.4	Section 10.1.2.5. Standard Provisions While no changes were incorporated in this section as part of the revisions to the draft CII Permit, WSPA respectfully requests the Board provide additional information and clarity as to what is intended. The language in this section is unclear and vague. While it seems to relate to the Climate Change Mitigation Plan requirements, which we are seeing on newly issued site specific NPDES permits, additional information and clarity on what is required would be helpful.	Section 10.1.2.5 does not require submittal of a climate change impact assessment plan or report; however, if the facility location is not protected against extreme wet weather events, flooding, storm surges, and projected sea level rise, the facility would be out of compliance with this provision. Refer to Fact Sheet section 3.15 for information on measures to mitigate and adapt to climate change.

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16.5	Attachment A – Acronyms & Definitions While we appreciate the Board providing clarity regarding what the draft CII Permit considers “impervious surface” and “imperviousness,” we have concerns with the new definitions on page A-10 that include “gravel roads.” This is particularly important for facilities that may have pipelines or rail lines coming to/from facility properties that are considered “contiguous” and that may have gravel surfaces upon which they rest. The language does not provide any consideration for the compaction of the gravel surfaces where it still allows for absorption or infiltration. Further, gravel increases storm water percolation by slowing water velocity and reduces erosion and sedimentation. As most water compliance specialists know, attached to these soil particles are various pollutants from industrial activity or airborne deposition. Various stormwater management handbooks including those prepared by organizations like the California Stormwater Quality Association (CASQA) include manuals, both construction and industrial as well as commercial guidance that considers gravel a best management practice (BMP). In this regard, it is unclear why the Board would consider this impervious for the purpose of regulation via the Permit much less what justification would warrant such a decision. In this regard, WSPA strongly urges the LA Regional Board to clarify that surface area for the purpose of pipelines and rail lines that are not asphalt or concrete-paved and allow for absorption or infiltration do not count towards nor are subject to a facility’s 5-acre threshold scope for draft CII Permit coverage. Similarly, areas that have pipelines, rail lines, and utilities that are considered “rights of way” or “easements” should not be in scope for draft CII Permit coverage and compliance obligations.	See responses to comment #5.27.

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16.6	Attachment E – Monitoring & Reporting Program Like the Industrial General Permit (IGP), the draft CII Permit requires sampling within four hours of discharge. It is unclear, however, how a discharger can or should determine the start of discharge from the non-industrial areas at a site. Unlike industrial outfalls covered by the IGP, non-industrial portions of a site (e.g. parking lots) do not have valves or singular discharge points. In this regard, there is a lack of clarity as to whether the non-industrial areas should be considered 24-hour operating facilities. We support the exceptions to sampling collection and visual observations in Section 2.2.5.1. regarding facility operating hours, but this is complicated by the multitude of outfalls in areas of a site like a parking lot and whether any activity would constitute a round-the-clock sampling and observation obligation. WSPA urges the Board to address this issue and clarify the process, timeline and obligations. Additionally, we urge the Board to provide flexibility for dischargers and the required sampling and monitoring at these sites that are more complicated. One such approach may include a regional monitoring approach rather than individual combined monitoring. This would be consistent with the overarching intent of Compliance Option 1 that is also focused on a regional approach to managing stormwater and non-stormwater discharges.	Section 9.3 of the tentative revised CII Permit requires the Discharger to develop a site-specific monitoring and reporting plan that includes sampling within four hours of the start of discharge or the start of facility operations if the qualifying storm even occurs within the previous 12-hour period. Sample collection is required during scheduled facility operating hours and when sampling conditions are safe in accordance with section 2.2.5.1 of the Attachment E - Monitoring and Reporting Program. As mentioned above, samples must be collected from each discharge location identified in its site-specific monitoring and reporting plan. Operating hours should be considered as time whenever employees are at the site. If there is activity occurring in the non-industrial areas such as parking lots during certain times, then those times should be considered operating hours, regardless of whether there is also activity in the industrial areas. Section 9.3 of the tentative revised CII Permit only applies to Compliance Option 3. The suggested regional monitoring approach would not be appropriate for Option 3, which is an individual direct demonstration of compliance with effluent limitations.
16.7	Finally, regarding the Species Sensitivity Screening described in Section 5.4, it is unclear if is required of all dischargers covered by the draft CII Permit. It would be helpful to ensure clarity for compliance purposes who is subject to this requirement.	Section 5 of Attachment E – Monitoring and Reporting Program requires chronic whole effluent toxicity testing for Dischargers choosing Compliance Option 3.

Comment Number	Comment	Response
17.1	Overall Concern Although the Permit is focused on the two designated watersheds, its impact will inevitably extend far beyond the watersheds it applies to under this Permit and could serve as a model for a statewide permit, or at least be precedent setting relative to its provisions. If the State is not aligned with the Board's requirements in this Permit then later efforts on a statewide permit will be out of sync from a statewide perspective. This permit can even lead to conflicts for those in the Los Angeles region relative to those impacted on a statewide basis. This could then lead to different permits on a regional basis. If the Board then elects to opt into the statewide permit program, industrial permittees would have then spent money on requirements which may no longer be in place, and any agreements under Compliance Option 1 would need to be re-negotiated. In this regard, CCEEB urges the Board to engage with and seek feedback from the State Water Board on the Permit provisions after the opportunity to review the comments submitted. The State Water Board should have a role in providing technical feedback to ensure consistency and continuity for this Permit, impacts on those already covered by the Industrial General Permit and individual NPDES permits, and any potential future CII Permit	The Los Angeles Water Board has engaged with State Water Resources Control Board staff throughout development of the tentative revised CII Permit. State Water Board staff provided comments on early drafts of the tentative permit, consulted on revisions to the tentative permit, and facilitated several meetings with various stakeholders, including CCEEB and Watershed Management Group representatives, after the close of the public comment period for the last version of the tentative permit.
17.2	Compliance Options In reviewing this section, it appears there may be an error in the text. In this regard, CCEEB respectfully suggests making the following correction to ensure the language applies to Compliance Option 1 rather than reference to Compliance Option 3. 8.1.3. Dischargers selecting and in compliance with Compliance Option 3 Compliance Option 1 shall be deemed in Compliance with the water quality based effluent limitations established in section 7.2 of this Order	Comment noted. The correction in section 8.1.3 has been made in the tentative revised CII Permit.

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17.3	Overall, CCEEB believes Compliance Option 1 will most likely be the option of choice by many regulated entities covered by the Permit and who may have multiple outfall compliance locations. This approach is, however, not clearly laid out and several financial, legal, and administrative issues remains. Some issues include: • Are the watershed management groups legal entities who can legally enter into contracts with CII Permit holders for payments? • What are the checks and balances to ensure that funding provided is spent properly? • How and when can a company entering into such an agreement see the estimated cost of joining as compared to pursuing Options 2 or 3 prior to declaring which option they elect to join? • Who is held responsible for noncompliance with the actions specified in the agreement? • What are the commitment mechanisms so that a company can control the costs they may be charged? • What are the estimate of volumes and locations of these projects so that it can be seen as a viable option? CCEEB urges the Board to provide further clarity and detail the process and elements associated with this Compliance Option and the Watershed Management Groups as a whole prior to adoption of this Permit. Alternatively, the Permit should specify that it is not to take effect until such agreements are established in guidance or regulation and a formal process in established for those subject to the Permit.	The Los Angeles Water Board has responded to each individual question posed by the commenter in order below: • During meetings with Watershed Management Groups since the close of the comment period and prior to release of the tentative revised CII Permit, it was confirmed that there are options for Watershed Management Groups to be the legal entity to enter contracts with CII permittees, including working through local councils of governments. • Section 9.1.2 of the permit requires the Discharger to submit an annual report that includes the project funded through the previous year, fees paid, and confirmation that the Discharger has complied with the requirements of their agreement with the Watershed Management Group, including the requirements in section 8.1 of this Order. • See response to comment #12.14. • The Discharger is responsible for complying with all agreed-upon terms in their agreement. See section 8.1.2 and subsections of the tentative revised CII Permit. • Dischargers are responsible for negotiating an agreement that they can fully comply with, including any payments due. • Please refer to the Board's Watershed Management Programs web page, where WMP funding sources, allocation of funds, and individual regional project administrative records are publicly available. This link is also provided in Attachment H. Please also see response to comments #2.4 and #2.7.

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17.4	As it relates to Compliance Option 2, CCEEB is concerned with the following characterization: “The Discharger may include BMPs that capture and divert the required stormwater runoff volumes to a publicly-owned sanitary sewer treatment facility, to an on-site facility for on-site use, to a regional reclaimed water distribution system, or a combination thereof. Proposed discharges to a publicly-owned sanitary sewer or reclaimed water distribution system shall be supported by a permit or by authorization in writing from the system’s agency that specifically allows the proposed stormwater flow rates” These options are limited at best for a few selected CII permittees. With the hydraulic loading that occurs during rain events at the various POTWS, it is highly unlikely they would be amenable or even capable of increasing the volume of influent going to their systems in wet weather flows. CCEEB and its members are also concerned that the “onsite” use option reference is also infeasible for most CII users due to both land availability onsite and the resources needed to manage such a system. Unanticipated consequences such as the creation of habitats that can increase the populations of mosquitos, invasive species, and other issues make this option infeasible for most. The third example such as connecting to a reclaimed water distribution system may be viable in the future, but there are currently limited opportunities at this point in time. In this regard, the Board should consider working with POTWs to develop a process to guide the acceptance of stormwater run-off prior to the Permit being implemented. This process should include a volume the POTWS are willing and able to accept and a smooth process to ensure CII Permit users understand the process, cost, and effluent limits they must meet.	Any individual agreement for a POTW to receive and treat stormwater runoff is between a Discharger and the POTW. The references to onsite use and diversion to a reclaimed water distribution system are provided to allow flexibility for Dischargers when managing their runoff. A Discharger who chooses Compliance Option 2 will have undertaken a site characterization and will be in the best position to select a stormwater management strategy that suits their facility.

17.5	Acronyms & Definitions While we appreciate the Board providing clarity regarding what the draft CII Permit considers "impervious surface" and "imperviousness," CCEEB and its members are highly concerned with the new definitions on page A-10 that include "gravel roads." This is particularly important for sites that may have utility, pipelines or rail lines coming to/from facility properties that are considered "contiguous" and that may have gravel surfaces upon which they rest. The language does not provide any consideration for the compaction of the gravel surfaces where it still allows for absorption or infiltration. Further, if this definition remains in place, it will have many unanticipated consequences. While some engineered gravel roads with clay bases may be considered impervious, not all gravel roads are impervious. Many roads are simple gravel placed on top of soil so as to provide some level of stability for the travelers, eliminate vegetation, and to work as a pathway in which way to travel. Not all roadways used for heavy traffic and a differentiation must be made. Additionally, there is a lack of definition when using the term "compacted soil." The lack of clarity as to what constitutes "compacted soil" is of concern as it could result in inconsistent interpretation by inspectors to determine what is compacted. Some may believe that any soil that is levelled such as dirt pathways could be considered compacted. The absence of clarity on this point may also result in unattended consequences, such as: Examples of Consequences • Inclusion of firebreaks as impervious surfaces. Fire codes dictated that areas around roadways, buildings and structures that are in or nearby fire zones are to have cleared setbacks to prevent damage during wildfires. Landowners are required to establish setbacks per Fire Marshall requirements. Under this definition, the use of fire preventive measures such as the placement of gravel or even cutting of vegetation back using mechanical equipment can be considered areas subject to calculation under the Permit. • Trails, firebreak roads, other seldom used pathways – There are numerous examples of areas where seldom used trails and roadways are either graveled to reduce erosion, dust, or to minimize maintenance. These would be found in more rural areas and may include local farms, nurseries, timber harvesting, emergency access roads, hiking trails and more. All of these would be potentially subject to coverage if this permit is used as a model under a statewide CII permit. • Gravel surfaces can also be considered a best management practice (BMP). A number of handbooks and manuals for stormwater management reference gravel	See response to comment #5.27.

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	surfaces as BMPs such that their use for capturing and minimizing pollutant loading would not be considered an option to assist with the various compliance obligations. In general, these definitions may bring sites and acreage into the Permit which would not normally be included, and unnecessarily expand the areas needing management including BMPs. This may also have significant impacts to more rural areas not only in the affected Permit region, but also if adopted on a statewide basis in the future. Failure to address these issues can also have implications for other permits including IGP and individual NPDES permits in the relevant region under the Permit, as well as precedent statewide. To this end, CCEEB urges the Board to clarify that surface area for the purpose of utility, pipelines and rail lines that are not asphalt or concrete-paved and allow for absorption or infiltration do not count towards nor are subject to a facility's 5-acre threshold scope for draft CII Permit coverage. Additionally, CCEEB urges the Board to remove "gravel roads" and "compacted soils" from the definitions.	

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17.6	Similarly, CCEEB urges the Board to consider the need for additional clarification as it pertains to easements. Easements are issued for a variety of reasons, and are different than leasing out a property by the owner to a tenant. One type of use for easements is granting access for power lines by utilities. These areas are kept free of vegetation and structure and may also be graveled or compacted. There are other cases where right of ways for private roads, access to trails, and more are done through easements between landowners and various groups which may include nonprofits. This relationship raises questions, as follows: • Would the owner of the land need to obtain the Permit even though they may not have control of the activity? • How would land use codes which are used to assess who may be subject to the Permit be based? By land owner designation or the use of the property? This can work both as a detriment both ways. For example, a piece of land designated under land use code as open space, but used for other activities under an access agreement may not be subject to the Permit, but a piece of property that has no activity on it but designated by a land use code subject to the Permit would be subject to it. Given this lack of clarity and the potential implications, CCEEB urges land in the affected watersheds covered by easements to be explicitly removed from the Permit scope and requirements. Only land owned and operation by the property owner or leased to another user be included. Land leased to a tenant should be the responsibility of the tenant to meet Permit conditions and requirements if they lease 5 acres or more, irrespective of if the parcel owned by the land owner is 5 acres or greater. Further, areas that have utility, pipelines, and rail lines that are considered “rights of way” or “easements” should also be explicitly exempted from scope for draft CII Permit coverage and compliance obligations.	The Discharger is either the owner or operator of the CII site, whoever has the authority and operational control to comply with all conditions of the CII Permit. Regarding easements, the responsibility for areas that are rights of way or easements in the County Assessor’s record will be based on the easement/right of way agreement. Regarding the question about land use code applicability, the tentative revised CII Permit remains consistent with U.S. EPA’s designation of the assessed land use codes as reported in the Los Angeles County Tax Assessor’s database.

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17.7	Monitoring & Reporting Program For many dischargers, the draft CII Permit's monitoring and sampling obligations will be challenging given in many cases the newly covered areas do not have single outfall spots. It also raises the question as to whether the non-industrial areas on a site should be considered 24-hour operating facilities. We support the exceptions to sampling collection and visual observations in Section 2.2.5.1. regarding facility operating hours, but this is complicated by the multitude of outfalls in areas of a site like a parking lot and whether any activity would constitute a round-the-clock sampling and observation obligation. CCEEB urges the Board to address this issue and clarify the process, timeline, and obligations. Additionally, we urge the Board to provide flexibility for required sampling and monitoring at these sites that are much more complicated. One such approach may include a regional monitoring approach rather than individual combined monitoring. This would be consistent with the overarching intent of Compliance Option 1 that is also focused on a regional approach to managing stormwater and non-stormwater discharges.	See response to comment #16.6.

18.1	Impacts to Regional Housing Needs California is suffering from a housing crisis concerning both supply and affordability. Senate Bill 330 was adopted in 2019 to help address these issues. The SB 330 legislative fact sheet states: California is experiencing an extreme housing crisis. Rent and purchase prices have skyrocketed, super commutes are normal, and increasing numbers of Californians, who can no longer afford the cost of housing, are living in their cars or on the streets. The fact sheet further goes on to state, “With just a few years as an exception, annual housing construction in the state has not kept pace with population and job growth since the 1970s.” The fact sheet focuses particularly on the development of multifamily housing, “the cost of building a single unit of housing in a multi-unit complex climbed from $265,000 in 2000 to $425,000 in 2016 – a 60 percent increase.” In the context of California’s housing crisis, measures that significantly impact the cost of delivering additional housing, particularly affordable housing, and constraining the land available for residential development will exacerbate the State’s housing issues. The Revised RD now incorporates a clear definition regarding which properties will be subject to the Revised Draft Permit.[4] : “For purposes of the designation of CII parcels, designated commercial, industrial, and institutional parcels are parcels with land use codes used by the Los Angeles County Assessor’s Office of 1000 through 2900, 3000 through 3920, and 6000 through 6910, 7000 through 7710 and 8100 through 8400. See Appendix 4 for additional information concerning land use codes.” Per the County of Los Angeles Real Property Handbook at page 6 and attached to the Revised RD: “Improved properties with both commercial and residential use are coded 1210 if each use is represented by a significant improvement value”. Thus, a commercial mall that is converted to mixed use remains subject to the CII or an existing mixed-use property greater than five acres would be subject to CII based on the current proposed scope of the Revised RD. The inclusion of new and existing mixed-use properties under the Revised Draft Permit appears to go well beyond the findings supporting either the Revised Draft Permit or the Revised RD and thus is arbitrary and capricious on its face. Moreover, the increased cost of implementing the permit for mixed use housing projects would have a draconian effect on the ability of jurisdictions to meet their housing obligations by driving up costs beyond what low- and middle-income families could ever afford.	See response to Comment #7.2.

18.2	Failure to provide feasible definitions for "Discharger." The Revised Draft Permit now defines the Discharger as follows: "The discharger is the owner or operator of the CII facility, whoever has the authority and operational control to comply with all conditions of this General Permit, including preparing and implementing the SWPPP and either (1) entering into a legally binding agreement with a local Watershed Management Group, (2) operating and maintaining stormwater controls to address the volume of runoff produced by an 85th percentile 24-hour storm event, or (3) implementing monitoring and reporting requirements and stormwater controls to directly demonstrate compliance with water quality based effluent limitations. The owner is the owner of the parcel subject to this General Permit. The operator is the lessee of the parcel subject to this General Permit." When a parcel is leased to multiple lessees, the owner of the parcel shall serve as the Discharger. Where multiple qualifying parcels owned by different entities are forming a common development, the owner and/or operator of each parcel that is subject to this General Permit must obtain separate permit coverage." While this new definition may appear clear on its face it is too vague and fails to recognize the realities of the complex land use relationships frequently found in larger commercial, institutional, and mixed-use projects. As an initial matter the definition provides "Where multiple qualifying parcels owned by different entities are forming a common development, the owner and/or operator of each parcel that is subject to this General Permit must obtain separate permit coverage." It is unclear how this definition would be applied to a typical shopping center in which one entity owns the common areas such as the parking lots and leases some of the buildings to tenants, while other commercial entities own a parcel within the greater project in fee. • Is the owner of a parcel within the footprint of the shopping center subject to the permit if the inholding parcel itself is less than five acres? • Each of the parcels within the greater shopping center have rights to use the parking facilities but are not part of a lease. How will these relationships be accounted for when determining who will be the responsible discharger?	Responses to each individual question posed by the commenter are provided in bulleted order. • An owner of a parcel with less than five acres of impervious area is not subject to the CII Permit. The applicability of the tentative revised CII Permit is based on each parcel. • The Discharger would be the owner or the operator of the parcel that has the parking facilities. • A parcel owner subject to the CII Permit can choose a compliance option that is most appropriate. • For early termination of Compliance Option 1, see section 8.1.4 of the tentative revised Permit. Terms of the agreement such as proration or forfeiture of fees paid to a Watershed Management Group for early termination should be addressed in the agreement between the parties. The definition of Discharger has been clarified and does not need to be revised any further.

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	• Can a parcel owner that holds its parcel inside the greater scheme of development choose a different compliance option from that chosen by the owner of the greater project fee? • If a lessee or inholding parcel owner chooses to comply via Option 1 and later files an NOT, who owns the Option 1 credits? Given the cost of compliance and the complexity of the relationships between property owners, the current definition is too vague to provide either regulators or potential discharges with sufficient guidance to determine their respective compliance obligations. Moreover, these complexities become even more opaque if the proposed definition is applied to a mixed-use project. To address these issues, commenters suggest that the definition of Discharger be limited to fee simple owners of commercial, industrial, and institutional sites as defined by the Draft Revised Permit that are greater than five acres.	

Comment Number	Comment	Response
18.3	NONA and NEC Commenters appreciate the clarifications provided in the Revised Draft Permit regarding the NONA. It is now our understanding that those portions of a CII facility that do not discharge storm water to a water of the United States as further defined in the Supreme Court's decision in Sacket v. EPA are not subject to CII requirements. Commenters request that both EPA and the RWQCB reconsider their conclusions regarding the applicability of the Non-Exposure Certification (NEC) for both environmental and legal reasons. Environmentally, it is our understanding that source control has always been deemed to be the most effective means of protecting water quality. As an example, legislation that minimizes the use of copper in brake pads has been demonstrated to significantly reduce the quantities of available copper in the environment that could enter storm water. A facility that obtains an NEC for industrial pollutants represents another source control strategy, reducing the available levels of the pollutants of concern in the environment. Commenters request NEC source control be incorporated in the permit not just for industrial pollutants but also for pollutants associated with commercial and institutional facilities. For example, facilities or portions of facilities where the commercial or institutional activities occur under roof such as indoor shopping centers or covered parking lots should be considered as NEC candidates. From a legal perspective we were unable to find any findings of fact associated with either the Revised Draft Permit or the Revised DA that would support the conclusion that facilities or portions of facilities that do not expose storm water to pollutants of concern should be regulated under the CII Permit. Thus, without more, the prohibition on the use of the NEC exemption for industrial, commercial, or institutional facilities both conflicts with an already promulgated permit and would be both arbitrary and capricious on its face.	Facilities that have submitted a no exposure certification (NEC) or notice of non-applicability (NONA) under the IGP must still obtain coverage under the CII Permit. Although parking lots may be covered or activities may occur under a rooftop, the runoff from impervious surfaces of the site (such as rooftops or storm-resistant shelters) still contribute to pollution in the impaired water bodies and an NEC or NONA is not an option under the CII Permit. See section 2.2 of Attachment F- Fact Sheet for more information regarding U.S. EPA's Residual Designation of CII facilities, and section 2.3 regarding the nature of residual designation discharges as a source of pollutants to receiving waters. Any comments on the substance of U.S. EPA's designation memo are outside the scope of the action before the Los Angeles Water Board.

Comment Number	Comment	Response
18.4	Exemption for Non-Aviation Activities at Airports Commenters appreciate the clarification regarding the status of private industrial, commercial, and institutional facilities that operate on publicly owned leased land. We now understand that other than at airports, parcels, designated commercial, industrial, and institutional parcels are parcels with land use codes used by the Los Angeles County Assessor's Office ("Assessor's Office Code" or "AOC") of 1000 through 2900, 3000 through 3920, and 6000 through 6910, 7000 through 7710 and 8100 through 8400. Thus, a distribution center greater than an acre (AOC 3330) with more than five acres of impervious area located on an airport would be exempt from regulation while the same facility located anywhere else within the watershed would be subject to the Draft CII Permit. The RDA provides no basis for this distinction other than the fact that overall zinc loading from airports is less than the overall loading from seaports. This analysis is flawed because it fails to consider the relative footprint involved at these different facilities. Moreover, it creates an unlevel playing field by which lessees at FAA Grant Assurance Airports are allowed to continue contributing zinc to the watershed while lessees at seaports are not.	This comment is on the substance of U.S. EPA's designation memo and is outside the scope of the action before the Los Angeles Water Board.

18.5	Facilities to be Covered. While it may be possible to imply the scope of industrial facilities that the Board and EPA seek to cover under the Revised Draft Permit, the revised document still fails to adequately disclose the scope of "commercial" or "institutional" facilities. In its July 15, 2022, Preliminary Designation Memo ("Memo"), EPA estimates that 640 parcels would be included in its preliminary designation. However, neither the Memo nor the Draft Permit explain the linkage between the estimates in the Memo and what AOC's EPA now seeks to include. For example: • AOC 1210 -- A commercial-residential combination if both uses are represented by a significant improvement value. The improvements may consist of several buildings. • AOC 6500 Auditoriums, stadiums, and amphitheaters • AOC 6600 Golf courses • AOC 7000 - A children's day care center. • AOC 7100 - All church uses. This includes rectories, convents, and Sunday schools. • AOC 7200 - Private and parochial schools. • AOC 7300 - Colleges and universities (private). • AOC 7400 - Hospitals. • AOC 7410 - A convalescent hospital, nursing home, or related institution, which provides essentially medical or recuperative services. • AOC 7500 - Homes for the aged and others. Includes most institutions which provide essentially residential services, such as orphanages, rest homes, or retirement homes. • AOC 7600 - Senior day care centers: Adult care facility - social and recreational services. • AOC 7610 - Senior day care centers: Adult day services - skilled care services offered. • AOC 7700 Cemeteries, mausoleums, mortuaries, and funeral homes • AOC 8100 Utilities	This comment is on the substance of U.S. EPA's designation memo and is outside the scope of the action before the Los Angeles Water Board.

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	• AOC 8300 Petroleum and Gas facilities • AOC 8400 Pipelines It is essential that the Draft RD and Draft Revise Permit explain how the total acreage to be regulated has been calculated so the potential dischargers and the public can assess the economic impacts of these proposed rules on the communities at large. How will these additional costs be absorbed by residents of low-income communities for the everyday necessities of life including health care, education, recreation, utilities, religious observation and even burying their dead?	
18.6	Moreover, Draft RD needs to explain how the CII categories were determined. For example, “private and parochial schools were determined to contain significant amounts of impervious areas, such as parking lots and rooftops, which are exposed to a variety of pollutants. Because impervious surfaces allow for little, or no infiltration pollutants can build up and run off CII facilities during rain events and because of NSWDs.” However, the same conclusion can be drawn for public and charter schools. Public and charter schools are not regulated under either the Large or Small MS4 permits issued by the State Water Resources Control Board. The Draft RD needs to provide sufficient findings of fact to support the imposition of the Revised Draft CII on one class of learning institutions versus another. Otherwise, such discrimination must be considered arbitrary, capricious, and possibly in violation of the First Amendment to the US Constitution.	This comment is on the substance of U.S. EPA's designation memo and is outside the scope of the action before the Los Angeles Water Board.

Comment Number	Comment	Response
18.7	Compliance Options The Draft Permit allows for three compliance options. These are: • Compliance Option 1 – Agreement with Local Watershed Management Group to Fund Regional Project • Compliance Option 2 - Facility-Specific Design Standard to Reduce Stormwater Runoff • Compliance Option 3 - Direct Demonstration of Compliance with Water Quality Based Effluent Limitations Based on additional research and discussions with Local Water Shed Management Group consultants, Commenters have been able to further refine the cost implications for mixed use housing projects choosing this option. The best estimates for the construction costs of Regional Projects described in Option 1 range from $1,200,000 to $1,800,000 per acre foot of capacity. The best per acre estimates of the volume of runoff for an 85th percentile storm event in these watersheds is approximately 0.0625- acre feet. Thus, the capital costs associated with Option 1 are in the range of $100,000 per acre in addition to the annual Operating and Maintenance (O&M) costs which Commenters estimate to be in the range of 20% of the construction costs or $20,000 per impervious acre serviced into perpetuity. Thus, the cost of compliance appears to range from a low-end estimate for Compliance Option 1 of $100,000 per impervious acre plus annual O&M costs to a high-end estimate for Option 3 of $250,000 per impervious acre plus annual O&M costs. Commenters are hopeful that these costs can be further refined and justified through the permit development process by the Regional Water Quality Control Board Staff, particularly as they impact low- and middle-income housing.	The tentative revised CII Permit does not apply to residential facilities of any type. The permit has been revised to provide this clarification. See response to comment #7.2. The Los Angeles Regional Water Board appreciates the research and approach to determining costs of compliance. Please refer to section 3.11.4.1 Costs of Compliance in Attachment F – Fact Sheet of the tentative revised CII Permit, which states that costs will vary based on the facility. Additionally, an economic analysis memo has been posted on the CII Permit web page to help Permittees navigate their choice of compliance option.

18.8	Compliance Option 1 The Revised Draft Permit now provides the following description of Option 1 at section 8.1: Dischargers shall enter into a legally binding agreement with the local Watershed Management Group to fund, or partially fund, a downstream regional project that is included in the group's Watershed Management Program, which has been developed to implement requirements of the Regional MS4 Permit and approved by the Los Angeles Water Board. A Discharger may only participate in Compliance Option 1 if the CII facility is included in the area modeled by the reasonable assurance analysis supporting the group's Watershed Management Program. If there is no existing or planned downstream regional project in the Watershed Management Program, the Watershed Management Group shall identify an upstream project. The determination of availability of a downstream regional project shall not consider the cost. Specific details related to the funded project shall be documented in the agreement as specified in this section and submitted as described in section 9.1 of this Order. At a minimum, the regional project shall be adequately sized to address the NSWD and stormwater volume that would otherwise need to be addressed onsite under Compliance Options 2 or 3. The funding level or regional project participation fee structure for participation under Compliance Option 1 may be determined on a project basis or larger scale (e.g., watershed or subwatershed basis) consistent with the estimated pollution reduction from regional projects in the Watershed Management Programs. The funding level must be proportional to the sum of NSWD volume and onsite stormwater volume relative to the total regional project, watershed, or subwatershed stormwater capacity, modified by pollutant level potential based on activity type, and can be expressed as the following formula: $$Funding\ Level \propto \frac{Volume_{NSWD} + Volume_{SWD}}{Volume_{Total\ stormwater\ capacity}} \text{ x Pollutant level factor}$$ Where: Volume NSWD = Authorized non-stormwater discharge volume Volume SWD = Onsite stormwater runoff volume produced up to and during an 85th percentile 24-hour storm event. Since the volume of runoff is proportional to imperviousness, imperviousness, or another equivalent metric, which is easily determined, may be used in lieu of volume. Unfortunately, this provision and those that follow it still fail to provide adequate information for the prospective permittees to determine the cost or feasibility of compliance under this option.	See response to comment #18.7 regarding the comment on cost of compliance. See response to comment #4.4 and 5.8 regarding the pollutant level factor. During meetings with Watershed Management Groups since the close of the comment period and prior to release of the tentative revised CII Permit, it was confirmed that there are options for Watershed Management Groups to be the legal entity to enter contracts with CII permittees, including working through local councils of governments. Also, during these meetings, any uncertainty about the availability of projects in the two watersheds was resolved. There are plenty of projects with sufficient capacity to treat the volume or load from CII facilities in the two watersheds.

Comment Number	Comment	Response
	As an initial matter, the Revised Draft Permit fails to define the term “Pollutant Level Factor. Moreover, it is still unclear whether the Watershed Management Groups have the legal authority to enter into binding agreements or will have sufficient project capacity to satisfy the demand.	
18.9	As stated in previous comments, it appears that many of the Watershed Management Groups are more of the nature of ad hoc committees that identify and make recommendations on possible watershed projects than legally constituted entities with the power to enter into binding agreements. Once again, commenters recommend that the RWQCB review the legal authority of the Watershed Management Groups to confirm their ability to execute contracts or, in the alternative, expand the scope of entities with which a discharger could contract to include all public agencies including, but not limited to, cities, the County, or Joint Powers Authorities	Watershed Management Groups have the legal authority to enter into binding agreements with CII Dischargers or they can work through local councils of governments. They are more than ad hoc committees.
18.10	Finally, Option 1 described in the Revised Draft Permit still fails to define any of the terms or conditions to be included in the “legally binding agreement” between the discharger and the Watershed Management Group. This omission can only lead to confusion and, or contracts of adhesion. The California Legislature recognized this problem when they included the following language in AB-2106. The state board shall contemporaneously develop a model memorandum of understanding to issue with the publication of the draft statewide order for public comments that details the necessary components of an agreement between commercial, industrial, and institutional permittees and local municipalities for achieving offsite stormwater capture and use within the adopted final statewide commercial, industrial, and institutional NPDES order. Commenters again suggest that the Draft Permit follow the guidance provided by the state legislature and include a model memorandum of understanding that details the necessary components of any agreement between a discharger and a Watershed Management Group. The model memorandum should provide the total cost of a fully designed project and the total acreage of the project to establish a cost per acre value. The funding level should be based on the acreage contribution by the regulated facility multiplied by the cost per acre of the regional project. This formula makes it fair and equitable for all parties and makes the funding burden consistent across all agreements.	See response to comment #2.4.

Comment Number	Comment	Response
18.11	Compliance Option 2 Under this option, dischargers can comply with the Draft Permit if they "design, implement, and properly operate and maintain stormwater controls (structural and/or non- structural BMPs) with the effective capacity to capture and use, infiltrate, and/or evapotranspiration all NSWDs and the volume of runoff produced up to and during an 85th percentile 24-hour storm event." However, the obligations placed on the Discharger in Section 2 Additional Requirements require the discharger to prove a negative when proposing infiltration. That is that the infiltrated stormwater and NSWD will never cause or contribute to the exceedance of a water quality objective or impair a beneficial use. Thus, for most dischargers, Option 2 is only viable where discharge to the sanitary sewer is both technically and economically feasible. While commenters support this option, we are concerned that it will have limited applicability unless dischargers are allowed to enter into binding agreements with sanitary sewer districts to accept the discharge at a cost that fairly reflects the cost to treat and recycle the water like Option 1 or, alternatively to delete Section 2 Additional Requirements. Without these changes, Option 2 will be infeasible for mixed use housing.	The additional requirements listed under section 2 of Attachment I are to prevent any factors that may degrade receiving waters. These requirements are placed to ensure that the BMPs implemented under Compliance Option 2 will address the water quality of the stormwater runoff generated and to protect the water quality of receiving waters and groundwater resources. Therefore, section 2 of Attachment I will remain in the tentative revised CII Permit. Please note that the CII Permit does not apply to mixed use housing or housing of any kind; please see response to comment #7.2.

Comment Number	Comment	Response
18.12	Compliance Option 3 Option 3 requires Dischargers to capture and treat storm water to exceedingly stringent contaminant levels prior to discharge. Best estimates of the capital costs to design, permit, and build stormwater conveyance and treatment systems that can achieve the required contaminant levels range between $100,000 and $250,000 per impervious acre serviced. Based on a conservative estimate of 32,000 acres as described in our prior comments, regional capital cost of this alternative would be in the range of $320,000,000 and $800,000,000. Commenters base these cost estimates on treatment systems that have been installed at industrial facilities to achieve the Numeric Effluent Limits set forth in the Industrial General Permit in Region 4. Moreover, based on experience in the industrial sector, Commenters anticipate that operations and maintenance costs of such systems will range between $10,000 and $25,000 per year per impervious acre serviced or a regional cost of between $32,000,000 and $80,000,000 per year. These costs do not account for the Measure W Property Tax that started in 2019 (or 2020). A typical 18–20-acre commercial property (Costco, Target, Home Depot, etc.) is already paying on average an additional $17-$20K per year in property tax per store for these same watershed objectives. It is not clear how smaller minority owned businesses, private schools, churches, monasteries, and hospitals will be able to absorb these costs in lower income communities. Commenters suggest that these costs and their impacts on environmental justice be carefully analyzed prior to the adoption of this permit.	Please see response to comment #18.7 regarding cost of compliance. The tentative revised CII Permit has analyzed the impacts of compliance costs in these specific watersheds, which include lower income communities. Notably, the Los Angeles Water Board has also considered the impact of water quality pollution in these communities. As explained in the workshop during the development of this permit, the Los Cerritos Channel and Dominguez Channel/Harbors watersheds include highly impacted, underserved communities faced with disproportionate amounts of pollution. The tentative revised CII Permit will address one source of pollution by reducing the discharge of polluted runoff from CII facilities to receiving waters located within these communities. In addition, the types of implementation projects can yield multiple benefits, such as greener communities, improved water resilience, reduced flooding, and a lower heat island effect.

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19.1	Iterative Process and Reasonable Compliance Option Terms Needed: To be economically practicable and achievable, the compliance options must be feasible to implement and include an iterative process to allow for corrective action and measurement of progress, especially considering “that many (but not all) of the Dischargers subject to (the CII) have not been regulated by the Los Angeles Water Board’s, or the State Water Resource Control Board’s (State Water Board) industrial stormwater programs before.” The requirements of compliance options 2 and 3 are not reasonable to implement for a new group of Dischargers (for example historic contamination at a Site, through no fault of the Discharger, may make Option 2 not feasible), the EPA and State Water Board are, by default, requiring Discharges to select Option 1, which they do not have the authority to do. The Compliance Options in the IGP are provided as a good example; however, to date, no significant use of the IGP Compliance Options has occurred, showing that the options must be feasible to be real choices. In addition, the law does not require immediate restoration of impaired water bodies nor does it require an immediate prohibition of discharges that contribute to an exceedance in the waterbody. Rather, federal regulations at 40 CFR section 122.47 allow NPDES permits to have compliance schedules. As such, an iterative process with a compliance schedule of NALs and ERAs should be implemented along the lines of the IGP. This schedule will give more time for Dischargers to implement minimum BMPs and select compliance options going forward that are feasible for implementation.	The Los Angeles Water Board recognizes that the commenter is referring to the established IGP procedure of establishing numeric action levels, the exceedance of which will trigger the escalation of facility oversight and required BMPs. The approach to regulating stormwater pollution has evolved over time, and the CII Permit constitutes a different approach from the IGP. Instead of the iterative methodology used in the IGP, the tentative revised CII Permit is focused on immediate application of numeric effluent limitations with flexible but easily trackable and enforceable compliance options. The compliance options in the CII Permit are designed to directly require CII sites to attain water quality standards regardless of their history of compliance or noncompliance with numeric action levels. This approach directly implements U.S. EPA's designation of CII facilities in the two watersheds, which is based on comprehensive evidence that receiving waters remain impaired after multiple iterations of the IGP and MS4 Permit. Regarding allowance of compliance schedules, the tentative revised CII Permit allows Dischargers applying for coverage one year to submit an NOI and SWPPP and three years after its adoption, reflecting the phase-in period for Dischargers to select their Compliance Option.

Comment Number	Comment	Response
19.2	Basis of residual designation: Appeal should be made to the conclusion that EPA acted arbitrarily and capriciously in leaving the CII stormwater discharges unregulated, because MS4 permits already include stormwater discharge requirements as part of their ministerial permits and therefore privately-owned CII sites are already subject to the NPDES permitting process through their MS4.	Please note that comments related to U.S. EPA's residual designation authority are outside the scope of the action before the Los Angeles Water Board. The applicability of the tentative revised CII Permit is based upon U.S.EPA's preliminary designation. Prospective CII Permittees have been explicitly identified in U.S. EPA's preliminary designation memo as significant contributors to pollutant loading in the receiving waters. U.S. EPA's preliminary designation defines the applicable threshold of either imperviousness or total acreage of the parcel for facilities subject to regulation under the tentative revised CII Permit, regardless of their being subject to another permit.
19.3	Concern over lack of clarity regarding review of stormwater data over time to assess progress in watersheds: What is the source of the loading factors used in the Paradigm study and what adjustments were made for the data over time considering the ERA and TMDL requirements implemented over time for IGP sites? For example, the basis of much of the lawsuit against EPA was based on studies from before the 2015 IGP, so the data are out of date and need update prior to implementation of the CII.	The Paradigm Environmental memo from U.S. EPA's modeling analysis package (https://www.epa.gov/npdespermits/residualdesignationauthority addressstormwaterqualityproblemsepaspacific) is dated February 2021, and states: > To quantify loading from CII areas, land use codes from the Los Angeles County Tax Assessor's Parcel dataset were used to designate parcels with CII land uses. The Los Angeles County Tax Assessor's Parcel dataset (https://egislacounty.hub.arcgis.com/) is updated quarterly, and therefore reflects the most recently available data.
19.4	Text edits: Remove the strike through text below from the definition of Impervious Surface. Any surface in the urban landscape that cannot effectively absorb or infiltrate rainfall; for example, driveways, sidewalks, rooftops, roads ~~(including gravel roads), compacted soils~~, and parking lots.	See Response to Comment #5.27.

Comment Number	Comment	Response
19.5	Requirements edits: Remove the requirement to submit visual observations to SMARTS. In alignment with IGP, require a checklist be completed regarding these observations.	The visual observations requirement will not be removed from the tentative revised CII Permit. The discharger must photograph and record the date and time the visual observation was observed.
20.1	Concern for Housing Development and Affordability when Commercial Property in Code 1210 is transitioned to Multi-Family and Mixed-use Retail/Housing. We are concerned that existing commercial properties in Parcel Code 1210 which are converted into multi-family housing or mixed use retail/multi-family housing will be subject to the CII Permit. Inclusion of these types of properties will lead to substantially greater housing costs by driving up home prices (because of expensive, on-site pollutant removal and treatment systems required), and is at least duplicative of already adopted and existing MS4 permit requirements for controlling stormwater runoff. Notably, we support the comments of IEA/BIASD on page 4 of 11 of their comment letter.	See response to comment #7.2. Regarding the differences between tentative revised CII Permit and Regional MS4 Permit requirements, see response to comment #5.2.
20.2	Compliance Option 1 - Regional Approach Infeasibility. As IEA/BIASD and CASQA point out, Option 1 is an unviable option for ANY project within the subject permit area, and needs significant program development and modification, and importantly time, to address the myriad of complexities in enacting a regional program, to ever be a realistic option. Because of this, and the huge costs which Options 2 and 3 will impose for compliance, we urge you to delay permit release, until the significant problems with Option 1 are addressed and a financial and administrative analysis performed which presents available and realistic options for compliance.	See responses to comments #2.4-#2.10.
20.3	CII Permit Conditions Setting State-wide Precedent. Unless the Regional Board addresses the incompletely developed Option 1 for compliance, we are concerned CII Permit conditions could become state wide precedent for future statewide legislation concerning similarly situated properties in urban areas. This would be a major setback to property and land development, as well as to the use of Regional Programs for NPDES permit compliance. IEA and BIASD share this concern in their comment letter.	See response to comment #17.1.
21.1	The Draft CII Permit's three Compliance Options still contain significant flaws, including arbitrary and unknown costs, technical challenges, and uncertainties that are, in many instances, beyond the control of the permittee. As such, The LARWQCB must delay adoption to allow additional coordination and time with potential permittees, stakeholders and the Local Watershed Management Groups to ensure the CII Permit is feasible and effective.	Comment summary noted. See individual responses below.

Comment Number	Comment	Response
21.2	Premature Actions and Insufficient Time for Review and Commentary The Draft CII Permit was released on November 15, 2023 and allowed only a twenty-seven working day comment period, including two federal holiday periods (Veteran's Day and the Thanksgiving holiday). This is simply not sufficient time for potentially regulated stakeholders to adequately assess and provide LARWQCB with the most comprehensive comments. Further, Board staff have not accomplished sufficient stakeholder outreach, as evidenced by the extremely modest number of comments submitted at just 31. The great majority of impacted stakeholders are simply not aware, and thus not engaged to provide comment, in such a costly and burdensome stormwater permit. The LARWQCB must continue stakeholder outreach prior to bringing the Draft CII Permit to the Board for consideration, inappropriately scheduled for February 2024. Further, the 31 letters submitted provide insight on the technical and legal challenges, infeasibility and high costs of the Draft CII Permit and the LARWQCB Response to Comments document is deeply concerning due to the minimal thought and effort that was expended to provide the potential permittee's comments the consideration they are due.	The tentative revised CII Permit was re-noticed on November 15, 2023, and newly received comments are addressed herein. Since then, additional outreach was performed to supplement original outreach efforts. A record of outreach performed to date is provided in sections 3 and 5 of the Fact Sheet. See the CII Program webpage for records of public notices and other avenues of public engagement, including workshops and meetings between Board staff and stakeholders. Staff considered stakeholder comments from the Response to Comments dated November 2, 2023, and incorporated many of their suggestions into the tentative revised CII Permit. The Los Angeles Water Board is committed to continuing collaboration with stakeholders.

Comment Number	Comment	Response
21.3	EPA Must First Adequately Promulgate the Residual Designation Prior to CII Permit Proposal or Adoption It is also noteworthy that the coordinated public Notice of the Environmental Protection Agency's (EPA's) Preliminary Designation Notice (Notice) and the Board's Draft CII Permit is burdensome on potential permittees to review and provide technical and comprehensive comments on 169-pages of Board content and 39-pages of EPA content concurrently. It is confounding that the EPA provided an extension to their comment period at the request of stakeholders, whilst Board staff refused for a much longer and technical Permit documentation. In the RTC, the Board claims the parallel process provides more complete information to the potentially regulated community, but this is false as the permit adheres to the permitting framework and applicability EPA adopts and the Draft CII Permit has done nothing but cause confusion and raise concerns on the lack of information, as discussed therein. In fact, this schedule hinders the LARWQCB permitting efforts due to incomplete information and lack of final EPA designation. If this decision is truly intended to maintain the February hearing date, this is not just reasoning as neither EPA nor the Court Order dictates when the CII Permit must be adopted. It is premature to close comment and move forward with the Draft CII Permit prior to EPA finalizing its Residual Designation; in fact, the Regional Water Board is inappropriately creating a de facto deadline for the Federal government by scheduling a Board hearing date.	The February 2024 Board meeting was postponed to allow for additional stakeholder outreach. Staff have maintained open and active discourse with stakeholders during both public comment periods in conjunction with targeted workshops and meetings upon request. The tentative revised CII Permit will not be adopted until U.S. EPA issues the final residual designation.

21.4	Arbitrary and Capricious Designation of Applicability for Publicly Owned Seaports The Preliminary Designation erroneously includes the publicly owned Ports of Long Beach (POLB) and Los Angeles (POLA); the whole of each of which are municipally owned properties which are held in trust for the people of the State of California as beneficiaries. It is irrelevant that the marine terminals are privately operated. The inclusion of the ports' public property is erroneous as it is arbitrary and capricious to single out these public properties for inclusion (to the exclusion of all other publicly owned property), and to do so in contradiction to the original petitioned-for action and subsequent court decisions which resulted in the Preliminary Designation proposal. The underlying petition which serves as the basis of the initial Preliminary Designation, and thus the Draft CII Permit, does not name seaports. In fact, while the GIS "analysis does not distinguish between publicly and privately owned sites; [the] petition only seeks designation of the latter." (Emphasis added). Natural Resources Defense Council, American Rivers, and Los Angeles Waterkeeper, Petitions for a Determination That Stormwater Discharges from Commercial, Industrial and Institutional Sites Contribute to Water Quality Standards Violations in the Alamitos Bay/Los Cerritos Channel Watershed, Dominguez Channel and the Los Angeles/Long Beach Inner Harbor (Los Angeles County, California) and Require Clean Water Act Permits, September 17, 2015. A 2018 US District Court's Order on Summary Judgement, following a 2016 decision by EPA Region 9 to decline the 2015 NRDC petition, directed the EPA to only "engage in the NPDES permitting process for stormwater discharges from the CII sources in Plaintiffs' petitions that EPA has determined contribute to a violation of water quality standards." Los Angeles Waterkeeper v. Pruitt, 320 F. Supp.3d 1115 (C.D. CA 2018). In fact, the initial Preliminary Designation stated "…since the Petitions were only for privately owned CII facilities, Region 9 subtracted the loadings … to get an estimate of the loading from the privately owned [only] CII parcels that were the subject of the Petitions." Page 10, Footnote 28. Confoundingly, the Draft CII Permit is not applicable to publicly owned and privately operated airports. The RTC states that Fact Sheet section 1.4, Permit Scope, clarifies the basis of the airports' exclusion, which does nothing but compare the control of impervious surfaces. Applicability based on control of or amount of comparative runoff is nonsensical and has no legal standing. No other CII sites eligibility are determined by the amount of control or discharge. Further, "control" is irrational as it can be reasoned that the property owner, and not a lease holder, holds control of its property. It is noteworthy that EPA explicitly stated in its	U.S. EPA's final designation does not include CII sites at the Ports of Los Angeles and Long Beach. Accordingly, the tentative revised CII Permit doesn't apply to these sites either.

Comment Number	Comment	Response
	Notice that it is accepting comments on inclusions of airports, a further example of the LARWQCB acting prematurely.	
21.5	Watershed Terminology Erroneously Applied While the LARWQCB references two watershed programs, the Draft CII Permit lacks a definition of a watershed. While not defined in state law, a traditional concept of, and that utilized by the State Water Resources Control Board, watershed is a land mass that drains into a stream. As such, the San Pedro Bay Ports (SPBP) are beyond the boundary of the two watersheds the Draft CII Permit is intending to regulate. The SPBP are constructed of fill connected to the main land mass via Federally controlled bridges and Federal, State and/or Country controlled roadways. The SPBP are situated in a harbor in the Pacific Ocean, clearly beyond the reach of a watershed or ability to convey water to any river. Much of the main mass of the SPBP, called Terminal Island, even fits within the definition of an island by being detached and surrounded by water on all sides. Further, the watershed terminology and areas included in Draft CII Permit is not consistent with EPA's Preliminary Designation Memorandum (PD Memo). The Notice indicates that EPA seeks to exercise its Residual Designation Authority (RDA) pursuant to the Clean Water Act and 40 CFR § 122.26(a)(9)(i)(D) to designate discharges from CII sites in the Alamitos Bay/Los Cerritos Channel Watershed and the Dominquez Channel and Los Angeles/Long Beach Inner Harbor Watershed (emphasis added). The revised Draft CII Permit has been amended to erroneously expand the proposed Federal Action to include Dominguez Channel/Inner and Outer Los Angeles and Long Beach Harbor Watershed (emphasis added). Several of LARWQCBs Responses to Comments (RTC) erroneously state this as well. To be clear, EPA does not authorize LARWQCB to regulate discharges from both the Outer Harbor and Inner Harbor. Any inconsistencies from the applicability of EPA's Final Designation is a willful misinterpretation and gross overextension of power by the Board. The EPA actively excluded the Outer Harbor waterbody just as the 2018 District Court Order in response to Los Angeles Waterkeeper v. Pruitt and two 2015 petitions excluded them. Further, there has never been a limit for metals applied to these areas as they do not have metals on the CWA § 303(d) list. Any attempt to include these areas is in direct opposition to the initial EPA petitions, District Court Order and the CWA.	U.S. EPA's final designation does not include CII sites at the Ports of Los Angeles and Long Beach. Accordingly, the tentative revised CII Permit doesn't apply to these sites either.

Comment Number	Comment	Response
21.6	Lack of Data to Support Stormwater Discharge Permitting for the Harbors Regardless of terminology, there is no scientific basis to include CII facilities that discharge to the Inner Harbor nor Outer Harbor waters, as these waterbodies are not in violation of water quality standards. POLB and POLA are geographically separated into the Inner Harbor and Outer Harbor waters and further into six different waterbodies, including Inner Cabrillo Beach, Fish Harbor, Consolidated Slip, Inner Harbor and Outer Harbor. Notably, the Outer Harbor waterbody has no 303(d) listing for metals, meets all California Toxics Rule criteria and has been demonstrated to obtain beneficial uses. Further, most waterbodies within the Greater Los Angeles and Long Beach Harbor are in attainment of Total Maximum Daily Loads (TMDL) limits.	See response to comment #5.5.
21.7	Facility Size Applicability Inconsistent with Technical Modeling The LARWQCB are inconsistently applying modeling results that established the apparent need for the CII Permit by forcing applicability to facilities much smaller than five acres. The Draft CII Permit requires any portion of an existing IGP facility that is five acres or larger, or a facility with any area not covered by a notice of non-applicability (NONA), or any area covered by a no exposure certification (NEC) must obtain coverage under the Draft CII Permit, which is inappropriate. For example, as written, the Draft CII Permit would require a 1,000 square foot labor or employee parking area outside the coverage area of the IGP or a NONA to obtain separate coverage under the permit. It is inconsistent with modeling performed by EPA that established the five-acre threshold and would entail significant costs to regulate insignificant areas with little if any benefit to water quality.	The language in section 3.1 of the tentative revised CII Permit is consistent with U.S. EPA's designation. Please note that U.S. EPA has revised its designation and is not including CII sites at the Ports of Los Angeles and Long Beach. Accordingly, the tentative revised CII Permit doesn't apply to these sites either.

Comment Number	Comment	Response
21.8	Compliance Options Lack Clarity, Sufficient Analyses and are Infeasible Each of the three options contained deep flaws, including arbitrary costs, technical challenges, and uncertainties in the compliance options that are in many instances beyond the control of the permittee. The Draft CII Permit proposes three flawed Compliance Options with numerous significant technical concerns and uncertainties. These “options” are unfeasible for marine terminals, or, in the very least, do not provide adequate technical and cost data to even evaluate feasibility at this time. However, it is likely that Compliance Option 2, Facility-Specific Design Standard to Reduce Stormwater Runoff Requirements, and Compliance Option 3, Direct Demonstration of Compliance with Water Quality Based Effluent Limitations, will prove to be impracticable and cost prohibitive for ports and marine terminals. As such, PMSA is focusing comments on Compliance Option 1 and supports POLB’s and POLA’s comments and references the many concerns and technical impracticalities Compliance Options 1 and 2 present.	Section 3.12.4 of the Fact Sheet has been expanded with further analysis regarding BMP performance to help Permittees navigate their choice of compliance option. Please note that U.S. EPA has revised its designation and is not including CII sites at the Ports of Los Angeles and Long Beach. Accordingly, the tentative revised CII Permit doesn’t apply to these sites either.

Comment Number	Comment	Response
21.9	Compliance Option 1, Agreement with Local Watershed Management Group to Fund Regional Project While PMSA reserves the position on inapplicability, the eligibility of Compliance Option 1 for marine terminals remains uncertain due to the absence of clear information, fee structures, compliance timelines, agreement frameworks and the unknown availability of regional water capture projects. It is not possible for a Discharger to make an informed decision on which Compliance Option to select if Compliance Option 1 is not fully developed. 'Clarity' assured by LARWQCB on this revised Draft CII Permit is fundamentally lacking and insufficient; there remains general uncertainty from impacted stakeholders and Watershed Management Groups (WMGs). The LARWQCB must legitimately engage with WMGs and potential permittees to develop an approach to ensure Compliance Option 1 is viable. If stakeholders are not provided with hard costs associated with this option at the time the Draft CII Permit is adopted, or even a basic understanding of what the legally binding agreement entails, it is unclear how anyone could securely select Compliance Option 1. Until this has been completed and there are defined costs and a model framework for dischargers to review and understand the structure of these agreements, the Draft CII Permit should not be adopted and implemented. Further, it is imperative that LARWQCB provides sufficient time, a proposed three years after the Final CII Permit's effective date, to allow Dischargers to characterize their site conditions, select their Compliance Option, and continue implementing Best Management Practices (BMPs), as identified in their Stormwater Pollution Prevention Plans (SWPPP). The current proposed timelines of one to two years, or even 45 days for "new" dischargers, is unreasonable.	See response to comments #2.4 and #5.8.
21.10	PMSA offers the following concerns and comments for staff to consider: A model agreement is essential and would benefit the WMGs, Dischargers and the Board by clarifying the responsibilities and streamlining the process. This would also reduce or eliminate any concerns on inequity among Dischargers, projects, and watersheds.	See responses to comments #1.8 and #2.4.
21.11	There is no assurance that WMGs legally can and will enter into a legally binding agreement with a Discharger.	See response to comment #18.8.

Comment Number	Comment	Response
21.12	The compliance schedule to select the Compliance Option does not allow WMGs, which are made up of several municipalities, time to develop process or even add additional projects to their WMPs and must be lengthened.	See response to comment #4.1.
21.13	The funding level equation included in the Draft CII Permit requires additional clarification. This equation represents a proportional relationship between the total volume of captured stormwater and non-stormwater, and the total stormwater capacity of a regional BMP or the overall capacity of regional BMPs. This proportion would then be multiplied by an undefined "pollutant level factor." At a minimum, guidelines and examples for determining the pollutant level should be provided now. Otherwise this could lead to unjust disparities for permittees among WMGs and specific projects. As is, a Discharger or a WMG cannot use this equation to quantify a potential cost, a significant consideration when selecting a Compliance Option.	See response to comment #4.4.
21.14	It remains unclear why the Board has not finalized the cost memo referenced in the RTC. This information is critical as the funding level equation will only be meaningful once a corresponding fee structure is developed. While LARWQCB staff says they are working with WMGs to identify a fee structure and will be available prior to the deadline to submit the Compliance Options selected, this is a gross mistiming as WMGs and stakeholders both need to understand the legal and technical issues related to developing a defined fee structure before the CII Permit is adopted.	Economic Considerations in section 3.12.4 of the Fact Sheet has been expanded to help Permittees navigate their choice of compliance option. Additionally, an economic analysis memo has been posted on the CII Permit web page. See also response to comment #1.8.
21.15	In the RTC, Board staff claimed that the permit does not allow for the mixing of Compliance Options and that doing so would greatly increase the administrative burden for both LARWQCB and WMG staff. However, to the extent that the Board is issuing an onerous permit with limited viable options for compliance, it is not acceptable to dismiss comments that provide flexibility to dischargers because of the administrative burden on the RWQCB. It is also unclear what the basis for the additional administrative burden is as the resources by either entity needed to administer would be the same if another option was also selected.	As outlined in section 3.12.4 of the Fact Sheet, the compliance options are intended to provide flexibility and be practicable and economically feasible. The mixing of compliance options will in fact create an additional administrative burden. Under this proposal, additional effort will be required to track the apportionment of stormwater between compliance options. Staff would also need to coordinate with WMGs on a case-by-case basis when validating the proportion of flow being received by individual regional projects.

Comment Number	Comment	Response
21.16	There are realistic concerns whether there are adequate projects available to fund. While Board staff states there are sufficient projects available, comments and discussions with the WMGs suggest this is not true, even considering ongoing needs. It will take years to identify, design, permit and build these projects. To ensure flexibility and viability, the following provisions should be considered: • Compliance Option 1 should not mandate that a CII Discharger be specifically linked to an existing regional project or one in the design or construction phase. The CII Permit should allow WMGs to establish a General Fund to broadly finance future projects, operations and maintenance of current projects and structural improvement to existing regional BMPs to enhance performance. This would allow for a streamlined process for both the WMG and permittees and, vitally, it would also guarantee the accessibility of Compliance Option 1. • Offer the flexibility to collaborate with multiple WMGs. • Similar to previous comments that were not responded to by Board staff in the RTC, the permit should allow for participation in other regional stormwater quality improvement projects, including regional stormwater treatment projects (e.g., Long Beach MUST project) or off-site capture or infiltration projects that are not linked to a WMG (such as privately owned land or Cities not involved in one of the designated WMGs). • Municipalities within a WMG should have the ability to establish their own regional projects, independently but in coordination with the WMG, specifically the Joint Port Specific Watershed Management Group. This would allow the SPBP to focus funding on projects that provide the most benefit to the harbor. This is especially pertinent for "privately operated" CII facilities at the Port of Long Beach (POLB) and Port of Los Angeles (POLA). Compliance Option 1 is intended to address projects on a watershed scale and collaboration across WMGs, tenant groups, and municipal led programs should be encouraged. • Permittees should be permitted to participate in upstream WMGs, even when not specifically modeled in the Reasonable Assurance Analysis (RAA). This includes the Lower Los Angeles River Watershed, Upper Los Angeles River Watershed, and the Lower San Gabriel River Watershed. This would provide more upstream regional BMP opportunities for facilities to use for Compliance Option 1.	See response to comments #2.7, # 5.9, 5.10, and #6.11.

Comment Number	Comment	Response
22.1-22.15	See comments #12.1-12.15	See response to comments #12.1-#12.15
22.16	The assessment of a proportional fee should be a compliance mechanism established in Compliance Option 1. The fee should be proportional to the implementation of the applicable WMP with the budgets as defined in the approved WMPs. The following permit changes should be made: 1. In the absence of identified regional projects in the Dominguez Watershed, owners should have the ability to enter into a legally binding agreement with the applicable local Watershed Management to pay a fee of $24,572 per acre of ownership as a part of Compliance Option 1. In addition, the funding contribution to an identified project in the Dominguez watershed should be capped at $24,572 per acre of ownership. 2. In the absence of identified regional projects in the Los Cerritos Watershed, owners should have the ability to enter into a legally binding agreement with the applicable local Watershed Management to pay a fee of $18,745 per acre of ownership as part of Compliance Option 1. In addition, the funding contribution to an identified project in the Los Cerritos watershed should be capped at $18,745 per acre of ownership. 3. The introduction of a cap on the off-site contribution provides a fair and proportional cost basis to property owners. Property owners have little to no control over the position of their property within the watershed, the nature of the soils and potential contamination of soils underlying the site, and the costs of downstream regional improvements versus the costs of downstream regional improvements for other projects within the watershed. Watershed positioning is not related to the nature of the business or type of development. 4. The Pollutant level factor in the funding level equation provided in section 8.1 should be defined and the Draft CII Permit recirculated for further commentary. The current Draft CII Permit cannot be adequately commented upon or discussed without a specific definition of this important factor.	See response to comments #1.11, # 2.7, 4.4, and #5.9.

Comment Number	Comment	Response
23.1	Inclusion of Housing Opportunity Sites and Mixed-Use Zones in the CII Permit Regime Contravenes Water Code Requirements and State Housing Law and Has Detrimental Impacts on the Ability of the Region to meet its Regional Housing Needs. The Draft CII Permit creates unacceptable housing impacts and imposes enormous regulatory and economic burdens on sites within the affected area that are planned for (or planning for) future housing in direct contravention to the State of California's serious and significant effort to address its housing crisis and the requirements of the California Water Code. The Draft CII Permit would constrain housing by regulating new and existing mixed-use properties greater than five acres as subject to the Draft CII Permit.	See response to comment #7.2.
23.2	*Contravention of State Water Code.* The Board is required by the California Water Code to consider the Draft CII Permit's impacts on housing. (Cal. Water Code § 13241, sub (e).) The Fact Sheet of the Draft CII Permit includes the Board's consideration of housing impacts, but only insofar as the Draft CII Permit impacts water supplies for housing. (Fact Sheet, § 3.11.5.) While acknowledging the "Need for Developing Housing Within the Region" in Section 3.11.5, the Draft CII Permit does not examine the impacts that the Draft CII Permit likely will have in drastically reducing the availability of land for housing in the affected watersheds, in particular, the redevelopment of commercial properties into mixed- use housing developments.	See response to comment #7.2.

23.3	*Contravention of State Housing Law and Policy; Effect of Draft CII Permit on Housing Development at Lakewood Center.* In 2019, the California legislature declared a statewide housing emergency, and in response, the State enacted the Housing Crisis Act of 2019 (Senate Bill 330, as amended). SB 330 declares, "California is experiencing a housing supply crisis, with housing demand far outstripping supply." The Housing Crisis Act also focuses on environmental harms caused by the housing crisis, including increased pressure to develop farmland, open space, and rural interface areas, and increasing GHG emissions due to longer commutes as housing development is far from job centers. The Housing Crisis Act addresses these issues by suspending restrictions on housing development during the statewide emergency and implementing specific and wide-ranging regulatory modifications to accelerate infill housing development. Likewise, the Housing Accountability Act, as amended in 2017, clearly states the policy of the State that the Housing Accountability Act should be "interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing." California State law requires that local governments adequately plan to meet the housing needs of everyone in the community by adopting a Housing Element that is consistent with and furthers the regional housing goals established by the State of California through its mandated Regional Housing Needs Assessment (RNHA) process. Under the RHNA process, each Housing Element must be updated every eight years and must demonstrate how a local government will accommodate the number of units described in the RHNA and other housing needs of the community, including by identifying land zoned or otherwise available for the development of housing, including affordable housing, in the community. The Draft CII Permit is therefore overbroad in that it fails to properly exclude land identified in a City's Housing Element for housing development or mixed use/residential development from the scope of the permit. Under California law, the designation of a housing opportunity site in a local agency's Housing Element obligates that local agency to rezone the property within a specific time period consistent with the designation and creates a right for the owner of that property to require such rezoning or, in some cases, to develop the property with residential uses, even if the property is not then zoned for residential uses. Thus, a CII Site identified in the City's General Plan Housing Element as a housing opportunity site is required to be rezoned with residential or mixed-uses within the period established by State law.	See response to comment #7.2.

Comment Number	Comment	Response
23.4	As demonstrated in its Housing Element, the City of Lakewood is highly urbanized with substantial single-family housing and has limited undeveloped land, with the bulk of that being built out commercial areas. As such, the primary lands available for redevelopment with housing are commercial properties, the same properties that the Water Board has designated as subject to the Draft CII Permit. In its Housing Element, the City of Lakewood acknowledges its lack of available land for residential development and confirms its reliance on the redevelopment of commercial property to provide needed housing. It includes substantial portions of Lakewood Center in its Housing Opportunity Sites list and explicitly states the particular importance of Lakewood Center to the City's plan for providing housing in the community: Based on the owner's intent, and expansive, underutilized surface parking lots suitable for redevelopment, along with Lakewood Center's central location, the City will be rezoning a portion of Lakewood Center to residential/mixed-use. The City anticipates that at least one thousand units can be accommodated at this location. Of these, the City is assuming that 20 percent will be affordable to lower- and moderate-income households based on preliminary discussions with the property owner. The number of units in each income category is distributed within this 20 percent to match an equivalent portion of the City's RHNA, with very low-income accounting for 50.1 percent, low-income accounting for 24.6 percent, and moderate-income accounting for 25.3 percent. The City is currently processing a mixed-use overlay ordinance that would re-characterize commercially zoned sites in the City, including Lakewood Center, with mixed-use zoning to permit the development referenced above. The District's failure to exclude housing opportunity sites or mixed use sites from the scope of the CII Permit will threaten each local government's Housing Element (which has taken years to establish) and, in turn, its compliance with California State law requirements that it adequately plan to meet the housing needs of everyone in the community. The Draft CII Permit directly and immediately jeopardizes the City of Lakewood's Housing Element compliance and Macerich's ability to develop housing at Lakewood Center by making it physically or economically infeasible to develop such land with housing, as discussed below.	See response to comment #7.2.

Comment Number	Comment	Response
23.5	*Inclusion of Mixed Use Properties in CII Permit Makes Housing Site Subject to CII Designation*. The CII Permit by its very title (Commercial, Industrial, Institutional) and its other provisions purports not to regulate residential uses. "Sites are classified as commercial, institutional, and industrial according to Los Angeles County Tax Assessor land use codes." However, the Draft CII Permit defines CII Sites to include mixed-use (residential and commercial) parcels by including the Los Angeles County Assessor Property Use Classification Codes Real Property Handbook (LA County Assessor's Handbook or Handbook) Code 1210 (mixed-use) as subject to the permit. The LA County Assessor's Handbook is also referenced in the definition of "Commercial, Industrial, and Institutional Sites" by the Draft CII Permit. The LA County Assessor's Handbook states that "Improved properties with both commercial and residential use are coded '1210' if each use is represented by a significant improvement value." However, the Handbook also requires that vacant parcels within a given zone be designated with the property use code classification for the most likely use of the property if it were to be developed. The Handbook indicates that when a property has a mixed use, the parcel should be coded "to identify the primary or predominant use." (*Id*. § 2.1(d).)	See response to comment #7.2.

Comment Number	Comment	Response
23.6	Nothing in the litigation underlying the Draft CII Permit action indicates that residential uses were intended to be regulated by the Draft CII Permit (*L.A. Waterkeeper v. Pruitt* (2018) 320 F. Supp. 3d 1115, 1120 [referencing only commercial, industrial, and institutional sites as targets for regulation, not residential].) In other instances, where the residual designation authority of the Clean Water Act has been utilized, it was undeniable when residential uses were included within the categories of discharges to be covered by the permit. (*See* U.S. EPA, "Clean Water Act Residual Designation Determination for Certain Stormwater Discharges in the Charles, Mystic, and Neponset River Watersheds, in Massachusetts" (Sept. 14, 2022), at pp. 1, 24 [explaining why multi-family residential sites were initially selected for regulation and later removed from selection leaving only commercial, industrial, and institutional sites for regulation by the agency].) In the present regulatory action, residential uses have not been overtly selected for regulation and appear to have been arbitrarily included within the definition of CII Sites selected for regulation by the EPA and the Board. As indicated above, the State "afford[s] the fullest possible weight to the interest of, and the approval and provision of housing." Where properties are designated as housing opportunity sites under State law, deference should be given to the State law requirements that require rezoning to allow residential or mixed use of the sites. Further, by identifying commercial sites using the existing County Assessor Property Use Classifications and without taking into account the reclassifications that will occur as a requirement of State law, the Draft CII Permit extends its coverage to sites that by law are designated residential or mixed-use and not solely "commercial, institutional or industrial," hampering future development of housing on these housing opportunity sites.	See response to comments #7.1 and #7.2.

Comment Number	Comment	Response
23.7	To the extent that the Draft CII Permit fails to take each Housing Element and its designated housing opportunity sites into account in establishing the scope of the initial permit and fails to provide a mechanism for termination of the permit's applicability when LA Assessor property codes are changed for an existing commercial building, parking lot or other vacant parcel, the Draft CII Permit will exceed the scope of authorization by EPA under its proposed residual designation for the affected watersheds. Therefore, the definition of CII Sites in the Draft CII Permit that references Los Angeles Tax Assessor Land Use Codes 1210 (mixed-use commercial and residential) and 1720 (mixed-use office and residential) should be excluded from the CII Permit regulations. Further, Section 3.5 of the revised Draft CII Permit states, "Reduction of parcel size by subdivision is not an acceptable basis for permit termination unless the reduction in size is due to a change in ownership." Thus, a CII Site that is currently or is later converted to mixed-use will be forever subject to the CII Permit. Nothing in the modifications to section 3.5 of the Draft CII Permit appears to allow for modification of a permittee's coverage based on removing portions of a site from coverage due to residential or mixed-use designation or use. Therefore, should a CII site regulated by the CII Permit be later identified as a RHNA site or have residential incorporated into it, the Draft CII Permit should allow for complete or partial termination for that site from Permit coverage. Based on the above description of the Board's overregulation, the Draft CII Permit is extending coverage to sites not ostensibly "commercial, institutional or industrial" and is hampering the ability of the future development of housing on commercial sites that would otherwise seek to include housing as they would be required to treat flows from residential areas that would have otherwise not been subject to regulation under the CII Permit had they been considered individually. The Draft CII Permit would also hamper the ability of cities such as Lakewood to meet their housing obligations as the development of multi-family housing on larger existing commercial parcels within the built-out environment of the cities regulated by the Draft CII Permit will be a necessity to meet the required RHNA mandated by the Housing Elements.[11] Should the Board and EPA persist in regulating multi-use residential properties in the manner in which the Draft CII Permit and the Preliminary Designation are currently drafted, the Board will be acting extra-jurisdictionally. Such an action would be an abuse of the Board's discretion and an arbitrary and capricious action by the Board. Macerich offers proposed solutions in Section A.5 below.	See response to comments #7.1 and #7.2.

Comment Number	Comment	Response
23.8	*Difficulty of Mixed-Use CII Sites with Options 2 and 3.*\ Should a commercial/multi-use/multi-family site not be capable of entering an agreement to fund a project with a Watershed Management Group under Option 1 of the Draft CII Permit, such a permittee would be obligated to utilize Compliance Option 2 or Option 3. Compliance Options 2 and 3 likely would both require significant site infrastructure with potentially significant physical footprints. The infrastructure footprints would be primarily dictated by existing site drainage patterns, which cannot typically be altered on existing sites. The placement of additional infrastructure on commercial CII Sites would significantly limit the ability to plan and construct housing on properties that are already partially developed with housing or can be partially developed or redeveloped with housing. The obligation to treat the runoff from commercial uses within mixed-use sites will reduce the already scarce land available for residential development. As indicated above, in Lakewood, Lakewood Center, and other large commercial sites are the locations identified for larger-scale multi-family development. Under the Draft CII Permit, all of these sites would nonetheless be regulated as CII. Like many existing commercial properties, Lakewood Center has existing drainage system infrastructure that conveys drainage to the public right-of-way at multiple points, both via surface conveyance and underground storm drains and from roof drains to both surface conveyance and the storm drain system. Overhauling complex existing systems such as these to install substantial additional onsite infrastructure under Options 2 or 3 would reduce the site planning flexibility that would, in turn, conflict with the residential development footprint under consideration. Residential redevelopment at Lakewood Center and others similarly situated can only occur if sound site planning principles are followed. The layout of vehicular and pedestrian access and circulation supporting the proposed residential uses and the layout of the buildings themselves will be negatively impacted to a significant degree by the stormwater infrastructure that would be obligated by Compliance Options 2 and 3. Due to the hydrological site constraints and infrastructure footprints introduced by the drainage systems required by Compliance Options 2 and 3, Lakewood Center cannot effectively pursue its residential redevelopment plans, which have been informed by the City of Lakewood's certified Housing Element Plan.	Please see response to comment #7.2.

Comment Number	Comment	Response
23.9	*Proposed Solution to Address Mixed-Use and Future Residential CII Sites.* Based on the potentially significant regional housing impacts due to the Draft CII Permit, the Board should exempt the following property from being characterized as CII Sites: • All property with mixed-use and/or residential SIC codes that include residential in the mix of uses; • All property identified in a city General Plan as designated for residential and/or mixed-use development and/or redevelopment; • All property zoned for or located in planning areas within specific plans that allow housing and/or mixed-use development and/or redevelopment; • All property located within zoning overlays that allow housing and/or mixed-use development and/or redevelopment. • All property listed as housing opportunity sites in a city or county with a Housing Element certified by the Department of Housing and Community Development as of the CII Permit's effective date. Additionally, we recommend the following: After the adoption of the Draft CII Permit, CII Sites that are to be modified by or after the Draft CII Permit's effective date to add residential uses will be permitted to file for a partial or complete termination of coverage depending on the amount of residential use to be incorporated into the Site.	Please see response to comment #7.2.
23.10	Infeasibility of Options 2 and 3 As outlined in Section A.4 above, renovating complex existing systems to install substantial additional onsite infrastructure will not be technically or economically feasible, leaving only Option 1 as a compliance choice. For the following reasons, we do not believe retrofitting Lakewood Center (or other commercial CII Sites) to adhere to Compliance Options 2 or 3 will be technically or economically feasible:	Please see responses to comments #23.11 and #23.12.

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23.11	Option 2: Infiltration of the 85th percentile 24-hour storm event would be limited by soil type and areas of soil contamination. Infiltration, as set forth in the Draft CII Permit, requires that any infiltrated water meet drinking water standards; a requirement that would necessitate pre-treatment of water and require additional costs in addition to the infiltration systems. High implementation costs, as well as space constraints (including maintaining required parking standards) related to the filtration systems, make this option unlikely for existing businesses where business interference and lack of sufficient space are significant. Evapotranspiration of the 85th percentile 24-hour storm event. There will be few if any, evapotranspiration opportunities due to standing water and vector control issues associated with standing water. Capture and reuse of the 85th percentile 24-hour storm event. Typical commercial CII Sites, such as the Lakewood Center, are highly impervious and do not have adequate landscape coverage to disperse the 85th percentile runoff as irrigation in a reasonable timeframe. Commercial retail properties sites attempting to re-plumb for stormwater capture and reuse would require an overhaul of building and landscaping plumbing systems with insufficient opportunities for onsite graywater use of the reused water to make such systems feasible.	See response to comments #12.6, #12.7, and #12.8 regarding feasibility of infiltration, evapotranspiration and capture and reuse of the 85th percentile 24-hour storm event. The requirement that infiltrated water meet drinking water standards (MCL criteria) is necessary to protect groundwater quality. Stormwater traveling across a CII facility into an infiltration BMP can pick up various pollutants and deliver them to the subsurface. However, the levels of pollutants may not exceed MCLs for CII facilities and pre-treatment may not be necessary.
23.12	Option 3 Discharge of 85th percentile 24-hour storm event runoff treated to numerical effluent limits with monitoring and reporting requirements. There is a lack of currently commercially viable treatment systems that can treat the volumes of stormwater generated by commercial CII Sites of the size of the Lakewood Center to the level prescribed in the Draft CII Permit. Additionally, the storage, mechanical/filtration, and other structural components required to implement Option 3 at a site like Lakewood Center would not allow business operations to continue at sustainable levels due to significant impacts on site access, circulation, parking, and building footprint.	See response to comment #12.9.

Comment Number	Comment	Response
23.13	Concerns with Option 1 The Draft CII Permit outlines the process—compliance Option 1—for entering into a legally binding agreement with the applicable local Watershed Management Group or their fiduciary to fund or partially fund a regional stormwater project. While we appreciate the Board's offer of Compliance Option 1 to the regulated community, and in particular to commercial sites regulated by the CII Permit, which were previously unregulated by such stormwater permits, we have concerns regarding the implementation of Option 1 by the businesses who operate commercial CII Sites centered on the vague terms in the Draft CII Permit and the inequality that the Board acknowledges related to Option 1.	See response to comments #2.4.

23.14	*Option 1 as Presented is Unconstitutionally Vague.* As pointed out in the prior comments on the Draft CII Permit, Option 1 lacks numerous details that prevent the regulated parties from fully understanding their obligations under the CII Permit. For example, permittees are told to pay an indeterminate amount of money to a Watershed Management Group (WMG) that may or may not have projects available for funding and may or may not have the legal authority to enter into such agreements. Each permittee is obligated within two years to devise a contract of undefined terms with the group to last for the duration of the permittee's operations at their site, where the watershed group has control of the terms of the contract and where the formula critical to calculating the monetary amounts in the contract from the Draft CII Permit has undefined terms. (Draft CII Permit, §§ 8.1 [payment amounts required are undefined], 8.1 [volume of project must be sized to equate to Option 2 or 3 volume but Option 3 has no required volume], 8.1 [cost considerations for downstream projects are explicitly not to be considered], 8.1 [pollutant level factor included in the funding formula is undefined], 8.1.2.1 [fees and alternative compensation included in the agreements undefined], 8.1.2.5 [provision allowing WMGs to include any other provisions desired in the agreements].) When asked repeatedly in the comments on the last version of the Draft CII Permit for additional detail on the terms of the agreements critical to Option 1 (see RTCs 1.38, 9.10, 11.6), the Board deferred the issue, stating that it would *consider guidance* on the terms of a model agreement *after* the CII Permit was adopted. With the numerous permittees that will be immediately subject to the terms of the CII Permit and immediately seeking to enter agreements with local WMGs, awaiting some future guidance document that may never come from the Board will not be helpful in the permittee's implementation of their obligations under the CII Permit after its adoption. Similarly, with key terms such as the pollutant level factor undefined in the Draft CII Permit, permittees cannot determine what their financial obligations will be under Option 1. Lastly, without a better understanding of the range of financial obligations that Option 1 will represent to the permittees seeking to avail themselves of this option, Option 1 cannot be reasonably compared to either Option 2 or Option 3. The Board has made no effort to provide any costs of compliance to the regulated community and, in response to a request for such information (RTC 12.10), has stated "comment noted" and that it is "developing a cost memo" without any indication as to whether this cost memo will be forthcoming before or after the CII Permit is adopted. (*See also* Fact Sheet § 3.11.4.1.2, which defers providing compliance costs for Option 1 to an unknown future date.) For the Board to refuse to provide such essential cost	After the comment period on the previous tentative CII Permit closed, Los Angeles Water Board staff met with representatives for potential CII Permittees and Watershed Management Groups multiple times and have worked out many of the details about implementation of Compliance Option 1. The tentative revised CII Permit reflects these meetings and includes additional detail where helpful and necessary to comply with law. In addition, the cost memorandum has been made available on the Los Angeles Water Board's website. And, although unnecessary as a matter of law, costs have been fully analyzed in accordance with Water Code section 13241. (See, Fact Sheet, Part 3.12; *City of Duarte v. State Water Resources Control Board* (2021) 60 Cal.App.5th 258, 276; *City of Burbank v. State Water Resources Control Board* (2005) 35 Cal.4th 613.) Please see responses to comments throughout this document including comments #1.8, #1.10, #2.4, #2.7, #4.1, #4.4, #12.14, and #18.8. Finally, neither Compliance Option 1 itself nor the other specific terms in the permit called out in the comment are unconstitutionally vague, and they do not violate the due process rights of the CII Permittees. Specifically, the commenter complains that all of the following make Option 1 "unconstitutionally vague: That (a) key terms, such as "pollutant level factor" used in the Permit itself, and other terms that might be included in a future contract with Watershed Management Groups and CII Permittees are undefined; (b) that the costs are not fully analyzed or developed; and (c) that the failure to include a model agreement as part of the CII Permit renders the permit constitutionally unsound. This is not true; and the cases cited in support of this argument, *Connally v General Construction Co.* (1926) 269 U.S. 385, 391 (considering whether two Oklahoma statutes concerning wages paid and hours worked were vague and ambiguous) and *FCC v. Fox Television Stations, Inc.,* (2012) 567 U.S. 239, 253 (holding that the FCC violated television networks' due process rights by failing to give them fair notice

	of compliance information violates California Water Code section 13241, sub (d). (See also Section D below.) Should the Board fail to correct these deficiencies and provide additional information for permittees that will be availing themselves of Option 1, the Board will violate the due process rights of the permittees by its failure to give notice to the regulated community of their obligations to do so would equate to arbitrary and capricious action by the Board. (See *Connally v. General Constr. Co. (1926) 269 U.S. 385, 391* [A statute which either forbids or requires the doing of an act in terms so vague that a man of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law.]; FCC v. Fox Television Stations, Inc. (2012) 567 U. S. 239, 253 [Applying the Connally rule to administrative processes and finding that a regulation which governs persons or entities must give fair notice of conduct that is forbidden or required and that regulated parties should know what is required of them so that they may act accordingly.]	that, in contrast to prior policy, a fleeting expletive or brief shot of nudity could be actionably indecent), are inapplicable. First, the key words and phrases, and the cost amounts about which the commenter complains are now defined in the CII Permit or in Attachment A. For example, the term "pollutant level factor" is now defined in the CII Permit at p. 27, n. 15; other terms, such as "Discharger," are defined in Attachment A. Similarly, the amount of money that each CII Permittee must pay to a Watershed Management Group, should the Permittee choose Compliance Option 1, is explained as a fee that is proportional to the sum of NSWD volume and onsite stormwater volume relative to the total regional project(s), watershed, or subwatershed stormwater capacity, modified by pollutant level potential based on activity type, and there is a clear, unambiguous formula by which to determine such fee in section 8.1 of the CII Permit. Second, costs have been fully and adequately analyzed, as noted above. Third, neither *Connally* nor *FCC* concern NPDES permits (or permits generally), and neither concern a voluntary compliance option in a permit. This last point is important, since a voluntary compliance option is not something that is "forbidden" or prohibited in a permit, nor is it "required" of any permittee. To illustrate this point further, the commenter is not complaining that required effluent limitations (with which all CII Permittees must comply) are vague or ambiguous, which might indeed be a legitimate complaint. (*See, e.g., Natural Resources Defense Council (NRDC) v. U.S. E.P.A.* (2d Cir. 2015) 808 F.3d 556, 577-78, (holding that a narrative water quality based effluent limitation in a permit for ships discharging ballast water in the

		Great Lakes was vague, arbitrary and capricious).) Rather, the commenter's primary complaint is that a method by which a permittee may *choose* to comply, by contracting with a Watershed Management Group, is too vague because a sample contract is not attached. Finally, the terms in the CII Permit concerning the contract for Compliance Option 1 are not vague. Compliance Option 1 includes the critical terms the Los Angeles Water Board will need to see in any contract, and a formula for determining how much a Discharger must pay and a requirement that the funding level be proportional to the sum of NSWD volume and onsite stormwater volume relative to the total regional project(s), watershed, or subwatershed stormwater capacity, modified by pollutant level potential based on activity type. Specifically, the CII Permit includes certain essential terms set forth in Section 8.1.2 of the CII Permit, including but not limited to: specifications on where a project into which a Discharger pays must be located; a requirement that the Discharger's Facility be located in the area modeled by the RAA supporting the Watershed Management Group's program; a requirement to identify the projects funded; method of payments; and a specific timeframe. All these essential terms are designed to ensure that a permittee pays its fair share of a project that captures or otherwise accounts for the stormwater discharge and NSWD volume that the permittee contributes to the MS4 in a particular watershed. The other details of the contract for Compliance Option 1 will vary depending on the chosen project, the watershed within which the project and discharge occur, and other factors that the contracting parties must be able to work out among themselves, and tailor to the project at issue (for example, one project might be a stormwater capture project, and one project might involve green infrastructure or a bioswale). Given the differing nature of CII Sites, the Dischargers, and the different projects that the Watershed Management Groups have available for funding,

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		flexibility in the details of certain contractual terms must be allowed. Indeed, the Watershed Management Groups have indicated as much in their conversations with Los Angeles Water Board staff, and this is part of the reason why the Los Angeles Water Board has allowed three years from the adoption date of the permit for Watershed Management Groups and Permittees to draft and enter into such contracts.

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23.15	*Revised Option 1 Violates the Equal Protection Clause.* Several commenters on the latest Draft CII Permit pointed out the inequality of Compliance Option 1 to the Board and requested that funding of Option 1 be made more fair across the regulated community. (See RTCs 3.41, 3.43, 7.16, 7.18, 10.11, 16.1, 22.1, 23.10, 24.11, 25.7, 26.4, 29.5.) The Board responded to these pleas for equity with promises that the Board is working with the WMGs on transparency to determine equitable fee schedules—an acknowledgment that the current Draft CII Permit does not establish an equitable program within Option 1. (See, e.g., RTC 3.43.) While we understand that the Board does not desire to step in the place of the WMGs in determining the cost of projects to be developed under Option 1, many of the commenters have suggested the concept of a watershed-wide fund that would more equitably distribute the funds than a one-off agreement program of agreements required to be individually negotiated by every permittee (and which explicated discounts costs in project selection per CII Permit section 8.1). As it is written, Option 1 is designed to be flexible, as is the stated goal of the Board (RTC 2.17), but the price of this flexibility is a system whereby some permittees who may be discharging an amount of water at a given pollutant level may pay a price to enter an agreement with a WMG vastly different than another permittee with a similar volume and pollutant level. Because the equal protection of the Fourteen Amendment applies to administrative actions such as the Board's adoption of the Draft CII Permit, the Board must ensure that Option 1 provides an equitable solution for permittees at the outset—not at some indeterminate future time that may or may not come to pass. (Angquist v. Oregon Dept. of Agriculture (2008) 553 US 591, 597.) We fail to see a rational basis for the Board to refuse in light of the numerous commenters' requests for equitable fee structure terms for Option 1 for the Board to continue to refuse to provide a regional or watershed-wide funding option that meets the Board's volume and pollutant loading metrics but provides permittees an equitable solution. (Heller v. Doe (1993) 509 US 312, 320; see also City of Los Angeles v. County of Kern 509 F. Supp 2d 865, 879 (9th Cir. 2007) (vacated in part on other grounds) [lack of rational basis for classification will cause a government action to fail in an equal protection challenge].) Suggested revisions for Option 1 are provided in Section C.4 below.	See responses to comments #23.14 and #12.13.

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23.16	*Incorrect Design Standard for Option 1.* The Los Cerritos Channel Watershed Management Plan, revised on September 21, 2017, incorporates a Reasonable Assurance Analysis (RAA). Text in the RAA indicates that: > A key element of each WMP is the Reasonable Assurance Analysis (RAA), which is used to demonstrate "that the activities and control measures…will achieve applicable WQBELs and/or RWLs with compliance deadlines during the Permit term" (NPDES Permit Order No. R4-2012-0175, Section C.5.b.iv.[5], page 64; NPDES Permit Order No. R4-2014- 0024, Section C.5.h.vii.[2]). This report presents the Reasonable Assurance Analysis (RAA) for the Lower Los Angeles River (LLAR), Los Cerritos Channel (LCC), and Lower San Gabriel River (LSGR) WMPs. The RAA concluded that the total BMP volume to achieve watershed compliance was 591.9 acre-feet for the Los Cerritos Channel watershed. The watershed itself comprises approximately 17,711 acres. The Draft CII permit utilizes an 85th percentile runoff volume in its Compliance Option 1 equation. However, the modeling in the RAA sets forth a runoff reduction volume target across the watershed that is not equal to the 85th percentile runoff; instead, it modeled the runoff volume reduction required to achieve the water quality targets for the watershed, which is lower than the 85th percentile runoff. Thus, CII Sites are held to a higher design standard and a larger volume per-acre basis in the Draft CII permit than the volume reduction established in the RAA analysis. This incorrect design volume would lead to the over-obligation of projects constructed under Option 1 for the watershed and a higher charge for such projects to permittees in the Los Cerritos watershed choosing Option 1. The formula in the Draft CII Permit needs to be corrected to use the correct design storm volume so as not to lead to overcharging for permittees. The equation for determining the quantity of runoff to be treated in Compliance Option 1 should be limited to a prorated volume based on the total RAA volume required to achieve watershed compliance divided by the total acreage of the watershed.	See response to comment #4.4. A footnote has been added to the Compliance Option 1 funding formula in section 8.1 of the tentative revised CII Permit that provides additional detail about the pollutant level factor. Determination of the pollutant level factor's value must be consistent with the assumptions and model inputs for the reasonable assurance analysis supporting the most recent Watershed Management Program. This clarification will ensure that CII Sites are not held to a higher standard than the Watershed Management Group, and that the pollutant load contributed by a CII Site is offset and captured in a proportional amount by a regional project(s) in a Watershed Management Program.

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23.17	*Clarification of Compliance Option 1.* In addition to providing additional time to the CII Permit adoption process to allow the Board to correct deficiencies noted in Sections C.1 and C.3—model agreement, pollutant level factor definition, costs of compliance, and corrected design storm volume—we suggest the following equitable fee structure program as a replacement to the current proposed fee structure contained in Draft CII Permit section 8.1. The assessment of a proportional fee should be a compliance mechanism established in Compliance Option 1. The fee should be proportional to the implementation of the applicable WMP with the budgets as defined in the approved WMPs. The following permit changes should be made: • In the absence of identified regional projects in the Los Cerritos Watershed, owners should have the ability to enter into a legally binding agreement with the applicable local WMG (or their fiduciary) to pay a fee that is no greater than the proportional cost of watershed compliance on a per-acre basis. In addition, the funding contribution to an identified project in the Los Cerritos watershed should be capped at the proportional cost of watershed compliance on a per-acre basis. • The proposed fee payment should constitute compliance with the Draft CII Permit through Compliance Option 1 and run with the land in perpetuity. • Payment of the per-acre fee over time, including annual maintenance costs, can be negotiated with the WMGs as part of the agreement.	See response to comments #1.11, # 2.7, 4.4, and #5.9.
23.18	Deficient Cost of Compliance Analysis Although the Board states in the Fact Sheet (§3.11) that it is providing cost of compliance information as a courtesy because it does not believe that the Draft CII Permit exceeds federal requirements, we respectfully disagree in that the Draft CII Permit is proposed to be authorized under the residual designation authority and the fact that the CII permittees have heretofore not be regulated under the NPDES stormwater permit program (33 U.S.C § 1342, sub. (p)). The proposed CII Permit program is a first-of-its-kind program in California, going beyond prior federal requirements and triggering the need for the Board to undertake a section 13241 analysis under the California Water Code.	Each of the requirements in the tentative revised CII Permit are not more stringent than what federal law requires. Nevertheless, the factors set forth in CWC section 13241 were considered in the fact sheet. Please see section 3.13 of the Fact Sheet in the tentative revised CII Permit.

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23.19	We also take issue with the fact that in considering economic factors related to the CII permit (§ 3.11.4), it is only the costs of *not* implementing the CII Permit that are given objective cost considerations (e.g., dollar amounts). In contrast, compliance costs are discussed only in subjective terms (e.g., low or medium cost amounts). (*Compare* Fact Sheet § 3.11.4.2 with 3.11.4.1.3). Moreover, the data the Board uses to present compliance costs is not accurate in all instances. For example, when describing compliance costs of implementing minimum BMPs under the required Stormwater Pollution Prevention Plan required by Draft CII Permit section 6.5, data cited in section 3.11.4.1.1.1 of the Fact Sheet indicates that sediment removal costs are low. However, an examination of the data cited by the Board reveals that to meet the Draft CII Permit requirement— prevent all sediment in discharges from a regulated site (Draft CII Permit § 6.5.1.4) a permittee would have to implement BMPS with a high cost, not a low cost, to achieve the desired result. Implementing low-cost BMPS would only achieve marginal sediment removal and would not lead to permit compliance. (U.S. Department of Transportation, Federal Highway Administration. Stormwater Best Management Practices in an Ultra-Urban Setting: Selection and Monitoring. Section 6.5.1., Table 59.) If the Board is presenting inaccurate subjective compliance cost data based upon less than compliant BMP selections, as it appears to be, then the economic analysis is deficient and cannot justifiably support a Section 13241 analysis.	See response to comment #12.14.
23.20	Lastly, the Board has not considered the negative impacts on businesses that will undoubtedly occur due to implementing the CII Permit in its economic assessment. As was made evident in Section A above, no consideration has been given in the Draft CII Permit to how the permit will negatively impact housing and the ability to develop housing in the area. No discussion is provided regarding the negative impacts of the Draft CII Permit implementation on businesses charged with the extraordinary costs of implementing the CII Permit or how many of them might be able to continue operating when faced with these costs. No assessment in the CII Permit is given of the ability for smaller businesses to manage CII Permit implementation costs or how tenants, including smaller commercial, retail, and office tenants of CII permittees, would be impacted by Permit costs. Overall, the Board has wholly failed to perform a sufficient economic or housing analysis as required by Water Code Section 13241.	The Fact Sheet has been expanded with further analysis regarding BMP performance and an economic analysis memo has been posted on the CII Permit web page to help Permittees navigate their choice of compliance option. See also responses to comments #12.14 and #7.2.

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23.21	Procedural Issues We appreciate that the Board indicated in the Responses to Comments (RTC 12.21) its intent to adopt the Draft CII Permit only after the U.S. EPA concludes its process of finalizing the residual designation. We only make the following comment to remind the Board of their need to delay the issuance of the Draft CII Permit until all federal process related to the residual designation has been completed and to remind the Board that EPA has yet to undertake all of its required procedures under the federal Administrative Procedure Act (5 USC § 551 et seq.) including certain published notices of proposed and final rulemakings in the Federal Register and opportunities for public comment along with procedures under the federal Regulatory Flexibility Act (5 U.S.C. § 61 et seq.) including following certain equitable procedures for regulations that may impact small entities. Because these required federal processes have yet to conclude, we understand that the Board will not proceed with issuing the Draft CII Permit. These procedural necessities provide additional time for the Board to make the crucial changes discussed herein, including the proposed Option 1 alternative fee structure, proposed mixed-use/housing exclusions, and proposed permit and analysis corrections suggested throughout this comment letter.	Comment noted.
24.1	Stormwater Coverage Expansion The proposed expansion of stormwater coverage to encompass the entire facility footprint, particularly for transportation facilities, raises significant concerns. It is imperative to provide clear details on compliance timelines and address potential conflicts with existing statewide permits, specifically the Industrial General Permit (IGP) and the Phase II Small MS4 Permit regulating industrial and institutional facilities, respectively. Additionally, a statewide focus on IGP non-filers is a more appropriate step for improving surface water quality, avoiding the complexities introduced by the proposed Draft CII Permit.	Comments regarding the expansion of stormwater coverage pertain to U.S. EPA's designation memo and are outside the scope of the action before the Los Angeles Water Board. The tentative revised CII Permit contains clear compliance deadlines and addresses potential conflicts with statewide permits.

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24.2	Moreover, the inclusion of contiguous rail lines associated with facility properties in the draft CII Permit coverage area warrants careful consideration. Concerns arise regarding the applicability of the 5-acre threshold for CII Permit coverage to rail lines connecting facilities that fall outside the facility property boundary. It is essential to clarify that the CII Permit pertains to facilities, not rights-of-way (ROW), and that facility boundaries can be defined by switches, mainline rail, roadways, etc. It is recommended to explicitly exclude rights-of-way, such as roadways and rail lines, from the coverage under the CII Permit. This distinction is crucial to avoid unintended regulatory implications and ensure that only facility areas are subject to the permit requirements.	If the surface area for the contiguous pipelines or rail lines are owned or operated by the facility, this area should be considered for coverage under the tentative revised CII Permit. However, the responsibility for areas that are “rights of way” or “easements” in the County Assessor’s record will be based on the easement/right of way agreement.
24.3	Impervious Surface Area and Imperviousness The definition of impervious surface area and inclusion of graveled areas around rail lines as impervious areas needs careful consideration. Justification should be provided on why gravel areas are considered impervious surface areas. Railyard ballast has similar run-off coefficients typically seen in undeveloped natural environments. A distinction should be made between pervious ballast and impervious compacted gravel. Clarification is needed that rail lines composed of ballast/gravel (not asphalt or concrete paved or compacted gravel) should not be considered as impervious surface and should not count towards a facility's 5-acre threshold for CII Permit coverage.	See response to comment #5.27.
24.4	The definition of imperviousness in the draft CII Permit is vague and lacks clarity. Clarification is needed on the specific criteria that should be used for evaluating imperviousness, including the calculation methodology and frequency. Consistent methodology is necessary to ensure fair application of CII Permit coverage.	See response to comment #5.27.
24.5	Compliance Option 1 Agreements: The viability of Off-site Compliance is contingent upon streamlined permitting processes, documentation, and financial contributions to watershed management groups. A template for agreements needs to be established to eliminate uncertainties.	See response to comment #1.8.

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24.6	Compliance Option 1 Grace Period and Financial Contributions**:** To make Off-site Compliance more workable, the CII Permit should allow regulated parties to contribute financially to watershed projects without specifying a particular project upfront. Agreements with watershed management groups and corresponding fee structures should be pre-determined, and a grace period should be granted for on-site compliance during negotiations.	Regarding fees due to WMGs as part of the Compliance Option 1 agreement, see response to comment #1.11. Regarding a grace period for on-site compliance, refer to section 3.4 of the tentative revised CII Permit, which states that the Permittees must submit an NOI and SWPPP within 1 year and Compliance Option Documents within 3 years of the effective date of the CII Permit. Effectively, CII permittees will demonstrate compliance with the effluent limits in section 7.1 upon submittal of the NOI and SWPPP, and the effluent limits in section 7.2 upon submittal of the Compliance Option Documents.
24.7	Compliance Option 3 Sampling Activities and Monitoring Requirements: Concerns are raised about the feasibility of sampling activities, particularly for bacteria analysis. The short hold time and specific sample collection requirements pose challenges, and there should be a more practical approach, considering logistical constraints and site-specific issues.	Permittees should select corresponding analytical test methods provided in 40 CFR Part 136 (see Attachment E section 2.2.2.2.6, Sampling and Analysis). For analyzing Enterococcus in non-potable water, as for Dischargers to the Dominguez Channel Estuary, federal guidelines recommend standard method 9230. Standard method 9230 recommends standard method 9060 for sample collection, and standard method 9060 presents provisions for surface water sampling in 9060 A.3.c. The Dominguez Channel Estuary is a non-potable water body, so the maximum allowable holding time is 8 hours after sample collection. Furthermore, a sample that cannot be analyzed within the 8-hour timeframe may be filtered in the field and stored on dry ice for later analysis through standard method 9230 E.

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24.8	Compliance Option 3 In addition, justification is sought for why CII facilities must sample for all parameters in Tables 1 through 4 when only a subset is identified in the facility pollutant source assessment. The pollutant list should be minimized based on facility operations and pollutants that are known to be onsite. For example, railyard facilities are not a source for bacteria and sampling for bacteria should not be required. In addition, the CII Permit should outline a process for removing parameters (e.g., waiver) from monitoring requirements based on routine compliance or lack of relevance. Additionally, clarity is needed on the origin and basis of the metals loading estimate, ensuring it accurately represents all facilities covered by the CII Permit.	All constituents of concern applicable to a facility's location must be monitored to meet Compliance Option 3 requirements. Limiting permit applicability to pollutants resulting from pollutant sources from within the facility, similar to the IGP and U.S. EPA's Multi-Sector General Permit, would not be consistent with U.S. EPA's designation. The tentative revised CII Permit regulates pollutants that accumulate on impervious surfaces within the CII facility that could have come from a variety of sources, including tire and brake pad wear, leaking automotive fluids, litter, and air deposition. As explained in the Fact Sheet, pollutant discharge increases with increasing impervious area. Thus, in the context of the pollutant source assessment process, the impervious surfaces themselves are pollution sources that must be managed. See also response to comment #5.16. Note that Table 4 has been deleted from the tentative revised CII Permit. Regarding the procedural steps behind quantifying pollutant loading, this comment pertains to U.S. EPA's designation and is outside the scope of the action before the Los Angeles Water Board.

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24.9	Compliance Option 3 Sediment-Associated Effluent Limitations**:** The sediment-associated effluent limitations in a 3-year average value in "mg/kg sediment" raise concerns. Clarification is needed on compliance demonstration and justifications for sediment criteria inclusion in water quality compliance requirements. In addition, justify how compliance will be determined for all facilities within a drainage area/sub-watershed discharging into a receiving water relative to the point of compliance. The use of sediment sampling to indicate compliance is not a logical approach as the sediment sampling results could be attributed by adjacent facilities, which could result in a given facility being responsible for discharges of pollutants from other facilities. Sediment sampling should not be required under the CII Permit.	Sediment-based effluent limitations are part of the Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants TMDL. Please see documentation associated with that specific TMDL for further information about its necessity. Regarding background sources of pollutants, U.S. EPA's exercise of its residual designation authority, which requires regulation of the highly impervious CII facilities, stemmed from a court ruling that these facilities are significant sources of pollutants causing or contributing to impairments in the two watersheds. However, the tentative revised CII Permit does not preclude any demonstration that a facility's exceedances are caused by other facilities, i.e., run-on. With respect to regional, background or depositional sources, impervious surfaces regulated in the tentative revised CII Permit have a proven link to heightened pollutant accrual and runoff during storm events because heightened imperviousness prevents the natural infiltration and removal of pollutants from stormwater. See Fact Sheet section 2.3 and all cited studies therein for further information. Regarding responsibility for discharges from an adjacent facility, the CII facility has the option to divert run-on away from its facility or demonstrate that the CII facility's pollutant contribution to the discharge does not cause or contribute to the exceedance of the WQBELs. The Los Angeles Water Board will evaluate on a case-by-case basis any demonstration that run-on from a neighboring property caused or contributed to a CII Permittee's exceedance of the WQBELs.

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24.10	Aerial Deposition Consideration: Clarification on why aerial deposition from roadways contributing to pollutant loads has not been considered and requests details on how it will be addressed. An aerial deposition evaluation, similar to IGP Section XII.D.2.b. Non-Industrial Pollutant Source Demonstration, should be included as an option in the CII Permit.	Atmospheric deposition of pollutants is described in section 2.3 in the Fact Sheet, which states, “pollutants can come from tire and brake pad wear, leaking automotive fluids, litter, and air deposition.” The tentative revised CII Permit thus focuses on parking lots and areas with vehicular use, but also other impervious surfaces such as rooftops, which can accumulate pollutants from air deposition.
25.1	Flexibility and Additional Time to Comply with CII Permit It is important to highlight that there is a lack of evidence from the EPA Residual Designation Memorandum and modeling demonstrating that marine terminals are major contributors to water quality standard violations. This data gap raises concerns about the rationale behind the proposed permit expansion. The non-industrial areas not covered under the Industrial General Permit (IGP) are covered under the municipal separate storm sewer system (MS4) Permit and require BMPs to be implemented in these areas. Moreover, TTI has already invested significantly in best management practices (BMPs) and monitoring for improving stormwater discharge quality. These efforts align with the observed water quality improvements in the Harbor's receiving waterbodies. The current draft CII Permit and the Water Board’s Response to Comments (RTC) do not seem to fully consider these advancements and the cost implications of the CII Permit. Additionally, the draft CII Permit’s limitation on Dischargers to select a single Compliance Option may not be feasible for large-scale marine terminals. These facilities, typically several hundred acres, generate substantial volumes of stormwater, require a range of engineered solutions. A more flexible approach, allowing for multiple Compliance Options, is critical to effectively manage the stormwater challenges unique to these large facilities. The Water Board’s RTC indicated that allowing Dischargers to select more than one Compliance Option would cause an administrative burden for the Water Board and Watershed Management Group (WMG) staff, a claim that is without merit.	See response to comment #5.1 and #21.15.

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25.2	Compliance Option 1 – Agreement with Local Watershed Management Group to Fund Regional Project The incomplete development of Compliance Option 1 challenges Dischargers in making informed decisions. Stakeholders cannot realistically commit to this option without concrete cost details and a clear understanding of the legally binding agreements involved. The Water Board needs to provide models for these agreements and an anticipated fee range, or allow sufficient time for all stakeholders to develop these, considering the significant effort required to establish a scope and fee for legally bound agreements. Additionally, the lack of clarity in the Funding Level equation of the draft CII Permit, especially regarding the undefined "pollutant level factor," further complicates the decision-making process for Dischargers and WMGs. Moreover, identifying, designing, permitting, and constructing these watershed stormwater capture projects will take years. To promote flexibility and the use of Compliance Option 1, several provisions should be considered:	See response to comment #5.8.
25.3	Compliance Option 1 should allow for broader participation, not limited to existing regional projects. It should enable WMGs to establish in-lieu fees or mitigation funds to support future projects and maintenance of current ones. This approach would streamline the process and allow CII Permittees to contribute to future regional capture or water quality improvement projects.	See response to comment #5.9.
25.4	The CII Permit should permit participation in various regional stormwater quality improvement projects, not just those linked to a WMG. This flexibility is crucial for privately operated CII facilities at major ports, which may face unique challenges and regulatory scrutiny.	See response to comment #5.10.
25.5	For Ports specifically, a Joint Port Specific Watershed Management Group should be established to focus funding on projects that provide the most benefit to the Harbor area, addressing legacy contamination issues and aiding in achieving sediment-based load allocations.	See response to comment #5.11.

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25.6	Compliance Option 3 - Direct Demonstration of Compliance with Water Quality Based Effluent Limitations. The requirement for CII facilities to analyze a variety of parameters, including PCBs, PAHs, pesticides, toxicity, and bacteria, regardless of their exposure to stormwater, presents a technical challenge. Many facilities lack baseline data for these parameters and do not have on-site sources for them. The Water Board's focus on zinc as a “limiting pollutant” is technically inadequate. Dischargers should be allowed to establish monitoring parameters based on a site-specific pollutant source assessment.	See response to comment #5.16 and #24.8.
25.7	The current draft CII Permit's stringent requirements for sampling at all discharge locations are impractical, especially for large facilities like marine terminals. These marine terminals face unique challenges, such as submerged outfall locations and commingling with stormwater from upstream, off-site sources. The estimated costs for sampling from all upstream catch basins are prohibitively high, representing an inefficient allocation of resources that could be better utilized for BMP implementation. In line with the IGP, the CII Permit should include provisions for selecting alternative sampling locations and reducing the number of sampling locations based on representativeness. Furthermore, the CII Permit should align with the Total Maximum Daily Load (TMDL), allowing Dischargers to participate in coordinated compliance monitoring efforts and sample representative points in the receiving water. The Water Board’s RTC did not offer a reasonable solution for selecting representative sampling locations, merely indicating that the CII Permit allows for consideration of safety and accessibility when identifying alternative sampling locations. Based on our operational experience, all the outfalls and most of the upstream catch basins are not considered safe for collecting stormwater samples during a storm event.	Regarding selecting alternative and reduction of sampling locations, see response to comment #5.22. Regarding coordinated compliance monitoring, see response to comment #5.14.

26.1	Failure to provide feasible definitions for "Discharger." The Draft Permit now defines the Discharger as follows: "The discharger is the owner or operator of the CII facility, whoever has the authority and operational control to comply with all conditions of this General Permit, including preparing and implementing the SWPPP and either (1) entering into a legally binding agreement with a local Watershed Management Group, (2) operating and maintaining stormwater controls to address the volume of runoff produced by an 85th percentile 24-hour storm event, or (3) implementing monitoring and reporting requirements and stormwater controls to directly demonstrate compliance with water quality based effluent limitations. The owner is the owner of the parcel subject to this General Permit. The operator is the lessee of the parcel subject to this General Permit." When a parcel is leased to multiple lessees, the owner of the parcel shall serve as the Discharger. Where multiple qualifying parcels owned by different entities are forming a common development, the owner and/or operator of each parcel that is subject to this General Permit must obtain separate permit coverage." While this new definition may appear clear on its face it is too vague and fails to recognize the realities of the complex land use relationships frequently found in larger commercial, institutional, and mixed-use projects. As an initial matter the definition provides "Where multiple qualifying parcels owned by different entities are forming a common development, the owner and/or operator of each parcel that is subject to this General Permit must obtain separate permit coverage." It is unclear how this definition would be applied to a typical shopping center in which one entity owns the common areas such as the parking lots and leases some of the buildings to tenants, while other commercial entities own a parcel within the greater project in fee. • Is the owner of a parcel within the footprint of the shopping center subject to the permit if the inholding parcel itself is less than five acres? • Each of the parcels within the greater shopping center have rights to use the parking facilities but are not part of a lease. How will these relationships be accounted for when determining who will be the responsible discharger?	See response to comment #18.2.

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	• Can a parcel owner that holds its parcel inside the greater scheme of development choose a different compliance option from that chosen by the owner of the greater project fee? • If a lessee or inholding parcel owner chooses to comply via Option 1 and later files an NOT, who owns the Option 1 credits? Given the cost of compliance and the complexity of the relationships between property owners, the current definition is too vague to provide either regulators or potential discharges with sufficient guidance to determine their respective compliance obligations. Moreover, these complexities become even more opaque if the proposed definition is applied to a mixed-use project. To address these issues, commenters suggest that the definition of Discharger be limited to fee simple owners of commercial, industrial, and institutional sites as defined by the Draft Revised Permit that are greater than five acres.	
26.2	Clarification of Compliance Option 1 to Prevent Business Disruption The Draft CII Permit outlines the process for entering into a legally binding agreement with the applicable local Watershed Management Group to fund or partially fund a downstream regional project. In the absence of downstream regional projects, the Watershed Management Group may identify an upstream project. As of the time of the permit, only a select number of regional projects have been identified by the relevant Watershed Management Groups. Given the short timeline to comply with the Draft CII Permit, two years, it is likely that many CII sites would be forced into compliance options 2 and 3. Collectively, Compliance Options 2 and 3 offer the following compliance design options; typical constraints and challenges associated with these measures are listed below:	See response to comments #2.7 regarding number and capacity of available regional projects.

26.3	Option 2 Infiltration of the 85th percentile 24-hour storm event. Soil type and areas of soil contamination will limit the feasibility of infiltration throughout Draft CII Permit areas. Owners have little to no control over the feasibility of infiltration. Those owners who can retrofit a site with infiltration systems will experience significant construction timelines that materially interfere with the business operation of CII sites. Site access and parking would be affected for significant amounts of time due to the significant physical footprints required for infiltration; this would result in business revenue losses in addition to the costs of implementation. Compliance with Option 2 when using infiltration methods requires the discharger to ensure all influent entering the infiltration BMP to meet MCL criteria for all CII pollutants or install monitoring devices (lysimeters) to collect monthly samples of infiltrated water below the BMP devices. The cost of treating water to MCL standards will negate the advantage of using infiltration as a compliance option while the use of monitoring devices should include a provision where monitoring can be discontinued once a sufficient number of samples meet the MCL criteria. Evapotranspiration of the 85th percentile 24-hour storm event. There will be few, if any evapotranspiration opportunities due to standing water and vector control issues associated with standing water. Capture and reuse of the 85th percentile 24-hour storm event. Typical CII sites are highly impervious and do not have adequate landscape coverage to disperse the 85th percentile runoff as irrigation in a reasonable timeframe. Some sites are already irrigated with reclaimed water. Site capture and reuse, similar to site infiltration, will materially interfere with business operations and result in business revenue losses in addition to the costs of implementation due to site impacts during construction. Retrofit of building plumbing systems for capture and reuse of stormwater would require an overhaul of building plumbing systems, leading to potential partial or even full building closures. Building closures would cause significant business revenue losses. Capture the 85th percentile 24-hour storm event and discharge to the local sewer system. Based on the limited capacity of the sewer systems after rain events, it is not anticipated that very many CII facilities will be allowed to discharge the volumes associated with this permit to the sewer system. Based on the other constraints noted above, very few facilities will be able to achieve compliance via Option 2.	See response to comment #23.11.

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26.4	Option 3 Discharge of 85th percentile 24-hour storm event runoff treated to numerical effluent limits with monitoring and reporting requirements. There is a lack of currently commercially viable treatment systems that can treat the volumes of stormwater generated by CII sites to the level prescribed in the Draft CII Permit. Such systems would likely have a storage component and potentially complex mechanical systems and filtration systems. The storage component would cause similar temporary business disruptions during construction as infiltration systems and capture and reuse systems would due to footprint size. In addition, the filtration systems would likely consist of above-ground components that would have permanent impacts on site access, circulation, and parking. The obligation of CII owners to monitor and maintain potentially complex systems is a significant burden and creates an increased risk of system failure due to the lack of CII owner expertise in the maintenance and operation of advanced stormwater filtration facilities. Based on IGP experience and the lack of commercial viable treatment systems to meet the permit water quality standards, best estimates of the capital costs to design, permit and construct stormwater conveyance and treatment systems on existing sites range between $100,000 to $250,000 per impervious area services. Operations and maintenance costs range between $10,000 to $25,000 per year per impervious acre serviced. These anticipated capital and maintenance costs leave Option 1 as the only viable option.	See response to comment #12.9.
26.5	Given the myriad challenges and impacts of implementing Compliance Options 2 and 3, the applicability of Compliance Option 1 should be expanded to include all CII properties covered under the Draft CII Permit. Funds that are directed to the Watershed Management Groups would result in professionally designed and professionally managed stormwater projects that would have lower chances for failure due to improper design or maintenance. If no projects were available to fund, the Compliance Option 1 funding could help to identify more high-benefit regional projects and then fund them once identified.	See response to comment #12.13.

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26.6	The assessment of a proportional fee should be a compliance mechanism established in Compliance Option 1. The fee should be proportional to the implementation of the applicable WMP with the budgets as defined in the approved WMPs. The following permit changes should be made: 1. In the absence of identified regional projects in the Dominguez Watershed, owners should have the ability to enter into a legally binding agreement with the applicable local. Watershed Management to pay a fee of $24,572 per acre of ownership as a part of Compliance Option 1. In addition, the funding contribution to an identified project in the Dominguez watershed should be capped at $24,572 per acre of ownership. 2. In the absence of identified regional projects in the Los Cerritos Watershed, owners should have the ability to enter into a legally binding agreement with the applicable local Watershed Management to pay a fee of $18,745 per acre of ownership as part of Compliance Option 1. In addition, the funding contribution to an identified project in the Los Cerritos watershed should be capped at $18,745 per acre of ownership. 3. The introduction of a cap on the off-site contribution provides a fair and proportional cost basis to property owners. Property owners have little to no control over the position of their property within the watershed, the nature of the soils and potential contamination of soils underlying the site, and the costs of downstream regional improvements versus the costs of downstream regional improvements for other projects within the watershed. Watershed positioning is not related to the nature of the business or type of development. 4. The pollutant level factor in the funding level equation provided in section 8.1 should be defined and the Draft CII Permit recirculated for further commentary. The current Draft CII Permit cannot be adequately commented upon or discussed without a specfic definition of this important factor.	See response to comment #1.11.

26.7	The Costco Warehouse and Fuel station in Hawthorne (14501 Hindry Ave, Hawthorne, CA 90250) is an example of the complexities that will arise from the implementation of the proposed Commercial, Industrial and Institutional (CII) draft permit. This particular Costco falls within the Dominguez Channel and Los Angeles/Long Beach Harbors Watershed and is one of 6 Costco Warehouses within both watersheds covered by the draft permit. Costco owns one parcel of a total of seven parcels at this particular site. Drainage areas do not correspond to parcel boundaries, and by design, there is extensive cross lot drainage. Parking is shared freely among the parcels and owner agreement contracts are in place addressing the rights and obligations between owners. Only two of the seven parcels are larger than 5-acres. One is owned by Costco and the other is owned by the LA County Flood Control District which leases the parcel for parking purposes to Costco. Three of the parcels less than 5-acres are upstream of the larger parcels and contribute to flows over the larger parcels via cross-lot drainage resulting in co-mingling of permitted versus non-permitted parcels. There are six different discharge points and combining into fewer for more efficient treatment (and less maintenance) would require installation of lift stations to pump water to consolidated treatment area(s).The discharge points typically occur near [or] at key drive aisles into and out of the facility and also occur where the primary dry and wet utilities are located to service the site and various tenants. Construction of large underground tanks and above ground treatment systems would result in significant temporary parking impacts and permanent loss of parking spaces to accommodate above ground treatment facilities. The proposed regulations do not address the complexities and responsibilities of this type of development. Many of the agreements took years to negotiate and it is not clear how the water board took into consideration existing contract law between individual parcel owners, who may consist of multiple owners themselves in the form of LLC's, Limited general partnerships, general partnerships etc. The temporary and permanent loss of parking to accommodate storage and treatment facilities will impact existing parking requirements. Developments of this type have optimized the site plan to meet the zoning code they were designed under. Reducing parking counts could violate existing owner's agreements, conditional use permits issued by the local jurisdictions and zoning codes, none of which are addressed in the proposed CII regulations. Is LA County Flood Control District responsible for compliance or is Costco responsible for the parking lot parcel leased from LACFD (> 5 acres)? Is Cosco responsible for sizing and treating their respective 85th percentile flows volumes only or is Costco responsible for treating co-mingled flows from upstream non-permitted parcels also?	The potential complexities of the various types of CII Sites have been considered when developing the tentative revised CII Permit. The definition of Discharger in Attachment A of the permit has been further refined in response to comments such as this one, where the commenter questions who should be responsible for the discharge from the parking lot parcel owned by LACFD and leased to Costco. However, such site-specific complexities cannot be resolved prior to the adoption of a general permit that will cover hundreds of facilities. Rather, many potential CII Site complexities, including those identified for this specific Costco property, must necessarily be addressed on a case-by-case basis at the time of enrollment under the CII Permit because it is a general NPDES permit. In accordance with federal regulations, the tentative revised CII Permit describes the categories and subcategories of Dischargers in the watersheds subject to the permit, presents various potential owner/operator associations at CII sites, and provides a range of implementation alternatives and BMP costs so that each Discharger can choose the compliance option that works best for it . These compliance options were informed in part by, workshops held by Los Angeles Water Board staff, to provide Dischargers such as Costco the opportunity to listen to, and weigh in on, various enrollment scenarios proposed by workshop attendees. Furthermore, the CII Permit Compliance Options do not necessarily impinge on Costco's existing agreements. For example, should Costco determine that Compliance Option 1 is the best compliance option for it, then it can negotiate the appropriate agreement with the Watershed Management Groups, and if Costco deems it necessary to enter into a cost sharing agreement with others parcel owners or lessees as a result, then it can do so. There would not be any impact on parking space if Compliance Option 1 was chosen. If Costco chose a different compliance option, and if Costco determined that it wanted to build its own retention basins, then its choice

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	A portion of the Costco parcel (larger than 5 acres) drains into a smaller parcel (World Market) that is less than 5 acres (1.6 acres) and the co-mingled flows discharge from the site with the approximate percentage of tributary areas at the discharge point (86% World Market/ 14% Costco). Would this discharge point be regulated under the permit and how?	might require it to renegotiate the agreements mentioned in this comment. But nothing in the CII Permit requires that Costco choose this compliance route. . Please note that the tentative CII Permit has been revised to allow Dischargers 3 years to submit Compliance Option 1 Documents to allow for additional time to resolve site-specific issues. Please see below for responses to the three questions at the end of the comment: For the parking lot that Costco is leasing from LACFD, the responsibility is with whomever has the authority and operational control to comply with all conditions of the tentative revised CII Permit. If choosing Compliance Option 2, Costco is responsible for sizing and treating their respective 85th percentile 24-hour stormwater runoff volumes from its parcel using the Straight Calc method. If choosing Compliance Option 3, run-on from upstream non-permitted parcels may be monitored to demonstrate that Costco's parcel is not causing or contributing to any exceedances of the WQBELs. Since Costco is responsible only for the stormwater runoff generated from the parcel it owns or is operationally responsible for, the discharge point that represents the comingled stormwater discharges is not the appropriate compliance point for the Costco-owned or operated parcel.

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27.1	Comment 1: The Subjective Nature of the Permit's Definition of Impervious Surface In the revised draft permit, the Board defines Impervious Surface as "Any surface in the urban landscape that cannot effectively absorb or infiltrate rainfall, for example, driveways, sidewalks, rooftops, roads (including gravel roads), compacted soils, and parking lots." Nowhere does the Permit provide any objective definition or criteria for what is means to "effectively absorb," and it leaves the application of that term to potentially arbitrary applications. The regulated community is entitled to know objective criteria and precisely what the standard is. For example, the Board's response to comments from the Western State Petroleum Association indicates that "graveled areas around pipelines and rail lines are considered 'impervious' under the newly added definitions" (Letter Number 4, comment 4.2). Yet, if rainwater can move through tracks or roadbed and reach native soil at the same rate as if tracks were absent, then those areas should not be considered an "impervious surface," nor used as contributing surface area to a facility's 5-acre impervious area threshold.	See response to comment #5.27.
27.2	Comment 2: The Permit Fails to Allow for the Pervious Nature of Railroad Tracks and Roadbed and is Thus Arbitrary Union Pacific Railroad has conducted extensive research on the pervious nature of our track structure. Attached is a study conducted using the Cornell Sprinkle Infiltrometer device to test infiltration rates at 11 different areas on Union Pacific property. The study included tests in various areas such as railroad ballast areas within railyards, railroad ballast areas within right of way (ROW) track lines, unpaved areas within railyards, unpaved areas along ROW track lines, and grassy/undeveloped areas within railyards. The study findings indicate that the infiltration rates for ballast, whether in track ROW or railyard, far exceed typical values for soils and undeveloped areas, demonstrating their super pervious nature with extreme infiltration rates Union Pacific Railroad strongly urges the Board to clarify that rail lines and related areas composed of ballast, which are designed to have higher permeability, should not be considered impervious and counted towards a facility's 5-acre threshold for draft CII Permit coverage.	According to Los Angeles Water Board research, these parcels are associated with heightened pollutant loading. SMARTS records show that Union Pacific Railroad operates 7 sites within the Los Angeles Water Board's region. Of these sites, four sites are required to sample to assess compliance with zinc effluent limits under the IGP. Three of these four sites have reported multiple serious violations of zinc effluent limits over the 2020-2022 reporting years. For reference, U.S. EPA has specifically listed zinc as one of the primary constituents of concern. More generally, ballast indeed allows infiltration and facilitates drainage, but the soils underneath tend to be compacted by the freight tonnages passing overhead. Therefore, rail lines and related areas with fractional ballast composition and underlying compacted soils are not exempt from tentative revised CII Permit coverage. However, sites can be evaluated on a case-by-case basis. See also response to comment #5.27.

Comment Number	Comment	Response
27.3	Comment 3: The Definition of Imperviousness is Problematic The revised draft permit defines imperviousness as "The percentage of impervious cover by area within a development site or watershed, often calculated by identifying impervious surface from aerial photographs or maps." However, the term "often" suggests that the use of maps or aerial photos alone can be conclusive in determining the impervious nature of property, without even specifying or describing the criteria for evaluating the impervious nature of the property on the basis of maps or aerial photographs. This lack of clarity raises concerns about the consistent and fair application of the permit requirements. Union Pacific suggest that the reference to "often calculated by identifying impervious surface from aerial photographs or maps". At the very least, this provision should be changed to state that "in the absence of other evidence, maps and aerial photographs can be used to assist in determining the impervious nature of property	Language in Attachment A has been updated to incorporate this suggestion. Upon NOI submittal, total imperviousness should be determined through individual site characterization and will be validated by staff on a case-by-case basis.
27.4	Comment 4: The Definition of Site & Contiguous Property Should be Limited The revised draft permit defines a Site as "The land or water area where any 'facility or activity' is physically located or conducted, including adjacent land used in connection with the facility or activity." The Board responded to industry comment by stating "If the surface area for the contiguous pipelines or rail lines are owned or operated by the facility, this area should be considered for coverage under the tentative CII Permit". Yet the Permit terms are impermissibly vague to support this application. Moreover, such a construction impermissibly treats railroad and pipeline ROW fundamentally different than other transportation corridors. Union Pacific Railroad urges the Los Angeles Regional Board to clarify that the surface area of rail lines connecting to a facility but not part of the facility's operational boundary should not be counted towards a facility's 5-acre threshold for CII Permit coverage. Mainline track entering, departing or connecting between facilities is not part of the facility, and should not count towards, nor be subject to, a facility's 5-acre threshold scope for CII Permit coverage.	Language in Attachment A has been updated to address this comment. The definition of Site has been revised to better align with the definition of Discharger.
28.1	Compliance Option 1 — Agreement with Local Watershed Management Group to Fund Regional Project Section 8.1, pg. 26 If there are not enough regional projects available for funding within the designated Watershed Management Group, how does a Discharger comply with Compliance Option 1?	See Response to Comment #2.7.

Comment Number	Comment	Response
28.2	Will authorization be given for funding regional projects outside the Watershed Management Group?	Only regional projects identified in approved Watershed Management Programs may be funded under Compliance Option 1. See response to comment #5.10.
28.3	Will Watershed Management Groups be required to provide a list of regional projects, including funding information?	WMGs periodically update their progress of regional projects on their website. The Los Angeles Water Board will provide a guidance document for Dischargers, which contains links to the WMGs in the two watersheds and how to access their lists of current and future projects.
28.4	Have the Watershed Management Groups listed in Attachment H been notified of the proposed permit, the compliance requirements, and how they may be affected? Will they be provided the opportunity to provide comments on this proposed permit?	WMGs listed in Attachment H are all aware of this tentative revised CII Permit and how they will be involved and affected. All who are interested in leaving comments on the proposed permit were notified and given the opportunity to provide comments.
28.5	Do the listed Watershed Management Groups have fee schedules and funding guidelines in place? If not, has the time that it would take to develop and approve these items been considered for proposed permit implementation?	See response to comment #1.11 regarding fee structure and guidance. Also, funding has been clarified in section 8.1 of the tentative revised CII Permit. We expect the fee schedules to be in place within the phased 3-year permit implementation timeline after permit is in effect.
28.6	Once a regional project is funded and the owner/operator changes, how does that affect the Discharger funding that project? Does this affect the agreement between the Discharger and Watershed Management Group?	If the discharger changes, whether owner or operator, the current Discharger must submit an NOT and the new owner/operator must obtain CII Permit coverage within 45 days prior to discharge (CII Permit Sections 3.4.2, and 3.6). The Discharger must also abide by the termination provision in their agreement with the WMG.
28.7	Compliance Option 1 — Agreement with Local Watershed Management Group to Fund Regional Project Section 8.1, pg. 26 Based on the funding level equation provided, the cost for Compliance Option 1 is still unclear. Will this be a one-time fee or annual fee? Is this determined by the Watershed Management Group?	Fees are to be negotiated and developed within the agreements with WMGs. Payments of fees will be ongoing and must be indicated in the annual report submitted by the Discharger to the Regional Board. See also response to comment #1.11.

Comment Number	Comment	Response
28.8	The IGP states in Section X.H.6.a in footnote 13 of page 36, that “all hydraulic calculations shall be certified by a California licensed professional engineer in accordance with the Professional Engineers Act…” when discussing volume of runoff determinations for volume-based BMPs. Will Dischargers be required to have the volume calculations, and therefore, funding level, certified by a California licensed professional engineer in accordance with the Professional Engineers Act?	A California licensed civil engineer shall certify that all hydrologic analyses, hydraulic calculations, and design standard(s) operation parameters comply with Attachment I - sections 1.1.3, and 1.5.1.2 of the tentative revised CII Permit.
29.1	For Compliance Option 1, can you please provide more clarity on the inputs required to calculate the proportional funding level to NSWD volume and onsite stormwater volume? Specifically, what is the definition for the “pollutant level factor” multiplier within the formula noted in Section 8.1 of the draft regulations. Additionally, what is the recommended default value(s) for the pollutant level factor?	Please see responses to comments #1.11 and #4.4. Section 8.1 of the tentative revised CII Permit describing the Funding Level equation has been clarified with the addition of a footnote that defines the pollutant level factor.
29.2	For a facility that chooses participation under Compliance Option 1, what happens to funding spent on compliance should the owner/operator change?	Contracts/agreements typically have provisions for early termination. Watershed Management Groups and CII Sites may include early termination provisions to specify proration or forfeit of fees paid for the remaining term of the agreement. See also response to comment #1.8.
30.1	A primary concern that remains with Option 1 is the availability of projects. While TraPac appreciates the premise of Compliance Option 1, we have significant concerns that this option lacks sufficient detail and may not result in a feasible option. Given that there are at least 640 businesses that will be affected by this Permit who could also be interested in selecting Compliance Option 1 TraPac’s access to this compliance option may be limited.	See response to comment #2.7.
30.2	For seaport facilities, TraPac does not view Option 2 as feasible. Due to the geographic location of the seaport facilities and available infrastructure, it would not be possible to “design, implement, and properly operate and maintain stormwater controls (structural and/or non-structural BMPs) with the effective capacity to capture and use, infiltrate, and/or evapotranspire all NSWDs and the volume of runoff produced up to and during an 85th percentile 24-hour storm event” as described in Compliance Option 2.	See response to comment #23.11

Comment Number	Comment	Response
30.3	Option 3 has the potential to be an alternative option, but under the current language it is not feasible for seaport facilities to comply. Due to our location, TraPac's outfall points are directly over the water and below the berths. Sampling at these outfall points presents a number of logistic and safety issues in a harbor that remains active. Most importantly, the sampling at these outfall points can pose a large safety risk for those involved. In order to test for the parameters proposed, more than a thousand gallons of water would need to be collected, properly stored, and preserved for transit during each sampling event.	Regarding logistics and safety concerns about sampling, see response to comment #5.20. Regarding the need to collect large volumes of stormwater samples, Attachment E, Monitoring and Reporting Program, section 2.2.2.2.6, has been added to the tentative revised CII Permit to provide an alternative process to determine compliance with the sediment based effluent limitations that would not require the collection of large volumes of stormwater.
30.4	By including a pollutant source assessment and representative sampling within Option 3, the amount of time and money spent on monitoring a wide range of parameters could instead be diverted to resources for best management practices. Further, the strain on the laboratories and sampling vendors as Option 3 is currently drafted is a concern as TraPac is uncertain there is the capacity to test such volumes of water as currently required.	Regarding pollutant source assessment and representative sampling, see responses to comments #5.16 and #24.8. Regarding the strain on the laboratories and sampling vendors availabilities, see comment #30.3. Failure to provide analytical results due to lack of laboratories to process the amount of sampling events or other reasons will be evaluated on a case-by-case basis.
30.5	Finally, the best management practices (BMPs) outlined in the draft permit as currently drafted are overly restrictive. TraPac requests that equal BMP alternatives may be recognized in order to achieve the greatest pollutant reduction given our location, geography, and infrastructure.	All minimum BMPs in section 6.5 are required under the tentative revised CII Permit. The SWPPP may specify why any BMP is infeasible and should propose an equally effective BMP.
31.1	The Regional Board's process is premature given that the United States Environmental Protection Agency (EPA) has not yet finalized its designation for these two watersheds. See EPA Revisions to 2022 Preliminary Designation (Preliminary Designation). EPA's public comment period for its Preliminary Designation extends until January 3, 2024, and any decision to exercise its residual designation authority is still subject to change. Regardless, the Regional Board is planning to move forward with an adoption hearing scheduled for February 22, 2024, which is likely to precede EPA's issuance of its Final Designation. As a result, the final permit will not have the underlying authority it assumes and will be invalid if adopted prior to EPA's issuance of its Final Designation. Further, if EPA revises its Final Designation, the permit may be inconsistent with the Final Designation's requirements. Accordingly, the Regional Board should delay adoption of the permit pending EPA's Final Designation.	See response to comment #15.1.

Comment Number	Comment	Response
31.2	Additionally, the Revised Draft CII Permit is both too broad and too narrow to be effective. The permit regulates CII sites and impervious surfaces that contribute only de minimis amounts of copper and zinc pollution to the watersheds while leaving uncovered the vast majority of impervious surfaces. For example, the Revised Draft CII Permit does not cover any of the more than 19,000 CII sites in these two watersheds with under five acres of impervious surface. Instead, it chooses to regulate a small portion of the CII sites based on their acreage, even though they contribute a minority of the zinc and copper pollution from CII sites in the watersheds. The Revised Draft CII Permit therefore chooses to place the massive economic burden of addressing a regional issue on a small number of facilities which have a minimal impact on pollution.	This comment pertains to U.S. EPA's designation memo and is outside the scope of the action before the Los Angeles Water Board.
31.3	Moreover, the permit places unnecessarily strict standards on private facilities that are inconsistent with the requirements for regulated public facilities. For example, the Los Angeles Region Phase I Municipal Permit (Order R4-2021-0105) (MS4 Permit) does not require control of rooftop discharges. Furthermore, the MS4 permit merely requires inspection of parking lots, a known source of zinc and copper pollution, twice per month and cleaning of those lots once per month. It is neither cost effective nor logical to place significantly more restrictive requirements on private facilities based only on their ownership.	The requirements of the tentative revised CII Permit are not more restrictive than the Regional MS4 permit. The Regional MS4 permit requires more than simply inspections and cleanings of public parking lots; it also requires compliance with numeric water quality based effluent limits. Currently, MS4 permittees bear most of the burden for the pollution loading in the two watersheds at issue. The tentative revised CII Permit will result in CII Permittees and MS4 permittees sharing responsibility for controlling pollutants in urban stormwater.
31.4	Remarkably, the Regional Board seeks to regulate privately owned impervious surfaces that are not subject to vehicular use more strictly than publicly owned land whose express purpose is vehicular use. Thus, the Revised Draft CII Permit should be further revised to exclude those low-risk private CII facilities which have five or more acres of impervious surface, but do not contribute to zinc and copper pollution because an insignificant portion of the impervious surface is open to parking or vehicular traffic. For example, certain impervious surfaces/sites may only make *de minimis* contributions of pollutants in runoff as a result of atmospheric deposition, buildup, and wash off. The trace amount of these *de minimis* pollutants are generated from regional transportation sources and are not attributable to the activities or sources from these low-threat facilities. As such, these facilities should not be forced to bear the economic burden of a regional issue.	This comment pertains to U.S. EPA's designation memo and is outside the scope of the action before the Los Angeles Water Board.

Comment Number	Comment	Response
31.5	Further, the Revised Draft CII Permit does not provide sufficient information regarding the three compliance options, which makes it impossible for dischargers to evaluate which option is most feasible for their specific facilities and site characteristics. Although we appreciate the Regional Board's flexible approach to permitting, the permit simply leaves too many open questions as currently drafted. Revisions to clarify the compliance procedures are in the best interest of the Regional Board and the dischargers.	The three compliance options of the tentative revised CII Permit are clearly defined in section 8, section 9, and Attachment E, and the tentative CII Permit has been revised to provide further clarification. Additionally, the Fact Sheet has been expanded with further analysis regarding BMP performance and an economic analysis memo has been posted on the CII Permit web page to help Permittees navigate their choice of compliance options.
31.6	General Comment Under federal law, the United States Environmental Protection Agency (EPA) may exercise its discretionary authority to designate certain stormwater discharges as requiring NPDES permits based on localized conditions or additional information. 33 U.S.C. § 1342(p)(2)(e); *id.* § 1342(p)(6); 40 C.F.R. § 122.26(a)(9)(i)(D). In this case, exercise of EPA's residual designation authority (RDA) is the legal basis underpinning the Regional Water Quality Control Board's (Regional Board) adoption of the Revised Draft CII Permit. In parallel with the Regional Board's permit adoption, EPA is seeking to designate stormwater discharges from CII sites in the Los Cerritos Channel/Alamitos Bay Watershed and the Dominguez Channel/Inner and Outer Los Angeles and Long Beach Harbor Watershed. See EPA Revisions to 2022 Preliminary Designation (Preliminary Designation). The Regional Board's process is premature given that EPA has not yet made a formal designation for these two watersheds. In fact, the Revised Draft CII Permit wrongfully assumes EPA has already finalized its Preliminary Designation. Revised Draft CII Permit, p. 6 ("EPA has exercised RDA pursuant to 40 CFR section 122.26(a)(9)(i)(D) for certain CII sites in the Alamitos Bay/Los Cerritos Channel watershed and the Los Angeles/Long Beach Harbor watershed."). EPA's public comment period for its Preliminary Designation extends until January 3, 2024 and any decision to exercise its residual designation authority is still subject to change. The Regional Board is planning to move forward with an adoption hearing scheduled for February 22, 2024, which is likely to precede EPA's issuance of its final designation. As a result, the final permit will not have the underlying authority it assumes and will be invalid if adopted prior to EPA's issuance of its Final Designation. Accordingly, the Regional Board should delay adoption of the permit pending completion of the EPA RDA process.	See Response to Comment #31.1.

Comment Number	Comment	Response
31.7	General Comment The Revised Draft CII Permit cites to EPA's Preliminary Designation and its associated modeling in support of the CII permitting requirements. See, e.g., Attachment F, p. F-9. However, EPA does not provide clear documentation regarding the assumptions underlying its calculations. For example, EPA appears to rely on certain supporting modeling data in its Preliminary Designation but does not directly cite to this data or explain where it can be found. It is therefore difficult to evaluate EPA's modeling or determine whether the CII facilities regulated by the Revised Draft CII Permit contribute meaningfully to copper and zinc pollution in the watersheds. Private CII facilities with five or more acres of impervious surface constitute less than 3% of the total number of CII sites within the watersheds. Absent more persuasive modeling linking these facilities to copper and zinc pollution, the Regional Board cannot justify the permit.	This comment pertains to U.S. EPA's designation memo and is outside the scope of the action before the Los Angeles Water Board.

Comment Number	Comment	Response
31.8	General Comment The Regional Board claims that impervious surfaces are pollutant sources by way of deposition of pollutants from wear of automotive parts, spills and leaks of automotive fluids, litter, and deposition of airborne materials. Attachment F, p. F-9. Impervious surfaces themselves, absent the incidental presence of these pollutants from off- property regional sources, do not generate copper and zinc pollution. It is both inefficient and unnecessarily costly to regulate the surfaces on which zinc and copper pollution have the potential to be deposited, rather than the root sources of these pollutants. The Regional Board should focus on addressing copper and zinc sources to reduce their availability and migration rather than regulating CII sites that have no control over atmospheric deposition of pollutants on their properties. In fact, the two largest impervious land uses in the two watersheds are residential and roadways, which are likely the largest generating sources of copper and zinc, which are then subject to atmospheric deposition on impervious surfaces throughout the watersheds. As such, the Regional Board's efforts should focus on resolving pollution at the source, which will eliminate the need for regulation of impervious surfaces at CII facilities. The very small group of CII operators with more than five impervious acres should not be forced to bear millions of dollars in costs to manage regionally generated pollution that happens to be aerially deposited on their properties. Moreover, the Regional Board does not cite to evidence indicating that atmospheric deposition of pollutants on impervious surfaces that are not subject to direct transportation use contributes meaningfully to water quality standard violations. Absent any evidence that the impervious surfaces at CII facilities unrelated to transportation, such as rooftops, make more than *de minimis* contributions to water quality standards violations, the Regional Board should not regulate stormwater discharges from these surfaces. Notably, the MS4 permit regulating stormwater discharges from publicly owned and operated CII sites does not regulate stormwater discharges from rooftops.	Impervious surfaces provide a venue where pollutants from onsite site activities and offsite aerial deposition concentrate prior to wash-off during rain events. Pollutants from impervious surfaces in residential land uses, including rooftops, and local roadways are regulated under the Regional MS4 permit. Pollutants from highways and Caltrans right of ways are regulated under the Caltrans stormwater permit. The tentative revised CII Permit accurately reflects U.S. EPA's final designation memo. See response to comment #24.10 regarding atmospheric deposition of pollutants.

Comment Number	Comment	Response
31.9	General Comment According to the Revised Draft CII Permit, the 2015 Petitions that led to EPA's Preliminary Designation and establishment of this permit specifically allege that portions of the watersheds at issue are impaired for copper, zinc, and/or ammonia pollution. See Attachment F, pp. F-6 - F-8. Based on its review of the evidence provided in the 2015 Petitions, EPA has determined that there is sufficient evidence to designate stormwater discharges of copper and zinc from CII facilities. See Preliminary Designation, p. 8. Without explanation, the Revised Draft CII Permit expands its permit to target far more than these pollutants of concern. In total, the Revised Draft CII Permit includes effluent limitations for more than 15 pollutants. See Revised Draft CII Permit, pp. 18-22. However, the Regional Board provides no information regarding the technical modeling underlying these proposed effluent limitations. This is insufficient under federal law, which requires that a NPDES permit fact sheet "briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit." 40 C.F.R. § 124.8. The Revised Draft CII Permit fails to meet this standard for all pollutants except copper and zinc. The Revised Draft CII Permit must either be revised to exclude the other pollutants of concern or provide significantly more information about the data underlying the permit.	See response to comment #5.16

Comment Number	Comment	Response
31.10	General Comment The existing Los Angeles Region Phase I Municipal Permit (Order R4- 2021-0105) (MS4 Permit) demonstrates that the Revised Draft CII Permit is overly burdensome. For example, the MS4 Permit does not require control of rooftop discharges because they do not meaningfully contribute to pollution. Moreover, the MS4 Permit does not place the same onerous requirements on public CII facilities. For instance, the MS4 Permit's only requirement for publicly owned parking facilities is stated in Section H.9 as follows: "H.9. Parking Facilities Maintenance. Permittee-owned parking lots exposed to stormwater and meeting either criteria listed below, shall be inspected at least twice per month. If debris and/or oil is observed during the inspection, the parking lot shall be cleaned. At a minimum, parking lots must be cleaned once per month. For parking lots with a gravel/sediment base, Permittees shall also implement and maintain BMPs to prevent the discharge of gravel and sediment to the MS4." It is neither cost effective nor logical to place significantly more restrictive requirements on private facilities of the same category. If inspection twice per month and cleaning once per month is sufficient to address stormwater discharge for public facilities, the same methods should also be employed for private CII facilities.	See response to comment #31.3.

Comment Number	Comment	Response
31.11	General Comment The Revised Draft CII Permit should incorporate No Exposure Certifications (NEC) and Notice of Non-Applicability (NONA) options, as available under the existing Industrial General Permit (IGP). If a condition of no exposure exists at an industrial facility regulated under the IGP, a permit is not necessarily required for stormwater discharges from the facility if the facility submits a NEC or NONA to the permitting authority attesting to the condition of no exposure. See 40 C.F.R. § 122.26(g). Dischargers that are deemed to meet the requirements of the NEC are exempt from Stormwater Pollution Prevention Plan (SWPPP), sampling, and monitoring requirements of the IGP. The purpose of the NEC and NONA exclusions is to provide all industrial facilities regulated under the NPDES program, whose industrial activities and materials do not have a significant impact on water quality standards violations, with a simplified method for complying with the Clean Water Act. The private CII facilities regulated under the Revised Draft CII Permit should be afforded the same opportunities to demonstrate no exposure or non-applicability as those facilities regulated under the IGP. Private CII facilities should not be overburdened with compliance costs and arbitrarily held to more restrictive requirements than other permittees within the same watersheds.	See response to comment #18.3.
31.12	Page 7, Section 3.1 General Permit Coverage – Applicability The Revised Draft CII Permit is both too broad and too narrow to be effective. The permit regulates CII sites and impervious surfaces that contribute only *de minimis* amounts of copper and zinc pollution to these watersheds while leaving uncovered the vast majority of impervious surfaces. For example, the Revised Draft CII Permit does not cover any of the more than 19,000 CII sites in these two watersheds with under five acres of impervious surface. Instead, it chooses to regulate a small portion of the CII sites based on their acreage, even though they contribute a minority of the zinc and copper pollution from CII sites in the watersheds. The Revised Draft CII Permit therefore chooses to place the massive economic burden of addressing a regional issue on a small number of facilities. This is both ineffective and unjust.	This comment pertains to U.S. EPA's designation memo and is outside the scope of the action before the Los Angeles Water Board.
31.13	Page 8, Section 3.2.1 Compliance Option 1 – Agreement with Local Watershed Management Group to Fund Regional Project The Revised Draft CII Permit should provide a model agreement between a discharger and the applicable local Watershed Management Group.	See responses to comments #1.8 and #2.4.

Comment Number	Comment	Response
31.14	Page 9, Section 3.4.2 Timing for Submittal of Permit Registration Documents Existing dischargers applying for coverage under the Revised Draft CII Permit are required to submit a notice of intent (NOI) and SWPPP within one year and Compliance Option Documents within two years of the effective date of the permit. New dischargers, on the other hand, are required to submit an NOI, SWPPP, and Compliance Option Documents at least forty-five days prior to commencement of the authorized discharge. This penalizes new dischargers and does not allow them sufficient time to prepare Compliance Option Documents. New dischargers should also be given two years to prepare Compliance Option Documents.	New dischargers are typically subject to numerous permitting processes. This process will encompass CII Permit requirements and allows enough time to submit Compliance Option Documents.
31.15	Page 10, Section 3.5 Notice of Termination The Revised Draft CII Permit provides three situations under which dischargers may request termination of coverage. However, it fails to address changes in site characteristics which result in the facility no longer requiring coverage under the permit. For example, inclusion of green infrastructure such as permeable pavement, installation of swales or other pervious cover all have the potential to reduce the impervious acreage of a site to below five acres. In these cases, dischargers should have the opportunity to terminate coverage under the permit.	See response to comment #5.31.
31.16	Page 17, Section 7.1.1 Technology Based Effluent Limitations All dischargers, regardless of the compliance option they select, are required to implement best management practices (BMPs) that comply with the best conventional pollutant control technology (BCT) and best available technology (BAT) economically achievable requirements of the permit. In essence, this requires all dischargers to implement Compliance Option 2. Additionally, BAT/BCT BMPs may not be implemented equitably, as compliance is determined by the BMPs implemented at neighboring facilities. To avoid this issue, the Regional Board should provide a list of approved BMPs to be implemented for all CII sites.	The technology based effluent limits expressed as BMPs in section 7.1.1 are different than the BMPs needed to demonstrate compliance with water quality based effluent limits under Compliance Option 2. Under Compliance Option 2, the BMPs must be quantitatively shown to have the capacity to address all the runoff from a design storm. For the technology based effluent limits, the tentative revised CII Permit lists minimum BMPs (section 6.1.5 of the Order) that are generally applicable at all facilities. Due to the diverse CII sites covered by the permit, the development of a more comprehensive list of minimum BMPs is not currently feasible. The selection, applicability, and effectiveness of a given BMP is often related to facility-specific facts and circumstances.

Comment Number	Comment	Response
31.17	Pages 22-24, Section 8.1 Compliance Option 1 – Agreement with Local Watershed Management Group to Fund Regional Project The Revised Draft CII Permit provides further information regarding Compliance Option 1, but it is still insufficient. For example, the new formula for calculating the funding level leaves a number of factors, including the total stormwater capacity and pollutant level factor, undefined. The lack of clarity makes it impossible for dischargers to determine whether Compliance Option 1 is feasible for their facilities.	Please refer to response to comments #4.4 and #5.8.
31.18	Pages 22-24, Section 8.1 Compliance Option 1 – Agreement with Local Watershed Management Group to Fund Regional Project Prior to the Revised Draft CII Permit becoming effective, the Regional Board should provide a list of projects to be funded in each subdrainage area so that dischargers can assess which projects may be available for their facilities. Additionally, the Regional Board should provide the project lead agency and key contacts for each of these projects.	See response to comment #28.3.
31.19	Page 24, Section 8.2.1.1 Compliance Option 2 – Facility-Specific Design Standard to Reduce Stormwater Runoff Rather than referring dischargers to the IGP standards found in another permit, the Revised Draft CII Permit should provide the applicable formula.	The formula for Straight Calc Method has been added in section 8.2.1.1 of the tentative revised CII Permit to provide more clarity.
31.20	Page A-10, Attachment A Acronyms and Definitions The Revised Draft CII Permit defines “impervious surface” as “[a]ny surface in the urban landscape that cannot effectively absorb or infiltrate rainfall; for example, driveways, sidewalks, rooftops, roads (including gravel roads), *compacted soils*, and parking lots.” Attachment A, p. A-10 (emphasis added). The Preliminary Designation, on the other hand, defines impervious surface as "surfaces that are impermeable to infiltration of precipitation (here, rainfall) into underlying soils/groundwater and includes rooftops, parking lots, sidewalks, and driveways." Preliminary Designation, p. 2, fn. 5. The Regional Board provides no support for its conclusion that compacted soils qualify as impervious surfaces or its deviation from the Preliminary Designation’s definition.	The tentative revised CII Permit’s definition of “impervious surface” is consistent with the U.S. EPA’s designation saying impervious surfaces are “impermeable to infiltration”. Compacted soils are an example of an impervious surface because water cannot infiltrate through these types of soils. See also response to comment #5.27.

31.21	Pages F-22 - F-27, Attachment F, Section 3.11.4 Economic Considerations The Revised Draft CII permit is devoid of any meaningful economic analysis regarding permit implementation. Costs of permit compliance are only directly addressed in the context of Water Code section 13241, which the Revised Draft CII Permit suggests is inapplicable. Even so, the economic considerations do not address BCT or BAT requirements and refer the reader to the design standards and cost estimates for BMPs in the California Stormwater Quality Association's (CASQA) BMP handbook without undertaking any evaluation of such costs for the retrofitting of existing facilities. However, CASQA's design standards and cost estimates do not address the cost of land, acquiring land, or construction costs based on actual site constraints and infrastructure improvement. Additionally, these costs are highly variable across projects and therefore do not adequately reflect the economic impacts for all facilities. Further, while CASQA is a highly beneficial organization, it is not a publicly accessible organization and requires membership to access many of the documents specified in the permit. Any references to required design documents or specifications should be made publicly available. The Revised Draft CII Permit alludes to the consideration of what are likely to be significant compliance costs by stating that "the costs of the BMPs will vary by facility" and that "[w]hile it is important to consider the cost of compliance, it is also important to consider the costs that would be incurred by not fully regulating or controlling CII discharges to receiving waters." As such, there is no indication that the Regional Board meaningfully considered the costs of setting technological requirements. Without such a detailed cost-to-comply assessment, the Regional Board's statement regarding the relative consideration of cost-to-comply versus costs of not fully regulating these discharges is lacking. Simply put, the Regional Board is required to conduct a more fulsome economic analysis under Water Code section 13241. In *City of Duarte v. State Water Resources Control Bd.*, 60 Cal. App. 5th 258 (2021), the Court found that the Regional Board gave sufficient consideration under Water Code section 13241 where the Regional Board provided ranges and averages of cost data and economic impacts in several categories, considered how much more costs might be under the permit's terms, identified potential sources of funds to cover costs, and concluded failure to regulate would increase health-related expenses. Similarly, in *City of Arcadia v. State Water Res. Control Bd.*, 135 Cal. App. 4th 1392 (2006), the Court found that the State and Regional Boards gave sufficient economic analysis where they included the estimated costs of several types of compliance methods and a cost comparison of capital costs and costs of operation and maintenance. The Revised Draft CII Permit's economic analysis fails to meet the standards affirmed by the Courts in *City of Duarte* and *City of Arcadia*, as it lacks any	Please see response to comment #12.14.

Comment Number	Comment	Response
	consideration of quantitative cost data or concrete economic impacts. Prior to additional rulemaking, the Regional Board must conduct a more comprehensive economic impact analysis.	
31.22	Pages I-1 – 1-9, Attachment I Implementing infiltration projects has the potential to affect and alter plume conditions for active sites and sites that have obtained closure. Has the RWQCB's groundwater unit reviewed and identified sites where infiltration could affect ongoing remediation efforts in these watersheds? Attachment I states that the selected BMP must not cause or contribute to an exceedance of water quality but does not specify the mechanism. Additionally, the RWQCB should provide specificity on locations that are known to be prohibitive for infiltration projects.	When developing a SWPPP, the Permittee must disclose applicable information on any preexisting contamination in the soil or groundwater for any industrial or non-industrial pollutants at the facility that may be discharged or mobilized through infiltration to meet the protections. Please refer to Attachment I for additional information.
31.23	Pages I-2 – I-3, Attachment I, Section 1.1.4.1 Best Management Practices Rather than referring dischargers to the IGP standards found in another permit, the Revised Draft CII Permit should provide the applicable formula.	The formula for the Straight Calc Method has been added in section 1.1.4.1 of Attachment I. See response to comment #31.19.
31.24	Page I-3, Attachment I, Section 1.1.4.3 Best Management Practices Please clarify whether a system designed with greater than 24-hour drawdown time must include additional volume to infiltrate the remaining compliance storm volume past 24-hours drawdown, allowing the system to accommodate the next compliance event volume.	An on-site BMP that has a greater than 24-hour drawdown time must have additional storage volume beyond the design storm standard to offset longer drawdown time.
31.25	Page I-3, Attachment I, Section 1.1.4.3, fn. 5 Best Management Practices Typically, a safety factor is employed for the long-term infiltration rate. Please clarify whether an engineer may elect to (but is not required to) use an infiltration rate safety factor or volume safety factor.	The Discharger may include reliability and safety factor considerations as appropriate. Footnote 5 on Attachment I, page I-4, states that the design standard(s) must drain from full to empty when no inflows are occurring, considering any relevant safety factor included by the California licensed civil engineer. Therefore, an engineer may use either or both infiltration rate safety factor or volume safety factor to design a system that handles a 24-hour drawdown for stormwater to maintain compliance for Compliance Option 2.

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31.26	Page I-4, Attachment I, Section 1.1.4.6.1.2 Best Management Practices The Revised Draft CII Permit requires that infiltrated water be monitored monthly via monitoring devices, such as lysimeters. However, most months of the year there will be insufficient moisture to make sampling feasible.	As stated in section 1.1.4.6.1.2 of Attachment I, "the monthly samples are only required when feasible sampling conditions exist (including, but not limited to, enough moisture in the monitoring device to collect a sample). When monthly samples are not collected, the Discharger shall document this information in an attachment to the annual report and update the Stormwater Pollution Prevention Plan if necessary." Monthly sampling is the minimum if enough moisture or infiltrated water is present.
31.27	Page I-6, Attachment I, Section 1.4.2 Monitoring and Reporting Requirements for a Discharger with Implemented and Operational BMP(s) The reference in this section should be to Attachment I, Section 1.1.4.6.1 rather than Section 1.4.6.1.	This change has been made.
32.1	Compliance Option 1 Needs More Public Outreach and Involvement The process for communicating with Watershed Management Groups (WMGs) must be equitable and CII permittees must have adequate resources to register under this option. If the Water Board is relying on WMGs to implement Compliance Option 1, there needs to be significantly more public outreach regarding the nuances of how this compliance option will be implemented and achieved by operators and at what financial costs. ALG agrees conceptually with this watershed-based approach, as it provides a method of benefitting entire watershed while *potentially* being cost-effective and feasible for facilities (although costs are still undetermined). Currently, there are many unknown variables associated with this option, making it difficult for companies and facilities to decide whether to pursue it. As explained in Comment 2 below, public meetings must be held, and information must be provided to permittees well in advance of any permit registration deadlines.	The Los Angeles Water Board has been working with Watershed Management Groups to ensure that Compliance Option 1 is implementable. Please see response to comment #2.4. The Los Angeles Water Board has and will continue to reach out to potential CII Permittees after permit adoption to ensure that they understand how to enroll in the CII Permit.

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32.2	Compliance Option 1 Requires Additional Time for Submitting PRD The CII Permit Section 3.4 states the timeline for enrolling for permit coverage. Permit Registration Documents (PRDs) must be submitted within two years of the *effective date* for non-IGP sites, and within one year of the effective date for IGP sites (see Section 3.4 for complete language). This does not appear to be an effective criterion for implementing Compliance Option 1, since the ability for dischargers to decide their preferred compliance option will be contingent upon when the WMGs release relevant information regarding the funding level requirement, fee schedules, and other pertinent information. Therefore, the deadline to submit PRDs should be based on when the relevant information becomes available from the WMGs. The following information supports this comment:	See response to comment #4.1.
32.3	Compliance Option 1 Requires Additional Time for Submitting PRD In the Water Board's Response to Comment No. 1.4, it is stated that "A fee schedule based on this formula will be developed by the Watershed Management Groups responsible for the WMPs". Further, it is stated that "a CII facility may only participate in Compliance Option 1 if the CII facility, regardless of whether it is upstream or downstream of a regional stormwater project, is included in the area modeled by the reasonable assurance analysis for a WMP". This information needs to be published and made known well in advance of the deadline to submit permit registration documents so that facilities have time to assess which compliance option to choose. In many cases, choosing the correct compliance option will involve an alternatives analysis, include an assessment of cost for multiple options and engineering projects. For example, a facility may need to evaluate and compare the cost of sampling, treatment measures, diversion to the sewer, and/or infiltration against the cost of Option 1. These fee schedules must be released at least two years prior to the requirement to submit PRDs.	See response to comment #12.19.
32.4	Compliance Option 1 Requires Additional Time for Submitting PRD Not all watershed projects are the same from a cost perspective. How is equitability considered? Meaning, the cost may be higher for certain regional projects, and lower for others. The permit must establish conditions to ensure a level of equity among fees for various projects implemented under Compliance Option 1. There must be clear deadlines to apply for inclusion under Compliance Option 1 to avoid benefitting from a first-come, first-serve basis (which may favor facilities that can hire experts, consultants, etc).	See response to comment #1.11 and #4.1.

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32.5	Compliance Option 1 Requires Additional Time for Submitting PRD We understand that the amount to be paid will be consistent with the formula in Section 8.1 of the Permit. We request that the "Pollutant level factor" be explained such that facilities can easily determine what this factor is by themselves.	See response to comment #5.8.
32.6	Compliance Option 1 Requires Additional Time for Submitting PRD In the Water Board's Response to Comment No. 2.17, it is stated that "the funding level requirement for CII permittees to participate in Compliance Option 1 will be developed by the WMGs because they are responsible for selecting projects and have the most relevant knowledge to allocate funding among CII permittees". The deadlines to submit PRDs should be at least two years from the date the funding level requirements are established.	The Los Angeles Water Board is working with WMGs and understand that they will be prepared to enter in agreements for Compliance Option 1 within three years of the effective date of the Permit. See response to comment #5.8.
32.7	Compliance Option 1 Requires Additional Time for Submitting PRD In the Water Board's Response to Comment No. 2.17, it is stated that "The Los Angeles Water Board will not review the agreement before it is executed… but will verify that the agreement is in place and complies with Compliance Option 1 as part of the initial submittal of the Permit Registration Documents and annually thereafter as a reporting requirement in the CII Permit". The Water Board must establish clear criteria that will be used for conducting this review. One example criterion that is not currently clear is the use of the "Pollutant Level Factor" (see Comment #2 above).	The criteria for determining that the agreement complies with Compliance Option 1 are laid out in section 8.1 of the tentative revised CII Permit. See response to comment #5.8 for clarification on the Pollutant Level Factor.
32.8	Compliance Option 1 Requires Additional Time for Submitting PRD We acknowledge that the definition of "Discharger" has been revised in Attachment A Section 2 (Definitions), in the revised tentative CII Permit. However, there is still a need for consideration of landlord-tenant relationship with many CII properties. Tenants and owners will be required to modify lease terms to incorporate responsibilities under the CII permit, especially considering the heavy costs expected to be incurred. The deadlines for submitting PRDs should be based on the timing of lease renewals to account for the contractual obligations between property owners and their tenants.	The deadlines for submitting permit registration documents account for the contractual obligations between property owners and their tenants. Please note that the tentative CII Permit has been revised to allow 3 years to submit compliance option documents.

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32.9	A Checklist Should Be Developed for the Visual Inspection Required by Section 9.3.3 of the Draft CII Permit The inspection required by Section 9.3.3 is different than the inspection required by the Industrial General Storm Water Permit (IGP) and as such, many permittees are not familiar with the visual inspection process. We suggest the water board develop a form or checklist for the visual inspections required by Section 9.3.3 to add clarity to the inspection requirements of this section.	The sampling event visual observation requirements under both the tentative revised CII Permit and IGP are almost identical. The differences are the frequency of visual observation and photographic documentation requirement in the tentative revised CII Permit. The IGP requires monthly visual observations in which the Discharger shall visually observe each discharge location. The tentative revised CII Permit requires Dischargers choosing Compliance Option 1 or 3 to conduct visual observations for two qualifying storm events for each reporting period, July 1 to December 31 and January 1 to June 30, and also requires that visual observations include photographs that are time stamped with the date and time.
32.10	Revise the Permit to Allow for Equally Effective BMPs The Water Board's response to Comment No. 23.17 and 24.17 regarding language in Section 6.1.5 that "all of the following minimum BMPs" states that "All minimum BMPs are required. The SWPPP may specify why any BMP is infeasible and should propose an equally effective BMP". The permit must clearly state the ability to provide an equally effective BMP in situations where a minimum BMP is not feasible. If not, this provision is subject to interpretation by regulators and inconsistent enforcement. It is not acceptable to state this in a Response to Comments document, and not include it in the permit language itself.	The previous version of the tentative revised CII Permit added language that all minimum BMPs are required to reduce or prevent pollutants in stormwater discharges and authorized NSWDs to the extent feasible.
32.11	Compliance Option 3 Needs Revision to Become Feasible Large facilities may have dozens of outfalls and it is not physically feasible to collect storm water from all of them during a storm event. Considering the extensive analysis required by Compliance Option 3 (which will require numerous sample bottles per sample location), every single outfall could take 20 minutes or more to collect enough sample volume, especially during lighter rain events where it takes longer to fill sample bottles. Therefore, many storms do not last long enough for staff to have time to collect samples from large numbers of sample locations. The permit must provide some allowance or consideration for this situation. For example, the IGP allows for alternative and representative sampling reduction. The CII permit should provide a similar or equivalent options.	See response to comment #5.22.

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32.12	The Water Board Must Provide a Cost Benefit Analysis for This Regulation The sampling costs to comply with this permit are anticipated to be very high, especially for large sites with many outfalls. As a real world example, a site that must sample for the sediment-associated parameters in Table 2 in addition to effluent parameters from Table 3 would incur costs of $3,000 - $4,000 per outfall, per sample event. If a facility has five outfalls and samples four times per year as required, total costs will range from $60,000-$80,000 for lab analysis alone each compliance year. This will increase proportionally for larger properties with more outfalls (e.g., ten outfalls would cost between $120,000 to$160,000). This does not include other compliance-related costs such as staff time and BMPs. These costs are astronomical and far exceed analytical costs for any other NPDES permit among the clients we work with. Accordingly, the Water Board must provide a Cost Benefit Analysis (CBA) for this regulation or explain why a CBA was not prepared.	A cost benefit analysis is not required for the tentative revised CII Permit. No economic analysis is required for NPDES Permits. And while California Water Code section 13263 requires that economics be considered for certain state permits under section 13241, it does not require that a cost benefit analysis be conducted. Even though an economic analysis under California Water Code section 13263 and 13241 is not required for this tentative revised CII Permit, the permit's fact sheet nevertheless includes an economic analysis. In the tentative revised CII Permit, the economic considerations section of the Fact Sheet has been revised and a memorandum estimating potential costs for Compliance Options 2 and 3 and the implications on Option 1 has been posted to the Los Angeles Water Board's website.
33.1	Para: 3.1.1.2.2 Facilities that have submitted a notice of non-applicability (NONA) under the IGP. These facilities must obtain coverage under this General Permit for the acreage not covered by the NONA. NONA facilities have experienced rigorous studies establishing that the storm water discharged from the entire NONA facility does not cause or contribute to the exceedance of a receiving water standard. If the facility complies this this standard of performance then the allegations under the CII of potential receiving water adverse impacts from the site's discharge is without merit. This paragraph should be removed from the CII.	This comment pertains to U.S. EPA's designation memo and is outside the scope of the action before the Los Angeles Water Board.
33.2	Para: 3.1.1.2.3 Any facility where only a portion of the facility is covered by another NPDES stormwater permit. These facilities must obtain coverage under this General Permit for the remaining portion of the facility Clarification would be appreciated. If the entire facility encompasses an area greater than five acres but the remaining portion of the facility that is not covered by another Permit is less than five acres is a CII Permit required?	Yes, a CII Permit is required as long as the entire facility is greater than five acres.

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33.3	Para: 5.1 Authorized NSWDs. Is landscape water considered an Authorized NSWD if it does not contain pollutants that cause or threaten to cause pollution, contamination, or nuisance as defined in CWC section 13050?	Landscaping water that meets the criteria in section 5.2 of the CII Permit is considered an Authorized NSWD under section 5.1.5.
33.4	Para: 6.2 Stormwater Pollution Prevention Team Each facility must have a Stormwater Pollution Prevention Team established and responsible for assisting with the implementation of the requirements in this General Permit. The Discharger shall include in the Stormwater Pollution Prevention Plan detailed information about its Stormwater Pollution Prevention Team including: If there are multiple tenants on one CII site, is there to be a pollution team for each individual tenant or one team for the entire site?	The tentative revised CII Permit requires one Stormwater Pollution Prevention Team per CII site regardless of the number of tenants.
33.5	Para: 6.3.1.6 Locations where materials are directly exposed to precipitation and the locations where identified significant spills or leaks have occurred; and, Attachment A Industrial Materials: Includes, but is not limited to: raw materials, recyclable materials, intermediate products, final products, by product, waste products, fuels, materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under section 101(14) of CERCLA; any chemical the facility is required to report pursuant to section 313 of title III of Superfund Amendments and Reauthorization Act; fertilizers; pesticides; and waste products such as ashes, slag, and sludge and that are used, handled, stored, or disposed in relation to a facility's industrial activity. Clarification as to industrial materials that would be identified with commercial and institutional facilities would be helpful.	As the tentative revised CII Permit also applies to facilities holding NEC and NONA certifications under the IGP, the definition of industrial materials has been included in Attachment A to help Dischargers comply with Permit requirements. All materials present at the site must be reported per section 6.4 and subsections of the tentative revised CII Permit, regardless of Discharger land use. Any materials that further meet the definition of industrial materials are subject to applicable provisions and effluent limitations.

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33.6	Para: 8.3.1 Compliance Option 3 - Direct Demonstration of Compliance with Water Quality Based Effluent Limitations The Discharger shall demonstrate direct compliance with the water quality-based effluent limitations established in section 7.2 of this Order by implementing the monitoring and reporting requirements described in section 9.3 of this Order. and according to the compliance determination in section 11.2 of this Order. Is sampling to be analyzed for all parameters associated with the receiving water or those listed in the facility pollutant source assessment?	See Response to Comment #24.8. In conclusion, the samples should be analyzed for all parameters associated with the receiving water.
34.1	One major issue is that the draft CII Permit was not adequately noticed. The Regional Board's web page, under "Announcements" mentions nothing about the draft CII Permit (see attachment #1). Only those who are on the Regional Board's mailing list were made aware of it. Others who are impacted by it were not. This most conspicuously includes subject Commercial, Industrial, and Institutional dischargers, estimated to be in the hundreds. Therefore, it is recommended that the Regional Board re-notice the CII Permit and place it on the front page of the Regional Board's web site under "Announcements." By the way, I learned about it from another party.	See response to comment 14.11. All potentially affected CII facilities were notified months in advance both by mail and electronically and advised to sign up for the electronic mailing list. Announcements regarding tentative orders are posted on the Regional Board's site at: https://www.waterboards.ca.gov/losangeles/board_decisions/tentative_orders/index.html#6. The CII Permit adoption will be posted to the Regional Board's web page, under "Announcements." Any future updates regarding the tentative revised CII Permit will be posted to the CII page: https://www.waterboards.ca.gov/losangeles/water_issues/programs/stormwater/Commercial_Industrial_and_Institutional/ and notifications will be sent out via our electronic mailing list.

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34.2	The draft CII Permit does not identify the subject CII facilities. Under Section 3.1.1, Applicability, footnote 2, it simply says: *Commercial, institutional, and industrial land use types are based on the Los Angeles County Assessor's Office property use classification codes 1000 through 2900, 3000 through 3920, 6000 through 6910, 7000 through 7710, and 8100 through 8400 (8100 through 8900 at the Ports of Los Angeles and Long Beach).* This poses two challenges. First, it provides no definition of the County Assessor's property land use classifications in terms of CII facilities. Secondly, NPDES permits require the use of Standard Industrial Classification (SIC codes) to identify subject dischargers. Local jurisdiction codes cannot be used because they preempt federal law.	Facilities subject to the tentative revised CII Permit are not based on SIC codes. Rather, U.S. EPA's final designation is based on parcel and land use information within the watersheds.
34.3	The draft CII permit, per 3.2.3, Compliance Option 3, specifies a direct demonstration of compliance with effluent limitations. However, it does not appear that effluent limitations have been established for General NPDES permits. And, in any case, the CII Permit does not have legal authority to do so. It should be noted that Waste Load Allocations (WLAs) for General NPDES permits have not been established in the Dominguez Channel Harbors Toxics TMDL -- with the exception of toxicity. The CII permit writer should review the General Industrial Permit (GIP) for guidance on how to establish WLAs and, based on them, effluent limitations. But once effluent limitations are established, the question will be where the effluent discharges should be measured? An MS4 outfall may not be the appropriate place. Further, there is uncertainty as to whether effluent limitations must be strictly complied with or should BMPs determine compliance? If, and, when effluent limitations are established, it is not clear where compliance will be determined. It cannot be the outfall because it includes it is predominated MS4 discharges.	The tentative revised CII Permit incorporates the WLAs in the Harbors Toxics TMDL in accordance with the TMDL implementation language. WLAs and TMDLs are further explained in section 4.6.3.1 of the Fact Sheet. In choosing Compliance Option 3, the discharger will need to sample at all discharge locations from the facility. In addition to the water quality based effluent limits in section 7.2, the discharger will be responsible for meeting the technology based effluent limitations in section 7.2, and any BMPs may be used to achieve this.

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35.1	Attachment I, Section 1.2, says the BMPs must be operational “within 2 years of PRD submission”. However, the Permit also states that Compliance Option documents must be submitted within 2 years of effective date of the permit. It is unclear whether this was meant to mean 2 years from submission of the Compliance Option document, as opposed to the NOI. In other words, does a Discharger get three years or four years to put the BMPs in place after the Permit effective date?	When choosing Compliance Option 2, the Discharger must submit Compliance Option Documents within three (3) years of the effective date. On-site BMP(s) under Compliance Option 2 must be operational and functioning within two years from submittal of Compliance Option Document. Therefore, depending on the submittal date of Compliance Option Documents, a Discharger has up to five years to design, and have on-site BMP(s) operational and functioning.
35.2	Attachment E, Section 2.2.2.2.6 is not clear as to whether field filtering and preservation for dissolved constituent analysis is required. Since the standard analytical methods for metals, e.g., 200.8, do not specify field filtering, this should be clarified.	Attachment E, Section 2.2.3.2 provides an alternative analytical method for suspended sediments in stormwater samples for compliance with sediment-associated effluent limitations. All other sampling analysis including concentration-associated analysis shall be done in accordance with 40 CFR Part 136.