

Response to Comments
Section A: Discharge Prohibitions

Sub-category #	Comments Category
A.1	General
A.2	Order, Part III.A – Discharge Prohibitions for Toxic Substances
A.3	Order, Part III.B – Discharge Prohibitions for Non-Stormwater Discharges
A.4	Order, Part III.D – Discharge Prohibitions for the Federal Insecticide, Fungicide, and Rodenticide Act

The below table includes all significant comments on the tentative permit section described above and the corresponding Fact Sheet section.

#	Commenter(s)	Comment	Response
A.1.1	Aleshire & Wynder, LLP on behalf of the cities of Bell, Carson, Flintridge, Glendora, Irwindale, La Cañada, and Rancho Palos Verdes	<p>Remove New Discharge Prohibitions</p> <p>The Cities request the removal of the two new discharge prohibitions from the Tentative Order: the toxic substances prohibition in Part III.A. and the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) prohibition in Part III.D.</p> <p>The rationale provided in the Fact Sheet for including the proposed toxic substances discharge prohibition is the need to implement the narrative toxicity objective in the Basin Plan. The narrative toxicity objective applies to the receiving water, not the discharge location. However, inclusion of this discharge prohibition effectively constitutes an end of pipe limitation without consideration of the impact of the discharge on receiving waters.</p>	<p>Change made. Removed Parts III.A and III.D of the Tentative Order and Parts IV.A and IV.D of the Tentative Fact Sheet.</p> <p>The intent of the toxic substances discharge prohibition was to complement the receiving water limitation not to subsume it into a more stringent discharge prohibition. Since the Receiving Water Limitations provision in Part V.A of the Order prohibits MS4 discharges that cause or contribute to the violation of receiving water limitations, where receiving water limitations include the narrative toxicity water quality objective in the Basin Plan, the Board finds that Part V.A of the Order is sufficiently protective. To avoid confusion, the Board agrees that the toxic substances discharge prohibition can be deleted.</p>

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		<p>Pursuant to state law, municipal agencies do not have the authority to control the use of these products by consumers. As a result, the prohibition imposes conditions for which the Permittees have no enforcement authority.</p> <p>The Cities request that Parts III.A and III.D of the Tentative Order be removed.</p>	<p>Part III.D of the Tentative Order, which prohibits the discharge of any product registered under FIFRA to a waste stream that may be released to surface waters, is not a new discharge prohibition. It is carried over verbatim from the 2012 Los Angeles County MS4 Permit and 2014 City of Long Beach MS4 Permit. See Tentative Fact Sheet, Part IV.D. Additionally, while municipal agencies may not prohibit the use of properly registered and commercially available pesticides, a Permittee is required to have the legal authority to control pollutant discharges into and from its MS4. See Tentative Fact Sheet, Part VIII.B. In fact, many cities subject to the MS4 permit have adopted ordinances effectuating this discharge prohibition. See e.g., the City of Manhattan Beach, Code of Ordinances, § 5.84.040.D.9, City of Beverly Hills, Municipal Codes, § 9-4-504.G.9.</p> <p>Nonetheless, the Board finds that this provision is unnecessary since there are several other provisions that ensure pesticides are not introduced into an MS4 discharge such that they adversely affect beneficial uses. These include the Receiving Water Limitations provision in Part V.A of the Order, which prohibits MS4 discharges that cause or contribute to the violation of receiving water limitations. Per Attachment A “Definitions” of the Tentative Permit, receiving</p>

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			<p>water limitations include “Any applicable numeric or narrative water quality objective or criterion, or limitation to implement the applicable water quality objective or criterion, for the receiving water as contained in Chapter 3 or 7 of the Water Quality Control Plan for the Los Angeles Region (Basin Plan), water quality control plans or policies adopted by the State Water Board, or federal regulations, including but not limited to, 40 CFR § 131.38.” There are a number of receiving water limitations for individual pesticides as well as a narrative objective for individual pesticides and combinations of pesticides, which states “No individual pesticide or combination of pesticides shall be present in concentrations that adversely affect beneficial uses. There shall be no increase in pesticide concentrations found in bottom sediments or aquatic life” (Basin Plan, p. 3-40).</p> <p>Other permit provisions related to controlling discharges of pesticides include those requiring municipal employee and contractor training (Part VIII.A.3.b of the Order); educational activities and public information activities (Part VIII.D.3.b of the Order); a business assistance program (Part VIII.E.3.b of the Order); and landscape, park, and recreational facilities management (Part VIII.H.5.b and c of the Order).</p>

#	Committer(s)	Comment	Response
A.1.2	Santa Ana Region MS4 Permittees	<p>Remove New Discharge Prohibitions The Santa Ana Region MS4 Permittees recommend the removal of the two new discharge prohibitions from the Tentative Order: the toxic substances prohibition in Part III.A. and the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) prohibition in Part III.D.</p> <p>The rationale provided in the Fact Sheet for including the proposed toxic substances discharge prohibition is the need to implement the narrative toxicity objective in the Basin Plan. The narrative toxicity objective applies to the receiving water, not the discharge location. However, inclusion of this discharge prohibition effectively constitutes an end of pipe limitation without consideration of the impact of the discharge on receiving waters. Small amounts of pollutants could be discharged in toxic amounts without having any impact on the beneficial uses of receiving waters or causing or contributing to exceedances of the toxicity water quality objectives. However, those discharges would be in violation of the discharge prohibition.</p> <p>The FIFRA prohibition is exceedingly broad and would be challenging for Permittees to implement. Municipal agencies have very limited jurisdiction over the use of the</p>	<p>Change made. See response to comment # A.1.1.</p>

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		<p>products covered by this prohibition. Pursuant to state law, municipal agencies do not have the authority to control the use of these products by consumers. As a result, the prohibition imposes conditions for which the Permittees have no authority to ensure compliance.</p> <p><i>Consideration for revising the Tentative Order:</i> The Santa Ana Region MS4 Permittees recommend that Parts III.A and III.D of the Tentative Order be removed.</p>	
A.2.1	SGVCOG 2 nd Letter and ULAR Group	Part III.A; Page 12. Specify this prohibition should not apply to any invasive animal or plant life.	<p>Change made. See response to comment # A.1.1. No further change is needed in response to this comment because this prohibition has been deleted. Note, however, that acute and chronic toxicity are evaluated using specific test species that would not include invasive animal or plant life. (See Attachment E, Parts IX.F and IX.G.) Additionally, there is already a receiving water limitation for “exotic vegetation” based on the narrative water quality objective in the Basin Plan, which states that “Exotic vegetation shall not be introduced around stream courses to the extent that such growth causes nuisance or adversely affects beneficial uses” (Basin Plan, p. 3-32).</p>
A.2.2	City of San Fernando, City of Agoura	Page 12. Part III.A. "Any discharge from the MS4 into surface waters in concentrations	<p>Change made. See response to comment # A.1.1. No further change is needed in response to this comment because this</p>

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	Hills, City of La Puente, City of La Cañada Flintridge, City of Hidden Hills, and Aleshire & Wynder, LLP	<p>acutely or chronically toxic to animal or plant life is prohibited."</p> <p>What is acutely or chronically toxic to animal or plant life depends on the Permittee's monitoring program. This language should refer to the appropriate monitoring requirements section of the Permit used to determine if a discharge is toxic.</p>	prohibition has been deleted. Furthermore, Attachment E clearly sets forth requirements for aquatic toxicity monitoring. (See Attachment E, Part IX.)
A.2.3	VCSQMP	<p>Part III.A; Page 12. This part prohibits any discharge from the MS4 that contains concentrations toxic to animal or plant life. However, this prohibition is inconsistent with receiving water limitations and an evaluation of the actual impact of the discharge on receiving waters. If a pollutant is present in a very small flow, permittees could be found in violation of this discharge prohibition even if the discharge is not causing or contributing to toxicity in the receiving waters or impacting beneficial uses. This prohibition should be removed.</p> <p>Remove discharge prohibition III.A Prohibitions-Toxic Substances and make corresponding changes to the Fact Sheet.</p> <p>Provision III.A – Prohibitions – Toxic Substances</p> <p>The Draft Regional Permit includes a proposed discharge prohibition for toxic</p>	Change made. See response to comment # A.1.1.

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		<p>substances. (Draft Regional Permit, p. 12.) According to the Draft Fact Sheet, this provision is purportedly being included to implement the narrative toxicity objective in the Water Quality Control Plan for the Los Angeles Region (Basin Plan). The inclusion of this prohibition is problematic for several reasons. First, it applies to the discharge directly, which is contrary to the application of water quality objectives, including the narrative toxicity objective, that apply to receiving waters. By applying this prohibition to the discharge directly, it is essentially an edge of pipe prohibition and fails to consider if the receiving water itself is in compliance.</p> <p>Second, to the extent that the prohibition duplicates the parallel receiving water limit, it creates additional liability for essentially the same discharge. The narrative toxicity objective, and compliance there with, is also covered by the receiving water limits in Provision V.A. By including the discharge prohibition, permittees could be held liable for violating two permit provisions for exactly the same discharge. A discharge from the MS4 system that causes or contributes to toxicity in the receiving water may also violate the toxic substances provision here, which would then be considered two separate violations</p>	

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		<p>(potentially subject to enforcement action) for the same discharge event.</p> <p>Third, the prohibition would apply independently of any approved compliance schedule in the Basin Plan that is incorporated into the Draft Regional Permit, or of any approved Watershed Management Plan. The compliance provisions of the Draft Regional Permit refer to compliance with water quality based effluent limitations (WQBELs) and receiving water limitations – not prohibitions in section III. Accordingly, this prohibition undermines any compliance schedule or approved watershed management plan that otherwise deems the discharge in compliance for toxic substances.</p> <p>It is inappropriate for the Draft Regional Permit to include a discharge prohibition of this nature. It is inconsistent with the Basin Plan, which requires that the discharge not cause or contribute to an exceedance in the receiving water. The Basin Plan does not directly prohibit toxic discharges. Moreover, it undermines compliance pathways that are otherwise recognized in the Draft Regional Permit. Accordingly, the Provision III.A needs to be deleted from the Draft Regional Permit.</p>	
A.2.4	LLAR Group, LSGR Group,	<p><u>Section III.A, Page 12</u> The language "excluding invasive species and vectors" should be added to the sentence</p>	<p>Change made. See response to comment # A.1.1. No further change is needed in response to this comment because this</p>

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	and City of Long Beach	reading "Any discharge from the MS4 into surface waters in concentrations acutely or chronically toxic to animal or plant life is prohibited."	prohibition has been deleted. See also response to comment # A.2.1.
A.2.5	PVP Group	Prohibition of "Any discharge from the MS4 into surface waters in concentrations acutely or chronically toxic to animal or plant life" as shown in Section III A, Page 12 should be expanded by adding the wording "excluding invasive species and vectors."	Change made. See response to comment # A.1.1. No further change is needed in response to this comment because this prohibition has been deleted. See also response to comment # A.2.1.
A.3.1	City of San Fernando, City of Agoura Hills, City of La Puente, City of La Cañada Flintridge, City of Hidden Hills, and Aleshire & Wynder, LLP	<p>Page 12. Part III.B.1. "Each Permittee shall prohibit non-storm water discharges through the MS4 to receiving waters."</p> <p>Since one permittee cannot be held responsible for an upstream permittee's discharge, this statement needs clarification. Recommend adding: "... for the portion of the MS4 for which it is an owner or operator."</p>	Change made. For clarification, the Los Angeles Water Board made the requested change to Part III.A.1 of the Revised Tentative Order. This is consistent with the Tentative Fact Sheet, which addresses the commenters' concern in several sections. Part VIII.D of the Tentative Fact Sheet, "Responsibilities of the Permittees," states, "Consistent with the previous permits, the Regional MS4 Permit is structured to require all Permittees to comply with the requirements of the Order as applicable to its discharges. However, it does not hold a Permittee responsible for implementation of provisions applicable to other Permittees" (Tentative Fact Sheet, p. F-173). Part IV.B.4, "Implementation of the Effective Prohibition on Non-Storm Water Discharges," states that, "... Part III.B of the Order requires each Permittee, for the portion of the MS4 for which it is an owner or operator, to prohibit non-storm water discharges ..." (Tentative

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			<p>Fact Sheet, p. F-98). Section XI.D, “Commingled Discharges,” further discusses an individual Permittee’s responsibility where its discharge is commingled with the discharges of other Permittees (Tentative Fact Sheet, pp. F-218 to F-219). The Tentative Attachment E (Monitoring and Reporting Program) also addresses this concern in Part VII.C, “Source Investigation for Outfalls with Significant Non-Storm Water Discharge,” which directs that, “If a source of a significant non-storm water discharge originates within an upstream jurisdiction, then the Permittee shall inform in writing both the upstream jurisdiction and the Los Angeles Water Board within 30 days of determination of the presence of the discharge all available characterization data, contribution determination efforts, and efforts taken to identify its source” (pp. E-26 to E-27).</p>
A.3.2	Los Angeles County and LACFCD 2 nd Letter	<p>Order/ Part III.B.1./ Pg. 12. The Tentative Order states that “Each Permittee shall prohibit non-storm water discharges through the MS4 to receiving waters”. The language is inconsistent with controlling language in the Clean Water Act and associated federal regulations as outlined in the Fact Sheet (see Pg. F-97). Specifically, the Clean Water Act require each permittee to “<i>effectively</i> prohibit non-storm water discharges” – not prohibit. (33 U.S.C.S., §1342(p)(3)(B)(ii)) The County and LACFCD requests that Part III.B.1 (and</p>	<p>No change. The language in Part III.B.1 of the Tentative Order is consistent with the Clean Water Act. As explained in the Fact Sheet, the meaning of an “effective prohibition” of non-stormwater discharges was articulated by U.S. EPA in the preamble to the 1990 stormwater regulations (1990 Preamble) (Tentative Fact Sheet, pp. F-94 to F-97). The 1990 Preamble states “EPA does not interpret the effective prohibition on non-storm water discharges to municipal separate storm sewers to apply to discharges that are</p>

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		<p>other relevant provisions where “prohibit” is used to describe non-stormwater discharges) be modified to state “effectively prohibit” non-storm water discharges – not prohibit non-storm water discharges.</p>	<p>not composed entirely of storm water, <i>as long as such discharge has been issued a separate NPDES permit</i>. Rather, an “effective prohibition” would require separate NPDES permits for non-storm water discharges to municipal storm sewers.” (55 Fed.Reg. 47990, 48376-48377). This language makes clear that to “effectively prohibit” means to remove the non-stormwater discharge from the system unless it is separately permitted under the NPDES permitting program. This interpretation is consistent with the plain language of Clean Water Act 402(p). “Effectively” as an adverb means “in an effective manner” or “in effect: virtually” (Merriam-Webster.com Dictionary, Merriam-Webster, https://www.merriam-webster.com/dictionary/effectively. Accessed 26 Apr. 2021.) “Effectively prohibit” therefore does not mean “mostly prohibit” or “prohibit to the maximum extent practicable” (a standard that Congress could have used in this context, but deliberately did not.) Instead, as used here, “effectively prohibit” means that non-stormwater discharges are “in effect”—or “virtually”—prohibited because, in actuality <i>some</i> non-stormwater discharges are authorized, provided that these discharges are permitted. The Tentative Order makes this allowance for permitted non-stormwater</p>

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			<p>discharges. (Part III.B.2.a, see also footnote 18 of the Tentative Order.)</p> <p>Note, the 1990 Preamble also acknowledged that Congress likely did not intend for the Clean Water Act to prohibit “seemingly innocent flows that are characteristic of human existence in urban environments and which discharge to municipal separate storm sewers” (55 Fed.Reg. 47990, 48037.) To that end, U.S. EPA clarified in response to comments on the proposed regulations that certain non-stormwater discharges may not pose environmental problems and that the permitting authority “may include permit conditions that either require municipalities to prohibit or otherwise control any of these types of discharges where appropriate” (Id. at 48037). The Tentative Permit takes this approach. Instead of prohibiting <i>all</i> unpermitted non-stormwater discharges, the Tentative Permit specifies exceptions to the non-stormwater discharge prohibition subject to certain conditions. Relatedly, Part IV.B.9 in the Tentative Fact Sheet discusses how a Permittee’s implementation of program elements and control measures to effectively eliminate prohibited non-stormwater discharges will be considered when determining compliance with the non-stormwater discharge prohibition.</p>

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			<p>Note, also, that the language in Part III.B.1 of the Tentative Order is carried over from the previous Los Angeles County MS4 permit. The 2012 Los Angeles County Permit (2012 Permit) was upheld by the State Water Resources Control Board (State Water Board) in Order WQ-2015-0075,¹ which resolved 37 petitions challenging various provisions of the 2012 Permit, including aspects of the non-stormwater discharge prohibition provisions. (See generally, discussion in Order WQ-2015-0075, pp. 61-64.)</p>
A.3.3	SGVCOG 2 nd Letter	<p>Part III.B.3.a; Page 13. Recommend adding discharges from recycled water systems as a conditionally exempt discharge. Definition of recycled water discharge could be: "Discharges from recycled water systems includes sources of flows from recycled water storage, supply and distribution systems (including flows from system failures),</p>	<p>No change. Discharges from recycled water systems can be a source of pollutants and must be separately permitted under the California Water Code and, for discharges to surface waters, also under the Clean Water Act. Discharges associated with the production and use of recycled water are permitted under various general and</p>

¹ On April 21, 2021, the Los Angeles County Superior Court issued a final judgment in the case of Natural Resources Defense Council, Inc. and Los Angeles Waterkeeper v. State Water Resources Control Board and California Regional Water Quality Control Board, Los Angeles Region (Super. Ct. Los Angeles County, No. BS156962 (NRDC)). In furtherance of the judgment, the court will issue a writ ordering the State Water Board to set aside Order WQ 2015-0075. To date, the State Water Board has taken no action to set aside Order WQ 2015-0075. Even if Order WQ 2015-0075 is ultimately set aside, the trial court's ruling was based solely on the antidegradation analysis for high quality waters and did not call into question the propriety of the State Water Board's other holdings on the 2012 Los Angeles County MS4 Permit. Because these holdings have not been disturbed by the NRDC case, and because these holdings address matters relevant to the Regional MS4 Order, this response comment continues to cite and discuss Order WQ 2015-0075, as appropriate, for matters other than antidegradation concerning high quality waters.

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		pressure releases, system maintenance, distribution line testing, and flushing and dewatering of pipes, reservoirs, and vaults, and pump stations."	individual NPDES permits issued by the State and Regional Water Boards. Discharges to the MS4 that are regulated by another NPDES and/or waste discharge permit are considered authorized non-stormwater discharges pursuant to Part III.B.2.a. and Part III.B.2.b of the Tentative Order.
A.3.4	VCSQMP	<p>Part III.B.3.b. Page 13. Air conditioning condensate is not listed as a conditionally exempt non-essential non-storm water discharge.</p> <p>Include air conditioning condensate as a conditionally exempt non-essential non-stormwater discharge.</p>	<p>No change. As explained in the Tentative Fact Sheet, Part IV.B.5 (p. F-100), the Tentative Permit eliminates the conditional exemption in the 2010 Ventura County MS4 Permit for discharges of air conditioning condensate because these discharges are more appropriately regulated under General NPDES Permit # CAG994003. When covered under this General NPDES Permit, per Part III.B.2.a of the Order, a discharge of air conditioning condensate is an authorized non-stormwater discharge, meaning that it is not prohibited.</p>
A.3.5	SGVCOG 2 nd Letter and ULAR Group	Part III.B.5.a.i; Page 14. The requirement for all conditionally exempt non-stormwater discharges to notify the Permittee in advance is excessive given the range of exempt discharges (includes landscape irrigation, car washing, etc.). Recommend distinguish this requirement for specific discharge categories relative to the potential impacts.	<p>Change made. Part III.A.5.a.i of the Revised Tentative Order only requires notification to the Permittee when required in Table 5 or the applicable BMP manual. Per Table 5 of the Order, notification to the Permittee is not required for discharges of less than 100,000 gallons unless otherwise specified (e.g., notification is required for lake dewatering regardless of the discharge volume). The language was updated to clarify that notification was only required where specified in Table 5 or the applicable BMP manual.</p>

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			Note, notification is not required per Table 5 for discharges of landscape irrigation or non-commercial car washing where the discharge volume is less than 100,000 gallons.
A.3.6	ULAR Group	Part III.B.5.a.i; Page 14. In addition, to date this information is not readily available and presents a cumbersome effort for Permittees in tracking unknown flows during non-stormwater monitoring and investigation efforts. To address these concerns, recommend the Regional Board develop a streamlined public portal for small exempt non-stormwater discharges to input such notifications.	Change made. See response to comment # A.3.5.
A.3.7	SGVCOG 2 nd Letter and ULAR Group	Part III.B.5.b; Page 15. For discharges greater than 100,000 gallons, recommend continue to coordinate with County/Water Purveyors releases of this size for safety reasons downstream.	No change. In addition to the requirement in Part III.B.5.b to maintain records for discharges greater than 100,000 gallons, Permittees are required to work with drinking water system owners/operators that may discharge to the Permittee's MS4 to ensure notification at least 72 hours in advance for planned discharges of greater than 100,000 gallons and as soon as possible for an unplanned discharge (Tentative Permit, Table 5, pp. 17-18).
A.3.8	Los Angeles County and LACFCD 2 nd Letter	Order/ Part III.B.6/ Pg. 15. There have been previous instances of Regional Board permitted dewatering discharges that overtop LACFCD operated low flow diversions and cause exceedances in the receiving water. For these instances, we request language that exempts permittees from these	No change. The commenter's concern is addressed by the Tentative Order, Part III.B.8 and Part X.B.2.a.iv (pp. 16 and 95-96 respectively). The two parts of the Tentative Order address the possibility of an exceedance of a WQBEL and/or receiving water limitation resulting from an authorized

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		<p>exceedances that are a result of a permitted upstream discharge. To avoid this situation in the future, we request that the Regional Board require a system to notify low flow diversion operators when the Regional Board is considering approval of such dewatering discharges to provide a process for better collaboration to prevent future exceedances as more low flow diversions are constructed. Enclosure C provides a map of current low flow diversions in operation.</p>	<p>(e.g., separately permitted) discharge and establish that a Permittee would not be out of compliance with the applicable limitations in this situation.</p> <p>Additionally, in response to concerns from Permittees, the Los Angeles Water Board now routinely requires that dischargers enrolled in its General NPDES Permit for Discharges of Groundwater from Construction and Project Dewatering notify the applicable flood control district three days in advance of any discharges and provide basic information on the planned discharge.</p>
A.3.9	VCSQMP	<p>Part III.B.7; Page 16. This provision of the Tentative Order states "If the Permittee effectively prohibits the non-storm water discharge to the MS4, as per Part III.B.6.a above, then the Permittee shall implement procedures developed under Part VIII.I of this Order (Illicit Discharge Detection and Elimination Program) to eliminate the discharge to the MS4." Part III.B.6.a, footnote 18 defines effectively prohibit in this case as "not allow the non-storm water discharge into the MS4 unless the discharger obtains coverage under a separate NPDES permit prior to discharge into the MS4." As the Permittee has already required the discharger to obtain a separate NPDES permit, they have fulfilled the requirements of the Illicit Discharge Detection and Elimination Program</p>	<p>Change made. The Los Angeles Water Board clarified that Part III.A.7 of the Revised Tentative Order applies to those conditionally exempt non-essential non-stormwater discharges identified in Part III.A.3.b of the Revised Tentative Order that continue to <i>not</i> be regulated under a separate NPDES permit. If a Permittee determines that a previously conditionally exempt discharge is a source of pollutants and is better regulated by another NPDES permit and that NPDES permit coverage is obtained, then the Illicit Discharge Detection and Elimination Program provisions are not implicated at all as the discharge would now be considered an authorized stormwater discharge per Part III.A.2.a of the Revised Tentative Order.</p>

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		<p>requirements. The only remaining required action is for the Permittee to take follow-up actions to ensure the discharge is permitted. Additional actions specified in Part VIII.I of the Order are not needed.</p> <p>Remove III.B.7 or modify the requirement as follows: "If the Permittee effectively prohibits the non-storm water discharge to the MS4, as per Part III.B.6.a above, then the Permittee shall implement procedures developed for Parts <u>VIII.I.3.a, 3.b. and 7</u> of this Order (Illicit Discharge Detection and Elimination Program).</p>	
A.3.10	SGVCOG 2 nd Letter and ULAR Group	Part III.B.8; Page 16. Clarify if notifying the Board within 30 days is from the time when the discharge occurred or when the Permittee determines the discharge contributed to an exceedance.	Change made. The language of Part III.A.8 of the Revised Tentative Order has been revised to make it clearer that the 30-day notification requirement applies from the time the Permittee determines that the discharge contributed to an exceedance.
A.3.11	SGVCOG 2 nd Letter and ULAR Group	Part III.B.9; Page 16. Recommend modifying the end of this sentence to include: "...source of pollutants to receiving waters "	No change. The scope of the conditional exemption is consistent with U.S. EPA's explanation in the 1990 Preamble that non-stormwater discharges must be removed from the municipal separate storm sewer system. (See Tentative Fact Sheet, pp. F-96 to F-97).
A.3.12	VCSQMP	Part III.B.5 and Table 5. Page 22. The requirements for conditionally exempt non-storm water discharges in Table 5 are onerous and mix Permittee and discharger requirements. Permittee requirements related	Change made. Table 5 of the Revised Tentative Order is intended to specify requirements for the dischargers of conditionally exempt non-stormwater discharges. In Table 5 for potable water

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		<p>to conditionally exempt non-storm water discharges are specified in III.B.5 and should not be included in Table 5. Table 5 should only specify requirements for the dischargers of conditionally exempt non-stormwater. Several of the items specified for Permittees in Table 5 are infeasible for a Permittee to implement (e.g. conduct a daily walk through prior to potable discharges from movie scenes).</p> <p>Clarify that Table 5 contains the required conditions to be implemented by the discharger prior to discharge to the MS4 in order to be considered conditionally exempt. Add a footnote that specifies that Permittee responsibilities are outlined in III.B.5 and remove any Permittee required actions from Table 5.</p>	<p>discharges for filming activities, clarification was added specifying that it is the discharger's responsibility to implement BMPs. However, it is the Permittee's responsibility to develop and implement procedures to ensure that a discharger fulfills the requirements in Part III.A.5.a.i-vi of the Revised Tentative Order, including implementation of BMPs and/or control measures as specified in Table 5 as a condition of the Permittee's approval to the discharger to discharge into the Permittee's MS4. Ultimately, the prohibition of non-stormwater discharges through the MS4 that are a source of pollutants is the responsibility of the Permittee unless the non-stormwater discharge is an authorized discharge, i.e., one that is separately permitted or otherwise authorized as specified in Part III.A.2.a-d of the Revised Tentative Order.</p> <p>To the extent commenter is expressing concern that some of the tasks in Table 5 are too onerous, the conditions are common practice and similar requirements are incorporated into MS4 permits statewide (see e.g., Provision C.15 in the San Francisco Bay MS4 Permit, Order No. R2-2015-0049 as amended, Part III.3.ii in the Orange County MS4 Permit, Order No. R8-2009-0030, Part II.E.2.a in the San Diego MS4 Permit, Order No. R9-2013-0001 as amended.) Further,</p>

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			<p>absent these provisions, the effective prohibition on non-stormwater discharges in Part III.A.1 of the Revised Tentative Order (formerly Part III.B.1) would apply. This means that, if anything, the conditions in Table 5 create a less stringent standard than would otherwise apply. Permittees that do not want to develop and implement procedures to ensure the BMPs in Table 5 are implemented by a discharger may prohibit these discharges entirely and/or require the discharger to get a separate NPDES permit prior to discharge to the MS4.</p>
A.3.13	City of Los Angeles	<p>Main Body, Part III, Table 5, Page 22. Four discharge categories of conditionally exempt non-storm water discharges have been added from those included in the 2012 Permit (essential non-emergency firefighting activities, drinking water systems not otherwise regulated, potable wash water discharges associated with reservoir cover cleaning, and potable water discharges from filming activities). The requirements associated with these new discharge categories seem onerous. In particular, it is infeasible for Permittees to conduct a daily walk through prior to potable discharges from movie scenes. If the discharge of a high volume of water is planned (as in a flood scene or deluge), it is understood why there</p>	<p>Change made. See response to comment # A.3.12.</p>

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		<p>may be a concern. LASAN requests that a minimum volume of 100,000 gallons discharged be specified to trigger daily walk-throughs of a filming area consistent with the requirements for other conditionally exempt non-stormwater discharges identified in Table 5 (e.g., All Discharge Categories, Discharges from drinking water systems that are not otherwise regulated by NPDES Permits, and Dewatering of decorative fountains).</p>	
A.4.1	SGVCOG 2 nd Letter and ULAR Group	<p>Part III.D; Page 25. Please clarify why this prohibition for insecticides, fungicide and rodenticides are not applicable to products used for lawn and agricultural purposes.</p>	<p>Change made. This discharge prohibition was deleted as described in comment response A.1.1. Note that agricultural stormwater and irrigation return flows from agricultural lands are not subject to regulation under the Clean Water Act, but are separately permitted in the Los Angeles Region under the Conditional Waiver of Waste Discharge Requirements for Irrigated Agricultural Lands.</p>
A.4.2	VCSQMP	<p>Part III.D. Page 24-25. The discharge prohibition for products registered under the Federal Insecticide, Fungicide, and Rodenticide Act is exceedingly broad and would be nearly impossible to implement in a manner that would ensure compliance. As proposed, the prohibition applies to any waste stream that may ultimately be released to waters of the United States. We agree with the principle of keeping pesticides, herbicides and other toxic chemicals from entering</p>	<p>Change made. See response to comment # A.1.1.</p>

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		<p>waterbodies. However, our jurisdiction with respect to the use of such products is limited to our activities only. Pursuant to state law, we do not have the authority to otherwise control the use of such products by consumers. Thus, we are concerned that this prohibition imposes an obligation on us as the permittees to which we cannot ensure compliance. We request that this provision either be removed, or revised to limit its application to permittee activities specifically.</p> <p>Remove III.D and make corresponding changes to the Fact Sheet.</p> <p>Provision III. D – Prohibitions – Federal Insecticide, Fungicide, and Rodenticide Act</p> <p>The discharge prohibition for products registered under the Federal Insecticide, Fungicide, and Rodenticide Act is exceedingly broad and would be nearly impossible to implement in a manner that would ensure compliance. As proposed, the prohibition applies to any waste stream that may ultimately be released to waters of the United States. We agree with the principle of keeping pesticides, herbicides and other toxic chemicals from entering waterbodies. However, MS4 jurisdiction with respect to the</p>	

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		<p>use of such products is limited to our activities only. Pursuant to state law, we do not have the authority to otherwise control the use of such products by consumers. (Cal. Food & Agricultural Code § 11501.1; see <i>Jacobs Farm/Del Cabo, Inc. v. Western Farm Service, Inc.</i> (2010) 190 Cal.App.4th 1502, 1521 [section 11501.1 expressly prohibits local regulation of pesticides and agricultural chemicals].) Thus, we are concerned that this prohibition imposes an obligation on the Program to which we cannot ensure compliance.</p> <p>The Draft Fact Sheet claims that the provision is essentially the same as that included in previous permits, which required permittees to possess the legal authority to prohibit the discharge of non-storm water to the MS4 from spills, dumping, or disposal of any pesticide, fungicide or herbicide. However, as proposed, the prohibition is much broader as it would apply to “the discharge of any product registered under the Federal Insecticide, Fungicide, and Rodenticide Act to any waste stream that may ultimately be released to waters of the United States, ... unless specifically authorized elsewhere in this Order...” (Draft Regional Permit, pp. 24-25.) By removing this provision from the “non-</p>	

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		<p>storm” section to the general prohibitions section, the prohibition is being greatly expanded to also include such products that may enter storm water. Further, it applies directly to the discharge, and not if the discharge causes or contributes to an exceedance of a receiving water limit.</p> <p>In effect, the legal use of any registered product that could end up in a waste stream is prohibited. We request that this provision either be removed, or revised to limit its application to permittee activities specifically.</p>	
A.4.3	Pyrethroid Working Group	<p>The PWG also expresses concern with respect to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) products discharge prohibition in the Draft Regional Permit...</p> <p>Regarding the FIFRA prohibition, the discharge prohibition is exceedingly broad and would impose obligations on local municipalities for which they have no authority. MS4’s [sic] are limited in their jurisdiction with respect to the use of pesticides. Pursuant to state law, MS4s do not have the authority to control the use of pesticide products by consumers. (Cal. Food & Agricultural Code § 11501.1; see <i>Jacobs Farm/Del Cabo, Inc. v. Western Farm Service, Inc.</i> (2010) 190 Cal.App.4th 1502, 1521 [section 11501.1 expressly prohibits</p>	<p>Change made. See response to comment # A.1.1. Regarding the comment that the Los Angeles Water Board does not have the legal authority to adopt the prohibition as proposed, the Board disagrees. Products regulated under FIRFA are not exempt from the Clean Water Act. (<i>Headwaters, Inc. v. Talent Irrigation District</i>, (9th Cir. 2001) 243 F.3d 526; <i>League of Wilderness Defenders v. Forsgren</i> (9th Cir. 2002) 309 F.3d 526; <i>Fairhurst v. Hagener</i> (9th Cir. 2005) 422 F.3d. 1146.) Further, the Board is not subject to the preemption in section 11501.1(c) of the California Food & Agricultural Code, which states, “[n]either this division nor Division 7 (commencing with Section 12501) is a limitation on the authority of a <i>state agency</i> or department to enforce or administer any law that the agency or department is authorized</p>

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		<p>local regulation of pesticides and agricultural chemicals].) Thus, an MS4 may adopt and implement policies that relate directly to their agency's use of pesticides but not others.</p> <p>As proposed, the prohibition applies to any properly registered product under FIFRA and prohibits the discharge of any such product to any waste stream that may ultimately be released to waters of the United States, unless otherwise authorized elsewhere in the Order or through another NPDES permit. It then exempts lawn and agricultural applications from the Draft Regional Permit. The prohibition is problematic for several reasons. First, the prohibition and its reference to "discharge" is not directly tied to municipal stormwater or discharges from a MS4 system. Rather, it just prohibits discharges broadly without regard to municipal stormwater or the MS4 system.</p> <p>Second, to ensure compliance with this broad prohibition, a municipality would potentially need to consider banning any outside use of pesticides that could wash off and end up in stormwater runoff, non-stormwater runoff or any waste stream. As shown above, a municipality does not have the legal authority to ban the use of pesticides. Consumers and professional pest control operators have the legal right to use pesticide products at or</p>	<p>or required to enforce or administer." (emphasis added). Nonetheless, this discharge prohibition has been deleted for the reasons explained in response to comment # A.1.1.</p>

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		<p>around homes, apartments and businesses to control insects. This may include spraying building perimeters, gardens, planter beds and other areas outside a home or business that are unrelated to lawn or agricultural applications.</p> <p>According to the Draft Fact Sheet, the Los Angeles Water Board alleges that the prohibition is essentially the same as one that was included in previous permits. The previous prohibitions required permittees to possess the legal authority to prohibit the discharge of non-storm water to the MS4 from spills, dumping, or disposal of any pesticide, fungicide or herbicide. The prohibition at issue in the Draft Regional Permit is not the same as the previous prohibitions and is much broader. It applies to any discharge, not just non-stormwater from the MS4. By removing this provision from the “non-storm” section and making it a stand-alone general prohibition, it is being greatly expanded to include products that may enter storm water. Further, it removes reference to spills, dumping and disposal of products and suggests that a single molecule of any legal product that “may” end up in a water of the U.S. is prohibited.</p> <p>The Los Angeles Water Board does not have the legal authority to adopt the prohibition as</p>	

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		<p>proposed, and the MS4s do not have the legal authority to implement the prohibition. Accordingly, the PWG requests that this provision either be removed, or revised to limit its application to permittee related activities specifically.</p>	
A.4.4	The Nature Conservancy	<p>Part III.D. Prohibitions – Federal Insecticide, Fungicide, and Rodenticide Act</p> <p>“The discharge of any product registered under the Federal Insecticide, Fungicide, and Rodenticide Act to any waste stream that may ultimately be released to waters of the United States, is prohibited, unless specifically authorized elsewhere in this Order or another NPDES permit. <u>This requirement is not applicable to products used for lawn and agricultural purposes.</u>”</p> <p>This is a very broad exclusion. Clearly we are talking about compounds and substances that do cause chronic and acute toxicity and we believe exclusions like this do not have a place in regulations that are intended to bring the region to water quality compliance.</p>	<p>Change made. This provision was deleted. See responses to comments # A.1.1 and A.4.1.</p>

Miscellaneous Modifications

1. Table 5 of the Order. For clarification, change made to street/sidewalk wash water category, last paragraph. Omitted “public agency” from last sentence “...sidewalk cleaning public agency activities to the sanitary sewer.”