

February 29, 2008

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

Subject: City of San José Comments on the Tentative Order for the Municipal Regional Stormwater National Pollutant Discharge Elimination System Permit

Dear Mr. Wolfe,

Thank you for the opportunity to comment on the Tentative Order for a Municipal Regional Stormwater Permit (MRP) dated December 14, 2007. San José also plans to attend and testify at the March 11 public hearing for the MRP.

Introduction

The City of San José is a co-permittee of the Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPPP) and has had a proactive stormwater pollution prevention and control program since the first countywide municipal stormwater permit was adopted in 1990. San José has also been actively engaged in the development of a regional stormwater permit, with staff having participated in the original work groups and in various workshops.

Key concerns and issues related to the Tentative Order and to each provision are summarized in this letter, and detailed comments are provided in Attachment A. San José has dedicated considerable staff time and effort to review the feasibility and merit of the prospective provisions. These comments have been prepared consistent with the direction of San Jose's Transportation and Environmental Committee, which is comprised of four City Council members, and the San José City Council which approved the report of the Committee to the Council on February 26, 2008.

In general, San José finds that this Tentative Order is dramatically more prescriptive than previous permits and includes stringent and costly new requirements. The Order proposes continuing key elements, with expanded scopes and extensive data management and reporting

requirements. The Tentative Order also proposes expanded and prescriptive water quality monitoring and control programs to address a host of pollutants of concern. While several of the proposed provisions are aimed to improve water quality, the aggregate effect of the Order would place a considerable strain on City resources.

In addition to joining in the comments submitted by SCVURPPP and BASMAA, San José is submitting these comments to highlight its concern with several requirements in the draft Order that would be unreasonably costly and offer questionable returns in water quality benefit, including the following:

- Treatment controls on trails and during road rehabilitation;
- Shifting of storm drain inlet cleaning to dry season only;
- Inspection of mobile businesses in the field;
- Inspection of industrial facilities directly regulated by the Water Board;
- Duplicative control measures for trash;
- Monitoring and benchmarks for planned and unplanned potable water discharges; and,
- Excessive data management and reporting.

While it is evident that there is value in a strong community commitment to stormwater management efforts, the aggregate of the proposed requirements do not reflect Water Board priorities and are too extensive to accomplish within a five-year permit term. The permit language is too prescriptive and does not provide municipalities with flexibility to implement their stormwater programs pragmatically and efficiently.

The City has reviewed the Tentative Order to evaluate the operational impacts and associated cost implications. The estimated five-year cost to implement new and expanded programs mandated by the draft Order exceeds \$35M, excluding the costs associated with the provisions for treatment controls on trails and during road rehabilitation; the capital costs of rehabilitation of bridge crossings and culverts in rural areas; and the unpredictable cost of additional studies or activities that may be triggered by monitoring results. The estimated first-year additional cost alone is \$7,328,000. The cost to implement all proposed requirements well exceeds currently available and projected funding.

Municipal Maintenance [Provision C.2]

San José is very concerned about the cost implications of meeting the proposed requirements. Of particular concern is the requirement to conduct annual storm drain inspection and cleaning on all inlets prior to the rainy season. San José currently inspects and cleans as needed each inlet once annually typically between September and February. The City's current strategy has the benefit of capturing the inevitable leaf debris of autumn. Requiring San José to conduct this work only during the dry season will result in increased risk of system blockages and significant additional cost for storm preparation and response in the wet season. The total additional cost to meet this requirement as proposed is \$650,000 per year.

We also want to state our understanding of the language in the draft Order related to rural public roads and the requirement for rehabilitation of existing culverts and bridge crossings. We interpret this requirement only to incorporate the specified design criteria when doing a rehabilitation project, and not to require a new capital program for rehabilitation of culverts and bridge crossing in rural public roads. If the requirement were to require a rehabilitation program, it would have significant capital costs.

San José also requests that the requirements related to sidewalk maintenance and pavement washing conform with the Bay Area Stormwater Management Agencies Association Mobile Surface Cleaner program that is referenced in the draft Order, and that consistent language be used to describe the goal of implementing best practices during maintenance as the “prevention of pollutant discharges” versus the prohibition of all wash waters to storm drains, which is sometimes impractical.

New Development and Redevelopment [Provision C.3]

San José continues to recommend that the Water Board retain the current level of implementation for new and redevelopment requirements, because experience with these measures remains in its infancy for local jurisdictions. We also acknowledge that the Tentative Order represents a sincere effort to reflect the concerns and interests of a broad array of stakeholders.

San Jose’s greatest concern lies with the application of treatment measures to trails and road rehabilitation projects and San José requests that these categories be exempted from the provision. The Tentative Order would significantly impact San Jose’s trail plan. As part of its Green Vision goals, San José is currently developing a plan to add an additional 60 miles of trails over the next 15 years. The vast majority of these trails are planned to be impervious, 12 feet wide (to meet design guideline specifications required by funding sources as well as ADA compliance), and within 50 feet of top of bank. Requiring treatment, for example, in the form of swales or plantings, is not possible because the trail land is typically not owned by San José and most of the trails require all available space to meet the guidelines for 12-foot width. Switching to pervious materials will substantially increase the cost to build the trails by an estimated \$60M (increasing costs from \$265M to \$325M). San José recommends that the Water Board recognize that trails offer an overall benefit to water quality by providing potential alternative transportation options and encourage interface between the community and the watershed, and that trails be exempted from this Provision.

Additionally, the draft Order uses definitions that place limitations on the alternative compliance options for public and private development. San José requests the deletion of the reference to one parking space per unit from the definition of Transit Oriented Development or that an appropriate definition from regional, state, or federal authorities be substituted.

Industrial and Commercial Site Controls [Provision C.4]

San José is very concerned that the level of expansion proposed for this program is not consistent with any Water Board priority and does not provide substantial water quality benefit. Of greatest concern is the requirement to inspect mobile businesses - such as portable sanitary services, mobile cleaners, landscapers, and pool cleaners - during their field activities. The practicality of inspecting field activities of mobile businesses and other new categories would present challenges in daily work schedules and would be resource intensive. San Jose's current program includes inspection of several of these categories at their business address and at a minimum, outreach materials are provided to educate on appropriate field practices. Failures to employ best practices are addressed when reported through the City's complaint response program. San José asserts that this is a more effective use of resources than a field-based inspection program for mobile services. A field-based inspection program would cost an additional \$500,000 annually.

San José is also concerned that the Tentative Order potentially expands the number of industrial facilities that would need to be inspected and regulated to include facilities that are already regulated by the Water Board. This constitutes a shift of state responsibility to local agencies and raises resource concerns.

San José also objects to the requirement to report inspection results at the transaction level. For San José, this would result in the reporting of inspections for more than 4,000 facilities, in detail, each year, for just this program element with no demonstrable water quality benefit. This is inconsistent with the goal of streamlining reporting for permittees, and summary data in annual reports is sufficient to demonstrate program performance.

Illicit Discharge Detection and Elimination [Provision C.5]

As noted with Provision C.4, San José requests that the excessive reporting requirements be removed. Complete records are available for review upon request and summary data in annual reports is sufficient to demonstrate program performance.

Construction Site Control [Provision C.6]

San José requests that references to stop work orders and withholding inspections be removed. This requirement is overly prescriptive and does not provide a necessary enforcement mechanism. Also, the reporting template is inconsistent with the Order language in a number of areas. In particular, the reporting template should not include any inference that all "screening level" inspections are to be tracked (or reported). The Tentative Order clarifies that this is the case only when a violation is discovered during such an inspection and San José agrees that degree of tracking is sufficient. San José also reiterates its concern about excessive reporting and requests deletion of the requirement to report inspection results at the transaction level.

Public Information and Outreach [Provision C.7]

San José acknowledges the value of outreach and education in engaging the community on environmental protection and achieving successful behavior change. San José has a robust and multi-faceted public information and public participation program, utilizing many different outreach methods to best deliver stormwater pollution prevention and watershed protection messages. The Tentative Order prescribes continuing the variety of outreach approaches and much of the work will continue to be achieved through inter-agency collaboration. San José requests that the limitations for credit to permittees for events developed through inter-agency collaboration, as well as upon the location of collaborative events, be deleted.

Water Quality Monitoring [Provision C.8]

As drafted, this Provision comprises a list of overly burdensome requirements that do not bear a reasonable relationship to the benefit the monitoring results might provide. In addition to supporting SCVURPPP's comments on this Provision, San Jose wishes to emphasize concern with the inclusion of costly, unpredictable triggered actions that will make managing program resources untenable. San José requests that the use of triggers be deleted or be clearly preceded by additional efforts to confirm water quality results and to determine the most appropriate next steps.

San José supports revision of the Monitoring Provision to allow municipalities to jointly develop a monitoring plan that addresses and describes the type, interval, and frequency of monitoring that would be conducted to yield high quality, representative data that will assist Co-permittees and Water Board staff in assessing the condition of water bodies and to determine trends over time.

Trash Reduction [Provision C.10]

Reducing the impact of trash on local creeks is an important endeavor for the environment and local communities. San José has already begun addressing trash impacts to creeks through a wide array of activities including site assessments, sponsorship of creek clean-up events, partnerships with the Santa Clara Valley Water District, community outreach, and piloting the use of trash capture devices in storm inlets. Nevertheless, this Provision as proposed represents a dramatic impact to City resources.

Compliance with the Tentative Order's requirements for identification of areas highly impacted by trash, implementation of additional maintenance practices such as increased street sweeping and increased inlet cleaning, and installation of permanent trash capture devices such as storm drain screens would be extremely costly for San José. The preliminary estimate to meet these requirements over the five-year permit term is approximately \$11M.

The draft Order provides insufficient technical basis for the very prescriptive maintenance activities listed in this Provision. San José also finds that some of the prescribed practices are duplicative of one another and are thus not cost-efficient. The prescribed approach of layering

on multiple trash control practices in the same area, without evidence to support the need and in an unscientific, arbitrary manner, will make it difficult to assess the most effective trash control measures under various site-specific conditions. The draft Order also requires that these practices be implemented as interim controls in the areas where trash capture devices would eventually be installed. San José considers it wasteful to make short term changes to such large scale operations.

San José considers trash an important priority for potential new City programs. However, any large scale efforts to control trash should move forward methodically, cost-effectively, and only when accompanied by adequate resources to ensure their success. The effort prescribed in the Tentative Order is not a cost-effective solution that can be managed solely by local municipal resources. It is unlikely that the scale of effort prescribed will be achievable by most if not all the permittees given the costs. San José recommends collaboration with agencies and organizations regionally to develop a strategy for building the funding necessary to implement the kind of large scale, high impact effort contemplated in the Tentative Order.

Mercury and PCB Controls [Provision C.11 and Provision C.12]

San José is very concerned about the high cost of the requirements included in these provisions, and inconsistencies with the PCB TMDL and Basin Plan Amendment (BPA). The requirements related to abatement on private property, and diverting storm flows to the sanitary system are of particular concern.

Local jurisdictions should not be responsible for abatement on private property but should reasonably limit their responsibility to advocating cleanup and prohibiting exposure of the storm sewer system to pollutants from the site. While San José understands the role of municipalities in assisting the Water Board in identifying contaminated on-land sites, and is committed to such activities, cleanup and abatement activities are the responsibility of property owners and other responsible parties. San José is committed to the activity of preventing contaminated sediments from entering the MS4, and requests that the language be revised to clarify that municipalities are not responsible for cleanup and abatement activities on private properties.

The diversion requirements are strongly focused on first flush and dry weather flows from pump stations to the sanitary system without sufficient information about possible mercury and PCBs problems related to those pump stations or whether diversion to sanitary is the best approach to addressing potential problems. San José asserts that the timing and method for choosing relevant pump stations are inappropriate. The Monitoring Provision (C.8) requires that the final five pump stations selected be tested for mercury and PCBs in the third and fourth years, while the PCB and Mercury Provisions (C.11 and C.12) require five pump stations be selected for pilot diversion studies one to two years earlier. San José requests that this confused set of provisions regarding pump stations and flow diversion be rewritten to address potential problems in a stepwise fashion and that discussion of flow diversion should be considered only as one of many possible solutions, assuming the results of investigations of pump station water quality justify such actions.

San José is concerned that these provisions do not take into account possible technical and legal restrictions on the use of POTW infrastructure and capacity for stormwater. San José requests that technical and legal constraints be explicitly mentioned as criteria for evaluating feasibility. Consideration of such diversions should be predicated on a collaborative feasibility study with wastewater agencies and open discussion with all relevant stakeholders as one of many possible alternatives for water quality improvement before being required as a permit provision.

San José is also concerned that Provision C.11 is inconsistent with the PCB TMDL and BPA. The PCB TMDL only states that opportunities for targeted diversions should be investigated, pilot tested, and implemented where feasible. The TMDL further states under Regulatory Analysis (page 93): "No specific project to route stormwater to a wastewater treatment plant is currently required."

In summary, the proposed requirement to divert selected storm flows to sanitary sewers is significant, problematic, and premature. In addition to being beyond the TMDLs/Basin Plan, the provisions require the evaluation of feasibility, but then require subsequent implementation without regard to feasibility. It is clear that such diversion is likely to be fraught with engineering, financial, regulatory, legal, and institutional challenges which if done improperly could have deleterious effects on water quality. Any such evaluation should be advanced methodically and no implementation of flow diversion should be included in this Permit.

Copper Controls [Provision C.13]

San José does not believe that the effort to establish and execute a program to prohibit washwater from copper architectural features is commensurate with any water quality benefit that could be achieved by it. Discouraging the use of architectural copper and promoting best practices to manage this source is sufficient. San José also recommends that this Provision (and *all* provisions) incorporate adaptive management. For example, if it is demonstrated that a waste stream is not a significant source of copper to the receiving waters for a given jurisdiction, then there should be a provision to adapt efforts to make them commensurate with the potential water quality threat.

Exempted and Conditionally Exempted Discharges [Provision C.15]

Non-stormwater discharges such as pumped groundwater, foundation drains, water from crawl spaces, and footing drains would be required to be permitted by San José and tracked. San José objects to this Provision as it represents a transfer of regulatory responsibility from the Water Board to local jurisdictions. Additionally, this Provision requires the development of an entirely new program which includes permitting, monitoring, tracking, and reporting of *all* such conditionally-exempt discharges at a considerable cost to the City. San José does not believe the cost for this new program is commensurate to the threat to water quality. This provision also includes overly prescriptive monitoring requirements that would be extremely cost-prohibitive to a discharger and would likely create a situation where more unauthorized non-stormwater discharges occur. With no flow threshold for this requirement, stringent and costly BMPs and control measures would be required for every instance of dewatering, which is not proportionate

to the potential for water quality impairment. San José requests this requirement be modified to include minimum required BMPs for dewatering-type, non-stormwater discharges in lieu of a new local regulatory program.

Proposed requirements imposed on planned, unplanned, and emergency discharges of the potable water systems also will have significant operational impacts on the City. New monitoring requirements would have a significant impact on the routine operations (such as hydrant flushing) of the San José Municipal Water System (SJMWS) and would require SJMWS to monitor discharges *and* the receiving waters. Discharge benchmarks for pH, chlorine residual, and turbidity are overly prescriptive and in some instances are unrealistic. Meeting these provisions would not only require investment in equipment and personnel, but could affect the utility's ability to conduct essential operations such as hydrant maintenance and main flushing. It is estimated that for SJMWS, the annual impact of implementing the proposed requirements would be \$379,000 with an additional equipment investment of \$364,000. Please note that these operational and financial impacts on SJMWS only represent approximately 12% of citywide impact and do not account for private water retailers. Additionally, San José is unaware of any effort made by the Water Board to notify private water retailers of these new requirements, including San Jose Water Company and Great Oaks Water Company, which are the two largest water retailers in the City of San José.

San José requests the replacement of the overly prescriptive and infeasible monitoring benchmarks (for pH, chlorine residual, and turbidity) for both planned and unplanned discharges and the receiving waters with BMPs for pollution prevention, consistent with current practice. The Tentative Order provides insufficient information to conclude that current practices present a significant threat to water quality. The proposed requirements are expensive, have questionable water quality benefit, and come with serious health and safety concerns.

General Comments on Tentative Order

Increased Data Collection & Reporting

San José urges the reduction of the tracking and reporting requirements so that those resources can be directed to operational and programmatic activities that directly benefit water quality. Throughout the Tentative Order, increased data collection, tracking, and summaries are required for every program element. It is not clear that the increased data collection for everything from construction inspections, to the amount of impervious surface, to inlet cleaning, to facility inspections will result in improved water quality or what management objective is being addressed with this effort. San José notes that the proposed report form, which has been described by Water Board staff as "streamlined," totals 110-pages plus an additional 57 attachments and tables of detailed information required to be submitted over the permit term, some containing potentially thousands of detailed transaction-level entries every year. Estimates to comply with all data tracking and reporting requirements in the Tentative Order include upfront investments for modification and development of data systems and mapping totaling nearly \$1M in addition to the ongoing costs.

Adaptive Management

The Tentative Order is overly prescriptive which will not afford permittees flexibility during implementation. San José requests that the Order incorporate the principles of adaptive management in all provisions. Permittees should have the flexibility to redirect resources based on new information about pollutant impacts, sources, and pathways or the effectiveness of prescribed best practices.

Annual Report Form

While San José appreciates that the original comment period for the Tentative Order was extended, the period was still insufficient to provide a thorough review of the 122-page Annual Report Form (Attachment L of the Tentative Order) in addition to the Fact Sheet and draft Permit. Several inconsistencies have been identified between the draft Permit and the report form and there is no direction in the draft Permit on how to interpret requirements in those instances. San José requests that 1) more time be provided for careful review of any standard reporting and that the final report form be developed following adoption of the permit, and 2) that the final Permit include specific language that states where inconsistencies exist between the Permit language and the report form, the Permit language prevails.

Compliance Timelines

The Tentative Order includes many new requirements and in most cases acknowledges that each of those requirements will take some time to put in place. The Tentative Order does not account for the aggregate demands to implement so many initiatives concurrently and to also expand, redirect, or refine established programs. San José urges the phased implementation of requirements to allow time to establish the funding, personnel, and contractual services necessary to implement the requirements. Additionally, San José recommends referring to time periods, such as 12 months after permit adoption, in lieu of specific dates, to avoid unintended reductions in compliance timelines due to any potential delay in permit adoption.

Conclusion

San José remains an active steward of the environment, our local creeks, and the iconic San Francisco Bay. San Jose's City Council has adopted a Green Vision which sets forth a bold set of specific goals for advancements in environmental protection in our community. In light of San Jose's interest in undertaking such a bold endeavor, it is paramount that new regulatory requirements be prioritized to address identified, significant water quality problems and phased over time based on a realistic assessment of municipal resources.

San José is also submitting legal comments on the Tentative Order under separate cover by our City Attorney's Office. In addition, San José supports and incorporates by reference the comments submitted by the Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPPP) and the Bay Area Stormwater Management Agencies Association (BASMAA).

Mr. Bruce Wolfe, Executive Officer

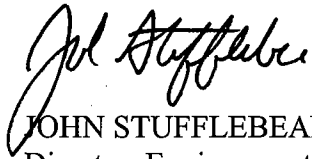
City of San José Comments on the Tentative Order for the Municipal Regional Stormwater Permit

February 29, 2008

Page 10

San José acknowledges the time and effort of Water Board staff that went into the production of the Tentative Order. We appreciate your consideration of our comments and look forward to engaging in the next steps to develop a successful regional permit for stormwater.

Sincerely,

A handwritten signature in black ink, appearing to read "John Stufflebean". The signature is fluid and cursive, with the first name "John" being more prominent than the last name.

JOHN STUFFLEBEAN

Director, Environmental Services

Attachment A: San José Detailed Comments on Tentative Order

Attachment A

San José Detailed Comments on Tentative Order

Master Provision #	Detailed Provision #	Comment
Attachment L	All 122 pages	<p>The City has not had adequate time to review Attachment L, in addition to the 76 page factsheet and 114 page (excluding attachments) Tentative Order, and requests additional time for review and comment to the Water Board.</p> <p>Several inconsistencies have been identified between the draft Permit and the report form and there is no direction in the draft Permit on how to interpret requirements in those instances.</p> <p>San José requests that 1) more time be provided for careful review of any standard reporting and that the final report form be developed following adoption of the permit, and 2) that the final Permit include specific language that states where inconsistencies exist between the Permit language and the report form, the Permit language prevails.</p>
C.2	C.2.a, C.2.b, C.2.f (pg. 8-12)	<p>The City requires a minimum of one year to finance the increased staffing and equipment needed to comply with these requirements, including time to hire staff, develop new maintenance programs, establish needed contractual services, as well as order and receive required equipment (large equipment such as vacuums could take in excess of a year to receive once ordered). For example, six months is barely adequate time to develop the necessary contractual services, let alone complete the mapping of all streets, roads, and public parking lots. The City requests a minimum period of two years to fully comply with these requirements.</p>
C.2	C.2.c, C.2.d, C.2.e (pgs. 9-10)	<p>The City requests the language for Provisions C.2.c.ii(1) Street and Road Repair and Maintenance, C.2.d.i Sidewalk/Plaza Maintenance and Pavement Washing, and C.2.e.i.1 Bridge and Structure Maintenance and Graffiti Removal be consistent with the Bay Area Stormwater Management Agencies Association Mobile Surface Cleaner Program that is referenced in the Tentative Order, and that consistent language be used to describe the goal of implementing best practices during maintenance as the “prevention of pollutant discharges” versus the prohibition of all wash waters to storm drains, which is sometimes impractical.</p>
C.2	C.2.f.i (pg. 11)	<p>The City is very concerned about the operational impact of moving all cleaning to the dry season because wet season cleaning is beneficial to address seasonal leaf litter, the bulk of which drops early in the wet season. Wet season cleaning has value. What is the basis for requiring that catch basin or storm drain inlet inspection and cleaning must be completed before the wet season?</p>
C.2	C.2.f.ii (2) iii (page 11)	<p>The City requests that this Provision be revised so that it is consistent with Provision C.7.a.ii which requires inspection of storm drain stencil legibility once per permit cycle.</p>

Attachment A

Master Provision #	Detailed Provision #	Comment
C.2	C.2.f.iii (pg. 11)	The City requests that the “shall report” phrase be changed to “shall summarize and report the data consistent with Attachment L.”
C.2	C.2.g.i (pg. 11)	The City requests the word “eliminate” be replaced with “reduce impact from” and, to note conditionally exempt discharges, contain the statement “consistent with Provision C.15.”
C.2	C.2.g.ii (3) (pg. 12)	The City requests that the statement read “...within 24 hours <i>or next business day...</i> ” so as not to incur unmerited costs.
C.2	C.2.h (pg. 13)	The City and SCVURPPP spent considerable time, effort, and funds developing the <i>Performance Standard and Supporting Documents for Rural Public Works, Maintenance and Support Activities</i> . The Tentative Order provides no basis for changing the existing standard, which was approved by the Water Board and has been successfully implemented in the City.
C.2	C.2.h.ii (3) b (pg. 13)	The City interprets this requirement only to incorporate the specified design criteria when doing a rehabilitation project, and not to require a new capital program for rehabilitation of culverts and bridge crossing in rural public roads. If the requirement were to require a rehabilitation program, it would have significant capital costs.
C.2	C.2.h.iii (1) (pg. 13)	The City requests the reporting requirements be consistent with Attachment L.
C.2	C.2.i.ii (5) (page 14)	The City requests removal of the requirement for outdoor storage areas containing waste pollutants to be covered and/or bermed. Permittees should be allowed to determine the best and most cost efficient way of preventing pollution of stormwater runoff or run-on to storm drain inlets for each individual outdoor storage area.
C.3	C.3.b.i (3) (pg 16)	The City requests that the date of July 1, 2008 be revised to “12 months after permit adoption” to maintain consistency with Provision C.3.c.ii.
C.3	C.3.b.i (4) (pg.18)	<p>The City requests the removal of the phrase “(including contiguous sidewalks and bicycle lanes; or impervious trails that are greater than 10 feet wide or are creek-side (within 50 feet of the top of bank)).”</p> <p>The City requests that these facilities remain exempt and that trails be recognized as offering an overall benefit to water quality as they provide alternative transportation options and encourage interface between the community and the watershed. Requiring treatment of these facilities works against the goal of providing non-vehicular commute options which are beneficial to water quality. Currently 40% of trail users in San Jose (Guadalupe River) use it to bicycle commute to and from work. This requirement would jeopardize San Jose’s current goal of constructing an additional 60 miles of trails in 15 years and result in decreased non-vehicular commute options for City residents.</p>

Attachment A

Master Provision #	Detailed Provision #	Comment
		The Tentative Order provides no basis for requiring treatment of stormwater runoff from sidewalks, bicycle lanes and impervious trails greater than 10 feet wide or within 50 feet of top of bank.
C.3	C.3.b (5) a (pg.18)	The City requests that current permit language that excludes resurfacing, repaving and road pavement structural section within the existing footprint, and other reconstruction work within a public street or road right-of-way where both sides of that right-of-way are developed continue to be used in the new permit. In cases where the street is being replaced within the same footprint and there is development on both sides of the street, there is usually very little right-of-way in which to install treatment BMPs. Including this new requirement will create a significant burden and could result in street repairs being delayed and create a public safety hazard.
C.3	C.3.c.ii (pg. 21)	The City requests that the date of July 1, 2009 be revised to “12 months after permit adoption.”
C.3	C.3.e.i (3) d (pg. 24)	The City requests the source of the Transit-Oriented Development (TOD) definition. The City requests that the Tentative Order use an accepted regional, state or federal authorities’ definition of TOD such as the ABAG/MTC lead FOCUS Initiatives created <i>Station Area Planning Manual</i> (October 18, 2007) which provides guidelines for TOD. Additionally, the City requests removal of the one car per unit requirement.
C.3	C.3.i.i (pg. 32)	Please add “discretionary” before the word “approvals” in the last sentence, to this and all other references to the Permittees’ planning, building, and other comparable authority to be consistent with the intent expressed in the Fact Sheet.
C.4	C.4.b.ii. (pg. 36-37)	For greater clarity, the City requests a list of Standard Industrial Classification codes for businesses requiring inspection.
C.4	C.4.b.ii (1) a.i. – iv (pg. 36)	<p>The City requests removal of the following four industrial sites/sources: “Industrial facilities, as defined at 40 CFR 122.26(b)(14), including those subject to the State Board’s General Industrial Stormwater Permit; Operating and closed landfills; Facilities subject to SARA Title III; and (iv) Hazardous waste treatment, disposal, storage, and recovery facilities”</p> <p>The City recognizes that other federal and state agencies already inspect these areas, and their inspections and regulations ensure proper facility functioning for pollution prevention.</p>
C.4	C.4.b.ii (1) a.iii (pg. 36)	The City requests removal of industrial facilities subject to SARA Title III. The SARA Title III program already covers such facilities ensuring stormwater protection. Also, sites that are (or will be) associated with a regulated facility or operation will already be subject to stormwater inspections.

Attachment A

Master Provision #	Detailed Provision #	Comment
C.4	C.4.b.ii (1) b.vi (pg. 36)	The City requests removal of the category “Automobile (or other vehicle) storage facilities.” A tremendous number of facilities could fall under this category that have very limited potential to impact stormwater.
C.4	C.4.b.ii (1) b.i.viii and ix (pg. 37)	The City requests clarification of the definitions (or SIC codes) for “kennels” and “animal facilities, including horse boarding facilities.” A lot of facilities could fall under these categories that have no stormwater impact (e.g. veterinarian offices).
C.4	C.4.b.ii (1) b.xi (pg. 37)	The City requests the requirement to inspect botanical or zoological gardens and exhibits be removed. An inspection program will not provide any added benefits to water quality from these facilities. An outreach program rather than a regular inspection program may better serve these facilities and their efforts at stormwater pollution prevention.
C.4	C.4.b.ii (1) b.xiii (pg. 37)	The City requests the requirement to inspect golf courses, parks and other recreational areas be removed. An inspection program will not provide any added benefits to water quality from these facilities. An outreach program rather than a regular inspection program may better serve these facilities and their efforts at stormwater pollution prevention.
C.4	C.4.b.ii (1) b (xiv) (pg. 37)	The City requests the requirement to inspect cemeteries be removed. An inspection program will not provide any added benefits to water quality from these facilities. An outreach program rather than a regular inspection program may better serve these facilities and their efforts at stormwater pollution prevention.
C.4	C.4.b.ii (1) c (pg. 37)	The City requests removal of the requirement to inspect mobile sources in the field such as portable sanitary services, mobile cleaners, landscapers, and pool businesses. The practicality of inspecting field activities of mobile businesses and other new categories would present challenges in daily work schedules and would be resource intensive. The City’s current program includes inspection of several of these categories at their business address and at a minimum, outreach materials are provided to educate on appropriate field practices. Failures to employ best practices are addressed when reported through the City’s complaint response program. The City holds that outreach and complaint based response provide more effective use of resources than a field-based inspection program.
C.4	C.4.b.ii (1) d.ii (pg. 37)	<p>The City requests removal of the requirement to determine and inspect, “All other commercial or industrial sites / sources tributary to a CWA section 303(d) impaired waterbody segment where the site source generates or may generate PCBs, copper, mercury, pesticide toxicity, trash and litter, plastic pellets and debris, and selenium”.</p> <p>The City does not support implementation of this loosely defined source category.</p>

Attachment A

Master Provision #	Detailed Provision #	Comment
C.4	C.4.b.iii (pp 38-39) C.4.c.iii (pg. 40)	The City requests removal of the required reporting format in Attachment L and replace it with continued reporting in summary formats with additional details provided to the Water Board upon specific request. The City has over 9,000 facilities subject to inspection and inspects more than 4,000 businesses per year. For San Jose, reporting at the transaction level is excessive and extremely onerous.
C.5	C.5.a.ii. (pg. 42)	The City requests replacing the date November 30, 2008 to the phrase “one year after permit implementation.” The proposed timeline to adequately implement legal authority by means of updating ordinances is too short.
C.5	C.5.b.i (2) (pg. 43)	The City requests adding the phrase “or in two business days” after “48 hours.”
C.5	C.5.b.i (3) c. (pg. 43)	The City requests that the Water Board remove the following statement “If a permittee is aware of a Tier One violation that does not enter the municipal conveyance, the permittee shall notify the Water Board within 48 hours.” It is in conflict with statement C.5.b.i.3.a and will add burden to permittees, even though there is no potential of discharge entering the conveyance system.
C.5	C.5.b.ii. and C.5.b.iii. (pg. 44)	The City requests replacing the dates November 30, 2008 and October 2009 to one year and eighteen months after permit adoption, respectively.
C.5	C.5.d. (pp. 44-45)	These requirements appear to overlap significantly with Provision C.2.f., Municipal Maintenance - Catch Basin or Storm Drain System Inlet Inspection and Cleaning, which calls for annual inspection and cleaning of all storm drain inlets and catch basins prior to the wet season. The City requests this requirement be removed.
C.5	C.5.e.iii. (pg. 45)	The City requests removal of the required reporting format in Attachment L and replace it with continued reporting in summary formats with additional details provided to the Water Board upon specific request. The City averages over 700 incidents per year and the reporting requirement detailed in Attachment L is onerous and does not add value.
C.6	C.6.a.ii (3) (pg. 47)	<p>The City requests that references to stop work orders and withholding inspections (and thus permits) be removed. This requirement is overly prescriptive and does not provide a necessary enforcement mechanism.</p> <p>The City also requests that the implementation date for legal authority changes at construction sites be changed from November 30, 2008 to the phrase “eighteen months after permit implementation” due to timeframe required to modify legal authority.</p>
C.6	C.6.b.ii (7) (pg. 48)	The City requests the implementation date for elements of the Enforcement Response Plan (ERP) be changed from November 30, 2008 to the phrase “eighteen months after permit implementation” due to timeframe required to modify legal authority.

Attachment A

Master Provision #	Detailed Provision #	Comment
C.6	C.6.e.ii (2) (pg. 51)	The City requests that the phrase be modified to read “Inspections shall determine whether adequate preparations for wet season erosion control have been implemented consistent with minimum required management practices.”
C.6	C.6.f.ii (1) (pg. 51)	The City requests adding the phrase “as needed” after the phrase screening inspections.
C.6	Attachment L (pg. L-44)	<p>The Annual Report Summary Table in Attachment L on pages L-44 – L45 and Provision C.6.h of the Permit on page 53 are inconsistent in a number of areas.</p> <p>For example, the reporting should not include any inference that all “screening level” inspections are to be tracked (or reported). The Tentative Order clarifies that this is the case <u>only when</u> a violation is discovered during such an inspection and San José agrees that degree of tracking is sufficient. It is unreasonable for the City to track every screening level inspection. The City has developed a comprehensive construction site inspection program utilizing inspectors from three departments (Environmental Services, Public Works, and Planning, Building and Code Enforcement) to best ensure that construction sites are monitored from start to finish. For Building Inspectors, who perform thousands of inspections each year, those inspections are not comprehensive with respect to stormwater but offer the opportunity to observe issues with implementation of best management practices. These inspections employ a form that does not track every inspection unless it results in a violation. Any attempt to develop and implement a tracking system for <u>all</u> screening level inspections would not be practical and would reduce the City’s capacity to perform screening level inspections.</p> <p>Additionally, the Tentative Order makes it clear that program data shall be provided in summary form, but Attachment L includes a Table C.6 which includes transaction level reporting. Table C.6 should be removed consistent with the Order text. Complete records are available upon request and summary data is sufficient to demonstrate program performance.</p>
C.7	C.7.a.i (pg. 54)	The City requests this section be modified to read “At least 90 percent, <i>except where noted below in C.7.a.ii</i> , of municipally-maintained storm drain inlets...” for clarity.
C.7	C.7.e.ii footnote 10 (pg. 55)	The City advocates county-level and regional-level collaboration where possible to fulfill requirements more efficiently and to reduce redundant work, and requests that language limiting the value of collaboration be removed. Many of the outreach requirements throughout the Permit can be fulfilled collaboratively at the county and/or regional levels. Pooling resources to accomplish these tasks is an efficient use of resources as well as a proven means to increase the effectiveness of specific messages.

Attachment A

Master Provision #	Detailed Provision #	Comment
C.7	C.7.g.ii footnote 12 (pg. 56)	For reasons noted above, the City advocates county-level and regional-level collaboration where possible to fulfill requirements more efficiently and to reduce redundant work, and requests that language restricting credit based on event location be removed. Many of the outreach requirements throughout the Permit can be fulfilled collaboratively at the county and/or regional levels and are held at various locations throughout the region. Requiring that permittees only receive credit for regional citizen involvement events that occur <i>in their jurisdiction</i> will likely reduce the number and effectiveness of regional-level collaboration.
C.7	C.7.a.ii (pg. 54)	The City requests revising Provision C.2.f.ii.2.c.iii so that it is consistent with Provision C.7.a.ii which requires inspection of storm drain stencil legibility once per permit cycle.
C.7	Attachment L (pg. L-47)	The City requests that Attachment L regarding C.7.a be modified to reference the benchmark for Oakland and San José consistent with the Order.
C.7	Attachment L (pg. 55)	The City requests changing the language regarding C.7.l in this reporting form to indicate that it is necessary only after a survey, study, or focus group is implemented.
C.8	General	As drafted, the monitoring requirements comprise a list of overly burdensome requirements that do not bear a reasonable relationship to the benefit the monitoring results might provide. The monitoring requirements must be pared back substantially and optimized so that monitoring can address management questions without unduly burdening municipal budgets. Some of the proposed monitoring tasks should be deleted and others need to be reduced, better targeted, and simplified. A number of the proposed monitoring tasks are better suited to nationwide and statewide monitoring efforts under the direction of U.S. EPA and the State Water Resources Control Board than to implementation by local agencies.
C.8	General	Many of the proposed monitoring sections are overlapping and duplicative and miss opportunities for efficiently combining and coordinating proposed studies. For example, the provisions in the Status and Trends monitoring section should also serve to meet any needs for Long-Term Trends Monitoring, and Pollutants of Concern Monitoring. The City requests that the frequency of monitoring be reduced to match only what is needed to track relevant trends in pollutant concentrations. For example, annual monitoring is unnecessary for pollutants whose concentrations are expected to change slowly over many decades.

Attachment A

Master Provision #	Detailed Provision #	Comment
C.8	General	<p>The City requests revision of the monitoring provisions to allow municipalities to jointly develop a monitoring plan that addresses and describes the type, interval, and frequency of monitoring that would be conducted to yield data representative of the monitored activity. This monitoring plan could be available for public review, comment, and modification before being accepted by the Water Board's Executive Officer. An example is SCVURPPP's Multi-Year Receiving Water Monitoring Plan, which was developed in cooperation with Water Board staff and determined to be a valid approach when EPA conducted its audit of the Program in 2003.</p>
C.8	General	<p>Please include a table or otherwise show the linkages and overlaps between Provisions because linkages between Provisions are unclear. Although this lack of clarity is found throughout the Tentative Order, it is particularly evident with respect to monitoring Provisions where links and overlaps with Pollutants of Concern Provisions (i.e. C.9 – C.14) are not always specifically identified.</p>
C.8	General	<p>The City is concerned that the proposed allocation of monitoring effort is arbitrary and unscientific. Allocating sampling efforts in this arbitrary way wastes resources by ignoring previous work and directing sampling activities toward watersheds that may not be a high priority. In this Permit, the number and location of sampling sites and projects are based on sub-regional population, not actual assessed monitoring needs.</p> <p>The City believes assessment and stressor identification should follow a stepwise progression from screening through source identification, and that existing data should be used to prioritize and guide monitoring and data collection region-wide. The current approach ignores previous work and allocates sampling effort in an inefficient, unscientific, arbitrary manner. This suggests that the primary objective of the monitoring and POC Provisions is not to scientifically address water quality issues.</p> <p>How does the Water Board propose to use data collected through requirements in previous stormwater permits to align and optimize the Provisions in the Tentative Order according to actual information needs and scientific principles?</p>
C.8	General	<p>The City requests that the Tentative Order make it clear that previous monitoring activities be taken into account and credited toward compliance with the Provision. The City and other permittees have already undertaken significant monitoring efforts conducted under previous stormwater permits, and that work should be accounted for.</p>

Attachment A

Master Provision #	Detailed Provision #	Comment
C.8	Table 8.1	The costs associated with the monitoring requirements are unaffordable and greatly exceed those costs in current stormwater permits. Table 8.1 includes unpredictable costly additional activities such as Toxicity Identification Evaluations (TIE) that are not planned activities, but dependent upon monitoring results. Such unpredictable activities will make managing program resources untenable. The use of triggers should be deleted or be clearly preceded by additional efforts to confirm water quality results and to determine the most appropriate next steps.
C.8	C.8.c.i Attachment G-2	The heading on page G-2 of Attachment G, and referenced in Table 8.1, refers to water column toxicity, but Table G-1 only refers to sediment quality issues. The City requests that water column toxicity be handled in an analogous way to sediment, using multiple lines of evidence to trigger follow-up actions. Please see our later comments for an elaboration.
C.8	C.8.c.i & Table 8.1	The City requests that a Toxicity Reduction Evaluation (TRE)-like process be preliminary to a full TIE, with appropriate follow-up activities based on the results of those preliminary tests. Table 8.1 also prescribes a TIE before any other type of analysis or without respect to any other line of evidence. The City is concerned that significant resources will be expended without sufficient preliminary investigation of possible causes of toxicity or other supporting lines of evidence of impairment or stress. Upon a second toxic result, additional lines of evidence, such as chemical analysis, should be collected in a manner analogous to the process applied to sediment in Table G.1. Results should be compared to water quality criteria or to Species Mean Acute Values (SMAV) for the species tested, and to the toxicity test results, to determine if they are related. If there is sufficient exceedance of water quality criteria (or SMAV for the species tested) to explain the observed toxicity in the stream, there is no need to perform a TIE.
C.8	C.8.c.i & Table 8.1	The City requests the storm event-based sampling in Table 8.1 (nutrients) be removed. The City asserts this requirement represents a substantial, costly effort with little or no water quality benefit. Local creeks and the Bay do not display eutrophy due to algal blooms and the benefit of measuring nutrients in this way is marginal. The City also has first-hand experience with storm-based sampling and has found it very costly because staff need to be “on call” to immediately respond to storm events at any hour.
C.8	C.8.c.i & Table 8.1	<p>Table 8.1 requires trash assessments immediately downstream of enhanced trash management control catchments. What is the objective of these assessments?</p> <p>Provision C.10 directs the placement of these control measures toward the lower watershed if possible. In a stream setting, assessments integrate inputs from all catchments above the site in question, confounding the ability to assess the contribution of a single catchment. The City believes that if the objective of the assessments is to determine effectiveness of enhanced management control measures in an individual pilot catchment, other approaches should be used. Please see City comments related to Provision C.10.</p>

Attachment A

Master Provision #	Detailed Provision #	Comment
C.8	C.8.c.ii	The City requests that the second sentence be removed, which directs samples to be collected in reaches where the contributing catchment area is 60 percent or more urban or suburban land use, and replaced with the following: “Samples shall be collected in reaches chosen scientifically to determine the character of the water quality in the main receiving water for each major watershed.” The optimal sampling point may, or may not, be downstream of an area with at least 60 percent urban/suburban land use.
C.8	C.8.d.i	The City requests that the first bullet point be eliminated, which requires that locations be chosen where the surrounding land uses are primarily industrial, commercial and urban. The City notes that the immediate surrounding land uses are often not the major contributors to water quality problems at a given location. Results must be interpreted in the context of the entire watershed at, above, and in some cases below the sampling point. This is particularly true of the Santa Clara Permittees location on the Guadalupe River where most of the contributing watershed is not urban and significant non-urban sources of mercury are well known.
C.8	C.8.d.ii & Table 8.3	The formatting of this table makes interpretation difficult. For example, the Monitoring Project Trigger column for water column and sediment toxicity lists three freshwater species used to test water column toxicity. However, the species used in sediment testing, <i>Hyalella azteca</i> , is not included in the table. There are several other apparent errors, especially where the rows in column 1 do not match up with the correct triggers in column 4 (e.g. the last row in column 4 seems to refer to the last two rows of column 1, but that is not apparent). The City requests that the table be revised, re-formatted and clarified so a clear relationship exists between elements of each column.
C.8	C.8.e.iii (1) & Table 8.4	What criteria or process of selection or parameters of interest were used to determine the designated pump stations in Table 8.4?
C.9	C.9.e.ii. (pg. 78)	The City requests this reporting requirement be eliminated. The City will continue to participate in regulatory processes; however, this reporting requirement is overly prescriptive, and the City would anticipate Water Board representatives to be similarly involved.
C.9	C.9.g.ii. (pg. 79)	The City requests that the Attachment L date be corrected to match the C.9.g.ii date of October 2012 Annual Report.
C.9	C.9.h.ii (pg. 79)	The City requests that the documentation and reporting of measurable awareness and behavior change requirement in this Provision be done as part of C.7.l.
C.9	C.9.h.v. (pg. 79)	The City requests placing the words “Permittees may” in front of the sentence “Work with DPR,...” in order to allow the City to maximize outreach effectiveness and to maintain permit compliance should one of the above listed entities become defunct or otherwise ineffective for collaboration on this issue.

Attachment A

Master Provision #	Detailed Provision #	Comment
C.9	C.9.h.vi. (pg. 79)	The City requests rewording this Provision to mirror the language in C.9.h.iv, so that it reads “Permittees shall document effectiveness of these actions in the October 15, 2012 Annual Report.”
C.10	General	<p>Trash in urban areas and creeks is a complex problem for which public agencies have already expended extensive public resources to help solve. On March 14, 2007, the Water Board heard a status report on the Municipal Regional Stormwater Permit that solicited many comments on the need to improve trash and litter control. Some of the comments pointed out the variety of societal problems, such as homeless encampments, that in some locations contribute significantly to garbage and hazardous material being dumped along creeks. Several Board members recognized that the issue was bigger than just “stormwater” and suggested that it would be worthwhile to form a multi-agency team to help improve the control of trash and litter. The City continues to support this idea and looks forward to participating. After nearly one year following the Water Board hearing, we are unaware of any effort the Water Board staff has made to form a multi-agency team to develop a more comprehensive public policy to deal with trash and litter, and Provision C.10 does nothing to advance this approach. Rather, the approach in the Tentative Order requires prescriptive actions for each jurisdiction without regard to the broader context.</p>
C.10	General	<p>The City recognizes trash as an important priority for new programs and asserts that any large scale effort to control trash must move forward methodically, cost-effectively, and accompanied by adequate resources and time to implement in order to support success. For example, structural controls require sufficient maintenance or run the risk of increasing flood hazards.</p> <p>The City has begun the implementation of a pilot project to install trash screens inside catch basins. With approximately 60 devices in this first phase, the City is closely monitoring the amount and type of material captured and the maintenance demands. Note that in comparison to the 60 devices, San José has more than 29,000 storm drain inlets throughout the City. This pilot provides an important opportunity to evaluate the impact, effectiveness, and resource demands of this approach as applied to our city.</p> <p>The effort prescribed in the Tentative Order is not cost-effective and cannot be managed solely by local municipal resources. It is unlikely that the scale of effort prescribed will be achievable by most if any of the permittees given the costs. The City requests an approach which focuses on collaboration with regional agencies and organizations to develop a strategy for building the funding necessary to implement the kind of large scale, high impact effort contemplated in the Tentative Order.</p>

Attachment A

Master Provision #	Detailed Provision #	Comment
C.10	C.10.b.i (pg. 80-81)	<p>The Tentative Order provides insufficient technical basis for the very prescriptive maintenance activities listed in this Provision. The City finds that some of the prescribed practices are duplicative and therefore wasteful. The prescribed approach of layering multiple trash control practices in the same area, without evidence to support the need and in an unscientific, arbitrary manner, will confound the ability to assess the most effective trash control measures under various site-specific conditions.</p> <p>The Tentative Order also requires that these practices be implemented as interim controls in the areas where trash capture devices would eventually be installed. The City considers it wasteful to make short term changes to such large scale operations.</p>
C.10	C.10.b.i (2) (pg. 81)	The requirement that devices be installed “in entire catchments” is overly restrictive and not always feasible. Each inlet is unique, and not all inlets are large enough or constructed in a way to accommodate inlet-based devices.
C.10	C.10.c (pg. 82)	The development of a long term plan should be limited to addressing the impacts of trash transported through MS4 systems.
C.11 & 12	C.11.c.i & C.12.c.v	<p>The language surrounding the requirements for cleanup and abatement of mercury and/or PCB contaminated soils is unclear. While the City understands the role of municipalities in assisting the Water Board in identifying contaminated on-land sites, and is committed to such activities, cleanup and abatement activities are the responsibility of property owners and other responsible parties. The City is committed to the activity of preventing contaminated sediments from entering the MS4, but municipal responsibility for cleanup and abatement activities should be limited to municipal properties and infrastructure. Municipalities should not be held responsible for cleanup and abatement activities on private properties.</p> <p>The City asserts that such a requirement for PCB controls exceeds required actions outlined in the current PCB TMDL Basin Plan Amendment (BPA). The City requests that the Provisions in the Municipal Regional Permit be rewritten to agree with the BPA.</p>
C.11 & 12	C.11.e.i, C.12.b.iii & C.12.e.i	The language in these Provisions is worded inconsistently with respect to the number of sites included in the activity. The City interprets all of these provisions to mean 10 sites throughout the region. Further, the City believes that a superior approach would be to have the location and number of sample sites be based on more objective, science-based considerations of variability, costs, and certainty needs.

Attachment A

Master Provision #	Detailed Provision #	Comment
C.11 & 12	C.11.f.i & C.12.f.i	<p>The Tentative Order is focused on diversion of first flush and dry weather flows from pump stations to the sanitary without sufficient information about possible mercury and PCBs problems related to those pump stations or whether diversion to sanitary is the best approach to addressing potential problems. The City also asserts that the timing and method for choosing relevant pump stations is inappropriate. Table 8-4 requires that the final five pump stations selected in the second year be tested for mercury and PCBs in the third and fourth years, while five pump stations would be required to be selected for the pilot studies at least a year before this. Additionally, C.12 contemplates the five to comprise a variety of land uses, while C.8 relies on land use in order to identify the five. The City requests that this confused set of provisions regarding pump stations and flow diversion be rewritten to address potential problems in a stepwise fashion and that discussion of flow diversion should be considered only as one of many possible solutions, assuming the results of investigations of pump station water quality justify such actions.</p>
C.11 & 12	C.11.f.i & C.12.f.i	<p>The City is also concerned that these provisions do not take into account possible technical and legal restrictions on the use of POTW infrastructure and capacity for stormwater. The City requests that technical and legal constraints be explicitly mentioned as criteria for evaluating feasibility. Consideration of such diversions should be predicated on a collaborative feasibility study with wastewater agencies and open discussion with all relevant stakeholders as one of many possible alternatives for water quality improvement before being required as a permit provision.</p>
C.11 & 12	C.11.f.i & C.12.f.i	<p>The City is concerned that this Provision is inconsistent with the PCB TMDL. The TMDL only states that opportunities for targeted diversions should be investigated, pilot tested and implemented where feasible. The TMDL further states under Regulatory Analysis (page 93): "No specific project to route stormwater to a wastewater treatment plant is currently required."</p>
C.11 & 12	C.11.f.i & C.12.f.i	<p>The proposed requirement to divert selected storm flows to sanitary sewers is significant, problematic, and premature. In addition to being beyond the TMDLs/Basin Plan, the provisions require the evaluation of feasibility, but then require subsequent implementation without regard to feasibility. It is clear that such diversion is likely to be fraught with engineering, financial, regulatory, legal, and institutional challenges which if done improperly could have deleterious effects on water quality. Any such evaluation should be advanced methodically and no implementation of flow diversion should be included in this Permit.</p>
C.12	C.12.a (pg 87)	<p>The City requests that this requirement be limited to heavy industrial sites to focus the considerable effort this inspection program will require on the most likely sources. The City also requests that the Water Board provide specific SIC codes to include in these inspections. Further, the City also requests that this requirement be phased in as a pilot to test the efficacy of such a program, starting in a limited number of heavy industrial areas.</p>

Attachment A

Master Provision #	Detailed Provision #	Comment
C.12	C.12.b.v (pg 87)	This Provision requires training and deployment of inspectors with no timeline associated. The City requests that this Provision be contingent on the results of the sampling and analysis efforts. If PCBs are not found in meaningful amounts in demolition wastes, this Provision should be omitted. The City requests rewording this Provision to be dependent upon the results of the sampling and analysis activities.
C.12	C.12.b,c,d (pgs 87-89)	The City requests that explicit mention of ongoing Prop 13-funded projects currently underway by SFEI and others to address PCB BMP effectiveness and PCBs in demolition materials be made in regard to these Provisions. The City also requests that participation in these projects be considered to satisfy these requirements. If not, please explain why.
C.12	C.12.e.iii (pg 89)	This requirement may conflict with results of the technical and economic feasibility assessment if assessment recommendations do not “span treatment types and drainage characteristics.” The City requests adding “as possible within the constraints of the feasibility assessment outcomes in C.12.e.i.” to C.12.e.iii.
C.13	General	The City requests that this Provision, and all other provisions, allow for adaptive management. If it is demonstrated that a waste stream listed in Provision C.13 is not a significant source of copper to the receiving waters, the City should be permitted to adapt efforts to make controls commensurate with the potential water quality threat.
C.13	C.13.a.i (pg. 92)	The City requests removal of the requirement to adopt an ordinance prohibiting the discharge of washwater from copper architectural features. The City does not believe that the effort to establish and execute a program to prohibit washwater from copper architectural features is commensurate with any water quality benefit achieved by it. Discouraging the use of architectural copper and requiring BMPs to manage this source is sufficient.
C.13	C.13.b (pg. 92)	This section should be reviewed for consistency with Provisions C.15.b.v.(1)(a) and C.15.b.v.(1)(b). One requires the prohibition of discharges from pools, spas, and fountains and the other allows it under certain conditions. The conditions should be reviewed for consistency.
C.13	C.13.b.ii (pg. 92)	The City requests removal of the words “spas” and “fountains” from the sentence. Many spas and fountains are portable devices. Requiring a permanent connection to the sanitary sewer for them is infeasible.
C.13	C.13.b.ii (pg. 92)	The City requests deletion of the phrase “...including connection for filter backwash...” as it conflicts with sanitary sewer ordinances prohibiting the discharge of solids/debris to the sanitary sewer.
C.13	C.13.c.i (pg. 93)	The City requests adding the phrase “acting individually or collectively,” after the word Permittees.

Attachment A

Master Provision #	Detailed Provision #	Comment
C.13	C.13.c.iii (pg. 93)	The City requests adding the phrase “acting individually or collectively,” after the word Permittees. The City also requests that the Water Board consider other actions that the State can take to require that the manufacturers of vehicle brake pad products conduct these types of studies, since municipalities do not control the amount of copper that is used in brake pads.
C.13	C.13.e (pg. 94)	The City requests that additional studies to investigate copper impacts on the Bay be removed, since there are numerous other high priority requirements. The Water Board delisted copper as impairing the Bay. Copper is therefore a lower priority than other POCs included in the Tentative Order. If, however the Water Board chooses to include this provision, the City requests that any studies on the sublethal effects of copper on salmonids use local species and natural test waters from relevant local receiving waters. The City also requests that this Provision be coordinated between BASMAA and BACWA to avoid duplication of effort since similar requirements are contained in POTW permits.
C.14	C.14.a	The City believes that pre-existing data and the monitoring requirements listed in the Water Quality Monitoring Provision (C.8) will provide sufficient data to comply with the intent of this provision. The City requests revision of this provision to clarify that data collected as part of Provision C.8.f as well as related data previously collected by BASMAA will provide a sufficient basis for completion of these tasks and thus compliance with this provision.
C.14	C.14.a	Since previous data have shown that selenium is not problematic in most urban creeks, the City requests that selenium be removed from this Provision.
C.14	C.14.a.v and C.14.a.vi	The City requests that these provisions be modified to remain consistent with the fact sheet, which states this is an information gathering exercise.
C.15	C.15.b.i (1) (pg. 96)	<p>The City and SCVURPPP spent considerable time, effort, and funds developing the <i>Conditionally Exempted Discharges Classification and Control Measures Performance Standard</i>. What deficiencies exist within the current standard, which was approved by the Water Board and has been successfully implemented in the City, to substantiate why requirements in the Tentative Order are necessary?</p> <p>With respect to permitting discharges under this provision, the City objects as it represents a transfer of permitting duties from the Water Board to local jurisdictions. Additionally, this provision requires the development of an entirely new program including permitting, monitoring, tracking, and reporting of <i>all</i> conditionally-exempt discharges at a considerable cost to the City which is not commensurate to water quality threat. This provision also includes overly prescriptive monitoring requirements that would be extremely cost-prohibitive to the discharger and would likely create a situation where more unauthorized non-stormwater discharges occur. With no threshold for this element, stringent and costly BMPs and control measures would be required for every instance of dewatering, which is not proportionate to the potential for water quality impairment. The Order provides no information that explains how the required resources and expenses necessary to address</p>

Attachment A

Master Provision #	Detailed Provision #	Comment
		<p>this provision are commensurate with the threat to water quality.</p> <p>The City requests this provision be modified to include minimum required BMPs for all dewatering-type, non-stormwater discharges in lieu of a new local regulatory program.</p>
C.15	C.15.b.iii	<p>Proposed requirements imposed on planned, unplanned, and emergency discharges of the potable water systems will have significant operational impacts on the City. New monitoring requirements would have a significant impact on the routine operations (such as hydrant flushing) of the City of San José Municipal Water System (SJMWS). Discharge benchmarks for pH, chlorine residual, and turbidity are overly prescriptive and in some instances are unrealistic. Meeting these provisions would not only require significant investment in equipment and personnel, but could affect the utility's ability to conduct essential operations such as hydrant maintenance and main flushing. In short, these requirements hinder the utility's ability to provide essential services such as the delivery of high quality drinking water and reliable fire fighting facilities.</p> <p>The City requests that the overly prescriptive and infeasible monitoring benchmarks (for pH, chlorine residual, and turbidity) for both planned and unplanned discharges and the receiving waters be replaced with BMPs for pollution prevention, consistent with current practice. The City also requests that language be added to the draft permit so that municipalities do not have to take on the onerous task of making sure that private water utilities would comply with the requirements for potable water discharges.</p> <p>The Tentative Order provides insufficient information to conclude that current practices present a significant threat to water quality. The factsheet also does not describe the basis for the aforementioned proposed requirements in this provision. The proposed requirements are expensive, have questionable water quality benefit, and come with serious health and safety concerns.</p> <p>If the City's requests are not acceptable, please explain why.</p> <p>In support of the City's request to replace this Provision with BMPs, additional comments are provided below.</p>
C.15	C.15.b.iii	<p>The City spent considerable time, effort, and funds developing the <i>Water Utility Operations and Maintenance Discharge Pollution Prevention Plan</i>. How is this existing standard, which was approved by the Water Board and has been successfully implemented in the City, deficient so as to necessitate the additional requirement proposed?</p> <p>In addition, this Provision conflicts with the AWWA publication cited in the Tentative Order. Specifically, the AWWA states "It is recommended that each water utility develop monitoring strategies that meet their own needs. Key elements of a successful monitoring program include determining sampling objectives, sampling locations, sampling frequencies, and field methods. Criteria for selecting a field method include ease of use, detection limits, precision, accuracy, and cost." The Tentative Order does not provide</p>

Attachment A

Master Provision #	Detailed Provision #	Comment
		rationale for the proposed monitoring requirements and benchmarks and this provision would severely limit the utility's ability to develop and implement monitoring strategies that best meet the needs of the City.
C.15	C.15.b.iii (1)(c)(i) (pg. 99) & C.15.b.iii (2)(d)(i) (pg. 100)	<p>These provisions as drafted do not reflect a priority for worker health and safety, and do not reflect EPA's position that drinking water system releases pose minimal threat to the environment. Additionally, the California-Nevada Section of the American Water Works Association (AWWA) <i>Guidelines for the Development of Your Best Management Practices Manual for Drinking Water System Releases</i>, which is cited in the Tentative Order, states "EPA considers drinking water system releases to pose a minimal threat to the environment." It is unclear to the City how responders balance resolving an unplanned discharge while trying to concurrently monitor receiving waters.</p> <p>Additionally, proposed monitoring requirements for unplanned discharges are problematic because any attempt to monitor receiving waters could be unsafe, would result in lengthy and unpredictable work delays, and would provide questionable water quality benefit. The AWWA guidelines cited in the Tentative Order emphasize that unplanned discharges present "...an emergency situation where public safety is the immediate and primary concern. In this situation, the implementation of BMPs should not interfere with immediate emergency response operations or impact public health and safety".</p>
C.15	C.15.b.v (1)(a) and C.15.b.v (1)(b) (pg. 101)	This section should be reviewed for consistency with C.13.b. One requires the prohibition of discharges from pools, spas, and fountains and the other allows it under certain conditions. The conditions should be reviewed for consistency.
C.15	C.15.b.v (1)(c) (pg. 101)	As drafted, this provision is problematic because it does not acknowledge that many hot tubs, spas and fountains are portable and may be put in place without permits.
C.15	C.15.b.v (1)(c) (pg. 101)	The City requests deleting the word "connected" and replacing it with the phrase "have a connection" to avoid inconsistencies with the Uniform Plumbing Code.
C.15	C.15.b.v (1)(e) (pg. 101)	The City requests replacing the word "improve" with "implement."
C.15	C.15.b.v (2) (pg. 101)	The City requests that the phrase "to the storm sewer system" be added after "fountain water" for clarification.
C.15	C.15.b.v (2) (pg. 101)	The City recommends that the threshold for reporting be reconsidered, as 5,000 gallons may be too small. Additionally, the language should be amended to clarify that reporting is related only to discharges to the storm sewer system.