

**Item 7. Municipal Regional Stormwater NPDES Permit –
Municipalities and Flood Management Agencies in Alameda County,
Contra Costa County, San Mateo County, Santa Clara County, and the
Cities of Fairfield, Suisun City, and Vallejo in Solano County**

Appendix F

Response to Comments on the February 11, 2009 Revised Tentative Order

**The Response to Comment Tables are arranged by the
Provisions of the Final TO, with the exception of General and
Legal Comments, which are placed at the end. C.1
comments are included in the Legal section.**

**Response to Comments February 11, 2009 Tentative Order
Provision C.2 – Municipal Maintenance**

File	Comment No.	Provision No.^a	Key Word(s)	Comment	Response	Proposed MRP Revision^b
Berkeley	1	C.2	Support Deletion of Street Sweeping	The City appreciates many of the changes incorporated in the Revised Tentative Order, in particular: (1) the deletion of the requirement to purchase certain types of street sweepers.	Comment noted.	No changes made.
ACCWP Attachment1	1					
Newark	1					
Crabbe, David	2	C.2	Removal of Street Sweeping Provisions	I also object to the relaxation of street sweeping requirements. Not only does it keep junk out of the bay, but it also keeps our neighborhoods clean and attractive. Please note that the City Council does not speak for me, nor do I suspect it speaks for many of my fellow residents.	The permit gives permittees credit for street sweeping that utilizes methods, frequencies, and equipment that measurably reduces stormwater pollutants.	No changes made.
SMCWPPP	1	C.2	Provision Streamlined and More Flexible	This permit provision was streamlined, in part, by no longer including specific requirements for street sweeping, types of street sweepers that need to be purchased and used, and by deleting record keeping and reporting requirements associated with street sweeping. In addition, further streamlining and flexibility have been accomplished by deleting specific requirements for cleaning storm drain inlets and storm drainage facilities other than storm drain pump stations.	Comment noted.	No changes made.
Oakland	1	C.2	Support Removal of Prescriptive Street Sweeper Requirements	We also thank the Board for many of the changes incorporated in the Revised Tentative Order, including eliminating requirements to purchase specific types of street sweepers, install treatment systems for road reconstruction projects within the existing footprint, implement an impervious surface data collection pilot project, and perform prescriptive trash requirements. We appreciate the Board's willingness to	Comment noted.	No changes made.

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				address some of our previous concerns.		
Contra Costa Board of Suprs Attach 1	1	C.2	Concerns Regarding Elimination of Street Sweeping Requirements	<p>Though it has been removed as a requirement in the Revised Tentative Order (RTO), it appears that the MRP anticipates that Permittees will continue to conduct this activity. Street sweeping is referenced as a trash removal Best Management Practice (BMP) in C.10; also, a pilot program to evaluate the effectiveness of street sweeping for removing mercury and PCBs is discussed in C.11 and C.12. Contra Costa County (“the County”) appreciates that the RWQCB has removed the prescriptive street sweeping requirement in an effort to address co-Permittees’ concerns about the high cost of meeting the previous iteration of the MRP’s many requirements. However, the County is concerned that removing street sweeping as an explicit requirement may make it more difficult for the County to justify maintaining current levels of street sweeping service, possibly resulting in backsliding on the water quality advances made over the past several years. This will be especially likely if cuts must be made in the current street sweeping schedule in order to pay for other provisions of the MRP, some of which may be less effective at improving water quality than street sweeping. Finding 16 For the MRP notes that specific extraneous pollutants found in urban run-off, including heavy metals, dioxin and PBDEs, can be deposited on paved and</p>	<p>The Water Board agrees that street sweeping is an effective stormwater control practice if conducted using methods and frequencies that effectively eliminate pollutants. Permittees can use sweeping practices that measurably remove stormwater pollutants to satisfy the requirements for Provisions C.10, C.11, and C.12.</p>	No changes made.

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				other impervious surfaces. The County feels that street sweeping is one of the most effective ways to prevent these pollutants from entering the storm drain system.		
Save the Bay	28	C2	Do Not Eliminate Requirements for High Efficiency Street Sweepers	The RTO eliminates requirements in Section C.2 for high-efficiency street sweeper upgrades, even though these are the only sweepers that have a documented impact on trash and other sediment-associated pollutants. The RTO also eliminates requirements for cleaning and inspecting storm drain catch basins, even though such actions can help identify trash problems when properly documented. Language in previous drafts that specified pump station retrofit requirements has also been deleted in the RTO. <u>These established programs should not be deleted unless replaced with programs that are already clearly documented to be more effective.</u>	These programs are still available for permittees to use in order to reduce POCs and trash. In their current structure many permittees do not sweep using equipment that is optimized for pollutant removal or at speeds effective to remove pollutants. Permittees can use sweeping frequencies and techniques that remove stormwater pollutants to satisfy the requirements for Provisions C.10, C.11, and C.12.	No changes made.
Daly City	1	C.2.a.i	Clarify Use of SQAHMO	The addition of the reference to the SQAHMO re-instates many of the deletions from the C.2 section of the 12/07 TO. This document broadly covers all aspects of C.2. Municipal Operations but it is specifically referenced to C.2.a. It is unclear whether this reference is intended only for C.2.a or could it be applied to the entire C.2 Municipal Operations of the 2-09 TO?	Provision C.2.a.i refers to the use of the California Stormwater Quality Association's Handbook for Municipal Operations as a source of methods to be used in street and road repair and maintenance.	The permit language was modified to state methods such as those described in the CASQA Handbook for Municipal Operations shall be used in street and road repair.

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SMCWPPP	1	C.2.a.i	Street and Road Repair and Maintenance	The task description states that road repair and maintenance BMPs followed shall be as described in California Stormwater Quality Association's Handbook for Municipal Operations. The permittees should be allowed flexibility in identifying and using appropriate BMPs. Modify the permit to state that street and road repair and maintenance BMPs, such as those described in the California Stormwater Quality Association's Handbook for Municipal Operations, may be used.	Permittees have the flexibility to use methods equivalent to those described in the CASQA Handbook if they are equally as effective for preventing or removing stormwater pollutants.	The permit language was modified to state methods such as those described in the CASQA Handbook for Municipal Operations shall be used in street and road repair.
Contra Costa Board of Sups Attach 1	2	C.2.a.ii.(1)	What if Sanitary Sewer Disposal Unavailable?	The RTO does not provide what should be done if disposal to the sanitary sewer system is not available, and does not acknowledge that many areas of the County lack sanitary sewer service. The sanitary districts have generally expressed an opposition to accepting stormwater.	If sanitary sewer disposal is unavailable, permittees shall use appropriate BMPs to prevent the discharge of pollutants to receiving waters.	No changes made.
Daly City	2	C.2.a.ii.(1)	Clarify Intention for Diversion to Sanitary Sewer	"Permittees shall coordinate with sanitary sewer agencies to determine if disposal to the sanitary sewer system is available for the wastewater generated from these activities provided that appropriate approvals and pretreatment standards are met." What does this mean? How do you enforce "shall coordinate to determine"?	It means that permittees will contact sewer agencies and attempt to obtain approval for discharge of maintenance wastewater in situations where appropriate. If approval is not granted or if this option is not available, permittees shall use standard BMPs for controlling pollutants. This will be enforced by verifying that permittees have made reasonable effort to determine if sanitary sewer disposal is feasible.	No changes made.

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Fremont	1	C.2.a.ii.(1)	Disposal of Street Maintenance Wastewater	Language requiring that street maintenance wastewater shall be discharged to the sanitary sewer and may require the installation of a pretreatment system is not necessary and overly burdensome. This requirement should be removed and the permittees allowed to manage wastewater resulting from street and road maintenance operations through existing and approved BMPs and disposal guidelines.	If sanitary sewer disposal is unavailable, permittees shall use appropriate BMPs to prevent the discharge of pollutants to receiving waters.	No changes made.
Kolb, Larry and James, Roger	5	C.2.b	Add Private Property	<u>PROVISION C.2.b-page 10</u> A similar provision covering street and road repair, sidewalk/plaza maintenance and pavement washing and stormwater pump stations should be developed for these activities on private commercial property.	The MRP does not directly regulate activity on private commercial property. It is the responsibility of permittees to insure that commercial properties do not break local storm water ordinances and adequately prevent and eliminate stormwater pollutants.	No changes made.
Caltrans	1	C.2.c.i	Add Phrase to Graffiti Removal Provision	The subsection states [showing changes proposed in the TO]: (1) Permittees shall implement appropriate BMPs to prevent <i>pollutant polluted stormwater and non-stormwater</i> discharge from bridges and structural maintenance activities directly over water or into storm drains. Because it is impossible in some situations to capture or control all discharges from bridges and related structural features, we suggest adding the terms "to the extent technically feasible and cost effective."	The proposed changes are not appropriate. It is always the permittees responsibility to prevent the discharge of pollutant discharge to the MEP. It is not relevant whether the cost is effective. It only matters if the cost of cleaning up to the MEP is reasonable.	No changes made.

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Caltrans	2	C.2.d	Pump Station Inventory Appropriate	<p><i><u>"The objective of this sub-provision is to prevent the discharge of water with low dissolved oxygen (DO) from pump stations, and to explore the use of pump stations for trash capture and removal from waters to protect beneficial uses of receiving waters."</u></i></p> <p>The inventory requirement is appropriate.</p>	Comment noted.	No changes made.
Caltrans	3	C.2.d	Dissolved Oxygen and Corrective Actions Premature	<p>The DO monitoring and mandated corrective actions are premature. We are not aware of any information that has been developed showing that DO below 3 mg/L within pump stations results in adverse water quality conditions in receiving waters. In the context of roadways, the monitoring and inspection requirements for pump stations could cause lane closures, risks to employees, and travel disruption.</p>	<p>The DO in the pump station is not the problem; however, the discharge of water with DO below 3mg/L to the MS4 can kill fish and aquatic organisms. The impacts of low DO have been observed by Regional Board Staff and documented by numerous studies. Permittees shall investigate pump stations a minimum of two times of year during the dry season to prevent the discharge of first flush or dry season discharge with DO below 3 mg/L.</p>	No changes made.
Caltrans	4	C.2.d	Difficult to Implement Corrective Actions	<p>Please clarify the corrective actions: <i><u>"Such post-storm inspection and monitoring shall focus on trash and discharge impacts, including presence of odor, color, turbidity, debris, trash, and floating hydrocarbons"</u></i>.</p> <p>The provision requires debris and trash removal and replacement of oil booms, which would be difficult to implement without standards, and many of our facilities were not designed to</p>	<p>The pump station inspection has been revised to require a minimum of two inspections during the rainy season. Many permittees are already conducting inspections and removing trash without specific standards in place. If trash is present and will create</p>	<p>Pump station inspection requirements have been reduced to require a minimum of two inspections during the rainy season.</p>

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				accommodate trash collection and absorbent booms. As an alternative to pump stations at intermediate locations, which may be preceded or followed by additional facilities where monitoring and treatment controls are already in place, we suggest setting goals for point-of-discharge conditions.	water quality impacts, it should be removed. Standards are not necessary to determine how to remove trash and replace oil absorbent booms.	
Alameda City	9	C.2.d	Increased Resources for Stormwater Pump Station Monitoring	Provisions C.2.d, <i>Stormwater Pump Stations</i> , requires the monitoring and analysis of dry weather and rain event flows at all eight of the municipal stormwater pump stations. These requirements, without the identification of the funding mechanism for the additional staff time, heightened expertise, and analytical expense, creates an additional staffing and expense burden to the City. The estimated minimum increase in annual municipal staffing to implement this provision for monitoring, sampling, and reporting is approximately 10% of a full-time staff person.	The inspection frequency has been reduced in the Final TO. Permittees should be able to conduct the required activities during the normal course of pump station operation with only a minimal increase in effort. The pump station inspection and trash removal efforts will directly reduce the discharge of stormwater pollutants.	The required inspection frequencies in both the dry and wet season have been reduced.
Kolb, Larry and James, Roger	6	C.2.d	Change Language	<u>PROVISION C.2.d-page11</u> Change “explore” to “determine the technical and economic feasibility” to make this more meaningful	The purpose of this provision is to explore and investigate possible opportunities for trash removal. Conducting a technical and economic feasibility study is beyond the scope of this provision. Permittees may choose to conduct this type of analysis as part of their trash reduction program.	No changes made.

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San Jose	1	C.2.d.i	Revise language to establish Consistency	To ensure consistency between Task Description and Implementation Levels, the City suggests the following: "Operation and Maintenance of Stormwater Pump Stations – Permittees shall develop and implement measures to operate, inspect, and maintain these facilities to minimize non-stormwater discharges containing pollutants, and apply corrective actions when DO levels are below limits."	Adding language regarding corrective action for DO levels in this section (C2.d.i) would be too specific. Permittees need to implement measures to reduce pollutant loads in the stormwater discharges to comply with WQSS.	No changes made.
Millbrae	5	C.2.d.i	CWA Requirements Regarding Non-Stormwater Discharges and Pump Stations	Section C.2.d.i. requires all pump stations to be operated, inspected and maintained to eliminate non-stormwater discharges containing pollutants but the Federal Clean Water Act only requires that permits "shall include a requirement to effectively prohibit non-stormwater discharges into storm sewers. We request that the permit be modified to state that permittees shall implement a program to effectively prohibit non-stormwater discharges to the Stormwater pump stations that they own and operate where these discharges are disallowed by the MRP.	Non-stormwater discharges are prohibited per the conditions in C.15. Permittees shall insure that pump station discharges meet the requirements of the MRP.	No changes made.
SMCWPPP	2					
San Jose	2	C.2.d	Dissolved Oxygen Requirements Only Where Discharge to Creek and Minimum Pump Threshold	The City requests that the provision to measure DO apply only to those pump stations that discharge to a creek or waterbody and that a minimum threshold total pump station capacity of 10 CFS be applied for inspecting and collecting DO data to ensure limited resources are directed only to pump stations where the discharge could potentially cause concerns. The City requests that the provision clarify that the 3mg/L DO	The Final TO has been revised to exempt DO monitoring in areas that will drain to a dry creek immediately downstream of the discharge.	Exemption included for areas that will drain to dry creek and infiltrate immediately downstream.

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				threshold is an action level.		
Pittsburg	3	C.2.d	Minimum threshold for Pump Station Monitoring Requirements	This provision needs clarification regarding the size and types of pumps subject to monitoring and reporting activities. This provision should provide a minimum pump station size threshold for monitoring requirements, i.e. larger than _____ gallons per minute. The problem is that while we have pump stations, they are all very small. The time necessary to meet the monitoring requirements is not productive based on their limited capacity. Please also provide guidance regarding the appropriate location for DO data collection.	The monitoring requirements have been reduced to require a minimum number of inspections in the dry and wet seasons.	The required inspection frequencies in both the dry and wet season have been reduced.
ACCWP	16	C.2.d	Revise Pump Station Monitoring	There have been rare instances in the Bay Area where discharges from pump stations have caused a water quality problem. However, the monitoring and reporting requirements are more onerous than necessary.	The monitoring requirements have been reduced to require a minimum number of inspections in the dry and wet seasons. The Final TO has been revised to exempt DO monitoring in areas that will drain to a dry creek immediately downstream of the discharge.	The required inspection frequencies in both the dry and wet season have been reduced. Exemption included for areas that will drain to dry creek and infiltrate immediately downstream.
Newark	6			Proposed Resolution: Change the maximum sampling required to twice per year for two years and allow an exemption from monitoring in situations where it can be demonstrated that there is no potential water quality problem, such as in Livermore, where the summer discharge is to a dry arroyo or where the discharge rate is too minimal to impact water quality.		
Oakland	11	C.2.d	Exempt Monitoring Where No Impact to	The City of Oakland operates two small stormwater pump stations and four sump pumps; they all operate only during rain. There may be occasional groundwater	The Final TO has been revised to exempt DO monitoring in areas that will drain to a dry creek	Exemption included for areas that will drain to dry

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			Receiving Waters	infiltrating into the pump stations. All eventually discharge into larger bodies of water. It is highly unlikely that the DO level will impact the receiving waters. Proposed Resolution: Allow an exemption from monitoring in situations where it can be demonstrated that there is no potential water quality problem or where the discharge rate is too minimal to impact water quality.	immediately downstream of the discharge.	creek and infiltrate immediately downstream.
Kolb, Larry and James, Roger	7	C.2.d.i	Add language to C2	<u>PROVISION C.2.d.i.-page 11</u> Add "and discharge prohibitions".	It is implicit in the MRP that all discharges will comply with discharge prohibitions. The pollutant loads from pump station discharges should be reduced to meet WQSS	No changes made.
Kolb, Larry and James, Roger	8	C.2.d.ii(1)	Add Footnote	Add a footnote for "characteristics" to indicate "Drainage area, land uses, dimensions and elevations of wet well, inlet and discharge pipes, bar screens and trash racks, high and low flow pump capacities, dry and wet weather flows".	This section has been revised to include specific characteristics of pump station that are consistent with previous Water Board data collection efforts.	Specific characteristics have been added as a footnote in the Final TO.
Fremont	3	C.2.d.ii.(1)	Dissolved Oxygen Monitoring in Dry Season Provides No Water Quality Benefit	Sampling and collecting DO data at all pump stations twice a year between July & October provides no water quality benefit. Nuisance irrigation runoff mixed with decaying plant material and sediment that collects in the pump stations is expected to cause low DO levels as this material will accumulate in volumes for long periods before the pumps activate. These stations are designed to start pumping activities during high stormwater flows when the	Assessing DO levels during the dry season is not a waste of effort. If low DO levels are measured permittees shall implement corrective actions to prevent receiving water impacts upon discharge. The statement that low DO is unlikely to impact water bodies is overly generalized	No changes made.

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				additional water would counteract low DO. Inspecting and collecting monitoring data on water having low DO, but unlikely to impact receiving water bodies, wastes manpower and limited resources. Eliminate this requirement.	and does not recognize that adverse impacts frequently occur.	
ACCWP Attachment1	1	C.2.d.ii.(2)	Dissolved Oxygen Pump Station Monitoring	Collect DO data from all pump stations twice a year during the dry season. Change the maximum sampling required to twice per year for two years and allow an exemption from monitoring in situations where it can be demonstrated that there is no potential water quality problem, such as in Livermore, where the summer discharge is to a dry arroyo or where the discharge rate is too minimal to impact water quality.	The monitoring requirements have been reduced to require a minimum number of inspections in the dry and wet seasons. The Final TO has been revised to exempt DO monitoring in areas that will drain to a dry creek immediately downstream of the discharge.	The required inspection frequencies in both the dry and wet season have been reduced. Exemption included for areas that will drain to dry creek and infiltrate immediately downstream.
Alameda County	3					
Berkeley Attachment1	1					
Oakland Attachment1	1	C.2.d.ii.(2)	Dissolved Oxygen Pump Station Monitoring	Collect DO data from all pump stations twice a year during the dry season. Allow an exemption from monitoring in situations where it can be demonstrated that there is no potential water quality problem or where the discharge rate is too minimal to impact water quality. "Add minimum pump size."	The monitoring requirements have been reduced to require a minimum number of inspections in the dry and wet seasons. The Final TO has been revised to exempt DO monitoring in areas that will drain to a dry creek immediately downstream of the discharge.	The required inspection frequencies in both the dry and wet season have been reduced. Exemption included for areas that will drain to dry creek and infiltrate immediately

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						downstream.
Fremont	4	C.2.d.ii.(3)	Pumping to Raise Do Levels Not Practicable	To institute continuous pumping activities to bring the DO level to 3 mg/L is not practicable. It would likely result in damage to the pump station equipment due to increased on/off pump cycling resulting from the need to pump such low volumes of water to achieve the required 3 mg/l DO level. Remove this requirement in conjunction with the removal of C.2.d.ii(2).	Permittees are not required to implement continuous pumping if it will damage equipment. The provision has been revised to include aeration, or other appropriate measures to increase DO levels.	The provision has been revised to include aeration, or other appropriate measures to increase DO levels.
NOAA	2	C.2.d.ii.(3)	Consider Aeration or Discharge to Sanitary Sewer When Dissolved Oxygen Low	Setting the dissolved oxygen (DO) threshold at 3 milligrams per liter (mg/L) or parts per million (ppm) for discharges from pump stations before requiring corrective actions may result in water quality impacts to receiving waters if sufficient dilution is not available. While the DO should easily be above this level during storm events when the retention time of stormwater in a pumping station may be very short, during drier portions of the year the retention time of water in a pumping station may be prolonged, resulting in poor DO conditions. This discharge to a waterbody during a low-flow time period may impact beneficial uses and ESA listed species. The permit should require the exploration of aerating these discharges during these periods of the year or diverting them to the sanitary sewer system to prevent impacts.	The Final TO requires dry season monitoring to identify low DO levels and implementation of corrective actions if DO level fall below 3 mg/L.	
Millbrae	6	C.2.d.ii.(3)	Implementation of Corrective Measures Only When	Section C.2.d.ii.(3) states that the implementation level requires that corrective actions be applied if dissolved oxygen levels are at or below 3 mg/l. This	The monitoring requirements have been reduced to require a minimum number of	The required inspection frequencies in both the dry and
SMCWPPP	3					

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			Dissolved Oxygen Level Will Impact Receiving Waters	requirement should be conditioned on having a discharge from the pump station that causes a receiving water problem. We request that the permit language be modified to state that corrective actions will only be necessary if the pump station is discharging water with low dissolved oxygen that is causing an unacceptable reduction of dissolved oxygen in the receiving water.	inspections in the dry and wet seasons. The Final TO has been revised to exempt DO monitoring in areas that will drain to a dry creek immediately downstream of the discharge.	wet season have been reduced. Exemption included for areas that will drain to dry creek and infiltrate immediately downstream.
Kolb, Larry and James, Roger	8	C.2.d.ii(4)	Start Monitoring in 2009	This program must be started in 2009 rather than waiting for the 2010-11 wet weather season because earlier permits have already required enforceable programs.	Earlier permits have not required monitoring as specified in the MRP. Permittees will need time to organize and coordinate inspections and response efforts	No changes made.
ACCWP Attachment1	1	C.2.d.ii.(4)	Rain Threshold for Inspection	Inspect pump stations in the first business day after ¼ inch storm Change to ½ inch storm	Changing to a ½ inch storm may not allow for collection of enough data to accurately assess the impacts of pump station discharges.	No changes made.
Alameda County	4					
Berkeley Attachment1	2					
Oakland Attachment1	2					
Fremont	5	C.2.d.ii.(4)	Remove Pump Station Inspection After Rain Event	To inspect pump stations in the first business day after a ¼ inches rain event for 9 separate criteria is unnecessary and wasteful of limited resources. Some of these pump stations are very expensive to inspect due to their confined space entry configuration. Remove this requirement in	The monitoring requirements have been reduced to require a minimum number of inspections in the dry and wet seasons. The Final TO has been revised to exempt	The required inspection frequencies in both the dry and wet season have been reduced.

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				conjunction with the removal of C.2.d.ii(2),(3)	DO monitoring in areas that will drain to a dry creek immediately downstream of the discharge.	Exemption included for areas that will drain to dry creek and infiltrate immediately downstream.
Fremont	7	C.2.d.ii.(4)	Remove Pump Station Inspection After Rain Event	Section C.2.d.ii.(4) states that implementation level requires that pump stations be inspected in the first business day after ¼-inch or larger storm events. This level of prescriptiveness is unnecessary. The permittees should have flexibility, based on their experience, to decide when to inspect the stormwater pump stations that they own and operate. We request that the permit language be modified to delete a specific amount of stormwater that triggers a requirement to inspect stormwater pump stations.	The monitoring requirements have been reduced to require a minimum number of inspections in the dry and wet seasons. The Final TO has been revised to exempt DO monitoring in areas that will drain to a dry creek immediately downstream of the discharge.	The required inspection frequencies in both the dry and wet season have been reduced. Exemption included for areas that will drain to dry creek and infiltrate immediately downstream.
Millbrae	7					
San Mateo County	2					
SMCWPPP	4					
Fairfield Suisun Sewer District	3	C.2.d.ii.(4)	Modify Rain Even Inspection Threshold and Extend Time	Provision C.2.d.ii (4) requires the inspection of all pump stations on the first business day following a ¼-inch storm. This requirement is problematic due to staffing limitations and the fact that local agencies have the knowledge and ability to operate pump stations remotely, without environmental consequences. We request that this provision be modified to apply to prioritized pump stations determined to be a significant water quality problem. Furthermore, we request that 48-hours be	The monitoring requirements have been reduced to require a minimum number of inspections in the dry and wet seasons. The Final TO has been revised to exempt DO monitoring in areas that will drain to a dry creek immediately downstream of the discharge.	The required inspection frequencies in both the dry and wet season have been reduced. Exemption included for areas that will drain to dry creek and

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				the allowed time window to conduct inspections following major storm events. In addition, the ¼-inch rainfall threshold for conducting inspections should be raised to a ½-inch rainfall threshold, a rainfall volume more indicative of runoff events.		infiltrate immediately downstream.
Fremont Attachment	2	C.2.d.ii.(1-4)	Eliminate Pump Station Record Keeping	Inspect 2x/yr during dry season (July to Oct); monitor for DO; corrective measures for low DO concentrations 3 mg/L or lower. Collecting data and maintaining records is overly burdensome and impracticable. Eliminate this record keeping requirement	The monitoring requirements have been reduced to require a minimum number of inspections in the dry and wet seasons. The Final TO has been revised to exempt DO monitoring in areas that will drain to a dry creek immediately downstream of the discharge.	The required inspection frequencies in both the dry and wet season have been reduced. Exemption included for areas that will drain to dry creek and infiltrate immediately downstream.
Sunnyvale	17A	C.2.d.ii.(2-4)	Clarify DO value is Trigger for Identifying Additional Actions	We request that you clarify that the DO value included in this provision is a trigger and would be used for the purpose of identifying pump stations with problems and for identifying additional actions that might be needed.	It is explicitly stated in the permit provisions that the DO data is being collected to identify pump station problems. The provisions require corrective actions if DO monitoring identifies levels below 3 mg/L.	No changes made.
Sunnyvale	17B	C.2.d.ii.(2-4)	Oil Absorbent Booms and Pump Stations	The inspection requirement for pump stations after a ¼ inch of rain within a 24-hour storm event or larger storms makes an assumption that we have oil absorbent booms at the pump stations. This is not	This requirement only pertains to pump stations that have or utilize oil absorbent booms. If oil booms are not necessary or	Added language to clarify that oil absorbent booms shall only be replaced

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				necessarily the case. This should be clarified that pump stations are not expected to have oil booms in place.	appropriate for a pump station design then they do not have to be checked and replaced.	as needed.
Mountain View	4	C.2.d	Pump Station Inspection and Monitoring	<p>Requiring inspection and maintenance within 24 hours of significant rain events may divert personnel resources during critical "storm patrol" operations and could potentially endanger employees by requiring them to enter these facilities during high-flow conditions. The City operates and maintains five storm water pump stations, which vary in type, construction, drainage inputs and flow rate. The additional monitoring, inspection and maintenance required in the Regional Permit places an increased demand on limited staff resources.</p> <p>The City recommends revising this provision to limit the monitoring and maintenance requirement to storm water pump stations having characteristics that may warrant the additional activities. For example, require the dissolved oxygen monitoring only at pump stations that could contribute sufficient flow of low dissolved oxygen water to have a deleterious effect on receiving water quality. Additionally, the City recommends extending the time after significant storms when inspection and maintenance are required to ensure that personnel can be dispatched according to resource needs and to ensure worker safety.</p>	<p>The monitoring requirements have been reduced to require a minimum number of inspections in the dry and wet seasons. The Final TO has been revised to exempt DO monitoring in areas that will drain to a dry creek immediately downstream of the discharge. If a hazard exists or personnel are needed to respond to storm impacts, inspection should be delayed until an appropriate time.</p>	<p>The required inspection frequencies in both the dry and wet season have been reduced. Exemption included for areas that will drain to dry creek and infiltrate immediately downstream.</p>

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Palo Alto	4	C.2.d	Pump Station Inspection and Monitoring	Provision C.2.d.ii.(4), which requires inspection of <u>all</u> pump stations <u>in the first business day</u> following a large storm, will be problematic for cities with a large number of pump stations. For example, Palo Alto has nine pump stations, several of which do not discharge directly to a creek or the Bay. We request that this provision be modified to focus on inspection of only pump stations of significant size that discharge directly to water bodies, and that more time be allowed following a major storm event to conduct the inspections.	The monitoring requirements have been reduced to require a minimum number of inspections in the dry and wet seasons. The Final TO has been revised to exempt DO monitoring in areas that will drain to a dry creek immediately downstream of the discharge.	The required inspection frequencies in both the dry and wet season have been reduced. Exemption included for areas that will drain to dry creek and infiltrate immediately downstream.
San Jose	2	C.2.d	Pump Station Inspection and Monitoring	This provision requires that the City augment pump station maintenance and operations activities with dry weather monitoring and post-storm inspection and cleaning activities. Corrective actions are required if monitoring results fall below a specified threshold. The extent of the corrective action that may be required is not presently known and may be disruptive to core operation of storm pump stations, in addition to being resource intensive to administer. As drafted in the TO, all storm pump stations are subject to this provision. In San José, there are more than 25 pump stations of varying sizes, not all of which flow to a water body. San José requests that only pump stations that are of significant size and that discharge directly to a creek or water body	The monitoring requirements have been reduced to require a minimum number of inspections in the dry and wet seasons. The Final TO has been revised to exempt DO monitoring in areas that will drain to a dry creek immediately downstream of the discharge.	The required inspection frequencies in both the dry and wet season have been reduced. Exemption included for areas that will drain to dry creek and infiltrate immediately downstream.

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				be included under this provision and that the provision be revised to ensure that pump station operations are adequately supported to protect public safety.		
Santa Clara County	6	C.2.d	Pump Station Inspection and Monitoring	The County has six pump stations. Four of these pump stations are to keep roadways from flooding and two are strictly groundwater stations that have no drain inlets. All of our pump stations pump ground water continuously all year long and have already been exempted from Discharge Prohibition A.1. Since our pump stations are primarily groundwater pump stations and are located under roadways, there will never be any water from urban runoff to sample during the dry season, only ground water. Because the County has both groundwater pump stations and surface water pump stations, we request clarification on which pump stations must meet the requirements of C.2.d. We also request that pump stations where the primary purpose is to pump groundwater be exempted from these requirements.	We will review this issue in more detail with the County. At this stage we advise that these pump stations should be sampled.	
Santa Clara County	7	C.2.d	Pump Station Inspection and Monitoring	Finally, the requirement that all pump stations are inspected within the first business day following a storm event that results in a quarter inch of rain or more will interfere with other required obligations that the County must accomplish. We request that this provision be modified to require inspection for pumps stations that are of significant (i.e. capacity of 10,000 gallons per minute) size only and that more time be allowed following a storm event to	The monitoring requirements have been reduced to require a minimum number of inspections in the dry and wet seasons. The Final TO has been revised to exempt DO monitoring in areas that will drain to a dry creek immediately downstream of the discharge.	The required inspection frequencies in both the dry and wet season have been reduced. Exemption included for areas that will drain to dry

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				conduct inspections. Our maintenance crew has limited staff and other obligations that must be met in any given day. For this reason, we request at least five workdays to complete inspections.		creek and infiltrate immediately downstream.
SCVURPPP Attachment 1	1	C.2.d	Pump Station Inspection and Monitoring	However, item (4) requiring inspection of all pump stations in the first business day following a large storm is problematic for cities with a large number of pump stations. For example, the City of Santa Clara has 21 pump stations, and the City of San Jose has 25 pump stations, many of which do not discharge to a creek or the Bay. We request that this provision be modified to prioritize monitoring and inspections on pump stations that are a significant problem and that discharge directly to water bodies, and to allow more time following a major storm event to conduct the inspections. In addition, we request that you clarify that the DO value included in the provision is a trigger or action level and not a numeric effluent limitation per se and will be used only for purposes of identifying problematic stations and for identifying needed additional actions.	The monitoring requirements have been reduced to require a minimum number of inspections in the dry and wet seasons. The Final TO has been revised to exempt DO monitoring in areas that will drain to a dry creek immediately downstream of the discharge.	The required inspection frequencies in both the dry and wet season have been reduced. Exemption included for areas that will drain to dry creek and infiltrate immediately downstream.
Union City	2	C.2.d	Pump Station Monitoring Financially Burdensome	<u>Provision C.2.d: Stormwater Pump Stations</u> – This provision requires the inspection and collection of the dissolved oxygen (DO) data from all pump stations twice a year during the dry season between the months of July and October and inspecting pump stations in the first business day after 1/4 –inch rainfall within	The monitoring requirements have been reduced to require a minimum number of inspections in the dry and wet seasons. The Final TO has been revised to exempt DO monitoring in areas that	The required inspection frequencies in both the dry and wet season have been reduced. Exemption

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				24 hour and larger storm events. The requirement of inspecting the pump station is expected. However, it is not practicable and is financially burdening the City for collecting DO data and inspecting the pump station for every storm event. The City recommends this unnecessary provision being removed.	will drain to a dry creek immediately downstream of the discharge.	included for areas that will drain to dry creek and infiltrate immediately downstream.
ACCWP Attachment3	1	C.2.d.iii	Reporting Trash Levels in Pump Station	Reporting on the levels of trash and debris removed from the pump stations unnecessary. If this information is needed for a specific purpose, a one-time assessment would suffice. Delete the requirement to collect and report on trash and debris removed from pump stations.	The objective of this provision is to assess and determine the feasibility of controlling trash discharges at pump stations. In order to assess potential benefits of trash removal from pump stations, it is necessary to monitor and collect data.	No changes made.
Berkeley Attachment2	2					
Newark Attachment	1					
Oakland Attachment2	2					
Kolb, Larry and James, Roger	8	C.2.d.ii(4)	Change Language	Change waste materials to "trash, vegetative material and sediments separately".	The permit language requires permittees to determine presence and quantity estimates of trash. It is expected if these types of debris are present insignificant quantities they will be recorded during observations and quantity estimates.	No changes made.
Sunnyvale	18	C.2.d.iii	Data Collection and Reporting Excessive	The data required to be kept and reported on for maintenance activities at storm water pump stations is excessive. Requiring that cities report the mass or volume of the debris and trash removed from a pump station fore-bay or bar screen does not provide essential information as	The objective of this provision is to assess and determine the feasibility of controlling trash discharges at pump stations. In order to assess potential benefits of trash removal from pump	No changes made.

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				to the effectiveness of the pump station operations. It is unclear why this information is needed. It should be sufficient to provide records of pump station maintenance activities, showing that appropriate maintenance has occurred without having to collect data that does not have a clear purpose identified.	stations, it is necessary to monitor and collect data.	
Pittsburg	2	C.2	Reporting and Recordkeeping Burdensome	The reporting requirements for municipal operations are onerous and burdensome. Several other Sections, such as Illicit Discharge, Trash, Pesticides Toxicity Control, and Exempted and Conditionally Exempted Discharges, require varied reporting and/or monitoring requirements required of Municipal Maintenance staff. Our City's Maintenance Department is already operating at a minimum, and may act be reduced further as response to the City's current economic crisis. The City urges the Board to consider limiting the continuous reporting requirements to the most problematic section(s) that need monitoring. The City urges elimination of monitoring requirements in areas where it is not warranted, or where it may have been warranted in the past but there are currently no unacceptable exceedances.	The objective of this provision is to assess and determine the feasibility of controlling trash discharges at pump stations. In order to assess potential benefits of trash removal from pump stations, it is necessary to monitor and collect data.	No changes made.
Pittsburg	4	C.2.e.ii	Remove Post Construction Controls for Rural Roads	This provision requires post-construction treatment measures for maintenance activities of existing Rural Public Roads. Please remove the last sentence requiring post-construction treatment measures to treat runoff from the new impervious surface area created in association with	The language was revised to clarify that the requirements for after construction controls are related to the maintenance and implementation of BMPs for sediment and	The Final TO language was revise to stat that Permittees shall implement and require contractors to

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				road projects. Regular maintenance activities should be distinguished from creation of new roads in this section. Section C.3 already provides guidance for new road projects that create 10,000 square feet of contiguous impervious surface, with exceptions where appropriate.	erosion control.	implement BMPs for erosion and sediment control during and after construction.
CCCWP Attachment	1	C.2.e.i	Remove Reference to Post Construction BMPS	Omit "and post" from the second sentence so it reads: <i>"Permittees shall implement and require contractor to implement BMPs for erosion and sedimentation control measures during and post-construction for maintenance activities on rural roads, particularly in or adjacent to stream channels or wetlands".</i> <i>Rationale for Omission:</i> This provision should be consistent with C.2.e.ii.(1), which states Permittees shall "implement BMPs for erosion and sediment control measures during construction, and maintenance activities.....".	The language was revised to clarify that the requirements for after construction controls are related to the maintenance and implementation of BMPs for sediment and erosion control.	The Final TO language was revise to stat that Permittees shall implement and require contractors to implement BMPs for erosion and sediment control during and after construction.
CCCWP Attachment	2	C.2.e.ii.(1)	Delete Reference to C.3	Delete second sentence referring to implementation of the C.3 requirements. <i>Rationale for Deletion:</i> Including C.3 provisions in section C.2 is unnecessary, duplicative, and may cause confusion to permittees reading multiple notations of the same permit requirements.	We agree.	Language deleted.
CCCWP Attachment	3	C.2.e.ii.(2)(e)	Remove Regrading Rural Roads to Slope	Delete ".....re-grade roads to slope outward where consistent with road engineering safety standards...." from this section as follows: "(e) Maintenance of	This provision only applies to unpaved rural roads where outsloping is appropriate and in	Permit language revised to apply only to unpaved rural roads

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			Outwards	<i>rural roads adjacent to streams and riparian habitat to reduce erosion, replace damaging shotgun culverts, re-grade roads to slope outward where consistent with road engineering safety standards, and install water bars; and</i> Rationale for Change: Re-grading roads to slope outward on an inside curve is in direct conflict with the American Association of State Highway and Transportation Officials (ASSHTO) and Caltrans standard practice of grading roads to slope inward for vehicle safety on curves. There is no road engineering safety standards that would allow roads to be sloped outward so this wording should be deleted.	accordance with road safety standards.	where outsloping is in accordance with road safety standards.
CCCWP Attachment	4	C.2.e.ii.(2)(e)	Water Bars Not Appropriate for Paved Roads	Furthermore, "water bars" are a feature for unpaved roads and are not appropriate for paved roads. On paved roads, they would be an inappropriate speed bump. Sawing transverse grooves in the pavement will have the effect of shortening the life of pavement and can only be used where the design thickness of the pavement has considered the structural reduction of pavement thickness due to the grooves.	Water bars are not required for paved rural roads. They should only be implemented on unpaved roads where appropriate.	Permit language revised to apply only to unpaved rural roads where water bars are appropriate.
Caltrans	5	C.2.f	Eliminate Reference to Caltrans Maintenance Staff Guide	There is a reference to the Caltrans Storm Water Quality Handbook Maintenance Staff Guide. <i>"Each SWPPP shall incorporate all applicable BMPs that are described in the Caltrans Storm Water Quality Handbook Maintenance Staff Guide, May 2003, and its addenda."</i> Caltrans would prefer that reference to	This is just reference to the utilization of the methods included the guide. It does not prevent Caltrans from updating or modifying the 2003 Maintenance Staff Guide.	No changes made.

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				2003 Maintenance Staff Guide be removed and replaced with more generic reference. This is necessary to avoid staff guide becoming “standard practice” which will limit Caltrans ability to update or modify practices as appropriate.		
Daly City	3	C.2.f.i.(1)	Clarify Reference to Caltrans Maintenance Staff Guide	Added reference to the Caltrans Storm Water Quality Handbook Maintenance Staff Guide, May 2003, and its addenda (referenced addenda could not be found). This document is over 250 pages and covers the entire stormwater program for all Caltrans maintenance activities.	The addenda are included as appendices to the document and are available in the PDF version of the guide on Caltrans website.	No changes made
CCCWP Attachment	4	C.2.f.i.(1)	Add Reference to CASQA Handbook for Municipal Maintenance	Insert “ <i>California Stormwater Quality Association’s California BMP Handbook for Municipal Activities and/or</i> ” to: “ <i>Each SWPPP shall incorporate all applicable BMPs that are described in the <u>California Stormwater Quality Association’s California BMP Handbook for Municipal Activities and/or the Caltrans Storm Water Quality Handbook Maintenance Staff Guide, May 2003, and its addenda.</u></i> ” <i>Rationale for Insertion:</i> The California BMP Handbooks are a well recognized and readily available resource, and reflect the current state of water quality best management practices for all typical activities conducted at municipal corporation yards.	We agree.	Reference added.
SMCWPPP	6	C.2.f.i.(1)	Modify Language Regarding Guidance	The permit requires the preparation of a Stormwater Pollution Prevention Plan (SWPPP) for corporation yards and that the SWPPP incorporate all applicable	The permit language states that the BMPs will be incorporated as appropriate. Permittees are only required	No changes made.

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			Materials for SWPPP Development	BMPs from the Caltrans Storm Water Quality Handbook Maintenance Staff, May 2003 and its addenda. The Caltrans Handbook should be considered as a basis for identifying appropriate BMPs, but it should not be an absolute mandate for what is needed. Modify the permit to state that each SWPPP shall incorporate applicable BMPs by considering information in handbooks, such as the Caltrans Storm Water Quality Handbook Maintenance Staff, May 2003 and its addenda.	to implement BMPs that apply to their specific circumstances.	
San Jose	3	C.2.f.i	Caltrans Storm Water Quality Staff Guide Only Supplemental	The City requests that the Caltrans Storm Water Quality Staff Guide is identified as a supplemental guide for developing and improving SWPPPs.	The permit language states that permittees will implement all applicable BMPs as appropriate.	No changes made.
SMCWPPP	6	C.2.f.ii	No Date for Completion of SWPPP	There is no date provided for completing the SWPPP, and a date should be given. Add permit language that requires that the SWPPP be completed by July 1, 2010 or one year following adoption of the permit, whichever date occurs later.	We agree.	Completion date of July 1, 2010 has been added.
SCVURPPP Attachment A	2	C.2.f.ii.(3)	Some Vehicle and Equipment Areas No Accessible Sanitary Sewers	The Revised TO requires Co-permittees to retrofit all vehicle and equipment wash areas to be plumbed to the sanitary sewer. Some relatively rural corporation yard facilities are not accessible to sanitary sewers, and the MRP should allow wash waters to flow to vegetated areas or other areas that do not impact water quality. As stated in our February 25, 2008 letter, SCVURPPP recommends that the	If sanitary connections are not available, permittees should collect wash water and use appropriate BMPs for treatment and disposal that will not impact surface water or groundwater.	The permit language was revised to clarify disposal options when sanitary sewer connection not available.

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				language be revised to allow for this alternative.		

^a Refers to Provision Numbers contained in the Municipal Regional Stormwater Permit (MRP) Tentative Order dated December 14, 2007.

^b Provision Numbers referenced are found in the Municipal Regional Stormwater Permit (MRP) revised Tentative Order dated February 11, 2009

**Response to Comments on February 11, 2009 Revised Tentative Order
Provision C.3. – New Development and Redevelopment**

File	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
Friends of Five Creeks	3	C.3.	Assessment of Effectiveness	This draft does eliminate important components. In particular, there will be no real measurement of whether various methods to treat and retain urban runoff – that is, C.3 and hydromodification measures -- really work. We will basically continue to base requirements for low-impact development -- swales, bioretention, green roofs, etc.-- on imperfect projections and faith.	The Final TO contains more stringent and precise requirements for source control, site design and LID treatment for all Regulated Projects. Also, Provision C.3.c. requires Permittees to report on their procedures for determining the feasibility/infeasibility of harvesting and reuse, infiltration, and evapotranspiration and to develop biotreatment soil media and green roof design specifications.	See revised Provision C.3.c.
Friends of Five Creeks	5	C.3.	General comment	Provision C.3. should strengthen these first-try rules so that LID and hydromodification rules begin to have actual effect on runoff pollution and volume in our Bay Area cities. The revised TO moves modestly in that direction by lowering to 5,000 ft ² the threshold for requiring treatment of runoff in parking lots and for certain types of high-pollution business and closing some loopholes in the ways applications are deemed complete and projects are exempted from requirements, calling for green street pilot projects, and allowing large single-family homes to choose from a menu of	Comment noted.	None

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Provision C.3. – New Development and Redevelopment**

File	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
				measures that lessen runoff.		
ACCWP Berkeley Newark Oakland	1 1 1 1	C.3.	General Comment	We appreciate many of the changes incorporated in the Revised TO and in particular, the deletion of the requirements to install treatment systems for road reconstruction projects within the existing footprint and to conduct an impervious surface data collection pilot project. However, many of our concerns have not been addressed and some of the new requirements in the Revised TO are of great concern.	Comment noted.	None
Stopwaste.org	4	C.3.	Goal statement for Provision C.3.	On Page 15, Section C.3., last sentence to initial paragraph, add highlighted text in last sentence of paragraph, "This goal is to be accomplished primarily through the implementation of low impact development (LID) techniques and Bay-Friendly Landscaping practices employing landscape-based design and treatment measures."	We have deleted the reference to "landscape-based treatment measures" in the sentence because it seems to narrow the definition of LID to exclude accepted LID measures such as harvesting and reuse; therefore, the reference to Bay Friendly Landscaping practices would be inappropriate here.	None
BASMAA Att Contra Costa Brd of Sups Att A Fairfield FSSD Menlo Park	3 8 5 4 3	C.3. C.3.b.ii.(4)	Implementation / Effective Dates	<ul style="list-style-type: none"> Numerous requirements in Provision C.3. require immediate implementation. Significant key sections have been modified (e.g., new road projects, LID, and the HM threshold and applicability area 	<ul style="list-style-type: none"> We concur that all new requirements should not have immediate effective dates; however, Provision C.3. also contains some requirements that have 	<ul style="list-style-type: none"> Any new requirement in Provision C.3. with an immediate effective date has been revised to allow a later

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File	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
Mountain View Pacifica Palo Alto San Jose Att A Santa Clara Co SCVURPPP SCVURPPP Att A Suisun City Sunnyvale West Valley Clean Water Program	8 19 6 5 14 11 4 5 20 5			definition) but insufficient time is allowed to implement the requirements. Implementation will require staff training; revisions to policies, procedures, development review processes, ordinances, and guidance documents; and public outreach. Permittees should have at least one year to prepare to implement the new requirements. • All “effective immediately” dates should be changed to at least 6 months after the MRP is adopted. • For applicable public road or trail projects that have received funding or are in the plan development phase but do not have construction scheduled by the effective date, the treatment requirement was not considered during planning for these public projects.	been carried forward from the existing stormwater permits and these requirements should have immediate effective dates. • The grandfathering language for public projects contained in Provision C.3.b.ii.(1) allows projects that have funding committed and construction scheduled to begin within 3 years of the MRP effective date to be exempted from the threshold requirement. We concur that this grandfathering allowance should apply to public road and trail projects as well.	implementation date. • Grandfathering language has been added to Provision C.3.b.ii.(4)
BASMAA Att	2	C.3.	LID Definition	C.3 introductory paragraph – delete from last sentence of first paragraph “...employing landscape-based treatment measures.” as this changes and narrows the definition of LID and connotes that LID is not appropriate in ultra-urban areas or transit-oriented development.	We concur	The referenced text has been deleted.
Contech	2	C.3. C.3.c.	LID Treatment Requirements	The selection requirements for LID treatment controls on new development and redevelopment projects are	• In the sentence in question, we have deleted the reference to	None

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Provision C.3. – New Development and Redevelopment**

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				<p>fundamentally flawed. The C.3. opening paragraph states the goal to “address both soluble and insoluble stormwater runoff pollutant discharges and prevent increases in runoff flows from new development and redevelopment projects...is to be accomplished primarily through the implementation of LID techniques employing landscape-based treatment measures.” Provision C.3. effectively supplants the goal of reducing the discharge of pollutants of concern to the “maximum extent practicable” (MEP), with the goal of implementing landscape-based techniques to the MEP. These are not interchangeable goals. The MEP approach is mandated by the CWA and requires a performance based hierarchy of management approaches. An “implement landscape-based treatment measures to the MEP” goal relies on the false assumption that landscape-based BMPs treatment measures are always more effective and feasible as compared to “vault based systems.”</p>	<p>“landscape-based treatment measures” because it seems to narrow the definition of LID to exclude other accepted LID measures such as harvesting and reuse.</p> <ul style="list-style-type: none"> • LID treatment measures, which include landscape-based treatment, is a preferable approach to treating and reducing stormwater runoff because it is cost-effective, sustainable, and environmentally-sound. LID treatment measures are effective because they can remove a broader range of pollutants in a more robust and redundant fashion, and can achieve multiple environmental and economic benefits in addition to reducing downstream water quality impacts, such as enhanced water supplies, cleaner air, reduced urban temperatures, increased energy efficiency and 	

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Provision C.3. – New Development and Redevelopment**

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					other community benefits. As such, these measures satisfy the MEP criteria of the Clean Water Act.	
Stopwaste.org	1	C.3.	Reference to Bay-Friendly Landscaping Coalition	We have attached to this letter some specific language we are asking be included in the MRP. The language with respect to Bay-Friendly Landscaping is non-regulatory, but will help ensure that every reader of the MRP over the next five years, and perhaps much longer, becomes aware of the Bay-Friendly Landscaping approach and its relevance to the outcomes the MRP seeks to achieve.	Comment noted.	Specific recommended language that we deemed appropriate has been added to the appropriate sections of Provision C.3.
Contra Costa Brd Of Sups Att A	4	C.3.a.	Implementation Dates	The timetable for this section (immediate implementation required) is unrealistic. Modifications to the County Ordinance Code (and potentially other documents) will be necessary to ensure legal authority to implement the modifications made to other sections of Provision C.3. The County recommends changing the implementation date (C.3.a.ii.) to July 1, 2010.	<ul style="list-style-type: none"> • With the exception of Provisions C.3.a.i.(6)-(8), Provision C.3.a. specifies elements that should already be in place under the Permittees' current stormwater permits. As such, the "phase-in" period has already passed so the requirements should be effective as soon as the MRP is effective. • In response to comments on the Dec. 2007 TO, we revised Provision C.3.a.i.(8) to allow one 	Provisions C.3.a.i.(6)-(7) have been revised to allow six months for implementation.

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Provision C.3. – New Development and Redevelopment**

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					<p>year after the MRP effective date for General Plan amendments.</p> <ul style="list-style-type: none"> We concur that some time is necessary to comply with Provisions C.3.a.i.(6)-(7). 	
Stopwaste.org	7	C.3.a.i.	New Development and Redevelopment Performance Standards <i>Additional Requirement</i>	Add an additional task to this Provision as: C.3.a.i.(9) Adopt a Bay-Friendly Landscape Ordinance that requires that civic landscapes are designed and constructed to meet or exceed the minimum requirements on the Bay-Friendly Landscape Scorecard in order to achieve a more sustainable, integrated approach to water quality and conservation, watershed protection, air quality and habitat protection in public landscapes.”	The suggested language was not incorporated because it would impose additional requirements.	None
ACCWP Att 1 Berkeley Att 1 Newark Att Oakland Att	3 3 2 3	C.3.a.i.(2)	“303(d) Listed Waterbodies”	Clarify this section because “303(d) listed waterbodies” may not be understood by everyone, and include a list of the currently listed water bodies/pollutants in the Fact Sheet.	This is not necessary because the phrase “303(d) listed waterbodies” is discussed in the MRP Findings.	None
BASMAA Att San Jose Att A SCVURPPP Att A	5 4 3	C.3.a.i.(2)	Pre-development	The term “pre-development” appears twice and should be changed to “pre-project” to be consistent with the rest of C.3.	In the context of the referenced language, it is implicit that “pre-development” refers to the conditions prior to construction of the Regulated Project (i.e., pre-	None

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Provision C.3. – New Development and Redevelopment**

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					project).	
Stopwaste.org	5	C.3.a.i.(7) 2 nd Bullet	Source control measures for non-Provision C.3. regulated projects	Add to the last sentence the highlighted text below: "Landscaping that minimizes irrigation and runoff, promotes surface infiltration where possible, and minimizes the use of pesticides and fertilizers and incorporates other appropriate sustainable landscaping practices and programs such as Bay-Friendly Landscaping (For example, meet or exceed the minimum requirements on the Bay-Friendly Landscape Scorecard, www.BayFriendly.org)"	We concur.	The reference to sustainable landscaping practices and programs such as Bay-Friendly Landscaping has been added to Provision C.3.a.i.(7)
Fremont	8	C.3.a.i.(8)	General Plan Updates	Maintain the language in Section C.3.l. of Order R2-2003-0021. The language in this Provision is too broad in scope; not all of the task items listed are required to be included in a General Plan and interfere with local land use decisions.	The intent of Provision C.3.a.i.(8) is to require Permittees to review and revise as necessary their General Plans to reflect a more holistic approach to water quality and supply. This Provision references general concepts only and there are no specific requirements that would interfere with local land use decisions.	None
Stopwaste.org	6	C.3.a.i.(8)	General Plan Updates	Add to the end of the sentence the highlighted text, "Revise, as necessary, General Plans to integrate water quality	We concur.	Reference to the Bay-Friendly Landscape Guidelines has been

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				and watershed protection with water supply, flood control, habitat protection, groundwater recharge, and other sustainable development principles and policies, for example, by referencing the Bay-Friendly Landscape Guidelines.”		added.
Stopwaste.org	8	C.3.a.ii.	New Development and Redevelopment Performance Standards <i>Additional Requirement</i>	In second paragraph of this Provision, add a reference to (9) as shown in the highlighted text, “ Due Dates for Full Implementation – Immediate for C.3.a.i.(1)-(7) and July 1, 2010 for C.3.a.i.(8) and (9) For Vallejo Permittees: July 1, 2010 for C.3.a.i.(1)-(8).”	The suggested language was not incorporated because it would impose additional requirements.	None
Stopwaste.org	9	C.3.a.iii.	New Development and Redevelopment Performance Standards <i>Reporting</i>	Add a reference to C.3.a.i.(9) as shown in highlighted text below, “Reporting – Provide a brief summary of the method(s) of implementation of Provisions C.3.a.i.(1)–(9) in the 2011 Annual Report.”	The suggested language was not incorporated because it would impose additional requirements.	None
NOAA	6	C.3.b.	Regulated Projects	<ul style="list-style-type: none"> We support this Provision as it seems to include virtually all potential development and redevelopment projects, but the protections of this section could be greatly strengthened by requiring projects to address the stormwater pollutants from all <u>existing</u>, new, and/or replaced 	<ul style="list-style-type: none"> We agree that this Provision would be greatly strengthened by requiring stormwater treatment from existing impervious surfaces; however, it is not economically feasible for all businesses and 	None

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				<p>impervious surfaces.</p> <ul style="list-style-type: none"> • There is not a biological or water quality reason to set a “50% of impervious area” threshold before requiring inclusion of the entire site, as is done in Provisions C.3.b.ii.(1)(c) and C.3.b.ii.(3). • The Permittees could be required to set up a decision making system to address an alternative percentage of the site. 	<p>homeowners to retrofit their properties with stormwater treatment. Also, Permittees do not have the manpower or resources to implement such requirements.</p> <ul style="list-style-type: none"> • The 50% rule is an acknowledgement that in general, if a Regulated Project is replacing and/or adding more than 50% of the existing impervious area, it is practicable and economical to design stormwater treatment system(s) to address the runoff from the entire site. It is also a means to realistically address runoff from some existing impervious areas. The 50% rule is used in all stormwater permits statewide. 	
Pacifica	12	C.3.b.i.(1)	Incorrect Reference	References to various sections of the MRP are erroneous and confusing. For instance, there is no Provision C.3b.i.(1), yet there is a requirement tied to it. Errors of this type create confusion and undecipherable regulations and should be edited throughout the document and	We have tried to remove incorrect references throughout the Final TO.	Changes made as necessary to remove incorrect references.

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				reissued for re-review.		
Contra Costa Council	3	C.3.b.ii.	Stormwater Treatment Requirements for Industrial Facilities	<ul style="list-style-type: none"> • The MRP requires municipalities to impose LID requirements on any industrial facility disturbing more than 10,000 ft² of impervious surface area. If less than 50% of the facility is disturbed, the facility would be required to treat the runoff from the disturbed portion using LID standards. If more than 50% of the facility is disturbed, the runoff from the entire facility would need to be treated using LID methods. Applying standards that were intended primarily for residential and commercial development to industrial development is inappropriate. Industrial facilities are different because they often handle hazardous materials. Requiring such facilities to direct runoff to vegetated areas and maximize infiltration, for example, could make containment of spills and other materials more difficult and lead to unfortunate consequences. • Industrial facilities are subject to stormwater requirements either under the statewide Industrial General Permit or an individual NPDES permit. They are obligated to implement BMPs developed especially for industrial facilities. 	<ul style="list-style-type: none"> • The 50% rule is applicable to all redevelopment projects, including industrial facilities, and is a requirement in current stormwater permits for the Bay Area and statewide. The 50% rule is an acknowledgement that in general, if a Regulated Project is replacing and/or adding more than 50% of the existing impervious area, it is practicable and economical to design stormwater treatment system(s) to address the runoff from the entire site. It is also a means to address runoff from some existing impervious areas. • This Provision requires all new development and redevelopment projects, including industrial development, to include treatment for the stormwater runoff from the sites. These post-construction requirements are different from the 	None

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				Addition of another layer of regulatory requirements is duplicative, dangerous, and not sound public policy.	BMPs required by the General Industrial Permit, which include source control, proper procedures for handling and storage of potential pollutant sources, and "good housekeeping" at industrial facilities so that pollutants are not released in any runoff leaving the facilities.	
ACCWP Att 1 BASMAA Att Berkeley Att 1 Brisbane Burlingame CCCWP Att Contra Costa Brd Of Supervisors Contra Costa Council Fairfield Fremont FSSD HBANC Millbrae Newark Att	5, 6 4 5, 6 8 3 8 6 1 6 10 5 1 8,16 4, 5	C.3.b.ii.(1) C.3.c.ii.	Grandfathering or Pipeline Language <i>Private Projects</i>	<ul style="list-style-type: none"> Exclude from new requirements projects with applications deemed complete per the Permit Streamlining Act prior to July 1, 2011. If an agency imposes a new stormwater treatment requirement in the middle of its review process that was not applicable when the application was deemed complete, then the project would have to be re-designed and defeat the Legislature's efforts to ensure clear understanding of development permit requirements. If the grandfathering language is not revised to coordinate the applicability of new requirements with the application deemed complete date, then Water Board staff should specifically involve Permittees in the rewriting of the language. As written, the grandfathering 	<ul style="list-style-type: none"> The Permit Streamlining Act requires public agencies to determine whether a permit application is complete within 30 days after receipt; if the public agency does not make this determination, the application is automatically deemed complete after 30 days. Data we have collected from audits and file reviews as well as reported to us by Permittees confirm that in many cases, the development permit applications have not been reviewed for compliance with Provision C.3. 	<p>The grandfather language in Provisions C.3.b.ii.(1) and C.3.c.ii. has been revised to use a combination of the "application deemed complete" and "final discretionary approval" milestone dates:</p> <ul style="list-style-type: none"> Any private project whose application has been deemed complete by a Permittee on or before the Permit effective date shall be exempt from the new requirements as long as the project

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San Mateo SCVURPPP Att A SMCWPPP Suisun City Sunnyvale	3 5 7, 10, 17 6 22			<p>language is confusing to development review staff and reflects the fact that state regulators lack familiarity with the day-to-day functioning of the development review process. It would also be very difficult to enforce due to the ambiguities of the language on determining at what point in time a project is subject to the new requirements.</p> <ul style="list-style-type: none"> • This provision is fundamentally unfair, in that a local permitting agency can change its requirements after an applicant has made a good faith effort to submit a full and complete application that complies with the permitting agency's rules and regulations in place at the time of the application. • Other development standards and requirements (CEQA, Map Act, etc.) are triggered at the time the project is "deemed complete." If standards change after review is complete (but before approval), it is too late to make changes to the project design. The entire review process would need to start again. • For projects requiring an EIR, this threshold is particularly problematic because preparation of the EIR may take several years. Subjecting a 	<p>requirements and yet have automatically been deemed complete 30 days after the application submittal date. Therefore, we feel the "deemed complete" date is too early in the permitting process for projects to be grandfathered and essentially exempted from the lower 5000 ft² threshold, LID requirements, and other new requirements. Projects should be further along in the permitting process before they are granted this exemption from complying with new requirements.</p> <ul style="list-style-type: none"> • However, we understand that Provision C.3.b.ii.(1)'s use of the "final, major, staff- level discretionary review and approval date" does not correspond to a defined point in any land use decision making process nor any known milestone in the development review 	<p>applicant is diligently pursuing the project. Diligent pursuance may be demonstrated by the project applicant's submittal of supplemental or addendum to the original applications, plans, or other documents required for any necessary approvals of the project by the Permittees. If during the time period between the Permit effective date and the implementation date for the new requirements, the project applicant has not taken any action to obtain necessary approvals from the Permittees, the project will then be subject to the new requirements.</p> <ul style="list-style-type: none"> • Any private development project that has an

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				<p>project to new/changed stormwater requirements at the time of approval could render the EIR insufficient, forcing new environmental review.</p> <ul style="list-style-type: none"> The list of project types in Footnote No. 2 is unworkable because it combines actions associated with pre-project land division (e.g., parcel map, tentative maps, tract map) with specific development proposals (e.g., discretionary permit, development permit). Additionally, the term "technical and or engineering review" is ambiguous and does not align with known milestones in the development review process. 	<p>process.</p> <ul style="list-style-type: none"> Given these challenges, we concede that it is appropriate to use the "application deemed complete" date. However, it should be used only to grandfather projects whose applications have been deemed complete by the Permit effective date instead of the much later implementation date for the new requirements. Furthermore, any project applicant with an application deemed complete by the Permit Effective date must demonstrate he is diligently pursuing the project. Diligent pursuance may be demonstrated by the project applicant's submittal of supplemental information to the original applications, plans, or other documents required for any necessary approvals of the project by the Permittees. If during the time period between 	<p>application deemed complete after the Permit effective date shall be exempt from the new requirements only if the applicant has received final discretionary approval for the project before the implementation date for the new requirements.</p>
Oakland Att 1 Sunnyvale	4 22	C.3.b.ii.(1) C.3.c.ii.	Grandfathering or Pipeline Language <i>Private Projects</i>	<ul style="list-style-type: none"> Change "Final, major, staff-level discretionary review" to "<u>Final discretionary review</u>." Restore the original language about "conformity" and delete the added language about complete applications. The language defining the time of applicability is confusing. It refers to "staff-level" approvals, but many approvals requiring stormwater review are made by elected/appointed officials at public hearings rather than by staff. It also refers to "major" approvals, yet every jurisdiction has its own way of interpreting "major" and "minor" 	<p>process.</p> <ul style="list-style-type: none"> Given these challenges, we concede that it is appropriate to use the "application deemed complete" date. However, it should be used only to grandfather projects whose applications have been deemed complete by the Permit effective date instead of the much later implementation date for the new requirements. Furthermore, any project applicant with an application deemed complete by the Permit Effective date must demonstrate he is diligently pursuing the project. Diligent pursuance may be demonstrated by the project applicant's submittal of supplemental information to the original applications, plans, or other documents required for any necessary approvals of the project by the Permittees. If during the time period between 	<p>application deemed complete after the Permit effective date shall be exempt from the new requirements only if the applicant has received final discretionary approval for the project before the implementation date for the new requirements.</p>

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				<p>permits and these do not necessarily conform to the thresholds for stormwater review. At a minimum, remove the words “major” and “staff-level.” If this new language is adopted, “final discretionary approval” should be a sufficient description.</p>	<p>the Permit effective date and the implementation date for the new requirements, the project applicant has not taken any action to obtain necessary approvals from the Permittees, the project will then be subject to the new requirements.</p> <ul style="list-style-type: none"> • Projects whose applications are deemed complete after the Permit effective date should know that the new requirements are imminent and that they have the time period between acceptance of their application and the implementation date for the new requirements to get their project approved; therefore, projects whose applications are deemed complete after the Permit effective date that get “final discretionary approval” by the implementation date for the new requirements are grandfathered from the new requirements as well. 	
HBANC	1	C.3.b.ii.(1)	Grandfathering	<ul style="list-style-type: none"> • The reference to local agency 	We concur and appreciate	We concur and

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		C.3.c.ii.	or Pipeline Language <i>Private Projects</i>	<p>determination of “adherence to applicable local, state, and federal codes” is vague, impracticable, and does not correspond to any defined point in any land use approval process.</p> <ul style="list-style-type: none"> We understand that staff’s concern is that utilizing the standard “application deemed complete” trigger for grandfathering projects allows projects that have been deemed complete but now reviewed to be exempt from the new MRP requirements. Staff explained that this situation is particularly problematic where such projects do not go forward for a significant period of time. To address these issues, we recommend inserting the following language into Provision C.3.b.ii(1) and C.3.c.ii: “For development projects for which an application has been deemed complete before July 1, 2010, the requirements of Provision C.3.c.i. shall not apply so long as the project proponent is diligently pursuing the project. Diligent pursuance may be demonstrated by submittal of further applications, plans, or other documents required for any necessary approval(s) of the project by the Discharger. If in any twelve 	<p>the suggested language revisions, which we have modified and used in our revisions to these Provisions.</p> <p>Also see response immediately above.</p>	<p>appreciate the suggested language revisions, which we have modified and used in our revisions of these Provisions.</p> <p>Also see response immediately above.</p>

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				<p>(12) month period following July 1, 2010, the applicant fails to take any action to obtain necessary approvals from the Discharger, the Project will then be subject to the requirements of Provision C.3.c.i. For public projects for which funding has been committed and construction is scheduled to begin by July 1, 2011, the requirements of Provision C.3.c.i shall not apply. “</p> <ul style="list-style-type: none"> • We believe that this language would meet the dual goals of ensuring that projects which have undergone design and review are not unfairly subject to a new set of regulations that could require significant revisions while at the same time ensuring that the exemption is limited to projects which are being actively reviewed and considered. 		
NOAA	7	C.3.b.ii.(1) C.3.c.ii.	Grandfathering or Pipeline Language <i>Private Projects</i>	<p>This grandfathering provision exempts development projects from the requirement to incorporate LID techniques if they have received final, major, staff-level discretionary review and approval before July 1, 2010. We object to this provision because most of the Permittees have been required to have a working stormwater program in place for many years. They should be more than capable of evaluating and</p>	<p>The grandfathering language allows projects which have undergone design review and later stages of development or construction to not be subjected to a new set of regulations that could require significant revisions. At the same time, the language must also ensure</p>	<p>See the discussion in the two responses immediately above.</p>

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				<p>requiring stormwater BMPs for all projects upon approval of this permit by the Water Board. Development projects coming through the approval process now should already be designed with stormwater BMPs in place and this provision seems to open the door for allowing a batch of projects to get through without fully addressing their impacts.</p>	<p>that this “exemption” from new regulations is limited to those projects that are actively pursuing their permits and proceeding with development. Based on numerous comments on this Provision, we recognize that the language in the revised TO does not reflect recognized milestones in the development approval process. Therefore, the grandfathering language has been revised to reflect more universal development milestones. Also see the two responses immediately above.</p>	
NOAA	8	C.3.b.ii.(1) C.3.c.ii.	Grandfathering or Pipeline Language <i>Public Projects</i>	<p>We object to the exemption for public projects for which funding has been committed and construction is scheduled to begin by July 1, 2011. This could result in many public projects claiming this exemption which would impact the water quality and attainment of beneficial uses in the San Francisco Bay area for a long time. It would be more efficient and less expensive to prevent these impacts.</p>	<p>Application of the grandfathering exemption to public projects that have construction scheduled to begin by a new requirement’s effective date (for the 5000 ft² threshold, 2 years after the MRP effective date) may be too late in the permitting process to implement new requirements, particularly since this type of approval</p>	None

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					requires actions by city councils or boards of supervisors. We feel allowing an additional year after a new requirement's implementation date to determine the "grandfathering date" for public projects is appropriate.	
ACCWP ACCWP Att 1 Alameda Berkeley Berkeley Att 1 Dublin Fremont Hayward Livermore Mountain View Newark Newark Att Oakland Oakland Att 1 Pleasanton San Pablo Sunnyvale	15 4 3, 10 13 4 5 6, 9 7 7 5 7 3 10 5 8 1 21	C.3.b.ii.(1)(a)	Special Land Use Categories 5000 ft ² Treatment Threshold	Do not reduce the Regulated Project applicability threshold to 5000 ft ² because: <ul style="list-style-type: none"> • It will result in a disproportionate amount of implementation costs directed at inspecting and enforcing compliance of small treatment devices. • The cost of inspection and enforcement would continue to increase dramatically over time. • It is inefficient and wasteful to dedicate this level of public resources toward the maintenance of small devices that would be of questionable usefulness even if they were rigorously maintained. • There is also an excessive administrative burden associated with executing operations and maintenance agreements for each of these devices. 	The 5000 ft ² threshold for the identified special Land Use Categories in Provision C.3.b.i.(1) constitute MEP and are consistent with State Board guidance, court decisions, and other Water Boards' requirements. In the precedential decision contained in its WQ Order No. 2000-11, the State Board upheld the SUSMP (Standard Urban Stormwater Mitigation Plan) requirements issued by the Los Angeles Water Board's Executive Officer on March 8, 2000 and found that they constitute MEP for addressing pollutant discharges resulting from Priority Development	None

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				<ul style="list-style-type: none"> • A study by Regional Board staff found that the existing 10,000 ft² threshold captured 97% of all the impervious surfaces installed in the cities of Livermore, Dublin and Pleasanton. • Is supporting data available showing that reducing the impervious threshold for special land use categories will improve water quality? • Preparation of Stormwater Management Plans is very expensive for applicants. Requiring this for smaller projects is likely to have a chilling effect on development and redevelopment at a time when it is most needed due to the economic situation. • Using different thresholds for different types of projects introduces additional complexity and confusion for applicants/staff. 	<p>Projects. The State Board re-affirmed that SUSMP requirements constitute MEP in their Order WQ 2001-15. Provision C.3.b.i.(1)'s requirement that development projects in the identified Special Land Use Categories that add and/or replace ≥ 5000 ft² of impervious surface shall install hydraulically sized stormwater treatment systems is consistent with the SUSMP provisions upheld by the State Board. Provision C.3.b.i.(1) is also consistent with Order No. R9-2007-0001 issued by the San Diego Water Board, Order No. R4-2009-0057 issued by the Los Angeles Water Board, Order No. 2009-0030 issued by the Santa Ana Water Board, and State Board's Order WQ 2003-0005 issued to Phase II MS4s. Under Order WQ 2003-0005, Phase II MS4s must apply the lower 5000 ft² threshold for requiring stormwater treatment systems by April</p>	
Livermore	7	C.3.b.ii.(1)(a)	Special Land Use Categories 5000 ft ² Treatment Threshold	For small sites subject to the reduced treatment threshold of 5000 ft ² , effective vegetated controls are difficult or impossible to effectively implement in a cost-effective manner. The requirement to lower the treatment threshold should be eliminated from the permit once and for all, unless the Board and staff are interested in implementing ineffective, "symbolic"		

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				stormwater controls on these small projects. While these features may be effective for limited portions of these smaller sites, in most cases they do not fully solve the problem nor make this requirement workable.	2008. The MRP already allows 2 years from the MRP effective date for the Permittees to implement the lower 5000 ft ² threshold, essentially 3½ years later than the Phase II MS4s.	
Berkeley Att 1	4	C.3.b.ii.(1)(a)	Special Land Use Categories 5000 ft ² Treatment Threshold	Alternatively, remove the requirement for maintenance agreements for or inspections of these smaller Regulated Projects subject to the lower treatment threshold.	These smaller projects represent land use categories that have greater potential to contribute pollutants to stormwater runoff. Therefore, it would be inappropriate to remove the maintenance and inspection requirements for them.	None
Union City	3	C.3.b.ii.(1)(a)	Special Land Use Categories 5000 ft ² Treatment Threshold	This provision lowers the threshold for Regulated Projects from 10,000 ft ² to 5000 ft ² . This also places additional review efforts by the City staff. It appears that any project with ≥5,000 ft ² of impervious surface would need to obtain an individual permit from the Board.	No individual permit from the Water Board is required.	None
Contra Costa Brd Of Sups Att A Contra Costa Council	5 2	C.3.b.ii.(1)(c) -(d)	50% Rule for Redevelopment	The MRP should require redevelopment projects to ameliorate stormwater impacts to the MEP instead of applying the 50% rule, which requires any redevelopment project disturbing ≥ 50% of the pre-existing impervious surface to comply with the	The purpose of the 50% rule is to require stormwater treatment at projects where a substantial amount of impervious surface is being replaced. It is a means to address the pollutant	None

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				<p>stormwater treatment requirements for the entire project. If less than 50% is disturbed, the project still must implement the permit's requirements for the stormwater runoff from the "disturbed" portion.</p> <p>Infill and redevelopment projects bring significant environmental, quality of life benefits and economic benefits that may be used to defray the added costs of implementing the MRP's new requirements. Any improvement in stormwater management as a result of redevelopment is an improvement over the pre-existing conditions, so redevelopment projects should be encouraged not penalized.</p>	<p>loading from existing development and impervious surfaces when these sites are being redeveloped. Use of the 50% rule in this Provision is consistent with the Permittees' current stormwater permits and stormwater permits statewide; therefore it is considered MEP.</p> <p>In situations where the site conditions render the treatment of existing impervious areas challenging or cost-prohibitive, Provision C.3.e. provides alternative means of compliance with Provision C.3.b.</p>	
Oakland Att 1	8	C.3.b.ii.(3)	Redevelopment Definition	<p>The definition of "redevelopment" states that the site has some past development. This definition is way too strict. In Oakland, many redevelopment sites were originally undeveloped, then developed, and then the improvements were removed and the site was returned to its natural state (for example, in the course of remediating contaminated soil). It doesn't make sense to call a project a redevelopment</p>	<p>The distinction recommended in the comment does not affect the applicability of Provision C.3.b.'s requirements. All development projects, new and redevelopment, is required to provide LID stormwater treatment in accordance with Provisions C.3.c. and d.</p>	None

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				project if it's on a site that had impervious surface once in the distant past but is now pervious. Change to "Redevelopment is any...on a site <u>containing existing impervious surface.</u> "		
ACCWP Att 1 Berkeley Berkeley Att 1 Oakland Att 1	7 15 7 9	C.3.b.ii.(3)	Redevelopment Projects	The Water Board's "General Comments and Responses - MRP November 2007 Tentative Order" expresses the Board's intent to maintain the existing exemption for paving work in the right-of-way. However, this Provision abbreviates this exemption language to only "pavement resurfacing within the existing footprint." This language is far short of the affirmative language in the current permit which includes structural section rehabilitation and any other road reconstruction. Therefore, the exemption language in this Provision should be replaced with the language from the current permit: "Excluded routine maintenance and repair includes roof or exterior surface replacement, pavement resurfacing, repaving and road pavement structural section rehabilitation, within the existing footprint, and any other reconstruction work within a public street or road right-of-way where both sides of that right-of-way are developed."	The requirements and by extension the exemptions listed in this Provision apply to redevelopment of structures and their associated parking lots. The December 2007 TO contained a Provision (C.3.b.i.(5)) to regulate road expansion and rehabilitation projects. In response to comments, we removed that Provision, thereby maintaining the existing exemption for road rehabilitation and/or reconstruction work in an existing right-of-way.	None
Caltrans	6	C.3.b.ii.(4)	Caltrans Road Projects	We appreciate the exclusion of Caltrans road projects from the list of	We concur.	The suggested revisions have been

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				Regulated Projects. It would be preferable to state this exclusion as "Caltrans highway projects and associated facilities." Park and Ride Lots and Safety Roadside Rest Areas, for example, are covered by the Caltrans' Statewide Permit and they would not fall under the building and planning authority of the Permittees.		incorporated into this Provision.
Contra Costa Brd Of Sups Att A Pleasanton Santa Clara Co	7 12 8	C.3.b.ii.(4)	New Road Projects <i>Bike lanes</i> <i>Sidewalks</i> <i>Trails</i>	To require treatment (and flow control) of runoff from sidewalks, bicycle lanes and trails to an increased degree is to effectively discourage these amenities from being included in projects by rendering it more expensive for Permittees to include these amenities in road projects; therefore it seems inconsistent with goals of the NPDES permit to require treatment of runoff from these types of impervious surface.	<ul style="list-style-type: none"> • This Provision only requires treatment of runoff from bike lanes built as part of a new road project. Bike lanes added to existing roads are not subject to treatment requirements. • Although widening existing roads with bike lanes and sidewalks increases impervious surface and increases stormwater pollutants because of aerial deposition, they have been excluded from this Provision because we recognize the greater benefit that bike lanes and sidewalks provide by encouraging less use of cars. 	An exclusion from treatment for bike lanes built as part of a new road project but that are not hydraulically connected to the road and that direct stormwater runoff to adjacent vegetated areas has been added into Provision C.3.b.ii.(4)(d).
BASMAA Att Millbrae SMCWPPP	6 10 8	C.3.b.ii.(4)(a)	New Road Projects <i>Bike Lanes</i>	Provision C.3.b.ii.(4)(a),(b), and (c) requires new bicycle lanes regardless of whether they are built as part of a new street or roadway or added to an existing roadway to be subject to the treatment requirements. All bike lanes should be excluded from compliance with Provision C.3 in order to create an incentive for alternative modes of transportation that reduce the emission of green house gases and other vehicle-caused stormwater pollutants.		

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Pacifica San Jose Att A SCVURPPP Att A Sunnyvale	11 7 6 23	C.3.b.ii.(4)(a)	New Road Projects <i>Bike Lanes</i>	Construction of new bike lanes built as part of a new street or roadway or added to an existing roadway should be excluded from the treatment requirements of Provision C.3.	<ul style="list-style-type: none"> • This Provision also contains specific exclusions for: sidewalks built as part of a new road and built to direct stormwater runoff to adjacent vegetated areas; bike lanes built as part of a new road but not hydraulically connected to the new road and built to direct stormwater runoff to adjacent vegetated areas; impervious trails built to direct stormwater runoff to adjacent vegetated areas, or other non-erodible permeable areas, preferably away from creeks or towards the outboard side of levees; and sidewalks, bike lanes, or trails constructed with permeable surfaces. • We concur that the use of bike lanes reduces air and water pollutants by encouraging less use of cars; however, the additional impervious 	
Pleasanton San Jose Att A	12 8	C.3.b.ii.(4)(b)	New Road Projects <i>Sidewalks</i>	<p>Excluded projects should also include new sidewalks and sidewalk additions built in infill locations where adjacent vegetated non-erodible permeable areas do not exist and it is impractical to build them. Sidewalks provide an environmental benefit for encouraging alternative modes of transportation. The City requests that new sidewalks in infill locations where directing runoff to vegetated areas is infeasible be excluded from the requirements of Provision C.3.d</p>		

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					<p>surface from bike lanes do increase stormwater pollutants because of aerial deposition. Also, bike lanes right next to and hydraulically connected to traffic lanes will receive pollutants from vehicles travelling in the traffic lanes.</p> <ul style="list-style-type: none"> • New roads do not have the drainage and space constraints of projects adding bike lines to existing roads, so stormwater treatment can easily be designed and built to account for the bike lanes additional impervious surface. • We realize there may be two types of bike lanes built as part of new road projects and so an exclusion from treatment is appropriate for bike lanes built as part of a new road project but that are not hydraulically connected to the road and that direct stormwater runoff to adjacent vegetated areas. 	

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ACCWP Att 1 Berkeley Att 1 Brisbane Burlingame Millbrae Mountain View Newark Att Oakland Att 1 Pacifica San Mateo Santa Clara Co SCVRUPPP Att A SMCWPPP Sunnyvale	8 8 9 4 9, 11 6 6 10 10, 11 4 10 7 9 23	C.3.b.ii.(4)(b)	50% % Rule for Road Widening Projects	Revise this Provision to allow the 50% rule to apply to road widening projects. This rule allows any redevelopment project altering less than 50% of the impervious surface of a previously existing development with no post-construction controls to design stormwater treatment only for the impervious surface being replaced and/or added as part of the project. The Fact Sheet states that Water Board staff expects that most road widening projects will not be able to separate runoff flows from existing and new lanes; therefore, road widening projects are not allowed the same 50% rule that applies to other redevelopment projects. The MRP should not restrict the ingenuity and resourcefulness of municipal staff and design professionals. It is not reasonable or practicable to burden roadway widening projects with an inflexible requirement to treat all stormwater runoff from the entire road.	We concur that it is appropriate to apply the 50% rule to road widening projects. However, we still anticipate that most road widening projects will not be able to separate stormwater runoff flows from existing and new traffic lanes. In these cases, if onsite stormwater treatment systems are installed, they still must treat the runoff from the entire road. However, if offsite treatment or in-lieu fees are provided under Provision C.3.e., the 50% rule will allow projects replacing <50% of the impervious surface to address only the runoff from the added traffic lanes.	Provision C.3.b.ii.(4) has been revised to include the 50% rule for road widening projects.
Pleasanton	12	C.3.b.ii.(4)(b)	New Road Projects	The requirement for installing treatment devices for additional traffic lanes on a public street should be exempt. Adding new traffic lanes has the benefit of minimizing pollution from congested traffic conditions. Adding this stringent requirement to these community	Roads are considered one of the most polluted impervious surface types because of the contribution of pollutants from vehicles and the immediate washing of these pollutants into the	None

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				enhancement features places limits on the already strapped funding for these projects and results in postponement and perhaps eliminating the project.	storm drain system during rainfall events with no diversion through pervious or vegetated areas. As such, requiring treatment for road widening projects is appropriate.	
Mountain View Santa Clara Co	6 9	C.3.b.ii.(4)(c)	Trails	All trail projects should be exempted from the treatment requirements to keep costs of these projects at a manageable level. The requirement to treat runoff from new, nonexempt trail projects may be difficult to design and construct, and may be a disincentive for cities to pursue development of these important pedestrian and bicycle trails.	To develop a fair and workable stormwater requirement for trails we worked closely with the Santa Clara stormwater program, especially the Santa Clara Valley Water District and the City of San Jose, two entities with numerous trail projects planned in the South Bay. We believe the exemption language in the revised TO addresses cost concerns while ensuring that stormwater runoff from trails is treated.	None
Daly City	4	C.3.b.iii and C.3.b.iii.v.(2)	Green Street Pilot Projects vs. Pilot Green Streets Project	Different Titles - Make language consistent with section C.3.b.iii.	Although the "Green Street" pilot projects are referred to a little differently, it is understood the different titles refer to the same pilot projects.	None
ACCWP ACCWP Att 1	18, 19, 21 10	C.3.b.iii.	Green Street Pilot Projects	Some municipalities have been aggressive in implementing green	In response to the Permittees' request for	None

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BASMAA Att Berkeley Berkeley Att 1 Fairfield FSSD Newark Newark Att Oakland Att 1 San Jose Att A SCVURPPP Att A SMCWPPP Suisun City Sunnyvale	7-9 16, 19 10 7-10, 12 6-10 11 8 12 9 8 11 7-12 25		<i>Existing Projects</i>	development and have installed projects that meet the requirements of this provision. Allow green street projects implemented since 2003, which meet the treatment sizing criteria and incorporate the green street components, to count towards the required number of pilot projects, with appropriate documentation of project elements.	allowing existing projects to be counted as one of the 10 required green street projects, we asked BASMAA numerous times for information on specific projects that the Permittees wanted us to consider; however, no information on any projects was provided to us. Therefore, no existing project will be given "credit" as one of the required 10 green street pilot projects.	
ACCWP Att 1 BASMAA Att Berkeley Att 1 Dublin Fairfield FSSD Oakland Att 1 Newark Newark Att Pleasanton San Jose Att A SCVURPPP Att A SMCWPPP Suisun City Sunnyvale	15 7-8, 11 15 7 7-8, 10-12 6-10 17 8, 10 8, 13 8 9 8 11, 14 7-12 25	C.3.b.iii.	Green Street Pilot Projects <i>Due Date</i>	Extend due date to at least July 1, 2014 to allow full permit term for achieving provision. The unrealistic time frame for identifying projects, obtaining funds, planning, design and construction demonstrates a lack of familiarity with the construction project development process. No one expects regulatory staff to understand the roadway project development process; therefore, the MRP would benefit from better communication and collaboration with Permittees who work on roadway improvements on a routine basis.	We concur that allowing the full permit term for completing all 10 green street pilot projects is appropriate. However, we rely on data generated by the requirements of the MRP for the permit term to determine the requirements for the next permit term. Therefore, a report on the green street pilot projects completed by the end of the fourth year of the MRP is appropriate.	Provision C.3.b.iii. has been revised to extend the due date for completion of all 10 green street pilot projects to the end of the permit term. A reporting requirement has been added to Provision C.3.b.v.(2) for projects completed by the fourth year of the MRP.
Campbell	3	C.3.b.iii.	Green Street Pilot Projects	Reduce or delay these new requirements.		

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			<i>Due Date</i>			
BASMAA Att CCCWP CCCWP Att Fairfield FSSD Newark Att San Jose Att A SCVURPPP Att A SMCWPPP Suisun City Sunnyvale	7-8, 10 14 10 7-8, 10-12 6-10 8 9 8 11 7-12 25	C.3.b.iii.	Green Street Pilot Projects	<p>The following changes should be made to this section to facilitate implementation by the Permittees:</p> <ul style="list-style-type: none"> • Make the pilot projects contingent on securing funding. • Allow parking lots to qualify as a type of green streets project. • Allow new road projects and redevelopment projects to count toward the total of ten projects. • Delete or reference as a goal the requirement to meet the hydraulic sizing criteria in Provision C.3.d. to make the redevelopment or retrofit projects feasible because space within right-of-ways in densely urban areas is limited and drainage areas tributary to treatment facilities comprise both new and existing areas. 	<p>This Provision was added in response to numerous comments from the Permittees objecting to treatment requirements for road reconstruction projects because of the level of difficulty and lack of funding. The intent of this Provision is to replace the road reconstruction treatment requirements with less onerous requirements and provide an opportunity for Permittees to collect data and learn from the pilot projects so as to make future projects easier to implement. As such, they cannot be Regulated Projects already subject to Provision C.3. (i.e., new road projects or redevelopment projects) They must also be subject to Provision C.3.d. because otherwise they will be undersized and not achieve the required treatment level. However, we have revised the Provision to allow</p>	<p>This Provision has been revised to allow parking lot projects to be pilot projects as long as they also treat street runoff.</p>

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					parking lot projects to be pilot projects as long as they also treat street runoff.	
ACCWP Att 1 Berkeley Livermore Menlo Park Newark Att Oakland Att A Union City	9 9 8 3 7 11 4	C.3.b.iii.	Green Street Pilot Projects	<p>Eliminate this Provision because:</p> <ul style="list-style-type: none"> The Permit already establishes a requirement for municipalities to comply with treatment requirements for road projects that create 10,000 sq. ft. of impervious surface and compliance with hydrograph modification requirement for new road projects that create an acre or greater of impervious surface. Given the current economic conditions faced by municipalities, expensive pilot projects that are also redundant with other established requirements, should be eliminated. 	<p>The Provision C.3. treatment requirement only applies when new roads are built or additional traffic lanes are added. This Provision was added in response to numerous comments from the Permittees objecting to treatment requirements for road reconstruction projects because of the level of difficulty and lack of funding. The intent of this Provision is to replace the road reconstruction treatment requirements with less onerous requirements and provide an opportunity for Permittees to learn from the pilot projects. The pilot projects provide treatment for street projects which would not otherwise be required, so there is no redundancy with existing requirements as the commenters contend.</p>	None
Metropolitan	2	C.3.b.iii.	Green Street	We strongly support your requirement	We concur that location in a	Provision C.3.b.iii.(2)

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Transportation Commission		C.3.b.iii.(2)	Pilot Projects	for the construction of 10 green street pilot projects within the first four years of the permit and strongly urge that these projects be required to be located in the region's defined "priority development areas" (PDAs) as per the Association of Bay Area Governments (ABAG) / MTC FOCUS program. We also support additional green street projects be included in the program, if possible.	PDA should be added as a key element; however, we acknowledge that it will be difficult for every project to include all the key elements. Therefore, Provision C.3.b.iii.(2) has been revised to require that as a whole, the ten projects should include all the key elements instead of each project having to include all the key elements.	has been revised to add location in a PDA as a key element and to require as a whole, the ten pilot projects should include all the key elements.
SMCWPPP	4	C.3.b.iii.	Green Street Pilot Projects	A positive improvement in this Provision is elimination of a requirement to install stormwater treatment controls for road rehabilitation projects. The replacement requirement for 10 green street pilot projects aligns with the Countywide Program's interest in pilot testing the use of green streets and parking lots.	Comment noted.	None
SMCWPPP	11	C.3.b.iii.	Green Street Pilot Projects	These requirements should specify that there be at least two projects in each countywide program.	We concur	Provision C.3.b.iii. has been revised accordingly.
San Leandro	4	C.3.b.iii.	Green Street Pilot Projects	Language is poorly written. It is not clear what a project must contain to be considered a green street.	Comment noted.	Additional language has been added to clarify the requirements.
ACCWP Att 1	13	C.3.b.iii.	Green Street	Eliminate the monitoring requirement	This Provision requires	This Provision has

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Berkeley Berkeley Att 1 Fremont Newark Newark Att Oakland Att 1 Pittsburg San Leandro SMCWPPP	18 13 11 10 11 15 8 4 13		Pilot Projects <i>Monitoring</i>	form this Provision: <ul style="list-style-type: none"> • Provision C.8 already contains extensive monitoring requirements. • Unless grant funding becomes available, it will be hard enough for the Permittees to implement green street pilot projects and the necessary long-term operations and maintenance and verification inspections. • Monitoring water quality benefits from individual LID installations is a cumbersome and costly requirement that will not improve water quality. • Tracking the on-going O&M costs associated with the pilot green streets project is burdensome on Permittees resources, and only serves as an excessive data gathering exercise. 	Permittees to “conduct appropriate monitoring of these projects to document the water quality benefits achieved.” This language is broad and allows flexibility. To highlight that flexibility, we have added the following qualifier, “Appropriate monitoring may include modeling using the design specifications and specific site conditions.”	been revised as described under the Response column.
Pacifica SMCWPPP	13 11	C.3.b.iii.(1)	Green Street Pilot Projects <i>Types of Projects</i>	The pilot projects should be focused on locations with the most opportunities for these types of projects. The requirement that the pilot projects be representative of various types of streets (i.e., arterial, collector, and local) should be replaced with a requirement that the pilot projects be conducted on the types of streets that provide the most opportunity for being retrofitted within each county.	This Provision was added in response to numerous comments from the Permittees objecting to treatment requirements for road reconstruction projects because of the level of difficulty and lack of funding. The intent of this Provision is to replace the road reconstruction treatment requirements with less onerous requirements and	None

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					provide an opportunity for Permittees to learn from the pilot projects. As such, they should be representative of different street types and not just the “easier” projects.	
ACCWP ACCWP Att 1 BASMAA Att Berkeley Berkeley Att 1 Dublin Fairfield FSSD Newark Newark Att Oakland Att 1 Pleasanton San Jose Att A SCVURPPP Att A SMCWPPP Suisun City Sunnyvale	18-19, 21 11-12 7-8 16-17, 19 11-12 7 7-8, 10-12 6-10 8-11 8-10 13-14 8 9 8 11 7-12 25	C.3.b.iii.(2) C.e.b.iii.(2)(d))	Green Street Pilot Projects <i>Key Elements</i>	<p>We are concerned about both the feasibility of implementing this Provision’s requirements and the appropriateness of some of the requirements in a stormwater permit because they go beyond water quality considerations. Our recommended changes for making implementation feasible, notwithstanding our legal concerns, are listed below:</p> <ul style="list-style-type: none"> The key elements listed under Provision C.3.b.iii.(2)(a)-(e) are unnecessary requirements given broad support for LID and they go beyond what is required in federal Clean Water Act stormwater permits. Either delete them as requirements for each Green Street Project or only require each project to consider them. Because it would be nearly impossible for one project to contain all of the key elements listed, require that as a whole, the ten projects should contain the listed elements rather than each project containing 	<p>We concur that it will be difficult for every project to include all the key elements but as a whole, the ten projects should include all the key elements.</p>	<p>Changes have been made to this Provision to allow the 10 pilot projects, as a whole, to include all the key elements listed.</p>

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				<p>the listed elements.</p> <ul style="list-style-type: none"> The parking requirements should be deleted because parking management is handled through land use regulation as part of an overall strategy to reduce transportation demand by various land uses and is not part of street design. 		
Stopwaste.org	10	C.3.b.iii.(2)	Green Street Pilot Projects <i>Key Elements</i>	Add text to the second to last sentence in the paragraph, "Permittees shall cumulatively complete 10 pilot green streets projects that incorporate LID techniques for site design and treatment in accordance with Provision C.3.c. and that provide stormwater treatment sized in accordance with Provision C.3.d. It is also desirable that they meet or exceed the Bay-Friendly Landscape Scorecard minimum requirements (www.BayFriendly.org)."	We concur.	Language added.
Stopwaste.org	11	C.3.b.iii.(2)	Green Street Pilot Projects <i>Key Elements</i>	Add an additional section (f) as follows, "(f) Meet or exceed Bay-Friendly Landscape Scorecard minimum requirements (www.BayFriendly.Org)"	The suggested language was not incorporated because it would impose additional requirements.	None
ACCWP Att 1 Berkeley Att 1 Newark Att Oakland Att 1	14 14 12 16	C.3.b.iii.(2)(a))	Green Street Pilot Projects <i>Key Elements</i> <i>Natural Features</i>	The term "natural feature" used to describe a landscape-based facility that treats and/or infiltrates stormwater is the wrong term because even landscape-based systems are not "natural" per se, they are designed and engineered systems. The term landscape-based is recommended,	"Natural feature" is a broad generic term that encompasses landscape-based systems and as such, no change is necessary.	None

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				since it is a term that is associated with design.		
ACCWP Att 3 Berkeley Att 2 Oakland Att 2 Newark Att	2 3 3 14	C.3.b.v.(1)	Regulated Projects Reporting	Reporting requirements are overly detailed. Eliminate categories of data, or make listing optional if not appropriate (such as street addresses that may not exist for new subdivisions), cross streets if an address is given, application date (approval date should be sufficient).	The data collection and reporting requirements for Regulated Projects are consistent with what is already being reported by most Permittees under their current stormwater permits.	None
Stopwaste.org	12	C.3.b.v.(1)	Regulated Projects Reporting	On page 21, Section C.3.b.v.(1) add an additional section (o) as follows "(o) Sustainable landscape measures incorporated into the project including, if relevant, the score from the Bay-Friendly Landscape Scorecard."	The suggested language was not incorporated because it would impose additional requirements.	None
Sunnyvale	24	C.3.b.v.(1)	Regulated Projects Reporting	<ul style="list-style-type: none"> • Additional reporting requirements may require restructuring of databases and data collection systems. • Developer name and phase number are unnecessary in establishing compliance with requirements and should not be added. • Reporting on each phase of a project separately is also unnecessary if the Stormwater Management Plan prepared at the time of approval covers all phases. It should be sufficient to report on all planned BMPs at one time. 	<ul style="list-style-type: none"> • The data collection and reporting requirements for Regulated Projects are consistent with what is already being reported by most Permittees under their current stormwater permits. • The Developer's name is important because we use the information and construction inspection data to identify exemplary as well as problem developers who may 	None

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					benefit from outreach or require enforcement. •As many subdivisions are built in phases over many years, the phase number distinguishes the phases as distinct separate projects.	
Fremont	12	C.3.b.v.(1)(c)	Regulated Projects Reporting	Eliminate reporting on the watershed because it is burdensome and does not improve water quality.	We disagree. Watershed data is very basic information that is even taught in schools more and more. Watershed information provides valuable data on which waterbodies Regulated Projects are discharging into and is essential when offsite and Regional projects are constructed in place of onsite treatment systems.	None
ACCWP Att 1 ACCWP Att 3 Berkeley Att 1 Berkeley Att 2 Newark Att Oakland Att 1 Oakland Att 2	16 3 16 4 15 18 4	C.3.b.v.(1)(d)	Regulated Projects Reporting	Remove requirement for reporting area of land disturbed. These data have no relevance to Regulated Projects for post-construction stormwater management. Collecting these data is unnecessary and cumbersome.	Site and land disturbed area is very basic information that is readily available from the development application. This information allows us to cross-check with construction sites subject to the general construction stormwater permit.	None
Kolb, Larry	11	C.3.b.v.(1)(k)	Regulated	This must also include operation and	Reporting specific	None

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James, Roger		Page 21	Projects <i>Reporting</i>	maintenance procedures and costs, funding mechanisms, monitoring program protocols to determine when replacement/renovation is required.	information on each Regulated Project's operation and maintenance procedures, costs, and funding mechanisms is too burdensome. As more stormwater treatment systems are installed and operation and maintenance inspections performed, more data will become available on treatment system performance. The recommendation for protocols to determine when replacement/renovation of these systems is required is a good one but more applicable for the next permit term.	
ACCWP Att 1 ACCWP Att 3 Berkeley Att 1 Berkeley Att 2 Fremont Newark Att Oakland Att 1 Oakland Att 2 Pacifica	17 4-5 17 5, 6 12 16, 17 19 5, 6 14	C.3.b.v.(2)	Green Street Pilot Projects <i>Reporting</i>	<ul style="list-style-type: none"> • Eliminate the Green Streets reporting requirement because this is a cumbersome, overly burdensome, and non-essential reporting task that will reduce the scope and scale of these types of projects. • Report on status only (i.e., design, construction, completion) until project is complete. • Report on O&M provisions only if entity other than Permittee is 	This Provision was added in response to numerous comments from the Permittees objecting to treatment requirements for road reconstruction projects because of the level of difficulty and lack of funding. The intent of this Provision is to replace the road reconstruction treatment requirements with less	None

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				<p>responsible.</p> <ul style="list-style-type: none"> • Eliminate cost reporting. • Green Streets projects will be reported in the Table of New Development projects, as required in C.3.b.v.(1). 	<p>onerous requirements and provide an opportunity for Permittees to learn from the pilot projects. As such, the listed data is required to provide basic information to Permittees on the feasibility of, barriers to, cost effective methods for, and other relevant information on implementing green street projects.</p>	
Stopwaste.org	13	C.3.b.v.(2)	Green Street Pilot Projects Reporting	<p>Ad the highlighted sentence, "...For each completed project, Permittees shall report the capital costs, operation and maintenance costs, and legal and procedural arrangements in place to address operation and maintenance and its associated costs and the sustainable landscape measures incorporated into the project including, if relevant, the score from the Bay-Friendly Landscape Scorecard."</p>	We concur.	Language added.
Kolb, Larry James, Roger	12	C.3.b.v.(2)	Regulated Projects Reporting	<p>The information required must also include design criteria, as built drawings, replacement costs during a 50-year life cycle, monitoring program and results.</p>	<p>Reporting specific information on each Regulated Project's design criteria, as-built drawings, and replacement costs during a 50-year life cycle is too burdensome. Reporting on operation and maintenance program and</p>	None

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					inspection results are required by Provision C.3.h.iv.	
NOAA	5	C.3.c.	LID	We strongly support the inclusion of Low Impact Development (LID) techniques as compliance options in the proposed permit for reducing the discharge of pollutants in stormwater runoff to the maximum extent practicable.	Comment noted.	None
Friends of Five Creeks	4	C.3.c.	LID	In the 7 years since the current permits were adopted, stunningly few projects have been actually built incorporating the current LID rules. (I made a pretty thorough search in the East Bay in the course of developing a website, www.bluegreenbldg.org that showcases such projects.) Please do not credit mythical projections of widespread effect of these weak, exception-ridden rules. The reality is that the current permit has led to a handful of what amount to pilot projects. Importantly, though, these show that urban-runoff pollution can be curbed without great hardship, financial or otherwise.	We concur that the LID requirements should be more stringent and specific so that more Regulated Projects incorporate LID, particularly for treatment.	The stormwater treatment requirements of Provision C.3.c. have been rewritten to incorporate more specific requirements.
NRDC & SF Baykeeper	6 18-20 26 42-43	C.3.c.	LID	<ul style="list-style-type: none"> LID is the single most practicable means of protecting and restoring beneficial uses in the Bay Area. LID has been established as a superior and practicable strategy and, 	We concur and have revised this Provision to include a requirement for 100% of the Provision C.3.d. stormwater runoff to be treated with LID	In response to comments, extensive revisions have been made to Provision C.3.c.

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				<p>therefore, must be required.</p> <ul style="list-style-type: none"> • The CA Ocean Protection Council has strongly endorsed LID. • USEPA has also called upon Water Boards across California to prioritize the implementation of LID. • This Provision fails to require the implementation of LID techniques common in other jurisdictions through specific numeric metrics and fails to set post-construction requirements representative of the Clean Water Act's MEP standard. • This Provision does not describe actual BMPs and accompanying performance standards; it only identifies six design measures of which Regulated Projects must implement at least one. • These site design measures need not be hydraulically sized to treat any particular amount of stormwater, and there is no guidance/requirement for which measure to select and no requirement that more than one, non-hydraulically sized measure be implemented. This does not satisfy EPA's counsel that, among other components, BMPs must be attached to measurable goals that include "a quantifiable target to measure progress toward achieving the activity or BMP." 	<p>treatment measures.</p>	

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Contech	3	C.3.c.	LID Treatment Requirements	This Provision would prohibit the use of a treatment train, including a vault based filtration system followed by an underground infiltration system, where a landscape based BMP, such as bioretention, could be used. From the perspective of meeting the requirement to reduce the discharge of pollutants of concern to the MEP, the systems are equivalent if the water quality design storm is infiltrated. Perhaps the underground system will reduce irrigation demands, simplify operation and maintenance requirements and allow for denser development of the site. This Provision takes away the decision making power from a stormwater management system engineer.	Comment noted. We have revised this Provision to include a requirement for 100% of the Provision C.3.d. stormwater runoff to be treated with LID treatment measures. LID treatment measures are defined as harvesting and re-use, infiltration, evapotranspiration, or biotreatment. The revised requirements would allow a scenario as described in the comment as long as the Provision C.3.d. stormwater runoff is treated and/or infiltrated by the bioretention unit.	In response to comments, extensive revisions have been made to Provision C.3.c.
Contech	1	C.3.c.	LID Site Design Approach	This permit intends to force stormwater management system designers to follow a LID design approach similar to the three part approach appearing in previous California NPDES permits, which requires sequenced application of source control, site design and finally treatment control features. The LID movement is partly a response to the widespread failure to adequately consider site design elements that can reduce the amount of runoff generated on site, prior to implementation of	Comment noted.	None

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				treatment or flow controls. This permit generally does a good job of redirecting focus toward site design elements.		
USEPA	2-4	C.3.c.	LID Treatment Measures	<ul style="list-style-type: none"> • This Provision does not establish a clear, measurable performance standard to require landscape-based treatment, on-site retention, and/or storage for re-use. • This Provision needs to include a numeric value for quantity of runoff which would be directed to LID treatment measures. EPA's primary objective for incorporating LID into renewed MS4 permits, especially for those that represent the third or fourth generation of permits regulating these discharges, is that the permit must include clear, measurable, enforceable provisions for implementation of LID. In our review of MS4 programs across our Region, we have found that it is common for permits to rely on the development of plans to achieve certain permit objectives, rather than including prescriptive requirements in 	We concur and have revised this Provision to include a requirement for 100% of the Provision C.3.d. stormwater runoff to be treated with LID treatment measures.	Extensive revisions have been made to Provision C.3.c.

¹EPA et al., Green Infrastructure Statement of Intent, April 19, 2007, available at http://www.msdcg.org/downloads/wetweather/greenreport/Files/Green_Report_Exhibit_A.pdf

²Managing Wet Weather with Green Infrastructure, Action Strategy, EPA, January 2008, available at <http://cfpub.epa.gov/npdes/greeninfrastructure/information.cfm#greenpolicy>

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				<p>the permits. While the Permittees often make significant and sincere efforts in their development of these plans, the plans often result in a reliance on qualitative provisions rather than specific measurable criteria. As a result, we have found that there often is uncertainty among both the MS4 Permittees and the permitting agencies as to specific permit expectations. The incorporation of LID techniques into MS4 permits provides an opportunity to establish clear, measurable performance standards for the implementation of LID.</p> <ul style="list-style-type: none"> • LID (also called “green infrastructure”) is a preferable approach to treating and reducing stormwater flow to MS4s.¹ • LID is an approach to storm water management that is cost-effective, sustainable, and environmentally-sound. • The effectiveness of landscape-based treatment for stormwater is generally superior to the “conventional” treatment addressed in Provision C.3.d of the MRP because landscape-based treatment can remove a broader range of pollutants in a more robust and redundant fashion, and can achieve 		

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				<p>multiple environmental and economic benefits in addition to reducing downstream water quality impacts, such as enhanced water supplies, cleaner air, reduced urban temperatures, increased energy efficiency and other community benefits such as aesthetics, recreation, and wildlife areas.²</p> <ul style="list-style-type: none"> The benefits of LID include: stormwater pollutant reductions, maintenance requirements do not generally require specialized equipment or personnel, and maintenance is often consistent with the requirements of other landscaping (e.g., mowing, mulching, trash clearing, etc.); reduced and delayed stormwater runoff volumes; enhanced groundwater recharge; reduced sewer overflow events; increased carbon sequestration; urban heat island mitigation and reduced energy demands; improved air quality; increased habitat and recreational space; improved human health; and increased land values. 		
Contech	4-6	C.3.c.	LID Treatment Requirements	<ul style="list-style-type: none"> Some vault based systems (e.g., media filters), perform on par with landscape-based, vegetated BMPs and provide distinct advantages because they remove and retain 	LID treatment measures, which include landscape-based treatment, are a preferable approach to treating and reducing	None

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				<p>pollutants in typically underground locations.</p> <ul style="list-style-type: none"> • This Provision does not allow selection of treatment controls based on spill protection, aesthetic or health and safety issues, maintenance feasibility, or anything else besides whether or not the treatment system is vault-based or vegetated. • Engineered treatment and hydromodification controls should be selected based on site constraints, their proven performance capabilities, and the pollutants and hydrologic conditions of concern on site. • If there is insufficient information available to make these comparative performance assessments, the monitoring section of the permit should be revised to include a program to establish the performance implications of various design criteria for common BMPs. 	<p>stormwater runoff because it is cost-effective, sustainable, and environmentally-sound. LID treatment measures are effective because they can remove a broader range of pollutants in a more robust and redundant fashion, and can achieve multiple environmental and economic benefits in addition to reducing downstream water quality impacts, such as enhanced water supplies, cleaner air, reduced urban temperatures, increased energy efficiency and other community benefits. As such, these measures satisfy the MEP criteria of the Clean Water Act while vault-based treatment systems do not.</p>	
Filterra	1-3	C.3.c.	LID Treatment Requirements	<p>Based on the prescriptive wording it is evident that the WB prefers landscape-based stormwater BMPs. We have concerns that the revised TO is solely a design-based plan and lacks performance-based standards that establish water quality pollutant limits,</p>	<p>Provision C.3.c. has been revised to include specifications for biofiltration treatment systems, and a requirement for future development of biofiltration soil specifications. These</p>	None

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				discharge effluent standards or treatment goals. Depending on site soils and geography, available landscape space, targeted pollutants and other variables, Filterra may be the best choice to achieve pollutant removal and hydromodification goals for many retrofit, redevelopment, infill and new construction applications.	specifications are not performance-based standards that establish water quality pollutant limits, discharge effluent standards or treatment goals.	
ACCWP Att 1 Berkeley Att 1 CCCWP Att Contra Costa Brd Of Sups Att A Newark Att Oakland Att 1	18 18 11 9 18 20	C.3.c.i.(1)	LID Source Control Requirements	<ul style="list-style-type: none"> • Since not all of the listed source control measures are appropriate for all projects, state that they are required "as appropriate." • Provide a statement that the requirements to plumb discharges to the sanitary sewer are dependent upon the local sanitary sewer agencies approval, not just its authority. 	<ul style="list-style-type: none"> • It is implicit that certain source control measures are only applicable to certain types of Regulated Projects. • Reference to a local sewer agency's authority and standards implies that its approval is required. 	None
Contech	7	C.3.c.i.(1)(b)-(e)	LID Source Control Requirements	<p>The source control requirements are qualitative and possibly unenforceable. These criteria should be rewritten to be quantitative and measurable. For example:</p> <p>(c) Trash storage areas must be covered and enclosed with fencing such that rainwater cannot contact stored trash, and trash can not be transported by wind or water from the containment area.</p> <p>(e) Irrigation systems use no more than 80% of the average water demand for</p>	This Provision strives to define source control requirements such that maximum flexibility is preserved to allow for unique and innovative project designs. We view these types of qualitative standards as fully enforceable.	None

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				similar type conventional landscape systems. Landscape systems may not cause or contribute to dry weather runoff be created.		
Stopwaste.org	14	C.3.c.i.(1)(d)	LID Source Control Requirements <i>Landscaping</i>	Add to the sentence, "Landscaping that minimizes irrigation and runoff, promotes surface infiltration, and minimizes the use of pesticides and fertilizers and incorporates other appropriate sustainable landscaping practices and programs such as Bay-Friendly Landscaping (For example, meet or exceed the minimum requirements on the Bay-Friendly Landscape Scorecard www.BayFriendly.org) ;	We concur.	Reference to sustainable landscaping practices and programs such as Bay-Friendly Landscaping added.
Contra Costa Brd Of Sups Att A	10	C.3.c.i.(2)	LID Treatment Requirements	No guidance is provided to determine how much runoff is effectively managed by the treatment methods noted in C.3.c.i.(2)(a through d), and there is therefore a lack of clarity as to how much remaining stormwater runoff must be treated per C.3.d. It is recommended that these requirements be changed to recommendations. As a less-preferred alternative, this section could be augmented with a defensible rubric for determining how "remaining storm water runoff" is to be calculated.	This section has been revised to set a specific numeric value for the quantity of runoff that must be treated with LID measures and the language in question has been deleted.	None
CCCWP Att	12	C.3.c.i.(2) C.3.c.i.(2)(a)	LID Site Design	Change the initial sentence as shown below because implementation of each	• The listed site design requirements are minimum	None

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			Requirements	of these design elements is contingent on the characteristics of the site and the project. <i>“Require each Regulated Project to implement the following design elements, as appropriate to the project: (a) Conserve natural areas, to the extent feasible, including existing trees, other vegetation, and soils;”</i>	LID techniques that every Regulated Project should include. Including the qualifier, “as appropriate” only serves to weaken the requirement. • We concur with the deletion of the qualifier “to the extent feasible.”.	
NRDC & SF Baykeeper	27 29-31 33 – 35 39 41	C.3.c.i.(2)	LID Treatment Requirements	<ul style="list-style-type: none"> • The vague “hierarchy” of treatment measures in this Provision does not set forth any consistent, achievable standard and is insufficient to meet the MEP standard; it must be paired with a measurable requirement for the implementation of LID. • The State Board commissioned a report which found that “[t]he important concept across all of [the] approaches [described in the report] is that the regulations established a performance requirement to limit the volume of stormwater discharges.”³ • A study completed for the Ocean Protection Council, recommended the following standard: “Regulated 	We concur and have revised this Provision to include a requirement for 100% of the Provision C.3.d. stormwater runoff to be treated with LID treatment measures.	Extensive revisions have been made to Provision C.3.c.

³ State Water Resources Control Board (December 2007) *A Review of Low Impact Development Policies: Removing Institutional Barriers to Adoption*, at 23 (emphasis added) (hereinafter “SWRCB LID Report”).

⁴ Ocean Protection Council of California (January 2008) *State and Local Policies Encouraging or Requiring Low Impact Development in California*, at 27.

⁵ Letter from E. Bromley, U.S. Environmental Protection Agency, Region 9, to San Francisco Regional Water Quality Control Board, at 2.

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				<p>development projects shall reduce the percentage of effective impervious area to less than five percent of total project area by draining stormwater into landscaped, pervious areas.”⁴</p> <ul style="list-style-type: none"> • EPA has highlighted similar but more specific concerns, remarking that the MRP “needs to include a numeric value for the quantity of runoff which would be directed to pervious areas” and “suggest[ing] a requirement such as proposed in the August 2007 draft Ventura County MS4 permit [5% EIA].”⁵ • The MRP, however, contains nothing other than qualitative provisions and nearly everything is left to the discretion of the Permittees, which violates federal law. • The widespread implementation of other far more stringent requirements creates a presumption that such requirements would be practicable in the Bay Area. • The Response to Comments purports to explain why the Water Board does not need to impose a numeric performance standard, but the reasoning derives from anecdotal statements without supporting materials. • This Provision would allow the 		

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				<p>installation of conventional treatment systems without any particular justification or notification to the Executive Officer.</p> <ul style="list-style-type: none"> • Staff point to ¶ C.3.c.i (2)'s revised hierarchy of stormwater treatment options, with an attendant requirement that the Regional Board's executive officer be notified and/or approve a site design when certain thresholds are exceeded, as a significant improvement in the Tentative Order. • The MRP fails to set a specific numeric performance standard for the implementation of LID, so the LID site design measures listed in Provision C.3.c.i.(2) are not required to be hydraulically sized to treat any meaningful quantity of stormwater. • The LID provisions remain a collection of largely hortatory provisions with no specific measurable outcome. Narrative and subjective terms (i.e., "Conserve natural areas, to the extent feasible," "Minimize impervious surface," etc.) are still prominent. Such vague provisions would not enable the Water Board or the Permittees to measure the outcomes of, or to enforce, the MRP's requirements since their implementation could vary 		

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				enormously.		
USEPA	4	C.3.c.i.(2)(a)-(h)	LID Site Design and Treatment Requirements	<ul style="list-style-type: none"> In order to incorporate clear, enforceable LID requirements into the Bay Area permit, sections C.3.c.i.2.(a) through (f) should be revised to clarify that regulated projects must utilize LID design elements to ensure onsite management of stormwater. Provisions describing these design elements should be revised to remove qualifiers such as "to the extent feasible" and "as practicable."⁶ The Provision should be clear that the use of the conventional means in C.3.c.i.2(g) and (h) would not be counted in determining whether projects meet the permit's LID requirements. Sections C.3.c.i.(4)- (6), which allow regulated projects to avoid use of LID design elements in favor of vault-based treatment systems, should be deleted. 	<ul style="list-style-type: none"> We concur and have revised this Provision to include a requirement for 100% of the Provision C.3.d. stormwater runoff to be treated with LID treatment measures. We have also removed the qualifiers "to the extent feasible" and "as practicable." 	Extensive revisions have been made to Provision C.3.c.
Contech	8	C.3.c.i.(2)(d)	LID Site Design Requirements	These site design and stormwater treatment requirements require that runoff be directed to "vegetated" areas. As a water conservation measure, and to avoid soil erosion caused by	The intention is to have stormwater runoff directed into vegetated areas so that some treatment is provided. We assume that whichever	None

⁶In addition, these qualifiers appear to allow self-regulation by the Permittees rather than require oversight by the Regional Board on the issues of feasibility and practicability. See Environmental Defense Center, Inc. v. EPA, 344 F.3d 832 (9th Cir. 2003), and Waterkeeper Alliance, Inc. v. EPA, 399 F.3d 486 (2nd Cir. 2005)

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				directing high velocity flows toward vegetated areas, the word “vegetated” should be changed to “permeable” in this section.	measure(s) that is chosen will be suitable for the specific site conditions and designed properly.	
Contech Oakland Att 1	9 21	C.3.c.i.(2)(d)	LID Site Design Requirements	Footnote 3 is missing from this section. Presumably it includes some definition or runoff reduction performance standard for permeable surfaces.	Footnote 3 appears on page 22 when “permeable surfaces” is first used. The superscript “3” used in this section is simply a cross-reference back to Footnote 3.	None
James, Roger Kolb, Larry	13	C.3.c.i.(2)(d)	LID Site Design Requirements	Mandating these specific design elements is a violation of Section 13360 of the California Water Code and must be avoided because of the dangers created by seismic hazards. The recent article in the March 24 edition of the Contra Costa Times must be of concern to the Regional Board and taken into consideration when mandating design elements that can result in property damage. The proposal for widespread application of site design measures involving infiltration lacks creditability considering the California Geological Survey’s mapping of the Bay Area identified significant areas vulnerable to liquefaction and landslides during large seismic events. It is unrealistic to expect Permittees to require these design elements in all developments	These site design measures are consistent with techniques already being implemented throughout the Bay Area and California. We have included enough options in the Provision so that projects with unsuitable site conditions for infiltration are not required to infiltrate.	None

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				especially in these danger zones. This section must require Permittees to consider creation of seismic hazards when implementing this provision.		
Sunnyvale	26	C.3.c.i.(2)(d)	LID Site Design Requirements	The required measures may not be feasible for many projects, particularly redevelopment projects in an urban setting where it is impossible to divert runoff to rain barrels or vegetated areas. The alternatives of using permeable surfaces may also be infeasible because of concerns about groundwater quality.	These site design measures are consistent with techniques already being implemented throughout the Bay Area and California, including highly urbanized areas.	None
ACCWP Att 1 BASMAA Att Berkeley Att 1 Fairfield FSSD HBANC Newark Att Oakland Att 1 San Jose Att A Suisun City Sunnyvale	19 12 19 13 11 4 19 22 10 13 27	C.3.c.i.(2)(e)	LID Treatment Requirements	In the following sentence "After completion of the site design measures specified in Provision C.3.c.i(2)(d), treat as much of the remaining stormwater runoff..." <u>Add the words "as practicable" between "stormwater runoff" and "this includes any runoff leaving..."</u> . This is consistent with paragraphs (f) and (g).	This Provision has been extensively revised and the referenced sentence has been deleted so the comment is no longer applicable.	None
Fairfield FSSD Suisun City	14 12 14	C.3.c.i.(2)(e)- (f)	LID Treatment Requirements	The language in these sections implies that there is a train of treatment devices required to be used in series on every project. Please delete and utilize section C.3.c.i.(2) (d) as a guidance for the Boards preferred site measures.	This Provision has been extensively revised and the sections have been deleted so the comment is no longer applicable.	None
Contech	11-14	C.3.c.i.(2)(e)-	LID Treatment	These subsections impose a treatment	LID treatment measures,	None

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		(h)	Requirements	<p>BMP selection hierarchy that is form based instead of performance based. It is inconsistent with the directive in the Clean Water Act to reduce the discharge of pollutants to the maximum extent practicable. Some vault based systems typically perform better for key pollutants of concern than some natural feature systems.</p> <p>Certainly we should expect biofiltration BMPs to significantly reduce pollutant loads leaving sites when designed similar to the Contra Costa County IMP criteria which requires slow percolation through 18 inches or more of soil and vegetation. However this section does not require such BMPs and it does not include any BMP performance criteria, either for runoff reduction or pollutant removal. Instead, it simply prioritizes the use of "natural feature" BMPs.</p> <p>Such pitfalls are avoidable with adequate coordination and training. Unfortunately this section requires that "natural feature" BMPs be used regardless of the level of coordination and training that is likely. Where control over construction, operation and maintenance of "natural feature" BMPs can not be reasonably assured, using a vault based system may be a better bet for improving water quality.</p>	<p>which include landscape-based treatment, are a preferable approach to treating and reducing stormwater runoff because it is cost-effective, sustainable, and environmentally-sound. LID treatment measures are effective because they can remove a broader range of pollutants in a more robust and redundant fashion, and can achieve multiple environmental and economic benefits in addition to reducing downstream water quality impacts, such as enhanced water supplies, cleaner air, reduced urban temperatures, increased energy efficiency and other community benefits. As such, these measures satisfy the MEP criteria of the Clean Water Act while vault-based and conventional treatment systems do not.</p> <p>These sections have been revised to reflect this view</p>	

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					by setting a specific numeric value of 100% for the quantity of runoff that must be treated with LID measures. As a result, the treatment selection hierarchy referenced in the comment has been deleted	
SMCWPPP	15	C.3.c.i.(2)(f)	LID Treatment Requirements	It is unclear what is meant by “natural feature systems (e.g., bioretention, vegetated swales, tree wells, planter boxes, and green roofs)” and “conventional systems (e.g. extended detention basins)” and why a preference is given for the former over the latter. Simply state a preference for landscape-based stormwater treatment systems over below ground treatment systems because of ease of maintenance and because they allow water to be reused as part of landscaping and infiltration. Add to the glossary definitions for terms, such as “natural treatment systems,” “conventional systems,” and “primary treatment.”	See response immediately above.	Extensive revisions have been made to Provision C.3.c.
CCCWP Att	13	C.3.c.i.(2)(g)	LID Treatment Requirements	This Provision should make explicit that sand filters are suitable conventional treatment systems, while also providing suitable design criteria—criteria which are lacking in Provision C.3.d.	This Provision has been extensively revised and the referenced section has been deleted so the comment is no longer applicable.	None

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Contech	10	C.3.c.i.(2)(i)	LID Treatment Requirements	Please change the word “vegetated” to “permeable” to allow the use of xeriscaped or non-vegetated permeable areas to intercept flow from impervious areas.	This section has been revised to set a specific numeric value for the quantity of runoff that must be treated with LID measures and the language in question has been deleted.	None
Contech	15	C.3.c.i.(2)(i)	LID Treatment Requirements	This is a site design approach and should be moved to subsection (d) or prior to that section. If it is intended to apply to landscape areas, it should be combined with subsection (e). The term “vegetated” should be replaced with “permeable”.	This Provision has been extensively revised and the referenced section has been deleted so the comment is no longer applicable.	None
James, Roger Kolb, Larry	14	C.3.c.i.(2)(i)	LID Treatment Requirements	Consideration of slope stability in the design must be a consideration in whether infiltration is feasible and if the design element should even be considered. If the Regional Board insists on mandating site designs that promote site instability and create seismic hazards then it must also be prepared to be held accountable for ensuing damages.	See response immediately above.	None
ACCWP ACCWP Att 1 Alameda BASMAA Att Berkeley Berkeley Att 1 CCCWP Att	17 20-22 4, 11 13 14 20-22 14	C.3.c.i.(4)-(6)	LID Treatment Requirements	<ul style="list-style-type: none"> For projects with limited space to install adequate landscape-based treatment controls vault-based BMPs may be the only feasible systems. There is no sound evidence that structural controls are not effective and no guarantee that vegetated 	<ul style="list-style-type: none"> LID treatment measures, which include landscape-based treatment systems are a preferable approach to treating and reducing stormwater runoff because it is cost- 	Extensive revisions have been made to Provision C.3.c.

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Contra Costa Brd Of Sups Att A	12			<p>treatment measures will work indefinitely without ongoing monitoring and maintenance.</p> <ul style="list-style-type: none"> • This Provision ignores the reality that many jurisdictions are engaged in redevelopment of higher-density urban areas and not greenfields. • Storm runoff from existing developments built more than twenty years ago predates nonpoint pollution control requirements and is likely not treated. Therefore, we believe that the Board would concur that redevelopment of these properties should be encouraged so that some treatment could be provided. Furthermore, we believe that redevelopment of developed sites meets many of the same goals of LID so it is unclear why the requirements appear to do the opposite. • Limiting the use of vault-based systems conflicts with community development strategies that are promoted in Assembly Bill 375. • The additional notification and approval requirement encroaches upon a city's land use authority, puts the cities at risk for violating the Permit Streamlining Act, and will significantly delay the project approval process, which would 	<p>effective, sustainable, and environmentally-sound. LID treatment measures are effective because they can remove a broader range of pollutants in a more robust and redundant fashion, and can achieve multiple environmental and economic benefits in addition to reducing downstream water quality impacts, such as enhanced water supplies, cleaner air, reduced urban temperatures, increased energy efficiency and other community benefits. As such, these measures satisfy the MEP criteria of the Clean Water Act while vault-based treatment systems do not.</p> <ul style="list-style-type: none"> • LID treatment measures are subject to the same operation and maintenance requirements as other stormwater treatment systems. • We acknowledge that 	
Daly City	5-6					
Dublin	8					
Fairfield	15					
FSSD	13					
Fremont	7, 13					
Livermore	9					
Mountain View	7					
Newark	12					
Newark Att	20-22					
Oakland Att 1	23-25					
Pacifica	15					
Palo Alto	5					
Pleasanton	11					
San Jose	3					
San Jose Att A	11					
San Leandro	5-6					
Santa Clara Co	11-12					
SCVURPPP	9					
Suisun City	15					
SMCWPPP	16					
Sunnyvale	29					
West Valley Clean Water Program	6					

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				<p>increase costs.</p> <ul style="list-style-type: none"> • Clarify timeline for response from Water Board Executive Officer upon notification from jurisdiction and whether this is for notification purposes only or for approval. • The Water Board Executive Officer does not have the legal authority to review or take part in local agency issuance of discretionary project approvals. The Executive Officer may determine at the end of annual reporting that a jurisdiction has not met MRP requirements for the year, but cannot supersede local authority over individual projects; • Water Board is notified of all projects per the annual report requirement so this Provision is redundant. • Revise to state the goal of limiting the use of vault-based systems, specify when they can be used, and request notification of the use of these systems in the annual report only. 	<p>Executive Officer notification and approval of non-LID treatment methods as outlined in the revised TO is not workable and the notification and approval requirements have been removed.</p> <ul style="list-style-type: none"> • Extensive revisions have been made to this Provision to set a specific numeric requirement for 100% of the Provision C.3.d. stormwater runoff to be treated with LID treatment measures onsite. 	
NRDC & SF Baykeeper	36, 37	C.3.c.i.(4)-(6)	LID Treatment Requirements	<ul style="list-style-type: none"> • These Provisions are lacking and unlawful. • They do not give the Executive Officer approval authority until a developer proposes to use vault-based treatment systems for 50% or more of the design storm volume. 	We concur and have revised this Provision to include a requirement for 100% of the Provision C.3.d. stormwater runoff to be treated with LID treatment measures.	Extensive revisions have been made to Provision C.3.c.

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				<p>Most vault-based systems perform poorly so that even allowing 30% or 40% volume treatment through such features virtually guarantees high pollutant loads and concentrations,</p> <ul style="list-style-type: none"> • No criteria are given for judging whether conventional practices and/or vault-based treatment systems are truly necessary. • No guidance is given for the determination of what constitutes “site constraints” that would qualify a site for the lax stormwater BMP implementation that triggers executive officer notification/approval, nor do the provisions specify under what conditions “Equivalent Offsite Treatment” could be considered “infeasible.” Indeed, it is not obvious why implementing equivalent offsite treatment would ever be infeasible. 		
Contech	16-19	C.3.c.i.(4)-(6)	LID Treatment Requirements	<ul style="list-style-type: none"> • The reporting and approval requirements for projects using “vault-based treatment systems are based on the false assumption that “vault-based” systems are inherently inferior to “natural feature” systems. If the Board is interested in reviewing approval trends for any type of system, BMP installation, inspection and maintenance records submitted annually is sufficient. 	<ul style="list-style-type: none"> • LID treatment measures, which include landscape-based treatment systems are a preferable approach to treating and reducing stormwater runoff because it is cost-effective, sustainable, and environmentally-sound. LID treatment measures are effective 	None

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				<ul style="list-style-type: none"> • The requirements in this section create an additional review requirement for some projects that becomes the burden of the Executive Officer of the Board. • “Vault-based treatment systems” are undefined but could reasonably be assumed to include modular filter systems, sand filters, gravity separators, flow-through planter boxes or any other system which is contained in an impermeable vault. It is possible for a BMP to have both “natural features” and to be “vault-based”. • It is also unclear what “primary treatment” means. For example, the first step in a treatment train, usually consisting of gross solids removal, is conventionally referred to as primary treatment. In this case, I suspect the term “sole” treatment more accurately captures the intent of the section. • These points of semantic clarification are made necessary by the lack of performance standards in this section. A preferable alternative would be to replace this entire section with the requirement that the treatment system with the best documented performance for the pollutants and hydrologic conditions 	<p>because they can remove a broader range of pollutants in a more robust and redundant fashion, and can achieve multiple environmental and economic benefits in addition to reducing downstream water quality impacts, such as enhanced water supplies, cleaner air, reduced urban temperatures, increased energy efficiency and other community benefits. As such, these measures satisfy the MEP criteria of the Clean Water Act while vault-based treatment systems do not.</p> <ul style="list-style-type: none"> • We acknowledge that Executive Officer notification and approval of non-LID treatment methods as outlined in the revised TO is not workable and the notification and approval requirements have been removed. • Extensive revisions have been made to this 	

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				of concern, that is also feasible, be used.	Provision to set a specific numeric requirement for 100% of the Provision C.3.d. stormwater runoff to be treated with LID treatment measures onsite. <ul style="list-style-type: none"> • The referenced section has been deleted so the comments regarding clarification of terms and definitions are no longer applicable. 	
James, Roger Kolb, Larry	15	C.3.c.i.(4)-(6)	LID Treatment Requirements	The glossary must include definitions of vault-based treatment systems and primary treatment. The rationale for this section must be presented because vault based systems are capable of capturing and removing pollutants for safe disposal in compliance with regulations while the mandated design elements only accumulate and concentrate pollutants that are removed when they reach hazardous levels or are flushed into water bodies during high flow events. The Regional Board staff must recognize that the vault based systems limit the exposure of the public, pets and wildlife to these hazardous levels while design systems expose the	See response immediately above.	None

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				public, pets and wildlife to pollutants that can reach hazardous levels.		
ACCWP Att 1 Berkeley Att 1 Contra Costa Brd Of Sups Att A Newark Att Oakland Att 1	21 21 11 21 24	C.3.c.i.(5)(b)	LID Treatment Requirements	This provision indicates that there is a preference for Equivalent Offsite Treatment over vault-based treatment. It is not clear whether this provision is intended to allow projects that do not otherwise qualify for Alternative Compliance (per C.3.e) to employ Equivalent Offsite Treatment as a preferred option to vault-based treatment. Clarification is requested.	The referenced section has been deleted so the comment regarding clarification of intent is no longer applicable.	None
ACCWP Att 3 Berkeley Att 2 Newark Att Oakland Att 2	6 7 23 7	C.3.c.iii.	LID Reporting	Reporting of implementation efforts is redundant with reporting under C.3.b.v.(1), which demonstrates LID elements of each approved project.	We disagree. Reporting on implementation efforts is in the programmatic context for each Permittee whereas reporting under Provision C.3.b.v.(1) is on measures at each Regulated Project. For any potential overlap in reporting, this Provision also allows a reference to the reporting table for Provision C.3.b.v.(1).	None
James, Roger Kolb, Larry	16	C.3.d.i.(2)(c)	Numeric Sizing Criteria Flow Hydraulic Design Basis	It is not clear that the Regional Board staff has carefully analyzed our comments and supporting information in Comment 30. submitted on the December 2007 draft MRP since there has not been a change in this provision or response to the February 29, 2008	Provision C.3.c.i.(2)(b)(vi) of the Final TO requires bioretention treatment systems to be designed to have a surface area no smaller than what is required to accommodate a 5 inches/hour stormwater	None

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				<p>comment. We expect an analysis of this issue however the issue can be addressed by adding the following footnote to this section of the provision: "Flow rates shall be based on rainfall intensities that correspond to the BMP catchment's time of concentration. The surface area of BMPs designed to retain storm water to mitigate this increase in flow shall be considered as impervious surface".</p>	<p>runoff surface loading rate. This corresponds to an average storm intensity of 0.2 inches per hour. As the commenter states there is a safety factor of 2 added to the 85% percentile hourly annual rainfall data. This is a substantial storm intensity, and represents an optimization of the sizing of flow through stormwater treatment devices, but a fairly conservative optimization. This represents an inch of rain in a five hour period, which is a fairly infrequent rain event in this region. No requirement for size of LID or stormwater treatment catchment exists, but even if treatment is installed for small catchments, this does not necessarily require design of treatment capacity for a smaller time of concentration sized to that catchment. The stormwater treatment measures are often designed with a small storage volume above the treatment area, which also</p>	

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					serves to ameliorate the effects of short time frame variability in the intensity of rainfall. All in all, overflow of treatment systems designed to this rainfall flow standard will be acceptably infrequent in this region.	
Caltrans	7	C.3.d.iv.	Infiltration Devices	<p>This Provision has been modified to state: “In these areas, <u>a greater [than 10 ft vertical distance from the base of the infiltration device to the seasonal high groundwater mark may be appropriate and</u> treatment system approvals should be subject to a higher level of analysis...”</p> <p>These restrictions on infiltration and specification of additional analysis exceed the State Water Board’s <u>Proposed Regulations and Proposed Statewide Waiver for Onsite Wastewater Treatment Systems (OWTS) (Septic Systems)</u>: “Three feet minimum depth to groundwater or impermeable layer for conventional septic system. Two feet minimum depth for systems with supplemental treatment.” Septic system discharges likely present a greater risk to groundwater than stormwater.</p>	<p>These changes were made in response to comments from local water management agencies with concerns about pollutants from infiltration devices. Also, by design, infiltration devices “inject” water into the ground while septic systems disperse water through a larger surface area; therefore, a greater distance to the highest groundwater mark is appropriate for infiltration devices.</p>	None
James, Roger Kolb, Larry	17	C.3.d.iv.(1)	Infiltration Devices	This section should require that proponents of these devices file reports	The MRP does not implement the requirements	None

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				<p>required by the Safe Drinking Water Act UIC program with USEPA-IX. This section must also include unlined cisterns as an infiltration device.</p>	<p>of USEPA's Safe Drinking Water Act; therefore, we cannot include a requirement for reporting of infiltration devices with USEPA. Infiltration devices as defined in this Provision (using a depth to width ratio) would include unlined cisterns that meet the specifications so there is no need to list them here.</p>	
<p>CCCWP Att Contech Contra Costa Brd Of Sups Att A</p>	<p>15 20 13</p>	<p>C.3.d.iv.(2)(a))</p>	<p>Infiltration Devices</p>	<ul style="list-style-type: none"> • Remove the requirement to include a "suitable soil" layer because infiltration systems are only allowed in areas with appropriate natural soil types to accommodate infiltration. Importing additional soil adds expense with no discernible benefit, and the soil layer only serves to add a potential failure point. If this requirement is retained, the maximum infiltration rate of 5 inches/hour should be changed to a minimum infiltration rate of 5 inches/hour. • It is not feasible to engineer a soil mix to reliably limit infiltration to a maximum of 5 inches/hour while also guaranteeing infiltration will occur at a rate sufficient for stormwater treatment and flow-control. In fact, a 	<ul style="list-style-type: none"> • The two feet of suitable soil and maximum infiltration rate required by this Provision serve to ensure adequate removal of pollutants since these are specifications for infiltration devices used as stormwater treatment devices. • Given that infiltration devices are structures that are designed to infiltrate stormwater into the subsurface and bypass the natural groundwater protection afforded by surface soil, the 5 inches/hour maximum infiltration rate 	<p align="center">None</p>

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				<p>soil meeting the specification as written in the Revised Tentative Order would almost certainly cause the infiltration device to fail.</p> <ul style="list-style-type: none"> • Percolation through 2 feet or more of suitable soil at an infiltration rate of at least 5 inches/hr prior even when an infiltration facility meets groundwater and well head setback requirements is an unnecessarily high level of treatment for runoff that will be traveling through at least 10' of native soil prior to reaching the water table. 	<p>ensures that the required treatment is achieved and that groundwater basins are sufficiently protected. It represents a long-term steady state infiltration rate for these devices.</p>	
Contech	21	C.3.d.iv.(2)(d)	Infiltration Devices	<p>.A spill protection requirement is needed to protect groundwater from contamination for these areas that pose a high threat to water quality. Vault based spill containment should be required upstream of "infiltration devices" or landscape based infiltration BMPs on these sites. Hydrodynamic separators are routinely used upstream of infiltration devices since they provide spill protection and can be sized to reliably remove particles as fine as 50 microns. Where the ratio of annual infiltration volume to infiltrating surface area is very small, for example a dry well, treatment by filtration upstream of infiltration may be necessary.</p>	<p>These requirements do not preclude the use of hydrodynamic separators upstream of infiltration devices if the site conditions warrant their use. However, we do not agree that it is necessary to require spill protection for infiltration devices that are designed and sized properly.</p>	None
James, Roger	18	C.3.e.	Alternative	This Provision does not include two	<ul style="list-style-type: none"> • Provision C.3.h. requires 	None

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Kolb, Larry			Compliance	<p>critical elements required to ensure that infiltration BMPs are sustainable during a project's life:</p> <ul style="list-style-type: none"> • Verification that a BMP has been constructed as designed by requiring as built drawings and verification of infiltration rates through field testing. The performance of BMPs that rely on infiltration will begin to deteriorate from the date of initial installation as the soils clog from accumulation of sediments and schmutzdecke. • Rehabilitation/replacement requirement because the performance of all infiltration BMPs will eventually deteriorate requiring rehabilitation or replacement. 	<p>initial inspection of a treatment system within 45 days of construction and ongoing operation and maintenance inspections for the life of the system.</p> <ul style="list-style-type: none"> • Based on the results of these inspections, Permittees are required to take appropriate enforcement actions when the treatment systems are not operating or being maintained properly. These enforcement actions will require appropriate compliance actions, including rehabilitation and/or replacement of the malfunctioning BMP. • Provision C.3.c. has been revised to include design specifications for biotreatment systems and a requirement for Permittees to propose soil media specifications and soil testing methods to verify a long-term infiltration of 5-10 inches per hour. 	

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Contra Costa Co Flood Cntrl Att A	1	C.3.e.	Alternative Compliance	The MRP does not provide for alternative means to comply with the water quality and flow control requirements and hydromodification requirements. The Water Board should allow jurisdictions the flexibility to implement regional mitigation of C.3 impacts for projects that cannot acceptably meet onsite LID criteria. It is particularly problematic that some roadway projects and redevelopment projects in urban and dense suburban areas will not reasonably accommodate retrofit with LID facilities.	Alternative compliance with the stormwater treatment requirements and a specific allowance for Regulated Projects to contribute funds to Regional Projects is allowed for all redevelopment projects under Provision C.3.e. We concur that alternative compliance should be available to all projects, so this Provision has been revised to allow for this.	This Provision has been revised to allow alternative compliance for all Regulated Projects.
Daly City SMCWPPP	7 18	C.3.e.	Alternative Compliance <i>Exemption from Hydraulically Sized Treatment</i>	Alternative compliance with the hydraulically sized stormwater treatment under C.3.d has been eliminated from this heading of the permit. It also unclear whether the Water Board staff intended to delete Alternative Compliance from Provision C.3.d from this heading since this section describes an exemption from installing hydraulically-sized treatment systems.	The exemption from hydraulically sized treatment for such projects has been eliminated, so this comment is no longer applicable.	None
ACCWP Att 1 BASMAA Att Berkeley Att 1 CCCWP CCCWP Att Contra Costa Brd Of Supervisors	23, 24 14 23, 24 13 9,16, 18 1, 14	C.3.e.i.	Alternative Compliance <i>All Regulated Projects</i>	<ul style="list-style-type: none"> Expand the alternative compliance option to include all road projects, which are more likely to rely on use of the alternative compliance option, due to limited right of way for treatment controls and the piecemeal nature of road improvements. Such 	We understand the commenter's concerns and have revised this Provision to allow alternative compliance to all Regulated Projects. Additionally, appropriate grandfathering	Provision C.3.e. has been revised to allow alternative compliance or payment of in-lieu fees for all Regulated Projects. Appropriate grandfathering

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Fairfield Fremont HBANC Newark Att Oakland Oakland Att 1 Pittsburg San Pablo San Jose Att A Santa Clara Co SCVURPPP SMCWPPP Suisun City West Valley Clean Water Program	16 14 2 24 27 26 9 2 12 13 10 19 16 7			<p>projects are most often not afforded additional land to incorporate LID design features.</p> <ul style="list-style-type: none"> • Allow alternative compliance for new development and for road projects also because this option is intended to provide flexibility. • The elimination of the alternative compliance option and grandfathering for road projects has negative ramifications for road projects, particularly the Vasco Road Safety Improvement Project. Vasco Road is a heavily used rural road that has experienced numerous collisions. The project includes widening and installation of median barriers to improve safety but we have limited right of way and mitigating on site for the additional pavement will be difficult. The project design is currently 80% complete. Under this Provision alternative compliance would not be an option for this project, and the lack of grandfathering language would require the design of the project to be modified significantly, resulting in increased cost, delays, and loss of federal stimulus money. 	language has been added for road widening projects.	language has also been added for road widening projects.
Oakland Att 1	31	C.3.e.i.	Alternative Compliance	Provision C.3 requirements overlap with "green" building requirements that	See response immediately above.	See entry immediately above.

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			<i>"Green" Projects</i>	also require stormwater management and water quality features. To streamline the design and permitting process, projects certified "green" under either the LEED program or the Green Point Rated program should also qualify for alternative compliance.		
Oakland Att 1	28	C.3.e.i.	Alternative Compliance <i>Urban Uses</i>	Footnote 5 states that a density of 18 development units per acre is required for urban uses. This definition only applies to residential projects. Therefore, the footnote should include a threshold, such as a minimum floor-area ratio, for nonresidential projects.	Since this Provision has been changed to allow alternative compliance for all Regulated Projects, the comment and requested changes are no longer applicable.	Provision C.3.e. has been revised to allow alternative compliance or payment of in-lieu fees for all Regulated Projects.
NRDC & SF Baykeeper	7 18-19 23 30 44-50 53, 55	C.3.e.i.(1)	Alternative Compliance <i>Projects Exempted from Hydraulically Sized Treatment</i>	The State Water Board has established the SUSMP hydraulic sizing criteria (Provision C.3.d.) as a compliance floor for all Regulated Projects. A permit cannot meet the MEP standard if it does not impose these criteria to reduce stormwater pollution, yet the revised TO waives these criteria entirely for the broad category of projects described in Provision C.3.e.i.(3). These Regulated Projects, which include brownfields, low-income housing, senior-citizen housing, and transit-oriented development, are only required to implement one of seven site design measures, without any performance/sizing requirement or demonstration of technical infeasibility.	We concur and the exemption from hydraulically sized treatment for such projects has been eliminated. However, we acknowledge that when considered at the watershed scale, certain types of smart growth, high density, and transit-oriented development can either reduce existing impervious surfaces, or create less "accessory" impervious areas and auto-related pollutant impacts. For these types of projects, the Water Board intends to allow incentive LID	Extensive revisions have been made to Provision C.3.e.

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				While we agree with the environmental preferability of such projects in comparison to their greenfield counterparts, there is no reason to establish a blanket waiver of all meaningful stormwater mitigation requirements simply because a project constitutes "smart growth.	treatment reduction credits. That is, projects qualifying for credits may be allowed to provide LID treatment onsite for less than 100% of the Provision C.3.d. stormwater runoff. Permittees are required to propose to the Water Board by December 1, 2010, the types of projects that should be allowed the LID treatment reduction credit.	
NOAA	9	C.3.e.i.(1)	<i>Alternative Compliance Projects Exempted from Hydraulically Sized Treatment</i>	There is no water quality or biological reason to give the listed categories a special exemption from the requirement for providing maximum site design treatment controls or requiring equivalent offsite treatment. We object to this exemption, especially for projects that will occur in watersheds which still support ESA listed steelhead trout.	See response immediately above.	Extensive revisions have been made to Provision C.3.e.
USEPA	5	C.3.e.i.(1)	<i>Alternative Compliance Projects Exempted from Hydraulically Sized Treatment</i>	The MRP should include a clearly defined, enforceable process for requiring off-site mitigation in the project vicinity for projects where use of LID design elements is infeasible.	See responses immediately above.	Extensive revisions have been made to Provision C.3.e.
Contech	22-23	C.3.e.i.(1)	Alternative Compliance	It is important to incentivize infill and redevelopment projects; however, this	See responses immediately above.	

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			<i>Projects Exempted from Hydraulically Sized Treatment</i>	section requires only a limited set of treatment BMPs to be considered prior to waving the hydraulic treatment control sizing requirements of section C.3.d. While these sizing requirements may be difficult to achieve with the landscape based BMPs listed in footnote 6, there are numerous underground options that can be employed without impacting geologic stability and without limiting the density of development on site.		
Contra Costa Brd Of Sups Att A	15	C.3.e.i.(1) Footnote 6	<i>Alternative Compliance Projects Exempted from Hydraulically Sized Treatment</i>	It may be extremely difficult to implement one of the listed site design treatment controls, and other treatment methods, such as green roofs, would provide equivalent treatment. The list of site design treatment controls should include an additional bullet for "other site design measures that provide stormwater runoff treatment equivalent to or greater than at least one of the listed site design treatment controls."	The site design treatment controls listed in Footnote 6 of the Revised TO refers to requirements for certain projects that were allowed to be exempted from the hydraulically sized treatment requirements of Provision C.3.d. This exemption has been removed in the Final TO; therefore, the list of site design treatment controls is no longer applicable	None
HBANC	5	C.3.e.i.(1)	<i>Alternative Compliance Projects Exempted from Hydraulically Sized Treatment</i>	C.3.e.i.(1) last line of (1), "as possible" should be replaced with "as practicable"	The exemption for certain projects from the hydraulic sizing requirement of Provision C.3.d. has been removed in the Final TO; therefore, the requested change is no longer	None

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					applicable.	
ACCWP Att 1 Berkeley Att 1 Newark Att Oakland Att 1	25 25 25 29	C.3.e.i.(1)(a)	Alternative Compliance Projects Exempted from Hydraulically Sized Treatment Brownfields	Eliminate the subsidy requirement for Brownfields projects to be exempt from hydraulic sizing requirement. Because this limitation seems unrelated to the goal of facilitating Brownfield remediation and most Brownfield redevelopment does not receive subsidies or similar benefits.	The exemption from hydraulically sized treatment for such projects has been eliminated. However, we acknowledge that when considered at the watershed scale, certain types of smart growth, high density, and transit-oriented development can either reduce existing impervious surfaces, or create less "accessory" impervious areas and auto-related pollutant impacts. For these types of projects, the Water Board intends to allow incentive LID treatment reduction credits. That is, projects qualifying for credits may be allowed to provide LID treatment onsite for less than 100% of the Provision C.3.d. stormwater runoff. Permittees are required to propose to the Water Board by December 1, 2010, the types of projects that should be allowed the LID treatment reduction credit.	Extensive revisions have been made to Provision C.3.e.
CCCWP Att Contra Costa Brd of Sups Att A	17 16	C.3.e.i.(1)(b)	Alternative Compliance Projects Exempted from Hydraulically Sized Treatment Low Income Housing	The low income housing definition should coincide with the California Redevelopment Law requirement of 15% which is also consistent with Contra Costa County's 15% Inclusionary Housing Ordinance requirement.		
Metropolitan	1	C.3.e.i.(1)(d)	Alternative	Based on analytical work in the field,	The exemption from	Extensive revisions

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Transportation Commission			<p align="center"><i>Compliance Projects Exempted from Hydraulically Sized Treatment Transit Oriented Development (TOD)</i></p>	<p>including MTC's studies of the issue, the factors of TODs that appear to contribute most to lower levels of per capita and per household automobile ownership and vehicle miles of travel are:</p> <ul style="list-style-type: none"> • Close proximity to high quality transit • High density development • Low levels of parking • Mixed land use (residential / retail / commercial). <p>These factors also contribute to higher mode shares for transit, walking and bicycling.</p> <p>We support your refinement of the definition and requirements for TODs to clarify your policies and procedures. The standards as proposed appear to define very high quality TODs for the purpose of modified water treatment requirements in a reasonable manner.</p>	<p>hydraulically sized treatment for such projects has been eliminated. However, we acknowledge that when considered at the watershed scale, certain types of smart growth, high density, and transit-oriented development can either reduce existing impervious surfaces, or create less "accessory" impervious areas and auto-related pollutant impacts. For these types of projects, the Water Board intends to allow incentive LID treatment reduction credits. That is, projects qualifying for credits may be allowed to provide LID treatment onsite for less than 100% of the Provision C.3.d. stormwater runoff. Permittees are required to propose to the Water Board by December 1, 2010, the types of projects that should be allowed the LID treatment reduction credit.</p> <p>We appreciate MTC's comments and will take them into consideration when we review the</p>	<p>have been made to Provision C.3.e.</p>

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					Permittees' proposal.	
NRDC & SF Baykeeper	51-52	C.3.e.i.(1)(d)	Alternative Compliance Projects Exempted from Hydraulically Sized Treatment Transit Oriented Development (TODs)	<p>The TOD requirement that a project be located within a half-mile of a "transit station" carves out large portions of the metropolitan Bay Area for waivers, given the plethora of rail and bus lines. There are, for instance, 19 BART stations within Alameda County alone. Accounting for the close proximity of some stations to each other, the BART system in Alameda County would create approximately 13.5 square miles of waiver-eligible land, which includes vast swaths of prime real estate in downtown Oakland and Berkeley.⁷</p> <p>The criteria for commercial projects requires the project's FAR to be at least 3 (i.e., it must be at least three stories tall without any tapering—not a difficult standard to meet in urban areas). While the parking restrictions are lower than typical suburban development, they are not stringent for heavily urbanized settings—Portland, Oregon's central business district, for instance, allows no more than 0.7 parking spaces per 1000 square feet of office</p>	<p>The exemption from hydraulically sized treatment for such projects has been eliminated. However, we acknowledge that when considered at the watershed scale, certain types of smart growth, high density, and transit-oriented development can either reduce existing impervious surfaces, or create less "accessory" impervious areas and auto-related pollutant impacts. For these types of projects, the Water Board intends to allow incentive LID treatment reduction credits. That is, projects qualifying for credits may be allowed to provide LID treatment onsite for less than 100% of the Provision C.3.d. stormwater runoff. Permittees are required to propose to the Water Board</p>	Extensive revisions have been made to Provision C.3.e.

⁷ The radius of waiver eligibility around a transit station is a half-mile, meaning that the total area eligible for a waiver is $\Pi(0.5)^2$ (approximately, 0.79 square miles). With 19 BART stations in Alameda County, this has the potential to create 15 square miles of waiver-eligible land, but the short distances between some BART stations, particularly in downtown Oakland, creates an overlapping area of approximately 1.5 square miles.

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				space and 1 parking space per 1000 square feet of retail. ⁸	by December 1, 2010, the types of projects that should be allowed the LID treatment reduction credit. We will take these comments into consideration when we review the Permittees' proposal.	
ACCWP Att 1 Alameda Berkeley Att 1 CCCWP Att Contra Costa Brd Of Sups Att A Daly City Fremont Newark Att Oakland Att 1 San Leandro	26, 27 12 26, 27 17 17-19 8 15 26, 27 30 7	C.3.e.i.(1)(d)	Alternative Compliance Projects Exempted from Hydraulically Sized Treatment Requirements Transit Oriented Development (TOD)	<ul style="list-style-type: none"> Setting minimum service levels for bus hubs and bus transit stations is problematic; schedules are subject to change and are not governed by the Permittees. The minimum Floor Area Ratio (FAR) of 3 would exclude many projects that can legitimately be categorized as TODs. Limiting parking does not necessarily reduce the amount of impervious surface and tying the incentive to an unreasonable low parking requirement for semi-urban regions effectively eliminates the incentive and obviates an otherwise good policy. Lower density requirement to 25 units per acre. This is more feasible for the less urbanized areas. For example, 	The exemption from hydraulically sized treatment for such projects has been eliminated. However, we acknowledge that when considered at the watershed scale, certain types of smart growth, high density, and transit-oriented development can either reduce existing impervious surfaces, or create less "accessory" impervious areas and auto-related pollutant impacts. For these types of projects, the Water Board intends to allow incentive LID treatment reduction credits. That is, projects qualifying for credits may be allowed	Extensive revisions have been made to Provision C.3.e.

⁸ U.S. Environmental Protection Agency (January 2006) *Parking Spaces/Community Places: Finding the Balance Through Smart Growth Solutions*, at 16.

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				<p>the TOD at the Eastern Dublin BART station has 25.1 units per acre.</p> <ul style="list-style-type: none"> • Raise the parking limitations to the following maximums: Restaurants = 5 spaces per 1000 ft² Offices = 2 spaces per 1000 ft² Retail = 2.5 spaces per 1000 ft² • Parking limits should be changed to 1.5 parking spaces per unit so TOD projects are marketable. • Remove the parking limits because it is inappropriate for the MRP to define residential parking standards for municipalities. • Residential portions of qualifying TODs are more likely than not to have underground parking, so these restrictions would not serve to reduce impervious surface. • Lower the minimum FAR (Floor Area Ratio) to 1 because 3 would exclude many projects that can legitimately be categorized as TODs. <p>Land uses allowed within individual spaces in a TOD are subject to change after the development is completed. Therefore, it would be more appropriate to establish overall parking restrictions addressing entire TOD projects (erring on the side of less stringent parking restrictions). This section should add language indicating that the parking ratios</p>	<p>to provide LID treatment onsite for less than 100% of the Provision C.3.d. stormwater runoff. Permittees are required to propose to the Water Board by December 1, 2010, the types of projects that should be allowed the LID treatment reduction credit.</p>	

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				<p>should be required for the designed occupancy.</p> <ul style="list-style-type: none"> The State’s planning policy on traffic congestion management, Government Code Section 65088(g) states, “the Legislature intends to do everything within its power to remove regulatory barriers around the development of infill housing, transit-oriented development, and mixed-use commercial development in order to reduce regional traffic congestion and provide more housing choices for all Californians.” Consistent with this policy, TODs should be entirely exempted from installing site design treatment controls for purposes of compliance with C.3. 		
NRDC & SF Baykeeper	44 53, 55	C.3.e.i.(2)	Alternative Compliance <i>Infill and Redevelopment Projects</i>	For all infill and redevelopment projects that are not eligible for a complete exemption from stormwater treatment requirements, this Provision still allows non-compliance with onsite requirements, so long as projects “minimize[e] the new and/or replaced impervious surface on-site” and then perform “Equivalent Offsite Treatment” or contribute “Equivalent Funds” to a “Regional Project.” While these requirements do impose the Provision C.3.d. hydraulic sizing criteria, they do	We concur and Provision C.3.e.i. has been revised to specify that offsite LID treatment measures must provide hydraulically-sized treatment (in accordance with Provision C.3.d.) of an equivalent quantity of both stormwater runoff and pollutant loading and achieve a net environmental benefit. Another option is that the Regulated Project	Extensive revisions have been made to Provision C.3.e.

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				<p>not ensure that offsite mitigation will result in the same benefits as onsite treatment because they allow projects implementing alternative compliance measures to select from three options for designing/sizing the offsite BMPs: (1) an equal area of impervious surface; (2) an equivalent quantity of pollutant loading; or (3) an equivalent quantity of runoff. These options are not necessarily equal to onsite treatment. If an equal area of impervious surface or equivalent quantity of runoff is treated, there is no guarantee that the same pollutant loading (both in amount and pollutant type) will be mitigated. If an equivalent quantity of pollutant loading is treated, there is no guarantee that an equivalent quantity of stormwater will be mitigated, which could lead to hydromodification impacts.⁹ Projects should be required either to provide offsite mitigation at higher ratios (e.g., 1:1.5, as is common in the environmental context)¹⁰ to account for any locational differences or to ensure that equivalent quantities of pollutant loading and stormwater runoff are mitigated.</p>	<p>must pay in-lieu fees to a Regional Project to provide hydraulically-sized treatment (in accordance with Provision C.3.d.) of an equivalent quantity of both stormwater runoff and pollutant loading and achieve a net environmental benefit.</p>	

⁹ The hydromodification criteria do not apply to all projects that would be eligible for alternative compliance, so the hydromodification section would not address this concern. See Tentative Order ¶ C.3.g.

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ACCWP Att 1 BASMAA Att Berkeley Att 1 Newark Att Oakland Att 1 San Jose Att A SCVURPPP Att A SMCWPPP Sunnyvale	28 15 28 28 32 13 12 20 30	C.3.e.i.(2)	Alternative Compliance <i>Completion Date for Offsite Projects</i>	The penalty for offsite projects that are delayed is unworkable. It is reasonable to have as a goal incentivizing the timely construction of the offsite project, but requiring additional treatment for tardiness is not reasonable because it would require a change to the project, resulting in further delays, and possibly exceeding space limitations on the designated site. The allowance of more time to complete an Equivalent Offsite Treatment project should be contingent upon Executive Officer approval, consistent with the requirement later in this same paragraph for Regional Projects.	If an offsite project is not completed at the time the Regulated Project is completed, then the Regulated Project will essentially be discharging untreated stormwater runoff with no mitigation. The penalty is appropriate and for offsite projects where installing a larger treatment system is not available, in-lieu fees may be paid to a Regional Project for the penalty amount of additional runoff that must be treated.	None
NRDC & SF Baykeeper	54	C.3.e.i.(2)(a) Footnote 9	Alternative Compliance <i>Equivalent Offsite Treatment</i>	The achievement of this goal would be more likely if the Tentative Order clarified that "landscape-based treatment measures" means LID retention-based BMPs, which completely eliminate runoff and thus attenuate pollution and runoff to the maximum extent practicable. As currently written, the Tentative Order's lack of a definition for "landscape-based treatment measures" could allow the construction of conventional treat-and-release BMPs, which are	We concur and this Provision has been revised to specify that all offsite treatment must be LID treatment.	Extensive revisions have been made to Provision C.3.e.

¹⁰ See, e.g., West Virginia Draft Permit, at 15; Anacostia Waterfront Corporation (June 1, 2007) Final Environmental Standards, at 16.

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				<p>significantly less effective than LID features at pollutant removal and stormwater quantity mitigation. The implementation of LID retention-based BMPs should always be feasible for offsite mitigation since projects utilizing the alternative compliance option can choose from a variety of different locations and thus avoid the site constraints that, in rare cases, make onsite retention technically infeasible.</p>		
NOAA	11	C.3.e.i.(2)(a)	<p>Alternative Compliance <i>Equivalent Offsite Treatment</i></p>	<p>We must also caution the Water Board that this requirement may still not protect designated beneficial uses, including ESA listed species, in all cases. Different sections of streams can serve different biological functions and the function of one stretch may be absolutely crucial to the beneficial use overall. For example, if a section of a stream supports spawning for ESA listed steelhead trout, it not only has a specific beneficial use (SPAWN) but also a biological function that must be protected at that specific location. If a project proposes to impact that spawning section of the stream, equivalent offsite treatment elsewhere in the watershed will not offset the biological impact or impact to the beneficial use. The proposed permit should clarify that site-specific</p>	<p>The Final TO language on net environmental benefit will address this issue. This may lead to alternative compliance in the same water body nearby.</p>	None

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				beneficial uses such as this must be accounted for in project planning; and they should require approval by the Executive Officer before an allowance for equivalent offsite treatment is granted.		
NOAA	10	C.3.e.i.(2)(a)	Alternative Compliance <i>Equivalent Offsite Treatment</i>	We strongly support the requirement for equivalent offsite treatment for infill and redevelopment projects that cannot meet the numeric sizing criteria for stormwater BMPs in most cases. This requirement could provide drastic benefits toward reducing stormwater pollution and help to bring some sectors expected to have difficulty meeting these permit requirements (e.g., schools or churches) into compliance as potential beneficiaries of this provision. The requirement could be further strengthened, and more stormwater associated pollutants removed, if the equivalent offsite treatment requirement included addressing existing impervious surfaces.	We agree that this Provision would be greatly strengthened by requiring stormwater treatment from existing impervious surfaces; however, it is not economically feasible for all businesses and homeowners to retrofit their properties with stormwater treatment. Also, Permittees do not have the manpower or resources to implement such requirements at this time.	None
Daly City	9	C.3.e.iii.(1)	Alternative Compliance <i>Implementation Level</i>	The permit requires rescinding existing alternative compliance programs. Include existing alternative compliance programs. Specify cut off date for projects that have been approved for alternative compliance that would require the Permittee to rescind the	This Provision has been revised to include appropriate grandfathering language.	See Provision C.3.e.iv.

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				approval and require conformance to existing permit.		
ACCWP Att 3 Berkeley Att 2 Newark Att Oakland Att 2	7 8 29 8	C.3.e.iv.	Alternative Compliance Reporting	Eliminate requirement to report on legal authority/ procedural changes because it provides no value.	Implementation of this Provision represents a major change to a Permittee's stormwater program; therefore, the legal and procedural changes must be reported to the Water Board.	None
NOAA	12	C.3.f.	Alternative Certification of Stormwater Treatment Systems.	This provision allows "staff of another Permittee subject to the requirements of this permit" to certify a regulated project's adherence to Provision C.3.d. Is there an auditing system in place to detect and eliminate unqualified certifiers and to prevent a quid-pro-quo certification trading system from developing among the Permittees? Allowing only California registered professionals in this role gives the Water Board the option of trying to remove the professional certification from a person found to certify projects incorrectly or fraudulently. What is the recourse for the "staff from another Permittee"?	This Provision was included to provide flexibility to small cities that lack qualified staff to review Regulated Projects. Ultimately, the Permittee using third party reviewers, including staff from other Permittees, is responsible for determining a Regulated Project's compliance with Provision C.3. requirements. If this review is not being done appropriately, the Water Board may take enforcement action against the Permittee using third party reviewers.	None
Daly City	10	C.3.f.	Alternative Certification of Stormwater Treatment	Clarify verification requirements for third party reviewers (copies of certificates, etc.) and the level of reporting and recordkeeping required	Permittees must ensure that the third party reviewer is a State of California licensed and registered civil	None

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			Systems	by Permittee.	<p>engineer, architect or landscape architect, or staff of another Permittee subject to the requirements of the MRP. Permittees must make a reasonable effort to ensure that the third-party reviewer has no conflict of interest with regard to the Regulated Project being reviewed. That is, any consultant, contractor or their employees hired to design and/or construct a stormwater treatment system for a Regulated Project can not also be the certifying third party. Permittees must also require the reviewer to certify the Regulated Project's adherence to Provision C.3.d. and keep a record of that certification and any accompanying reports. Reporting for this Provision should be done by noting the Regulated Projects that were reviewed by a third party in the Provision C.3.b. reporting table.</p>	

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ACCWP Att 3 Berkley Att 2 Newark Att Oakland Att 2	8 9 30 9	C.3.f.iii.	Alternative Certification of Stormwater Treatment Systems	Reporting on who conducted a plan review is overly prescriptive; city engineer's approval of plans should be evidence of adequate plan review .	The reporting requirement only applies to Regulated Projects that were reviewed by a third party for adherence to Provision C.3.d. Reporting for this Provision is simply done by noting the Regulated Projects that were reviewed by a third party in the Provision C.3.b. reporting table. If a city engineer did the review, this Provision is not applicable.	None
Mountain View Palo Alto Santa Clara Co SCVURPPP West Valley Clean Water Program	8 6 14 11 5	C.3.g.	Hydromodification Management	An extension of the implementation date is especially important for the HM requirements, since there have been significant changes in the SCVURPPP HM applicability criteria (project size thresholds and map).	Additional implementation time is not necessary because the Permittees have been implementing HM requirements since 2005. The MRP does not change the requirements, just the HM applicability areas so no additional implementation time is needed.	None
NRDC & SF Baykeeper	25	C.3.g	HM Standard	The Tentative Order's failure to set an appropriate hydromodification standard.	The Final TO contains the comprehensive and appropriate hydromodification standard that was previously adopted into all of the Phase I municipal stormwater	

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					<p>permits in this region. The Final TO maintains the consistent regulatory approach from previous permits that pre-project rather than pre-development is the appropriate baseline condition under the Final TO. We do not find support in the regulations for requiring a redeveloper to essentially retrofit a development site to a condition that may have been altered significantly decades previously. The enhanced LID requirements in the Final TO, when implemented, will further reduce hydromodification impacts from all regulated projects.</p>	
NRDC & SF Baykeeper	56	C.3.g	Revise HM Baseline	<p>The Hydromodification section, as explained in our last comment letter, establishes a site's "pre-project" (existing) condition as the baseline for analysis. (Tentative Order ¶ C.3.g.ii.) This would effectively grandfather antiquated stormwater management practices and is entirely inappropriate and insufficient. For a more detailed discussion of the problems with this</p>	<p>The Final TO maintains the consistent regulatory approach from previous permits that pre-project rather than pre-development is the appropriate baseline condition under the Final TO. We do not find support in the regulations for requiring a redeveloper to</p>	

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				standard, which has not changed from the previous draft, see our February 29, 2009, letter (at 22-23).	essentially retrofit a development site to a condition that may have been altered significantly decades previously. The enhanced LID requirements in the Final TO, when implemented, will further reduce hydromodification impacts from all regulated projects.	
NOAA	13	C.3.g	MEP HM Requirements	This section on hydromodification management should reiterate that <u>all projects</u> need to treat and/or infiltrate stormwater to the maximum extent practicable under provision C.3.c. whether or not the project meets the hydromodification management definition given in this provision. Some of these options (e.g., cisterns, rain barrels, permeable pavements) would obviously aid in minimizing hydromodification impacts. We object to limiting the hydromodification management definition to only those projects that increase impervious surface area over the pre-project condition because this will miss addressing this form of pollution in already impacted watersheds. This could prevent the attainment of unimpaired beneficial uses in those	It is un-necessary to reiterate the requirements of C.3 for treatment of regulated projects. We agree that the enhanced LID requirements in the Final TO, when implemented, will further reduce hydromodification impacts from all regulated projects. The Final TO maintains the consistent regulatory approach from previous permits that pre-project rather than pre-development is the appropriate baseline condition under the Final TO. We do not find support in the regulations for requiring a redeveloper to essentially retrofit a	

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				watersheds and impair the recovery of ESA listed steelhead trout in watersheds impacted in this manner.	development site to a condition that may have been altered significantly decades previously.	
NOAA	22	C.3.g	Analysis of Exemption Threshold	The potential consequence of the “exceeds 2% of the project construction cost, excluding land costs” threshold is not presented in the draft documents. Will this exemption threshold result in numerous projects being excused from the hydromodification management requirements? Has the Water Board and/or the Permittees conducted an analysis of this issue that can be summarized in the permit?	This language has been removed from the Final TO.	
NOAA	23	C.3.g	Exemption for No Increase in Impervious Area	In the Contra Costa Permittees Hydromodification Management Requirements, provision 1.a. seems to exempt redevelopment projects that do not increase impervious surface area, even in areas already experiencing hydromodification impacts, from addressing their contributions to the hydromodification. Please see our comment on Provision C.3.g. This broad exclusion is not acceptable, particularly in watersheds that support ESA listed steelhead trout. In Contra Costa County, this includes Wildcat, San Pablo, Pinole, Rodeo, Alhambra, Pacheco and Mt. Diablo creeks.	The Final TO maintains the consistent regulatory approach from previous permits that pre-project rather than pre-development is the appropriate baseline condition under the Final TO. We do not find support in the regulations for requiring a redeveloper to essentially retrofit a development site to a condition that may have been altered significantly decades previously. The enhanced LID requirements in the Final	

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					TO, when implemented, will further reduce hydromodification impacts from all regulated projects.	
Sunnyvale	31	C.3.g	Revision of HMP Applicability Map	Sunnyvale requests that the revised HMP applicability map provided by SCVURPPP be adopted with this permit. The current map, as provided with the TO, contains some minor mapping errors (especially in the exempted drainage area for the Sunnyvale West Channel) which incorrectly indicate that the HMP requirements are applicable.	The Final TO includes the recently updated revised HMP applicability map for SCVURPPP, which resolves these issues.	
Sunnyvale	64	C.3.g Attachment F	Revision of HMP Applicability Map	Sunnyvale requests that the coloring error in the SCVURPPP HMP Applicability Map be corrected for the area between the intersection Highway 101 and Highway 237 that is within Sunnyvale. This area should not be "green" as indicated on the TO's HMP map version. HMP requirements do not apply to this area, since stormwater drainage goes to the Sunnyvale West Channel.	The Final TO includes the recently updated revised HMP applicability map for SCVURPPP, which resolves this issue.	
Stanford University	1	C.3.g	Revision of Exempt Areas	The current Tentative Order of the Municipal Regional Permit, dated February 11, 2009, identifies areas on the HMP Applicability Map (Attachment F for Santa Clara Permittees) as "under review". Per attachment F, item 4c of the Tentative Order, Permittees may	The Final TO includes the recently updated revised HMP applicability map for SCVURPPP, which resolves this issue.	

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				<p>present new data indicating that the actual level of imperviousness of a particular area is greater than or equal to 65% impervious. As indicated in Attachment F, Item 4, this evaluation could be made based on either a catchment or subwatershed level. Stanford met with Santa Clara Program staff member Lucy Buchan to review data and develop a method for making this evaluation. Upon initial review of available data, Subwatershed 21 (SUBID = SFQ_E1) was identified as likely greater than 65%, warranting detailed analysis.</p> <p>Using GIS shapefiles for subwatersheds and catchments provided to Stanford by Lucy Buchan (originally provided by Santa Clara Valley Water District), 2006 aerial photography data and campus basemap data with field verification, Stanford mapping staff used AutoCAD to delineate areas of buildings parking lots, roads and sidewalks and made area measurements to determine the cumulative impervious area within this subwatershed.</p> <p>The attached map reflects the results of this analysis. The total subwatershed area is 16,331,397 square feet, 10,797,489 square feet of which are</p>		

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				<p>impervious resulting in an overall impervious percentage of 66.1% within this subwatershed. Based on this analysis, we request that subwatershed 21 be categorized as red, i.e., projects in this subwatershed are exempt from the HM Standard and associated requirement</p>		
Palo Alto	1	C.3.g	Revision of Exempt Areas	<p>City staff have reviewed the areas that are designated as "Areas Under Review" within the City of Palo Alto on the latest Hydromodification Management Plan (HMP) Applicability Map to determine whether or not there is justification for exempting these areas from the HMP requirements based on more detailed impervious area data maintained by the City.</p> <p>The City has extensive impervious area records used as the basis for charging the monthly Storm Drainage Fee that is billed to each developed parcel in the City. The Storm Drainage Fee amount for each land parcel is based on the amount of impervious surface on the parcel. The Storm Drainage Fee billing unit is known as an "Equivalent Residential Unit (ERU)", which is equal to 2500 square feet of impervious surface. Based on this analysis demonstrating that the catchment</p>	<p>The Final TO includes the recently updated revised HMP applicability map for SCVURPPP, which resolves these issues.</p>	

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				<p>immediately to the north of downtown Palo Alto is approximately 76% impervious, I hereby request that this catchment be changed to “red” (exempt) on the HMP Applicability Map to be adopted by the Water Board with the Municipal Regional Permit.</p>		
<p>SCVURPPP Attachment C</p>	<p align="center">1</p>	<p align="center">C.3.g</p>	<p align="center">Revision of Exempt Areas</p>	<p>This attachment contains our request to make changes to the SCVURPPP HMP Applicability Map in order to reflect a more accurate percentage of impervious surface in two areas based on new, local impervious surface data. These areas (one catchment and one subwatershed) are part of the “Areas Under Review” noted as pink on the February 2009 applicability map contained in the Revised TO. The information provided is consistent with the process allowed for review of these areas described in Attachment F.4.c. of the Revised TO.</p> <p>The two areas that were reviewed for accuracy of impervious surface data included:</p> <p>1.) A catchment just to the north of downtown Palo Alto, known as Catchment 386 on the SCVURPPP map. The City of Palo Alto used impervious area records from its Storm Drainage Fee billing process to</p>	<p>The Final TO includes the recently updated revised HMP applicability map for SCVURPPP, which resolves these issues.</p>	

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				<p>estimate the imperviousness of land parcels in this catchment, and added the estimated impervious area of streets and sidewalks in the catchment to determine that the catchment is approximately 76% impervious.</p> <p>2.) A subwatershed on Stanford campus, including portions of Santa Clara County and the City of Palo Alto, that encompasses Stanford Shopping Center, Stanford Hospital, Stanford University classroom and research buildings, and associated parking lots. Stanford Utilities Division staff used 2006 aerial photography data and campus basemap data (with field verification) on AutoCAD to delineate areas of buildings, parking lots, roads and sidewalks, and determined that this subwatershed is 66.1% impervious.</p>		
SCVURPPP Attachment A	72	C.3.g	Extend Time to Implement Changes and Revisions	The HMP applicability requirements (map and project size thresholds) for the Santa Clara Program Co-permittees are sufficiently different from the current permit such that the co-permittees will need time to revise ordinances, policies and procedures, update handbooks and guidance materials, and educate staff and project applicants about the changes to the applicability map and project size	The project size thresholds have not changed and the map changes are minor, therefore no additional implementation time is included in the Final TO	

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				thresholds before they can successfully be implemented. We therefore request that an implementation date of July 1, 2010 be added to the Santa Clara Program HMP applicability requirements in Attachment F.		
Contra Costa Board of Sups Attachment A	20	C.3.g	Update Reference to CCCWP Guidebook and Swales	The reference to pre-sized and pre-designed Integrated Management Practices should specify that the designs are “per guidance in the most current iteration of the Contra Costa Clean Water Program’s <i>Stormwater C.3 Guidebook</i> .” Note that swales and bioretention areas, which function identically, have been grouped together as “Bioretention Facilities” in the most recent edition; the reference to “Swale” should be updated accordingly.	This change has been made in the Final TO.	
CCCWP Attachment	6	C.3.g.ii.(1)	Change Reference to IMPs and Input General Statement Regarding the CCCWP Guidebook	Edit as shown here: Contra Costa Permittees, when using the two pre-sized and pre-designed Integrated Management Practices (IMPs), the “Flow-Through Planter” and the “Swale” design procedure, criteria, and sizing factors specified in the Contra Costa Clean Water Program’s <i>Stormwater C.3 Guidebook</i> per Attachment C of his Order, are not required to meet the low-flow criterion of 10% of the 2-year peak flow. These two IMPs are designed to control to the specified low flows. After the Contra Costa Permittees conduct	The Final TO contains revisions that resolve this set of issues using slightly different language. Reference to the two outdated IMPs has been removed. Also, to further clarify the intent of the provision, reference to the Program's Stormwater C.3 Guidebook was added to the Contra Costa- specific Hydromodification Management requirements	

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				<p>the required monitoring, the design of these IMPs procedure, criteria, and sizing factors will be reviewed. <i>Reason for Change:</i> Although the existing language in the Revised Tentative Order seems intended to allow Contra Costa's LID approach to continue, the language is so specific as to be already outdated and so restrictive as to prevent ongoing development of improvements to Contra Costa's LID designs.</p>	<p>in Attachment C (Requirement #3). This requirement states the 4th Edition of the Stormwater C.3 Guidebook shall be implemented during the permit term, and significant changes to the IMPs, sizing factors, or manner of implementation shall be approved by the Water Board. In this context, Water Board staff interprets "significant" to mean changes from designing IMPs to achieve the maximum low-flow threshold of 0.2Q2. The requirement is not intended to restrict development of new IMP designs that achieve the hydrologic criteria expressed in the permit.</p>	
CCCWP Attachment	7	C.3.g.ii.(4)	Calculating Post-Project Runoff	<p>Delete the second sentence of this paragraph, which states: "<i>Retention and detention units shall be considered impervious surfaces for the purposes of calculating post-project runoff. Pre- and post-project runoff shall be calculated and compared for the entire site, without separating or excluding areas that may be considered self-retaining.</i>"</p>	<p>The second sentence as written is not inconsistent with the CCCWP HMP design and implementation approach. CCCWP has submitted calculations demonstrating adequate HMP performance of self-retaining areas as they</p>	

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				<p><i>Reason for Change:</i> The basis of LID is to disperse runoff to landscaped areas where possible and to use small-scale bioretention or other LID facilities distributed throughout the site. The clause eliminating credit for self-retaining areas would disallow the practice of directing downspouts to concave-graded landscaped areas as a means of control. The clause requiring comparison for the entire site would disallow use of distributed LID facilities and would disallow Contra Costa's simplified approach with sizing factors.</p>	<p>specify. Therefore, when pre- and post-project runoff are calculated using the method of analyzing separate portions of the site which, taken together, equal the entire site, this requirement is met. Therefore, the HMP design approach contained within the CCCWP C.3 Guidebook, 4th edition, is acceptable and shall be implemented for this permit term. Only significant changes in the HMP design approach, such as to the low flow criteria of 0.2Q2, need be reviewed by the Board.</p>	
BASMAA Attachment	16	C3.g.ii.(4)	Delete 2 nd Sentence Regarding HM Standard	<p>Calculating Post-Project Runoff – delete 2nd sentence as counterproductive and a disincentive to good site planning and design, and is also inconsistent with the site design provisions in C.3.c. and BASMAA's <i>Start at the Source</i> Guidance Manual</p>	<p>This clause does not exclude the use of self-retaining areas. This only requires that they be included in the HM analysis. They can be included in the analysis as performing as self-retaining areas, that form of HM performance in the analysis is not excluded. Also, pre- and post-project runoff can be compared for the entire site by describing</p>	

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					the controls for the entire site as a combination of the HM performance of each piece of the site.	
SMCWPPP HMP Comment	1	C.3.g	Update HM Control Area	SMCWPPP is submitting a revised HM Control Area Map in order to align the boundary between HM areas and exempt areas with Assessors parcels boundaries, & avoid bisecting parcels. These changes were necessitated by new digital map data for San Mateo County, including Assessors parcel data & Oakland Museum of CA's data set of watershed boundaries. Water Board staff reviewed the proposed HM Control Area Map revisions and advised SMCWPPP to submit the revised map for incorporation in the MRP, to replace the existing HM Control Area Map. As we discussed, these changes to the Map are relatively minor, resulting in a net increase of 20 acres to the total area subject to HM requirements throughout the county.	Agreed	Replace the San Mateo County HM Control Areas Map with the submitted map.
ACCCWP Attachment 1 Berkeley Attachment 1 Newark Attachment Oakland Attachment 1	29 29 31 33	C.3.g	Omitted Exclusions from Existing Order	The HM provision does not include exclusions to the HM requirements that are included in Provision C.3.f.v(a)-(d) of the current municipal stormwater permit as amended by Order No. R2-2007-0025. These exclusions have been omitted in the Tentative Order, despite assurances that the existing	The Final TO HM requirements apply to all Regulated Projects that create and/or replace one acre or more of impervious surface and are not specifically excluded within the requirements of	

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				<p>HM requirement would not be changed, in view of the fact that HM requirement went into effect very recently. These exclusions are important for retaining cost incentives that favor infill redevelopment in contrast to new development with higher impacts on water quality. <u>Include in the MRP the existing exclusions to HM requirements.</u> The current municipal stormwater permit (as amended) includes the following exclusions from the HM requirement: projects consisting of one single-family home that are not part of the larger common plan of development; sidewalks, bicycle lanes, trails, bridge accessories, guardrails, and landscape features associated with streets, roads, highways, or freeways under the Permittees' jurisdictions; transit village type of development; a project within a "Redevelopment Project Area" that redevelops an existing brownfield site, or the portion of a project that creates housing units affordable to persons of low or moderate income.</p>	<p>Attachments B–F. A project that does not increase impervious surface area over the pre-project condition is not an HM Project. The maps of applicability for Alameda County exclude many areas from HM applicability.</p>	
<p>ACCCWP Attachment 1 Berkeley Attachment 1 Newark</p>	<p>9 10 32</p>	<p>C.3.g.(iv)</p>	<p>Reporting Redundant</p>	<p>Reporting is redundant with reporting under C.3.b(v)(1). Eliminate requirement.</p>	<p>The reporting here is not redundant, as it pertains to treatment measures specifically to meet the HM requirements.</p>	

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Attachment Oakland Attachment 1	10					
Fremont	15	C.3.g. Attachment B	Omitted Exclusions from Existing Order	HM exclusions in the current HM Standard (Order No. R2-2007-0025) are omitted from the MRP. Maintain the exclusions allowed in Order No. R2-2007-0025. The HM standard has only been recently adopted and municipalities are working on questions that have been discovered during implementation. Water Board staff indicated that the HM Standard would remain the same in the MRP for at least one permit cycle to allow time for smooth implementation.	The Final TO HM requirements apply to all Regulated Projects that create and/or replace one acre or more of impervious surface and are not specifically excluded within the requirements of Attachments B–F. A project that does not increase impervious surface area over the pre-project condition is not an HM Project. The maps of applicability for Alameda County exclude many areas from HM applicability.	
Kolb, Larry & James, Roger	19	C.3.g.v.(3)	Reduce Percent Impervious Area	The % impervious area must be reduced to 25% based on studies by the Center for Watershed Protection. See Policy Comment 3 in our 2-29-08 comments on the Dec. 2007 draft MRP.	It is not practicable to require development projects to be limited to 25% impervious surface. The effect of the LID requirements may be to cause development projects to hydraulically perform as if there was smaller impervious surface.	
Kolb, Larry & James, Roger	20	C.3.g.v.(3)	Shorten Time Schedule	The time schedule must be shortened by one year since the City of Vallejo	The schedule for Vallejo is appropriate given their state	

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				has known for many years and certainly since the December 2007 tentative MRP stated that the HMP would be required	of C.3 implementation.	
Contech	24	C.3.g.ii.(1)	CCC Monitoring Contains No Water Quality Parameters	The Contra Costa monitoring program referenced here includes no water quality parameters. At least a small number of IMPs should be monitored for effectiveness on an individual basis. The monitoring provisions in section C.8 are not sufficient to establish the effectiveness of individual controls.	The HM IMP verification study will monitor hydraulic parameters, primarily flow and rainfall.	
Contech	25					None
Contra Costa Brd Of Sups Att A	21	C.3.h.ii.(5) C.3.h.iv.	Operation and Maintenance Inspections Database and Inspections	No implementation dates are provided for the requirements to implement a database and to conduct reporting relative to ongoing operation and maintenance of permanent stormwater management facilities. Implementation dates of July 1, 2011 and July 1, 2012 are recommended for C.3.h.ii. and C.3.h.iv., respectively.	A one-year implementation timeframe has been added for development of the database and reporting requirements are applicable to the 2010 Annual Report.	Provision C.3.h. has been revised to allow one year for development of the database and reporting is required beginning with the 2010 Annual Report.
ACCWP Att 1 Berkeley Att 1 Contra Costa Brd Of Sups Att A Oakland Att 1 San Leandro	32 32 21 36 8	C.3.h.ii.(5)	Operation and Maintenance of Stormwater Treatment Systems Database	<ul style="list-style-type: none"> • The requirement for a new database or tracking system cannot be accomplished immediately. • No implementation dates are provided for reporting relative to ongoing operation and maintenance of permanent stormwater management facilities. I • Implementation dates of July 1, 2011 	A one-year implementation timeframe has been added for development of the database and reporting requirements are applicable to the 2010 Annual Report.	Provision C.3.h. has been revised to allow one year for development of the database and reporting is required beginning with the 2010 Annual Report.

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				and July 1, 2012 are recommended for C.3.h.ii. and C.3.h.iv., respectively.		
Fremont	16	C.3.h.ii.(5)(d)	Operation and Maintenance Inspections <i>Database and Inspections</i>	The addition of including the “Size of the treatment systems(s)” into the database for all Regulated Projects is too prescriptive and unnecessarily burdensome.	We disagree. The size is basic information that is readily available from the approved design for the treatment systems.	None
ACCWP Att 1 Berkeley Att 1 Newark Att Oakland Att 1 Pacifica SCVURPPP Att A SMCWPPP Sunnyvale	30 30 33 34 16 13 21 32	C.3.h.ii.(6)	Operation and Maintenance Inspections <i>Frequency</i>	<ul style="list-style-type: none"> • Replace the requirement to inspect 20% of all Regulated Projects and 20% of the vault-based systems annually with requirement to submit an inspection plan for inspecting all Regulated Projects at least once during the 5 year permit cycle. • As the number of installed BMPs increases over time, this will be an increasingly untenable burden to municipalities. • Continue to allow more flexibility because the process for prioritizing BMPs for inspection involves a consideration of many factors. • Inspection of all newly installed storm water treatment systems within 45 days of installation is unreasonable. Various treatment systems may be installed at different times during the construction of the facility and they are inspected by Building Inspectors as part of their inspection of the facility. This permit requirement will result in multiple 	<ul style="list-style-type: none"> • Requiring Permittees to inspect at least 20% of the installed stormwater treatment systems and HM controls ensures that they are inspected at least once every 5 years and all the inspections will not take place in the 5th year. This requirement serves to prevent failed or improperly maintained systems from going undetected until the 5th year. We have the additional requirement to inspect at least 20% of all installed vault-based systems because they require more frequent maintenance and problems arise when the appropriate maintenance schedules are not followed. Also, problems with vault 	None

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				<p>“post-construction” visits to one site to inspect the different phases of the installation for treatment systems on a site that is still under construction.</p> <ul style="list-style-type: none"> • We request that the 45-day time period requirement be rephrased to require post-construction inspections within 45 days after a project has been completed or occupancy approved. • Allow inspections within 6 months of installation instead of 45 days. Inspections during the installation period should minimize the need to do further inspections following the installation. 	<p>systems may not be as readily identified by the projects’ regular maintenance crews. Neither of these inspection frequency requirements interferes with the Permittees’ current ability to prioritize their inspections based on the factors listed in the comments.</p> <ul style="list-style-type: none"> • Requiring the inspection of stormwater treatment systems within 45 days of installation ensures that Permittees will verify that the correct systems have been installed. Six months later is just too late to discover that a system has been incorrectly installed. Some Permittees currently have staff present during the entire installation process. • Given that Building Inspectors are routinely onsite during the Regulated Project’s entire construction, they may also be trained to inspect the newly installed post- 	

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					construction treatment systems.	
Contech	26	C.3.h.ii.(6)	Operation and Maintenance Inspections	This Provision creates an unnecessary burden by requiring Permittees to conduct all inspections. This creates an unnecessary burden on them. Provision C.3.h.ii.(1) already requires site owners to formally accept inspection and maintenance responsibility. It should be sufficient for the Permittees to collect inspection and maintenance reports, including information required in section C.3.h.iv.(1), from the site owner or service provider in lieu of an actual site visit by the Permittee.	We disagree. Permittees must conduct their own inspections to independently verify that treatment systems are operating and being maintained properly.	None
ACCWP Att 1 Berkeley Att 1 Oakland Att 1 San Leandro SMCWPPP	32 32 36 8 23	C.3.h.iii	Maintenance Approvals	<ul style="list-style-type: none"> The immediate full implementation due date is not feasible. Allow a 2-year phase-in period for these new requirements. 	This Provision requires Permittees to ensure that treatment systems are properly operated and maintained by Regulated Projects, a basic requirement that is in the existing stormwater permits and other stormwater permits statewide. No phase-in period is required.	None
BASMAA Att Pacifica San Jose Att A SCVURPPP Att A	17 17 14 14	C.3.h.iii	Maintenance Approvals	Please revise the first sentence to say "Permittees shall require" that treatment systems be properly maintained and operated for the life of the project. There is no possible way	We disagree. "Ensure" means implicitly that the Permittees are required to include adequate conditions of approval for the treatment	None

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SMCWPPP Sunnyvale	22 33			for Permittees to “ensure” the proper operation and maintenance for those systems on privately owned property. We can require them to be maintained properly, then follow enforcement procedures if they fail, but we cannot “ensure” that they will operate or maintain them for the life of the project.	systems, inspect the treatment systems, and take appropriate enforcement actions against the Regulated Projects if the systems are not operated and maintained appropriately.	
West Valley Clean Water Program	8	C.3.h.iii.	Maintenance Approvals	Change this Provision to state, “. . .for Regulated Projects that construct wetlands, Permittees should inform Regulated Projects of the need to comply with Water Board Resolution 94-102: Policy on Use of Constructed Wetlands for Urban Runoff Pollution Control...”	See response immediately above.	None
ACCWP Att 1 Berkeley Att 1 Newark Att Oakland Att 1	31 31 34 35	C.3.h.iii.	Maintenance Approvals	Revise this Provision to state that if the Permittee (not the responsible party) is working diligently and in good faith then the Permittee will be in compliance. What if the responsible party is not working diligently or in good faith but the Permittee is working diligently and in good faith (for example, by taking enforcement action to rectify the situation)? In that situation, the Permittee should not be held in violation of the provision.	This language was added in response to Permittees wanting protection from regulatory liability in the event that State or federal agencies effectively prohibit a Regulated Project from conducting maintenance on a treatment facility. In the example cited in the comment where a Permittee fails to take appropriate steps (e.g., inadequate enforcement) to bring a Regulated Project into compliance, the Permittee	None

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					would be found to be in violation of the MRP's requirements and subject to enforcement action from the Water Board. Therefore, the suggested language change would be inappropriate.	
ACCWP Att 1 Berkeley Att 1 Oakland Att 1 San Leandro SCVURPPP Att A Sunnyvale	32 32 36 8 15 34	C.3.h.iv.(1)	Operation and Maintenance Inspection Reporting	<ul style="list-style-type: none"> • The reporting requirements for O&M inspections are still excessive. A summary of the total number and types of BMPs inspected and categories of problems found should be sufficient to evaluate a Permittee's inspection program • Detailed records can be kept locally for review upon request. Specifically, information on facility name, address, and responsible operator name should be kept in local files and not be part of a public annual report. • Delete Provision C.3.h.iv.(1) because the only two items that the WB should be concerned with are design problems with specific types of BMPs and O&M problems with associated enforcement actions. • The discussions required in Provision C.3.h.iv.(3) should be able to address and provide enough information • The greatly expanded reporting requirements cannot be 	<ul style="list-style-type: none"> • This Provision and the associated Reporting Table C.3.h. requires only standard information that should be collected on each operation and maintenance inspection. We require this type of information to evaluate a Permittee's inspection and enforcement program and to determine compliance with the Permit. Summary data alone without facility-specific inspection findings does not allow us to determine whether Permittees are doing timely follow-up inspections at problematic facilities and taking appropriate enforcement actions. • A one-year implementation 	Provision C.3.h. has been revised to allow one year for development of the database and reporting is required beginning with the 2010 Annual Report.

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				accomplished immediately.	timeframe has been added for development of the database and reporting requirements are applicable to the 2010 Annual Report.	
Contech	27	C.3.h.iv.(1)	Operation and Maintenance Requirements Reporting	This section should make it clear that the BMPs must be inspected to ensure that the initial design infiltration, storage, flow capacity or other parameters are met. Unfortunately, vegetation health or other qualitative observations are often used as a surrogate for an actual BMP performance assessment. This is not acceptable since it does not ensure that the BMP is performing its intended water quality or hydraulic function.	Various countywide programs have developed inspection guidance and checklists to address exactly the issues raised in this comment.	None
ACCWP Att 3 Berkeley Att 2 Newark Att Oakland Att 2 West Valley Clean Water Program	10 11 35 11 9	C.3.h.iv.(3)	Operation and Maintenance Inspections Reporting	Reporting on inspections is redundant with Provision C.3.h.(iv)(1) so this requirement should be eliminated or changed to "report newly installed stormwater treatment systems and HM controls with the annual report" only.	We disagree. This Provision requires each Permittee to evaluate its program based on the data collected for Provision C.3.h.(iv)(1) and list proposed changes based on that evaluation.	None
Fremont	17	C.3.h.iv.(3)(a)	Operation and Maintenance Requirements Reporting	Eliminate the requirement for a "general comparison to the inspections findings from the previous year."	See response immediately above.	None

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Pacifica	18	C.3.i.	Required Site Design Measures for Small Projects and Detached Single-Family Home Projects	Additional time should be allowed for the implementation of these "staff time demanding" additional requirements. Modify the permit to allow a five year period before the new requirements must be met.	Since this Provision only requires site design measures and not hydraulically sized treatment, two years is sufficient time to implement the requirements.	None
ACCWP Att 1 Alameda Berkeley Att 1 Oakland Att 1 Pleasanton Newark Att	33 5, 13 33 37 9 36	C.3.i.	Site Design Measures for Small Projects and Detached Single-Family Home Projects	All projects are already required to implement stormwater design/treatment requirements to the MEP. This requirement is unnecessary, results in additional tracking/monitoring, and will have little or no real impact on water quality given that the majority of projects are already covered under the requirements based on the 10,000 sq. ft. threshold. For Alameda, the estimated increase in annual municipal staffing to implement this expanded Provision C.3 oversight is approximately 10% of a full-time staff person and the water quality benefit derived from this Provision is expected to be minimal and does not justify the increased costs.	The commenters misunderstand the requirements of this Provision. It is only applicable to projects that trigger the impervious surface thresholds listed but that do not fit the descriptions of Regulated Projects under Provision C.3.b.ii.	None
Brisbane Contra Costa Brd Of Sups Att A Dublin SMCWPPP Sunnyvale	10 22 6 24 35	C.3.i.	Site Design Measures for Small Projects and Detached Single-Family Home Projects	<ul style="list-style-type: none"> Allow Permittees the ability to not require directing runoff to landscaping and permeable surfaces where there are potential geotechnical problems or where implementing these requirements will require the use of pumped drainage 	These site design measures are consistent with techniques already being implemented throughout the Bay Area and California. We have included enough options in this Provision so	None

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				<p>systems.</p> <ul style="list-style-type: none"> It may be extremely difficult to implement one of the listed site design treatment controls for an urban project that is built to the property lines, does not have any vegetated areas, and does not involve driveways, walkways, parking lots, or bicycle lanes. The list of site design treatment controls should include an additional bullet for "other site design measures that provide stormwater runoff treatment equivalent to or greater than at least one of the listed site design treatment controls." 	that problematic sites can include at least one site design measure. Therefore, projects with unsuitable site conditions for any one site design measure will not be forced to pick that site design measure.	
Contech	28	C.3.i.	Site Design Measures for Small Projects and Detached Single-Family Home Projects	Please change "vegetated" to permeable where it appears. This is especially important for roof runoff management since downspout and roof gutter flow is delivered at a high velocity that may erode vegetation and soil. Directing these flows to a gravel area or piping them directly to a subsurface infiltration trench vastly reduces the potential for on-site erosion.	The intention is to have stormwater runoff directed into vegetated areas so that some treatment is provided. We assume that whichever measure(s) that is chosen will be suitable for the specific site conditions and designed properly.	None
Dublin Sunnyvale	6 35	C.3.i.	Site Design Measures for Small Projects and Detached Single-Family	<p>Do not require specific site design measures for small "unregulated" projects because:</p> <ul style="list-style-type: none"> This dramatic increase in the number of projects that staff must review will 	<ul style="list-style-type: none"> These small projects contribute stormwater runoff pollutants and volume (just like any other development with 	None

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			Home Projects	<p>place additional strains on already limited resources;</p> <ul style="list-style-type: none"> • Ordinances, staff processes, procedures, and written materials will need to be updated, requiring additional staff resources. 	<p>impervious surfaces) that cumulatively are significant. These projects should not be automatically exempted from stormwater regulations. This Provision is only applicable to projects that would otherwise require approvals and/or permits issued under a Permittee's planning, building or other comparable authority and requires simple site design measures to reduce the runoff pollutants and volume from these projects.</p> <ul style="list-style-type: none"> • This Provision contains a two-year phase-in period for Permittees to revise ordinances, procedures, and written material. 	
NOAA	14	C.3.i.	Site Design Measures for Small Projects and Detached Single-Family Home Projects	We explicitly express our support for this Provision	Comment noted.	None
ACCWP Att 3 Berkeley Att 2	11 12	C.3.i.iii.	Site Design Measures for	Eliminate this requirement because reporting on this material provides	This Provision contains minimal reporting	None

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Newark Att Oakland Att 2	37 12		Small Projects and Detached Single-Family Home Projects <i>Reporting</i>	nominal benefit to water quality.	requirements – essentially a status update on how Permittees are implementing the requirements of this Provision.	
ACCWP Att 1 Berkeley Att 1 Oakland Att 1	34 34 38	C.3.i.vi.	Standard Specifications for Lot-Scale Treatment BMPs	Delete the requirement for submittal of standard specifications for lot-scale treatment BMPs because Water Board can always request to review the BMPs as needed. Alternatively, change the submittal date to September 15 to align with Annual Report.	The purpose of the development of lot-scale measures by the Permittees is to provide guidelines to small projects and single-family homes for selecting and installing correctly the appropriate site design measures and/or treatment measures to satisfy the requirements of this Provision. We expect that any guidelines cooperatively developed by the Permittees will also be adopted by them for implementation.	None
BASMAA Att	18	C.3.j.	Impervious Surface Data	We support the deletion of requirement to collect impervious surface data for small projects.	Comment noted.	None

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Provision C.4. – Industrial and Commercial Site Controls**

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SCVURPP Attachment A	16A	C.4	Permittee Jurisdiction	The Permittees' responsibility for regulating industrial and commercial businesses needs to be limited to only those businesses within their jurisdictions and only for stormwater runoff conveyed in municipal separate storm sewer systems.	We agree, although permittees must also address pollutant sources that have the potential to discharge or be mobilized in to the MS4 system. Protecting the water quality of the MS4 must address potential sources in addition to sources that directly impact water quality.	No changes made.
San Jose MRP Comments Attachment A	15	C.4.b.ii.1.g	Inspection HVAC Equipment	The City understands that this provision is not meant to include HVAC equipment common to commercial office buildings, as inspection of those systems would greatly increase inspection workload without a clear benefit to water quality.	We agree. Inspections are not required to inspect the full extent of HVAC systems; however, permittees should observe outdoor portions of HVAC equipment to insure that they are not contributing pollutants that may impact stormwater runoff.	No changes made.
Santa Clara County	15	C.4.c	Violation Correction 10 Business Days Unrealistic	Requiring all violations to be corrected before the next rain event, but not longer than 10 business days, is unrealistic. We request that more flexibility for correcting violations within a timely manner be provided.	The permit allows permittees flexibility to achieve violation correction. If violations are not corrected in 10 business days or before the next rain event, permittees can provide an explanation justifying the reason for the delay. The 10 days for correction of violations is being established in lieu of the prescriptive enforcement response requirements that	No changes made.
SCVURPP Attachment A	17					

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					were included in the previous draft TO. Permittees have the flexibility to conduct enforcement in a manner that they deem appropriate to meet the violation correction performance standard.	
ACCWP Attachment1	35	C.4.a.ii.(1)	Legal Authority for Effective Site Management Too Broad	Legal authority is too broad as regards ability to oversee, inspect, and require expedient compliance and abatement at <u>all</u> sites that cause or contribute to pollution of stormwater runoff. The ordinances that municipalities adopted in the early 1990s were for the municipally owned/operated municipal separate storm sewer systems (MS4), not for stormwater runoff in general. Revise the legal authority to what is required by federal Clean Water Act requirements to control pollutants that flow to municipally owned/operated MS4s.	The entire permit is specifically regulating pollution of stormwater runoff to the MS4 and receiving waters. It is not necessary in every section to reestablish the areas regulated by the permit.	No changes made.
BerkeleyAttachment1	35					
Pacifica	36					
OaklandAttachment1	39					
Newark Attachment	38					
SMCWPPP	26					
SCVURPP Attachment A	18	C.4.c.ii.(4)	Recordkeeping	Make Recordkeeping (C.4.c.ii.(4)) and Reporting (C.4.c.iii.) fully consistent with same provisions for Enforcement Response Plans in C.5 Illicit Discharge Detection and Elimination and C.6 Construction.	It is not appropriate to make the recordkeeping requirements of Section C.4, C.5, and C.6 fully consistent. These provisions while similar in the need for enforcement response deal with different stormwater pollution issues that require different information to assess effectiveness and compliance. In order to keep the recordkeeping to the	
BASMAA Attachment	19					

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					minimum necessary for determining compliance with the permit, it is not possible to make these Sections identical.	
Sunnyvale	36	C.4.c	Enforcement Response Plan (ERP)	Sunnyvale's current ERP is designed to mainly enforce federal pretreatment regulations. Modifications of our existing ERP (which will likely include revisions to a city ordinance) to meet the requirements outlined within the MRP will take a significant amount of time as well as funds to complete. While this can eventually be accomplished, it is not likely that we would be able to do so by the implementation date of the permit (July 1, 2009), which would put Sunnyvale immediately into non-compliance with this MRP provision. Additional time will be needed to revise our ERP (and potentially a city ordinance) to meet these new requirements.	Permittees should already have the legal authority to conduct enforcement at Industrial and Commercial sites. These requirements have been in place since the early 1990's for municipal stormwater programs. Permittees should be actively taking enforcement actions as necessary. We have added a date for the implementation of the ERP to give permittees time to adapt and revise current plans to meet the requirements of the MRP.	Added April 1, 2010, as completion date for development of ERP.
ACCWP Attachment1	1	C.4	Removal Business Inspection List	We appreciate many of the changes incorporated in the Revised Tentative Order, in particular: the deletion of the prescriptive list of businesses requiring inspections	Comment noted.	No changes made.
Newark	1					
Berkeley	1					
Fremont	17	C.4.a.ii.(2)	Eliminate Recordkeeping for Non-compliance after 10 Business Days	The additional requirement of "...Violations shall be corrected prior to the next rain or within 10 business days after the violation. If more than 10 business days are required for correction, a rationale shall be given" The requirement to provide a rational	The requirement for recordkeeping when correction of violations exceeds 10 business days is necessary to assess the effectiveness of municipal	No changes made.
Newark Attachment	39, 42					

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				is onerous. Eliminate the requirement to provide a rationale for time frame required to achieve compliance. This record keeping requirement is time consuming, without achieving measurable water quality; and summaries of inspections are already reported.	stormwater enforcement programs. The documentation of cases exceeding the timeframe will allow the Water Board to compare and assess the enforcement activities of permittees. The correction standard will improve water quality because permittees will more closely monitor and enforce clean up of problem areas within a given time frame. If enforcement is not effective in meeting the correction standard, permittees shall assess and revise their enforcement protocols to improve the methods used to achieve violation correction. The 10 business day correction standard was established in order to the limit the prescriptive elements of the ERP.	
ACCWP Attachment1	36	C.4.a.ii.(2)	Violation Correction 10 Business Days Unrealistic	The requirement that violations shall be corrected during certain specified time periods is unrealistic and should be replaced with a more realistic estimate of 30 days. Replace the requirement to correct violations "prior to the next rain event or within 10 business days" with a more realistic timeframe of 30 days.	The permit allows permittees flexibility to achieve violation correction. If violations are not corrected in 10 business days or before the next rain event, permittees can provide an explanation justifying the reason for the	No changes made.
BerkeleyAttachment1	36					
Newark Attachment	39, 42					
Oakland Attachment1	40					

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File	Comment No.	Provision No. ^a	Key Word(s)	Comment	Response	Proposed MRP Revision ^b
					<p>delay. The 10 days for correction of violations is being established in lieu of the prescriptive enforcement response requirements that were included in the previous draft TO. Permittees have the flexibility to conduct enforcement in a manner that they deem appropriate to meet the violation correction performance standard.</p>	
SMCWPPP	27	C.4.a.ii.(2) and C.4.c.ii.(2)	Timely Correction of Violations	<p>The requirement that violations shall be corrected during certain specified time periods is unrealistic and unnecessary. Replace the requirement to correct violations “prior to the next rain event or within 10 business days” with a more flexible requirement to correct violations of local stormwater ordinances as soon as practicable.</p>	<p>The permit allows permittees flexibility to achieve violation correction. If violations are not corrected in 10 business days or before the next rain event, permittees can provide an explanation justifying the reason for the delay. The 10 days for correction of violations is being established in lieu of the prescriptive enforcement response requirements that were included in the previous draft TO. Permittees have the flexibility to conduct enforcement in a manner that they deem appropriate to meet the violation</p>	No changes made.

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File	Comment No.	Provision No. ^a	Key Word(s)	Comment	Response	Proposed MRP Revision ^b
					correction performance standard.	
Fremont	18	C.4.a.ii.(2) C.4.c.ii.(2)	Violation Correction 10 Business Days Unrealistic	<p>This requirement that violations shall be corrected by the next rain event or within 10 business days is unrealistic and unattainable. If more than 10 business days are required for the correction, a rational shall be given in tabulated sheets.</p> <p>Remove this requirement and replace with "Every effort should be made to correct these violations before the next rain event or within 10 business days if practicable. If not, the permittees shall institute a time frame for achieving compliance based and the type, severity and corrective action required." Summaries of all inspection reports are currently submitted with the annual report and any issues dealing with compliance are addressed in these comments. There is no need for a separate tabulated format as this is duplication.</p>	<p>The permit allows permittees flexibility to achieve violation correction. If violations are not corrected in 10 business days or before the next rain event, permittees can provide an explanation justifying the reason for the delay. The 10 days for correction of violations is being established in lieu of the prescriptive enforcement response requirements that were included in the previous draft TO. Permittees have the flexibility to conduct enforcement in a manner that they deem appropriate to meet the violation correction performance standard.</p>	No changes made.
San Leandro	9	C.4.a.ii.(2)	Justify Correction timeline	<p>Prescribing a baseline of 10 days for corrective actions is unreasonable. 30 days is the standard baseline across other regulatory programs, such as pretreatment and UST, with a shorter time frame given when conditions warrant it, such as next storm event projected or eminent threat to people or the environment. Change Baseline time frame from 10 to 30 days and eliminate justification for any</p>	<p>The permit allows permittees flexibility to achieve violation correction. If violations are not corrected in 10 business days or before the next rain event, permittees can provide an explanation justifying the reason for the delay. The 10 days for</p>	

**Response to Comments on February 11, 2009 Revised Tentative Order
Provision C.4. – Industrial and Commercial Site Controls**

File	Comment No.	Provision No. ^a	Key Word(s)	Comment	Response	Proposed MRP Revision ^b
				correction time frame less than 30 days.	correction of violations is being established in lieu of the prescriptive enforcement response requirements that were included in the previous draft TO. Permittees have the flexibility to conduct enforcement in a manner that they deem appropriate to meet the violation correction performance standard.	
Contra Costa Board of Sups Attachment A	24	C.4.b	Extend implementation Date	Implementing the MRP's requirement to undertake corrective actions within 10 days of a violation will require increased collaboration between departments that are responsible for different aspects of enforcements; it will also require modifications to procedures for documentation, tracking, and reporting. It would not be possible to implement these changes prior to the effective date of the MRP. An implementation date of July 1, 2010 is recommended.	Implementing the performance standard of 10 business days for correction of violations should be implemented in a timely manner upon adoption of the permit. While permittees are implementing the performance standard, coordination can be conducted between departments to optimize efforts. The data regarding compliance can be collected while tracking and reporting systems are developed. The requirement for 10 business days for corrective action is a necessary standard in absence of a prescriptive ERP.	No changes made.
ACCWP	37		Exempt Flood	The inspection plan should not be for sites	It is not appropriate to	No changes

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File	Comment No.	Provision No. ^a	Key Word(s)	Comment	Response	Proposed MRP Revision ^b
Attachment1		C.4.b.i	Control Districts	within each Permittee's jurisdiction because the flood control districts do not have businesses within their jurisdiction. Also, the sites covered by the plan should be ones that drain to an MS4 owned or operated by a municipality that is a Permittee. Modify the language to limit the creation of an inspection plan to municipalities that have commercial and industrial sites. In addition, modify language about sites within a Permittee's jurisdiction to just sites within a municipality that have stormwater drainage that flows to an MS4 owned or operated by the municipality.	completely exempt Flood Control Districts from this requirement. The Flood Control Districts are responsible for the inspection of facilities that are located on their property and under their control. This may include the Districts' corporate and service yards or property owned by the District that is leased to a commercial or industrial entity.	made.
BerkeleyAttachment1	37					
Oakland Attachment1	41					
SMCWPPP	28	C.4.b.i	Exempt Flood Control Agencies from Inspection Plan	The inspection plan should not be for sites within each permittee's jurisdiction because the flood control agencies' jurisdiction overlaps with municipalities and there is no need to require duplicative efforts. Also, the sites covered by the plan should be ones that drain to an MS4 owned or operated by a municipality that is a permittee. Modify the language to limit the creation of an inspection plan to municipalities that have commercial and industrial sites. In addition, modify language about sites within a Permittee's jurisdiction to just sites within a municipality that have stormwater drainage that flows to an MS4 owned or operated by the municipality.	It is not appropriate to completely exempt Flood Control Agencies from this requirement. The Flood Control Agencies are responsible for the inspection of facilities that are located on their property and under their control. This may include the Agencies' corporate and service yards or property owned by the Agency that is leased to a commercial or industrial entity. Local entities that have overlapping jurisdiction with Flood Control Agencies should coordinate efforts to insure that inspections are duplicative. The permit does	No changes made.

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File	Comment No.	Provision No. ^a	Key Word(s)	Comment	Response	Proposed MRP Revision ^b
					not require duplicate inspections if jurisdictions overlap.	
ACCWP Attachment1	38	C.4.b.ii	Limit List of Business to Inspect	This section requires each Permittee to annually update and maintain a list of businesses that could cause or contribute to pollution of stormwater runoff without limiting this requirement to certain Permittees and without limiting the requirement to businesses that drain stormwater to an MS4 owned or operated by a municipality. Make similar modifications as suggested above in ACCWP comment 37 to this permit section.	It is not appropriate to completely exempt Flood Control Districts from this requirement. The Flood Control Districts are responsible for the inspection of facilities that are located on their property and under their control. This may include the Districts' corporate and service yards or property owned by the District that is leased to commercial or industrial entities. If a Flood Control District does not have any of these facilities under their control they can present that information to the Water Board and would only be necessary to update the list if circumstances changed to require inspection of a facility.	No changes made.
BerkeleyAttachment1	38					
Oakland Attachment1	42					
SMCWPPP	30					
Contra Costa Board of Sups Attachment A	23	C.4.b	No implementation of State Requirements	It is inappropriate for the SWRCB to collect a fee of \$1008 for permittees covered under the General Industrial Permit, but intends to delegate responsibility for inspection to the MS4 Permittees without reimbursement. If Permittees are delegated responsibility for enforcing State General Permits, sufficient revenue from	The MRP does not require permittees to enforce the State's General Industrial Stormwater Permit. Permittees must only enforce the requirements of local stormwater and urban runoff ordinances in	No changes made.

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File	Comment No.	Provision No. ^a	Key Word(s)	Comment	Response	Proposed MRP Revision ^b
				these permits should be transferred to the MS4 Permittees to defray the MS4 Permittees' costs	compliance with the MRP. Even though a commercial industrial facility has coverage under the State's General Industrial Permit, it does not absolve permittees from enforcing compliance with local ordinances and preventing polluted discharges to their MS4.	
Contra Costa Council	4	C.4.b	Industrial Facilities Already Under State Permit	Section C4b.i requires municipalities to conduct stormwater inspections of industrial facilities. As noted above, these facilities are already covered by the Statewide General Industrial Stormwater permit issued by the State. The State receives a fee to inspect these facilities and does so on a regular basis. Municipal staff does not have the expertise or resources to inspect complex industrial facilities. Requiring duplicative and redundant inspections of industrial facilities would be a waste of scarce municipal resources and is likely to lead to inconsistent results.	The MRP does not require permittees to enforce the State's General Industrial Stormwater Permit. Permittees must only enforce the requirements of local stormwater and urban runoff ordinances. It is the responsibility of the State to conduct enforcement and follow up of violations of the General Industrial Permit. Permittees must inspect State permitted facilities to insure no violations of municipal stormwater and urban runoff pollution ordinances in compliance with the MRP	No changes made.
SMCWPPP	29	C.4.b.ii	Inspection Plan Implementation Date	There is no date for developing an Inspection Plan, which is a new requirement. The permit should allow one year from permit adoption to comply with this new requirement. Add additional language to the permit that states that if an	We agree that there should be a date for the update and completion of the Industrial Inspection Plan. We have added a completion date of July 1, 2010, to the permit	Added completion date of July 1, 2010 update and completion of Inspection Plan.

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File	Comment No.	Provision No. ^a	Key Word(s)	Comment	Response	Proposed MRP Revision ^b
				Inspection Plan does not currently exist, municipalities have until July 1, 2010 or one year following permit adoption, whichever is later, to prepare the Inspection Plan.	requirements. Permittees are still required to conduct inspections and enforcement while the plan is being updated.	
Alameda County	6	C.4	Exemption Language for Permittees with No Industrial Commercial Facilities	The Revised Tentative Order defines several requirements to be implemented by "each permittee" throughout Provision C.4. Certain entities do not have industrial and commercial facilities (i.e. the Alameda County Flood Control and Water Conservation District). A statement should be added to this provision, deeming this provision non-applicable for permittees that do not have industrial and commercial facilities.	It is not appropriate to completely exempt Flood Control Districts from this requirement. The Flood Control Districts are responsible for the inspection of facilities that are located on their property and under their control. This may include the Districts' corporate and service yards or property owned by the District that is leased to a commercial or industrial entity.	No changes made.
ACCWP Attachment1	39	C.4.b.ii.(4)	Exempt FCDS from Inspection Requirements	This section requires that each Permittee conduct inspections. This requirement should be limited to municipalities and not flood control agencies.	It is not appropriate to completely exempt Flood Control Districts from this requirement. The Flood Control Districts are responsible for the inspection of facilities that are located on their property and under their control. This may include the Districts' corporate and service yards or property owned by the District that is leased to a commercial or industrial entity.	No changes made.
BerkeleyAttachment1	39					
Oakland Attachment1	43					
SMCWPPP	31					

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File	Comment No.	Provision No. ^a	Key Word(s)	Comment	Response	Proposed MRP Revision ^b
ACCWP Attachment1	40	C.4.b.ii.(6)	Recordkeeping Requirements in One Section	The record keeping listed under this section is not as comprehensive as the recordkeeping required under the Enforcement Response Plan (C.4.c.ii.(4)). All of the inspection related record keeping should be listed in one place in this section and not be listed in different places and expressed in different ways. Consolidate all of the annual reporting requirements in this section.	The record keeping requirements listed in Section C.4.b.ii are specific to that section. It is necessary to keep the record keeping requirements with the specific provisions for clarity and to demonstrate the compliance verification mechanisms for each provision.	No changes made.
ACCWP Attachment3	12					
BerkeleyAttachment2	13					
BerkeleyAttachment1	40					
Newark Attachment	40					
Oakland Attachment1	44					
Oakland Attachment2	13					
SMCWPPP	32					
ACCWP Attachment1	41	C.4.b.ii	All Annual Reporting in One Section	The annual reporting requirements listed under this section are not as comprehensive as the annual reporting required under the Enforcement Response Plan (C.4.c.iii). All of the annual reporting should be listed in one place in this section. It is uncertain what the purpose is of including language about the percent of violations resolved within 10 working days or in a timely manner. Consolidate all of the annual reporting requirements in this section. If there are annual reporting items that merit additional discussion and consideration, these should be worked out following adoption of the MRP	The annual reporting requirements listed in Section C.4.b.ii are specific to that section. The annual report requirements for all provisions will be compiled in one document after the permit is adopted and the reporting format is developed. It is necessary to keep the reporting requirements with the specific provisions for clarity and to demonstrate compliance verification mechanisms for each provision.	No changes made.
ACCWP Attachment3	13					
BerkeleyAttachment2	14					
BerkeleyAttachment1	41					
Newark Attachment	41					
Oakland Attachment1	45					
Oakland Attachment2	14					
SMCWPPP	33					
ACCWP	42			It is inefficient to have requirements	The recordkeeping	No changes

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Provision C.4. – Industrial and Commercial Site Controls**

File	Comment No.	Provision No. ^a	Key Word(s)	Comment	Response	Proposed MRP Revision ^b
Attachment1		C.4.c	ERP Requirements in One Section	expressed for different Enforcement Response Plans in Provisions C.4.c., C.5.b., and C.6.b. Requirements for recordkeeping and reporting should not be incorporated into the Enforcement Response Plan section as occurs in C.4.c. Express the requirements for an Enforcement Response Plan (ERP) in one section of the permit and refer to this ERP, as needed, in other sections of the permit so that there is consistency in the requirements for an ERP.	requirements are a specific component of the ERP, so they are included in the ERP section. The ERP requirements are specific to each permit section and should remain separate. Permittees have the flexibility to create one ERP to satisfy the requirements of C.4, C.5, and C.6 if they choose.	made.
BerkeleyAttachment1	42					
Fremont	22					
Oakland Attachment1	46					
SMCWPPP	34					
ACCWP Attachment1	43	C.4.c	Revise language	Typo Replace "public and private construction" with "industrial and commercial"	We agree.	Language corrected.
BerkeleyAttachment1	43					
Contra Costa Board of Sups Attachment A	25					
Oakland Attachment1	47					
San Leandro	10					
ACCWP Attachment3	14	C.4.c.iii	Reporting Inspection Results	Requirement for reporting on inspection results is redundant with C.4b(iii). Eliminate requirement.	C.4.b.iii only requires the development of a list of facilities within a permittees jurisdiction and the facilities scheduled for inspection in the current year. C.4.c.iii is the section that requires the reporting of inspection results. These Sections are not redundant and require the collection of different information to assess	No changes made.
BerkeleyAttachment2	15					
Newark Attachment	43					
Oakland Attachment2	15					

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File	Comment No.	Provision No. ^a	Key Word(s)	Comment	Response	Proposed MRP Revision ^b
					effectiveness and compliance with the permit provisions.	
San Leandro	11	C.4.c.ii.(2)	ERP- Timely Correction of Violations	10 days to correct all violations is unrealistic as is the requirement to document every time 12 or 15 working days are needed instead of 10 working days. The more paperwork and data entry there is required by this permit the less time there is for actual field work necessary to implementing an effective program. We recommend a more standard baseline of either 20 working days or 30 days and recognition that Permittees will continue to prescribe shorter time frames when weather or threat to sensitive receptor conditions warrant doing so.	The requirement for recordkeeping when correction of violations exceeds 10 business days is necessary to assess the effectiveness of municipal stormwater enforcement programs. The documentation of cases exceeding the timeframe will allow the Water Board to compare and assess the enforcement activities of permittees. If enforcement is not effective in meeting the correction standard, permittees shall assess and revise their enforcement protocols to improve the methods used to achieve violation correction. The 10 business day correction standard was established in order to the limit the prescriptive elements of the ERP.	No changes made.
ACCWP Attachment3	15	C.4.d.iii	Modify Training Reporting Requirements	Reporting % of staff attending training is not of value and difficult to calculate Modify requirement	The reporting of percentage of staff attending training will be used to assess Permittees efforts to	No changes made.
BerkeleyAttachment2	16					
Newark Attachment	43					

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File	Comment No.	Provision No. ^a	Key Word(s)	Comment	Response	Proposed MRP Revision ^b
Oakland Attachment2	16				educate staff. This information is valuable to approximate the efforts of Permittees to keep staff trained and informed about developments in stormwater investigation and enforcement. Calculation of percentage of staff attending is already done by many permittees and should not be considered difficult to calculate.	
Alameda City	23	C.4.b.iii.(1)	Submission of Facility List for Annual Inspection	Provision C.4.b.iii.(1), <i>Inspection Plan, Reporting</i> , requires the annual submittal to the RWQCB of specific revisions or updates to the list of the businesses subject to the local agency's business inspection work plan. This is an additional tracking and reporting exercise that will require additional staff time with no substantive benefit to water quality protection gains and will provide redundant information when compared with the annual inspection list submitted in compliance with Provision C.4.b.iii.(2). Restaurants and retail food facilities typically have a high turnover and we anticipate that significant changes to a complete list of businesses subject to inspection will occur every year. The City suggests that this annual business list update requirement be deleted from the Revised Tentative Order.	The list of businesses subject to the local agency's business inspection work plan and the annual inspection list are being completed for different purposes. The list of business subject to inspection under the work plan determine the businesses that are under the permittees jurisdiction and help permittees prioritize and determine inspection frequencies. The businesses scheduled for annual inspection convey the agency's determination of priorities to the Water Board and implementation of the inspection work plan. It is essential for effective	No changes made.

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File	Comment No.	Provision No. ^a	Key Word(s)	Comment	Response	Proposed MRP Revision ^b
					oversight and enforcement to assess new businesses that may require inspection.	
Fremont	19	C.4.b.ii.(2)	Annual List of Businesses to Inspect Problematic	Submitting a list of facilities scheduled to be inspected for the each fiscal year in each annual report is problematic as businesses come and go. Committing to a specific list takes away the flexibility of the permittee in determining priorities and redirecting resources throughout the year. Replace list of facilities with the number of facilities to be inspected in each category (i.e. automotive repair, restaurants, NOI, misc. businesses etc.).	Permittees still have the flexibility to amend the list of facilities to inspect and to change priorities during the year based on circumstances and professional judgment. The list of facilities scheduled to inspect allows the Water Board to determining compliance with the Permittees established inspection frequencies and to compare annual efforts between permittees.	No changes made.
Fremont	20	C.4.b.ii.(6)	Replace List of Businesses with General Categories	The reporting requirement of providing a list of facilities scheduled for inspections during the current fiscal year is onerous, especially in these current economic times with many businesses closing. Developing a current list of operational business is a wasteful use of resources. Providing a general category list (e.g. automotive repair, restaurants, etc) is sufficient, and allows the inspectors flexibility due to geographic area. Eliminate the record keeping requirement of providing "... a list of facilities scheduled for inspections..." replaced with provide the number of facilities to be inspected in a	Permittees still have the flexibility to amend the list of facilities to inspect and to change priorities during the year based on circumstances and professional judgment. The list of facilities scheduled to inspect allows the Water Board to determining compliance with the Permittees established inspection frequencies and to compare annual efforts between permittees.	No changes made.

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File	Comment No.	Provision No.^a	Key Word(s)	Comment	Response	Proposed MRP Revision^b
				category such as restaurants, automotive repair, NOI, etc.		
Alameda City	24	C.4.c	Documentation and Tracking Require 5% Additional Staff Person	Provisions C.4.c and C.5.b, <i>Enforcement Response Plan</i> , require tracking, justification analysis, and reporting to the Water Board for corrective action responses taking longer than ten (10) days. This documentation effort is estimated to require approximately 5% of a full-time staff person.	The requirement for recordkeeping when correction of violations exceeds 10 business days is necessary to assess the effectiveness of municipal stormwater enforcement programs. The documentation of cases exceeding the timeframe will allow the Water Board to compare and assess the enforcement activities of permittees. The 10 business day correction standard was established in order to the limit the prescriptive elements of the ERP.	No changes made.
Oakland Attachment2	17	C.4.e.iii	Inspections and Reporting Redundant	Inspections and reporting are redundant with C.2, C.8, and C.10, Eliminate Requirement.	The inspections for these sections are specific to the requirements and objective of each provision. It is necessary to report the inspection results in order to determine compliance with the provisions.	No changes made.
Dublin	9	C.4	Current Practices Effective	The Permit requires development of a formalized Emergency Response Plan (ERP) for use with business inspections, spill response, and construction, which would detail how the City responds to these incidents, as well as other	The development of the ERP and processes for record keeping and reporting are necessary to establish consistency in enforcement response	No changes made.

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Provision C.4. – Industrial and Commercial Site Controls**

File	Comment No.	Provision No. ^a	Key Word(s)	Comment	Response	Proposed MRP Revision ^b
				processes, record keeping, and reporting. Included in the ERP are requirements to adopt, by ordinance, escalating penalties for noncompliance. In summary, the City of Dublin's current spill response, business inspection practices, and construction inspection practices are effective, and adoption of additional formal measures would provide no incremental benefit to water quality. The added cost of adopting additional business and spill response measures is estimated at \$6,000 per year.	programs and to demonstrate compliance with the MRP requirements. If Dublin has an effective response program, it should be relatively easy to formalize the procedures and track enforcement responses.	
San Mateo	5	C.4	Consolidate Requirements	These sections are an example of the cumbersome nature of the permit language. The language should be simplified and streamlined. For example, recordkeeping requirements should be consolidated in one section, annual reporting requirements in one section, enforcement response plan requirements in one section, etc.	It is necessary for individuals who may only be interested in one section of the permit to have all requirements for a specific section in one place. After the permit is adopted, the recordkeeping and annual reporting requirements will be compiled in one document to guide the development of the annual reporting format.	No changes made.
SMCWPPP	2	C.4	Support Revisions	This revised permit provision incorporates flexible requirements for developing an Industrial and Commercial Business Inspection Plan, including selection of businesses and inspection frequency.	Comment noted.	No changes made.
Daly City	11	C.4.b.ii(4)(d)	Verifying Coverage Under State General Permit	This section requires permittee to verify coverage. The Water Board should determine if coverage is required under the General Industrial Permit, not the	Ultimately, the Water Board will make the determination if coverage is needed under the State's General	No changes made.

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File	Comment No.	Provision No. ^a	Key Word(s)	Comment	Response	Proposed MRP Revision ^b
				Permittee. Please clarify.	Industrial Stormwater Permit. This provision requires Permittees to notify business that they may need coverage under the permit and refer the names of potential non-filers to the Water Board.	

^a Refers to Provision Numbers contained in the Municipal Regional Stormwater Permit (MRP) Tentative Order dated December 14, 2007.

^b Provision Numbers referenced are found in the Municipal Regional Stormwater Permit (MRP) revised Tentative Order dated February 11, 2009

**Response to Comments on February 11, 2009 Revised Tentative Order
Provision C.5. – Illicit Discharge Detection and Elimination**

File	Comment No.	Provision No.^a	Key Word(s)	Comment	Response	Proposed MRP Revision^b
Kolb, Larry & James, Roger	22	C.5	No Plans Inspection Driven	The requirements of this provision should not include development of illicit discharge detection and elimination and should be limited to implementation of the program since these programs have been required since the initial NPDES permits and should be in place and mature. This program should not rely on complaints and must be inspection driven.	The program will not be driven solely by complaints. The purpose of developing a plan is to insure that strategic implementation is utilized to proactively detect illicit discharges. The plan will help target efforts in areas with the highest potential for violations.	No changes made.
SMCWPPP Letter	3	C5	Support Revisions	This permit provision simplifies requirements for ERPs and deletes unnecessary requirements for preparing Illicit Discharge Control Plans.	Comment noted.	No changes made.
San Jose	16	C.5.a.ii.(3)	Revise Language	The City suggests the Provision is revised to read "Permittees shall have adequate legal authority to control the discharge of spills, dumping or disposal of materials other than storm water to the MS4."	We agree, although permittees must also address pollutant sources that have the potential to discharge or be mobilized in to the MS4 system. Protecting the water quality of the MS4 must address potential sources in addition to sources that directly impact water quality.	No changes made.
Central Contra Costa Sanitary District	2	C.5.a.ii	Sanitary Sewer Discharges	Permittees are required to have adequate legal authority to address stormwater and non-stormwater pollution; several examples are identified, with the first being sewage. This implies that stormwater agencies are being given legal authority over public sanitary sewers. This reference to sewage does not distinguish between sources originating from a private system	If sanitary sewer agencies are not responding appropriately to sanitary sewer releases, permittees do have the authority to respond and insure that appropriate clean up occurs. If sanitary sewer agencies respond appropriately and	No changes made.

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Provision C.5. – Illicit Discharge Detection and Elimination**

File	Comment No.	Provision No.^a	Key Word(s)	Comment	Response	Proposed MRP Revision^b
				versus a sanitary sewer system operated by a public agency. SSOs from public agencies' sanitary sewer systems are adequately regulated by federal and state agencies, and potentially third party lawsuits, under the Clean Water Act and California laws. The MRP should not create another layer of regulatory oversight at the local level for the public sanitary sewer agencies. Modify the text to clarify that the legal authority for Permittees to regulate sewage as a pollutant under the MRP is limited to releases from privately owned and operated laterals and collection systems.	comply with federal and state regulations than municipalities do not need to be involved in the clean up and enforcement process to sanitary sewer releases. Permittees jurisdiction is not limited to privately owned and operated sewage systems. If the MS4 system is being impacted by a sewage release from a sanitary agency, permittees do have the legal authority to respond.	
ACCWP Attachment1	44	C.5.a.ii.(1)	Only Non-Stormwater Discharges to the MS4	The requirement to have adequate legal authority for "non-stormwater pollution" is overly broad. The authority should be more specific to non-stormwater discharges to MS4s owned/operated by Permittees. Modify the legal authority requirement to having the ability to control non-stormwater discharges to the Permittees' MS4 as required by the federal Clean Water Act.	Permittees must also address pollutant sources that have the potential to discharge or be mobilized in to the MS4 system. Protecting the water quality of the MS4 must address potential sources in addition to sources that directly impact water quality.	No changes made.
Berkeley Attachment1	44					
Newark Attachment	45					
Oakland Attachment1	48					
SMCWPPP	35					
ACCWP Attachment1	45	C.5.a.ii.(2)-(3)	Control Discharge to MS4	The requirement to have adequate legal authority for discharges to "storm drains" is too broad. Modify the legal authority requirement to having adequate legal authority to control discharges to the Permittees' MS4.	Permittees must also address pollutant sources that have the potential to discharge or be mobilized in to the MS4 system. Protecting the water quality	No changes made.
Berkeley Attachment1	45					
Newark Attachment	46					

**Response to Comments on February 11, 2009 Revised Tentative Order
Provision C.5. – Illicit Discharge Detection and Elimination**

File	Comment No.	Provision No.^a	Key Word(s)	Comment	Response	Proposed MRP Revision^b
Oakland Attachment1	49				of the MS4 must address potential sources in addition to sources that directly impact water quality.	
SMCWPPP	36					
Alameda City	24	C.5.b	Increased Time Documenting Actions	Provisions C.4.c and C.5.b, Enforcement Response Plan, require tracking, justification analysis, and reporting to the Water Board for corrective action responses taking longer than ten (10) days. This documentation effort is estimated to require approximately 5% of a full-time staff person.	The justification and analysis of enforcement actions taking longer than 10 business days to achieve compliance is necessary to evaluate the effectiveness of municipal enforcement programs. The requirement to justify actions was added in lieu of a prescriptive enforcement response plan.	No changes made.
Sunnyvale	37	C.5.b	Extend Time for Development of ERP	As described in C.4.c above, the Sunnyvale's ERP (and possibly city ordinances) will need to be revised to meet the new requirements of the MRP. This can eventually be accomplished, but not by the implementation date of July 1, 2009. Additional time will be needed to revise our ERP (and potentially a city ordinance) to meet these new requirements.	Permittees should already have the legal authority to conduct enforcement of illicit discharges. These requirements have been in place since the early 1990's for municipal stormwater programs. Permittees should be actively taking enforcement actions as necessary. We have added a date for the implementation of the ERP to give permittees time to adapt and revise current plans to meet the requirements of the MRP.	Added April 1, 2010, as completion date for development of ERP.

**Response to Comments on February 11, 2009 Revised Tentative Order
Provision C.5. – Illicit Discharge Detection and Elimination**

File	Comment No.	Provision No. ^a	Key Word(s)	Comment	Response	Proposed MRP Revision ^b
ACCWP Attachment1	46	C.5.b.ii.(2)	Correction of Violations in 10 Days Unrealistic	The requirement that violations shall be corrected within prescribed time periods is unrealistic and unnecessary. Replace the requirement to correct violations “no longer than 10 business days after violation is discovered” with a more flexible requirement to “correct violations of local stormwater ordinances as soon as practicable.” Eliminate the requirement to provide “rationale.... if the more than 10 business days is required for compliance...”	The permit allows permittees flexibility to achieve violation correction. If violations are not corrected in 10 business days or before the next rain event, permittees can provide an explanation justifying the reason for the delay. The 10 days for correction of violations is being established in lieu of the prescriptive enforcement response requirements that were included in the previous draft TO. Permittees have the flexibility to conduct enforcement in a manner that they deem appropriate to meet the violation correction performance standard.	No changes made.
Berkeley Attachment1	46					
Oakland Attachment1	50					
Newark Attachment1	47					
SMCWPPP	37					
Santa Clara County	15	C.5.b	Correction of Violations in 10 Days Unrealistic	Requiring all violations to be corrected before the next rain event, but not longer than 10 business days, is unrealistic. We request that more flexibility for correcting violations within a timely manner be provided.	The permit allows permittees flexibility to achieve violation correction. If violations are not corrected in 10 business days or before the next rain event, permittees can provide an explanation justifying the reason for the delay. The 10 days for correction of violations is being established in lieu of	No changes made.

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					the prescriptive enforcement response requirements that were included in the previous draft TO. Permittees have the flexibility to conduct enforcement in a manner that they deem appropriate to meet the violation correction performance standard.	
ACCWP	8	C.5.b.ii.(2)	Excessive Reporting and Recordkeeping	There have been improvements to the requirements, in particular, removing the reporting template. However, the reporting and recordkeeping requirements are still onerous and many do not provide significant improvements for accountability. Examples of excessive reporting and recordkeeping requirements include: (4) a requirement to provide a rationale for each corrective action that will take more than 10 days to complete (C.5.b.ii(2));	The requirement for recordkeeping when correction of violations exceeds 10 business days is necessary to assess the effectiveness of municipal stormwater enforcement programs. The documentation of cases exceeding the timeframe will allow the Water Board to compare and assess the enforcement activities of permittees. The correction standard will improve water quality because permittees will more closely monitor and enforce clean up of problem areas within a given time frame. If enforcement is not effective in meeting the correction standard, permittees shall assess and revise their	No changes made.
Fremont	4					
Oakland	5					

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					enforcement protocols to improve the methods used to achieve violation correction.	
Fremont	23	C.5.b.(2)	ERP Requirements in One Section	ERP requirements in multiple locations, and inconsistent. State the ERP requirements in one section of the permit and refer to it as needed, in other sections of the permit.	The ERP requirements are specific to each permit section and should remain separate. Permittees have the flexibility to create one ERP to satisfy the requirements of C.4, C.5, and C.6 if they choose.	No changes made.
Oakland Attachment1	51	C.5.b.ii.(2)	Modify ERP Requirements	Requires guidelines on when to employ the range of regulatory responses from warnings, citations and cleanup and cost recovery, to administrative or criminal penalties. Remove requirement of guidelines and allow municipalities to impose range of types of enforcement. Although the City can utilize all these enforcement tools, they are not always effective or municipality may not have that enforcement option. Requires re-writing process, ordinances, and protocols.	The development of guidelines for employing specific enforcement actions is necessary to achieve consistent actions from inspectors and municipal inspection staff. Permittees still have the flexibility to determine the appropriate actions for specific violations. The ERP may specify a range of responses that are appropriate to achieve compliance.	No changes made.
Sunnyvale	38A	C.5.c.i	Requirements Unclear	The requirement listed in the third paragraph of this provision is unclear. What is expected to show compliance by the term "Permittees shall conduct reactive inspections in response to complaints"?	Permittees are expected to react to complaints according to the threat to water quality and to conduct follow up investigations and actions to insure that illicit discharge impacts to the	No changes made.

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					quality of stormwater runoff are abated, minimized, and/or prevented.	
Sunnyvale	38B	C.5.c.i	Implementing Non-emergency Call Line	Also, as described in other sections of the permit, addressing the new requirement for establishing a non-emergency voice-mail for reporting that is checked daily will require additional funds and staff time to implement it. As one small item, it may not be significant, but when included as a whole with all the other new requirements of the MRP that Sunnyvale will have to comply with, it has a significant cumulative impact on already limited resources.	The establishment of a number to report illicit discharges is a basic function of municipal spill response activities. This provision has been amended to require that the non-emergency number is only checked during normal business hours. During off hours, the spill response line should refer to the appropriate local emergency response entity.	C.5.c.i has been modified to only require checking of the non-emergency spill response line during normal business hours.
ACCWP Attachment1	47	C.5.c.i	Check Voicemail Only on Work Days	"If 911 is selected, also maintain and publicize a staffed, non-emergency phone number with voicemail, which is checked daily." Requiring Permittees to check a voice-mail box on weekends and holidays would generally require payment at over-time rates. Municipalities cannot afford this and it is unnecessary. Revise to "checked on work days."	We agree. The language has been revised to only require checking the voice-mail box during "normal business hours".	C.5.c.i has been modified to only require checking of the non-emergency spill response line during normal business hours.
Berkeley Attachment1	47	C.5.c.i	Check Voicemail Only During Business	Add "during normal business hours" at the end of the second sentence as follows: "If 911 is selected, also maintain and publicize a staffed, non-emergency phone number with voicemail, which is checked	We agree. The language has been revised to only require checking the voice-mail box during "normal business hours"	C.5.c.i has been modified to only require checking of the non-emergency
Oakland Attachment1	52					

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CCCWP Attachment	20		Hours	daily <u>during normal business hours.</u> Reason for Addition: Municipal staff will not be available to respond to non-emergency stormwater complaints during non-business hours.		spill response line during normal business hours.
Fairfield-Suisun Sewer District	15	C.5.c.i	Spill Response Only During Normal Business Hours	The requirement to maintain and publicize a staffed, non-emergency phone number with voicemail, which is checked daily, if 911 is selected, is unrealistic as it requires additional and unfunded resources. We request that the non-emergency staff phone number be required to be checked daily during normal weekday business hours (i.e., Monday–Friday, 8 am to 5 pm) in the event that 911 is used as the central contact point. Any spill/dumping incident occurring before or after weekday hours and during weekends; <u>and</u> deemed to be a serious threat to a water body will be addressed by other responders (e.g., City Fire Departments, contract hazardous material responders, etc.).	We agree. The language has been revised to only require checking the voice-mail box during “normal business hours”	C.5.c.i has been modified to only require checking of the non-emergency spill response line during normal business hours.
Fairfield	18	C.5.d	Tracking and Inspecting Mobile Businesses	“Establish oversight and control of pollutants from mobile sources” As a city, cannot even track or collect business licenses for these mobile businesses. Yet have participated in or shared information leading to enforcement of several mobile sources through collaboration with the Alameda County Environmental Crimes Task Force and County District Attorney’s office. The more this permit demands of individual agency staff time; the more staff	The mobile source control provision allows permittees to collaborate on a county wide or regional basis in order to develop source control BMPs and encourages cooperation in order to implement the provision. The new requirements encourage enforcement response	No changes made.
Suisun City	18					

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ACCWP Attachment1	47			may be forced to pull back on un-funded regional participation. Implementation level should consist of developing BMPs and reporting on successful partnering where it is available with entities/agencies that do have control. Example is the recent addition of owner certification to comply with ACCWP BMPs achieved by ACCWP partnering with Al. Co. Env Health Agency who permits mobile catering trucks.	activities as described in these comments. Permittees must proactively respond to illicit discharge complaints regarding mobile businesses.	
Berkeley Attachment1	48	C.5.d	Difficulty Inspecting Mobile Sources	Under the TO, mobile sources appear to require compliance by each Permittee. A mobile business is a business that is not fixed in any one particular jurisdiction. While the TO calls for a county-wide/regional collaboration with respect to discharge of pollutants from mobile sources, it still calls for a County developed program for mobile sources. The County's ability to oversee compliance and enforcement of mobile sources is difficult because mobile sources are not fixed in the County.	The mobile source control provision allows permittees to collaborate on a county wide or regional basis in order to develop source control BMPs and encourages cooperation in order to implement the provision. We understand the transient nature of mobile businesses and expect permittees to work together to develop response and enforcement strategies.	No changes made.
Newark Attachment1	48					
Oakland Attachment1	53					
San Leandro	12					
Santa Clara County	16					
Sunnyvale	39	C.5.d	Extend Time for Implementation of Mobile Source Control	This provision requires that Sunnyvale and the other permittees immediately (by July 1, 2009) develop and implement a program to reduce the discharges from mobile businesses. Immediate implementation of this provision is not feasible and will likely result in immediate non-compliance by Sunnyvale and other permittees. To cooperate regionally to develop and	Permittees should already be actively responding to illicit discharge complaints for mobile businesses. The program to develop BMPs and enforcement strategies for mobile business shall be developed during the first year of permit	No changes made.

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				implement a program, it will take more than the few months after the intended adoption date for the MRP to develop and implement such a program region-wide. Additional time is needed to comply with this provision.	implementation and progress reported in the Annual Report.	
SMCWPPP	38	C.5.d.ii.(1).(b) C.5.d.iii	Control of Mobile Sources Implementation Level and Reporting	It is unnecessary and redundant to require both an ERP and in this section an “enforcement strategy” for mobile businesses. There is also no need to report annually on the implementation of this enforcement strategy separately from the reporting about the ERP. Remove the requirement to have an enforcement strategy for mobile businesses and the requirement to report annually on the implementation of the enforcement strategy.	Mobile businesses are regulated under a separate section in order to provide Permittees with more flexibility in implementation of mobile source requirements and to provide a mechanism for county wide and regional collaboration. Permittees may include their mobile business enforcement strategy as part of their ERP if desired.	No changes made.
Contra Costa Board of Supervisors Attach A	27	C.5.d	Revise Requirements for Mobile Sources	Due to the cross-jurisdictional nature of discharges of pollutants from mobile sources, the County recommends that this section be revised to allow this requirement to be conducted collectively via the Contra Costa Clean Water Program, which includes sanitary district staff in its Industrial and Commercial Workgroup. At least one sanitary district has already established a program to permit mobile washers that provides a framework for permit application and review, and subsequent inspections. This enables recommendations that other businesses	The provision allows for regional collaboration and implementation. Permittees have the flexibility to designate a Clean Water Program with the authority to implement the mobile source inspection and enforcement activities.	No changes made.

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				utilize these environmentally responsible mobile washer companies. It is recommended that this section be incorporated into C.4.b.ii, with mobile food vendors, pressure washers, carpet cleaners, etc. listed as specific priority facilities in the Inspection Plan.		
Mountain View	9	C.5.d	MS4 Map Availability Concerns	The Regional Permit requires the City to make storm sewer maps available to the public either electronically or in hard copy. The City is concerned about publishing detailed infrastructure maps for security reasons. The City answers public requests for information related to the storm drainage system, but does not provide maps for public review. Has the Regional Water Board evaluated the requirement to make storm sewer maps publicly available for potential conflicts with Federal Homeland Security regulations? What is the rationale for requiring publication of the infrastructure maps?	The Water Board is not requiring the publishing of detailed infrastructure maps. The provision only requires making maps of the MS4 drainage system publicly available in order for citizens to assist with the identification and prevention of illicit discharges. Permittees shall control the dissemination of the maps for illicit discharge control purposes. This should not be in conflict with Homeland Security regulations.	No changes made.
Sunnyvale	40A	C.5.e	Phase Implementation of MS4 Screening Program	The requirement to develop and implement a screening program utilizing the USEPA/Center for Watershed Protection publication "Illicit Discharge Detection and Elimination (IDDE): A Guidance Manual for Program Development and Technical Assessment" as immediate upon adoption with no phase in time is unacceptable and will likely cause municipalities such as Sunnyvale to be out of compliance with this provision upon adoption of the permit.	Permittees are not required to develop a plan exactly as described in the manual. The USEPA/Center for Watershed Protection Manual is to be used as a reference in developing the screening program that will be implemented during the permit term. Permittees will not be in immediate non-	No changes made.

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				<p>According to Table 4 the USEPA document listed above, to implement an IDDE program, the first step is to audit the existing program with the resulting product being a 5-year IDDE program development plan. The monitoring criteria listed in the Provision C.5.e.ii of the permit would not start until year 2-5 of the plan, once developed, according to the guidance document cited. However, the permit requires this type of program to be implemented immediately. Also, according to Table 9 of this publication, the estimated Median Annual Cost of an IDDE program is \$121,825, based on 2004 dollars. If video inspections are required, obtaining just the equipment to perform such surveys is at least \$180,000, and this does not count the staff training and operating time for the unit, plus any flushing of lines that would need to be done to utilize the video equipment appropriately.</p> <p>This is a significant cost as a new program requirement, and when included as a whole with all the other new requirements, it will have a considerable cumulative effect on already limited resources for permit compliance by Sunnyvale. Sunnyvale requests that an implementation time frame, such as that outlined in the USEPA publication referenced in this provision (a 5-year time frame) be allowed so that cities</p>	<p>compliance if the manual has not been used prior to adoption. Video inspection are not required under the permit, although permittees may use video inspections to comply with the illicit discharge screening requirements if they choose to conduct them.</p>	

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				can develop a collection system screening program in a reasonable and cost-effective manner.		
Sunnyvale	40B	C.5.e	MS4 Map Availability Concerns	The requirement to produce and make available maps of the MS4 system to the public still does not take into account issues with potential Homeland Security requirements. In the response to comments, Water Board staff indicated that they had not yet contacted Homeland Security about this issue. Also, we believe that the requirement to publicize maps of the city's storm drain collection system should not be required until such a time that the Water Board staff has received clear direction that it is not a Homeland Security issue.	The Water Board is not aware of any security concerns regarding publicizing the drainage paths for the storm drain system. Permittees are being asked to publicize the availability of the information and make them available to the public upon request under the guidance of municipal staff. If the request for map information seemed inappropriate, permittees could deny access to the information.	No changes made.
Santa Clara County	17	C.5.e	MS4 Map Availability Concerns	This section of Provision C.5 requires the County to make storm water sewer maps available to the public. Storm water sewer maps may be critical infrastructure information that is voluntarily submitted to the California Emergency Agency for use by that office, the information is exempt from disclosure under Cal. Gov't Code s 6254(ab). The revised TO does not acknowledge the limitations on the County (and other Permittees) to disclose such maps under the California Public Records Act.	The Water Board is not aware of any security concerns regarding publicizing the drainage paths for the storm drain system. Information regarding storm rain flow paths should not be considered Critical Infrastructure Information as referenced in CA Govt Code 6254 (ab). Permittees should on make the maps	No changes made.

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					available to assist with prevention and identification of illicit discharges.	
ACCWP Attachment1	50	C.5.e.ii	Simplify MS4 Map Availability	The requirement to make MS4 maps publicly available should be simplified to allow fulfillment of this requirement by making the Creek & Watershed Maps produced by the Oakland Museum of California available. These maps depict storm drain lines that are 2-feet or larger in diameter, which should be sufficient for most public interest/educational purposes. Modify this requirement to allow the use of the Oakland Museum of California Creek & Watershed maps.	In some cases, the use of the Oakland Museum creek maps may be appropriate; however these maps do not provide complete coverage for many permittees. If additional information is required to adequately depict drainage paths of the MS4 system permittees should make additional maps available to the public upon request.	No changes made.
SMCWPPP	40					
Berkeley Attachment1	50	C.5.e.ii	Clarify usage of USEPA Manual	The requirement to utilize the USEPA/Center for Watershed Protection publication "Illicit Discharge Detection and Elimination: A Guidance Manual for Program Development and Technical Assessment" is unclear and should simply encourage the use of guidance, such as that provided by this manual. Modify language to state that the "Illicit Discharge Detection and Elimination: A Guidance Manual for Program Development and Technical Assessment" and other similar	Permittees are not required to develop a plan exactly as described in the manual. The USEPA/Center for Watershed Protection Manual is to be used as a reference in developing the screening program that will be implemented during the permit term. The manual in its entirety is intend for implementation.	No changes made.
Newark Attachment	50					
Oakland Attachment1	55					
SMCWPPP	39					
ACCWP Attachment1	49					

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				manuals may be used for guidance.		
ACCWP Attachment3	16	C.5.e.iii	Collection Screening Inspections Redundant	Collection Screening Inspections and reporting are redundant with C.2, C.8, and C.10 Eliminate Requirement.	The collection screening requirements are specific requirements to proactively screen and assess the potential for illicit connections and discharges. These provisions are not redundant with C.2, C.8, and C.10, although they may be implemented concurrent with those sections if permittees conducting screening activities while implementing those provisions.	No changes made.
Berkeley Attachment2	17					
Newark Attachment	51					
Contra Costa Board of Supervisors Attach A	28	C.5.e	Joint Tracking Between County and Flood Control District	Since the Flood Control District is housed within the County's Public Works Department, it is requested that the Water Board allow for (unincorporated) Contra Costa County and the Flood Control District to jointly track and report illicit discharges; this would eliminated the necessity to separately track activities that are undertaken by the two entities for the same purpose.	It is not necessary for Flood Control District and unincorporated Contra Costa County to redundantly track and report illicit discharges. It is only necessary for one entity to track and report joint illicit discharge responses.	No changes made.
Danville	7	C.5	Retain Existing Illicit Discharge Program	This section will increase the number of field screenings required to be performed in Town creeks, add more prescriptive requirements for conducting dry season field screening surveys/inspections, and require more active code enforcement procedures. In and of itself, this provision	Existing illicit discharge programs are currently not consistent between Stormwater programs. The MRP provisions will improve consistent reporting and tracking of illicit discharge	No changes made.

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				will require hiring of additional staff to meet the proposed requirements and handle the extra documentation and reporting efforts being requested. The Town's cost is about \$50,000 annually. Suggested Recommendation: Retain existing permit language including existing program, inspection plan, documentation and reporting requirements.	control activities.	
Fairfield	19	C.5.e	Collection System Screening	The requirement to survey at least one screening point per square mile per year including some key major outfalls draining industrial areas is very burdensome and unrealistic. The number of inspections required is too many for the City to realistically inspect with their current staff levels.	The Federal Regulations required NPDES Municipal Phase I permit applicants to include much more comprehensive screening in their initial NPDES Permit application than is contained in the Revised TO, (See Fact Sheet and 40 CFR 122. 26) including results of a field screening analysis for illicit connections that includes, at a minimum, a description of visual observations made at each designated field screening point. Field screening points are either all major outfalls or outfall points randomly located throughout the storm drain system and identified by overlaying the system with a 0.5 mile square grid system and selecting one field screening point for every 1/16 square	No changes made.

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					<p>mile cell.</p> <p>The Revised TO approach is much more efficient and easier to implement, and relies on a combination of focused inspections for illicit discharges based on the Permittees illicit discharge screening program and visual inspections during routine maintenance and other activities in the collection system to meet the screening frequency specified in the Federal Regulations.</p>	
Fairfield- Suisun Sewer District	16	C.5.e	Collection System Screening Too Prescriptive	<p>These requirements are too prescriptive and unnecessarily burdensome. It is the permittee's experience that surveying outfalls and underground storm drain lines for illicit discharges has had very little effect on identifying or controlling these types of discharges. A much more effective use of resources should be directed to actively surveying/inspecting above ground sources of these discharges. Keep current permit requirements.</p>	<p>The Federal Regulations required NPDES Municipal Phase I permit applicants to include much more comprehensive screening in their initial NPDES Permit application than is contained in the Revised TO, (See Fact Sheet and 40 CFR 122. 26) including results of a field screening analysis for illicit connections that includes, at a minimum, a description of visual observations made at each designated field screening point. Field screening points are either all major outfalls or outfall points randomly</p>	No changes made.
Suisun City	19					
Fremont	24					

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					<p>located throughout the storm drain system and identified by overlaying the system with a 0.5 mile square grid system and selecting one field screening point for every 1/16 square mile cell.</p> <p>The Revised TO approach is much more efficient and easier to implement, and relies on a combination of focused inspections for illicit discharges based on the Permittees illicit discharge screening program and visual inspections during routine maintenance and other activities in the collection system to meet the screening frequency specified in the Federal Regulations.</p>	

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Livermore	10	C.5.e	Collection System Screening	<p>This provision requires the City to develop and implement a screening program utilizing the U.S.E.P.A/ Center for Watershed’s publication entitled “Illicit Discharge Detection & Elimination, A Guidance Manual for Program Development and Technical Assessment”. It further requires that the City establish one screening point per square mile of the City’s Urban and Suburban Area less Open Space Area. The purpose of such a screening program is to provide a means to identify and stop illegal discharges to the storm sewer system.</p> <p>This is another area of the permit in which Board staff should utilize the expertise of the stormwater program staff, many of whom have over 15 years of practical experience actually implementing programs, rather than academically proposing “how” to do things in such detail. The screening-point approach may be good for an agency just starting to implement an illicit discharge program to identify on-going illicit connections. However, since our programs have been in place for over 10 years, any agency running a professional program has long ago eliminated illicit connections.</p> <p>This provision, as written, is overly prescriptive and unnecessarily burdensome. The City has demonstrated through past illicit discharge investigation</p>	<p>The Federal Regulations required NPDES Municipal Phase I permit applicants to include much more comprehensive screening in their initial NPDES Permit application than is contained in the Revised TO, (See Fact Sheet and 40 CFR 122. 26) including results of a field screening analysis for illicit connections that includes, at a minimum, a description of visual observations made at each designated field screening point. Field screening points are either all major outfalls or outfall points randomly located throughout the storm drain system and identified by overlaying the system with a 0.5 mile square grid system and selecting one field screening point for every 1/16 square mile cell.</p> <p>The Revised TO approach is much more efficient and easier to implement, and relies on a combination of focused inspections for illicit discharges based on the Permittees illicit discharge screening program and</p>	No changes made.

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				<p>activities that surveying outfall screening points and underground storm sewer system points for illicit discharge activity has been both inefficient and ineffective in discovering and reducing illicit discharge activity. Conversely, time spent performing “above-ground” survey inspections of commercial and industrial business parks has yielded much more success in identifying and stopping illicit discharges. This is a much more effective and efficient utilization of resources in identifying, stopping, and abating illicit discharge activity. The City has communicated the results and successes of it past illicit discharge activity in various reports to the Board over the years. This provision should be modified to allow permittees to implement measures that are effective in identifying and controlling illicit discharges.</p>	<p>visual inspections during routine maintenance and other activities in the collection system to meet the screening frequency specified in the Federal Regulations.</p>	
Alameda County	7	C.5.e.ii	<p>Exclude Non-population Based Permittees from Collection System Screening</p>	<p>This provision requires “Permittees” to “implement the screening program by conducting a survey of strategic collection system check points (one screening point per square mile of Permittee urban and suburban jurisdiction area, less open space)...” This requirement is geared more toward cities and not toward non-populated Permittees such as the Alameda County Flood Control and Water Conservation District.</p> <p>Proposed Solution: This provision should exclude non-populated Permittees or include requirement that are specific for</p>	<p>Flood Control District’s are only responsible for inspecting areas under their direct sphere of control. It is essential that Flood Control District’s conduct inspections of the MS4 to assess non-stormwater discharges and illicit flows from their outfalls.</p>	<p>No changes made.</p>

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				non-populated Permittees.		
Contra Costa Board of Supervisors Attach A	26	C.5	Does Not Address Inter-jurisdictional Challenges	The MRP does not address inter-jurisdictional challenges in enforcement of source discharges of trash, illegal dumping and other illicit discharges. It is not appropriate for one Permittee to be held responsible for illicit discharges originating within another jurisdiction. Provision C.5 should be modified such that a jurisdiction is not penalized for illicit discharges originating within another jurisdiction.	In cases that have inter-jurisdictional challenges permittees should cooperate and coordinate with the responsible entities. If it is not possible to obtain compliance after coordinated efforts, the Water Board should be contacted.	No changes made.
Contra Costa Board of Supervisors Attach A	29	C.5.f	Difficult to Abate Certain Discharges in 10-day Period	Some locations are not accessible for safe recovery of large debris, such as mattress and couches, and crews often must deploy costly boom trucks with operators. Although the County agrees that a 10-day abatement window is a reasonable time to abate active liquid discharges (although all efforts will be made to abate discharges more quickly, as appropriate), this may not be appropriate for all incidents of solid waste dumping. The County is requesting that the timeline for abatement of certain appropriate discharges be increased to 30 days. It is recommended that 30 days be allowed for abatement of discharges that are "neither prone to mobilization nor pose an imminent threat to water quality."	The permit allows permittees flexibility to achieve violation correction. If violations are not corrected in 10 business days or before the next rain event, permittees can provide an explanation justifying the reason for the delay. The 10 days for correction of violations is being established in lieu of the prescriptive enforcement response requirements that were included in the previous draft TO.	No changes made.
Contra Costa Co Flood Control Attach A	2	C.5.f	Lack of Authority to Respond	The primary concern of the Contra Costa County Flood Control and Water Conservation District (Flood Control District) is the lack of authority in responding to illicit discharges originating	Flood Control District's should directly enforce the requirements for illicit discharge response in areas where they have authority.	No changes made.

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				within city jurisdictions adjacent to our flood control channels. The MRP presents challenges in enforcement of point source discharges of trash, illegal dumping and other illicit discharges whose sources are located in cities' jurisdictions (where County Ordinances do not apply), that enter Flood Control District channels and downstream waterways in unincorporated areas. As written, the Flood Control District may be held responsible for illicit discharges it has limited means to effectively control, primarily in the form of structural controls like exclusion fencing. This section of the permit should make some concession for Flood Control agencies in recognition of their limited ability to enforce and correct/eliminate illicit discharges.	When cross jurisdictional cases arise, it expected that Flood Control District's will coordinate efforts with the appropriate responsible agency in order to achieve clean up and abatement.	
Contra Costa Co Flood Control Attach A	3	C.5.f	Lack of Authority to Respond	As noted above, the Flood Control District has no authority to abate an illicit discharge from a source outside its property. The Flood Control District can report the number and location of illicit discharges on its property, but cannot be reasonably expected to provide follow up information on incidents reported to cities. The MRP should limit the Flood Control District's responsibility to addressing illicit discharges originating on its property.	Flood Control District's should directly enforce the requirements for illicit discharge response in areas where they have authority. When cross jurisdictional cases arise, it expected that Flood Control District's will coordinate efforts with the appropriate responsible agency in order to achieve clean up and abatement.	No changes made.
Contra Costa Co Flood Control Attach A	4	C.5.f	Problem with 10 Day Clean Up	In general, the Public Works Department, on behalf of the Flood Control District, responds to complaints within three days.	The permit allows permittees flexibility to achieve violation correction.	No changes made.

**Response to Comments on February 11, 2009 Revised Tentative Order
Provision C.5. – Illicit Discharge Detection and Elimination**

File	Comment No.	Provision No. ^a	Key Word(s)	Comment	Response	Proposed MRP Revision ^b
				<p>However, removal of illegally dumped debris may not occur within the required 10 day response time due to the volume, geographic separation of dumping locations and limited staff available to the Flood Control District. Locations of dumped materials often do not allow for safe recover of large debris, such as mattresses and couches, without the use of costly boom truck equipment. In the case of homeless encampments, the Flood Control District must often coordinate cleanup efforts with the cities that own fee title to the lands underneath road bridges that attract homeless encampments; these efforts also require the involvement of law enforcement and social service providers to address the needs of evicted people. Although the requirement to conduct abatement of liquid discharges within 10 days, it is requested that 30 days be allowed for abatement of discharges that pose a low immediate risk to water quality.</p>	<p>If violations are not corrected in 10 business days or before the next rain event, permittees can provide an explanation justifying the reason for the delay. The 10 days for correction of violations is being established in lieu of the prescriptive enforcement response requirements that were included in the previous draft TO.</p>	
Danville	6	C.5	Reduce Reporting Requirements	<p>New record keeping and reporting requirements contained in Provisions C.3. New Development, C.6 Construction Site Controls, C.5. Illicit Discharge and Detection. And C.10 Trash. These efforts will require the creation of data base systems, employee training and considerable implementation time preparing reports that will have little impact on the environment. The Town does not have adequate resources available for these purposes and suggests that program</p>	<p>The data collected and reported in C.5 is the minimum amount necessary to assess illicit discharge investigation and response effectiveness.</p>	No changes made.

**Response to Comments on February 11, 2009 Revised Tentative Order
Provision C.5. – Illicit Discharge Detection and Elimination**

File	Comment No.	Provision No. ^a	Key Word(s)	Comment	Response	Proposed MRP Revision ^b
				funds be more effectively spent elsewhere. Suggested Recommendation: Reduce the extensive data base reporting requirements outlined in the proposed permit for both local agency and SFRWQCB benefit, and devote available staff resources toward program implementation.		
ACCWP Attachment1	51	C.5.f.ii	Tracking and Case Follow Up Overly Prescriptive	The information tracked is overly prescriptive and unnecessary. For example, information tracking about the response times will divert resources from doing the actual illicit discharge detection and elimination work. Remove the detailed information listed in this permit section.	Tracking response times is an effectiveness measure that can be used to evaluate and improve illicit discharge enforcement. Tracking response times will not create any significant time drain on enforcement resources. Recording a resolution date in files and database and summarizing the results in the annual report is a simple task.	No changes made.
SMCWPPP	41					
Berkeley Attachment1	51	C.5.f.ii	Record Keeping Requirement Overly Detailed	Record keeping requirements are overly detailed. Allow agency to determine means of tracking incidents; annual reporting will indicate number of unresolved issues, if any	It is necessary for all permittees to track and report actions in a uniform manner. The recordkeeping and reporting information required is the minimum necessary to determine appropriate identification and response to illicit discharge complaints and compliance with the MRP provisions. Permittees have the flexibility to develop the	No changes made.
Newark Attachment	52					
Oakland Attachment1	56					
ACCWP Attachment3	17					

**Response to Comments on February 11, 2009 Revised Tentative Order
Provision C.5. – Illicit Discharge Detection and Elimination**

File	Comment No.	Provision No. ^a	Key Word(s)	Comment	Response	Proposed MRP Revision ^b
					specific mechanism and tabular system to collect and report the data.	
Berkeley Attachment2	18	C.5.f	Requirement to Establish Additional Database Redundant	The requirement to create and maintain an additional database or tabular system is redundant and an inefficient use of resources. Remove this requirement. This data is already captured in the Illicit Discharge database.	Maintaining a database is an efficient way of tracking results and effectiveness. C.5.f does not require an additional database for Illicit Discharges. It establishes the minimum level of information that should be recorded in the database.	No changes made.
Oakland Attachment2	18					
Fremont	25					
Fremont	26	C.5.f.(2)-(3)	Requirement to Establish Additional Database Redundant	List investigation information & response time in separate data base. This information would already be entered into the Illicit Discharge database, so an additional database is unnecessary and a waste of resources. These types of discharges should be reported in the existing illicit discharge database.	Maintaining a database is an efficient way of tracking results and effectiveness. C.5.f does not require an additional database for Illicit Discharges. It establishes the minimum level of information that should be recorded in the database.	No changes made.
San Leandro	13	C.5.f.i.(3)	Level of Detail Required for Illicit Discharge Tracking Will Impact Implementation	There are far too many needless data tracking requirements; such as response in days of; call to investigation, investigation to abatement and call to abatement. This level of detail is inhibitory to effective implementation and draws funding and resources from field based tasks to reporting and data management. We recommend deleting section (3) as it is unnecessary to implementation of an effective illicit discharge component.	Tracking response time is an effectiveness measure that can be used to evaluate and improve illicit discharge enforcement. Tracking response times will not create any significant time drain on enforcement resources. Recording response times and a resolution dates in a database and summarizing the results in annual reports	No changes made.

**Response to Comments on February 11, 2009 Revised Tentative Order
Provision C.5. – Illicit Discharge Detection and Elimination**

File	Comment No.	Provision No.^a	Key Word(s)	Comment	Response	Proposed MRP Revision^b
					is a simple task.	
Daly City	12	C.5.f.ii	Tracking and Case Follow Up Resource Burden	The information tracked is overly prescriptive and unnecessary. Information tracking about the response times will divert resources from doing the actual illicit discharge detection and elimination work. Remove the detailed information listed in this permit section. Nevertheless, if not removed the Implementation schedule should be changed to July 1 st , 2010 or later to allow sufficient time to develop the plan.	Tracking response time is an effectiveness measure that can be used to evaluate and improve illicit discharge enforcement. Tracking response times will not create any significant time drain on enforcement resources. Recording response times and a resolution dates in a database and summarizing the results in annual reports is a simple task.	No changes made.
Dublin	9	C.5	Current Practices Effective No Need for ERP	The Permit requires development of a formalized Emergency Response Plan (ERP) for use with business inspections, spill response, and construction, which would detail how the City responds to these incidents, as well as other processes, record keeping, and reporting. Included in the ERP are requirements to adopt, by ordinance, escalating penalties for noncompliance. The City of Dublin, during the 2007-08 Fiscal Year, responded to a total of 36 spills or discharges, of which 34 incidents were abated that year, with the remaining 2 cases requiring physical improvements at the site which were completed by the end of the 2008. The majority of these dealt with oil leaks from parked vehicles, construction debris being dropped in a street, or similar	An enforcement response plan is an important tool that will help permittees achieve effective and consistent enforcement. The specific requirements for development of an ERP have been removed to provide permittees with flexibility. Permittees have the ability to create an ERP specific to their needs in order to achieve compliance in accordance with the MRP provisions.	No changes made.

**Response to Comments on February 11, 2009 Revised Tentative Order
Provision C.5. – Illicit Discharge Detection and Elimination**

File	Comment No.	Provision No. ^a	Key Word(s)	Comment	Response	Proposed MRP Revision ^b
				<p>problems. The most extreme incidents involved a sewage spill due to a plugged sewer main, dumping of cooking oil by a restaurant into a private storm drain, and trash generated at a market. In summary, the City of Dublin's current spill response, business inspection practices, and construction inspection practices are effective, and adoption of additional formal measures would provide no incremental benefit to water quality. The added cost of adopting additional business and spill response measures is estimated at \$6,000 per year.</p>		

^a Refers to Provision Numbers contained in the Municipal Regional Stormwater Permit (MRP) Tentative Order dated December 14, 2007.

^b Provision Numbers referenced are found in the Municipal Regional Stormwater Permit (MRP) revised Tentative Order dated February 11, 2009

**Response to Comments on February 11, 2009 Revised Tentative Order
Provision C.6. – Construction Site Control**

File	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
Daly City	5	C.6.	Overly Prescriptive	This will require additional staff time to implement without any improvement to water quality.	Board staff has inspected many construction sites that lacked BMPs, lacked effective BMPs, and/or lacked maintenance on the BMPs. A number of times, Board staff was present when illicit discharges into the MS4s were occurring. The reporting requirements level the playing field and bring accountability. The need for accountability will help ensure that construction sites are inspected at the prescribed frequency. Field presence and consistent enforcement will help ensure that adequate BMPs are in place, thereby reducing the potential for illicit discharges.	
Danville	6	C.6.	Reduce Reporting Requirements	Permit requires the creation of database, employee training, and lots of time to prepare reports that have little impact on the environment. <i>Reduce database reporting requirement and devote staff resources toward program implementation.</i>	Board staff has inspected many construction sites that lacked BMPs, lacked effective BMPs, and/or lacked maintenance on the BMPs. A number of times, Board staff was present when illicit discharges into the MS4s were occurring. The reporting requirements level the playing field and bring accountability. The need for accountability will help ensure that construction sites are inspected at the prescribed frequency. Field presence and consistent enforcement will help ensure that adequate BMPs are in place, thereby reducing the potential for illicit discharges.	
BASMAA Attachment	20	C.6.	Revise Goal Statement	Goal statement is a summary of the provision. <i>Revise into a goal statement like other</i>	We believe that the goal statement is appropriate.	

**Response to Comments on February 11, 2009 Revised Tentative Order
Provision C.6. – Construction Site Control**

File	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
				<i>provisions.</i>		
Moraga Oakley	1 1	C.6.	Significant Improvement	C.6. contains a set of strong, and appropriately detailed and clear set of requirements. It will strengthen enforcement of water quality protection in the construction environment.	Thank you!	
SMCWPPP SMCWPPP	42 44.b.	C.6.	Too Much to Do All Sites	The permit should not require implementation of a construction site control program at all construction sites. It should focus efforts on construction sites that are of sufficient size to pose a reasonable threat to water quality and are located where stormwater runoff from the site flows into the municipality's MS4. <i>Modify the language to qualify that permittees are responsible for all construction sites that have a grading permit and are located where stormwater runoff from the site flows into the municipality's MS4 and poses a threat to cause or contribute to a water quality standard</i>	40 CFR 122.26(d)(1)(iii)(B) requires that Permittees prohibit through ordinance, order, or similar means, illicit discharges to the municipal separate storm sewer. All construction sites, regardless of size, can pose a threat to water quality if appropriate and adequate BMPs are not implemented. A large number of "small" remodels, rebuilds, and expansions can equate to a rather large development. Just this past rainy season, a site way under one acre (approximately 530 ft long and between 8 – 12 ft wide) had significant erosion issues because it lacked erosion and sediment controls. Erosion from the site caused flooding and the spreading of sediment onto the public road ways and a number of illicit discharges occurred into the municipality's MS4. Pollutants must be contained on the construction site. Construction pollutants shall not be going to stormdrains, waterbodies, or neighboring properties.	

**Response to Comments on February 11, 2009 Revised Tentative Order
Provision C.6. – Construction Site Control**

File	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
				<i>exceedance.</i>		
Pacifica San Bruno	2 4	C.6.	Too Much with No Water Quality Improvement	Too prescriptive and will require additional staff time to deal with an unnecessary amount of information and reporting that does not relate to water quality.	Board staff has inspected many construction sites that lacked BMPs, lacked effective BMPs, and/or lacked maintenance on the BMPs. A number of times, Board staff was present when illicit discharges into the MS4s were occurring. The reporting requirements level the playing field and bring accountability. The need for accountability will help ensure that construction sites are inspected at the prescribed frequency. Field presence and consistent enforcement will help ensure that adequate BMPs are in place, thereby reducing the potential for illicit discharges.	
Contra Costa Brd of Sups Atch A	30	C.6.a.	Time Extension	Adoption of legal authority may not be feasible prior to the 2010 Annual Report since it is dependent on other activities with later implementation dates, such as ERP. <i>Change to 2011 Annual Report.</i>	The Enforcement Response Plan is a staff working document to implement the legal authority. Adequate legal authority has been required since the beginning of the stormwater programs in the early 1990s, 40 CFR 122.26(d)(2)(I)(B-F).	
Pacifica	24	C.6.a.i.	Language Change	<i>Modify the language to qualify that permittees are responsible for all construction sites that have a grading permit and are</i>	40 CFR 122.26(d)(1)(iii)(B) requires that Permittees prohibit through ordinance, order, or similar means, illicit discharges to the municipal separate storm sewer. All construction sites, regardless of size, can	

**Response to Comments on February 11, 2009 Revised Tentative Order
Provision C.6. – Construction Site Control**

File	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
				<p><i>located where stormwater runoff from the site flows into the municipality's MS4 and poses a threat to cause or contribute to a water quality standard exceedance.</i></p>	<p>pose a threat to water quality if appropriate and adequate BMPs are not implemented. A large number of "small" remodels, rebuilds, and expansions can equate to a rather large development. Just this past rainy season, a site way under one acre (approximately 530 ft long and between 8 – 12 ft wide) had significant erosion issues because it lacked erosion and sediment controls. Erosion from the site caused flooding and the spreading of sediment onto the public road ways and a number of illicit discharges occurred into the municipality's MS4. Pollutants must be contained on the construction site. Construction pollutants shall not be going to stormdrains, waterbodies, or neighboring properties.</p>	
Brisbane	14	C.6.a.i.	Too Much To Do All Sites	<p>Should not be required to implement construction site control program at all construction sites. <i>Focus on construction sites of a sufficient size to pose a reasonable threat to water quality and that are located where stormwater runoff from the site flows into a municipal separate storm sewer system owned or operated by the municipality. And link to</i></p>	<p>All construction sites, regardless of size, can pose a threat to water quality if appropriate and adequate BMPs are not implemented. A large number of "small" remodels, rebuilds, and expansions can equate to a rather large development. Just this past rainy season, a site way under one acre (approximately 530 ft long and between 8 – 12 ft wide) had significant erosion issues because it lacked erosion and sediment controls. Erosion from the site caused flooding and the spreading of sediment onto the public road ways and a number of illicit discharges occurred into</p>	

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Provision C.6. – Construction Site Control**

File	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
				<i>municipal permitting actions, such as issuing a grading permit.</i>	the municipality's MS4. Pollutants must be contained on the construction site. Construction pollutants shall not be going to stormdrains, waterbodies, or neighboring properties.	
Burlingame Millbrae San Mateo Pacifica	7 13 6 24.b.	C.6.a.i.	Too Much To Do All Sites	Should not be required to implement construction site control program at all construction sites. <i>Focus on construction sites of a sufficient size to pose a reasonable threat to water quality and that are located where stormwater runoff from the site flows into a municipal separate storm sewer system owned or operated by the municipality.</i>	All construction sites, regardless of size, can pose a threat to water quality if appropriate and adequate BMPs are not implemented. A large number of "small" remodels, rebuilds, and expansions can equate to a rather large development. Just this past rainy season, a site way under one acre (approximately 530 ft long and between 8 – 12 ft wide) had significant erosion issues because it lacked erosion and sediment controls. Erosion from the site caused flooding and the spreading of sediment onto the public road ways and a number of illicit discharges occurred into the municipality's MS4. Pollutants must be contained on the construction site. Construction pollutants shall not be going to stormdrains, waterbodies, or neighboring properties.	
Homebuilders Association	3	C.6.a.ii.(1)	Active Treatment Not Needed	Active Treatment has raised several potentially significant unintended environmental consequences in the reissuance of the General Construction Permit. <i>Eliminate Active Treatment</i>	The Revised TO mimics the BMP requirements of the Draft General Construction Permit.	

**Response to Comments on February 11, 2009 Revised Tentative Order
Provision C.6. – Construction Site Control**

File	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
				<i>Requirement.</i>		
Kolb, Larry & James Roger	23	C.6.a.ii.(1)	Program Should Extend Beyond Finishing of Lots -	<i>Control programs should extend until the site is fully stabilized by landscaping or the installation of permanent erosion control measures.</i>	It was intended for controls to be in place until the site is fully stabilized.	Language has been added to clarify that municipalities must have the ability to require effective controls through all phases of construction until the site is fully stabilized by landscaping or the installation of permanent erosion control measures.
ACCWP Attachment-3 Berkeley Attachment 2 Newark Attachment Oakland Attachment #2	18 19 53 19	C.6.a.iii.	No Reporting Value	Requirement to certify adequacy of legal authority has not value. <i>Delete requirement.</i>	Legal authority is the foundation to C.6. The Phase 2 Rule specifically requires legal authority to implement proper controls on applicable construction sites. Therefore, it behooves the Phase 1 municipalities to ensure that their respective legal authorities are adequate to implement C.6.	
Contra Costa Brd of Sups Attch A	31	C.6.b.	Change Date	Makes better sense for the implementation of the ERP to be required prior to the	ERP must be implemented year round.	

**Response to Comments on February 11, 2009 Revised Tentative Order
Provision C.6. – Construction Site Control**

File	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
				onset of the rainy season. <i>Change implementation date to October 1, 2010.</i>		
Dublin	9	C.6.b.	ERP Not Necessary	City's current construction inspection practices are effect. Adoption of formal measures would provide no incremental benefit to water quality and would cost about \$6,000.	ERP does not necessarily need to be adopted by the Council or Board of Supervisors. The ERP is a working document for staff that standardizes operating procedures for day to day work. A written ERP is intended to help all staff take consistent actions. In doing so, timely compliance should reduce illicit discharges from construction sites.	
Santa Clara County SCVURPP	18 19	C.6.b.	ERP Scaled Back	Appreciates deletion of the more prescriptive ERP requirements.	Comment Noted.	
Santa Clara County	18.b.	C.6.b.	Extend ERP Deadline	Still contains overly burdensome and extensive reporting requirements, which have the potential to interfere with enforcement work of staff. The County is experiencing escalating enforcement actions for violations at construction sites. To develop and implement an ERP will take significant time, including time for legal review, revision of ordinances, and training staff on the new requirements.	ERP does not necessarily need to be adopted by the Council or Board of Supervisors. The ERP is a working document for staff that standardizes operating procedures for day to day work. Most municipalities should already have some version of an ERP to guide staff to enforce the ordinance and take enforcement actions against violators in a consistent manner.	

**Response to Comments on February 11, 2009 Revised Tentative Order
Provision C.6. – Construction Site Control**

File	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
				<i>Extend deadline to develop and implement the ERP.</i>		
Sunnyvale	41	C.6.b.	Extend ERP Deadline	<p>City has enforcement authority to require effective stormwater pollutant controls and progressively implement stricter enforcement actions to bring construction sites/contractors into compliance but does not have a formal ERP in place that meets all the requirements of the Permit. The ERP will require a significant amount of staff time and funds to support its development, as well as possible ordinance changes to support its implementation.</p> <p><i>Allow additional time.</i></p>	<p>The ERP is a working document for staff that standardizes operating procedures for day to day work. All Pretreatment Programs are required to have an ERP. Sunnyvale, which has a very aggressive Pretreatment Program, should be able to readily adapt its Pretreatment Program's ERP for its Stormwater Program.</p>	
Fremont Attachment	28	C.6.b.ii.	ERP Requirements Inconsistent	<p>ERP requirements are in multiple locations and are inconsistent.</p> <p><i>State the ERP requirements in one section of the permit and refer to it in other sections of the permit.</i></p>	<p>The ERP could be one document, with a separate section of field violation scenarios for C.4. C.5., and C.6.</p>	

**Response to Comments on February 11, 2009 Revised Tentative Order
Provision C.6. – Construction Site Control**

File	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
Fremont Attachment Fremont Attachment	27 29.b.	C.6.b.ii.(1)	Corrections within 10-Business Days	<p><i>Remove requirement that all violations be corrected by the next rain event or within 10 business days. Replace with "Every effort should be made to correct these violations before the next rain event or within 10 business days if practicable. If not, the permittee shall institute a time frame for achieving compliance based and the type, severity and corrective action required."</i></p>	<p>It is a goal to correct violations by the next rain event but no longer than 10 business days after the violations are discovered. We know that in a few instances, such a slope failure, it may not be safe for someone to go out and implement corrective actions until the slope is stable and that may be after the next rain event or even 10 business days after the violation is discovered. However, sites disturbing more than an acre should be able to correct most violations within the goal because they are required by the General Construction Permit to have equipment, materials, and workers available for rapid response to failures and emergencies (Section A.11.). The failure or lack of erosion and sediment controls is a violation of local ordinances and must be addressed by the next rain event because there is a high probability for illicit discharges. The second sentence of the City's recommended replacement language could be very appropriate in an ERP document.</p>	
Santa Clara County	15	C.6.b.ii.(1)	Corrections within 10-Business Days Unrealistic	<p>Correcting violations by the next rain event but no longer than 10-business days is unrealistic. <i>Allow more flexibility for correcting violations within a</i></p>	<p>It is a goal to correct violations by the next rain event but no longer than 10 business days after the violations are discovered. We know that in a few instances, such a slope failure, it may not be safe for someone to go out and implement</p>	

**Response to Comments on February 11, 2009 Revised Tentative Order
Provision C.6. – Construction Site Control**

File	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
				<i>timely manner.</i>	corrective actions until the slope is stable and that may be after the next rain event or 10 business days after the violation is discovered. However, sites disturbing more than an acre should be able to correct most violations within the goal because they are required by the General Construction Permit to have equipment, materials, and workers available for rapid response to failures and emergencies (Section A.11.). The failure or lack of erosion and sediment controls must be addressed by the next rain event because there is a high probability for illicit discharges.	
Daly City	13	C.6.b.ii.(3)	Extend ERP Deadline	Can't meet implementation date. <i>Change to July 1, 2010.</i>	The ERP is a working document for staff that standardizes operating procedures for day to day work. Most municipalities should already have some version of an ERP, written or unwritten, to guide staff to enforce the ordinance and take enforcement actions against violators in a consistent manner.	
Kolb, Larry & James Roger	24	C.6.b.ii.(3)	Compliance Date for ERP Only	Limit April 1, 2010 implementation date to ERP since construction program has been in place since the beginning.	The Revised TO development and implementation date of April 1, 2010 in C.6.b.ii.(3) is intended only for the ERP.	
Pacifica	25	C.6.b.ii.(3)	Extend ERP Deadline	<i>Allow up to one year following adoption of the MRP to develop and implement ERP.</i>	The ERP is a working document for staff that standardizes operating procedures for day to day work. Most municipalities should already have some version of an	

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Provision C.6. – Construction Site Control**

File	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
					ERP, written or unwritten, to guide staff to enforce the ordinance and take enforcement actions against violators in a consistent manner.	
SCVURPPP	19.b.	C.6.b.ii.(3)	Extend ERP Deadline	All Co-Permittees have been effectively using escalating enforcement actions as needed at construction sites but some do not have a written enforcement plan. It will take time to develop, reviewed by legal staff, and then incorporated into codes and ordinances, and finally to train staff. <i>Extended deadline to develop and implement the ERP.</i>	ERP does not necessarily need to be adopted by the Council or Board of Supervisors, or incorporated into codes and ordinances. The ERP is a working document for staff that standardizes operating procedures for day to day work. Most municipalities should already have some version of an ERP, written or unwritten, to guide staff's work. Pretreatment Programs are required to have an ERP. Co-Permittees that have Pretreatment Program should be able to readily adapt its Pretreatment Program's ERP for its Stormwater Program.	
SMCWPPP	43	C.6.b.ii.(3)	Extend ERP Deadline	There should be additional time to develop and begin implementation of this type of plan. <i>Allow up to one year following adoption of the MRP to develop and implement ERP.</i>	The ERP is a working document for staff that standardizes operating procedures for day to day work. Most municipalities should already have some version of an ERP, written or unwritten, to guide staff's work.	
Sunnyvale	42	C.6.c.	Clarify What "All" Construction Sites Mean	City is concerned about the impact that this would have on very small sites, perhaps ones that are currently not regulated due to the size or	Thank you for promoting the use of the practices in "Blueprint for a Clean Bay". The revised TO turns the City's promoting to requiring the use of the practices. All construction sites, regardless of size,	

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Provision C.6. – Construction Site Control**

File	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
				<p>nature of the construction activity. City currently promotes the use of the practices in the BASMAA "Blueprint for a Clean Bay" for all construction activities that could result in stormwater pollution. <i>Clarify the size or type of construction project where these requirements are applicable.</i></p>	<p>can pose a threat to water quality if appropriate and adequate BMPs are not implemented. A large number of "small" remodels, rebuilds, and expansions can equate to a rather large development. Pollutants must be contained on the construction site. Construction pollutants shall not be going to stormdrains, waterbodies, or neighboring properties.</p>	
SMCWPPP	44.b.	C.6.c.i.	<p>BMP Categories Too Prescriptive</p>	<p>The six categories of BMPs are overly prescriptive and the types of BMPs needed depend on individual construction site characteristics. <i>Permit should clarify that BMPs from the six categories are not necessarily required and will depend on the nature of the construction project, the phase of construction, its location, and the season.</i></p>	<p>The December 2007 TO required minimum management practices. The Revised TO backed off from requiring minimum management practices because BMPs are site specific. Instead, it required site specific BMPs from six BMP categories that contain standard BMPs that have been in existence for many, many years in reputable handbooks such as the CA BMP Handbook and Caltrans Stormwater Handbook. It is intended for the BMPs to be site specific, seasonally appropriate, and construction phase appropriate. Our construction inspections have shown that most construction will need BMPs during most phases of construction from all categories, except for Active Treatment Systems.</p>	<p>Added "site specific" to C.6.c.i.</p>

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Provision C.6. – Construction Site Control**

File	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
Mountain View	10	C.6.c.i.	Don't Mandate All Construction Sites	Permit mandates that the City require all construction sites to have seasonally appropriate effective BMPs. This will significantly increase the number of projects subject to review, approval, and inspection to ensure compliance, many that would not pose a significant construction runoff threat. Allow the City the flexibility to determine which projects should have requirements for erosion and sediment control BMPs. <i>Eliminate requirement for all projects to have BMPs.</i>	The Revised TO already allows the necessary flexible to determine seasonally appropriate, site specific BMPs for the construction sites (C.6.c.ii.). 40 CFR 122.26(d)(1)(iii)(B) requires that Permittees prohibit through ordinance, order, or similar means, illicit discharges to the municipal separate storm sewer. 40 CFR 122.26(d)(2)(iv)(A-D) requires Permittees to enforce these ordinances and to take enforcement actions against violators.	Added "site specific" to C.6.c.i.
Contra Costa Brd of Sups Attch A	32	C.6.c.ii. C.6.d.ii. C.6.e.ii.	Change Date	No implementation dates. This will require changes to the County's current construction site erosion/sediment/pollution prevention program including Ordinance changes. <i>Change implementation date to October 1, 2010.</i>	Permittees already require site specific BMPs, check SWPPP, and inspect construction sites. They are to continue what they are supposed to be already doing.	
SCVURPPP BASMAA Attachment	20 21	C.6.d.i.	Specific Change	<i>Change the second sentence of this section be made consistent with C.6.d.ii.(2) by revising it to</i>		Change made.

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				<i>state "Permittees shall also verify that sites disturbing one acre or more of land <u>have filed a Notice of Intent for coverage under the Construction General Permit.</u>"</i>		
SMCWPPP	45	C.6.d.ii.(2)	BMPS Categories Too Prescriptive	Too prescriptive to require BMPs for each of the six categories at different types of construction sites. <i>Clarify that BMPs from the six categories are not necessarily required and will depend on the nature of the construction project, phase of construction, its location, and the season.</i>	The Revised TO does not require BMPs from each of the six categories at each construction site. It allows the necessary flexible to determine seasonally appropriate, site specific BMPs for the construction sites (C.6.c.ii.). If non stormwater management BMPs are not necessary during the grading phase, then it would be site specific not to have non stormwater management BMPs during the grading phase.	Added "phase" appropriate to C.6.c.i.
Kolb, Larry & James Roger	25	C.6.e.i.	Language Change	<i>"Potential Problems" should be changed to "threatened violations of local ordinances and/or erosion control plans" to make this more specific.</i>		Changed "potential problems" to "threatened violations of local ordinances".
Kolb, Larry & James Roger	26	C.6.e.ii.(1)	Language Addition	<i>Add "owner" after sites.</i>		Changed "sites" to "site developers and/or owners".

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Daly City	14	C.6.e.ii.(2)	Limit Enforcement to Property Line	Inspectors are given pre-wet season inspection checklist for project that may cause sediments to flow beyond property lines. <i>Area of enforcement responsibility must be established i.e. within property line and public right of way).</i>	Pre-wet season, wet season, and dry season check lists should all direct inspectors to ensure pollutants are contained on the construction sites. Construction pollutants must not leave the site on their way to stormdrains, waterbodies, or neighboring properties.	
SCVURPPP Sunnyvale	21 43	C.6.e.ii.(2)(b)	Specific Change	<i>Define High Priority Sites as other sites determined by the Permittee or which the Water Board has designated as significant threats to water quality.</i>	Sentence says the same thing.	
BASMAA Attachment	22	C.6.e.ii.(2)(b)(vii)	Specific Change	"Water Board" in the sentence leaves it too open-ended and undefined. <i>Delete Water Board.</i>	We rewrote the second sentence in C.6.e.ii.(2)(b).	Changed to "In evaluating the threat to water quality, the following factors shall be considered:".
SMCWPPP	46	C.6.e.ii.(3)(c)	Not Responsibility for Discharges into Waterbodies	Clean Water Act does not require municipalities to oversee discharges from construction sites that discharge directly to waterbodies without flowing through an MS4. <i>Delete language about inspecting discharges to</i>	If the waterbody is not part of the MS4, then it is not the Permittees' responsibility. We would appreciate your referrals.	

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				<i>waterbodies.</i>		
Pacifica	26	C.6.e.ii.(3)(c)	Not Responsible for Discharge into Water Bodies	Inspections should be limited to discharges to the MS4 owned and operated by the municipality. <i>Delete inspection of discharges to waterbodies.</i>	If the waterbody is not part of the MS4, then it is not the Permittees' responsibility. We would appreciate your referrals.	
Fairfield Fairfield-Suisun Sewer District Suisun City	20.c. 17.c. 20.c.	C.6.e.ii.(4)	Burdensome and Wasted Resources	Requires major revisions to our database and retraining of inspectors. Information will vary by construction site and it not readily available to inspectors. No benefit to water quality and wasted public resources.	We consider the reporting requirements for C.6. the minimum amount of information we need to determine Permittee's compliance and to determine if the Permittees are inspecting, reinspecting, and taking the appropriate enforcement actions to bring sites into rapid compliance. If sites are not inspected and if rapid compliance is not happening, sediment and other construction pollutants are entering our waterbodies.	
Contra Costa Brd of Sups Attch A	33	C.6.e.ii.(4)	Change Date	<i>Progress made towards compliance with C.6 should be reported in the 2010 Annual Report. Full C.6. reporting should begin with the 2011 Annual Report.</i>	Permittees should already be implementing most requirements.	
Fremont Attachment Fremont Attachment	27.b. 29.c.	C.6.e.ii.(4)	Database Duplicative	Summaries of all inspection reports are currently submitted with the annual report and any issues	Perhaps the summaries were inadvertently left out. We don't find them in the commenter's Annual Report.	

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				dealing with compliance are addressed in these comments. A separate database or tabulated format is duplication.		
Sunnyvale	44.c.	C.6.e.ii.(4)	Delay Implementation	There is no phase-in time. Resource is limited to develop tracking and database and conduct monthly inspections. <i>Allow a one year phase in time.</i>	According to the City's Annual Report, it is already conducting inspections. It is unclear why regular inspections would not be conducted on active sites throughout the rainy season.	
Kolb, Larry & James Roger	27	C.6.e.ii.(4)	Language Addition	<i>In the second sentence add after violation "of local ordinances and/or erosion control plan is observed or threatened" and change "problems" to "actual or threatened violation of local ordinances and/or erosion control."</i>		Changed "potential problems" to "threatened violations of local ordinances".
ACCWP Berkeley Newark Oakland	8 7 4 5	C.6.e.ii.(4) C.6.e.iii.	Recordkeeping and Reporting Onerous	The reporting and recordkeeping requirements are still onerous and many do not provide significant improvements for accountability.	We consider the reporting requirements for C.6. the minimum amount of information we need to determine Permittee's compliance and to determine if the Permittees are inspecting, reinspecting, and taking the appropriate enforcement actions to bring sites into rapid compliance. If sites are not inspected and if rapid compliance is not happening, sediment and other construction pollutants are entering our waterbodies.	

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ACCWP Attachment-1 Berkeley Attachment 1 Newark Attachment Oakland Attachment #1	52 52 54 57	 C.6.e.ii.(4) C.6.e.iii.	 Reporting Too Detailed	 A new construction inspection form that captures the requested data will need to be developed and a new construction database will need to be developed and maintained. <i>Revise reporting requirement to include a report on the total number, a summary of the construction inspections performed, and a summary of the violations observed/corrected.</i>	The tracking information is intended to standardize inspection frequency, response, and enforcement among all Permittees. The tracking information will help the Permittees and the Water Board determine information such as the frequency of site visits, frequency of reinspections, and what are the major violations. This information will help with tailoring trainings and educational materials for inspection staff and construction sites. Currently, it is not clear how often sites are inspected, how often there are reinspections, and the types of violations. <ul style="list-style-type: none"> • Alameda County and its Cities do not report any information on construction. • Contra Costa County and its Cities each provide Quantitative Results on a two page table that summarizes some information about inspections and enforcement actions. Each of Permittee's Table provides a very broad overview. It tells you how many inspections were done but not by site. It tells you the number of rainy season inspections to the least visited site. Sometimes the number of inspections for the least visited site was 1. The Contra Costa Permittees standardized the enforcement actions to written corrective measures, notices to comply, stop work orders, notices of violations, 	

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					<p>and fines. However, the annual report does not provide any discussions on the nature or gravity of the violations, if every site was visited, or how often each site was visited. Kudos to the cities of Concord, Moraga, and Orinda who provided informative detailed narratives about their respective construction inspection program.</p> <ul style="list-style-type: none"> • San Mateo County and its Cities include a Summary of Pre-Wet Season Erosion Control Inspection Form. This Form has the project name and address, project type, inspection, box to check off if General Construction Permit is required, box for whether erosion and sediment controls were in place, and description of corrections made. Some pre-wet season inspections were done well into December and January. The majority of the inspections yielded no erosion or sediment violations. Besides the Summary Pre-Wet Season Form, there is no narrative discussion on construction inspections. • Santa Clara County and its Cities don't have uniform reporting. For the most part, the narratives do not tell us how many sites the Permittee had, how many inspections were conducted, what type of violations were observed, and how many and the types of enforcement action taken. 	

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Alameda City	14	C.6.e.ii.(4) C.6.e.iii.	Reporting Too Detailed	Questions the need for an additional tracking system. <i>Revise reporting requirement to include a summary of the construction inspections performed and a summary of the violations observed/corrected.</i>	The reporting requirements listed in the Revised TO is asking for a summary of the construction inspections performed and a summary of the violations observed.	
Brisbane Burlingame Millbrae	15 8 14	C.6.e.ii.(4)	Too Much to Track	List of tracking information for each construction site inspection is unnecessary to protect water quality.	We believe that the list of tracking information is necessary for Board staff to determine that the Permittees are protecting water quality through its respective construction inspection and enforcement program.	
SMCWPPP	47	C.6.e.ii.(4) C.6.e.iii.(1)	Too Much Tracking	List of information to track and report for each construction site inspection is too prescriptive and unnecessary to protect water quality. No value to collect "inches of rain since last inspection." <i>Delete C.6.e.ii.(4)(d), (g), and C.6.e.iii(1)(d), (e), (f), (h), and (i).</i>	In response to comments on the December 2007 TO, we greatly reduced the prescriptiveness of the Provision with respect to legal authority, ERP, Minimum BMPs, and inspection requirements. So, in the Revised TO, we allowed great flexibility in those areas but put the accountability and effectiveness of Provision C.6. into tracking and reporting. The tracking and reporting requirements level the playing field and bring accountability. The need for accountability will help ensure that construction sites are inspected at the prescribed frequency. We believe that the list of tracking information is necessary for Board staff to determine that the Permittees are protecting water quality through its	We revised C.6.e.ii.(4)(d) to say, "Has there been rainfall with runoff?"

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					respective construction inspection and enforcement program. Requested deletions to C.6.e.iii.(1) reduces reporting to bare bone summaries that provide no information to determine if the Permittee is in compliance with its Permit and if the Permittee is taking the appropriate enforcement actions to bring sites into rapid compliance	
Santa Clara County SCVURPPP Sunnyvale	19 22 44	C.6.e.ii.(4)	Too Much Tracking	The level of detail of the inspection reports and tracking reports are very prescriptive.	We believe that the list of tracking information is necessary for Board staff to determine that the Permittees are protecting water quality through its respective construction inspection and enforcement program.	
BASMAA Attachment	23	C.6.e.ii.(4)	Too Prescriptive	List of information to be tracked at each construction site is too prescriptive.	We believe that the list of tracking information is necessary for Board staff to determine that the Permittees are protecting water quality through its respective construction inspection and enforcement program.	
Millbrae	3	C.6.e.ii.(4) C.6.e.iii.	Overly Prescriptive Tracking and Reporting	Voluminous amounts of tracking and reporting will require additional staff time without improving water quality.	We believe that the list of tracking information is necessary for Board staff to determine that the Permittees are protecting water quality through its respective construction inspection and enforcement program.	
San Leandro	14	C.6.e.ii.(4)(d)	Inches of Rain	<i>Remove inches of rain since last inspection.</i>		We revised C.6.e.ii.(4)(d) to say, "Has there been rainfall with

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						runoff?"
ACCWP Berkeley Fremont Newark Oakland	8.b. 7.b. 4 4.b. 5.b.	C.6.e.ii.(4)(d))	Inches of Rain Excessive	Recording the inches of rain since the last inspection for each construction site inspection is not needed to determine compliance.		We revised C.6.e.ii.(4)(d) to say, "Has there been rainfall with runoff?"
ACCWP Attachment-1 ACCWP Attachment-3 Berkeley Attachment 1 Berkeley Attachment 2 Newark Attachment Oakland Attachment #1 Oakland Attachment #2	53 20 53 21 55 58 21	C.6.e.ii.(4)(d))	Inches of Rain Excessive	<i>If requirement to report is not reduced to a summary than reduce the data that must be report, in particular the inches of rain since the last inspection.</i>		We revised C.6.e.ii.(4)(d) to say, "Has there been rainfall with runoff?"
Fremont Attachment	29	C.6.e.ii.(4)(d))	Inches of Rain Ineffective	Trying to access data on rainfall since the last inspection and rationales for longer compliance time at a construction site serves no rational purpose and wastes limited staff resources. Inspections are conducted after major rain events to	Sites disturbing more than an acre should definitely be able to correct most violations within the 10-day goal because they are required by the General Construction Permit to have equipment, materials, and workers available for rapid response to failures and emergencies (Section A.11.). The failure or lack of erosion and sediment controls is a violation of local ordinances	We revised C.6.e.ii.(4)(d) to say, "Has there been rainfall with runoff?"

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				ensure compliance. <i>Delete requirement to record inches of rain since the last inspection.</i>	and must be addressed by the next rain event because there is a probability for illicit discharges.	
Pacifica Pacifica	27 28	C.6.e.ii.(4)(d))	Inches of Rain Not Related to Water Quality	Too prescriptive. <i>Delete requirement to record inches of rain since last inspection.</i>		We revised C.6.e.ii.(4)(d) to say, "Has there been rainfall with runoff?"
BASMAA Attachment	24	C.6.e.ii.(4)(d))	Inches of Rain Onerous	<i>Delete requirement.</i>		We revised C.6.e.ii.(4)(d) to say, "Has there been rainfall with runoff?"
Fairfield Fairfield-Suisun Sewer District Suisun City	20 17 20	C.6.e.ii.(4)(d))	Inches of Rain Unnecessary	Unclear why some of this information (e.g., inches of rain since last inspection) needs to be tracked and included in the Annual Report.		We revised C.6.e.ii.(4)(d) to say, "Has there been rainfall with runoff?"
Brisbane San Mateo Millbrae Cupertino	15.b. 7.b. 14.b. 4	C.6.e.ii.(4)(d))	No Tracking Value	No value to collect inches of rainfall since the last inspection.		We revised C.6.e.ii.(4)(d) to say, "Has there been rainfall with runoff?"
Burlingame	8.b.	C.6.e.ii.(4)(d))	No Tracking Value	No improvement in water quality to collect inches of rainfall since the last inspection. Requires additional staffing resource to gather the information		We revised C.6.e.ii.(4)(d) to say, "Has there been rainfall with runoff?"

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				and report. <i>Delay implementation to better economic times or scale back significantly.</i>		
Fairfield Fairfield-Suisun Sewer District Suisun City	20.b. 17.b. 20.b.	C.6.e.ii.(4)(d)) C.6.e.ii.(4)(f) C.6.e.ii.(4)(g))	Redundant	Six BMP categories and Specific Problems appear to be identical.	The Six BMP categories are broad and are not the same as the Specific Problems. The Specific Problems are intended to help better understand the issues in the field. The following could be specific problems for the Erosion Control Category: No erosion control on exposed soils; seeds didn't germinate; slope failed. The following could be specific problems for the Good Site Management Category: Trash throughout site; paint cans uncovered and left out on the curb; bags of concrete mix not covered.	
CCCWP	21	C.6.e.ii.(4)(d))	Require Inches of Rain Only If There Was A Previous Violation	May be relevant for tracking whether a previous violation and required corrective action has been conducted in a timely manner. But rain data is burdensome when inspectors inspect thousands of sites each rainy season. <i>Change to "Inches of rain since the last inspection (if the previous inspection resulted in a violation requiring timely corrective</i>		We revised C.6.e.ii.(4)(d) to say, "Has there been rainfall with runoff?"

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				<i>action.”</i>		
Santa Clara County	19.b.	C.6.e.ii.(4)(d)	Too Much to Track Inches of Rain	Recording the inches of rain fallen since the last inspection is not feasible. This will vary between construction sites, is not readily available to inspectors, and is not relevant to the site’s effective use of BMPs. The scheduling of inspections and follow up is time consuming for staff, taking away from their other obligations under the TO. <i>Allow more flexibility.</i>		We revised C.6.e.ii.(4)(d) to say, “Has there been rainfall with runoff?”
SCVURPPP	22.b.	C.6.e.ii.(4)(d)	Too Much to Track Inches of Rain	Information will vary by construction site, is not readily available to inspectors, and is not relevant to the site’s effective use of BMPs.		We revised C.6.e.ii.(4)(d) to say, “Has there been rainfall with runoff?”
Sunnyvale	44.b.	C.6.e.ii.(4)(d)	Too Much to Track Inches of Rain	Not feasible to report inches of rainfall since the last inspection since it will vary from site to site, depending on the micro-climates and the information is not something that is readily		We revised C.6.e.ii.(4)(d) to say, “Has there been rainfall with runoff?”

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				available to inspectors. Information not necessary to determine the effectiveness of a site's BMPs.		
Fairfield Fairfield-Suisun Sewer District Suisun City	21 18 21	C.6.e.ii.(4)(f) C.6.e.ii.(4)(g))	Burdensome	Unnecessary reporting.	The Six BMP categories are broad and are not the same as the Specific Problems. The Specific Problems are intended to help better understand the issues in the field. The following could be specific problems for the Erosion Control Category: No erosion control on exposed soils; seeds didn't germinate; slope failed. The following could be specific problems for the Good Site Management Category: Trash throughout site; paint cans uncovered and left out on the curb; bags of concrete mix not covered.	
SMCWPPP	47.b.	C.6.e.ii.(4)(f)	Six BMP Categories Have No Benefit	No benefit to track and report problems within the six BMP categories. <i>Remove the requirement that problems observed need to use the six BMP categories and remove the reference to "Discharge of Sediment or Construction Related Material" unless what this is referring to is clarified.</i>	The six BMP categories contain standard BMPs that have been in existence for many, many years in reputable handbooks such as the CA BMP Handbook and Caltrans Stormwater Handbook. These are the same categories of BMPs contained in the Draft General Construction Permit. It is intended for the BMPs to be site specific, seasonally appropriate and phase appropriate. Our construction inspections have shown that most construction will need BMPs from all categories, except for Active Treatment	We have revised C.6.e.ii.(4)(f) to: "Problem(s) observed using Illicit Discharge and the six BMP categories listed in C.6.c.i."

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					Systems. "Discharge of Sediment or Construction Related Material" means Illicit Discharge. Please see Fact Sheet Attachment 6.1.	
San Jose Attachment A	17	C.6.e.iii(4)(d)	Too Much to Track Inches of Rain	The requirement to track inches of rain since last inspection does not result in environmental benefit for the amount of time and resources necessary to implement.		We revised C.6.e.ii.(4)(d) to say, "Has there been rainfall with runoff?"
ACCWP Attachment-3 Berkeley Attachment 2 Newark Attachment Oakland Attachment #2	19 20 56 20	C.6.e.iii.	Reporting Requirements Too Detailed	<i>Provide flexibility in reporting as needed to track and correct problem sites.</i>	A consistent set of requirements for all Permittees makes expectations clear and levels the playing field. We consider the reporting requirements the minimum amount of information we need to determine Permittee's compliance and to determine if the Permittees are taking the appropriate enforcement actions to bring sites into rapid compliance.	
Berkeley Attachment 2	23	C.6.e.iii.	Reporting Too Detailed	<i>Revise requirements to just the facts and eliminate guessing at effectiveness.</i>	All the reporting requirements in the Revised TO are based on facts observed from the inspections.	
Pacifica	27.b.	C.6.e.iii.	Too Much Reporting	<i>Delete. C.6.e.iii(1)(d), (e), (f), (h), and (i).</i>	Requested deletions reduces reporting to bare bone summaries that provide no information to determine if the Permittee is in compliance with its Permit and if the Permittee is taking the appropriate enforcement actions to bring sites into rapid compliance.	

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Fremont Attachment	30	C.6.e.iii.(1)(c)-(i)	Reporting Requirements Too Detailed	Especially percentage of various parameters are too detailed and do not provide any use to improving water quality or measuring the quality and effectiveness of the program. <i>Have staff in the field inspecting rather than bean counting.</i> <i>Remove (c)-i). Reporting requirements should be based on parameters which truly reflect the quality and effectiveness of this program.</i>	A consistent set of requirements for all Permittees makes expectations clear and levels the playing field. We consider the reporting requirements the minimum amount of information we need to determine Permittee's compliance and to determine if the Permittees are taking the appropriate enforcement actions to bring sites into rapid compliance. Requested deletions reduces reporting to bare bone summaries that provide no information to determine if the Permittee is in compliance with its Permit and if the Permittee is taking the appropriate enforcement actions to bring sites into rapid compliance.	
SCVURPPP Sunnyvale Fairfield Fairfield-Suisun Sewer District Suisun City	23 45 21.b. 18.b. 21.b.	C.6.e.iii.(1)(d)) C.6.e.iii.(1)(f)) C.6.e.iii.(1)(g))	Reduce Reporting Requirements	(f) number of discharges and (g) number of sites with discharges are burdensome to track and compile. Information is already covered in (d). <i>Delete C.6.e.iii.(1)(f)-(g).</i>	C.6.e.iii.(1)(d) asks for the number and percentage of violations in each of the <u>six categories</u> . This requirement does not include the <u>number of discharges</u> (actual and inferred) required in C.6.e.iii.(1)(f) or the <u>number of sites</u> with discharges (actual and inferred) required in C.6.e.iii.(1)(g).	
SCVURPPP	24	C.6.e.iii.(3)	Specific Change	Typographical error. C.6.e.ii.(3) should be C.6.e.ii.(4).	Thanks for catching the typo!	Reference changed to C.6.e.ii.(4).
SMCWPPP	48	C.6.e.iii.(3)	Water Board Should Develop and Maintain Database	<i>Permit should state that the Water Board will offer municipalities the option of using a database that the Water Board develops and</i>	We would be happy to provide Fact Sheet Attachment 6.1. as a template for tracking by hand or electronically. However, it is still the responsibility of the individual Permittee to maintain the information.	

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				<i>maintains.</i>	Maintenance of the data helps Permittees track adequate inspections and enforcement actions.	
ACCWP Attachment-3 Berkeley Attachment 2 Newark Attachment Oakland Attachment #2	21 22 57 22	C.6.f.(iii)	No Reporting Value	Percentage of staff attending training has no value and is difficult to calculate. <i>Modify.</i>	This is intended to be a mechanism for Permittees to document that all staff conducting construction stormwater inspections and/or BMP reviews is given the necessary training.	Revised C.6.f.iii. to "Permittees shall include in each Annual Report the following information: training topics covered, dates of training, and the names of staff members who attended each training."

**Response to Comments on February 11 2009 Revised Tentative Order
Provision C.7. – Public Information and Outreach**

File	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
Dublin	10.b.	C.7.	Awareness and Behavioral Changes	Questions the practicality of measuring awareness or behavioral changes.	<p>40CFR 122.26(d)(2)(v) states that the Permittees must include “Estimated reductions in loadings of pollutants from discharges of municipal storm sewer constituents from municipal storm sewer systems expected as the result of the municipal storm water quality management program.”</p> <p>40CFR 122.42(c) says that the Permittees must submit annual reports on the progress of their respective stormwater programs.</p> <p>The purposes of the public education programs are to inform the community about how everyday activities can impact stormwater discharges and potentially cause adverse impacts to local water bodies, and introduce steps that the community can take to reduce the discharges and resulting impacts. If outreach activities do not achieve an increase in awareness or a change in behavior, it’s time to rethink how money and time is being spent. No program should continuously fund and grow programs that are in theory good but not effecting changes.</p>	
ACCWP Berkeley Oakland	8.b. 7.b. 5.b.	C.7.	Don’t Need Effectiveness Evaluation for Compliance	The standard of compliance is conducting the activity. Effectiveness evaluations are done as needed to improve program, not to measure compliance.	<p>40CFR 122.26(d)(2)(v) states that the Permittees must include “Estimated reductions in loadings of pollutants from discharges of municipal storm sewer constituents from municipal storm sewer systems expected as the result of the municipal storm water quality management</p>	

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Provision C.7. – Public Information and Outreach**

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					<p>program.” 40CFR 122.42(c) says that the Permittees must submit annual reports on the progress of their respective stormwater programs. The purposes of the public education programs are to inform the community about how everyday activities can impact stormwater discharges and potentially cause adverse impacts to local water bodies, and introduce steps that the community can take to reduce the discharges and resulting impacts. If outreach activities do not achieve an increase in awareness or a change in behavior, it's time to rethink how money and time is being spent. No program should continuously fund and grow programs that are in theory good but not effecting changes.</p>	
Kolb, Larry & James, Roger	29	C.7.	Scale Back Surveys	<p>Focused surveys of public information campaigns have been found to be minimally effective. The program outlined appears to be rather costly and could be scaled back with reallocation of funds to activities that result in the reduction of pollutants of concern.</p>	<p>Surveys may be done regionally or county-wide and are necessary to identify and quantify the audiences' knowledge, trends, and attitudes and/or practices; and to measure the overall population awareness of the messages and behavior changes. BASMAA already conducts an Advertising Campaign for its members.</p>	
Dublin	10	C.7.e.	Too Many New Requirements	<p>City is required to complete 2 additional outreach</p>	<p>The number of events according to population was determined by the PIP</p>	

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				<p>events. While the City has implemented more than 4 outreach events each year, this Permit requires additional region-level outreach. Added costs for outreach are estimated at \$11,000/year.</p> <p><i>Since there are major new efforts to deal with trash and other POCs, this is not the year to add additional required public outreach work, and to impose additional record keeping and reporting requirements to this provision.</i></p>	<p>Workgroup for the MRP based on existing performance standards. Existing performance standards are as follow:</p> <p><u>Alameda County</u> Over 100,000 – 8 50,000 to 100,000 – 6 Less than 50,000 – 4</p> <p><u>Contra Costa County</u> Over 100,000 – 4 50,000 to 100,000 – 3 Less than 50,000 – 3</p> <p><u>San Mateo County</u> Over 50,000 – 5 5,000 to 50,000 – 4 Less than 5,000 – 3</p> <p><u>Santa Clara County</u> 8-10</p> <p>However, in response to comments on flexibility on the December 2007 TO, the revised TO (1) eliminates the cap on individual credits for events sponsored by the respective County-wide Program and BASMAA and (2) allows Permittees to claim public outreach and citizen involvement credits if the event contains significant elements of both. Specified number of events remains the same. 40CFR 122.42(c) says that the Permittees must submit annual reports on the progress of their respective stormwater programs.</p> <p>The purposes of the public education programs are to inform the community</p>	

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					about how everyday activities can impact stormwater discharges and potentially cause adverse impacts to local water bodies, and introduce steps that the community can take to reduce the discharges and resulting impacts. We consider the reporting requirements the minimum amount of information we need to determine compliance.	
ACCWP Berkeley Fremont Oakland	8 7 4 5	C.7.	Too Much Reporting	Extensive reporting and evaluation for many provisions.	40CFR 122.42(c) says that the Permittees must submit annual reports on the progress of their respective stormwater programs. The purposes of the public education programs are to inform the community about how everyday activities can impact stormwater discharges and potentially cause adverse impacts to local water bodies, and introduce steps that the community can take to reduce the discharges and resulting impacts. If outreach activities do not achieve an increase in awareness or a change in behavior, it's time to rethink how money and time is being spent. No program should continuously fund and grow programs that are in theory good but not effecting changes.	
Alameda City	29	C.7.a.i.	Inlet Markings on Privately Owned Streets	<i>Clarify whether the City will be responsible for ensuring that the inlet markings on privately owned streets are being maintained in</i>	Permittees are not responsible for ensuring that the inlet markings on privately owned streets are being maintained in perpetuity. But through the PIP Programs, Permittees should certainly	

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				<i>perpetuity.</i>	encourage owners of privately owned streets to keep their markings legible.	
Fremont Attachment	31	C.7.a.i.	Storm Drain Inlet Inspection Form	Development of a separate inspection and maintenance of storm drain inlet markings is too prescriptive and would not be feasible with limited resources of staff and funding. <i>Modify requirements to allow permittees to assess storm drain markers as part of existing field activities and maintain marking as needed.</i>	The Revised TO does not specifically require the development of a separate inspection form to ensure the legibility of the inlet markings.	
Kolb, Larry & James, Roger	28	C.7.a.i.-ii.	Mark All Stormdrains	This program must also include marking and maintaining storm drain inlets on private commercial and high density residential developments and public entities such as schools, universities, colleges, sport complexes, BART, etc.	Schools, universities, and colleges will be covered under the new Phase 2 General Permit. If private commercial properties require inspections through the Industrial Program, Permittees should require maintenance of the inlet markings. And through the PIP Programs, Permittees should certainly encourage such owners to mark their inlets and to keep their markings legible.	
ACCWP Attachment-1 Berkeley Attachment-1 Newark Attachment Oakland Attachment #1	54 54 58 59	C.7.b.	Delete Language	The goal of the advertising campaigns will be to change behavior. The best way to do that may not be to tie it to a stormwater message. <i>Delete reference to increase awareness of stormwater messages.</i>	The ideal goal of the advertising campaigns will be to change behavior. The stepping stone to behavioral change is raising awareness. Please refer to CASQA's <i>Municipal Stormwater Program Effectiveness Guidance</i> . The Revised TO does not specify the exact stormwater messages that must be	

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					in the advertising campaign or the survey questions that must be asked. Permittees have total flexibility on what the messages will be and how they will ask survey questions on awareness and behavioral changes.	
Newark Attachment	59	C.7.b.	Focus On Trash Only	Best to focus on just one pollutant at a time. <i>Delete reference to pesticides.</i>	Provision C.9. and C.10. in the Revised TO address pesticides and trash. The public can readily do something about these two pollutants once they are aware of the issues. Therefore, it makes sense to focus advertising campaigns on these two pollutants.	
West Valley Clean Water Program	10	C.7.c.iii.	Allow for County-wide Program Reporting	Other sections allow the Countywide to report. <i>Allow Countywide Program the ability to report Media Relations for all co-permittees.</i>	We agree.	The underlined language was added to C.7.c.iii. "In each Annual Report, each Permittee (<u>or the Countywide Program, if the media relations campaign was done countywide or regionally</u>) shall include details of each media pitch, such as the medium, date, and content of the

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						pitch.”
ACCWP Attachment-1 Berkeley Attachment-1 Oakland Attachment #1	55 55 60	C.7.c.iii.	Typo	<i>Delete the “s” on Permittee. Typo is repeated in the next several sections.</i>	Thanks for catching the typos!	“S” deleted off of “Permittees” in C.7.c.iii., C.7.d.iii., C.7.e.iii., C.7.g.iii., and C.7.h.iii.
Daly City Daly City	15.b. 16.b.	C.7.e. C.7.g.	Duplicative	C.7.e. and C.7.g. are very similar. <i>Combine public outreach events and citizen involvement events into a single requirement.</i>	40 CFR 122.26(d)(2)(iv) specifically requires public participation. In response to comments, the revised TO already allows Permittees to claim public outreach and citizen involvement credits if the event contains significant elements of both.	
Fairfield Suisun City	22 22	C.7.e.	Too Many Events	2007 TO required Fairfield-Suisun, which includes the Sewer District and the cities of Fairfield, to annually participate and/or host a total of 2 public outreach events. The 2009 Revised TO requires the three Permittees to annually participate and/or host a total of 14 public events (6 for the District, 5 for the Fairfield, and 3 for Suisun). 14 is too onerous.	The cities of Fairfield and Suisun are not non-population-based Permittees.	
Fairfield-Suisun	19	C.7.e.	Too Many	2007 TO required 2 events	Since the District does not own any of the	Fairfield-Suisun

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Sewer District			Events	for the District. This is equitable based on our service area, population and service provided. The 6 events required in the 2009 Revised TO is too many for a small non-population based agency like the District.	streets, storm drain inlets, catch basins, storm drain lines, drainage channels, creeks, or pump station, it is not a municipal separate storm sewer system. The District is no longer named as a Permittee.	Sewer District has been removed from the footnote to C.7.e.
Daly City	15	C.7.e.ii.	Clarification	<i>Clarify what constitutes an outreach event. Are local pollution prevention messages in a newsletter or utility bill considered outreach events?</i>	C.7e.i. describes examples of outreach events as fairs, show, workshops, community events, street fairs, and farmers' markets.	
Contra Costa Co Flood Control Attch A	5	C.7.e.ii.	Don't Require PIP for Non Population-Based Permittees	District is not a population-based entity and therefore has no population to reach. It does not host any land uses that generate trash that affects its waterways. No staff or funding to support these activities.	The District does have an outreach responsibility to the community. The requirements should be interpreted as appropriate for non-population based Permittees.	
Newark	4	C.7.e.iii C.7.f.iii. C.7.g.iii. C.7.h.iii.	Too Much Reporting	Onerous and many do not provide significant improvements for accountability.	40CFR 122.42(c) says that the Permittees must submit annual reports on the progress of their respective stormwater programs. The purposes of the public education programs are to inform the community about how everyday activities can impact stormwater discharges and potentially cause adverse impacts to local water bodies, and introduce steps that the	

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					community can take to reduce the discharges and resulting impacts. If outreach activities do not achieve an increase in awareness or a change in behavior, it's time to rethink how money and time is being spent. No program should continuously fund and grow programs that are in theory good but not effecting changes.	
ACCWP Attachment-1 Berkeley Attachment-1	56 56	C.7.e.iii.	Delete Language	Assessment of effectiveness for each event is not useful to Water Board staff or to the Permittees and it will be a waste of resources. <i>Delete requirement to report on effectiveness.</i>	We certainly hope that Permittees have been assessing the effectiveness of each event they attend. We strongly feel that effectiveness assessment is a valuable tool for Permittees. Permittees need this mechanism to determine if their events have achieved the desired impact and met goals. If desired impact is not achieved and/or goals are not met, it's time to redirect valuable resources.	
Oakland Attachment #1	61	C.7.e.iii. C.7.g.iii. C7.h.iii.	Delete language	Assessment of effectiveness for each event is not useful to Water Board staff or to the Permittees and it will be divert resources. <i>Delete requirement to report on effectiveness and maintain reporting on activities.</i>	We certainly hope that Permittees have been assessing the effectiveness of each event they attend. We strongly feel that effectiveness assessment is a valuable tool for Permittees. Permittees need this mechanism to determine if their events have achieved the desired impact and met goals. If desired impact is not achieved and/or goals are not met, it's time to redirect valuable resources so that the goals are met. CASQA's "Municipal Stormwater Program Effectiveness Assessment Guidance" provides tools on how to evaluation	

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Provision C.7. – Public Information and Outreach**

File	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
					effectiveness.	
ACCWP Attachment-3 Newark Attachment Oakland Attachment #2	22 60 23	C.7.e.iii.	Overly Detailed Reporting	Reporting requirements are overly detailed. <i>Revise requirements to just the facts and eliminate guessing at effectiveness.</i>	We strongly feel that effectiveness assessment is a valuable tool for Permittees and should already be done by Permittees. Permittees need this mechanism to determine if their events have achieved the desired impact and met goals. If desired impact is not achieved and/or goals are not met, it's time to redirect valuable resources so that the goals are met. CASQA's "Municipal Stormwater Program Effectiveness Assessment Guidance" provides tools on how to evaluate effectiveness.	
Fremont Attachment	32	C.7.e.iii.	Post-Event Survey Unnecessary	Post-event survey is unnecessarily burdensome, especially for large events. <i>Continue the same level of evaluation of event effectiveness by describing how each agency evaluates outreach activities.</i>	C.7.e.iii. of the revised TO asks Permittees to assess the effectiveness of the efforts with appropriate measures. Post-event survey could be one of the assessment methods if the Permittee determines it is an appropriate measure. Collectively, we need to determine if all these educational programs are increasing target audiences' knowledge regarding stormwater pollution and effecting behavioral changes.	
NOAA	14	C.7.f. C.7.g. C.7.h. C.7.i.	Supports Provisions	NOAA explicitly supports Watershed Stewardship Collaborative Efforts, Citizen Involvement Events, School-Age Children Outreach, and Outreach to Municipal Officials.	Noted.	

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File	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
Stopwaste.org	15	C.7.f.i.	Add Language	Add the highlighted text, “Task Description – Permittees shall individually or collectively encourage and support watershed stewardship collaborative efforts of community groups such as the Contra Costa Watershed Forum, the Santa Clara Basin Watershed Management Initiative, and “friends of creek” group and other organizations that benefit the health of the watershed such as the Bay-Friendly Landscaping and Gardening Coalition. If no such organizations...”		Added as requested.
ACCWP Attachment-3 Berkeley Attachment 2 Newark Attachment Oakland Attachment #2	23 24 61 24	C.7.f.iii.	Overly Detailed Reporting	Reporting requirements are overly detailed and may already be reported by other groups. <i>Limit reporting to listing the activity or group which the Permittee supports. Consolidate this reporting with C.7.e.iii.</i>	The reporting requirements are appropriate, and have already been reduced to the minimum.	
Fremont Attachment	33	C.7.g.	Post-Event Survey Unnecessary	Post-event survey is unnecessarily burdensome, especially for large events. <i>Continue the same level of evaluation of event</i>	Post-event survey is not specifically required in the revised TO.	

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				<i>effectiveness by describing how each agency evaluates outreach activities.</i>		
Newark Attachment	62	C.7.g.ii.	Assessments Resource Intensive	Requirement to sponsor or host citizen involvement events and provide assessments require an excessive commitment of resources above what is currently implemented.	40 CFR 122.26(d)(2)(iv) specifically requires public participation. 40CFR 122.42(c) says that the Permittees must submit annual reports on the progress of their respective stormwater programs. If outreach/involvement activities do not achieve an increase in awareness or a change in behavior, it's time to rethink how money and time is being spent. No program should continuously fund and grow programs that are in theory good but not effecting changes. We strongly feel that effectiveness assessment is a valuable tool for Permittees and should already be done by Permittees. If desired impact is not achieved and/or goals are not met, it's time to redirect valuable resources so that the goals are met. No program should continuously fund and grow programs that are in theory good but not effecting changes.	
Daly City	16	C.7.g.ii.	Focus on Quality and Not Quantity of Events	Focus should be a quality of events not quantity. <i>Eliminate the requirement that puts a number of events required.</i>	We agree that focus should be on the quality of the events. That, however, will require better assessment measures (effectiveness measures) than what the Revised TO requires. The rest of the commenters would rather not do any assessment.	

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File	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
ACCWP Attachment-1 Berkeley Attachment 2 ACCWP Attachment-3	57 57 57	C.7.g.iii.	Delete Language	Assessment of effectiveness for each event is not useful to Water Board staff or to the Permittees and it will be a waste of resources. <i>Delete requirement to report on effectiveness.</i>	We strongly feel that effectiveness assessment is a valuable tool for Permittees and should already be done by Permittees. Permittees need this mechanism to determine if their events have achieved the desired impact and met goals. If desired impact is not achieved and/or goals are not met, it's time to redirect valuable resources so that the goals are met. CASQA's "Municipal Stormwater Program Effectiveness Assessment Guidance" provides tools on how to evaluate effectiveness.	
Berkeley Attachment 2 Newark Attachment Oakland Attachment #2	24 25 25	C.7.g.iii.	Overly Detailed Reporting	<i>Revise requirements to just the facts and eliminate guessing at effectiveness.</i>	We certainly hope that Permittees have been assessing the effectiveness of each event they attend. We strongly feel that effectiveness assessment is a valuable tool for Permittees. Permittees need this mechanism to determine if their events have achieved the desired impact and met goals. If desired impact is not achieved and/or goals are not met, it's time to redirect valuable resources so that the goals are met. CASQA's "Municipal Stormwater Program Effectiveness Assessment Guidance" provides tools on how to evaluation effectiveness.	
ACCWP Attachment-1 Berkeley Attachment 1	58 58	C.7.h.iii.	Delete Language	Assessment of effectiveness for each event is not useful to Water Board staff or to the Permittees	We strongly feel that effectiveness assessment is a valuable tool for Permittees and should already be done by Permittees. Permittees need this	

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File	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
				and it will be a waste of resources. <i>Delete requirement to report on effectiveness.</i>	mechanism to determine if their events have achieved the desired impact and met goals. For example, some municipalities have used informal/formal pre and post tests for students and evaluation forms from teachers. Teachers have lots to cover in a school year. If your program isn't highly benefitting them or their students, they aren't going to use your program.	
ACCWP Attachment-3 Berkeley Attachment 2 Newark Attachment Oakland Attachment #2	25 26 64 26	C.7.h.iii.	Overly Detailed Reporting	<i>Revise requirements to just the facts and eliminate guessing at effectiveness.</i>	We strongly feel that effectiveness assessment is a valuable tool for Permittees and should already be done by Permittees. Permittees need this mechanism to determine if their events have achieved the desired impact and met goals. If desired impact is not achieved and/or goals are not met, it's time to redirect valuable resources so that the goals are met. CASQA's "Municipal Stormwater Program Effectiveness Assessment Guidance" provides tools on how to evaluate effectiveness.	

**Response to Comments on 2-18-09 Revised Tentative Order
Provision C.8. – Water Quality Monitoring**

File	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
Friends of Five Creeks	2	C.8	Support for the monitoring requirements	In the area of monitoring, I am pleased that the current draft retains most of the framework our stakeholders' group proposed as the minimum needed to obtain some basic idea of the status and trends in water quality in the Bay Area. The Board and staff, and we all, need this information in order to not flail in the dark.	Comment noted	None
SCVURPPP Attachment A SCVWD	26 8	C.8	Credit for previous sampling	Allow the Santa Clara Program to obtain credit for its previous and current monitoring. Include a provision that allows a stormwater program to reduce monitoring requirements to the extent that it can certify that it has already completed a substantially similar body of monitoring work.	The monitoring efforts Commenters want credit for or reduced is not clear. Status Monitoring rotates around watersheds, so repetition after a period of years is built in. Previous monitoring results will inform Permittees' selections of waterbody(s) to sample each year; sample locations; and analysis of analytical results, at a minimum. The proposed monitoring program is similar in many ways to the Commenter's current monitoring program, & is expected to build upon previous efforts.	None
Danville	4	C.8	Don't change procedures	It makes little sense to abandon over 7 years of data and change the procedures, rendering existing data incomparable, of little or no use.	Existing data should inform Permittee's next steps as they conduct the monitoring program outlined in C.8. It is necessary to for all Permittee's to use the same standard protocols as our monitoring programs are informed by updated scientific information.	None

**Response to Comments on 2-18-09 Revised Tentative Order
Provision C.8. – Water Quality Monitoring**

File	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
Palo Alto Santa Clara County SCVURPPP SCVWD CCCWP Walnut Creek Pleasanton SCVWD Sunnyvale	8 20 5 8 5 2 7 22 10	C.8	General	<p>As currently drafted, many of the monitoring requirements are:</p> <p>1) not based on sound science;</p> <p>2) too prescriptive to allow for adaptive monitoring or collaborative efforts underway via the Regional Monitoring Program for Water Quality (RMP);</p> <p>3) not necessary (data for data's sake and/or focused beyond pollutants subject to regulation under a federal permit); and</p> <p>4) not prioritized so as to allow monitoring resources to be focused on the most urgent water quality issues.</p>	<p>1) Following the previous round of public comments, we reviewed the scientific basis of each monitoring requirement, then made changes to better-describe methods, and revise or eliminate many requirements. We disagree that monitoring requirements, and the Commenters do not specifically reference method(s) they deem to be based on less-than-sound science.</p> <p>2) We have added language to more explicitly allow Permit compliance through efforts underway via the RMP.</p> <p>3) We disagree that the monitoring requirements are unnecessary or beyond regulatory intent. Municipal storm water permits generally do not contain effluent limits, due to the nature of storm water discharges & lack of information on which to base numeric effluent limits. Instead, permits include monitoring programs to gather necessary information to determine the extent to which the permit provides for attainment of water quality standards & to determine the appropriate conditions or limitations for subsequent permits. [Fed.Reg. 61:166, 43761 & 61:216, 57425-29]</p> <p>4) We disagree that the monitoring requirements could be any further</p>	

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Provision C.8. – Water Quality Monitoring**

File	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
					prioritized. The Tentative Order requires the absolute minimum monitoring, reflecting the current economic conditions in the Region.	
Danville	4	C.8	Delay	Reduce requirements. Allow 3 years to develop a monitoring program.	The monitoring requirements have been developed through a long process that included significant stakeholder input. We disagree that additional time is needed to develop a monitoring program.	None
– BEGINNING OF COMMENTS ON THE COSTS OF THE MONITORING REQUIREMENTS –						
Campbell	3	C.8	Reduce or delay; prioritize	New requirements for water quality monitoring, special studies, and pilot projects need to be reduced or delayed.	<p>In response to the Permittees' concerns about cost, Board staff scrutinized each monitoring requirement and pared back many of them again, in addition to the reductions made following the first Tentative Order.</p> <p>The reductions made to the second Tentative Order are listed in the column to the right.</p> <p>Every remaining monitoring requirement is cost-effective and necessary. See the Fact Sheet for a full explanation of the need for each monitoring requirement.</p> <p>In response to the estimates</p>	<p>In response to concerns regarding the cost of monitoring, the following items are reduced or deleted:</p> <ul style="list-style-type: none"> • Reduce nutrient sampling by 66% by eliminating 2 rounds of sampling per year. • Eliminate nutrients sampling during storm events entirely. Now all Status nutrient sampling can be done with the bioassessments, minimizing labor costs. • Eliminate analysis
Mountain View	11	C.8	Expensive: Reduce or delay; prioritize	These monitoring requirements are overly prescriptive and may result in significantly increased costs, especially during the later years of the permit cycle.		
SCVURPPP Att A	30	C.8	Too expensive: Reduce or delay; prioritize	SCVURPPP costs are estimated at over \$1.2 million/yr (plus SWRCB fees for SWAMP, about \$35,000/yr, & \$170,000/yr to the Regional Monitoring Program). SCVURPPP's costs are significantly greater than the roughly \$400,000 estimate by the Water Board.		
ACCWP ACCWP	4 5	C.8	Too expensive: Reduce or	Our primary concern was the increase in monitoring costs. While there have been some minor		

**Response to Comments on 2-18-09 Revised Tentative Order
Provision C.8. – Water Quality Monitoring**

File	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
			delay; prioritize	improvements, unnecessary requirements have been added. ... we estimate higher monitoring costs than in the previous Tentative Order, about \$1,150,000/yr, totaling \$5,762,595 over the permit term, nearly tripling our current \$400,000/yr monitoring budget.	presented by some commenters, we find these estimates to be excessive, especially in the following aspects: 1. Duplication of effort/cost: Permittees' cost estimates do not consider the flexibility offered by the Tentative Order to use data collected by Surface Water Ambient Monitoring Program (SWAMP) and other programs; to consolidate data management, quality control and quality assurance; and to conduct various reporting requirements.	for diazinon and chlorpyrifos from Status water-column toxicity samples. <ul style="list-style-type: none"> • Reduce bedded-sediment toxicity sampling by 66%. • Reduce bedded-sediment pollutant sampling by 66%. • Modify the pathogen methodology so that only one sample is required, and further sampling is required only where pathogen concentrations are elevated. • Eliminate the Long-Term Monitoring requirements, except for the water column and sediment toxicity sampling. Place this into Pollutants of Concern Monitoring, as requested by
Palo Alto Santa Clara County SCVURPPP SCVWD CCCWP Walnut Creek Pleasanton SCVWD Sunnyvale	8 20 5 8 5 2 7 22 10	C.8	Too expensive: Reduce or delay; prioritize	Monitoring requirements represent a very significant increase in resource commitment and will require a very significant expenditure of public resources. Monitoring, in general, requires a considerable amount of resources including time, staff and funding.	Both cost estimates and the comments reflect that Permittees are looking at the monitoring requirements as tasks each Stormwater Program will do separately. One Permittee comments about this sentence that follows Long-Term Monitoring requirements: <i>"The SWAMP plan is to collect sediment toxicity and sediment chemistry samples annually at these stations during the month of June."</i> Does this mean that if SWAMP collects these data, stormwater programs are not	
ACCWP Att-2 Newark Att	8 67	C.8	Too expensive: Reduce or delay; prioritize	Parameters are not justifiable in terms of costs vs. benefits. Monitor only for Sediment Quality Triad parameters (benthic macroinvert. bioassessment, bedded sediment toxicity & bedded sediment chemistry). These parameters have been scientifically validated as indicators for basic physical, chemical and biological conditions of streams.		
Alameda City	6	C.8	Too expensive: Reduce or	Revise requirements to prioritize needs, water quality benefits and cost-effectiveness and to phase		

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Provision C.8. – Water Quality Monitoring**

File	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
			delay	requirements over more than one permit cycle	required to? The answer is “yes,” and Board staff has emphasized this type of collaboration throughout the permit development process.	Commenters.
Alameda City	15	C.8	Too expensive: Reduce or delay; prioritize	C.8 is estimated to increase the annual monitoring program about \$640,000. The impact to City of Alameda is about \$25,400/yr. No funding mechanism has been identified. Phase; prioritize.	2. Not only are Permittees not taking advantage of opportunities to consolidate, share responsibilities, and reduce staffing requirements, but estimates for data management and reporting are quite high. It is a rule of thumb that data management and QA should not take up more than 10% of a monitoring budget. For the Regional Monitoring Program, data management and QA take up less than 10% of the budget, despite very strict QA requirements. One Commenter calculated up to 25% for "Data Quality Evaluation and Data Compilation and Entry".	<ul style="list-style-type: none"> Eliminate all Long-Term Monitoring for Vallejo and Fairfield-Suisun, because these Programs have a much smaller population (funding) base; Continue to encourage Permittees to use the 4 Long-Term Monitoring stations for which SWAMP will collect one of the two remaining required analytes. Provide much more flexibility within Pollutants of Concern Monitoring, so that the methodology being developed by Regional Monitoring Program (RMP) stakeholder for Small Tributaries Loading may be used to fulfill Permit
Berkeley Berkeley Newark	4 6 13	C.8	Too expensive: Reduce or delay; prioritize	Water Board staff has underestimated monitoring costs at \$1,268,500/yr for the Region. ACCWP estimates the cost at \$1,150,000/yr – an increase of \$750,000, or a near tripling of the current budget. Berkeley cannot afford a 55% increase.		
Fremont	3	C.8	Too expensive: Reduce or delay; prioritize	Expanded monitoring is expected to cost Alameda County jurisdictions an additional \$1,000,000/yr. Monitoring should focus on TMDL pollutants and concur with monitoring revisions proposed by the ACCWP.		
Newark	14	C.8	Too expensive: Reduce or delay; prioritize	Board member McGrath stated on March 11, 2008 that his first priority is legacy and TMDL pollutants. We agree, and believe the monitoring requirements should focus on	This cost estimate is especially high because SWAMP has already developed tools and provides assistance to make data entry and QA efficient and cost effective. Permittees will be required to electronically transmit monitoring data to SFEI, which is the regional	

those pollutants. Many costly requirements are not a priority. Reduce or defer to allow resources for high priority mercury & PCB

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				In addition to \$750,000/yr increase in monitoring costs, ACCWP estimates \$250,000/yr needed for mercury and PCBs. The Program's annual budget is \$1.8 million. Newark cannot afford a 55% increase.	data node for the California Environmental Data Exchange Network (CEDEN). Data will be delivered in SWAMP format which is an Excel file. SWAMP provides assistance for all aspects of SWAMP formatting including a template and help desk. There is also a QA help desk. SWAMP has also developed a website checker so that labs can upload and check data. In addition, CEDEN provides website data display so this will not be a cost to MRP programs.	requirements. <ul style="list-style-type: none"> • Allow phasing-in of Pollutant of Concern monitoring stations, so that monitoring of half of the stations may be delayed until Year 4 of the Permit term. • Allow an additional 3 months for both electronic and written reporting to eliminate any potential need for laboratory "rush" surcharges.
Oakland	4	C.8	Too expensive: Reduce or delay; prioritize	Oakland's additional costs could be \$1,000,000 over permit term. Many costly monitoring provisions are not a priority, such as: taxonomic ID of algae; silica, dry weather suspended sediment concentration, temperature, pathogens; sediment chemistry and toxicity to evaluate ambient conditions.	To provide perspective, we compare what SWAMP spent monitoring rotating watersheds, which is very similar to the Status Monitoring requirements in the Tentative Order. The regional SWAMP receives \$310,000/yr. For the first 5 years of monitoring, SWAMP monitored an average of 68 sites/yr, compared to 54 sites required for ALL stormwater programs combined. SWAMP paid full labor costs to CA Department of Fish & Game and Moss Landing Marine Laboratory.	Note that, in balancing data needs and costs, one additional round of General Water Quality data collection is added to the Revised Tentative Order, in order to monitor the general health of urban streams (dissolved oxygen, temperature,
Newark Att	69	C.8	Too expensive: Reduce or delay; prioritize	High cost for efforts that is partly duplicative or would be more efficiently achieved by incorporation in other provisions; separate wet-weather sampling station is extremely costly and labor-intensive for little added benefit.	In comparison, one Commenter estimates its Status Monitoring cost will be \$344,500 for only 20 sites and fewer analytes.	
Menlo Park	3	C.8	Too expensive: Reduce or delay; prioritize	We are very disturbed to find C.8 has been expanded to be more costly and labor-intensive, to add very costly and prescriptive testing requirements that will have little benefit to water quality		
San Mateo	8	C.8	Reduce or delay;	Monitoring requirements should be reduced and phased in more		

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			prioritize	gradually		
Antioch	2	C.8	Too expensive: Reduce or delay; prioritize	C.8 will be costly; excessive, unjustified. The CCCWP estimate is approximately \$6M. Should be conducted, funded at the State level, e.g. SWAMP, University studies, & SFEI – not municipalities	<p>[Notes: SWAMP's physical habitat assessment and bioassessment requirements were less than required in the Tentative Order. However, in all, SWAMP collected much more data than the TO requires. SWAMP monitored nutrients, metals, organics, and toxicity in the water column at 33 sites three times each year with this budget of \$310,000/yr.]</p> <p>Board staff estimated the costs of the proposed monitoring and found them to be comparable to or less than the Stormwater Programs current monitoring budgets. Before making the reductions listed to the right, we estimated the annual cost for required region-wide monitoring is \$1,286,500. This is just 60% of the \$2,138,600 budgeted by the four largest Programs combined for Fiscal Year 2007-08.</p> <p>This region-wide cost estimate of \$1,286,500/year compares favorably to monitoring costs incurred by other NPDES permittees, as obtained through annual reports or personal conversation:</p> <ul style="list-style-type: none"> • Los Angeles County FY0708 	conductivity, and pH) during low-flow, summer months.
Concord	2	C.8	Too expensive	Monitoring is expensive, excessive. Collect the needed data through SWAMP.		
Contra Costa Brd of Sups Attch A	36	C.8	Reduce or delay; prioritize	Prioritize monitoring; some requirements should be postponed, pending results of monitoring required.		
Danville	4	C.8	Too expensive: Reduce or delay; prioritize	CCCWP does all monitoring for about \$420,000 (2008-09). Brown & Caldwell estimates monitoring costs will increase over 400%, estimated at \$50,000/yr for Danville.		
Fairfield Fairfield-Suisun Sewer District Suisun City	23 20 23	C.8	Too expensive: Reduce or delay; prioritize	C.8 poses a significant cost increase, especially to Fairfield-Suisun Program, which makes up roughly 2.5% of the population covered by the TO. Program costs are estimated at over \$135,000/yr		

(plus SWRCB fees for SWAMP) – significantly greater than the roughly \$30,000 estimate by Water

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				recommend that the monitoring requirements for the FSUMRP be significantly reduced	monitoring cost: \$2,042,000 • Central Contra Costa Sanitary District annual monitoring cost estimate: \$1,000,000 • Conoco Refinery annual monitoring cost estimate: \$500,000 Our estimates are based on analytical costs under our laboratory contract and labor costs of \$100, including travel time. They do not include time for data evaluation, report writing, or contingencies.	
Moraga Oakley	2 2	C.8	Too expensive: Reduce or delay; prioritize	We are deeply concerned about the burdens that will be imposed by C.8. - significant addition to the amount of monitoring and reporting and substantial increase in cost.		
San Pablo	3	C.8	Too much	Though there have been some reductions, monitoring is still a huge undertaking compared to our current programs.		
SMCWPPP Letter	6	C.8	Too expensive: Reduce or delay; prioritize	Expensive, estimated \$4 million over 5 years. Requirements to assess chemical, biological, & geomorphic conditions are unlikely to lead to improved water quality. Monitoring projects will have uncertain benefits. Reduce, phase in, prioritize.		
Vallejo Sanitation and Flood Control District	2	C.8	Too expensive: Reduce or delay; prioritize	Financial burden with no benefit to water quality. Water Board should collect data to address management questions; it receives funding for these activities. We would be more amenable to reduced monitoring to address questions directly linked to stormwater discharges.		
Dublin	11		Too expensive	The added cost of new monitoring efforts to the City of Dublin is estimated at \$19,000 per year.		

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SCVURPPP Att A	28	C.8	Grant Funds Used to Fund POC Monitoring	Board staff implied that some POC monitoring is currently being conducted with grant funds, and that some SWAMP monitoring will fulfill monitoring requirements. To clarify, grants are NOT currently funding POC monitoring & SWAMP budget cannot be relied upon as a stable funding source.	To clarify, some POC <i>best management practice</i> projects, not monitoring projects, are being conducted with grant funding. While SWAMP budget is subject to change, SWAMP will conduct monitoring now & in the future. Very significant effort was made to ensure that Permittees would benefit by having SWAMP fulfill some monitoring requirements. Indeed, SWAMP is committed to collecting some of the data required under the Tentative Order.	None
– END OF COMMENTS ON THE COSTS OF THE MONITORING REQUIREMENTS –						
Contra Costa Brd of Sups Attch A	34	C.8.a.	Require regional collaboration rather than allow it	In the interest of higher data value associated with consistent sampling and data analysis, and the cost saving associated with economies of scale, consider requiring that these efforts be undertaken regionally. To facilitate this approach, which will require intensive efforts to establish a framework & legal agreements & budgetary negotiations, set implementation date for July, 2011.	We agree that, for many reasons, regional collaboration is the preferred way to collect water quality data. In particular, it appears that Permittees are not taking full advantage of the cost efficiencies associated with regional collaboration. However, both the law and our own preferred way of working with Permittees prevent us from specifying a method of compliance with permit requirements. We allow one extra year to set up a collaborative body	None
ACCWP Att-2 Newark Att SCVURPPP Att A	5 65 46	C.8.a.	Compliance Options	Allow programs to submit an alternative monitoring design prepared by a regional collaborative, which includes	We agree to clarify that Permittees may, through a regional collaborative, create an alternative monitoring design. Indeed, the	Add to C.8.a.(i).: ... an alternative approach may be pursued by

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				justification for collecting alternative types, quantities & qualities of data which will provide equivalent info, or address objectives stated in the permit. Add to C.8.a(i): "Permittees may comply with monitoring described in C.8. using alternative quantities or methods to those described, as long as they are conducted at a similar level of effort and yield equivalent data that answer management questions described herein to the same degree."	Tentative Order allows this at C.8.a.(i).: "The types, quantities, and quality of data required within Provision C.8. establish the minimum level-of-effort that a regional monitoring collaborative must achieve. Provided these data types, quantities, and quality are obtained, a regional monitoring collaborative may develop its own sampling design." Nonetheless, we will augment this statement as shown in the column to the right.	Permittees provided that: either similar data types, data quality, data quantity are collected with an equivalent level of effort described under C.8.f; or an equivalent level of monitoring effort is employed to answer the management information needs stated under C.8.f.
CCCWP Att SMCWPPP SCVURPPP Att A	22 49 31	C.8.b	Management questions	The management questions should be consistent with the monitoring questions laid out by the Regional Monitoring Program. RMP management questions were arrived at by consensus of all stakeholders, represent the current best thinking on the subject and should be respected in regards to how they guide the MRP: <i>Are chemical concentrations in the Estuary potentially at levels of concern and are associated impacts likely?</i> <i>What are the concentrations and masses of contaminants in the Estuary and its segments?</i> <i>What are the sources, pathways,</i>	As the commenter is likely aware, the management questions laid out by the Regional Monitoring Program have been somewhat modified since we began work on the Municipal Regional Permit. We agree that section C.8.b. should reiterate the same questions as used by the Regional Monitoring Program, which are stated at: http://www.sfei.org/rmp/rmp_prog_in_fo.html#objectives	Change the questions listed in C.8.b. to be the same as the management questions laid out by the Regional Monitoring Program. Add a footnote acknowledging that the stated objectives may change over time, but the overall mission of monitoring the quality of the San Francisco Bay remains the same.

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				<p><i>loadings, and processes leading to contaminant-related impacts in the Estuary?</i></p> <p><i>Have the concentrations, masses, and associated impacts of contaminants in the Estuary increased or decreased?</i></p> <p><i>What are the projected concentrations, masses, and associated impacts of contaminants in the Estuary?</i></p>		
ACCWP Att-2 Newark Att	6 66	Table 8.1 Status Monitoring	<i>Be more specific in terminology</i>	Time frames could be interpreted to mean monitoring must be conducted in each of the named months. Revise 2 nd sentence to specify spring sampling during “April or May”, dry weather during “June, July, August or Sept.”	We agree that the wording could be misinterpreted.	Revise wording so it is clear that the stated months represent timeframes during which to conduct a sampling event.
ACCWP Att-2	7	Table 8.1 Status Monitoring	Too much specificity	Most of ACCWP’s previous comments still apply regarding excess specificity	The Commenter does not state which of its previous comments still apply and which do not. We have added flexibility to the Tentative Order in several places.	None
ACCWP Att-2 ACCWP Att-2 Newark Att BASMAA Att SMCWPPP Palo Alto Fairfield- Suisun Sewer	2 9 67 25 50 9 22	Table 8.1 Status Monitoring	Biological Assessment	Adding taxonomic ID for 2 types of algae is a significant cost increase. Added physical habitat parameters include “reachwide algal % cover” which does not correspond to any parameters in the draft “SWAMP Reachwide Benthos Method for Stream Algae Sampling and Associated Physical Habitat Data	While most Permittees have not routinely collected algae and other physical assessment data in the past, we disagree that the requirement is excessive of overly costly. Please see our response to comments above regarding costs, particularly the amount of similar sampling (and more) conducted by	None

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District San Pablo SCVURPPP Att A Contra Costa Brd of Sups Attch A	4 34 6			<p>Collection" (Version 3, 2-09, V. 4 still in prep). Requiring the following measurements is excessive and inappropriate for urban stream reaches:</p> <ul style="list-style-type: none"> • Depth and pebble count+CPOM requires 420 observations be recorded at each sampling site. • Cobble embeddedness prescribes a "random walk" search for stones to augment preceding measurements if 25 cobbles were not found. <p>Delete algae from footnote including added physical habitat measures, as well as chlorophyll-a and ash free dry weight, and substitute under Monitoring Projects design of a characterization study to be conducted next permit term for nutrients and algae together. Algae bioassessment protocol for CA is draft & not fully tested. No evidence shows algae are good bioindicators of the condition of urban creeks in N.CA. Algae bioassessments should not be required until protocols have been adopted and a pilot test on the utility of algae to address the management questions is</p>	<p>SWAMP with an annual budget of \$310,000.</p> <p>The required protocol is well-established. SWAMP established the protocol using the 1999 US EPA method contained in "Rapid Bioassessment Protocols for Use in Wadable Streams and Rivers." These parameters are part of the bioassessment protocol used state-wide, and are necessary for interpretation of bioassessment results.</p> <p>Although some Permittees are/were not presently well-versed in conducting all aspects of bioassessments, the SWAMP has recently provided to Permittees, free of charge, a day-long classroom and field training workshop on algae sampling. Further workshops are under consideration.</p> <p>These parameters are not difficult to measure or sample and don't preclude the use of volunteers.</p>	

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				conducted.		
SCVURPPP Att A	33	Table 8.1 Status Monitoring	Biological Assessment	Footnote 28, pg 60, indicates that macroinvertebrates shall be identified...using a fixed-count of <u>600</u> organisms/sample. For past 3 yrs, stormwater programs used a fixed count of 500 per CA DFG's Aquatic Bioassessment Lab. Is this deviation is justified? The increased number of organisms will increase costs with no demonstrated benefit. Revise the fixed count to 500.	The SWAMP Quality Assurance Program adopted the 600 count method, as stated in the SWAMP QA Memorandum (5-21-07, Beverly van Buren & Peter Ode). This minimum sample count ensures large enough sample size to use current biological assessment tools. When preparing taxa lists for Observed / Expected models, "ambiguous taxa" (species not occurring in the models) must be removed from the taxa list. This can result in significant reductions to the total organism counts at a site. 500-count samples have at times reduced below the 300 count required for the models as a result of the "removal of ambiguous taxa" step – a problem greatly relieved by adopting the 600 count standard. The cost increase in going from 500 to 600 count is considered negligible compared to the cost of having to re-sample the site in order to be able to compare the results to available assessment tools.	None
Fairfield- Suisun Sewer District	29	Table 8.1 Status Monitoring	Change Nutrients to a Monitoring Project Or	A "Nutrient Characterization Study Work Plan" should be required as a monitoring project in C.8.e., rather than in C.8.c. The Work Plan would include: a) literature review of nutrient concentrations &	We disagree that nutrient sampling should be delayed. SWAMP data collected over the past five years demonstrates that nutrients are present in urban streams across the region.	Reduce Status monitoring nutrient sampling requirements to once per year (from three times per

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Santa Clara County SCVURPPP Att A BASMAA Att CCCWP Att Walnut Creek SMCWPPP ACCWP Att-2 Newark Att	21 42 26 28 3 51 10 7		Require a Nutrient Monitoring Project Next Permit Term Nutrients	<p>associated impacts to biological communities; b) summary of readily available data collected in Bay Area creeks/rivers; c) plan & timeframe for collection and analysis of additional water quality and biological community samples needed to answer management questions presented.</p> <p>Remove nutrients sampling - instead design a characterization study to be conducted next permit term.</p> <p>If nutrient sampling remains, clarify inconsistencies between “minimum sampling occurrence” & “minimum # of sample sites to monitor per year”. Table 8.1 says “3/year in conjunction with algae sampling and water column toxicity sampling”. This implies the sampling is to occur in spring, dry season and during storm events. However, references to storm, spring and dry were stricken and replaced with “20/10/4” not specifying any season. If these sites are to be sampled 3/yr, this has increased the level of effort. The Program believes Regional Board staff intended to reduce the sampling to once per year at 20/10/4 sites, but is not clear what</p>	<p>SWAMP has established protocols, so further study is not necessary to develop protocols. Nutrient parameters are being monitored state-wide.</p> <p>We agree a special study (or monitoring project under C.8.d.) to assess nutrient concentrations and collect the data to support Nutrient Numeric Endpoints may be important, but that could add costs that Permittees would oppose.</p> <p>In an effort to reduce monitoring costs to the greatest extent possible, we agree to eliminate storm event monitoring for nutrients, as well as one dry weather sampling for nutrients from Status Monitoring requirements. The number of nutrients sampling events will be reduced from 3/year to once per year.</p> <p>In considering the nutrient data collected thus far by SWAMP, nutrient concentrations generally do not exhibit as much variability temporally as they do spatially. Thus, it seems reasonable, given economic conditions today, that nutrient requirements should be</p>	year).

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				<p>season that should occur.</p> <p>Despite removal of “storm event” sampling “in conjunction with water column toxicity” is still required, including storm event sampling & 2 other times/yr, an increase in # of sampling sites from 3 to 20. Nutrient sampling also added chemical analytes & a SSC, without justification. Delete Nutrients; instead design a study to conduct next permit term.</p>		
<p>SCVURPPP Att A Fairfield- Suisun Sewer District SMCWPPP</p>	<p>35 23 56</p>	<p>Table 8.1 Status Monitoring</p>	<p>Nutrients</p>	<p>Nutrients are prescriptive; not based on clear objectives or a conceptual understanding of potential nutrient impacts. SCVURPPP has sampled for nutrients since 2002 during dry weather. Concentrations are generally greater than EPA’s criteria for total nitrogen & total phosphorous, but excess algae is rarely seen & there is little to no evidence of eutrophication. Delete nutrients; instead add “Nutrient Characterization Study Work Plan.”</p>	<p>reduced.</p>	
<p>Contra Costa Brd of Sups Attch A</p>	<p>35</p>	<p>Table 8.1 Status Monitoring</p>	<p>Excessive data required</p>	<p>Some requirements are reasonable, others are not. Requirement for constant data-logging at hourly intervals for six months is inefficient, and will yield an enormous amount of data of dubious value.</p>	<p>Data-logging over a six-month period is not required in the Tentative Order. General Water Quality probes are required to be deployed for 1-2 week intervals.</p>	<p>None</p>

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San Jose Att A	18	C.8.c.i & Table 8.1 Status Monitoring	Delete storm event sampling	Delete requirements for storm event sampling in keeping with modifications to the previous TO. Such sampling presents costly logistical challenges and significant safety concerns.	Storm event sampling is required in Municipal NPDES permits throughout California & the United States. Sampling during storm events is needed to determine what pollutants, if any, are present in urban runoff and is much less expensive than end-of-pipe monitoring of stormwater outfalls. We agree to reduce storm event sampling in Status Monitoring, but sampling for toxicity during storm events is vital in helping determine impacts of urban runoff to the health of our waterbodies.	Delete storm event nutrient, diazinon, and chlorpyrifos sampling; retain storm event toxicity sampling in Status Monitoring.
BASMAA Att CCCWP Attachment SMCWPPP Newark Att Fairfield- Suisun Sewer District ACCWP Att-2 ACCWP Att-2 SCVURPPP Att A	27 30 52 67 24 3 11 37	Table 8.1 Status Monitoring	Toxicity & Diazinon and Chlorpyrifos	<p>Move toxicity & OP pesticide during “storm events” to C.8.f - (POC Monitoring) since there is other storm event monitoring in that section.</p> <p>Sample commensurate with current level of understanding of impacts of these pollutants.</p> <p>Water column toxicity & diazinon concentrations in creeks have decreased since the phase-out of diazinon, so sampling should be minimal - the same frequency as “Category 2” pollutants.</p>	<p>We understand that Permittees prefer to delete any storm event monitoring from Status Monitoring due primarily to the cost of mobilizing a sampling crew during rain events. This is one reason why Board staff advocates working collaboratively, so that each Program does not have to bear the expense of contracting for this service, and so that separate contractors do not duplicate the planning, preparing, reporting, and other tasks that could more efficiently be consolidated.</p> <p>Status Monitoring is the single time when the Permittees' various waterbodies are monitored. If all</p>	Delete storm event nutrient, diazinon, and chlorpyrifos sampling; retain storm event toxicity sampling in Status Monitoring.

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					storm event monitoring were conducted under Long-Term or Pollutants of Concern Monitoring – which are stationary and never rotate among the waterbodies – then only a very small number of streams will be sampled during storm events. We would not, then, learn of any potential impacts of urban runoff to streams across the Permittees’ jurisdictions.	
CCCWP Attachment SMCWPPP ACCWP Att-2 SCVURPPP Att A BASMAA Att BASMAA Att	29 53 12 38 29 30	Table 8.1 Status Monitoring	Toxicity and Pollutants in Bedded Sediments	Change minimum number of sample sites back to the December 14, 2007 Tentative Order values.	The number of sediment samples to be analyzed for toxicity and pollutants was increased in the second Tentative Order after conferring with Permittees and reducing other requirements. Some Permittees expressed the opinion that sediment sampling was more valuable than some water column sampling. Nonetheless, we agree to reduce the sediment sampling as requested by these commenters.	Reduce the Toxicity & Pollutants in Bedded Sediment sample sites from 10/5/1 per year (# of sites varies by Stormwater Program size) to 3/2/1 per year.
Fairfield- Suisun Sewer District ACCWP Att-2 Newark Att SCVURPPP Att A	25 10 67 39	Table 8.1 Status Monitoring	Toxicity and Pollutants in Bedded Sediments Footnote	Remove “as well as other contaminants of interest” in Footnote 35: “ <i>Analytes shall include ... as well as other contaminants of interest, including pyrethroids.</i> ” This phrase could lead to misunderstanding of the analytes required. The footnote includes indirect	We agree that the phrase “ <i>as well as other contaminants of interest</i> ” is open-ended and will delete it.	Delete the phrase “ <i>as well as other contaminants of interest</i> ” from the footnotes associated with Toxicity and Pollutant sampling in Bedded Sediment.

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				reference to several analytes not named in the T.O., some of which may not have reasonable potential for stormwater impacts.		
BASMAA Att ACCWP Att-2 SCVURPPP Att A SMCWPPP Newark Att	28 14 36 57 68	Table 8.1 Status Monitoring	Temperature Footnote & Trigger	Change temperature trigger to water quality objective in Basin Plan. –OR– The reference is not applicable to Bay Area streams that only have warm water fish (no salmonids). The applicability to Bay Area creeks with coldwater fish is also questionable as salmonids in Bay Area have been shown to have different habitat requirements compared to Pacific Northwest Streams.	We disagree that the water quality objective for temperature in the Basin Plan is appropriate. This objective applies to thermal discharges and is not applicable to ambient water quality. In lieu of specific local temperature objectives, we find that the temperature threshold, as written in the footnote, is appropriate.	None
BASMAA Att CCCWP Att Fairfield- Suisun Sewer District SMCWPPP ACCWP Att-2 ACCWP Att-2 Newark Att SCVURPPP Att A	31 31 26 54 2 13 67 40	Table 8.1 Status Monitoring	<i>Pathogen Indicators - Delete requirement</i>	Pathogen Indicators – delete parameter as agreed during Water Board/BASMAA meetings in summer June 10, 2008 Delete Pathogen indicator; method is intended for swimming uses. It would be more cost effective to develop one or more screening projects targeted at areas with significant risk of human exposure through non-swimming contact recreation	We disagree that pathogens should be removed from the monitoring program, and any perceived agreement to do so is a misunderstanding. Pathogen monitoring is important regardless of whether recreation occurs in a waterbody, because pathogens can impair other beneficial uses as well. Pathogen monitoring recently led to discovery of a leaking sewer pipe, which the sewer district was directed to repair. Other pathogens sources more directly related to urban runoff are also controllable.	Change the analytical method to Example #2, pg. 54, of USEPA's <i>Implementation Guidance for Ambient Water Quality Criteria for Bacteria</i> , May 2002 Draft. This method allows a single sample be compared to the trigger, and further sampling is needed only if the trigger is exceeded by the first

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					We have considered how to reduce pathogen monitoring costs by modifying the monitoring protocol, which requires repeated sampling in a single stream. We agree to specify a simpler, less expensive method.	sample. Allow Permittees to modify this method upon approval of the Executive Officer.
Fairfield-Suisun Sewer District	27	Table 8.1 Status Monitoring	Stream Survey	FSURMP must assess 3 stream miles /yr, or 33% the level of effort required of larger programs. FSURMP only serves roughly 2.5 % of the population covered by the TO. Based on this, FSURMP's stream surveys should be more equitable (e.g., one stream mile/yr).	Actually, because FSURMP is required to conduct Status monitoring for only one year, the total number of stream survey miles is only 3 over a 5-year permit term, which is less than one mile per year.	None
SMCWPPP	55	Table 8.1 Status Monitoring	Stream Survey	SMCWPPP should get reduction in amount of stream mile surveys, given amount already completed. Add a footnote that reduces the amount of annual stream miles to survey in half if more than 20 stream miles were surveyed during last five years.	Board staff thought this issue was adequately addressed by the footnote which states "The Stream Survey need not be repeated on a waterbody if a Stream Survey was completed on that waterbody within the previous four years." Thus, if San Mateo Permittees are conducting Status Monitoring on a stream they already surveyed, then no further surveying is required that year.	Change the footnote from "...the previous four years..." to "...the previous five years."
Fairfield-Suisun Sewer District SCVURPPP	21 27	Table 8.1 Status Monitoring, & Provision C.8.e(i)	Triggers	We appreciate revisions to the stressor/source ID, which allows a stepwise process and utilizes existing data to evaluate the stressor or source of concern. The	This comment does not specify which specific reference, footnote, or language is of concern. Other more specific comments are addressed elsewhere in this	None

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Attachment A				applicability and accuracy of specific references (i.e., footnotes) and language used in the “trigger” column in Table 8.1 remain a concern.	document.	
ACCWP Legal	3	Table 8.1 Status Monitoring, & Provision C.8.e(i)	Triggers	C.1 requires notification where a determination has been made that discharges are causing or contributing to an exceedance of a water quality standard and requires submission of BMP related reporting for most exceedances. Adding triggers in C.8 & C.10 adds confusion to the well drafted and more comprehensive requirements of C.1. Delete the trigger columns in Tables 8.1 and 8.3.	We disagree and believe, based on past experience, that placing within Provision C.8 information on when monitoring results trigger a notification adds clarity regarding expected follow-up actions.	None
ACCWP Att-2 Newark Att	14 68	Table 8.1 Status Monitoring, & Provision C.8.e(i)	Triggers	Requirement for follow-up Monitoring Projects triggered by single-factor exceedances in Table 8.1 is excessive.	None of the triggers in Table 8.1 relies on a single exceedance to trigger a follow-up Monitoring Project. Also note there is a cap on the number of Monitoring Projects required over the Permit term.	None
BASMAA Att CCCWP Att SMCWPPP ACCWP Att-2 ACCWP Att-2 ACCWP Att-2 Newark Att Newark Att Palo Alto Santa Clara	32 23 58 3 15 19 69 71 10 21	C.8.d Long-Term Monitoring	Delete requirement Revise requirement Or Move requirement	C.8.d Long-Term Monitoring – delete provision as redundant, confusing. Significantly revise. Suggestions include: 1) develop mngt questions & compare them to questions for status & POC monitoring; 2) incorporate into C.8.c (Status Monitoring) by requiring that a portion of the sites sampled under	We agree that the storm-event sampling information required under Long-Term Monitoring can be pared down and combined with the storm-event sampling needed for Pollutants of Concern Monitoring.	Delete C.8.d. Long-Term Monitoring. Require only the water column and sediment toxicity sampling be conducted, but move this into Pollutants of Concern Monitoring, as requested by

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County SCVURPPP SCVURPPP Fairfield-Suisun Sewer District	5 41 28		to Provision C.8.f.	status monitoring be considered long-term trend sites where routine sampling occurs; and, 3) incorporate into C.8.f. (POC Monitoring). Eliminate nonessential or duplicative storm event monitoring from C.8.c & C.8.d; storm event sampling of high-priority pollutants can be transferred to the Category 2 parameter list in Table 8.5 of Provision C.8.f. Sites listed are not appropriate for wet weather sampling using methods prescribed. If retained as a separate monitoring activity, Board staff's proposal to make Table 8.3 non-prescriptive would allow selection of a more suitable site, but C.8.d would then be more redundant & confusing.		Commenters.
ACCWP Att-2 Newark Att	17 69	C.8.d Long-Term Monitoring	Revise	Recommendation for three-week antecedent dry period between storms is confusing & unrealistic. 4 evenly spaced isolated storms at this interval would be a minimum of 2.5 months in an "ideal" artificial system.	The recommendation is just that: a recommendation, and represents the ideal situation. Other time frames are not precluded by the terms of the Tentative Order.	None
ACCWP Att-2 Newark Att	18 70	C.8.d Long-Term Monitoring	Clarification	Concern re follow-up trigger: Table is unclear whether repeated sampling after an exceedance can be one of the four annual events.	Yes, the repeated sampling after an exceedance would be conducted during another storm event, and thus would constitute another sampling occurrence.	None

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CCCWP Att	24	C.8.d.iii.	Clarification	Below Table 8.4, is the following sentence, “* <i>The SWAMP plan is to collect sediment toxicity and sediment chemistry samples annually at these stations during the month of June.</i> ” Does this mean that if SWAMP collects these data, stormwater programs are not required to?	Yes, as stated in C.8.a.iv., the required data may be collected by any entity.	None
Vallejo Sanitation and Flood Control District	2	C.8.d Long-Term Monitoring	Beyond CWA	Proposes long-term monitoring to detect exceedances of water quality objectives in receiving waters. This provision appears to go beyond the Clean Water Act.	We disagree that the requirements go beyond Clean Water Act authorities. Please see the Fact Sheet for the full discussion of the legal authority for Provision C.8 monitoring requirements.	None
Hayward	6	C.8	Pump station investigations	Another major concern is the requirement to conduct pilot projects to divert discharges from stormwater pump stations to the sanitary sewer, found in Provisions C.8, C.11, and C.12.	This requirement is not in Provision C.8 of the Revised Tentative Order.	None
BASMAA Att ACCWP Att-2 Newark Att	33 21 72	C.8.e.i.(3) Stressor/ Source Identification step 3	Delete requirement	C.8.e.i.(3) Monitoring Projects – delete requirement to “implement one or more controls”; implementation requirement out of place in document	C.8.e.i. lays out the steps of physical stressor or pollutant source identification – these come into play when monitoring results indicate potential problems. The steps include (1) further sampling or study to narrow down the cause of the problem, (2) evaluate options for controlling the cause, (3) controlling the cause, & (4) confirming that the cause has been reduced or removed. To move/remove step 3	None

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					<p>alone is not logical.</p> <p>The steps do not include deadlines for completion, and the Tentative Order includes a cap on the number of Stressor/Source Identifications required. We see no overriding logic in separating the steps.</p>	
Pacifica San Bruno Millbrae	3 5 4	C.8.e.i.(3) Stressor/ Source Identification step 3	Control Actions Unpredictabl e	Control actions needed to comply with some requirements are unpredictable because they may be triggered by monitoring results, such as C.8.e.i.(3).	It appears the Commenters are concerned that they cannot predict what actions may be needed to control pollutants or stressors that are revealed through monitoring. The Tentative Order does not specify a deadline for taking control actions, and thus provides adequate flexibility for Permittees to plan for any necessary actions.	None
SMCWPPP	59	C.8.e.(i)(4).	Delete Stressor / Source Identification	Permittees are required to “confirm the reduction of the cause(s) of the trigger stressor/source,” which duplicates actions required by C.1, but in an unnecessarily prescriptive manner. Remove this requirement.	We disagree that step 4 is prescriptive in any way. As noted above, we see no overriding logic in separating the 4 steps of the Stressor/Source Identification procedure. We also disagree that duplicate actions are required or in any way appear to be required.	None
NOAA	15	C.8.e.i(1)	Support the requirement to conduct a TRE or TIE	We strongly support the requirement to conduct a TRE or TIE when monitoring results trigger follow-up actions. Clarify if toxicity monitoring (but not necessarily another TRE or TIE) will continue to be required as a monitoring	Thank you for the support. Yes, each type of monitoring (e.g., Status, Long-Term, Pollutants of Concern) is required. Any toxicity reduction or toxicity identification evaluation (TRE or TIE) would be conducted as a “Monitoring Project,”	None

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				measure while a corrective action plan (e.g., through a cease and desist order or a total maximum daily load) is developed and implemented.	while the other types of monitoring continue.	
ACCWP Att-2 Newark Att San Jose Att A	20 72 18	Table 8.1 C.8.e.i(1) & Attachment G	TIE too expensive	The added option for TRE is a positive change but TRE/TIE can still be inappropriate and potentially ineffective high-cost responses if thresholds are exceeded for parameters other than water toxicity. Although greater flexibility is provided by allowing a TRE to precede a TIE, triggered activities are still unpredictable and potentially costly, making budget planning difficult or impossible. Change the number of toxicity-triggered projects required to two.	We agree to change the number of toxicity-triggered projects to two to provide greater flexibility and minimize costs. Based on our knowledge to date of toxicity occurrences in urban streams, a minimum of two toxicity evaluations is reasonable.	Revise C.8.e.i.(5) to "... and at least two must be toxicity follow-ups ..."
BASMAA Att ACCWP Att-2 Newark Att	34 22 72	C.8.e.i.(6) Stressor / Source Identification step 6	Delete statement	C.8.e.i.(6) Monitoring Projects – delete provision; legal language out of place in document	C.8.e.i.(6) states "[a]s long as Permittees have complied with the procedures set forth above, they do not have to repeat the same procedure for continuing or recurring exceedances ... unless directed to do so by the Water Board." Other Permittees asked that this be clearly stated within C.8.e.i., and we see no substantive reason to delete it.	None
NOAA	16	C.8.e.ii. BMP Effect'ness	Exclusions	Why are Fairfield-Suisun and Vallejo exempt from this requirement?	Fairfield-Suisun and Vallejo are not subject to this requirement because both programs have, relatively, a	None

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		Invest'n			very small citizen base, and thus we intend for them to learn from the other BMP evaluations while not shouldering that particular cost.	
BASMAA Att ACCWP Att-2 Newark Att SMCWPPP	35 22 73 60	C.8.e.ii. BMP Effect'ness Invest'n	Delete requirement	C.8.e.ii. Monitoring Projects: BMP Effectiveness Investigation – delete provision as redundant with C.11 and C.12. Or clarify that this requirement may be met by assisting with studies being led by others, such as the West Coast Estuaries Initiative's monitoring of the effectiveness of BMPs.	We disagree that C.8.e.ii. should be deleted. Permittees are given flexibility to investigate various types of Best Management Practices (BMPs), including stormwater treatment or hydrograph modification controls, or to conduct the BMP evaluation required in C.11 and C.12. The Commenters may be assuming that all Permittees will collaboratively conduct the BMP evaluation required in C.11 and C.12, thus making C.8.e.ii. superfluous. However, C.8.e.ii. is needed in the case that Permittees do not join a monitoring collaborative.	None
Kolb, Larry & James, Roger	30	C.8.e.ii.	Would Eliminate CCCWP monitoring	Contra Costa program is required to monitor 3 BMPs at 5 sites, and this provision would relieve them of that. That requirement must remain in place because of the significant concern with Contra Costa program's BMP/IMP sizing criteria. The Board should determine the status/ results of that monitoring and if not met should pursue enforcement action.	We disagree: C.8.e.ii. in no way relieves the Contra Costa County stormwater program of requirements contained in other sections of the permit.	None

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NOAA	14	C.8.e.iii & C.8.f.	Support for these requirement	We wish to explicitly express our support for the following provisions: C.8.e.iii – Geomorphic Project, C.8.f – Pollutants of Concern Monitoring.	Comment noted.	None
SCVURPPP Att A	43	C.8.f Pollutants of Concern	Phase in Pollutant of Concern Monitoring Stations	This is a significant undertaking. The logistics of storm event monitoring makes this highly resource intensive. Allow time to “phase-in” POC stations, e.g., one for each program could go “on-line” in year 2 & the other in year 4, allowing programs to learn before adding an additional site. Because POC monitoring would continue beyond permit term, a 1-2 year phasing would not impact the intent of this requirement.	We agree that it is reasonable to phase in this monitoring, which will continue beyond the Permit term. While phasing is acceptable, a sufficient number of stations must be installed and monitored to provide spatial and temporal resolution of runoff loads that represent the various drainage areas.	Revise C.8.e.i. to allow monitoring of half the stations to be delayed until Year 4 of the Permit term.
BASMAA Att ACCWP Att-2 Newark Att Palo Alto Santa Clara County	36 23 74 11 21	C.8.f Pollutants of Concern	Flexibility	C.8.f Pollutants of Concern – revise language to allow flexibility in requirement to use alternative methodologies and number of sites based on the Small Tributaries Loading Strategy, at an equivalent level of effort	Agreed.	To the following sentence at the beginning of C.8.f. “Permittees shall implement the following monitoring components” add the following: “or pursue an alternative approach addressing the aforementioned management information needs.”

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SMCWPPP ACCWP Att-2 SCVURPPP Att A SCVURPPP Att A	61 23 44 45	C.8.f Pollutants of Concern	No management questions are included	Modify permit to include management questions agreed upon by Small Tributaries Loading Strategy workgroup (i.e., Water – Board staff, BASMAA, SFEI and technical reviewers). Incorporate these management questions into the permit.	We agree that it is important to state the information needs driving Pollutants of Concern monitoring, and that the Small Tributaries Loading Strategy workgroup (STLS) is committed to filling those needs. Lest the STLS modify its recently decided-upon management questions (see previous response concerning RMP questions), we will simply state the information needs.	Add the information needed by Pollutant of Concern monitoring to C.8.f.
CCCWP Att SMCWPPP ACCWP Att-2 Newark Att	25 64 27 77	C.8.f. Pollutants of Concern	Consistency with RMP	Methodology is inconsistent with RMP's Small Tributaries Loading Strategy. There is no scientific basis for a different methodology. Re-design to be consistent with the RMP, or remove entirely.	We agree to clarify that the methodology for meeting C.8.f. pollutant of concern monitoring requirements may be modified in such a way as to be consistent with the RMP's Small Tributaries Loading Strategy (STLS).	To C.8.f., add that Permittees may pursue an alternative approach that addresses each of the management information needs of the STLS.
ACCWP Att-2	25	C.8.f.(i). Pollutants of Concern	SWAMP not involved	Reference to "Regional SWAMP program" is inappropriate, since this strategy design is not driven by SWAMP needs or monitoring types.	The reference to Regional SWAMP is no longer necessary.	Remove the reference to SWAMP.
SMCWPPP	63	C.8.f.(i). Pollutants of Concern	Unnecessary Locations	Reduce number of sites to 3 regionally & state that this is being accomplished through use of existing RMP funds provided to SFEI.	We disagree that this reduction is warranted. Three monitoring stations would not be adequate to yield the management information needed for pollutant of concern monitoring.	None
ACCWP Att-2 Newark Att	24 5	C.8.f.(i). Pollutants of Concern	Too many Locations	Number of required sites too high; Change to equivalent of 1 station per county in addition to stations operated by the Regional	We disagree. Each of the 4 largest Programs would have 2 stations if this monitoring were conducted individually. We understand from	None

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				Monitoring Program. [At present if the RMP stops monitoring Zone 4 Line A, ACCWP would be obliged to pick up the cost in addition to monitoring at Castro Valley Creek]	numerous discussions with each Program that this monitoring will be conducted collaboratively. With the clarification we agree to above (that Permittees may pursue an alternative approach that addresses each of the management information needs of the STLS), we see no rationale for further modification to this provision.	
ACCWP Att-2 Newark Att	26 76	C.8.f.(i). Pollutants of Concern	Distinguish chemical classes	Pyrethroid and other added pesticides will increase costs. Carbaryl and fipronil belong to different chemical classes and are not pyrethroids as implied by the wording in the table. Revise wording of table listing to distinguish carbaryl and fipronil from pyrethroids	We agree to revise the format of the table so that carbaryl and fipronil, which are replacing pyrethroids in the marketplace, are listed separately from pyrethroids.	Reformat Table 8.5 so that carbaryl and fipronil are listed separately from pyrethroids.
ACCWP Att-2 Newark Att	28 77	C.8.f.(iv.)	Pollutants of Concern Monitoring – Methods	Direction for sampled storms to be separated by 21 days of dry weather is unrealistic and inappropriate – delete.	The recommendation is just that: a recommendation. It represents the ideal situation. Other time frames are not precluded by the terms of the Tentative Order.	None
SMCWPPP	65	C.8.f.(v).	Sediment Delivery Estimate	Remove this requirement because it is already completed by SFEI.	As stated in C.8.a.iv., any monitoring requirement may be fulfilled by parties other than the Permittees. While we are pleased this necessary will be obtained at no further cost to Permittees, we believe it is a valid Permit requirement.	None
SMCWPPP	66	C.8.g.	Citizen	Remove citizen monitoring	We disagree, because a large	None

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			Monitoring	because it should not be in both C.7 & C.8.	number of stakeholders advocated for the citizen monitoring section in C.8.	
CCCWP Att	26	C.8.g.	“Safe harbor” language for volunteer data	For citizen volunteers, safe harbor language is needed, so volunteers’ learning curve, errors, or omissions do not become compliance liabilities. For example: <i>“If volunteers participate in sample collection, compliance with this provision will be considered on development and execution of an approved sampling and analysis workplan.”</i>	We disagree that such language is needed. Many citizen volunteers have demonstrated that they are able to collect data of adequate quality. The State-wide emphasis, also the subject of SB1070 (California Legislative year 2005/2006), is on the collection of data using standard methods so that the data are of known quality and can be used to draw inferences about water quality.	None
SMCWPPP BASMAA Att ACCWP Att-2 Newark Att	67 37 29 78	C.8.h.i. Reporting	Reporting WQS Exceedance	Remove provision C.h.(i) from permit because it duplicates Provision C.1 and is unnecessary. C.8.h.i. Reporting: Water Quality Standard Exceedance – revise “within 30-days” Revise to conform with or reference C.1.	We disagree and believe, based on past experience, that placing within Provision C.8 information on when monitoring results trigger a notification adds clarity regarding expected follow-up actions. We also disagree that there is any inconsistency between C.1 and C.8.h.i.	None
Caltrans	8	C.8.h.i. Reporting	Clarification	The reference to “data” in line one is unclear. Is this effluent data or effluent and receiving water data? Does the 2nd sentence mean that receiving water data is to be used to identify exceedances but not effluent data?	“Data” refers to all data collected pursuant to C.8. Yes, due to variability, difficulties, and costs of monitoring effluent (i.e., stormwater runoff or outfalls), Permittees monitor receiving waters instead.	In the first 2 sentences in C.8.h.i., clarify that “data” refers to all data collected pursuant to C.8.
BASMAA Att BASMAA Att	38 39	C.8.h.ii. & C.8.h.iii.	Due date	We get spring BMI sample results in fall, so allowing even minimal	We agree that a longer reporting time frame is needed.	Revise report due dates to January 15

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File	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
SMCWPPP SMCWPPP ACCWP Att-2 ACCWP Att-2 Newark Att CCCWP Att Fremont Fairfield- Suisun Sewer District Fairfield- Suisun Sewer District Oakland SCVURPPP Att A	68 69 30 31 79 27 4 3 31 5 47	Electronic Reporting and Urban Creeks Monitoring Written Reports		<p>time for QA and uploading to electronic databases, we would not be able to meet the Sept. 30 deadline for electronic reporting.</p> <p>With annual reports also due in the fall, it would not be possible to submit the Urban Creeks Mon. Report by Dec. 15th.</p> <p>Reporting timelines are unrealistic & inappropriate. It's highly likely that the Electronic Reporting due date (Sept 30) will not allow all data collected during the previous fiscal annual to be included. It would require completion of sample processing, lab analysis & QA/QC to occur in 3 months, which is far less time than other regional collaborative monitoring programs (e.g., RMP) can achieve. The Sept 30 due date would likely increase resource scheduling problems and added rush costs for analysis and QA/QC of data collected in spring and summer.</p> <p>Change due date for Electronic Report to Dec. 15 & Urban Creeks Report to March 15.</p>	<p>Bioassessment samples will be collected in May-June, and can take up to six months for completion of laboratory analyses. Thus, we agree to extend the reporting period by 3 months.</p> <p>To date, reporting periods have coincided with fiscal years (July 1 through June 30). However, in the July-September timeframe, dry weather sampling will occur, and laboratory turn-around times for the associated analyses are short. This dry weather period is associated closely (in terms of the water year) with the previous wet weather period. In looking at monitoring data in totality to analyze runoff impacts to the overall health of a stream, the dry weather sampling results are important. It would not make sense to wait over a year for reporting of these data.</p> <p>Thus, while the reporting dates will be extended three months, the dry weather data will be included in the reporting period.</p>	<p>for the Electronic Reports and March 15 for the Urban Creeks Monitoring (written) Report.</p> <p>Revise the reporting period to run October 1 through September 30.</p>
ACCWP Att-2	4	C.8.h.ii. & C.8.h.iii.	Reporting Costs	RMP experience shows that monitoring budgets should account for costs of managing & coordinating the program, including review by scientific advisers &	We agree, and that is why the Tentative Order encourages reporting be consolidated at the regional level, to facilitate scientific advising and stakeholder	None

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				collaborative stakeholder involvement.	participation.	
ACCWP Att-2 Newark Att	32 80	C.8.h.iii.	Language too broad	Under discussion of data, requirement to “Develop hypotheses to investigate pollutant sources, trends, and BMP effectiveness” is open-ended. Require hypothesis “where appropriate and feasible using available information.”	Agreed.	Add “where appropriate” to C.8.h.iii.
Kolb, Larry & James, Roger	31	C.8.h.i.	Add Language	“Violation of Discharge Prohibitions” should be added to the title and elsewhere in this section.	We disagree that the emphasis of C.8.h. is “Violation of Discharge Prohibitions.”	None
Kolb, Larry & James, Roger	32	C.8.h.iii.(5)	Change Language	“Water quality problems” should be changed to “actual or threatened exceedance of water quality standards”.	We disagree, because some parameters within the monitoring program do not have associated water quality standards or objectives, such as bioassessment.	None
CCCWP Walnut Creek	5 1	C.8 All	<i>General comment</i>	We believe some of the monitoring requirements are still: 1) not based on sound science; 2) too prescriptive to allow for adaptive monitoring; 3) not necessary.	See responses to specific comments above.	See changes listed above

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Provision C.9. – Pesticide Toxicity Control**

File	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
NRDC & SF Baykeeper	58	C.9, C.11-C.14	Include Allocations	The Tentative Order Fails to Include or Enforce Waste Load Allocations from Applicable TMDLs	This comment was addressed in response to the original tentative order. See response to SF Baykeeper comments 4 and 19 concerning the original TO.	
NRDC & SF Baykeeper	60	C.9	Provision does not implement TMDL	The Tentative Order is similarly devoid of any information related to compliance with the Pesticide Toxicity TMDL in Provision C.9.	The pesticide provisions are taken directly from the Pesticide Toxicity TMDL.	
San Jose Attachment A	20	C.9.f.i	Add language	Insert the phrase "as needed" so the sentence reads "Permittees shall maintain regular communications with county agricultural commissioners (or other appropriate State and/or local agencies) <i>as needed</i> to..."	The requested change does not improve the clarity or effectiveness of the provision.	
San Jose Attachment A	21	C.9.g.i	Add language	Insert the phrase "may be done jointly with other Permittees" in Task Description.	The encouragement to work with other parties is stated explicitly at the top of C.9 so it is not necessary to repeat it for individual elements.	
San Jose Attachment A	22	C.9.h	Flexibility	The MRP Summary Response to Comments, dated 3-18-10, page 98, bottom row, states that "Flexibility will be added in this regard. We will divide the sentence in two, require working with DPR and the Ag Commissioners, and say "may work" with respect to the others." The revised TO does not include this change. The City requests that this change be made.	We will make the requested change.	Make change requested in both original and revised tentative order.
SCVURPPP A	48	C.9 – C.14	Add	The opening paragraph for each	This comment was addressed in	

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File	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
			Language	Provision pertaining to Pollutants of Concern Control Programs, needs to include a statement such as: "The Permittees may address the requirements in this Provision by building upon their prior submissions to the Water Board."	response to the original tentative order. See response to SCVURPPP comment 65 concerning the original TO.	
Sunnyvale	48	C.9.d	IPM certification	It is not clear, nor is it defined anywhere in the MRP documentation what an "IPM-certified" contractor is. To our knowledge, there is no IPM certification program for pesticide applicators within the Department of Pesticide Regulation or other state agency. There is an "EcoWise" certification program for structural pest control operators, but there is no equivalent for those who apply pesticides to landscapes. Until there is a state certification for pesticide applicators that use IPM practices, we suggest that this language be removed or modified to reflect the actual situation. We believe including the requirement to include contract specifications for contractors to incorporate the requirements of an agency's IPM policy or ordinance is sufficient to promote the use of IPM practices.	This comment was addressed in response to the original tentative order. See response to Sunnyvale comment 19 concerning the original TO.	
ACCWP Attachment-	59	C.9.a	Remove Language	Permittees can adopt a resolution supporting others in implementing	This phrase is appropriate because several C.9 sub-provisions relate to	

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File	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
1 Berkeley Attachment 1 Newark Attachment San Leandro	59 81 15			IPM. Remove the added “and others” (in the preamble) as Permittees can only enforceable control their own operations on this issue. Remove the reference to ordinance in C.9.a entirely or replace with resolution.	discouraging pesticide use by others (e.g. not public agency staff). Regarding the reference to an ordinance, this was not a change from the original tentative order, and the language reads “policy or ordinance”. This language is flexible enough so as not to be burdensome.	
ACCWP Attachment- 1 Berkeley Attachment 1 Oakland Attachment 1 San Leandro	60 60 62 16	C.9.e	Delete Provision	Bay Area Permittees and regional groups; such as BASMAA & BACWA; have a long and successful history of doing all the tasks in this section collectively. The regional, statewide and national collaborative groups and processes will continue to work has they have. The only effective way the Waterboard can accelerate this process is through more consistent participation and dedication of its resources. Section C.9.e should be deleted from the permit.	This comment is very similar to many received on the original tentative order. Please see responses to Contra Costa County supervisors’ comment 66, Contra Costa Clean Water Program comment 79, and SMCWPPP comment 13 on the original tentative order.	
ACCWP Attachment- 1 Berkeley Attachment 1 Oakland Attachment	61 61 63	C.9.f	Delete Provision	The Waterboard needs to develop effective relationships with DPR and the County Ag Commissions directly, not attempt to mandate this upon NPDES Permittees The task descriptions of section i should be recommendations, not mandates, otherwise it should be	This comment is not based on a change to tentative order. This provision comes directly from the pesticide toxicity TMDL and is part of implementing that TMDL.	

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File	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
1 San Leandro	17			deleted from the permit. The reporting requirement should be information provided to the Water Board by the County Ag Commissions and/or DPR and should be removed from this permit.		
ACCWP Attachment-3 Berkeley Attachment 2 Newark Attachment Oakland Attachment 2	26 27 82 27	C.9.b(iii)	Too much detail	Reporting requirements are overly detailed. Revise to allow a qualitative instead of quantitative discussion of IPM efforts	This provision is not overly detailed and currently requires a mixture of quantitative and qualitative reporting. The only reporting element that is quantitative is the need to assess a trend. This can be accomplished without burdensome quantification.	
ACCWP Attachment-3 Berkeley Attachment 2 Newark Attachment Oakland Attachment 2	27 28 83 28	C.9.c(iii)	Reporting not useful	Reporting % of staff attending training is not of value and difficult to calculate. Modify requirement	This metric is the most straightforward way of assessing the extent to which municipalities are training employees in IPM. This should not be too difficult to provide.	
ACCWP Attachment-3 Berkeley	28 29	C.9.d(iii)	Reporting not useful	Does the Board <u>really</u> want copies of our standard specs and individual contracts? The additional attachments will further complicate	The text about the contract is provided as a suggestion but is not the only possible acceptable means to confirm compliance.	

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File	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
Attachment 2 Newark Attachment Oakland Attachment 2	85 29			permit submittal. Eliminate submittal of documents and allow agencies to summarize IPM requirements		
ACCWP Attachment-3 Berkeley Attachment 2 Newark Attachment Oakland Attachment 2	29 30 85 30	C.9.e(iii)	Reporting not useful	This requirement is inappropriate to put in a stormwater permit. Pesticide regulation is beyond the jurisdiction of local agencies. The Board should be providing input on these issues to the appropriate State and Federal agencies that regulate pesticides. Eliminate requirement	See response to ACCWP Attachment 1, comment 60 above.	
Fremont	34	C.9.d	Flexibility	A July 1, 2010 implementation date (to hire an IPM-certified contractor) may be infeasible if the City contract is not up for renewal prior to that date. Add "or next contract award thereafter" to allow City additional flexibility.	This is a reasonable request to add flexibility	Add language as suggested
NOAA	17	C.9 preamble	Broaden Language	We suggest changing the introduction to this pesticides toxicity control section to include the carbamate insecticide class, of which the named pesticide carbaryl is highly likely to be the most commonly encountered in urbanized settings. However, all	This is a good point.	We will do this as well as correct spelling of carbaryl.

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				carbamates cause sublethal effects to salmonids similar to the organophosphate insecticide class with which effects may be additive or synergistic.		
NOAA	18	C.9.h	Point of Sale Notice	The proposed permit should require that all Permittees shall insure that all point of purchase locations have properly posted point of sale notification warnings as required under the January 22, 2004, court order from the U.S. District Court in Seattle, Washington (Washington Toxics Coalition v. EPA). More information and a copy of the Court's order (including a listing of affected communities that includes many of the Permittees) are available at www.epa.gov/espp/litstatus/wtc/pos.htm . Inspection could occur in conjunction with other stormwater related inspections (<i>e.g.</i> , outside storage areas, <i>etc.</i>).	Imposition of this requirement is beyond the scope and specification of the TMDL implementation plan.	
Pleasanton	13	C.9.b,c	Reporting	There are currently similar established reporting requirements on municipalities regarding pesticide use by the California Department of Pesticide Regulation. This reporting requirement is in essence redundant and unnecessary. Regional Water Quality Control Board could and should coordinate the collection and	There are multiple agencies to which municipalities must report concerning any number of activities. These C.9.b,c provisions do not contain burdensome reporting requirements, and these requirements were taken directly from the pesticide toxicity TMDL implementation plan.	
Livermore	11					

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				<p>acquisition of this data from the California Department of Pesticide Regulation.</p> <p>In light of the need for efficiency and to eliminate the redundancy with other State programs/agencies' requirements, this requirement should be deleted.</p>		
Pleasanton	14	C.9.f	Beyond scope	<p>This provision is beyond the technical and legal scope of local government. The Board may, as necessary, obtain this type of data through collaborative efforts with other State agencies. This provision should be removed from the Tentative Order.</p>	<p>We disagree. This provision is neither beyond the technical or legal scope of local government. This provision is taken directly from the urban pesticide TMDL implementation plan and is necessary to implement that TMDL.</p>	
Livermore	12					
U.S. EPA	15	C.9	WLAs and reopener	<p>The basin plan amendment adopted by the Regional Board in 2005 indicates that if the BMPs prove to be insufficient to meet WLAs, the Board may require additional control measures. We recommend the permit include a reopener clause which would provide that if the initial BMPs prove insufficient to comply with the numeric WLAs, the permit may be reopened to include additional controls as necessary to ensure consistency with the WLAs. It is our position that the permit should include the numeric WLAs themselves, as this would provide</p>	<p>Permits are adopted every 5 years. It is highly unlikely that the sufficiency of BMPs to comply with WLAs will be evaluated within this 5 year permit term. No reopener clause is needed.</p> <p>Adding the WLAs to the permit without numeric limits derived from the WLAs does not help provide consistency with the TMDL or enhance the enforceability of the permit because WLAs by themselves are not enforceable. The implementation provisions regarding pesticides are taken directly from the</p>	

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				greater assurance of consistency with the TMDL and would enhance the enforceability of the permit with regards to the WLAs.	TMDL so the permit is already consistent.	
Dublin	12	C.9.e	Beyond scope	This activity is beyond the technical and legal scope of local government, and is and should continue to be handled at the State and Federal level. Further, if the Regional Board (a State agency) already has reason to believe that certain pesticides should not be used because of water quality impacts, it should take the case directly to the State agencies responsible for pesticide control and not rely on local government to perform these duties.	We disagree. Please see response to ACCPW Attachment 1, comment 60 on this issue.	
Larry Kolb, Roger James	33	C.9.a	Wording	Change “threaten water quality” should be changed to “threaten beneficial water uses” because standards haven’t been established for many pesticides and some of the existing standards are considered to be inadequate.	The term “threaten water quality” is satisfactory. This term does not lose force even for situations where standards have not been established or may be deemed inadequate.	
Pacifica	29	C.9.a	Wording	The permit should be restricted to	This may be a useful suggestion if it	

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SMCWPPP	70			pesticide uses that reach stormwater that flows to MS4s owned and operated by the municipalities in order to meet the federal Clean Water Act requirements. Modify the permit language so that it more narrowly focuses on pesticides that adversely affect stormwater that flows to MS4s owned and operated by the municipalities.	were possible to distinguish just those pesticide molecules that have the potential to impact water quality, this might be a good idea. But, this is not the case. Further, because pesticides are very toxic, water quality impacts occur if even a very small fraction of total applied pesticides reach receiving waters. Thus, the most effective and sensible control strategy is to target all applied pesticides in a watershed.	
Stopwaste.org	16	C.9	Wording	Add the following highlighted text in the last sentence of the paragraph. "Permittees may coordinate with BASMAA, the Urban Pesticide Pollution Prevention Project, the Urban Pesticide Committee, the Bay-Friendly Landscaping and Gardening Coalition and other agencies and organizations in carrying out these activities.	We will add the language as requested.	We will add the language as requested.
Stopwaste.org	17	C.9.c	Wording	Amend the sentence as shown , "Permittees shall ensure that all municipal employees who, within the scope of their duties, apply or use pesticides that threaten water quality are trained in IPM practices and the Permittee's IPM policy and may also include other training opportunities such as Bay-Friendly Landscape Maintenance Training	We will add the language as requested.	We will add the language as requested.

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				& Qualification Program and Eco-Wise.		
Stopwaste.org	18	C.9.h	Wording	Add the highlighted reference, "Public Outreach (may be done jointly with other Permittees, such as through CASQA or BASMAA and/or the Urban Pesticide Pollution Prevention Project, or the Bay-Friendly Landscaping & Gardening Coalition)"	We will add the language as requested.	We will add the language as requested.
SMCWPPP	71	C.9.b	Reporting	There is no implementation date. Add an implementation of two years following permit adoption.	Reporting takes place in every annual report, starting with the first such report.	
SMCWPPP	72	C.9.b	Reporting	The permit requires annual reporting to show trends in quantities and types of pesticides used, and this frequency of reporting to detect trends is unnecessary. Modify reporting so that information about the quantities and types of pesticides used is reported every five years.	The frequency of reporting is appropriate.	
SMCWPPP	73	C.9.d	Reporting	Modify reporting requirement for this provision so that the requested information does not need to be reported unless requested by the Water Board.	Reporting requirement is quite reasonable as written.	
SMCWPPP	74	.9.e	Delete provision	This portion of the permit requires a lot of tasks that go well beyond what is required by the federal Clean Water Act. Modify the permit to delete	This comment is very similar to many received on the original tentative order. Please see responses to Contra Costa County supervisors'	

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				the four tasks listed under C.9.e.i. because they may be done more effectively by other agencies than local municipalities and they are not required by the federal Clean Water Act.	comment 66, Contra Costa Clean Water Program comment 79, and SMCWPPP comment 13 on the original tentative order. We also note that this requirement is taken directly from the TMDL implementation plan.	
SMCWPPP	75	C.9.g	Duplication	The activity of this provision is already covered under Provision C.1 and should not be duplicated here. Modify the permit to delete this section, which is unnecessary and duplicative of Provision C.1.	This requirement is taken directly from the TMDL implementation plan. C.9.g provides additional direction and detail not found in C.1. For example, C.1 says nothing about evaluating effectiveness of implemented control measures nor evaluating attainment of specific concentration and toxicity targets.	
SMCWPPP	76	C.9.h	Outreach	The permit requires that the permittees provide resources for an integrated pesticide management (IPM) certification program for structural pesticide management, if needed to augment grant funding. The permit should not require municipalities to fund this type of activity since it is not a requirement of the federal Clean Water Act nor any state statute.	We will delete the clause about "provid(ing) resources" in C.9.h.iii (4).	We will delete the clause about "provid(ing) resources" in C.9.h.iii (4).
SMCWPPP	77	C.9.h.v	Outreach	The permit contains a specific list of groups that the municipalities are required to work with to conduct outreach to pest control operators. The list provided should simply state that the list is offered as examples of	The list is a suggested, not mandatory list, and this will be clarified.	Text was added clarifying that this is a suggested list of parties with whom to

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				the groups available that municipalities may choose to work with. Modify the permit to state that municipalities may work with groups and organizations, such as DPR, county agricultural commissioners, etc., when conducting outreach to pest control operators.		cooperate.

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BASMAA Attachment	40	C10.a.i	Revise Goal Statement	reduce "goal statement" from 378 words and more of an executive summary to just a goal statement (66 words, first sentence only) (D- Document construction / typographic / formatting / consistency)	Goal statement has been reduced in size.	
BASMAA Attachment	41	C10.a.i	Revise Language in Goal Statement	replace "tangible progress" with "improvement" in goal statement (C- Unscientific / technically or managerially unsound)	Load reduction of trash, or tangible progress will be required during this permit term.	
BASMAA Attachment	42	C10.a.i	Remove Language Not Part of Goal Statement	remove or move rest of language that is not part of a goal statement to Fact Sheet (D- Document construction / typographic / formatting / consistency)	Goal statement has been edited.	
BASMAA Attachment	43	C10.a.i	Clarify TAL Triggers not Water Quality Objective or Effluent Limitation	clarify that Trash Action Level (TAL) is a goal or a trigger for more actions, not a water quality objective or numeric effluent limitation (B- Legal liability / Legal authority / Inconsistent with Basin Plan, Clean Water Act, and/or Porter-Cologne)	Trash Action Level has been removed from the Third Tentative Order (TO).	
BASMAA Attachment	44	C.10.a.ii.	Trash Hot Spots	confirm identification of hot spots "on State waters" is doable for all 77 permittees (B- Legal liability / Legal authority / Inconsistent with Basin Plan, Clean Water Act, and/or Porter-Cologne)	Permittees will propose Trash Hot Spots in 2010. If a few Permittees have no opportunities to clean Trash Hot Spots within their jurisdictions, they can make that case at that time.	
BASMAA Attachment	45	C.10.a.ii.	Trash Hot Spots	delete the sentence "The Trash Hot Spots will be publicized on the Water Board web page to enable public review and comment for a minimum of	Any proposal presented to the Water Board is public information. We may take this step unless the Permittees have	

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				30 days.” (C- Unscientific / technically or managerially unsound)	already involved the public and stakeholders in the Trash Hot Spot selection process already.	
BASMAA Attachment	46	C.10.a.ii.	Trash Hot Spots	change last sentence, 2 nd paragraph to “If no communication is received by the Permittees April 1, 2010, the hot spot selections are approved.” (D- Document construction / typographic / formatting / consistency)	In the Final TO revision of the C.10 Trash Load Reduction Provision, we have stated that the Permittees can proceed with their proposed Trash Hot Spots unless they are informed otherwise.	
BASMAA Attachment	47	C.10.a.iii.	Non-Population based Permittees Hot Spots Selection	Non-Population based Permittees Hot Spot Selection – move right hand column of Table 10-1 to provision C.10.a.v. Trash Capture Requirement; the column is not related to the header of this section - selection (D- Document construction / typographic / formatting / consistency)	This table has been moved to Attachment M in the Final TO.	
BASMAA Attachment	48	C.10.a.iv.	Clarify TAL Trigger	Clarify that Trash Action Level (TAL) is a goal or a trigger for more actions, not a water quality objective or numeric effluent limitation, and change the characterization of the goal from TAL to Trash Reduction Goal (B- Legal liability / Legal authority / Inconsistent with Basin Plan, Clean Water Act, and/or Porter-Cologne)	The TAL has been removed from the Final TO.	
BASMAA Attachment	49	C.10.a.iv.	Change Date	Change date July 1, 2012 to July 1, 2014 – the date in this section, which is about achieving TALs/Trash Reduction Goals, should be after the date in the next section, which is about	The TAL has been removed from the Final TO. Primary trash load reduction will be assessed with a trash load accounting methodology proposed by the	

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				implementation to achieve TALs/Trash Reduction Goals (C- Unscientific / technically or managerially unsound)(D- Document construction / typographic / formatting / consistency)	Permittees.	
BASMAA Attachment	50	C.10.a.vii.	Booms	Booms or sea curtains – to be consistent, change reference in 3 rd sentence regarding cleaning from “any storm” to be the same as the design storm in C.10.a.v. Trash Capture Requirement (one year, one hour) (D- Document construction / typographic / formatting / consistency)	Booms or Sea Curtains are not longer specifically described in the Final TO, except with regard to non-population based Permittees. While these devices will not count toward full trash capture installation, the trash removed will count toward the trash load reduction.	
BASMAA Attachment	51	C.10.a.viii.	Trash Source Reduction	support this new, positive incentive (E-Support)	Noted.	
BASMAA Attachment	52	C.10.a.viii.	Change Report Date	change reporting date from 2012 to 2013 for receiving 20% credit (D- Document construction / typographic / formatting / consistency)	The trash load reduction tracking method proposal from the Permittees will set forth the credit system for trash and litter source control measures, such as plastic bag bans.	
BASMAA Attachment	53	C.10.b.i.	Change Assessment to Modified Urban RTA	given assessment is based on counting trash items, change method to modified Urban RTA focused on that protocol (A- Affordability-Increased cost / lack of resources / need for phasing of provisions and schedules)	Assessment of Trash Hot Spot Clean ups is more flexible in the Final TO, including allowing for measuring volume of trash collected.	
BASMAA Attachment	54	C.10.b.i.	Change Assessment	change frequency of assessment from twice to once a year for each Trash	The frequency of assessment has been reduced to one a year	

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			Frequency	Hot Spot and allow flexibility for assessments to be limited to Urban RTA Parameter 1 (Level of Trash) and Parameter 2 (Actual Number of Trash Items Found) except that at least one assessment during year two (2010) and at least one assessment during year four (2012) must include all six Urban RTA Parameters (A- Affordability- Increased cost / lack of resources / need for phasing of provisions and schedules)(C- Unscientific / technically or managerially unsound)	and made more flexible in the Final TO.	
BASMAA Attachment	55	C.10.c.	Change Dates for Long Term Plan	to be consistent, change dates 2024 to 2029 (20 years = other TMDLs) and 2013 to 2014 (C- Unscientific / technically or managerially unsound)(D- Document construction / typographic / formatting / consistency)	The date for attainment of full abatement of impacts of trash to receiving waters is July 1, 2022. The Long Term Trash Load Reduction Plan is due Feb. 1, 2014.	
BASMAA Attachment	56	C.10.c.	Change Language	in each occurrence of term “no impact”, add “unreasonable” (B- Legal liability / Legal authority / Inconsistent with Basin Plan, Clean Water Act, and/or Porter-Cologne)	We have avoided use of such qualifiers, as they are not well defined. The Trash Action Level (TAL) is no longer included in the Final TO.	
BASMAA Attachment	57	C.10.d.	Clarify TAL Trigger not Water Quality Objective or Effluent Limitation	in each occurrence, clarify that Trash Action Level (TAL) is a goal or a trigger for more actions, not a water quality objective or numeric effluent limitation (B- Legal liability / Legal authority / Inconsistent with Basin Plan, Clean Water Act, and/or Porter-	The Trash Action Level (TAL) is no longer included in the Final TO.	

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				Cologne)		
BASMAA Attachment	58	C.10.d.	Delete Funding as Reportable Item	in each occurrence, delete “funding” as a required reportable item (B- Legal liability / Legal authority / Inconsistent with Basin Plan, Clean Water Act, and/or Porter-Cologne)	Funding is not a required reporting parameter in the Final TO version of Provision C.10.	
BASMAA Attachment	59	C.10.d.v.	Change Due Date of Long Term Plan	C.10.d.v. Reporting: 2013 Annual Report – change due date of Long-Term Plan for Trash Abatement to 2014 Annual Report (C- Unscientific / technically or managerially unsound)	The Long Term Trash Load Reduction Plan is due Feb. 1, 2014.	
Caltrans	9	C.10	Trash Control Implementation Should Be Coordinated With TMDL Implementation	Page 116 – C.10. Trash Reduction – Reference to the ongoing installation and operation of trash control devices for the Los Angeles River and Ballona Creek may decrease the need for pilot testing in the Bay Area. Also, solutions for trash should be coordinated with implementation plan requirements for future Trash TMDLs and other TMDLs for other pollutants. The concern is that the devices being installed for trash TMDL are not compatible with the structural controls required for other TMDLs developed for various watersheds. The piecemeal issuance of the requirements for trash may mean that permittees such as the Department are required to implement controls prior to being aware of the total pollutant control requirements to	No Trash TMDL is currently proposed for this Region. Trash controls are due in July 1, 2014, allowing ample opportunity for coordination with efforts underway for the PCB and Mercury TMDLs, if necessary.	

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				comply with all TMDLs within the bay area.		
CCCWP	6	C.10.	More Focused and Affordable Implementation of Pilot Scale Trash Controls	<p>The <u>capital cost</u> for “pilot-scale” deployment/installation of these devices in Contra Costa County alone is estimated to range from \$1.5 to 33 million dollars. The <u>operation and maintenance costs</u> are estimated to be \$1.5 million annually. A more expensive approach, in terms of capital costs, involves installation of much larger structural facilities¹ strategically deployed to treat larger catchment areas. The Countywide operation and maintenance cost for these larger structural devices is estimated to be \$650,000 annually – significantly less than the inlet screens.</p> <p>Unfortunately, by law (Assembly Bill No. 2768) the Program’s dedicated Stormwater Utility Assessment revenues cannot be used for debt financing. Therefore, the least expensive option will necessarily be employed in order to meet the “pilot scale” full trash capture requirements. To avoid these unintended consequences, the Program requests a more focused and affordable pilot-scale deployment approach, which <u>will</u></p>	<p>The capital outlay for larger type trash capture devices will not necessarily require debt financing to cover the cost of construction. This is particularly true as grant funds are being made available for some trash capture installation.</p>	

¹ An example of the larger type device is one used by Caltrans in Los Angeles called a Gross Solids Removal Device (GSRD).

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				help us learn: 1) what types of devices work best in different applications and settings; 2) the maintenance costs and requirements of the various devices; and, 3) the various devices' durability and parts availability.		
CCCWP	7	C.10.	Make TALs Consistent with SWRCB's Blue Ribbon Panel	Water Board staff's proposed requirements for selecting, cleaning and assessing "trash hot spots" has been improved, but still needs further refinements to make these requirements more feasible and effective, such as Revising the proposed Trash Action Level (TAL) to be consistent with the concept of action levels developed by the State Water Resources Control Board's Blue Ribbon Panel.	The TAL has been removed from the Final TO. The assessment of Trash Hot Spots has been made more flexible.	
CCCWP	8	C.10.	Revise TAL Definition	Revising the proposed Trash Action Level (TAL) to be 100 pieces of trash or less per 100 feet of creek/shoreline, instead of the Santa Clara URTA "urban optimal" category.	The TAL has been removed from the Final TO. The assessment of Trash Hot Spots has been made more flexible.	
CCCWP	9	C.10.	Credit Previously Installed Trash Capture Devices	Allowing credit for <u>all</u> previously installed full trash capture devices meeting the permit requirements.	All previously installed devices meeting the full trash capture definition can be counted toward this requirement.	
CCCWP	10	C.10.	Modify Trash Hot Spot Assessment Requirements	Modifying the trash hot spot assessment requirements in order to reduce overall compliance costs while still providing meaningful trash	The assessment of Trash Hot Spots has been made more flexible.	

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				monitoring information.		
CCCWP	11	C.10.	Provide Flexibility to Change Hot Spots to Achieve Maximum Benefits	Providing municipalities the flexibility and option to present justification for redirecting trash hot spot reduction measures and resources to another trash hot spot(s), where greater benefit or trash load reduction could be achieved.	The primary accountability for Provision C.10 is no longer focused in the Trash Hot Spot cleanup and assessment, but on the Trash Load Reduction Tracking Method, which will be proposed by the Permittees. If Permittees want to move Trash Hot Spots, they would need to make a proposal with supporting information.	
CCCWP Attachment	32	C.10.a.ii.	Change Timeframe and Process for Approval of Hot Spot Report	<p><i><u>"If no communication neither Executive Officer approval nor a list of requested alternative hot spot locations is received by the Permittees 60 days after the close of that comment period submission of their Hot Spot Report, the hot spot selections are approved."</u></i></p> <p><i>Reason for Change:</i> Water Board staff's proposed language requires a minimum of 30 days public review of the submitted Hot Spot Report on the Water Board's web page, and a maximum of 60 days following the close of the public review period for the Water Board Executive Officer to affirmatively approve the Hot Spot Report, or to request alternative hot spots. While it would seem this</p>	In the Final TO, the Permittees can proceed to clean up their selected Trash Hot Spots unless otherwise informed by the WaterBoard.	

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				<p>language specifies up to three months (i.e., 90 days) for either Executive Officer approval of the Hot Spot Report or a request for alternative sites, there is no timeframe for initiating the 30 day public review period. This is unacceptable, and the 60 day period for Executive Officer action seems unnecessarily long. The change requested above provides 30 days for public review of the Hot Spot Reports, and 30 days for Executive Officer action, while providing a time certain for municipal receipt of a response to their Hot Spot Report submittal.</p>		
CCCWP Attachment	33	C.10.a.iv.	Change TAL Definition	<p><i>“iv. Trash Hot Spot Clean Up to Trash Action Level Hot Spot Goal - Permittees shall achieve TAL by July 1, 2012, at these trash hot spots, and then maintain at least that level. The trash hot spot goal (THSG) TAL implemented for this permit cycle, which does not represent full attainment of the Basin Plan trash prohibition or water quality objectives for trash, will be 100 pieces of trash or less per 100 foot assessment reach the “Urban Optimal” level of the Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPPP)</i></p>	<p>The TAL has been removed from the Final TO. The primary accountability for Provision C.10 is no longer focused in the Trash Hot Spot cleanup and assessment, but on the Trash Load Reduction Tracking Method, which will be proposed by the Permittees.</p>	

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				<p>version of the Water Board developed Rapid Trash Assessment method (Urban RTA) Attachment 10.1. The Urban Optimal level of the Urban RTA includes the requirements of less than 100 pieces of trash per 100 foot assessment reach, and that there be no visual impact from trash within the assessment reach.</p> <p><i>Reason for Change:</i> A trash action level (TAL) should be consistent with the concept of action levels developed by the Blue Ribbon Panel of experts assembled by the State Water Resources Control Board. As defined by the Blue Ribbon Panel, an Action Level or TAL should be a numerical goal that defines a threshold for the potential need for further management actions, and is not a water quality objective or numeric effluent limit. We request that the Tentative Order clarify that the TAL is a goal, and not a water quality objective or numeric effluent limit. We also request the TAL goal be set at 100 pieces of trash or less per 100 feet of creek/shoreline, instead of the Santa Clara URTA "urban optimal" category. Having a specific number of trash items established as the TAL goal is more consistent with the goal</p>		

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				statement provided in C.10.a.(i) and allows less subjectivity than the Urban Rapid Trash Assessment Protocol.		
CCCWP Attachment	34	C.10.a.v	Give Credit for Previously Installed Trash Capture Devices	<p><i>“Previously Installed Capture Device Credit – Credit can be claimed for trash full capture devices meeting the full capture definition and installed and maintained by the Permittees before January 1, 2003 prior to the adoption of this Order.”</i></p> <p><i>Reason for Change:</i> The Program sees no rationale for limiting credit or excluding any previously installed “full capture trash devices” that meet the definition and intent of this provision. Whether a “full capture trash device” was installed before or after January 1, 2003 is completely arbitrary and irrelevant. Such installations should be credited regardless of when they were installed.</p>	All previously installed devices meeting the full trash capture definition can be counted toward this requirement.	
CCCWP Attachment	35	C.10.a.vii	Change Percentage Credit for Sea Curtains	<p>1. Booms or sea curtains. Change 10% back to 25% as follows:</p> <p><i>“Booms or sea curtains receive credit for 10% <u>25%</u> of the tributary catchment area.</i></p>	Booms or Sea Curtains are not longer specifically described in the Final TO, except with regard to non-population based Permittees. While these devices will not count toward full trash capture installation, the trash removed will count toward the	

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				<p><i>Reason for Change:</i> The December 14, 2007 Tentative Order allowed booms and sea curtains to receive credit for 25% of the area draining to the booms/curtain. It is unclear why the percentage credit was reduced, therefore we request the above change be made, which is consistent with Water Board staff's previous proposed language.</p>	trash load reduction.	
CCCWP Attachment	36	C.10.b.i.	Change Hot Spot Assessment Method	<p>Trash Hot Spot Assessment. Change this section as follows:</p> <p><i>Permittees shall assess trash at their designated trash hot spots <u>relative to the Trash Hot Spot Goal (THSG) using the SCVURPPP Urban Rapid Trash Assessment (Urban RTA) (Attachment I).</u> These assessments shall occur twice at least once a year for each approved Trash Hot Spot, at the beginning and end of during the dry season, in the spring and fall of each year, with the first assessments occurring as a part of the Hot Spot selection process, in late summer 2009, after permit adoption. If a trash assessment scores less than 10 pieces of trash per 100 feet, two years in a row, assessment can be reduced</i></p>	The RTA or Urban RTA are no longer required Trash Hot Spot Assessment methods. Simple volume of trash removed along with dominant types of trash collected can be reported.	

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				<p>to once a year. <u>Assessments may be limited to Urban RTA Parameter 1 (Level of Trash) and Parameter 2 (Actual Numb of Trash Items Found) except that at least one assessment during year two (2010) and at least one assessment during year five (1013) must include all six Urban RTA Parameters.</u> The assessments shall be augmented by photo documentation as described in C.10.a.ii., which shall be reported with the assessments in the annual report.</p> <p>Reasons for Changes: In Fiscal Year 2008/2009, Contra Costa County Volunteer Monitors conducted several trash assessments using both the SCVURPPP's Urban Rapid Trash Assessment and the San Francisco Bay Regional Water Quality Control Board's Rapid Trash Assessment Protocols. These assessments are labor and time intensive. The most time consuming aspect of both assessments involved tallying the collected trash items into the various trash categories. This fact, combined with the fact that the TAL goal is based upon the number of trash items per 100 feet of creek/shoreline, we request the assessment method require quantification of trash items at hot</p>		

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				<p>spots and not the URTA. Additionally, we request the assessment of each hot spot be conducted once a year during the dry season. However, we propose that the URTA be conducted once during year two (2010) and once during year five (2013). The purpose for conducting the URTA in year two is to establish a baseline, which would be based upon a one year accumulation of trash at each trash hot spot (i.e., the time between the initial assessment and clean-up conducted in late summer 2009 and the year-two URTA conducted after May 1, 2010). Information obtained in the year-two URTA (i.e., trash types, sources, and pathways) would be used to develop trash source reduction strategies in accordance with C.10.a.viii, and to refine other measures designed to meet the TAL goal. Results obtained in the year five URTA can be compared to the year two URTA, and as a method to evaluate the effectiveness of any implemented trash source reduction measures and other trash reduction measures. The proposed changes outlined above would reduce overall compliance costs while still providing meaningful trash monitoring information.</p>		
CCCWP	37	C.10.c.	Long-Term Plan	<i>The Permittees, acting individually or</i>	The Long Term Trash Reduction	

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Attachment			for Trash Impact Abatement	<p><i>collectively, shall create a long-term trash management plan to prevent further reduce trash impacts on beneficial uses within their jurisdictions to the maximum extent practicable with the long term goal of supporting no impacts on beneficial uses from trash by 2024 2029. This plan for achieving this 15-year, no-trash-impact goal will <u>shall</u> be submitted with the 2013 <u>2014</u> Annual Reports."</i></p> <p><i>Reason for Changes:</i> Trash on our streets, in our neighborhoods, and in our water bodies is a societal problem. Simply understanding trash sources, pathways, and effective control measures will not be sufficient to end littering, illegal dumping, and homeless encampments, or otherwise eliminate trash impacts. Further significant trash reduction efforts will require a multitude of sustained and costly actions by local governments; institutional or legislative changes in the way products are made, packaged, sold, used and disposed of; and, significant changes in people's behaviors. The changes outlined above are necessary and reflect reality while committing local governments to significantly reducing trash in water bodies. A twenty year timeframe is</p>	Plan is required to meet full abatement of trash impacts to receiving waters by July 1, 2022 in the Final TO.	

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				<p>commensurate with the significant public investment that will be required for retrofitting and/or replacing significant portions of our aging drainage infrastructure with full trash capture devices.</p>		
<p>CCCWP Attachment</p>	<p>38</p>	<p>C.10.d.iv.</p>	<p>Change Trash Reporting Requirements</p>	<p><i>“Permittees shall report the results of assessments of Trash Hot Spots, including photos, and compare assessment results with the <u>TAL Trash Hot Spot Goal (THSG)</u>. Report whether the <u>TAL THSG</u> has been achieved at the trash hot spots. If <u>TAL THSG</u> has not been achieved, <u>the Permittee shall either report on additional actions aimed at further reducing trash at each Trash Hot Spot no meeting the THSG or present justification for redirecting resources to other locations to achieve this goal.</u>”</i></p> <p><i>Reason for Changes:</i> For some trash hot spots, particularly those impacted by larger and more urban watersheds, meeting the trash hot spot goal of 100 pieces of trash or less within a 100 foot reach of stream or shoreline may prove difficult to achieve. Moreover, it is conceivable that a municipality’s trash reduction actions could result in significant and measurable reductions</p>	<p>The TAL has been removed from the Final TO. The primary accountability for Provision C.10 is no longer focused in the Trash Hot Spot cleanup and assessment, but on the Trash Load Reduction Tracking Method, which will be proposed by the Permittees.</p>	

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				<p>in trash loading or accumulation at selected hot spots while still not attaining the trash hot spot goal. In this scenario, a municipality would be required to expend an inordinate amount of public resources trying to meet an arbitrary trash reduction goal on a single trash hot spot. Consistent with the “knee of the curve” concept and the “law of diminishing returns”, which has been applied in other aspects of the proposed permit (e.g., the C.3.d. treatment BMP sizing criteria), a municipality should be allowed the flexibility and option to present justification for redirecting resources to another trash hot spot(s) where greater benefit or trash load reduction could be achieved. To provide this flexibility, we request the above change.</p>		
<p>Contra Costa Brd of Sups Atch A</p>	<p align="center">37</p>	<p align="center">C.10</p>	<p align="center">Trash Goals Unrealistic Consider Cost</p>	<p>The County concurs with the Water Board that trash is unsightly and contributes to water pollution. The MRP’s requirement to plan for zero trash impacts within 15 years by 2024, though admirable, is unrealistic. The costs associated with the requirements of this section must be considered relative to the entirety of the County’s responsibilities to its population and environment (as well as the economic law of diminishing returns) and should</p>	<p>The attainment of no trash impacts to receiving waters by 2022 is a reasonable target.</p>	

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				<p>be revised accordingly. Ultimately, the solution involves human behavior modifications (and incentives) that will require time to develop, and for which the County will be one of numerous proponents of this behavioral change.</p> <p>The County supports trash reduction, both in waterways and throughout the County. However, there are a number of specific provisions that merit revision or more wholesale reconsideration, as noted below.</p>		
Contra Costa Brd of Sups Attch A	38	C.10.a.ii & C.10.d.i	Extend Implementation Date	<p>The short time line for the Trash Hot Spot Selection report due February 1, 2010, is unlikely to yield the best results. Contra Costa County proposes a report date of July 1, 2010, which would allow monitoring for a full rainy season to identify the most impacted trash hot spots, and correlate the hot spots with sources of trash.</p>	<p>July 1, 2010 is the Final TO date for the Trash Hot Spot Selection Report.</p>	
Contra Costa Brd of Sups Attch A	39	C.10.a.iv	Revise TAL Assessments	<p>There are serious concerns regarding the feasibility of meeting TAL (Trash Action Level) cleanup levels within the time frame provided. Section C.10 ignores the on-the-ground realities of pathways through which trash is conveyed from its sources to water bodies. It is likely that a hot spot in one jurisdiction is (primarily) the recipient of trash originating within</p>	<p>The TAL has been removed from the Final TO. The primary accountability for Provision C.10 is no longer focused in the Trash Hot Spot cleanup and assessment, but on the Trash Load Reduction Tracking Method, which will be proposed by the Permittees.</p>	

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				<p>another municipality. It may not be possible for a jurisdiction to address a trash source (or conveyance) located within another jurisdiction. Also, most storm drains and creeks cross jurisdictional borders, conveying trash from one jurisdiction into another. Furthermore, within the County's jurisdiction is land that, although it is within the Permittees' boundaries, is not within Permittees' actual jurisdiction (such as Caltrans right-of-ways). Provision C.10 should be modified such that a jurisdiction is not held responsible for trash originating within another jurisdiction; this would also provide an opportunity to foster increased cooperation between Permittees.</p> <p>The County proposes that a full baseline trash assessment (which characterize waste types) be required in Year 1 (which will be useful for public outreach and source control purposes), and that an end point full assessment be performed in Year 5. The County recommends that trash assessments during permit years 2 through 4 be limited to counting only.</p> <p>Setting a strict TAL may result in Permittees dedicating sufficient</p>		

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				<p>resources to clean up the hot spots (only) to meet the TAL, focusing on relatively small stretches of creek at the expense of cleaning up more extensive waterway reaches to attain possibly less of an improvement but over a larger area.</p> <p>The exhibit to the left demonstrates the complexity of jurisdictional boundaries within (and likely trash sources contributing to trash in) the Walnut Creek watershed. It would likely not be possible to identify a trash hot spot location within Walnut Creek that does not receive trash from sources in multiple jurisdictions. A more regional, collaborative approach for (at least for the “pilot scale deployment” of) trash capture devices would facilitate Permittees in addressing some more severe trash hot spots that could not effectively be tackled by a single Permittee due to sources from multiple Permittees’ jurisdictions.</p>		
Contra Costa Brd of Sups Attch A	40	C.10.a.v	Credit for Existing trash Capture Devices	Credit should be given for any full trash capture devices that have already been installed, regardless of when they were installed. The reference to January 1, 2003 should be removed from the last paragraph of Section C.10.a.v.	We agree. This revision has been made.	

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Contra Costa Brd of Sups Attch A	40.5	C.10.a.v/C.10.b.i	Justify 5mm particle retention or revise	The definition of “full trash capture device” provides for devices that trap particles retained by a 5mm mesh screen. The 5mm particle retention requirement seems to be an arbitrary and especially fine gradation that will not necessarily produce the highest degree of water quality benefit per dollar spent. This fine of a gradation also seems likely to cause storm drain systems to clog and fail, leading to flooding. Unless there is specific scientific research supporting the 5mm specification, and an appropriate corresponding cost-benefit ratio, the County requests that this specification be reviewed and adjusted appropriately (or deferred until appropriate studies can be conducted to determine the appropriate specification).	This standard has been and is being implemented on a massive scale in the Los Angeles region, so not only represents MEP for California, but is the specification that the devices readily available on the market are designed to meet. While this specification will not stop all trash, it removes a major portion down to cigarette butts in size, and still allows appreciable water flow to avoid flooding.	
Contra Costa Brd of Sups Attch A	41	C.10.c/C.10.d	Plan unrealistic	It is not realistic for any municipality to develop a plan to entirely eliminate trash impacts on beneficial uses within their jurisdictions. There will always be some level of trash (dumping/litter), and there will be a corresponding degree of trash-related impacts. Development of a collective plan for an achievable degree of trash reduction (as opposed to zero trash impact), however, is acceptable.	The Permittees, working with all stakeholders and the WaterBoard have 12 years to work on an interpretation of Discharge Prohibition A.2. and the level of evidence of clean-up that will constitute no trash impacts to beneficial uses or Receiving Water Limitations.	

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Contra Costa Brd of Sups Attch A	42	C.10.c	Consider Pilot Scale Trash Capture	The installation of full trash capture devices per Section C.10 is referred to as a “pilot scale deployment.” It should be noted that the devices are to be installed by July 1, 2013, which is nearly the end of the NPDES Permit’s term. This will only allow for a year or two before the release of the next iteration of the NPDES Permit. The County urges the Water Board to continue to consider the installation of full trash capture devices to be a “pilot scale deployment” for some time into the term of the next NPDES Permit (at least) so that Permittees have an adequate period of time to observe the devices’ function, gain experience maintaining the devices, and develop the expertise necessary to make any subsequent “full scale deployment” efficient and successful.	The minimum Trash Capture Device installation requirement is not described as a “pilot scale deployment” in the Final TO revision. This level of trash capture is necessary to begin to meet MEP and to make significant progress toward meeting the Trash Load Reduction requirement of 40% by July 1, 2014.	
Contra Costa Brd of Sups Attch A	43	C.10.c	Consider Pilot Scale Trash Capture	One final issue the County may be forced to address in this current section as written is the legal authority to access creeks and retrofit drainage that may be candidates for trash hot spot designation and installation of full capture devices but are on private property.	The Permittee may opt to require the private property owners to implement the trash controls in those instances.	
Contra Costa Co Flood Control Attch A	6	C.10.a.iii	Not population based entity, No capture devices	The Flood Control District is a non-population based entity. With the exception of homeless encampments	In the Final TO we have clarified the requirements for non-population based Permittees.	

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				<p>on Flood Control District property, it does not host residential, commercial or other land uses that generate trash that effects waterways. In general, the Flood Control District is a recipient of trash from outside its property, not a source of trash. There are no trash-generating activities on Flood Control property that can be mitigated with full capture devices on outfall structures to its channels. Therefore, the Flood Control District should not be responsible for implementing full capture devices on outfall structures or establishing trash booms. The Flood Control District can facilitate capture some trash through the installation of trash booms in certain locations. However, the trash collected by such an installation will principally come from sources outside the Flood Control District's property. For this reason, the Flood Control District's responsibility should be limited to cooperating with benefited cities and the unincorporated County in the installation of trash booms.</p>		
Contra Costa Co Flood Control Atch A	7	C.10.a.iii	Shared Trash Hot Spot Responsibility	Trash Hot Spots should be established in conjunction with upstream jurisdictions and the financial responsibility for establishment and monitoring of Hotspots on Flood Control District property should be	The non-population based Permittees will have sole responsibility for a small number of trash hot spots.	

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				shared with upstream jurisdictions in proportion to their trash loading.		
Contra Costa Co Flood Control Attch A	8	C.10.a.iii	FCD Role Limited to Cooperation	<p>While it is not reasonable for the Flood Control District to be required to install trash capture devices, it is recognized that Flood Control District property includes ideal locations for trash capture. However, the requirement of the Flood Control District should be limited to cooperating with the trash-contributing jurisdiction in establishment, operation and maintenance of trash capture devices within Flood Control District property (at the other jurisdictions' expense). The exhibit to the left illustrates the complications posed by jurisdictional boundaries within the Walnut Creek watershed. This supports the positions that the Flood Control District, as a recipient of trash (as opposed to a generator of trash) from numerous municipalities, cannot be expected to be responsible for this trash originating outside its jurisdiction. Furthermore, the reality of numerous jurisdictions contributing trash to a creek (Flood Control District property) bolsters the argument that it would be more appropriate for a collaborative approach to be employed in addressing trash. Due to the obvious potential for</p>	<p>The non-population based Permittees will have sole responsibility for a small number of trash capture devices. The Final TO requires that Permittees produce a Short Term Trash Load Reduction Plan. This plan will be Permittee specific. Proposals for collaborative work on trash capture could be included. It would be necessary to be clear on the contribution and credit toward compliance that would accrue to each partner in the collaborative.</p>	

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				<p>hotspots to provide a measure of effectiveness of regional trash management initiatives, it would be best to locate hotspots at the downstream end of Flood Control District channels. These downstream locations are also best suited for the placement of trash booms, so it would be most effective to locate hotspots and trash booms in close proximity. These downstream locations also are most likely to be receiving trash originating within a larger number of jurisdictions. Therefore, the MRP should encourage all jurisdictions to cooperate financially in the establishment of hot spots and placement of trash booms on Flood Control District property by allowing all jurisdictions in the tributary watershed to count a collaboratively funded hotspot and boom as fulfillment of all or a portion of their individual jurisdictions' trash management requirements.</p>		
Contra Costa Co Flood Control Attch A	9	C.10.a.ii & C10d.i	Extend time for Implementation	<p>The short time line for the Trash Hot Spot Selection report due February 1, 2010, will be difficult to meet, and may not yield selection of highest priority Hot Spots based on best available information. The Flood Control District proposes a report date of July 1, 2010. This will better allow the Flood Control</p>	<p>This revision has been made, the Hot Spot Selection report is due July 1, 2010.</p>	

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				District to conduct monitoring for this purpose through a full rainy season, and will allow time to coordinate the establishment and cooperative funding of Hot Spots with the upstream jurisdictions.		
Contra Costa Co Flood Control Atch A	10	C.10.a.iv	Unreasonable to establish standard dependent on upstream actions	<p>It is unlikely that it is possible for the Flood Control District to achieve the established Trash Action Level in any hotspot area without the successful mitigation by upstream jurisdictions contributing trash to runoff. It is unreasonable to subject the Flood Control District to a cleanup standard that is dependent on the actions of municipal entities over which it exercises no control. The Flood Control District should be required to cooperate with upstream jurisdictions by identifying and monitoring Hot Spots on Flood Control District property to assess the effectiveness of trash capture by upstream jurisdictions, but only when proportionate cost sharing is provided by all benefitted entities.</p> <p>Setting a strict TAL on Flood Control District regional channels could result in the need to spend a lot of resources in futile attempts to clean up 100% of trash within a few relatively short stretches of creek.</p>	The TAL has been removed from the Final TO. The primary accountability for Provision C.10 is no longer focused in the Trash Hot Spot cleanup and assessment, but on the Trash Load Reduction Tracking Method, which will be proposed by the Permittees.	

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Contra Costa Co Flood Control Attch A	11	C.10.b	Change Assessment Requirements	The Flood Control District proposes that a full baseline trash assessment be performed in Year 1, and an end point full assessment be performed in Year 5; these would characterize waste types and correlate them to land uses, which will be useful for targeting public outreach and source control efforts. However, if the goal is to reach our Urban Optimal Trash Action Level, it is recommended that in Years 2-4 trash assessments be limited to counting only.	The Trash Load Baseline report is due February 1, 2012, and a 40% reduction in trash loading is to be demonstrated by July 1, 2014.	
Daly City	4	C.10	Include Exemption When Requirements Unattainable	A form of exemption needs to be included when a permit requirement is considered unattainable (such as trash requirements when pipes are mostly subterranean).	There is no exemption from the Basin Plan Discharge Prohibition, which is included in the Permit as Prohibition A.2. The requirements contain flexibility in certain key aspects.	
Danville	5	C.10	Use Comparative Needs Approach, Reduce Capital Improvement Requirements, Allow Alternative Compliance	Language in the revised TO proposes to reduce the number of full capture trash devices that would be required for Danville, but adds a significant new trash management strategy that requires cities to identify Trash Hot Spots by February 1, 2010. These Hot Spots will be public noticed and approved by the SFRWCQB. The trash Hot Spots will require cities to conduct regular maintenance, inspections, monitoring and annual reporting of the results of the Town's	The TAL has been removed from the Final TO. The primary accountability for Provision C.10 is no longer focused in the Trash Hot Spot cleanup and assessment, but on the Trash Load Reduction Tracking Method, which will be proposed by the Permittees.	

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				<p>maintenance efforts. Cities will be required to achieve an interim Trash Action Level (TAL) by July 2012 of no visual trash impact and an Urban Optimal level of no more than 100 pieces of trash within 100 feet of the assessment creek reach. The TO is clear, this approach is the first phase of implementation and will allow cities time to develop expertise on trash assessments to achieve a long-term goal that will be defined during the permit term.</p> <p>The Town of Danville values and has always emphasized the need for litter removal in our community. Danville's current maintenance efforts that relate to trash pick-up/removal and street sweeping are well-established and successful. The new TO requirements relating to trash assessments, monitoring efforts, documentation of results and reporting back to the SFRWQCB will only serve to expend unnecessary time and effort in exchange for little gain in our community at an annual cost increase of \$66,000.</p> <p>The fact that this is only the first step in a continuum of ratcheted up requirements is of concern to our</p>		

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				<p>community. Trash collection efforts in Danville are currently very effective and there is little chance for significant improvement. However, these proposed requirements will only stand to cost the Town of Danville more money and will take time and effort away from the goal of trash reduction.</p> <p>Suggested Recommendation: Implement a trash management program based on a comparative needs assessment, minimize the required reporting efforts when compliance is achieved and eliminate the minimum capital improvement requirements; or allow another form of alternative compliance.</p>		
Danville	6	C.10	Reduce Reporting Requirements	<p>New record keeping and reporting requirements contained in Provisions C.3. New Development, C.6 Construction Site Controls, C.5. Illicit Discharge and Detection. And C.10 Trash. These efforts will require the creation of data base systems, employee training and considerable implementation time preparing reports that will have little impact on the environment. The Town does not have adequate resources available for these purposes and suggests that program funds be more effectively spent elsewhere.</p>	<p>The record keeping and reporting requirements in the Permit in general and Provision C.10 in particular have been reduced to the minimum necessary to determine compliance.</p>	

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				Suggested Recommendation: Reduce the extensive data base reporting requirements outlined in the proposed permit for both local agency and SFRWQCB benefit, and devote available staff resources toward program implementation.		
Fairfield	1	C.10	Trash Capture Requirements Overly Prescriptive	Our review of the Revised TO indicates that Water Board staff has made modifications and improvements relative to the previous MRP, particularly the “core” municipal stormwater management program elements that address municipal and industrial operations, construction inspection, public information and outreach. However, we still have some major concerns with the trash requirements. The Revised TO requires that capture devices be installed to drain a total of 30% of the retail/wholesale/commercial land use amount for the City. This proposed approach to solving the trash problem is overly prescriptive, and does not recognize a variety of possible trash and litter problems within the City (e.g., homeless living adjacent to creeks).	The minimum Trash Capture requirements have been significantly reduced for the First TO. This level of trash capture is necessary to begin to meet MEP and to make significant progress toward meeting the Trash Discharge Prohibition A.2. and Receiving Water Limitations by Year 12, and the Short Term Trash Loading Reduction Requirement of 40% by July 1, 2014.	
Fairfield	24	C.10.a(iv)	Clarify Definition of TALs	A trash action level (TAL) is consistent with the concept developed by a panel	The TAL has been removed from the Final TO. The primary	

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				<p>of experts assembled by the State Board. As defined, a TAL is a numerical goal that defines a threshold for the potential need for further management actions. It is not a water quality objective or numeric effluent limit. We request that language be revised to make the TAL definition more clear. In addition, we recommend that the TAL be set at 100 pieces of trash or less per 100 foot of creek/shoreline instead of the proposed SCVURPPP “urban optimal” category. Having the number of trash items as the TAL is more consistent with the goal statement presented in provision C.10.a (i). It permits less subjectivity than the Urban Rapid Trash Assessment Protocol. In addition, it allows Permittees to focus on reducing the level of trash at a hot spot to a defined endpoint.</p>	<p>accountability for Provision C.10 is no longer focused in the Trash Hot Spot cleanup and assessment, but on the Trash Load Reduction Tracking Method, which will be proposed by the Permittees.</p>	
Fairfield	25	C.10.a(vii)	Why percentage credit for sea booms changed?	<p>The previous version of the draft MRP Tentative Order allowed non-tidal booms or sea curtains to receive credit for 25% of the area draining to the booms/curtain. It is unclear why the percentage credit was reduced to 10% in the Revised TO. We request that the original percentage (i.e., 25%) be reinstated as the percentage of the draining area required to be addressed by full trash capture devices.</p>	<p>There is no direct reference to booms or sea curtains in the Final TO, except with regard to non-population based Permittees, and these devices will not meet the full trash capture standard. Trash removed from such devices would be credited toward the Short Term Trash Load Reduction Goal.</p>	

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Fairfield	26	C.10.b(i)	Change Assessment Frequency	It is unclear what scientific basis was used to establish the frequency of twice per year for conducting assessments at each approved trash hot spot. Based on the numerous trash assessments conducted by other stormwater programs (i.e., SCVURPPP) within the Bay Area, we believe that this frequency could be reduced to once a year and still achieve the objectives stated above. In addition, if the TAL is based on the number of trash items per 100 feet of creek/shoreline, it is unclear why Rapid Trash Assessments (RTAs) are needed. As a result, we request that the assessment method require the quantification of trash items at hot spots but RTAs not be conducted. RTAs require additional time, resources and yield subjective data that are not specifically needed to address the TAL.	The required Hot Spot assessment frequency has been revised to once per year. The TAL is no longer in the Final TO revision of Provision C.10.	
Fairfield_Suisun Sewer District	32	C.10.a through C.10.d	Do Not Have Authority to Clean Hot Spots or Operate Trash Capture Devices	The District does not own, operate or maintain flood control channels, culverts, ditches or stormwater outfalls. As a result, the District does not have the authority to cleanup hot spots, or operate and maintain full capture treatment devices in the creeks of Fairfield and Suisun City. Furthermore, the District lacks the land use authority on which a permittee	The Fairfield_Suisun Sewer District has been removed as a Permittee in the Final TO, as it is not a flood control entity.	

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				<p>may rely on to control sources of litter. The District should be removed from all requirements contained in Provision C.10.</p>		
<p>Kolb, Larry & James, Roger</p>	<p>34</p>	<p>C.10</p>	<p>Does not Make Significant Progress toward compliance with Discharge Prohibition</p>	<p>The Trash Reduction program contained in the February 2009 MRP is considerably weaker than that contained in the December 2007 draft MRP, does not represent significant progress towards compliance with the Discharge Prohibitions and needs to be replaced with the elements discussed below. The discharge of trash and solid waste to the Bay Area's creeks, wetlands, Bay and Ocean have been prohibited in Water Board's water quality plans and policies since the mid 60's, Basin Plans since 1975 and have been prohibited in countywide NPDES permits for over 18 years. The Permittees have been implementing municipal maintenance practices and public education programs for over 15 years that are aimed at reducing the discharge of gross pollutants including trash. However, ongoing violations of the NPDES Permits discharge prohibitions and receiving water limitations have been well documented by the Water Board staff's Rapid Trash</p>	<p>The Final TO incorporates the Trash Discharge Prohibition (A.2. in the TO) into the requirements, and calls for both a Short Term Trash Load Reduction Plan, and attainment of compliance with the Discharge Prohibition by 2021.</p>	

² National Research Council, 2009, *Tackling Marine Debris in the 21st Century*

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				<p>Assessment Protocol, testimony received by the Water Board on March 14, 2007 and 303(d) submittals of February 28, 2007. We find it disturbing that the February 2009 MRP makes no mention of the recent listing of 26 water bodies impaired by trash and doesn't use that list to prioritize the "hot spots" for initial enforcement action.</p> <p>The Los Angeles Regional Water Quality Control Board has taken aggressive regulatory action to address trash in that region's waterways. Its actions have been appealed to the State Board; have been upheld by the courts and approved by the State Board and USEPA. The magnitude of and impacts on the environment from trash in the Bay Area's waterways are comparable or greater than found in Los Angeles. The Bay Area's trash control program should be at least as aggressive as that in Los Angeles and have compliance schedules at least as restrictive.</p> <p>The National Research Council has recommended the adoption of a goal of zero discharge of waste into the marine environment including land-</p>		

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				based marine debris, derelict fishing gear, shipborne waste and abandoned vessels. ² The report addresses multiple types of marine debris and notes that plastics are now ubiquitous in the oceans and along coasts creating ecological and socioeconomic impacts.		
Kolb, Larry & James, Roger	35	C.10.a.i	Revise Goal Statement	The statement is extremely weak and needs to be replaced with Goals, Objectives and Implementation Strategy. The Goal must state: Establish a target of zero trash in creeks, wetlands and the Bay and Ocean to be achieved by 2020.	The Goal Statement has been Revised. The long term goal or target of no trash impacts and compliance with the Discharge Prohibition A.2. on trash is set for 2021.	
Kolb, Larry & James, Roger	36	C.10.a.i	Revise Objectives	The Objectives of the Permit must include: State that implementation of this permit shall address water bodies listed in the recent 303(d) listing revisions and state that additional water bodies may be added as additional areas of impairment are identified.	This permit is intended to address all waterbodies within the Permittees jurisdiction, so includes those waters proposed for 303(d) listing for trash.	
Kolb, Larry & James, Roger	37	C.10.a.i	Revise Objectives	Require 10% annual reductions in the volume and mass of trash discharged by the Permittees through compliance with Discharge Prohibitions A with a 30% reduction to be achieved by 2014.	The Final TO requires a 40% reduction in trash loads by 2014.	
Kolb, Larry & James, Roger	38	C.10.a.i	Revise Objectives	Require documentation of the reductions in the volume and mass of	The Final TO does this.	

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				trash through installation of full capture devices or an increased level of effort of municipal maintenance practices.		
Kolb, Larry & James, Roger	39	C.10.a.i	Revise Implementation Strategy	The Implementation Strategy must: State the RWQCB's intention to establish "acceptable" levels of trash in creeks, wetlands and Bay and Ocean that do not constitute a nuisance, adversely affect beneficial water uses and/or cause a contamination by 2019. SFEI should conduct the studies necessary to determine the "acceptable" levels of trash.	Currently the Final TO requires compliance with the Discharge Prohibition and Receiving Water Limitations by 2021. We believe there will be ample discussion once the short term goal of 40% reduction is achieved during this permit term on the subject of "how clean is clean" practicably for trash, and if any level of trash in waters is "acceptable".	
Kolb, Larry & James, Roger	40	C.10.a.i	Revise Implementation Strategy	Require Permittees to develop a Trash Control Program including identification of full capture devices, design and siting criteria, siting plans, funding for construction and long-term (say 50-years) life-cycle operation and maintenance costs of devices	Trash capture device installation is required as part of the Short Term Trash Load Reduction Plan. There is a requirement for adequate maintenance of the devices, but not life-cycle cost funding up front.	
Kolb, Larry & James, Roger	41	C.10.a.i	Revise Implementation Strategy	Require Permittees to submit a monitoring plan that will document the reductions in the discharge of the volume and mass of trash and compliance with the Prohibitions.	The Short Term Trash Load Reduction Plan shall contain a methodology to document loads prevented or reduced from discharge.	
Kolb, Larry & James, Roger	42	C.10.a.i	Revise Implementation Strategy	Require applicants for water quality certifications for storm water discharges to install full capture devices (new and rehabilitation of storm water pump stations, flood control projects and new outfalls	This comment is not directly pertinent to the MRP RTO. We have asked such applicants to consider trash capture in some instances.	

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				<p>serving high trash generation land uses).</p>		
Kolb, Larry & James, Roger	43	C.10.a.i	Revise Implementation Strategy	<p>Include an enforcement program that encourages use of federal stimulus funds, state grants and State Water Pollution Cleanup and Abatement Account funds and state that failure to pursue these funding opportunities is failure to achieve the MEP standard.</p>	<p>It is not clear what the commenter means by "enforcement program". There is a requirement for installation of trash capture, and there are grant funding opportunities. We do not require pursuit of grant funds, but failure to meet the trash capture requirements would constitute non-compliance, which could be subject to enforcement.</p>	
Kolb, Larry & James; Roger	44	C.10.a.i	Revise Implementation Strategy	<p>Urge Permittees to include and address gross pollutants including pollutant bound sediments and vegetation as part of the trash control program.</p>	<p>The definition of trash and litter does not include sediment. Vegetation residues from human activity, such as lawn and shrub clippings dumped would be considered trash.</p>	
Kolb, Larry & James, Roger	45	C.10.a.ii.	Replace Hot Spot Selection Method	<p><u>(page 77)</u> This section must be replaced with a finding that the RWQCB recently proposed revisions to the 303(d) list of impaired water bodies that added 26 water bodies where beneficial uses have been impaired by trash. The permit must contain a list of each water body and the Permittee in the water body's catchment/watershed. The focus of this permit must be on these water bodies and there is no need for further assessments by</p>	<p>The Final TO requires trash load reduction on the Permittees' entire jurisdiction. The 26 water bodies proposed for 303(d) listing are certainly not the only or even most trash impacted water bodies, but are those with the most substantial body of evidence for this listing cycle. Therefore while they are of significant concern and must be cleaned up, they are by no means the priority waterbodies in</p>	

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				<p>Permittees. Additions to this listing of water bodies should be permitted pending the next 303(d) update/revision if evidence is provided that meets the 303(d) listing criteria.</p> <p>The previous draft permit required that Permittees to identify trash impacted areas in 10% of a significant portion of the urbanized area. An analysis of the ABAG data for Contra Costa County indicates that previous draft would require programs to control trash for over 14,000 acres while the proposed permit would require trash control programs in only about 1,500 acres – a very significant reduction in the trash control requirements.</p> <p>The proposed revision would require development and implementation of trash control programs in those watersheds where impairment of beneficial water uses has been determined by the Regional Board through the 303(d) process rather than an arbitrary designation of a percent of an area.</p> <p>Some Permittees have demonstrated that they cannot be objective in selecting sites and evaluating trash levels in their water bodies. The Santa</p>	<p>the Permittees jurisdictions.</p> <p>Noted.</p> <p>There are many more waters in the Region impacted and impaired by trash than those proposed for listing.</p> <p>The Final TO requires the Permittees to reduce trash loads from their entire jurisdiction in an accountable manner.</p>	

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				<p>Clara program in a recent annual report indicated significantly improved conditions over previous years whereas information provided by Larry Johnman and others clearly show ongoing significant levels of trash in creeks. Comments submitted by several Permittees on the recent proposed revisions to the 303(d) list suggested that their programs have resulted in significant reductions in the amount of trash. These contentions were made based in part on observations made during the summer months where trash discharged during the wet weather months had long become imbedded in sediments and vegetation making objective observations impossible. These assertions of significant improved conditions are disingenuous at best.</p> <p>In summary there is no valid basis for another process to identify trash hot spots when the Regional Board has recently identified 26 water bodies that have been impaired by trash. Permittees should now focus their efforts and resources on programs to comply with the prohibition of the discharge of trash in the watersheds of the 26 water bodies.</p>	<p>Limiting Hot Spots to the 26 waterbodies proposed for listing would unduly limit the Permittees' efforts to address the trash impacts problem.</p>	
Kolb, Larry &	46	C.10.a.iv	TAL Standards	<u>(page 79)</u>	The TAL is no longer a	

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James, Roger			Not Permanent	There is a danger that the proposed "Urban Optimal" Trash Action Level (TAL) will become a permanent standard even though the section indicates that the TAL does not represent full attainment of the Basin Plan (NPDES Permit) trash <i>discharge</i> prohibitions or water quality objectives. Historically interim standards become permanent standards unless there is a clear and concise scientific well funded process for refining a standard. The section should state the process that will be used to develop final acceptable levels of trash through SFEI. This section should also make it clear that the Transportable, Persistent, Bouyant Litter shall be <25 pieces and no Biohazard, Toxic or Sharp Objects shall be present as part of the TAL in addition to the <100 trash items.	component of the C.10 provision in the Final TO. The short term requirement is 40% load reduction in four years, and compliance with the Discharge Prohibition A.2. and Receiving Water Limitations by year 12 or 2021.	
Kolb, Larry & James, Roger	47	C.10.a.v	Don't accept L.A. type catch basin inserts.	The definition of a Full Trash Capture Device is adequate provided there is not an implied acceptance of catch basin inserts that have been approved by the Los Angeles RWQCB (see Fact Sheet page 71 and later discussion on the effectiveness of catch basin inserts). The section should indicate that compliance with the Discharge Prohibitions can be achieved through the installation of Full Trash Capture	Storm drain catch basin inlet inserts meeting the Full Trash Capture standard will be allowed and credited under the Final TO. They are functional and useful devices in the tool box of trash abatement technologies.	

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				Devices for 30% of the ABAG land use categories (high density residential ->8 units/acre, industrial, major infrastructure, military, commercial services) in those water bodies that have been 303(d) listed as impaired by trash by July 1, 2013 and 10% of the land uses annually until 2019 when 80% coverage would be achieved.		
Kolb, Larry & James, Roger	48	C.10.a.v.	Credit for previous installation	Permittees that have installed Full Capture Devices before the effective date of the permit should be able to claim credit. A number of cities and entities have installed CDS devices since 2003 that are effectively removing trash including Cities of Oakland, South San Francisco, San Francisco, Port of San Francisco, and Port of Oakland and should be given credit.	Previous installations of Full Trash Capture Devices are credited toward the requirement in the Final TO.	
Kolb, Larry & James, Roger	49	C.10.a.vi.	Revise exemption and required monitoring	Small Permittees discharging to trash impaired water bodies should only be exempt from installation of full capture devices if they document that no trash is discharged from their storm drain systems through end-of-pipe monitoring for a period of three years.	This option may also be available to the Permittees, but the exemption for very small Permittees does not include such discharge verification. This can be reviewed during this permit cycle in preparation for the next permit requirements.	
Kolb, Larry & James, Roger	50	C.10.a.vii	Also Give Credit for Trash Removal	<u>(page 80)</u> Granting credit for booms and sea curtains endorses the acceptance of the discharge of trash and violation of	The credit described is included in the concept of the Short Term Trash Load Reduction Plan and credit methodology. The credit is	

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				<p>the Discharge Prohibitions. If these credits are given why not provide a similar credit for cleanup programs where trash is removed from creeks by volunteers. It is poor public policy to provide a reward for cleanup of pollutants that have been discharged in violation of an NPDES Permit when the emphasis must be on compliance with a prohibition. Any credit provided should be in the form of the type and level of enforcement actions or amount of civil monetary penalties assessed. If credits are to be given then the mass and volume of material removed must be determined and credited as part of the reduction.</p>	<p>not, however, from civil enforcement, but toward meeting the 40% reduction.</p>	
Kolb, Larry & James, Roger	51	C.10.a.viii	Trash Source Reduction	<p>The proposed actions to reduce solid waste and litter are commendable and must be part of every Permittee's compliance strategy and strongly encouraged by the RWQCB; however, unless these actions can be directly translated into compliance with the Discharge Prohibitions a Permittee should not be granted relief from the trash capture installation requirement. Any relief or credits provided should be in the form of the type and level of enforcement actions or amount of civil monetary penalties assessed. If credits are to be given then the mass and volume of material removed must</p>	<p>Both minimum trash capture and trash load reduction are required in Provision C.10 in the Final TO. The Discharge Prohibition is the 12 year target.</p>	

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				be determined and credited as part of the reduction and no rewards should be made for just making efforts.		
Kolb, Larry & James, Roger	52	C.10.a.viii	TRASH HOT SPOT ASSESSMENT	Use of the Rapid Trash Assessment to monitor levels of trash in water bodies is contrary to the requirement to comply with the Discharge Prohibitions . Permittees must focus their efforts on installation of Full Capture Devices and municipal maintenance practices that reduce the discharge of trash impaired water bodies and monitoring the reductions in the discharge of trash using Caltrans protocols. The Rapid Trash Assessment protocols will be a useful tool in establishing acceptable levels of trash that do not adversely affect beneficial water uses, cause a nuisance and/or contamination. The impairments to the water bodies 303(d) listed are so gross that Rapid Trash Assessments in these water bodies would be a waste of limited public resources that must be better spent on implementing trash control programs and not studies. The RWQCB should be developing through SFEI a program to determine acceptable levels of trash using g the Rapid Trash Assessment protocols as a beginning point. This program would be initiated only after there have been	<p>While the Final TO still requires assessment of Trash Hot Spots annually, this assessment can be a simple tabulation of the trash volume removed from the Hot Spot.</p> <p>The Short Term Trash Load Reduction Plan is focused on implementation of trash prevention and removal actions, in addition to the minimum trash capture installation.</p>	

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				significant – 70-80% reductions in the mass and volumes of trash being currently discharged .		
Kolb, Larry & James, Roger	53	C.10.c.	Long Term Plan	<p><u>(page 81)</u> This section should address compliance with the Discharge Prohibitions and Water Quality Standards and require that the Long-Term Program include the following elements: Full Capture Devices Identification of full capture devices including sizing and design criteria Funding for construction and long-term operation and maintenance for a long-term (say 50-years) life cycle of the devices. Implementation schedule Municipal Maintenance Practices Monitoring program to document reductions in mass and volume of trash discharges Evaluation of new and improved maintenance practices to reduce discharges of trash Long-term funding program Relevant Laws and Ordinances Monitoring/evaluation program to document reductions in mass and volume of trash discharges Funding for long-term oversight of the program</p>	<p>The Short Term Trash Load Reduction Plan contains these elements. We expect the Long Term Plan to build upon these elements, but also contain them. We do not currently ask for information on long term maintenance funding and oversight as it is sufficient to require that the actions occur, not that the funding is secured.</p>	

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Kolb, Larry & James, Roger	54	C.10 Fact Sheet	COSTS OF TRASH CONTROL – FACT SHEET – (page 70)	<p><u>COSTS OF TRASH CONTROL – FACT SHEET – (page 70)</u></p> <p>The Fact Sheet contains information on the costs of Full Capture Devices (CDS Units) installed by the City of Oakland at Lake Merritt and describes the City of Los Angeles storm drain catch basin program to control trash.</p> <p>An investigation of the City of L.A.'s claim on the .90% efficiency and overall performance of the catch basin inserts and trash excluders raises significant questions about the effectiveness of the City's program to control trash. The basis of the Los Angeles RWQCB's approval of catch basin inserts is highly questioned as it appears that the City submitted and the RWQCB accepted erroneous information.</p> <p>The City's report "Catch Basin Inserts; Method to Determine CB Inserts Act as Full Capture Devices" and "Technical Report: Assessment of Catch Basin Inserts" can be found at http://www.lastormwater.org/Siteorg/download/pdfs/general_info/Request-Certification-10-06.pdf. Attempts to clarify and obtain more information on the protocols used to characterize the material removed by the catch basins</p>	<p>The level of trash capture required in this permit cycle is relatively small for the Permittees' jurisdictional area, but still amounts to an estimated \$26 million investment. Inlet screens are one of the options for trash capture, and more will be learned about their effectiveness and costs both here and in the L.A. area over this permit term.</p>	

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				<p>and CDs unit and on the maintenance program from City staff have been unsuccessful. The reports and field observations in the enclosed CD raise very significant questions about the effectiveness of that program:</p> <p>The >90% effectiveness of the catch basin inserts was determined dividing the weight of material removed from the catch basins by the weight of the material removed from the catch basins plus the weight of only the floatables removed from the CDS units. The material removed from the catch basins included the floatables, sediment and vegetation while only floatables were removed from the CDS unit. Data from a number of cleanouts of CDS units and studies by Caltrans and others to determine the relative percent of the total mass that can be attributed to floatables, indicates that it is less than 5%.</p> <p>Based on data from cleanout of CDS units it is estimated that the catch basin inserts were no more than 10-15% effective rather than the >90% asserted by the City.</p> <p>The efficiency of catch basin inserts cannot possibly be the 90% reported by the City because significant amounts of trash were collected in the CDS unit down stream of the catch</p>		

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				<p>basins even with storms that were only 0.28-inch and 0.31-inch. A >90% catch basin efficiency for design storms should produce no trash in the CDS unit and someone should have picked up on this.</p> <p>During the efficiency study catch basins were cleaned after storms with depths greater than 0.25-inch while in actual practice the City apparently only performs maintenance two to three times a year. An analysis of rainfall data for Los Angeles indicates that there are about 12 storms a year where rainfall exceeds 0.25-inch. In the Bay Area we have about double that number of storm events so maintenance based on the Los Angeles criteria would have to be significantly increased.</p> <p>Maintenance requirements and frequency of maintenance of catch basin inserts has been the subject of multiple studies and depending on the design and physical features it is reasonable to expect that maintenance frequencies of significantly greater than three times per year are required. Several studies suggested that maintenance is required on a storm event basis and even during storm events may be required.</p>		

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				<p>Another factor that seems to have been overlooked when considering catch basin inserts is that many land uses such as high density residential, commercial, industrial, schools, sport complexes, etc have extensive drainage systems with multiple storm drain inlets. A field visit to three commercial shopping centers and two schools found that the number of storm drain inlets in each case to significantly exceed those on the adjacent public streets. In order for catch basin inserts to be effective municipalities would be required to develop and implement programs that would require installation on private property and at schools where they currently may not have authority. It is highly questionable whether the municipalities have the resources to provide periodic replacement and the required maintenance on their own systems much less provide the oversight of catch basin inserts on private properties.</p>		
Pacifica	3	C.8.e.i(3), C10	Control actions unpredictable	<p>The control actions needed to comply with some of the permit's requirements are unpredictable because they may be triggered by monitoring results, such as Provision C.8.e.i.(3). An additional uncertainty is posed by</p>	<p>The Final TO C.10 Trash provision contains predictable targets that the Permittees shall meet with predictable actions.</p>	

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				having to achieve an arbitrary and potentially unrealistic trash and litter clean up level.		
Pacifica	20	C.10	Should not be used to address direct dumping, litter and wind transport	Municipal separate storm sewer (MS4) permit should not be used to address trash and litter in creeks from direct dumping, littering, and wind transport. Remove requirements for controlling trash and litter that end up in creeks from sources other than MS4s owned or operated by Permittees.	The Final TO does not contain direct requirements to clean up such trash where it is clearly proven that the source is only from non-MS4 pathways. However, cleanup of Trash Hot Spots is credited toward reaching the Short Term Trash Load Reduction of 40% in July 1, 2014.	
Pacifica	21	C.10	Trash Assessments Once Every 5 Years	The requirement to assess trash hot spots twice a year detracts from efforts that could more usefully be spent correcting trash and litter problems. Modify the permit to reduce the trash assessments requirements to once every five years. In addition, the sentence about reducing the assessments if less than 10 pieces of trash per 100 feet are found should be removed.	Required assessments have been simplified and reduced to once a year.	
Pacifica	22	C.10	TALs should be goals note requirements	The permit proposes a trash clean up (action) level for what it terms trash hotspots that should be expressed as a goal and not an inflexible mandate because of uncertainty about what levels of trash reduction is needed to protect beneficial uses and what levels are reasonably achievable.	The TAL has been removed from the Final TO. However, the Short Term Trash Load Reduction is a requirement.	
Pacifica	23	C.10	Reduce capture	The requirement to install full capture	The Final TO minimum trash	

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			20% commercial land use area	devices on 30% of the ABAG 2005 Retail/Wholesale Commercial Land Use area is too ambitious. The installation of full capture on 20% of this land use is a reasonable level of implementation as part of what the permit characterizes as an initial pilot scale deployment. Due to infrastructure issues, costs associated with meeting this requirement are unreasonable for the City of Pacifica.	capture requirement remains at 30% of Wholesale/Retail Commercial Land. This is a relatively small trash capture requirement and can not be further reduced to be meaningful.	
Pittsburg	10	C10.iv	Clarify the size of particle considered trash	The City requests clarification of the size of particle that is considered a piece of trash. Section v. references the installation of full trash capture devices that trap particles retained by a 5mm mesh screen, therefore if 5mm is the size that defines a particle of trash, the Urban Optimal level requirement of "less than 100 pieces" would easily be exceeded if say, a single Styrofoam container were to disintegrate.	Any particle of trash or litter that could have an impact on water quality is a piece of trash. Piece counting trash assessments are no longer required in the Final TO.	
San Pablo	5	C.10	Opposed to trash capture, No single pathway	We are once again opposed to installing trash capture devices since it assumes that trash only enters the water bodies via the storm drain system.	Trash capture systems are one of the tools to reduce trash impacts. The amount of trash capture in the current revision is a reasonable component of a trash management approach.	
San Pablo	6	C.10	TALs should be goals	Per the findings of the Blue Ribbon Panel, Action Levels are meant to be goals. Please clarify so that it is not	The TAL has been removed from the Final TO.	

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				mistaken to be a water quality objective.		
San Pablo	7	C.10	More credit for sea curtains	The previous TO allowed for a 25% credit for sea curtains but the revised TO reduced it to 10% without any justification. Sea curtains are viable options in some areas and should be given more credit.	Under the Final TO booms or sea curtains are not credited for trash capture, except for non-population based Permittees, but the trash removed by such a system counts towards the Short Term Trash Load Reduction requirement.	
San Pablo	8	C.10.c.	No impact to beneficial uses unrealistic	Provision C.10.c. which requires no impact to beneficial uses in the long term is unrealistic. Even if all catch basins were equipped with the expensive trash capture devices, illegal dumping and homeless camps are societal issues that will require resources outside the stormwater program's purview to resolve. Please see proposed language in the County Program's comments.	The language of the Discharge Prohibition A.2. and the Receiving Water Limitations is clear, trash should not be discharged to waters. The discussion of the exact nature of the standards for the 12 year goal of no trash impacts will be further discussed during this permit term.	
San Pablo	9	C.10	Allow changing of Hot Spots for Effectiveness	In certain hot spots, it may be difficult to meet the requirement of 100 pieces of trash within a 100 foot reach of creek. However, if the municipality has substantially reduced the amount of trash in that particular area, it would be more cost effective to move to another hot spot rather than spend more resources to get to the 100 piece goal.	The TAL has been removed from the Final TO. Trash remove from hot spots is credited toward the 40% reduction in 4 years, and the target for hot spots is substantial reduction of trash.	
San Ramon	2	C.10.a.v.	Trash Capture	The Revised Tentative Order creates	The minimum trash capture	

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			for Commercial Areas Unfunded Mandate	many new, unfunded mandates that may or may not have an impact on local water quality. For example, Section C.10.a.v. of the Revised Tentative Order requires the installation of full trash capture devices for 30% of the retail/wholesale commercial land use within the City's jurisdiction by July 1, 2013. This section is a prime example of an expensive mandate that makes several assumptions that are not applicable to all stormwater programs throughout the Bay Area.	requirement is based on the work done in the L.A. area and now represents MEP. The amount of trash capture installation required is reasonable and a balanced component of an integrated approach to trash load reduction.	
San Ramon	3	C.10.a.v.	Other Methods to Reduce Trash, Funding for Full Capture Devices Not Available	<p>The first assumption is that existing trash control measures are not effective in reducing or eliminating trash from our creeks. The City of San Ramon has found that regular street sweeping (up to once per week) combined with extensive landscaping (captures trash before entering the street) and manual litter removal through a Citywide Landscaping and Lighting District has been very effective in reducing trash in our creeks. Our extensive public education efforts contribute to the reduction of littering as well.</p> <p>The second assumption is that local jurisdictions have the funding to install full trash capture devices. Under the</p>	<p>The Final TO credits all actions that remove trash from the MS4 or waters toward the Short Term Trash Load Reduction requirement.</p> <p>We understand that trash capture will require new resources, and are assisting in obtaining grant funds for trash capture installation.</p> <p>We recognize that trash discharged through the MS4, while a major source of impacts to waters, and is not the only source.</p>	

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				<p>proposed requirements, 30% of the retail/wholesale commercial land use in the City of San Ramon totals 82 acres. Brown and Caldwell Environmental Engineering provided a conservative estimate to the Contra Costa Clean Water Program for the installation of full trash capture devices for this area. Based on a cost of \$17,400 per acre, the City will be required to spend \$1,430,280 on treatment devices by July 1, 2013. This cost does not include funding for right-of-way acquisition or the relocation of utilities.</p> <p>Finally, this section assumes that all trash enters our local creek through the storm drain system. Installation of full capture devices will not have an impact on trash that enters the creek through other conveyances such as illicit dumping and windblown trash.</p>		
Save the Bay	2	C10	Provisions Inadequate Response to Trash Problem	The trash provisions contained in section C.10 are a woefully inadequate response to the documented negative impacts of trash on beneficial uses of Bay Area waters, the Regional Board's recently approved 303(d) listings for trash impairment, explicit direction to staff from Regional Board members, the <i>Implementation Strategy to Reduce and Prevent Ocean Litter</i> of	With the changes contained in the Final TO, we believe the Provision C.10 approach is a framework of requirements that will generate significant progress in trash load reduction to waters, toward a goal of complete cleanup in 12 years.	

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				Governor Arnold Schwarzenegger's Ocean Protection Council, and the escalating public demand to reduce marine debris. For all of these reasons, and because Save The Bay has daily direct experience with trash pollution through our shoreline restoration programs, we focus these detailed comments on the RTO's proposed permit provisions for trash.		
Save the Bay	3	C10	Should Address Trash Before TMDL Development	The Regional Board formally acknowledged the extent of trash pollution throughout the Bay in February of 2009 when it voted to list as 24 tributaries and two large sections of Bay shoreline as impaired by trash under section 303(d) of the federal Clean Water Act. As members of the Board noted during public hearings on this action, levels of trash in regional waters demand attention and these listings add to the impetus to tackle the problem with effective controls that can be mandated through permitting actions. Board staff also stated at a January 2009 public hearing that the Municipal Regional Permit can and should address recent 303(d) listings for trash impairment in a more timely fashion than waiting many years for the development of Total Maximum Daily Load requirements. The trash provisions of	We agree.	

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				this regional stormwater permit must be responsive to the serious water quality impairments documented in the Board's recent 303(d) listings.		
Save the Bay	4	C10	Trash Discharge must be Eliminated to Comply with Basin Plan	<p>The RTO's descriptive language acknowledges "<i>the ubiquitous, unacceptable levels of trash in waters of the San Francisco Bay Region....</i>"³ "<i>Observations made by members of the public and Regional Board staff since 1997 indicate a preponderance of trash in, on and near water bodies, particularly in urban portions of streams, lakes, and coastlines throughout the San Francisco Bay Region.</i>"⁴</p> <p><u>This discharge of trash and marine debris must be eliminated to comply with the Basin Plan, as well as other applicable state and federal laws and regulations. The Regional Board has a clear legal mandate for this action.</u></p> <p>As cited in sections A and B of the RTO, the Basin Plan explicitly prohibits discharges of "<i>rubbish, refuse... or other solid wastes into</i></p>	We agree. The Final TO C.10 Provision is written to make substantial progress toward compliance with the Discharge Prohibition A.2. in 12 years.	

³ Revised Tentative Order Municipal Regional Stormwater Permit Fact Sheet section C.10-4, p.67

⁴ Ibid, 12.

⁵ The Fourth Appellate District Court of Appeal. January 2006. City of Arcadia et al. v. State Water Resources Control Board: 17.

⁶ Ibid.: 16.

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				<p><i>surface waters or at any place where they would contact or where they would be eventually transported to surface waters, including flood plain areas." Receiving water limitations prohibit discharges that cause "floating, suspended or deposited macroscopic particulate matter, visible, floating suspended or deposited oil or other products of petroleum origin," such as plastics, or "substances present in concentrations or quantities that would cause deleterious effects on aquatic biota, wildlife or waterfowl, or that render any of these unfit for human consumption."</i></p> <p>As the California Court of Appeal noted in its decision on the Los Angeles River TMDL, the Los Angeles Regional Board established that Basin Plan requirements provide the authority for mandating a goal of zero trash, since: <i>"Even small quantities [of trash] can maim and kill wildlife, [which] becomes entangled in it or ingest[s] it. [Trash] [c]an obstruct and repel boaters and contact recreators and compromise the aesthetic quality that's essential to the recognized aspect of non-contact recreation beneficial use for the Los Angeles River."</i>⁵ The Los Angeles Regional Board <i>"found no study to document</i></p>		

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				<p><i>that there is an acceptable level of trash that will cause no harm to aquatic life.</i>"⁶</p> <p>A majority of beneficial uses of the San Francisco Bay and its tributary watersheds are affected by elevated trash levels, including non-contact and contact recreation (REC-1, REC-2), estuarine habitat (EST), marine habitat (MAR), fish migration (MIGR), rare and endangered species (RARE), fish spawning (SPWN), warm freshwater habitat (WARM), cold freshwater habitat (COLD), commercial and sport fishing (COMM) and wildlife habitat (WILD).</p>		
Save the Bay	5	C10	303d Listing Provides Additional Legal Authority	<p>The Clean Water Act requires that MS4 permits "<i>include a requirement to effectively prohibit non-stormwater discharges into the storm sewers</i>"⁷ and federal regulations require MS4s to control pollutant discharges that will cause or contribute to "<i>an excursion above and State water quality standard, including state narrative criteria for water quality.</i>"⁸</p> <p>In early 2009, the Regional Board took decisive action to recognize 24 tributaries and two shoreline sections</p>	We agree.	

⁷ Clean Water Act 402(p)(3)(B)(ii)

⁸ Federal NPDES Regulation 40 CFR 122.44(d)(1)(i)

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				<p>of the Bay as impaired by trash under the Clean Water Act section 303(d). Action by the U.S. Environmental Protection Agency to approve the 303(d) listings is <u>reasonably foreseeable and provides additional legal authority for the Regional Board to issue an MS4 permit that reflects the severe, established, widespread nature of the regional trash pollution problem.</u></p>		
Save the Bay	6	C10	Should Address Marine Debris	<p>The problem of marine debris is so dire and pervasive that Governor Arnold Schwarzenegger's California Ocean Protection Council has adopted a statewide <i>Implementation Strategy to Reduce and Prevent Ocean Litter</i>. That strategy says "<i>Regional Water Boards should amend Municipal Separate Storm Sewer System (MS4) permits to require that municipalities install storm sewer catchment devices or otherwise prevent litter from entering waterways that lead to the ocean.</i>"⁹</p> <p>In addition to the Basin Plan and the Clean Water Act, the Comprehensive Conservation and Management Plan (CCMP) recognizes that the "<i>full use of</i></p>	We agree.	

⁹ California Ocean Protection Council. 2008. An Implementation Strategy for the Resolution to Reduce and Prevent Ocean Litter: 21.

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				<p><i>the Estuary is being impeded by the presence of pollutants like trash.</i>"¹⁰ The CCMP is a blueprint for restoring and maintaining the estuary through specific recommended corrective actions. Among these actions, the CCMP recommends "<i>installation of treatment control facilities</i>" as a practical strategy to address the trash problem, "as soon as possible," <i>with a performance measure of achieving a "percentage reduction in trash and other pollutants of concern."</i>¹¹ The CCMP also calls for achieving a "<i>number of sites (or miles of shoreline) with reduced marine debris</i>" and a "<i>percentage decrease in trash around marinas/beaches.</i>"¹²</p>		
Save the Bay	7	C10	Provisions Don't Meaningfully Address Trash Problem	<p>In spite of these clear legal and policy mandates, staff has explicitly acknowledged in RTO section C.10 and the associated Fact Sheet that the proposed trash provisions <u>are not intended to meaningfully address trash pollution in this permit term.</u> Rather, the provisions relegate established Best Management Practices (BMPs) to only an "<i>initial pilot scale of deployment, to enable permittees to</i></p>	<p>The Final TO requires the compliance with the Short Term Trash Load Reduction of 40% in July 1, 2014 for the Permittees entire jurisdictions. In addition minimum trash capture system installation is required, as well as annual cleanup and assessment of Trash Hot Spots.</p>	

¹⁰ Comprehensive Conservation and Management Plan. 2007. Action PO-1.8: 139.

¹¹ Ibid.

¹² Comprehensive Conservation and Management Plan. 2007. Actions AR-9.1 & 9.2: 44-45.

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				<p><i>learn</i>" and "<i>begin actions and develop expertise</i>" for an as yet undefined plan in the future.¹³ Structural trash controls are to be implemented only as a "<i>step toward understanding the appropriate use of the various trash capture device options.</i>"¹⁴ The C.10 Goal Statement admits that the "<i>actions required in this permit term are unlikely to eliminate the impact of trash on beneficial uses or achieve the Basin Plan water quality standard for this pollutant after five years.</i>" This approach explicitly contradicts the RTO's stated intent "<i>that this Permit shall ensure attainment of applicable water quality objectives and protection of the beneficial uses of receiving waters and associated habitat.</i>"¹⁵</p> <p>Although the Basin Plan offers a strong basis for requiring significant, enforceable restrictions on discharge of trash, the Regional Board has failed to enforce discharge prohibitions and receiving water limitations on trash in the Bay under the current MS4 permit. This lenient approach to enforcement of illegal trash discharge has not</p>		

¹³ Revised Tentative Order, Municipal Stormwater Permit. 2009. C.10.a: 77.

¹⁴ Fact Sheet, Revised Tentative Order, Municipal Stormwater Permit. 2009. C.10.a.v: 69.

¹⁵ Ibid: 2.

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				<p>yielded reduction in trash pollution or produced increased useful efforts from permittees. The lack of enforcement under the current MS4 permit creates further imperative for the MRP to detail a trash program that includes explicit performance expectations to ensure permittee compliance and Board enforcement — the RTO will not achieve this outcome.</p>		
Save the Bay	8	C10	Focus Clean Up efforts on 303d Listed Waterways	<p>Although most permittees failed to assess their jurisdictions as the Regional Board directed in 2001, Rapid Trash Assessments (RTA) and documentation by concerned citizens have revealed many trash-clogged waterways that already qualified for listing as trash impaired on the 303(d) list approved by the Regional Board in February 2009. Through their regular maintenance activities, municipal staff and staff from flood-control districts should already be well aware of additional areas in their jurisdictions where trash accumulates in or near waterways. Santa Clara County permittees in good faith began an extensive assessment and study program for trash, which reported at least 200 trash-polluted sites.</p> <p>The most logical and appropriate way reduce trash impacts within this permit</p>	<p>The Final TO requires trash load reduction on the Permittees' entire jurisdiction. The 26 water bodies proposed for 303(d) listing are certainly not the only or even most trash impacted water bodies, but are those with the most substantial body of evidence for this listing cycle. Therefore while they are of significant concern and must be cleaned up, they are by no means the priority waterbodies in the Permittees jurisdictions. This permit is intended to address all waterbodies within the Permittees jurisdiction, so includes those waters proposed for 303(d) listing for trash.</p>	

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				<p>term is for the Board to start with the directive that any water body already established as trash-impaired through the 303(d) listing process must be the focus of aggressive clean up actions designed to eliminate further trash discharges to receiving waters from these waterways. Permittees should be mandated to spend time and money on further assessments <u>after</u> actions are being taken to resolve already-documented problem areas. The first priority should be to focus on cleaning up the 26 water bodies the Board has approved for 303(d) listing, other locally known trash impairments, and other waterways that subsequently meet the 303(d) criteria during the permit term.</p>		
Save the Bay	9	C10	Initial Clean Up in 6 months, Maintain Sites as Approx. Zero Trash	<p>The MRP should require permittees to <u>quickly report these sites to the Board and take initial clean up actions within six months.</u> The list of reported priority water bodies should be made available for public review. Subsequently, <u>these sites should be maintained at "no impact to beneficial uses" or approximately zero trash.</u> Cleanup of these waterways should not be restricted to small three hundred foot segments of shoreline. Rather, trash discharge to these waterways and their receiving waters</p>	<p>While significant progress is expected in this permit term, six months is too short a time frame for significant cleanup. The Short Term Trash Reduction requirement is 40% Trash Load reduction in July 1, 2014.</p>	

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				must be eliminated where it occurs and accumulates. The Regional Board can then use its discretion to take enforcement action when this requirement is not met, taking into account the efforts of permittees.		
Save the Bay	10	C10	Submit Clean Up Results in First Year Report	In the first year report, permittees should submit documentation of actions they have taken to clean up the first round of trash impaired waterways and locally known trash impairments, along with recent RTA scores for high trash accumulating regions of the water bodies. Permittees should also submit scored results of virtual (photographic) trash assessments along all waterways in their jurisdictions, indicated on maps. Quantitative RTA scores or equivalent (URTA) should be acceptable for submission if completed within the last three years.	We have allowed more flexible trash assessments including reporting of volume of trash collected in Trash Hot Spot cleanups, rather than the more labor intensive RTA or Urban RTA. Annual reports will include trash removed by all actions and reports of trash preventative actions.	
Save the Bay	11	C10	Small Municipalities with Minimal Problems Should Use Simplified RTA	The C.10 provisions should ensure a quantitative overview of regional trash pollution while minimizing unnecessary "study" of this well-established and easy-to-identify problem. The Regional Board must not accept the false notion that every part of identifying and reducing trash pollution is difficult or time-consuming. Because research is not a substitute for meaningful action	In this Final TO all Permittees can use a simplified assessment of Trash Hot Spots of reporting the volume of trash removed during the annual cleanup, and the general makeup of that trash. Permittees will be responsible for reducing the Trash Loads from their entire jurisdiction by 40% in July 1, 2014 under this Final TO.	

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				to eliminate pollution, extraneous efforts should be avoided. The RTO's hot spot formulation requires small permittees with no known trash impairments to identify and designate a hot spot that may or may not be significant. Instead, small permittees without known impairments should be directed to map and report the levels of trash along the water bodies in their jurisdictions using the time-efficient "virtual RTA" established and vetted during the 303(d) assessment process.		
Save the Bay	12	C10	Address Obvious Problems Immediately, Delay Full Capture While Funding Secured	The immediate directive of the permit's trash provisions should be to clean up obvious, known impairments now. While addressing some trash problems and inputs will take significant time and investment, including for important BMPs like full-capture devices, there are also businesses, schools and other sources that can be pursued immediately with warnings or fines for not controlling trash. Homeless encampments and illegal dumping sites can be remediated, catch basins can be cleared more frequently, and litter enforcement actions can be taken under existing laws. All of these can be accomplished while funding mechanisms are developed for	Full capture minimum installations must be completed by July 1, 2014, which allows significant time to develop funding. The Short Term Trash Load Reduction Plan will include many of the BMPs described in your comment.	

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				structural trash controls. The RTO should be rewritten to ensure that each year's accomplishments are sustained and built upon through subsequent annual reductions in trash pollution.		
Save the Bay	13	C10	Require measured annual reduction	The Regional Board should require measured annual reduction in trash discharge to water bodies, using the best available tools. The permit must either stipulate enforceable performance metrics for the entire permit jurisdiction or require BMPs to reduce trash pollution to the maximum extent practicable (MEP) that can produce significant, measurable success within this permit term. The permit provisions should cultivate programs and practices that will achieve Basin Plan water quality standards and discharge prohibitions in the long-term.	The Final TO requires all Permittees to meet a Short Term Trash Load Reduction of 40% by July 1, 2014.	
Save the Bay	14	C10	Require 10% annual load reduction	<u>After the first year, a minimum 10% additional annual reduction in trash load should be demonstrated across each jurisdiction.</u> Currently, permittees have limited tools for assessing the actual amount of trash flow in water bodies. The best monitoring methods available include the RTA (which relies on shoreline-caught trash as an indicator), Caltrans protocols, or trash	The Final TO requires all Permittees to meet a Short Term Trash Load Reduction of 40% by July 1, 2014 (2013).	

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				removed from capture devices – either full capture (>5mm) or trash booms, which catch only a proportion of floatable items. The 10% reduction during this permit term would therefore be reasonably demonstrated by <u>documenting installation and appropriate maintenance of full-capture devices equivalent to catch runoff from 10% of land area or more each year.</u>		
Save the Bay	15	C10	Must be able to demonstrate Reduction with Alternative Methods	The RTO does not contain clearly stated mandates and reporting requirements for sizing and maintenance of structural trash controls, and should be rewritten to do so. Some permittees may prefer to expressly define and document reasons for choosing one or more alternate BMPs for trash control, including for homeless encampments and illegal dump sites. If the permit is written to allow for this alternative approach, permittees must be required to demonstrate the percent reduction in trash accomplished through these methods by providing quantitative results from actual RTAs across all high trash accumulating areas and lower portions of watersheds within the permit jurisdiction.	The C.10 Provision is written as the Commenter suggests in the Final TO. After creating a Trash Load Baseline in Year 2, the Permittees can demonstrate reductions using any set of effective BMPs and documenting the additional trash removed from their jurisdiction.	
Save the Bay	16	C10	Ensure	In the period covered by this new	The Short Term Trash Load	

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			Meaningful Data Collection and Organization	permit, the Regional Board should ensure that permittees are well trained in the current methodologies, and that data collected and submitted is formatted consistently made available publicly to establish a baseline for trash impacts in the region. In the future, the Board should work to refine methods for measuring trash in water bodies through the Regional Monitoring Program.	Reduction accounting method must be proposed for WaterBoard approval. Adequate reporting and accounting will be required.	
Save the Bay	17	C10	Provide Objectives for Long Perm Plan	Explicitly Define Expectations for the “Long-Term Plan” If the Regional Board intends to allow permittees to submit a self-determined long-term plan for achieving water quality standards for trash, then the Board must provide direction and detail for the objectives those plans will meet and a schedule for attaining Basin Plan water quality standards and discharge prohibitions, which are absent from the RTO.	Such expectations and timing are included in the Final TO revisions.	
Save the Bay	18	C10	Define no impact to beneficial uses as zero trash	The permit should <u>define no impact to beneficial uses as zero trash</u> , and require that any substitute standard be proven effective at achieving no impact to beneficial uses through peer-reviewed studies that take into account all beneficial uses impacted by trash and marine debris.	The requirement for this permit term is 10% per year reduction in Trash Loads, and a 40% reduction by July 1, 2014 (2013). The Discharge Prohibition A.2. and Receiving Water Limitation must be met by Year 12. Further definition of “how clean is clean” will occur through ongoing	

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					stakeholder process with the submittals by the Permittees during this permit term, and with the Permit Reissuance in five years.	
Save the Bay	19	C10	Stipulate Expectations for Long Term Plan Reporting and Documentation	In addition, the permit should stipulate what is expected in a long-term plan to <u>report and document municipal activities, including sizing, maintenance schedules, and funding development plans for full capture devices. Consequences for submitting an inadequate plan and a process for full public review should be detailed.</u>	Trash capture devices must be installed by July 1, 2014 of this Permit (2013). The Permittees will report on installation and maintenance of these devices after installation.	
Save the Bay	20	C10	Must Have Quantifiable Short Term Reductions	The RTO trash provisions proposed in C.10 and as stated in the Fact Sheet are explicitly not intended to meaningfully address trash pollution in this permit term. Rather, the provisions require only an “initial pilot scale of deployment, to enable permittees to learn” and “begin actions and develop expertise” for this as yet undefined plan in the future. This approach is unacceptable, and will delay significant trash reductions and improvements in water quality. There is no indications that convoluted provisions proposed in this RTO that would provide essential new information or yield a more robust approach to achieve water quality standards in a reasonable future	The Trash Provision C.10 has been extensively revised in the Final TO. The Final TO requires all Permittees to meet a Short Term Trash Load Reduction of 40% by July 1, 2014. The Discharge Prohibition A.2. and Receiving Water Limitation must be met by Year 12.	

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				<p>timeframe.</p> <p>A long-term plan is only acceptable in conjunction with a significant, quantifiable short-term reduction in trash pollution during this permit term, and must not be used by permittees to further delay achievement of water quality standards. The proposed deadline of 2024 for achieving zero trash discharge, which has already been extended several times, is too generous given the severity of trash pollution and the mechanisms available to reduce it. It has already been twenty-seven years since the Regional Board identified widespread trash impairment of regional waters and <u>twenty-two years since permittees were directed to manage trash pollution in their jurisdictions.</u></p>		
Save the Bay	21	C10	Limited Spatial Coverage for Established BMPs.	<p>C.10 would require permittees to implement structural trash BMPs in only a tiny portion of the permit area. This RTO slashes spatial coverage and scope of well-established structural trash control BMPs from an already low 10% of urban/suburban acreage in the initial draft. The lack of requirements in C.10 for submitting siting plans or maintenance reports will make it difficult for the Regional Board and the public to understand and</p>	<p>While the minimum Trash Capture device installation requirement is smaller than that presented in the first TO, the Final TO requires Permittees to demonstrate a 40% reduction of trash loads by July 1, 2014 for their entire jurisdiction.</p>	

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				evaluate the effectiveness of the limited structural controls required. The RTO brings the spatial coverage of structural trash BMPs such as full capture devices for the entire permit region from approximately 65,500 acres (102.3 mi ²) in the original draft down to 5527 acres (8.6 mi ²).		
Save the Bay	22	C10	Spatial Coverage of capture devices inappropriate.	Because structural trash BMPs are generally placed in high-trash generating areas close to the bottom of watersheds, the RTO's proposed spatial scope of coverage is illogical. It is also <u>inadequate to address the high levels of trash and associated impacts to beneficial uses that the Regional Board has noted throughout the past decade.</u>	The Trash Capture requirement, while reduced from the First TO, still amounts to \$26 million for the Permittees in total.	
Save the Bay	23	C10	Rationale for Hot Spot Formulation and Credit for Booms Unclear	There is also no specified acreage included in the convoluted formulation for allocating trash hot spots and treatment of trash booms is contradictory. While admitting that booms are ineffective at capturing a large portion of trash, Section C.10 still gives booms a credit for 10% of the tributary catchment area, which could easily be all of the acreage required by the 'full-capture device' provisions. For flood-control districts, it is unclear why the allotment for booms is less than that for trash capture devices, and also	The Final TO does require 40% reduction in trash loads by July 1, 2014. Trash booms or sea curtains are no longer credited as trash capture devices, except with regard to non-population based Permittees, but the trash loads removed will be credited toward the trash load reduction requirement.	

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				<p>unclear what the rationale is for either allotment. <u>Given the spatial coverage of this regional permit (approximately 655,000 acres), the scope of the watersheds draining to the Bay, and the well-established structural BMPs available for trash capture, the spatial coverage of C.10 provisions are indefensibly low.</u> Instead, an annual 10% percent reduction in trash discharge should be required across the entire permit jurisdiction.</p>		
Save the Bay	24	C10	Inadequate and Arbitrary performance standards.	<p>As noted above, the staff's articulation that the performance standards in the RTO are not intended to meet Basin Plan requirements is inconsistent with the expressed intent of the MRP and is unacceptable. We support numeric objectives for trash discharge toward achieving zero trash, but the proposed interim standard is unacceptable. The RTO's minimum performance standard for "Hot Spots" after year three of the permit term is a "Trash Action Level" (TAL) defined as <u>100 pieces of trash per 100 feet of embankment. This level of trash clearly violates water quality standards by any reasonable interpretation.</u> The RTO also refers to this standard as "urban optimal," following Santa Clara Valley Urban</p>	<p>The TAL is no longer included in the Final TO version of the C.10 Trash Provision. There is the requirement for 40% Trash Load reduction by July 1, 2014.</p>	

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				Runoff Pollution Prevention Program's (SCVURPPP) arbitrary categories. This is an unacceptably low minimum performance standard incorporating misleading terminology. <u>The Regional Board must not suggest through this permit that 100 hundred pieces of trash per 100 feet of embankment is "optimal."</u> While the RTO states that meeting the TAL is not equivalent to meeting Basin plan water quality standards, using this TAL and describing it as "urban optimal" could establish this as the <i>de facto</i> standard, deterring progress toward achieving actual Basin Plan standards and causing potentially impaired areas to be incorrectly identified as clean.		
Save the Bay	25	C10	Inadequate and arbitrary performance standards	There is also no definition of "no visual impact" in the RTO or its appendices. "No visual impact" is a stated performance standard that is <u>entirely unenforceable without explicit definition.</u>	We agree that there is a degree of subjectivity to the "no visual impact" standard for Trash Hot Spot cleanup. Photo documentation is required and we are confident that non-compliance will be evident and discernable with the documentation.	
Save the Bay	26	C10	MRP Should Not Undercut Basin Plan	The Basin Plan requires that there be no impact to beneficial uses and expressly prohibits discharge of trash and debris into receiving waters. The	The requirement for this permit term is 10% per year reduction in Trash Loads, and a 40% reduction by July 1, 2014. The Discharge Prohibition A.2. and	

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				<p>legal interpretation of this has been established as <i>zero trash</i>. This permit must reinforce and implement these definitions, not undercut them.</p>	<p>Receiving Water Limitation must be met by Year 12. Further definition of “how clean is clean” will occur through ongoing stakeholder process with the submittals by the Permittees during this permit term, and with the Permit Reissuance in five years.</p>	
Save the Bay	27	C10	<p>Inefficient Hot Spot Formulation and Assessment Methodology</p>	<p>Rather than utilize the evidence already established and collected by the Regional Board, Section C.10 of the RTO contains an arbitrary and cumbersome formulation for locating hot spots, and fails to suggest methods of eliminating trash discharge at those spots. The origin and justification for the RTO’s requirement of one hot spot per 30,000 residents also is unclear.</p> <p>For these hot spots, the RTO suggests that unspecified “Enhanced Trash Management Actions” achieve a numeric goal based on a shoreline indicator (one piece of trash per foot of shoreline), but these <u>actions remain undefined and do not have to be reported</u>. In the RTO, failure to achieve the numeric goal for shore-bound trash also carries no specific</p>	<p>The TAL is no longer included in the Final TO version of the C.10 Trash Provision. There is the requirement for 40% Trash Load reduction by July 1, 2014.</p>	

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				<p>consequences to remedy the failure.</p> <p>The RTA methodology was designed as an assessment tool. It does not measure the amount of trash actually in the water column, but indicates what that amount and composition might be. RTA metrics therefore appropriately focus on the trash caught on embankments prior to an assessment-related clean-up (rather than a systematic elimination of trash discharge). Using these metrics as a water quality goal inappropriately <u>blurs the line between monitoring and implementation if they are used without explicit measures to control trash inputs</u>. In fact, the goal for "hot spots" described in the heading of C.10.a is to "demonstrate improved trash assessments at trash hot spots."¹⁶</p> <p>Demonstrating measurable, sustainable results to achieve zero trash discharge for the most critically impaired water bodies is the most reasonable and efficient first step in this permit term. The permit should not mandate searching for over 163 small reaches at which to perform assessments over the next five years, as the RTO does.</p>		

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Save the Bay	28	C10	Other Trash-Related Provisions Should not be Eliminated	The RTO eliminates requirements in Section C.2 for high-efficiency street sweeper upgrades, even though these are the only sweepers that have a documented impact on trash and other sediment-associated pollutants. The RTO also eliminates requirements for cleaning and inspecting storm drain catch basins, even though such actions can help identify trash problems when properly documented. Language in previous drafts that specified pump station retrofit requirements has also been deleted in the RTO. <u>These established programs should not be deleted unless replaced with programs that are already clearly documented to be more effective.</u>	These actions will occur through the Short-Term Trash Load Reduction, as many of these actions will be necessary to achieve the trash load reductions.	
Save the Bay	29	C10	Establish Enforceable Performance Metrics	Ensure that the permit stipulates enforceable performance metrics for the entire permit jurisdiction. The permit should achieve a 10% or greater documented yearly reduction in trash discharge, or alternatively, require installation of full-capture structural trash controls that serve, each year, an additional 10% or more of land area over the previous year's baseline.	The Final TO Trash Provision C.10 requires the Permittees to propose a trash load reduction tracking system for Board approval by Feb. 1, 2012.	

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Save the Bay	30	C10	replace Hot Spots with Directive for Zero trash in 303d Listed Waterways	Replace the convoluted hot spot provisions with directives to achieve zero trash discharge from waterways meeting the 303(d) listing criteria, including the 26 water bodies recently approved for listing by the Regional Board, new water bodies found to meet the 303(d) criteria during the permit term and locally known trash impairments.	Through the Short Term Trash Loads Reduction Plan due in Year 2, the Permittee must demonstrate 40% reduction of Trash Loads by July 1, 2014. Trash Hot Spots are assessed and simply cleaned up to no visual impact annually.	
Save the Bay	31	C10	Define and require full reporting of trash management actions and maintenance standards	Define and require full reporting for trash management actions and maintenance of trash controls and replace misleading standards ("Trash Action Level," "Urban Optimal") with quantifiable, prescriptive actions toward achieving zero trash discharge.	Through the Short Term Trash Loads Reduction Plan due in Year 2, the Permittee must demonstrate 40% reduction of Trash Loads by July 1, 2014. The actions are up to the Permittees, but the loads reduced must be documented. Trash Hot Spots are assessed and simply cleaned up to no visual impact annually.	
SMCWPPP Letter	5	C.10	Support Focusing Implementation of Trash Capture, Revise Hot Spots	The Countywide Program appreciates the improvement in this permit provision to require a more focused implementation of full-capture trash devices in retail and commercial areas rather than the December 2007 draft permit's proposed implementation based on using a percentage of a municipality's urban and suburban land area. The List of Issues Table contains recommendations for how to	Noted.	

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				use the Water Board's recently completed process to identify trash impacted waterways as a basis for the permit's "hotspots" for priority cleanup.		
StopWaste.org	2	C10.b.i	Include Alternative Trash Characterization Methods	With respect to source reduction of litter, we ask that Section C.10.b.i. of the draft permit be modified to allow the Executive Director to approve alternative methods of trash characterization if doing so would support evaluation of the types of government actions described in Section C.10.a.viii. (local ordinances, fees, and bans). Stopwaste.org has the power to implement and enforce such actions throughout Alameda County. But to evaluate and implement them we would need different information about trash in creeks than is specified in Appendix I, and in particular on the trash tally worksheet on pages I-12 and I-13.	The Final TO C.10 Trash Provision has been significantly revised, and the Permittees, working with stakeholders can propose additional assessment methods when they propose the Short Term Trash Load Reduction Plan and associated methodology. We are interested in working with StopWaste.org towards accomplishing the Permits goals.	
StopWaste.org	3	C10.b.i	Add Language	On page 82, Section C.10.b.i., add to the end of the first sentence, "or other such trash assessment method as the Executive Director may approve in writing in order to facilitate development of trash source reduction measures including, but not limited to, those listed in Section C.10.a.viii."	See Response above to StopWaste.org #2	
Suisun City	1	C.10	Major Concerns with Trash	Our review of the Revised TO indicates that Water Board staff has	The minimum Trash Capture requirements have been	

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			Requirements Still Exist	made modifications and improvements relative to the previous versions of the MRP, particularly the “core” municipal stormwater management program elements that address municipal and industrial operations, construction inspection, public information and outreach. However, we still have some major concerns with the trash requirements. The Revised TO requires that capture devices be installed to drain a total of 30% of the retail/wholesale/commercial land use amount for the City. This proposed approach to solving the trash problem is overly prescriptive, and does not recognize a variety of possible trash and litter problems (e.g., homelessness living by creeks) within the City.	significantly reduced for the First TO. This level of trash capture is necessary to begin to meet MEP and to make significant progress toward meeting the Trash Discharge Prohibition A.2. and Receiving Water Limitations by Year 12, and the Short Term Trash Loading Reduction Requirement of 40% by July 1, 2014.	
Suisun City	24	C.10.a(iv)	Clarify Definition of TALs	A trash action level (TAL) is consistent with the concept developed by a panel of experts assembled by the State Board. As defined, a TAL is a numerical goal that defines a threshold for the potential need for further management actions. It is not a water quality objective or numeric effluent limit. We request that language be revised to make the TAL definition more clear. In addition, we recommend that the TAL be set at 100	The TAL is not included in the Trash Provision C.10 in the Final TO. A 40% reduction in Trash Loads by July 1, 2014 and the installation of minimum trash capture devices, along with annual assessment and cleanup of Trash Hot Spots are the main requirements.	

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				pieces of trash or less per 100 foot of creek/shoreline instead of the proposed SCVURPPP “urban optimal” category. Having the number of trash items as the TAL is more consistent with the goal statement presented in provision C.10.a (i). It permits less subjectivity than the Urban Rapid Trash Assessment Protocol. In addition, it allows Permittees to focus on reducing the level of trash at a hot spot to a defined endpoint.		
Suisun City	25	C.10.a(vii)	Why percentage credit for sea booms changed?	The previous version of the draft MRP Tentative Order allowed non-tidal booms or sea curtains to receive credit for 25% of the area draining to the booms/curtain. It is unclear why the percentage credit was reduced to 10% in the Revised TO. We request that the original percentage (i.e., 25%) be reinstated as the percentage of the draining area required to be addressed by full trash capture devices.	The Final TO does require 40% reduction in trash loads by July 1, 2014. Trash booms or sea curtains are no longer credited as trash capture devices, except for non-population based Permittees, but the trash loads removed will be credited toward the trash load reduction requirement.	
Suisun City	26	C.10.b(i)	Change Assessment Methods and Frequency	It is unclear what scientific basis was used to establish the frequency of twice per year for conducting assessments at each approved trash hot spot. Based on the numerous trash assessments conduct by other stormwater programs (i.e., SCVURPPP) within the Bay Area, we	The required Hot Spot assessment frequency has been revised to once per year. The TAL is no longer in the Final TO revision of Provision C.10.	

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				<p>believe that this frequency could be reduced to once a year and still achieve the objectives stated above. In addition, if the TAL is based on the number of trash items per 100 feet of creek/shoreline, it is unclear why Rapid Trash Assessments (RTAs) are needed. As a result, we request that the assessment method require the quantification of trash items at hot spots but RTAs not be conducted. RTAs require additional time, resources and yield subjective data that are not specifically needed to address the TAL.</p>		
<p>Vallejo Sanitation and Flood Control District</p>	<p align="center">3</p>	<p align="center">C.10.b.</p>	<p align="center">Proposal for Alternative Trash Assessment Methodology</p>	<p>In the recent 303(d) State's listing process the Board recommended that Rindler Creek in Vallejo be added to the states 303(d) list for impairment due to trash. No field data were collected to reach this impairment recommendation. The decision was based entirely on the analysis of a small number of photographs submitted to the Water Board. This methodology was then supported in the Board's response to our comments: <i>"We did not merely look at the photos and make an impressionistic listing call based on gut reaction. Rather, as we described in the Staff Report, we</i></p>	<p>In the Final TO revision of the Trash C.10 Provision, Trash Hot Spot assessments during annual cleanup consists of photo documentation before and after cleanup, recording of the volume of trash collected, and the general types of trash collected.</p>	

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				<p><i>methodically inspected every photo and applied the systematic and quantitative trash assessment methodology to the photos. The rigorous application of the trash assessment methodology to the photos produces data that can be quantified and qualified. Therefore, our use of photographic information is not merely “descriptive, estimated, or projected” and, as such, can be used as the primary line of evidence to support listing.”</i></p> <p>The District would be able to save considerable staff time and resources if allowed to use the SCVURRPP Urban Rapid Trash Assessment (RTA) methodology on photographs of suspected trash hot spots in lieu of performing RTA in the field. Given that this methodology has been used by Water Board Staff and defended as scientifically reputable and repeatable, we are requesting the Water Board to consider revising Section C.10.b.i to allow the inspection of suspected trash hot spot photographs as an alternative to onsite Urban RTA’s.</p>		
Walnut Creek	4	C.10	Flexibility to Achieve Trash Reduction Goals	The proposed Trash Reduction provision was based on a flawed assumption that litter problems occur in all cities in the Bay areas. It does not recognize progressive efforts	The Minimum Trash Capture requirement is necessary to meet MEP and to make significant progress toward the Trash Load Reduction of 40% in July 1, 2014.	

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				already implemented by those cities that have successfully controlled litters and illegal dumping problems. In the current economic crisis faced by many municipalities, investing in full-capture devices as the ultimate mechanism to control trash or litters is a waste of financial resources for some cities. This provision should allow some flexibility for cities to choose the appropriate best management practices to achieve the established trash reduction goal.		
Walnut Creek	5	C.10	Clarify TALs Trigger not Water Quality Objective or Numeric Effluent Limit	Moreover the MRP must clarify that the proposed Trash Action Level (TAL) of "100 trash items per 100 feet of creek" is a goal and potential trigger for follow-up BMP-based actions and <u>not</u> a water quality objective or numeric effluent limit. Having a specific number of trash items established as the TAL goal is more consistent with the goal statement provided in Provision C.10.a.(i) and allows less subjectivity that the Urban Rapid Trash Assessment Protocol.	The TAL is no longer included in Final TO revision of the C.10 Trash Provision.	
Daly City	17	C.10.a.i.& ii.	Goal Statement and Trash Hot Spot Selection	The Board should define what they mean by "Storm." For example, they could define it as precipitation exceeding .x inches in a 24 hour period.	The Trash booms or sea curtains are no longer credited as trash capture devices, except for non-population based Permittees, but the trash volume removed by maintenance is credited toward	

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					the 40% in July 1, 2014 Trash Load Reduction requirement. Therefore it is no longer necessary to define storm for this Provision.	
Daly City	18	C.10.a.ii.	Trash Hot Spot Selection	Trash Hot Spots are defined as at least 100 yards of creek length or 200 yards of shoreline length. They should be accessible aquatic sites that are most impacted by accumulation of trash. Daly City's system is mostly subterranean. We have no aquatic sites or shorelines that are within the city's borders. Our system discharges into systems within and under the control of the cities of San Francisco, Brisbane, South San Francisco, and Pacifica. The city does not believe it can meet the mandates of this section or other sections related to this section.	Daly City can present this information when the Trash Hot Spot Selection proposals are due. Daly City may want to consider proposing an alternative activity to reduce trash loads.	
Daly City	19	C.10.d.ii.	Reporting	Annual Report directs Permittees to report adoption and implementation of all existing and relevant local laws and ordinances which impact on how solid waste, trash and litter are managed and litter reduction enforced. Why is the Board pushing each Municipality impacted by the MRP to enact local laws and ordinances for trash litter management and reduction?	The Final TO revision of the Trash C.10 Provision does not require trash prevention measures in the form of laws and ordinances, but these actions may be granted significant credit toward the Trash Load Reduction requirement of 40% in 4 years.	
Mountain View	12	C.10.a.iv	Trash Hot Spot	The Regional Permit requires the City	The Trash Action Level (TAL) is	

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			Clean-Up to Trash Action Level	to identify a prescribed number of trash hot spots, then achieve and maintain cleanup of those sites to a "trash action level (TAL)." The clean-up TAL is less than 100 pieces of trash per 100' assessment reach and that there is no visual impact from trash within the assessment reach. Examples of some of the trash hot spots that could be identified are homeless encampments and locations that attract graffiti. These areas are often difficult to access and patrol, so maintaining the hot spots to the TAL level will be resource intensive and costly. It is the City's position that the TAL cannot be achieved consistently at some of the trash hot spots. The City recommends revising the Regional Permit to include a TAL that can be achieved, or establishes the TAL as a goal instead of an enforceable limit.	no longer included in the Third TO revision of the Trash C.10 Provision. The Short Term Trash Load Reduction requirement will be 40% reduction by July 1, 2014.	
Mountain View	13	C.10a.v	Trash Capture Requirement	The Regional Permit requires the City to install full trash-capture devices to treat a catchment area draining a total of 30 percent of the retail/wholesale commercial land use area. Installation and maintenance of these full trash-capture devices is costly and only treats storm water-related trash sources. The City believes that the Regional	The Final TO Provision C.10 includes greater flexibility for Permittees to demonstrate reduced trash loads. The trash capture requirement is retained, however, as the requirement for installation is relatively incremental and trash capture technology has proven effective in Permittee cities.	

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				Permit should be modified to allow the flexibility to implement cost-effective trash controls that are appropriate for local conditions and severity of trash problem areas. Is supporting data available showing that installation of full trash-capture devices will effectively remove trash to a level that will cause noticeable improvements to water quality?		
Palo Alto	12	C.10.a.(iv)	Trash Hot Spot Clean Up to Trash Action Level	Trash Hot Spot Clean Up to Trash Action Level be revised to make clear that: 1) the Trash Action Level (TAL) of "100 trash items per 100 feet of creek" is a goal or a trigger for actions, not a water quality objective or numeric effluent limitation; and 2) the TAL be a number of pieces per 100 feet of creek as opposed to the SCVURPPP "Urban Optimal Level", which includes more subjective metrics that could create consistency issues among programs/cities.	The TAL is not included in the Final TO Provision C.10. Primary accountability for trash load reduction will be assessed with a trash load tracking methodology proposed by the Permittees.	
Palo Alto	13	C.10a.v	Trash Capture requirement	Trash Capture Requirement be revised to allow for potential revision of the 5mm mesh screen standard in the event that Permittees identify a trash removal device or technique that successfully achieves the goal of removing visible trash from storm water runoff without attaining compliance with the 5mm standard.	This standard has been and is being implemented on a massive scale in the Los Angeles region, so not only represents MEP for California, but is the specification that the devices readily available on the market are designed to meet. While this specification will not stop all trash, it removes a	

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					major portion down to cigarette butts in size, and still allows appreciable water flow to avoid flooding.	
Palo Alto	14	C.10.b(i)	Frequency of assessment	The frequency of assessment in Provision C.10.b(i) be reduced to "at least once per year at each approved trash hot spot". The current requirement is two times per year.	The assessment frequency for Trash Hot Spots has been reduced to once a year.	
San Jose Attachment A	4	C.10	Trash Reduction	The Water Board staff has modified the trash reduction provisions of the TO and revised some of the prescriptive and redundant trash solutions previously proposed. What remains, however, is still an exceptionally aggressive program to identify, assess, and clean-up specified 'Hot Spots.' Under the proposed provision, San José will be responsible for 33 Hot Spots and required to remedy the trash and litter problem in these areas within the five-year permit term. The scale of this effort is tremendous and the record is lacking in evidence that this is an appropriate requirement for the storm water program, given the significant non-stormwater sources to trash in these hotspots and the multiple pathways of trash to creeks. These factors also mean that the City's ability to remedy the trash problem at all 33	The requirement for 33 Trash Hot Spots for a Permittee with a population of nearly one million is not excessive. Trash Hot Spots can be placed closely together in large impacted reaches of streams or long shoreline impact areas. The Trash Load Reduction Tracking Method combined with establishment of Trash Baseline Loads will be the primary accountability system for demonstration of trash load reduction in the short term of this permit.	

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				<p>Hot Spots within five years is tenuous. While staff acknowledges that appropriate efforts will include structural controls, increased maintenance practices, and enhanced pollution prevention, the provision as set forth in the Permit would almost certainly result in the City falling into non-compliance during the permit cycle.</p> <p>San José requests that the Trash Provision be modified to set a framework for demonstrable improvements to be made related to trash impacts in creeks, in a manner that establishes a clear and achievable path for permittee compliance. Most notably, the proposed “trash action level” should be clarified as a programmatic goal and potential trigger for follow-up actions and the expectations for follow up designated in this permit should be limited to trash conveyed through a permittee storm sewer system. Additionally, San José requests that the number of Hot Spots for San José be reduced, to provide greater opportunity to focus efforts on high value sites with demonstrable connection to the storm water system as a source of trash in the creeks. San José looks forward to working with</p>		

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				Water Board staff and local stakeholders to advance a reasonable and successful approach to controlling trash in our creeks.		
San Jose	Attachment A 23	C.10.b.i (pg. 80-81)	Trash action level	Requirements to “achieve Trash Action Level” by 2012 may be unachievable in many locations that are accumulation points for very large portions of the watershed which include many sources of trash from outside the MS4. The City requests language clarifying the TAL as a goal against which the effects of corrective actions can be measured be added to the provision.	The TAL has been removed from the Final TO. The primary accountability for Provision C.10 is no longer focused in the Trash Hot Spot cleanup and assessment, but on the Trash Load Reduction Tracking Method, which will be proposed by the Permittees.	
San Jose	Attachment A 24	C.10.c (pg. 82)	Trash transport	The development of a long term plan should be limited to addressing the impacts of trash transported through MS4 systems.	The Final TO can only address trash discharged through the MS4, which includes the curb and gutter of streets, and some reaches of open creeks and streams.	
Santa Clara County	22	C.10	Trash Action Level	The County acknowledges the need to assess trash accumulation areas potentially associated with stormwater and the need for enhanced actions to reduce trash to our water bodies. The Revised TO requires the County to “achieve [Trash Action Level (TAL)] by July 1, 2012 at [our] hot spots, and then maintain at least that level”. The TO does not take into account that trash may be coming from an	The TAL has been removed from the Final TO. The primary accountability for Provision C.10 is no longer focused in the Trash Hot Spot cleanup and assessment, but on the Trash Load Reduction Tracking Method, which will be proposed by the Permittees.	

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				uncontrollable source and will most likely result in noncompliance during the permit cycle, despite our best efforts to seek compliance.		
Santa Clara County	23	C.10.a.ii	Trash Hot Spot Selection	Under this section it states "Trash Hot Spots shall be at least 100 yards of creek length or 200 yards of shoreline length...." To prevent inconsistencies in the Revised TO, this sentence should be revised to use feet instead of yards.	The unit yards is correct in the TO.	
Santa Clara County	24	C.10.a.iv	Trash Hot Spot Clean Up to Trash Action Level (TAL)	The SCVURPPP "Urban Optimal Level" includes more subjective metrics than simply a specific threshold of pieces of trash and this could potentially create inconsistencies among programs and cities. We request that the TAL number not be defined with the "Urban Optimal Level" but be based on the number of pieces of trash per 100 feet of creek. We also ask that there be some clarification that the TAL of "100 pieces of trash per 100 feet of creek" is a goal or a trigger for action, not a water quality objective or numeric effluent limitation.	The TAL has been removed from the Final TO. The primary accountability for Provision C.10 is no longer focused in the Trash Hot Spot cleanup and assessment, but on the Trash Load Reduction Tracking Method, which will be proposed by the Permittees.	
Santa Clara	25	C.10.viii	Trash Source Reduction	This section says if "...implementation of significant new, or implementation of existing legal measures to reduce trash and litter at the source by 2012 Annual Report will reduce the	The 20% reduction credit is not included in the Final TO revision of Provision C.10. The primary accountability for Provision C.10 is the Trash Load Reduction	

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				<p>Permittee's trash capture installation requirements by 20%, upon approval by the Executive Officer." The revised TO will require the County to install 2 full capture devices. Under this section the revised TO states " [a]doption and implementation of significant new, or implementation of major existing legal measures to reduce trash and litter at the source by 2012 Annual Report will reduce the Permittee's trash capture installation requirements by 20%, upon approval by the Executive Officer." If the County gains Executive Officer approval we will still be required to install 2 full capture devices because 20% of 2 devices is only a fraction of a device. This 20% reduction in installation requirements is not an incentive for the County to reduce trash at the source. We request that this section be revised to clarify that Permittees will be relieved from installing a minimum of one full capture devices.</p>	<p>Tracking Method, which will be proposed by the Permittees. It is anticipated that under this tracking method, a load reduction credit will be counted toward the Short Term Trash Load Reduction of 40% by July 1, 2012 for source control measures such as adoption of an ordinance limiting use of disposal plastic bags.</p>	
SCVURPPP	6	C.10	Trash Action Level	<p>The Santa Clara Program concurs with the need for systematically assessing trash accumulation areas potentially associated with stormwater and then, based on what is learned in the assessment process, developing enhanced actions to better address controllable sources and/or</p>	<p>The TAL has been removed from the Final TO. The primary accountability for Provision C.10 is no longer focused in the Trash Hot Spot cleanup and assessment, but on the Trash Load Reduction Tracking Method, which will be proposed</p>	

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				<p>conveyance of stormwater-related trash affecting such areas. We appreciate some of the modifications that the Water Board staff has made in this regard. However, to make it feasible and pragmatic, Provision C.10 still needs more refinement, including with regard to:</p> <p>Clarification that the proposed Trash Action Level (TAL) of “100 trash items per 100 feet of creek” is a goal and potential trigger for follow up BMP-based actions and not a numeric effluent limitation;</p> <p>Clarification that the TAL refers only to the number of pieces of trash observed per 100 feet of creek (as opposed to the SCVURPPP “Urban Optimal Level,” which includes more subjective metrics that could create consistency issues among programs/cities);</p> <p>Provide flexibility to Co-permittees to reduce the twice per year frequency of the hot spot assessment requirement and the level of assessment required.</p>	by the Permittees.	
SCVURPPP	Attachment A #49	C.10.a(i)	Goal Statement	We appreciate the Water Board staff including a Goal Statement in Provision C.10.a(i), however, much of the text is superfluous and should either be reduced or removed and included in the findings (see Attachment B).	Provision C.10 has been simplified in the Final TO.	

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SCVURPPP	Attachment A #50	C.10.a(ii)	Trash Hot Spot Selection	The minimum number of trash hot spots for large permittees (e.g., San Jose) is extremely high compared to permittees with medium and small-sized populations. Similar to the full capture treatment exemption (C.10.a(vi)) for small permittees, the Santa Clara Program recommends that language be added to Provision C.10.a(ii) that creates a maximum number of hot spots (i.e., 20) that are required to be addressed during the permit term. This number of hot spots will still require large permittees to implement significant resources and attempt to significantly reduce trash at these hot spots, but the lower number of hot spots will allow an increased effort per hot spot, thus allowing large permittees to more effectively use resources on the highest priority problem areas.	The requirement for 33 Trash Hot Spots for a Permittee with a population of nearly one million is not excessive. The Trash Hot Spot basis is proportional to population and amount of Commercial Wholesale/Retail land. Trash Hot Spots can be placed closely together in large impacted reaches of streams or long shoreline impact areas. The Trash Load Reduction Tracking Method combined with establishment of Trash Baseline Loads will be the primary accountability system for demonstration of trash load reduction in the short term of this permit.	
SCVURPPP	Attachment A #51	C.10.a.(iv)	Trash Hot Spot Cleanup to Trash Action Level	If properly determined in the manner they recommended, a numeric trash action level (TAL) could be consistent with the concept of municipal action levels developed by a panel of experts assembled by the State Board. As defined by the experts, a TAL would be an upper end numerical goal that helps identify situations all would readily agree on and triggers the need for further management actions to	The TAL has been removed from the Final TO. The primary accountability for Provision C.10 is no longer focused in the Trash Hot Spot cleanup and assessment, but on the Trash Load Reduction Tracking Method, which will be proposed by the Permittees.	

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				<p>address them. In the experts' view, unlike what is proposed in the TO, a TAL would not serve as a broadly applicable initial cleanup goal based on an underlying water quality objective; nor, like the Fact Sheet may be read by some to suggest, would it ever be used like a numeric effluent limit. Accordingly, we request that language of the TO be revised to avoid confusion and recommend that the operative term be changed from TAL to Trash Hot Spot Goal ("THSG"). Additionally, we recommend that the THSG be set at 100 pieces of trash or less per 100 foot of creek/shoreline, instead of the Santa Clara Program's previously proposed "urban optimal" category. Having a specific number of trash items established as the THSG is more consistent with the goal statement presented in C.10.a(i) and allows less subjectivity than the Urban Rapid Trash Assessment Protocol.</p>		
SCVURPPP	Attachment A #52	C.10	Trash Capture Requirements for Non-Population Based Permittees	<p>The full capture requirement for non-population based permittees effectively leaves them with options for either trash booms, which are not and do not receive credit for full capture, or outfall-based devices. The non-population based Permittee in Santa Clara County (i.e., Santa Clara Valley Water District) does not own</p>	<p>The term "equivalent measures" has been added to the trash capture requirements for non-population based Permittees, though it is anticipated that booms or other capture devices will be installed, possibly in collaboration with adjacent Permittees.</p>	

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				stormwater outfalls and therefore cannot utilize the aforementioned devices to meet the full capture requirement. To allow non-population based permittees to address hot spots, we recommend that the following language be added instead of the prescriptive language in the Revised TO: "Non-population based permittees shall address the hot spots they assess which do not meet the THSG with equivalently effective measures."		
SCVURPPP	Attachment A #53	C.10.a.(vii)	Booms or Sea Curtains	The previous version of the TO allowed non-tidal booms or sea curtains to receive credit for 25% of the area draining to the booms/curtain. It is unclear why the percent credit was reduced to 10%. In light of this, we request that the following language be included in the Revised TO: "Booms or sea curtains receive credit for up to 25% of the area required to be addressed by Full Trash Capture Devices"	Booms or Sea Curtains are not longer specifically described in the Final TO, except with regard to non-population based Permittees. While these devices will not count toward full trash capture installation, the trash removed will count toward the trash load reduction.	
SCVURPPP	Attachment A #54	C.10.b.(i)	Trash Assessment and Reporting	It is unclear what scientific basis was used to establish the frequency of 2 times per year, every year, for trash assessments. Based on the numerous trash assessments conducted by Santa Clara Program's Co-permittees, we believe that this frequency could be reduced and still	The frequency for clean-up and assessment of Trash Hot Spots in the Final TO is one per year.	

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				achieve the objectives stated above. Additionally, if the THSG is based on the number of trash items per 100 feet of creek/shoreline, then the need for Rapid Trash Assessments (RTA) is unclear. Alternatively, we request that the assessment method require the quantification of trash items at hot spots and not RTAs, the latter of which require additional time, resources and yield subjective data that are not specifically needed to address the THSG.		
SCVURPPP	Attachment A #55	C.10.c.	Long Term Plan for Trash Impact Abatement	Trash in water bodies is a complex issue that requires multiple efforts and understanding of trash sources, pathways, and effective control measures. Trash is arguably more complex than PCBs or mercury, which have been allowed 20-year time frames to achieve TMDL load allocations. Therefore, we request that the timeframe allowed to reach the goal of “no trash impacts” be extended to at least 2029, as opposed to 2024. This timeframe is consistent with approved TMDLs for Bay Area water bodies.	The 2022 target for achieving no impact to receiving waters from trash is appropriate. The necessary actions and control measures are relatively well understood, and therefore implementation is the primary challenge. While littering and trash production may continue to occur, keeping it out of waters is a more narrowly defined goal.	
SCVWD	6	C.10	Data collected by other waterboards	We are specifically concerned that Water Board staff did not take full advantage of data collected by other Water Boards relative to trash	We will continue to study the progress made in the L.A. region of addressing trash loads and control measures. Trash capture	

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				challenges in southern California. Some of this trash data may provide a greater understanding on pathways and control of sources, in a fiscally prudent fashion, that will still lead to reasonable reduction of the pollutant.	device installation is a major component of trash abatement efforts in Southern California.	
SCVWD	9	C.10	Installation of trash booms or outfall devices	Table 10-1 prescribes the installation of either trash booms or outfall devices as a requirement of permit compliance for the District. The District does not own or have jurisdiction of any outfalls, and it is inappropriate to require the District to install trash nets on them. The District believes the use of Start at the Source strategies, improved product stewardship, enforcement of existing anti litter laws, legislative controls (single use bag ban) and the use of full capture devices prior to the end of pipe, are more appropriate to combat trash rather than installing booms in the creeks. Booms present CEQA challenges, are potential threats to wildlife, and will need to be removed during the rainy season since they could become flood water conveyance hazards. The District and other co-permittees are planning to conduct an evaluation of up to two trash booms in our systems but these booms would be removed in the winter. Also, the District should not be burdened with the maintenance costs	The term "equivalent measures" has been added to the trash capture requirements for non-population based Permittees, though it is anticipated that booms or other capture devices will be installed, possibly in collaboration with adjacent Permittees.	

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				associated with operation of the booms when a full capture device in some part of the MS4 system is more appropriate.		
SCVWD	10	C.10	Trash Assessment	The total number of trash assessments in a given watershed should be based on population. Requiring additional trash assessments for flood control districts places a greater burden on taxpayers in those communities by directing them to fund additional assessments above the requirements already placed on the cities. A better approach is to reduce a city's number of trash assessments if an agreement can be reached that the flood control agency will share in the workload to complete a portion of the cities assessments.	The number of Trash Hot Spots assigned to the non-population based Permittees is relatively small, and since the Permittees are flood management agencies with great access to streams, this is an appropriate requirement.	
SCVWD	11	C.10	District has the following specific recommendations for modification	Provide language that makes it clear that some flood control districts do not own storm drain outfalls and therefore shall not be required to install full capture devices on the property of other co-permittees.	Permittee specific requirements always apply directly to Permittee jurisdiction.	
SCVWD	12	C.10		Provide language that indicates that Water Board staff is aware of the potential problems booms can cause to fish and wildlife and during rain events and acknowledge that booms are a last resort and not a full capture	Booms do have drawbacks, and may be a barrier to fish passage if blocking the entire water column, which is not a typical installation. They are not full capture devices.	

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				device.		
SCVWD	13	C.10		Clarify that the Trash Action Level (TAL) of “100 trash items per 100 feet of creek” is a goal, or a trigger, for actions, and remove the implication that it is a water quality objective or numeric effluent limitation.	The TAL has been removed from the Final TO revision.	
SCVWD	14	C.10		Clarify that the TAL be the number of pieces per 100 feet of creek, as opposed to the SCVURPPP “Urban Optimal Level,” which includes more subjective metrics that could create consistency issues among programs/cities.	The TAL has been removed from the Final TO revision.	
SCVWD	15	C.10		Reduce the twice per year frequency of assessment requirement to “at least one per year at each approved trash hot spot.” The resources needed to conduct a second round of trash assessments could be better spent on installation of full capture devices, or on working out the enforcement challenges.	The Trash Hot Spot clean-up and assessment frequency has been reduced to once a year.	
SCVWD	23	C.10		prescribes trash capture devices across jurisdictional boundaries and imposes very prescriptive use of trash booms without consideration of CEQA and flood conveyance issues, and	The Final TO does not require trash capture devices be installed across jurisdictional boundaries.	
Sunnyvale	9	C.10	Trash	A focused and cost-effective effort to address trash that is in stormwater, or likely to be conveyed by it into our	The Permittees are expected to employ their knowledge of the local nature of trash impacts to	

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				waterways. This should include using our existing data for assessments and analyses as to the nature and location for measures to be implemented.	water bodies, and local trash load sources.	
Sunnyvale	49	C.10.a.(iv)	Trash Hot Spot Clean-up to Trash Action Level(TAL)	<p>Sunnyvale supports SCVURPPP's request that the TAL be defined as a numerical goal to define a threshold for further management actions, and not a water quality objective or numeric effluent limit.</p> <p>Sunnyvale also supports SCVURPPP's recommendations to set the TAL at 100 pieces of trash or less, per 100 feet of creek or shoreline rather than the "urban optimal" category.</p> <p>Based on Sunnyvale staff's experience with performing the URTA in multiple locations over the past four years, we believe it will reduce the subjectivity of some of the URTA questions/assessment categories. As stated by SCVURPPP, this will allow permittees to reduce trash to a specific and measurable endpoint.</p>	<p>The TAL has been removed from the Final TO. The primary accountability for Provision C.10 is no longer focused in the Trash Hot Spot cleanup and assessment, but on the Trash Load Reduction Tracking Method, which will be proposed by the Permittees. The Permittees can continue to use the RTA or Urban RTA for assessment, but also have the option to use volume and dominant types of trash collected</p>	
Sunnyvale	50	C.10.a (v)	Trash Capture Requirement	<p>Sunnyvale is one of the two SCVURPPP cities to have participated in the pilot trash retrofit of storm drain inlets (SDIs) using "Full Capture" devices (Storm Tek inserts) as defined by the Los Angeles Regional Water Board.</p>	<p>Some grant funding has recently been secured to assist Permittees in trash capture device installation. As the requirement for trash capture installation is before 2014, Permittees will be able to phase</p>	

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				<p>Requiring the use of a device approved for use in Los Angeles may be problematic for communities to fully adopt for our area. This comment is based on Sunnyvale's experience with the pilot testing with SCVURPPP and the City of San Jose over the last year. Based on preliminary data and experiences with installing the full-capture devices in Sunnyvale, it will be very difficult, if not impossible to retrofit all the inlets in a particular "retail, wholesale, or commercial" area within a city to cover 30% of the ABAG 2005 land use by July 1, 2013 for the following reasons:</p> <p>Of the 5 types of treatment BMPs that have been certified by the LA Regional Water Quality Control Board, possibly only two of them will be suitable for use by cities in their urban, highly developed, commercial areas, as required by the permit. These are the inserts developed by the City of Glendale and the inserts developed by Advanced Solutions (Storm Tek devices used by Sunnyvale and San Jose in the local Pilot Project). The use of the other larger area treatment options such as the end-of pipe trash nets, linear radial gross solids removal device or the inclined screen gross solids removal device, all require</p>	<p>installations to avoid a bottleneck of manufacturers supply capabilities. Also, it is anticipated that qualified manufacturers will join the business as demand increases. There are several optional trash capture devices, so storm drain inlet capture devices will not be the only type installed.</p>	

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				<p>substantial land or open space to install.</p> <p>With the very limited choices for cities to select from, it will be extremely difficult for all 76 cities coming under the MRP requirements to obtain these devices in the quantities needed in the time frame prescribed. To obtain and install the 13 Storm Tek units in Sunnyvale took almost a full year's time from when the sites were selected until installations were complete. According to the MRP (Fact Sheet Attachment10.1), Sunnyvale may need to install upwards of 200 units within the commercial/retail areas of the city to meet the 4.45% of retail-commercial land treatment requirement.</p> <p>Given the fact that the Storm Tek devices must be custom made to fit each inlet, it takes a significant amount of time just to manufacture them and install them. (Also, based on our experiences in Sunnyvale, even with careful measurements and photographs, we had to send two of the 13 units back for remanufacture, as they did not fit the SDIs appropriately.) Considering the demand of 76 cities on one business for meeting the July 1, 2013 deadline in the permit does not seem</p>		

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				<p>reasonable. The cost for purchase and installation of the approximately 200 units for Sunnyvale to comply with this requirement will likely be in excess of \$250,000 (based on 2007 dollars). This figure does not include the increased annual costs for maintenance of retrofitted SDIs. We are in the process of determining what those costs will be as part of the SCVURPPP pilot project. However, preliminary indications are that some retrofitted SDIs will need to be cleaned out more frequently than one time per year, which is our currently budgeted inspection and clean out frequency. In areas with numerous street trees, maintenance may need to be as frequent as monthly during the leaf-drop season from November – February in order to prevent street flooding during significant storm events.</p> <p>Sunnyvale requests that the requirement to install full capture devices in such a large portion (30% of acreage) of a city's commercial/retail areas be reconsidered until there are more options available for full capture devices in highly urbanized commercial/retail areas. Either the number required needs to be reduced,</p>		

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				or additional time must be granted to incorporate the funding into capital budgets and allow for their manufacture and installation within the permittees' cities.		
Sunnyvale	51	C.10.a.vii	Trash Source Reduction	An example of an ordinance change in this provision refers to the implementation of parking restriction ordinances to clear curbs on street sweeping days. In order to comply with such a requirement, "no parking" signage would be required prior to street sweeping. It is unclear whether the signage would need to be permanent or not, which would help to determine the added costs to the city to meet this provision. Posting permanent signage would be a significant capital cost along with the added clean up (i.e., graffiti removal) costs for the signs. If the signs were temporary (i.e., posted the day before sweeping and removed after) the costs could be significant as well, since staff would be needed to post signage before sweeping and remove it afterwards. Also, using the posting of streets for sweeping as an example for source reduction does not seem to be an actual source reduction activity as it is not preventing litter in the same way that the other examples are (e.g., single-use bag ordinances).	The Final TO does not include any street sweeping or parking restriction requirements. Street sweeping to the curb may be a trash load reduction bmp that will remove more trash loading from the MS4, however.	

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Sunnyvale	52	C.10.b.(i)	Trash Hot Spot Assessment	Sunnyvale supports the SCVURPPP comment regarding the of the Urban Rapid Trash Assessment score, due to the subjectivity of some of the items of the URTA. A quantification of actual numbers of trash items at hot spots will provide less subjective data that is useful in addressing the TAL of 100 pieces of trash per 100 ft. section of waterway.	The TAL has been removed from the Final TO. Primary trash load reduction will be assessed with a trash load accounting methodology proposed by the Permittees. Assessment of Trash Hot Spot cleanup has been revised to be more flexible.	
Sunnyvale	53	C.10.c	Long Term Plan for Trash Impact Abatement	Sunnyvale supports the SCVURPPP comment on extending the goal of “no trash impacts” to a 20-year time frame to 2029, to be more consistent with the requirements of TMDLs that have been approved for the Bay Area waterbodies.	The Final TO Provision C.10 date to achieve compliance with Discharge Prohibition A.2 and no impact of trash to waters is 2022, over 12 years from now. This is a reasonable time frame to abate this pollutant impact. The means for addressing trash impacts are straightforward, including trash capture, increased bmps, source control and increased outreach. It is the implementation of those means that represents the challenge. While preventing all littering is a major challenge, keeping that litter out of waters is a more narrowly focused problem.	
Sunnyvale	54	C.10.d.(ii) & (iii)	Reporting – 2010 & 2011 Annual Reports	In section (ii) it is not clear why the city should be reporting on the laws or ordinances implemented to deal with displacement of creek-side homeless	We agree that to the extent such trash impacts are not related to the MS4, they cannot be required to be abated under the Final TO.	

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				<p>encampments under the storm water discharge permit requirements. While the issue of homeless encampments and their impacts on waterways can be significant, requiring a stormwater discharge permittee to report on this activity is not appropriate, since these trash sources in waterways that are not coming from stormwater outfalls. We request that this reference be removed from this provision.</p> <p>In section (iii) there is a reference to “establishing pilot full trash capture device installations”. It is our understanding that the requirement of this permit to install full capture devices is not a “pilot” effort, and we suggest that this reference be removed.</p>	<p>However, efforts to reduce such impact on waters could be credited under the Trash Load Reduction Tracking Method. The reference in question is not in the Final TO revision of Provision C.10.</p>	
West Valley Clean Water	#11	C10	Trash	<p>The draft revised permit needs to prioritize the highly aggressive and many new requirements in this section, with the combined efforts of all permit requirements; Priority focus to be on cost-effective efforts to address trash in or likely to be conveyed by stormwater conveyance systems into our waterways, with assessment work and data analysis driving the nature and location of the measures to be implemented;</p>	<p>These changes are evident in the Final TO revision of Provision C.10. Permittees can choose the trash load reduction bmps that are most efficient in their jurisdictions. The minimum trash capture requirements have been retained, however.</p>	
ACCWP	#1	C.2., C.3.,	Deleted	We appreciate many of the changes	Noted.	

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		C.4, and C.10	requirements-certain type of street sweepers, trash, etc.	incorporated in the Revised Tentative Order, in particular: (1) the deletion of the requirement to purchase certain types of street sweepers; (2) the deletion of the requirement to install treatment systems for road reconstruction projects within the existing footprint; (3) the deletion of the requirement to conduct an impervious surface data collection pilot project; (4) the deletion of the prescriptive list of businesses requiring inspections; and, (5) the deletion of some of the prescriptive trash requirements. However, many of our concerns with the previous Tentative Order have not been addressed and some of the new requirements in the Revised Tentative Order are of great concern.		
ACCWP	23	C.10.	Trash Controls	As with the TMDL pollutants, trash reduction is an appropriate focus for this permit term. We recognize that municipalities need to play a role in reducing the amount of trash entering our creeks and the Bay. However, this is not a problem municipalities can solve by themselves. We agree with the suggestion made by your board several years ago that a statewide task force including State and local representatives should be formed to address the trash problem.	The TAL has been removed from the Final TO. Primary trash load reduction will be assessed with a trash load accounting methodology proposed by the Permittees. There are more flexible options for assessment of cleaned hot spots in the Final TO.	

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				<p>We appreciate the increased flexibility provided in the Revised Tentative Order. We also appreciate the reduced scope of the structural control requirements. As with other pollutants we believe that source control is more cost effective than treatment and we appreciate the flexibility to pursue source control measures in addition to the implementation of structural controls. Again, these are extremely difficult economic times for our municipalities and the installation and maintenance of the required structural controls place a somewhat unknown and potentially severe economic burden on our municipalities. We also have concerns regarding the Trash Action Level and the Rapid Trash Assessment requirements.</p> <p>Trash Action Level: We have two concerns with the Trash Action Level. The first is that we believe terminology may cause confusion between a Trash Action Level and a Municipal Action Level or a Water Quality Standard. The Trash Action Level is not intended to be either.</p> <p>Proposed Resolution: To avoid this possible misinterpretation, we request</p>		

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				that the terminology be changed to "Trash Hot Spot Reduction Goal."		
ACCWP	Comment #24	C.10.	Hot spot reduction	<p>Our second concern is that we do not believe that the hot spot reduction target of 100 pieces of trash per 100 feet of creek will be attainable in all cases. As an example, in 2008, the Program conducted the Rapid Trash Assessment Protocol at ten sites throughout the county. (A technical memo summarizing the results is included as Attachment 4.) At one of the sites, approximately 3,000 pieces of trash were collected from a 100 foot stretch of creek. Almost all of the pieces were very small Styrofoam pellets that had been trapped in the ivy on the banks. These pellets are trapped along the creek bank for a long distance upstream of this site as well due to an illicit discharge that has now been corrected. At this site it will be nearly impossible to meet the pieces of trash per 100 feet target for the foreseeable future.</p> <p>Proposed Resolution: Express the Trash Hot Spot Reduction Goal as "either 100 pieces per 100 feet or an 80% reduction from the baseline level."</p>	The TAL has been removed from the Final TO. Primary trash load reduction will be assessed with a trash load accounting methodology proposed by the Permittees. There are more flexible options for assessment of cleaned hot spots in the Final TO.	
ACCWP	25	C.10	Rapid Trash	The Revised Tentative Order would	There are more flexible options	

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			Assessment:	<p>require that these assessments would be conducted at each hot spot twice per year for five years. We have two concerns with this requirement. The first is that the protocol is very labor intensive and not necessary to determine if the trash hot spot reduction target is being met. The second concern is that the protocol is still evolving and there may be more effective methods of assessing the trash.</p> <p>Proposed Resolution: Revise provision to require only counting the pieces of trash rather than categorizing them, and reduce the number of assessments required to once per year.</p>	<p>for assessment of cleaned hot spots in the Final TO. Volume of removed trash can be recorded, and the major or dominant types of trash collected reported. Some categorization is necessary to learn about possible sources for effective bmps.</p>	
ACCWP Attachment-1	62	C.10	Trash	<p>Allow green streets pilot projects to count toward trash capture. Given the effort and expense that various municipalities will make if the green streets provision is kept in the permit, these projects should count toward trash capture. Filtering roadway runoff through a bioretention area or swale before it enters the storm drain system naturally filters out trash. This would be in keeping with the Water Board staff's preference for landscape-based systems over mechanical systems.</p>	<p>Bio-retention stormwater treatment technology would meet the trash capture standard, as far as we are currently aware. We have not analyzed the hydraulic specifications for equivalency yet, but that analysis can be easily done.</p>	

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ACCWP Attachment-1	63	C.10	Trash	<p>The requirements of this section cannot be met financially by the Permittees. Water Board staff has estimated a \$6.06 per capita cost to Permittees which in actuality is \$27,473,822.04.</p> <p>Permittees, just like the State, are in massive budget deficit and the stormwater programs even this depression was already under funded due to Prop 13 restrictions on increasing revenues.</p> <p>State and/or Federal funding for this un-funded mandate must be in place before placing this requirement on local public agency Permittees.</p>	Some grant money for initial trash capture installation has been secured. The requirement for trash capture was given a long time (2014) to phase in so that there would be sufficient time to secure adequate resources.	
ACCWP Attachment-1	64	C.10.a.i.	Trash Reduction	<p>“While Permittees have completed some assessment of trash impacts in Santa Clara and San Mateo counties...”</p> <p>Add Alameda to the list of counties.</p>	Noted.	
ACCWP Attachment-1	65	C.10.a.ii.	Trash Hot Spot selection & commercial/retail acres	<p>The data in the 2005 ABAG Land Use database is inaccurate. One problem that is on their description web page is that all their land area calculations are to the middle of the public street.</p> <p>Arbitrary doubling of population based hot spot locations for San Leandro from 2 to 4 is out of line with the majority of other agencies. It appears</p>	The street is of key concern with regard to trash impact generation. We have adjusted the Commercial land amount for San Leandro based on the information that a large portion of that total was submerged under the Bay.	

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				that the variance between population and retail/wholesale acreages for most agencies is 1 or less.		
ACCWP Attachment-1	66	C.10.a.v.	Trash Capture	Previously Installed Trash Capture Device Credit: "Credit can be claimed for trash full capture devices..." Other devices such as sea curtains that have been previously installed should be eligible for credit as well. Revise to clarify that trash capture devices other than full capture devices are also eligible for credit.	Booms or sea curtains can be credited by the amount of trash volume removed or captured by these devices. This will be included in the Trash Load Reduction Tracking Method.	
ACCWP Attachment-3	30	C.10.b	Hot Spot Assessment	Eliminate photo documentation requirement, due to cost, difficulty of submitting with report, and questionable value in showing true condition of site. Also, correct the typo (10 pieces should be 100 pieces, in accordance with URTA standards for "optimal".	We disagree. The photographic information is very valuable, and before and after cleanup photos will give strong evidence of cleanup to no visual impact, and the pre-cleanup condition of the Hot Spot.	
ACCWP Attachment-3	31	C.10.d.(ii-v)	Annual Reports	Requirements for reporting on existing laws related to trash is vague, overly broad, and difficult to achieve. Restrict to reporting on any new laws or ordinances created by Permittees that are relevant to trash reduction.	This language has been removed. Under the Final TO revisions, the Permittees will document such actions and ordinance adoptions to gain credit toward trash load reduction to meet the 40% trash load reduction by July 1, 2014.	
ACCWP Legal	3	C.1. C.8. C.10.	"triggers"	Provisions where "triggers" have been added to expand the scope of Provision C.1 are in Provision C.8	The language under comment here has been removed. The TAL has been removed from the	

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				<p>Monitoring (Table 8.1 Status Monitoring triggers; Table 8-3 Long Term Monitoring triggers; C.8.e.i stressor source identification; C.8.h.i reporting) and in Provision C.10 Trash (C.10.d.iv 2012 Annual Report). The language of C.1 already requires notification to the Water Board where a determination has been made that discharges are causing or contributing to an exceedance of a water quality standard and already requires submission of BMP related reporting for most exceedances. The addition of the new triggers in the Provision C.8 monitoring requirement and Provision C.10 trash requirement cited above adds confusion to the well drafted and more comprehensive requirements of Provision C.1.</p> <p>Recommended Action In addition we request that the second sentence of Provision C.10.d.iv be deleted. Provision C.1 would remain unchanged.</p>	Final TO revision of Provision C.10.	
ACCWP Legal	4	C.10.	Monitoring and reporting	<p>Federal regulations require that all permits shall specify required monitoring including "type, intervals, and frequency sufficient to yield data which are representative of the monitored activity." 40 CFR</p>	<p>The monitoring and assessment program under Provision C.10 in the Final TO is simple and straightforward, and allows the Permittees greater flexibility than in the previous TO.</p>	

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				<p>§122.48(b). This is the general legal guidance for the scope of required monitoring requirements for NPDES permits, but there is little specific regulatory guidance on how this should be applied in the context of municipal stormwater permitting.</p> <p>The Fact Sheet/Rationale Technical Report (“Fact Sheet”) points out that each stormwater permit should include a coordinated and cost-effective monitoring program to gather necessary information to determine the extent to which the permit provides for attainment of applicable water quality standards and to determine the appropriate conditions or limitations for subsequent permits. We contend that the monitoring program proposed in the Revised Tentative Order is neither effectively coordinated nor cost-effective – it is overly prescriptive and requires considerably more resources than required by law. Furthermore, no priorities have been established in order to provide better focus for the monitoring program.</p> <p>The Fact Sheet continues to specify the same legal, technical and policy rationale for the Revised Tentative Order provisions as in the initial</p>		

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				<p>Tentative Order. The rationale given in the Fact Sheet for the very detailed monitoring provisions of the proposed permit is essentially as follows: Water quality monitoring requirements in previous permits were less detailed than the requirements in this Permit; and under previous permits, each program could design its own monitoring program with few permit guidelines. The Fact Sheet then cites the case of San Francisco Baykeeper vs. Regional Water Quality Control Board¹⁷ for the proposition that monitoring programs in the MRP must be detailed and extensive. In the Baykeeper case, the trial court held that the monitoring programs in that case, which were essentially non-existent as the permits at issue only contained a directive for the Permittee to design its own monitoring program (very different from what the Bay Area municipal stormwater dischargers are proposing), did not sufficiently specify the type, intervals, and frequency sufficient to yield data that are representative of the monitoring activity. That decision was decided on the specific facts before the court. It is important to note that trial court</p>		

¹⁷ Consolidated Case No. 500527 (November 14, 2003).

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				<p>decisions such as the Baykeeper case do not serve as precedent as do cases decided by the Courts of Appeal and the Supreme Court.</p> <p>The Fact Sheet fails to acknowledge the non-precedential character of the trial court decision in the Baykeeper case and further fails to discuss or disclose the more recent appellate case of Divers' Environmental Conservation Organization v. SWRCB decided by the California Court of Appeal, Fourth District that does serve as precedent.¹⁸ In that case the appellate court carefully analyzed the Clean Water Act requirements for municipal and industrial stormwater discharges and concluded that the Act provides the permitting authority broad discretion to use BMPs for stormwater discharges and provides wide flexibility in designing stormwater controls. In contrast to the trial court's opinion in Baykeeper, the Divers' case held as a precedential matter that so long as the permit provides sufficient details and standards, management plans and monitoring plans can be developed by permittees.</p> <p>Neither the Baykeeper opinion nor the</p>		

¹⁸ See 145 Cal.App.4th 246.

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				<p>Divers' case requires the extensive monitoring provisions and the revised and expanded requirements proposed in the Revised Tentative Order. To the contrary - as a matter of law, the Divers' appellate decision provides Permittees and the Water Board extremely broad discretion in formulating monitoring programs. The Revised Tentative Order goes considerably beyond the federal regulatory requirement of providing for monitoring that would include the type, intervals, and frequency sufficient to yield data which are representative of the monitored activity. In fact, as detailed in comments by other Bay Area stormwater Programs and Permittees, the staff proposal imposes significantly expanded monitoring requirements that result in additional resource burden on the Permittees beyond that required by law. The result is an overly detailed, unduly burdensome, and highly prescriptive monitoring program that is unaffordable, impracticable, goes beyond assuring water quality improvement/protection and is destined to create much data that will serve little useful purpose.</p> <p>Meaningful compliance data can be</p>		

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				<p>provided by the Permittees that satisfies federal regulations with a much less prescriptive and less detailed monitoring program than that required by the revised Tentative Order and that would be consistent with the Divers appellate court decision and the non-precedential Baykeeper decision.</p> <p>Recommended Action: We request that a more reasonable monitoring program be included in the MRP as has been set forth in comments submitted in the comments of the ACCWP.</p>		
ACCWP Legal	5	C.10	Trash Action Levels	<p>As stated in the ACCWP comments, we agree that trash reduction is an appropriate primary focus for this permit term and the Program is ready to take significant steps in toward this objective. Revised Provision C.10 requires attainment of Trash Action Levels (“TALs”), terminology that is used throughout this provision. The term “Action Levels” is not defined in the Glossary and no justification is given in the Fact Sheet for the use of</p>	<p>The TAL has been removed from the Final TO. Primary trash load reduction will be assessed with a trash load accounting methodology proposed by the Permittees. There are more flexible options for assessment of cleaned hot spots in the Final TO.</p>	

¹⁹ See Storm Water Panel Recommendations to the California State Water Resources Control Board – the Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities – June 19, 2006

²⁰ The draft Ventura permit addresses trash in a manner requiring implementation of BMPs to achieve trash waste load allocations in certain named watersheds, not with Action Levels.

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				<p>trash requirements as TALs.</p> <p>In June 2006 a blue ribbon State Storm Water Panel made recommendations to the State Water Board regarding the feasibility of numerical effluent limitations applicable to stormwater discharges.¹⁹ While the Panel found that it is not feasible at this time to set enforceable numeric effluent criteria for municipal urban runoff, it stated that it may be possible that Action Levels could be developed for certain catchments not treated by a structure or treatment BMPs. It noted that such Action Levels could be developed using three different approaches – a consensus based approach, ranked percentile distributions and statistically based population parameters. The Panel then went on to describe each approach in detail.</p> <p>The Revised Tentative Order fails to follow any of these recommended State Storm Water Panel approaches in arriving at the TALs. Action Levels may be appropriate as an interim approach where they are scientifically defensible and where adequate data is available to establish them. However, this data has not been proposed nor</p>		

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				<p>evaluated in order to develop appropriate TALs for the MRP.</p> <p>Even the much-discussed third draft of the Ventura MS4 NPDES Permit uses “Action Levels” for some pollutants in a carefully prescribed manner – they do not apply Action Levels to trash.²⁰ The Ventura draft establishes Municipal Action Levels (“MALs”) to identify subwatersheds requiring additional BMPs to reduce pollutant loads and prioritize implementation of additional BMPs. MALs for selected pollutants would be based on carefully selected and referenced protocols. The State Board Panel recommended protocols have not been followed in the Revised Tentative Order to establish TALs.</p> <p>In addition to the inappropriate use of TALs as a trash reduction measure, the revised Tentative Order incorrectly refers to a trash “water quality standard” (C.10a.i) and a trash “water quality objective” (C.10.a.iv). Water quality standards and water quality objectives are defined in the Glossary. Neither a water quality objective nor a water quality standard has been established for trash in the Basin Plan. Thus, such references are</p>		

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				<p>inappropriate.</p> <p>In summary, use of TALs is not an appropriate way to require trash reduction in the MRP at this time. Trash reduction, while being an important objective of the MRP with which the ACCWP is in accord, could better be referred to as trash Hot Spot Reduction Goals to be achieved.</p> <p>Recommended Action We request that reference to Trash Action Levels (“TALs”) be deleted in the MRP and replaced with the term, trash Hot Spot Reduction Goals. In addition, references to trash water quality standards and water quality objectives should be deleted.</p>		
Alameda City	7	C.10	Trash capture	The Provision C.10.a requirement for the installation and maintenance of trash capture devices with a five-millimeter mesh screen is highly impractical in the City of Alameda and should be eliminated as it will create a real likelihood of upstream flooding and damages to public and private property.	The trash capture devices referred to include and overflow system to avoid flooding. In addition, regular maintenance to remove captured trash will also prevent flooding potential.	
Alameda City	8	C.10.a.iv.	Trash Action Level	The Provision C.10.a.iv requirement for Trash Action Level goals at identified Trash Hot Spots should be modified to exempt trash swept into	The TAL has been removed from the Final TO. Primary trash load reduction will be assessed with a trash load accounting	

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				the shoreline by tides because they are outside a jurisdiction's ability to control and reduce.	methodology proposed by the Permittees. If the Permittee removes trash from hot spots, whatever the source, the trash will count toward the Permittees Trash Load Reduction Tracking credit toward achieving the 40% trash reduction by July 1, 2014.	
Alameda City	16	C.10	Trash Reduction	Provision C.10, Trash Reduction, requires enhanced trash management control measures. These efforts will require additional City staff time. No funding mechanism is identified for the additional municipal expense to support the implementation of these new trash control requirements. The estimated annual increase in municipal staffing to implement, track, and assess the increased trash management control measures is approximately 10% of a full-time staff person.	Compliance with the Clean Water Act, and the stormwater regulations is no contingent on the Cities funding conditions. Also, the Discharge Prohibition A.2. is not funding contingent.	
Alameda City	17	C.10.a.iv	Trash Hot Spot Clean Up to Trash Action Level,	Provision C.10.a.iv, Trash Hot Spot Clean Up to Trash Action Level, requires the achievement of Trash Action Level goals at identified Trash Hot Spots. Results of a 2008 trash pilot study in which the City volunteered to participate indicate that litter along the Alameda shoreline is largely a result of tidal action. It was also noted that the type of litter found	The TAL has been removed from the Final TO. Primary trash load reduction will be assessed with the Trash Load Reduction Tracking method proposed by the Permittees. However, all trash that the Permittee removes from the shoreline will be credited toward the requirement of 40% trash load reduction by July 1,	

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				on city streets does not correlate with the type of litter found along the shoreline sites. It is observed that the achievement of shoreline trash action levels are not exclusively within City control, and the City should not be held to a regulatory standard for trash swept in by tides. The City recommends that the RWQCB devise appropriate accountability standards that reflect the regional nature of the trash problem.	2014.	
Alameda City	18	C.10.a.v.	Trash Capture Requirement	Provision C.10.a.v, Trash Capture Requirement, requires the installation and maintenance of trash capture devices meeting a five-millimeter (5mm) mesh screen criteria. The installation of any device with a 5mm mesh screen is highly impractical in the City of Alameda as it will create a real likelihood of upstream flooding and damage to public and private property. This concern is further substantiated by the City of Los Angeles' technical report stating their observation that 5mm screen openings are problematic, as they tend to clog with minimal debris and may result in local ponding ²¹ . Furthermore, the City's estimated cost for purchasing	The trash capture devices referred to include and overflow system to avoid flooding. In addition, regular maintenance to remove captured trash will also prevent flooding potential. We agree that new resources will be required to meet the trash capture installation and maintenance requirements, however the requirements are phased to July 1, 2014 which should provide time to secure resources. In addition, some grant funds have been secured to assist with early installation of trash capture devices.	

²¹ Catch Basin Inserts Technical Report: Method to Determine CB Inserts Act as Full Capture Devices, Watershed Protection Division, Department of Public Works, Bureau of Sanitation, City of Los Angeles, June 2006: http://www.lastormwater.org/Siteorg/program/poll_abate/PilotStudyInsert.pdf

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				<p>and installing vertical trash capturing devices, such as the ones used by the City of Los Angeles, will amount to about \$13,50022. Additionally, the estimated annual increase in Maintenance staff time for maintaining these devices is approximately 5% of a full-time staff person. Therefore, the City recommends that this very specific engineering specification be modified to require the installation of trash racks to capture trash and to allow flexibility for local jurisdictions to adequately size the opening of the trash capture devices consistent with proven and workable engineering standards, and any existing State standards. In addition, the RWQCB or the SWRCB should provide a new revenue stream to fund this infrastructure mandate.</p>		
Alameda Co Flood Control Zone 7	1	C.10.iii.	Non-population based permittees	<p>Provision C.10.iii requires non-population based permittees, which include flood control management agencies and sanitation districts, to install either trash booms or outfall devices in order to reduce trash. The number of trash capture devices is based upon the service area population and development density.</p>	<p>The requirements for non-population based Permittees have been expanded in the Final TO Provision C.10 to all installation of booms, outfall capture devices or equivalent measures, which could include partnering with adjacent Permittee for collaborative trash</p>	

²² Based on 2007 data released in Catch Basin Inserts report by Santa Clara Valley Urban Runoff Pollution Prevention Program: http://www.scvurppp-w2k.com/trash_bmp_toolbox_2007.htm

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				<p>Provision C.10.iv allows cost-sharing between municipalities and non-population based permittees to install these devices. However, in these cases, the provision requires the obligations of municipalities and non-population based permittees be combined.</p> <p>Zone 7, a county flood protection agency in east Alameda County, has flood control facilities that receive stormwater discharges generated within both city limits and unincorporated areas. Provision C.10 requires municipalities identify hot-spots within its service area and install trash reduction devices. With that being said, our trash hot-spots will be what the municipalities deem as hot-spots. As such, combining obligations for these trash devices would require installing more trash capture devices than needed in designated hot-spots. Combining the obligations creates unnecessary redundancy and is cost-prohibitive. Furthermore, the outfalls are typically owned by the local municipality. In addition, streams reaches are not necessarily owned by flood management agents but are owned by the local municipality. Hence installing outfall devices and</p>	capture projects.	

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				<p>trash booms (in some cases) may not be feasible for non-population based permittees.</p> <p>Zone 7 recommends that non-population based permittees be required to coordinate with the local municipalities within its service area to evaluate hot-spots and alternative methods appropriate to address the municipalities obligations under this provision.</p>		
Alameda County	5	C.10.a.v.	Trash Capture Requirements	<p>Concern: The Revised Tentative Order reads “Previously Installed Trash Capture Device Credit- Credit can be claimed for trash full capture devices...” Other devices such as sea curtains and booms, used more commonly by the Flood Control District, that have been previously installed should be eligible for credit as well.</p> <p>Proposed Solution: Revise to clarify that trash capture devices other than full capture devices are also eligible for credit.</p>	The full trash capture standard remains the requirement for trash capture devices in the Final TO revised Provision C.10.	
Alameda County City Mgr’s Assoc		C.10.	Strategic Approach Necessary:	An extension of the current permit would provide us all the opportunity to hopefully benefit from a recovering economy, as well as develop longer term solutions to what are certainly	The resource intensive requirements in the Trash Load Reduction Provision C.10 are not required until July 1, 2014, allowing time for funding	

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				<p>issues of mutual concern to the Board as well as our member cities. The objectives are clearer than the steps to effective implementation: we need a strategic approach to the latter to reach our desired outcomes in a reasoned and realistic way. The most significant problems are in the areas of conditionally exempt dischargers, increased monitoring and new development (c.3) requirements. Solutions that are based on quantifiable scientific data that can be measured over time to determine their efficacy, as well as a balance in the financial implications of such solutions, is essential to support and strength of any proposal. Examples of the types of productive, state-wide efforts and initiatives that could be jointly pursued by municipalities, stormwater agencies, Regional Board staff, and State Water Resources Control Board staff during the extension period might be:</p> <p>Address trash and litter with a more comprehensive strategy that incorporates all of the sources (including highways via the Cal-Trans Stormwater Permit), provides a funding mechanism, and addresses the social issues associated with littering through state-wide education</p>	<p>development.</p>	

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				and outreach. Focusing only on cleaning up the end result of this nagging social problem without a corresponding effort to address the cause is short-sighted and unfairly burdens local government.		
Berkeley	1	C.2., C.3., C.4., and C.10.	Deleted requirements	The City appreciates many of the changes incorporated in the Revised Tentative Order, in particular: (1) the deletion of the requirement to purchase certain types of street sweepers; (2) the deletion of the requirement to conduct an impervious surface data collection pilot project; (3) the deletion of the prescriptive list of businesses requiring inspections; and, (4) the deletion of some of the prescriptive trash requirements.	Noted.	
Berkeley	21	C.10.	Trash Controls	As with the TMDL pollutants, trash reduction should be a primary focus for this permit term. The City recognizes that municipalities need to play a role in reducing the amount of trash in urban runoff entering creeks and the Bay. However, this is not a problem municipalities can solve by themselves. The City agrees with the suggestion made by your board several years ago that a statewide task force including State and local representatives should be formed to	Noted.	

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				<p>address the trash problem. Increased flexibility has been incorporated in the Revised Tentative Order. The City also appreciates the reduced scope of the structural control requirements. As with other pollutants the City believes that source control is more cost effective than treatment and we appreciate the flexibility to pursue source control measures in addition to the implementation of structural controls.</p>		
Berkeley	22	C.10	Full Trash Capture Devices	<p>As stated above, these are extremely difficult economic times for municipalities and the installation and maintenance of the required structural controls will place an economic burden on the City. The City's estimate for installing, cleaning, and maintaining simple screens as Full Trash Capture Devices to serve 30% of the commercial area over the 5 year term of this permit is \$570,000. This represents the low-end cost, if other devices beyond simple screens are needed, the cost quickly escalates to over \$1.5 million for the 5 year term of the permit. The size of the pilot project is excessive and can actually be considered to be premature full implementation of full trash capture. The size of the pilot project needs to be reduced from 30% to a more</p>	<p>The minimum amount of trash capture required has already been reduced for the previous TO. Grant funding to assist with trash capture funding has recently been secured. The resource intensive requirements in the Trash Load Reduction Provision C.10 are not required until July 1, 2014, allowing time for funding development.</p>	

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				<p>manageable 5% of the commercial area for each permittee. Alternatively, the pilot project can be spread over the entire region instead of overly burdening each individual permittee and eliminate duplicative pilot projects.</p> <p>Proposed Resolution: The size of the pilot full trash capture needs to be reduced to a manageable level for the individual permittee. This can be accomplished by reducing the size of the pilot area from 30% to 5%, or making the pilot projects a regional responsibility effectively reducing the burden to each permittee.</p>		
Berkeley	23	C.10.	Trash Action Level	<p>We have two concerns with the Trash Action Level. The first is that we believe terminology may cause confusion between a Trash Action Level and a Municipal Action Level or a Water Quality Standard. The Trash Action Level is not intended to be either.</p> <p>Proposed Resolution: To avoid this possible misinterpretation, we request that the terminology be changed to "Hot Spot Reduction Goal."</p>	The TAL has been removed from the Final TO. Primary trash load reduction will be assessed with a trash load accounting methodology proposed by the Permittees.	
Berkeley	24	C.10.	Hot spot reduction	The second concern is that we do not believe that the hot spot reduction target of 100 pieces of trash per 100	The TAL with a trigger value of 100 trash pieces per 100 feet has been removed from the Final TO.	

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				<p>feet of creek will be attainable in all cases. As an example, in 2008, the Program conducted the Rapid Trash Assessment Protocol at ten sites throughout the county. (A technical memo summarizing the results in included as Attachment 3.) At one of the sites, approximately 3,000 pieces of trash were collected from a 100-foot stretch of creek. Almost all of the pieces were very small Styrofoam pellets that had been trapped in the ivy on the banks. These pellets are trapped along the creek bank for a long distance upstream of this site as well due to an illicit discharge that has now been corrected. At this site it will be nearly impossible to meet the pieces of trash per 100 feet target for the foreseeable future.</p> <p>Proposed Resolution: Express the Hot Spot Reduction Goal as “either 100 pieces per 100 feet or an 80% reduction from the baseline level.”</p>	<p>Primary trash load reduction will be assessed with a trash load tracking methodology proposed by the Permittees.</p>	
Berkeley	25	C.10.	Rapid Trash Assessment	<p>The Revised Tentative Order would require that these assessments would be conducted at each hot spot twice per year for five years. We have two concerns with this requirement. The first is that the protocol is very labor intensive and not necessary to determine if the trash hot spot</p>	<p>The Final TO revision of Provision requires one assessment per trash hot spot cleanup each year, and the options for assessment are flexible, including simply reporting the volume of trash removed and the dominant types of trash</p>	

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				<p>reduction target is being met. The second concern is that the protocol is still evolving and there may be more effective methods of assessing the trash.</p> <p>Proposed Resolution: Revise provision to require only counting the pieces of trash rather than categorizing them, and reduce the number of assessments required to once per year.</p>	collected.	
Berkeley Attachment 1	62	C.10.	Allow green streets pilot projects to count toward trash capture.	<p>Install trash capture devices on catchment area equal to 30% of the Retail/Wholesale Commercial Land use as defined by ABAG 2005 Land Use Statistics. Trash capture devices shall be designed to retain particles by 5mm mesh screen with hydraulic capacity of not less than peak flow rate resulting from a one-year, one-hour storm event in the drainage catchment area.</p> <p>Allow green streets pilot projects to count toward trash capture. Given the effort and expense that various municipalities will make if the green streets provision is kept in the permit, these projects should count toward trash capture. Filtering roadway runoff through a bioretention area or swale before it enters the storm drain system</p>	Bio-retention stormwater treatment technology would meet the trash capture standard, as far as we are currently aware. We have not analyzed the hydraulic specifications for equivalency yet, but that analysis can be easily done.	

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				naturally filters out trash. This would be in keeping with the Water Board staff's preference for landscape-based systems over mechanical systems.		
Berkeley Attachment 1	63	C.10.	funding	<p>The requirements of this section cannot be met financially by the Permittees. Water Board staff has estimated a \$6.06 per capita cost to Permittees which in actuality is \$27,473,822.04.</p> <p>Permittees, just like the State, are in massive budget deficit and the stormwater programs even this depression was already under funded due to Prop 13 restrictions on increasing revenues.</p> <p>State and/or Federal funding for this un-funded mandate must be in place before placing this requirement on local public agency Permittees.</p>	Grant funding to assist with trash capture funding has recently been secured. The resource intensive requirements in the Trash Load Reduction Provision C.10 are not required until July 1, 2014, allowing time for funding development.	
Berkeley Attachment 1	64	C.10.a.i.	Assessment of trash impacts	<p>"While Permittees have completed some assessment of trash impacts in Santa Clara and San Mateo counties..."</p> <p>Add Alameda to the list of counties,</p>	Noted.	
Berkeley Attachment 1	65	C.10.a.ii.	2005 ABAG Land Use database is inaccurate	The data in the 2005 ABAG Land Use database is inaccurate. One problem that is on their description web page is that all their land area calculations are to the middle of the public street.	The street is of key concern with regard to trash impact generation. We have adjusted the Commercial land amount for San Leandro based on the	

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				Arbitrary doubling of population based hot spot locations for San Leandro from 2 to 4 is out of line with the majority of other agencies. It appears that the variance between population and retail/wholesale acreages for most agencies is 1 or less.	information that a large portion of that total was submerged under the Bay.	
Berkeley Attachment 1	66	C.10.a.v.	Previously Installed Trash Capture Device Credit	Previously Installed Trash Capture Device Credit: "Credit can be claimed for trash full capture devices..." Other devices such as sea curtains that have been previously installed should be eligible for credit as well. Revise to clarify that trash capture devices other than full capture devices are also eligible for credit.	The full trash capture standard remains the requirement for trash capture devices in the Final TO revised Provision C.10.	
Berkeley Attachment 1	31	C.10.b.	Overly detailed reporting.	Eliminate photo documentation requirement, due to cost, difficulty of submitting with report, and questionable value in showing true condition of site. Also, correct the typo (10 pieces should be 100 pieces, in accordance with URTA standards for "optimal".	We disagree. The photographic information is very valuable, and before and after cleanup photos will give strong evidence of cleanup to no visual impact, and the pre-cleanup condition of the Hot Spot.	
Berkeley Attachment 2	32	C.10.d.(ii-v)	Requirements for reporting on existing laws related to trash	Requirements for reporting on existing laws related to trash is vague, overly broad, and difficult to achieve. Restrict to reporting on any new laws or ordinances created by Permittees that are relevant to trash reduction.	This language has been removed. Under the Final TO revisions, the Permittees will document such actions and ordinance adoptions to gain credit toward trash load reduction to meet the 40% trash load	

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					reduction by July 1, 2014.	
Brisbane	11	C.10.	trash clean up (action) level	The permit proposes a trash clean up (action) level for what it terms “trash hotspots”; the permit should be modified so this action is expressed as a goal and not an inflexible mandate due to uncertainty about what levels of trash reduction are needed to protect beneficial uses, and what levels are reasonably achievable.	The language under comment here has been removed. The TAL has been removed from the Final TO revision of Provision C.10.	
Brisbane	12	C.10.	Requirement to install full capture trash control devices.	The City supports the revisions in the Tentative Order exempting small municipalities from the requirement to install full capture trash control devices. Small municipalities should also be provided an opportunity to be exempted from hot spot assessment and cleanup if they can document that they do not have any hot spots.	The Trash Hot Spot Selection report is due by July 1, 2010. If a Permittee seeks to document that there are no Trash Hot Spots within their jurisdiction, they can attempt to make that case on or before that deadline.	
Brisbane	13	C.10.	trash in hot spots originating from the storm drain system.	Municipalities should only be required to address trash in hot spots originating from the storm drain system. Any requirement to address trash generated by other sources such as illegal dumping, homeless encampments, or wind should be deleted.	We agree that the Final TO requires abatement of trash loads discharged through the MS4. Any trash removed, regardless of the source will be credited in the trash load reduction tracking method in the revised Provision C.10 in the Final TO.	
Burlingame	5	C.10.	trash cleanup (action) level	The permit proposes a trash cleanup (action) level for what it terms trash hotspots that should be expressed as a goal and not an inflexible mandate because of uncertainty about what	The TAL has been removed from the Final TO Provision	

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				levels of trash reduction are needed to protect beneficial uses and what levels are reasonably achievable.		
Burlingame	6	C.10.	full capture devices	The requirement to install full capture devices on 30% of the ABAG 2005 Retail/ Wholesale Commercial Land Use area is too ambitious. There is no funding available to implement this requirement. We request that this be either delayed or scaled back for implementation.	The requirement does not have to be met until July 1, 2014, allowing time to develop funding. Also, grant money has been secured for early installation of trash capture devices.	
Fremont Attachment	35	C.10.a.iv.	“no visual impact from trash within assessment reach”	The statement that there should be “no visual impact from trash within assessment reach” is subjective. A person impacted visually from the assessment reach is based on each person’s subjective decision. Once trash is seen no matter the magnitude, it becomes a visual impact. Eliminate “that there be no visual impact from trash within the assessment reach” from the language.	While this is a somewhat subjective standard, there should not be great ambiguity concerning when it is attained. The cleanup requirement for Trash Hot Spots remains to no visual impact. Photographs will be included as verification of cleanup to this requirement.	
Fremont Attachment	36	C.10.b.i	Due date of first assessment as part of the Hot Spot selection process	Due date of first assessment as part of the Hot Spot selection process. Late summer of 2009 Revise due date to match C.10.ii Feb. 1, 2010.	The first assessment will now occur in the dry season of 2010.	
Fremont Attachment	50	C.10	Actual Number of Trash Items Found,	Attachment I Provision C.10. SCVURPPP URTA Methodology	The requirement to use the RTA or Urban RTA has been removed from the Final TO.	

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			The description of scoring doesn't match the worksheet on page I-9.	Attachment I page I-4 & I-8 Trash Assessment Parameters #2: Actual Number of Trash Items Found, The description of scoring doesn't match the worksheet on page I-9. Modify scoring on the URTA Worksheet on page I-9 to match that of the description on page I-4.		
Newark	1	C.2., C.3., C.4., and C.10.	deletion of the requirements	The City of Newark is appreciative of many of the changes incorporated in the Revised Tentative Order, including: (1) the deletion of the requirement to purchase certain types of street sweepers as well as deletion of prescriptive street sweeping and catch basin cleaning requirements; (2) the deletion of the requirement to install treatment systems for road reconstruction and rehabilitation projects within the existing footprint; (3) the deletion of the requirement to conduct an impervious surface data collection pilot project; (4) the deletion of the prescriptive list of businesses requiring inspections; and, (5) the deletion of some of the prescriptive trash reduction requirements. Regional Board staff should be commended for these modifications.	Noted.	
Newark	4	C.2.d.iii., C.3.b.v.(1), C.3.b.v.(2),	Reporting and Recordkeeping Requirements	There have been improvements to the reporting and recordkeeping requirements, including removal of the	We have made further simplifications in reporting requirements. The reporting	

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		C.3.c.iii., C.3.e.iv., C.3.f.iii., C.3.g.iv., C.3.h.iv., C.3.i.iii, C.4.b.ii.(6), C.4.b.iii., C.4.c.iii., C.4.d.iii., C.5.e.iii., C.5.f.ii., C.6.a.iii., C.6.e.ii.(4), C.6.e.iii., C.6.f.iii., C.7.e.iii., C.7.f.iii., C.7.g.iii., C.7.h.iii., C.9.b.iii., C.9.c.iii., C.9.d.ii., C.9.e.ii., C.10.b, C.10.d.ii-v., C.13.a.ii, C.13.b.ii., & C.13.d.ii		reporting template. However, these requirements are still onerous and many do not provide significant improvements for accountability. Examples of excessive reporting and recordkeeping requirements include: (1) for each construction site inspection, record the inches of rain since the last inspection (Provision C.6.e.ii.(4).(d)); (2) many of the Public Information and Outreach provisions include extensive reporting and evaluation requirements; (3) Provision C.15, monthly reporting on planned and unplanned potable water discharges; and (4) unrealistically short timeframes for submitting monitoring data and reports.	requirements remaining are required for compliance determination.	
Newark	15	C.10	Trash Reduction	As with the TMDL pollutants, trash reduction should be a primary focus for this permit term. We recognize that local agencies need to play a role in	Noted.	

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				reducing the amount of trash entering our creeks and the Bay. However, this is not a problem that Newark and other municipalities can solve on our own. We agree with the suggestion made by your Board several years ago that a statewide task force including State and local representatives should be formed to address trash reduction.		
Newark	16	C.3. and C.10	reduced scope of the structural control requirements	We appreciate the increased flexibility and the reduced scope of the structural control requirements provided in the Revised Tentative Order. As with other pollutants, source control is more cost effective than treatment and the increased flexibility to pursue source control measures in addition to the implementation of structural controls is a move in the right direction. However, as previously stated, these are very difficult economic times for Newark and the installation and maintenance of the required structural controls places an additional and potentially severe economic burden on the City. We are currently estimating at least \$100,000 in additional annual costs to treat 30% of our commercial retail/wholesale areas within the 5-year period, assuming a significant contribution through redevelopment. There is simply no funding available given	Grant funding has been secured to assist Permittees with initial trash capture device installation. Full capture minimum installations must be completed by July 1, 2014, which allows significant time to develop funding. The Minimum Trash Capture Requirements have been reduced from the first TO requirements, and if further reduced would not have impact on the trash loads in the short term.	

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				current economic conditions. We also have serious concerns regarding the impact to flood control capacity with the required installation of screening with 5-millimeter openings.		
Newark	17	C.10	Eliminating trash	<p>Eliminating all trash from local creeks and the Bay is a lofty, noble goal, but it is not one that can be accomplished solely by local agencies. Anti-litter efforts have been in place for decades, but have not eliminated what is a societal problem. Pilot trash assessments have indicated that trash in waterways is more often due to random, windblown littering instead of direct transport via storm drain systems. Permit compliance should not be dependent upon correction of a problem by local agencies over which they do not have full control. The C.10 provision will be very expensive and will not eliminate the problem. The Board staff acknowledges as much in the current permit under C.10.a.i. by stating:</p> <p align="center">“The actions required in this 5-year permit term are unlikely to eliminate the impact of trash on beneficial uses or achieve the Basin Plan water quality standard for this pollutant after five years.”</p>	<p>The Final TO revision of Provision C.10 requires abatement of trash loads that are conveyed through the MS4. The Permittees can also obtain credit toward trash load reduction for removal of other trash, which was not conveyed by the MS4. Trash load reduction can not be deferred. The Clean Water Act was adopted in 1978, and the Stormwater regulations were enacted in 1982, so significant time has passed since the requirements were put into place.</p>	

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				We request that the entire C.10 trash reduction requirements be deferred until this problem can be addressed on a statewide basis. However, if the Board intends to move forward with the current MRP, we have additional specific comments related to the Trash Action Level and the Rapid Trash Assessment requirements.		
Newark	18	C.10	Trash Action Level	<p>We have two concerns with the Trash Action Level. The first is that we believe terminology may cause confusion between a Trash Action Level and a Municipal Action Level or a Water Quality Standard. The Trash Action Level is not intended to be either.</p> <p>Proposed Resolution: To avoid this possible misinterpretation, we request that the terminology be changed to "Hot Spot Reduction Goal."</p>	The TAL has been removed from the Final TO.	
Newark	19	C.10	hot spot reduction	Our second concern is that we do not believe that the hot spot reduction target of 100 pieces of trash per 100 feet of creek will be attainable in all cases. As an example, in 2008, the ACCWP conducted the Rapid Trash Assessment Protocol at ten sites throughout the Alameda County. (A technical memo summarizing the results is included as Attachment 4 in	The TAL is no longer included in the Final TO version of the C.10 Trash Provision. There is the requirement for 40% Trash Load reduction by July 1, 2014. We have allowed more flexible trash assessments including reporting of volume of trash collected in Trash Hot Spot cleanups, rather than the more labor intensive	

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				<p>the ACCWP letter.) At one of the sites, approximately 3,000 pieces of trash were collected from a 100-foot stretch of creek. Almost all of the pieces were very small Styrofoam pellets that had been trapped in the ivy on the banks. These pellets are trapped along the creek bank for a long distance upstream of this site as well due to an illicit discharge that has now been corrected. At this site it will be nearly impossible to meet the pieces of trash per 100 feet target for the foreseeable future.</p> <p>Proposed Resolution: Express the Hot Spot Reduction Goal as “either 100 pieces per 100 feet or an 80% reduction from the baseline level.”</p>	RTA or Urban RTA.	
Newark	20	C.10	Rapid Trash Assessment	<p>The Revised Tentative Order would require that these assessments would be conducted at each hot spot twice per year for five years. We have two concerns with this requirement. The first is that the protocol is very labor intensive and not necessary to determine if the trash hot spot reduction target is being met. The second concern is that the protocol is still evolving and there may be more effective methods of assessing the trash.</p>	<p>In the Final TO revision or Provision C.10 the frequency for trash hot spot cleanup and assessment is once per year. We have allowed more flexible trash assessments including reporting of volume of trash collected in Trash Hot Spot cleanups, rather than the more labor intensive RTA or Urban RTA.</p>	

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				Proposed Resolution: Revise provision to require only counting the pieces of trash rather than categorizing them, and reduce the number of assessments required to once per year.		
Newark Attachment	86	C.10.	trash capture	Allow green streets pilot projects to count toward trash capture. Given the effort and expense that various municipalities will make if the green streets provision is kept in the permit, these projects should count toward trash capture. Filtering roadway runoff through a bioretention area or swale before it enters the storm drain system naturally filters out trash. This would be in keeping with the Water Board staff's preference for landscape-based systems over mechanical systems.	Bio-retention stormwater treatment technology would meet the trash capture standard, as far as we are currently aware. We have not analyzed the hydraulic specifications for equivalency yet, but that analysis can be easily done.	
Newark Attachment	87	C.10.	un-funded mandate	The requirements of this section cannot be met financially by the City. Water board staff has estimated a \$6.06 per capita cost to each Permittee which equates to \$27,473,822.04. Permittees, just like the State, are experiencing significant budget shortfalls in stormwater program revenues. Increased revenues are highly unlikely due to the restrictions imposed by Prop 218. The City's general fund cannot absorb the treatment costs associated with this	Some grant money for initial trash capture installation has been secured. The requirement for trash capture was given a long time (2014) to phase in so that there would be sufficient time to secure adequate resources.	

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				provision. State and/or Federal funding for this un-funded mandate must be in place before placing this requirement on local public agency Permittees.		
Newark Attachment	88	C.10.b.	Overly detailed reporting.	Eliminate photo documentation requirement, due to cost, difficulty of submitting with report, and questionable value in showing true condition of site. Also, correct the typo (10 pieces should be 100 pieces, in accordance with URTA standards for "optimal".	The photo documentation of the condition of Trash Hot Spots can be submitted electronically, on CD or DVD to save paper, ink and staff cost. Photos will be essential in documenting the condition of Trash Hot Spots, before and after cleanup.	
Newark Attachment	89	C.10.d.	Requirements for reporting on existing laws related to trash	Requirements for reporting on existing laws related to trash is vague, overly broad, and difficult to achieve. Restrict to reporting on any new laws or ordinances created by Permittees that are relevant to trash reduction.	The intent was for only laws and ordinances related to trash and litter. In the Final TO, credit for these actions would be through the Trash Load Reduction Tracking Method, which the Permittees will propose.	
Oakland	1	C.2., C.3., & C.10	eliminating requirements to purchase specific types of street sweepers	We also thank the Board for many of the changes incorporated in the Revised Tentative Order, including eliminating requirements to purchase specific types of street sweepers, install treatment systems for road reconstruction projects within the existing footprint, implement an impervious surface data collection pilot project, and perform prescriptive trash requirements. We appreciate the	Noted.	

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				Board's willingness to address some of our previous concerns.		
Oakland	13	C.10.	Trash Controls	<p>As with the TMDL pollutants, trash reduction is an appropriate focus for this permit term. We recognize that municipalities need to play a role in reducing the amount of trash entering our creeks and the Bay. However, this is not a problem municipalities can solve by themselves. We agree with the suggestion made by the Board several years ago that a Statewide task force including State and local representatives should be formed to address the trash problem.</p> <p>We appreciate the increased flexibility provided in the Revised Tentative Order. We also appreciate the reduced scope of the structural control requirements. As with other pollutants, source control is considered more cost effective than treatment. We appreciate the flexibility to pursue source control measures in addition to the implementation of structural controls.</p> <p>We are concerned that the hot spot reduction target of 100 pieces of trash per 100 feet of creek for targeted trash hotspots may not be attainable or the most effective strategy for reducing</p>	The TAL has been removed from the Final TO.	

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				<p>trash. Using the Urban Rapid Trash methodology, each piece of broken glass or pieces of paper may count as an individual trash item. It may be impossible for any urban site to meet this standard.</p> <p>Proposed Resolution: Express the Trash Hot Spot Reduction Goal as “either 100 pieces per 100 feet or an 80% reduction from the baseline level.”</p>		
Oakland Attachment #1	64	C.10.	State and/or Federal funding for this un-funded mandate	<p>The requirements of this section cannot be met financially by the Permittees. Water Board staff has estimated a \$6.06 per capita cost to Permittees which in actuality is \$27,473,822.04. Permittees, just like the State, are in massive budget deficit and the stormwater programs even this depression was already under funded due to Prop 13 restrictions on increasing revenues.</p> <p>State and/or Federal funding for this un-funded mandate must be in place before placing this requirement on local public agency Permittees.</p>	Some grant money for initial trash capture installation has been secured. The requirement for trash capture was given a long time (2014) to phase in so that there would be sufficient time to secure adequate resources.	
Oakland Attachment #1	65	C.10.a.i.	Trash Reduction	“While Permittees have completed some assessment of trash impacts in Santa Clara and San Mateo	Noted.	

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				counties...” Add Alameda to the list of counties.		
Oakland Attachment #1	66	C.10.a.v.	Trash Capture	Previously Installed Trash Capture Device Credit: “Credit can be claimed for trash full capture devices...” Other devices such as sea curtains that have been previously installed should be eligible for credit as well. Revise to clarify that trash capture devices other than full capture devices are also eligible for credit.	In the Final TO, full trash capture devices are credited toward the requirement, regardless of installation date. Non-full trash capture devices are not eligible for credit, though trash removed by these devices, such as booms, can count toward the 40% trash load reduction requirement.	
Oakland Attachment #2	31	C.10.b.	Hot Spot Assessment Overly detailed reporting.	Eliminate photo documentation requirement, due to cost, difficulty of submitting with report, and questionable value in showing true condition of site. Also, correct the typo (10 pieces should be 100 pieces, in accordance with URTA standards for “optimal”).	The photo documentation of the condition of Trash Hot Spots can be submitted electronically, on CD or DVD to save paper, ink and staff cost. Photos will be essential in documenting the condition of Trash Hot Spots, before and after cleanup. The Urban RTA is not required in the Final TO.	
Oakland Attachment #2	32	C.10.d.(ii-v)	Annual Reports	Requirements for reporting on existing laws related to trash is vague, overly broad, and difficult to achieve. Restrict to reporting on any new laws or ordinances created by Permittees that are relevant to trash reduction.	The intent was for only laws and ordinances related to trash and litter. In the Final TO, credit for these actions would be through the Trash Load Reduction Tracking Method, which the Permittees will propose.	
Pleasanton	4	C.10.	“hot spots”	Under the Permit, the City would be required to identify trash “hot spots”	Reporting requirements have been simplified and trash hot spot	

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				<p>and develop measures to abate trash in these areas, as well as treat 30 percent of its commercial/ retail area with full trash capture devices. The Permit also requires that the City conduct ongoing surveying, photo documentation, and other monitoring of the sites, and report on the findings each year. The monitoring includes counting of individual trash pieces by type, number, and locations.</p> <p>Survey of trash problem areas can be completed in ways that are far less time intensive than detailed counting of trash pieces, and the reporting requirements can be far less exact without compromising cleanup efforts.</p>	<p>assessments have been streamlined in the Final TO revision of the Provision C.10.</p>	
Pleasanton	5	C.10.	Long Term Trash Management Plan	<p>The requirement for development of a Long Term Trash Management Plan by 2013 with the goal of “no” impacts to beneficial uses needs to be realistic in terms of municipalities’ ability to control trash. Based on our past years community coastal clean up day events, the source of trash in waterways was primarily generated from windblown from other locations in particular from freeways or school sites (over which the City has no code enforcement authority), as opposed to direct transport to the waterway by the City’s storm drain system.</p>	<p>We agree that to the extent such trash impacts are not related to the MS4, they cannot be required to be abated under the Final TO. However, efforts to reduce such impact on waters could be credited under the Trash Load Reduction Tracking Method.</p>	

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				<p>It does not seem appropriate that Permit compliance is requiring municipalities to manage or correct a problem over which the City does not have control. It seems much more productive to use other public funds and agencies, other than the municipalities, to inform the travelling public and key trash target areas about the need to eliminate this problem.</p>		
San Leandro	18	C.10.	Trash	<p>The requirements of this section cannot be met financially by the Permittees. Water Board staff has estimated a \$6.06 per capita cost to Permittees which in actuality is \$27,473,822 just to comply with section C.10.a.v. This estimate may be considerably low as based on our estimates accounting for some known variables; including discrepancies in the acreage requirement and costs per acre; the per capita cost range could be as high as \$22.84 per capita down to \$6.26 per capita. Permittees, just like the State, are in a massive budget deficit and the stormwater programs, even before this economic collapse, were already under funded due to Proposition 13 and 218 restrictions on increasing revenues. With our own small agency facing an \$11.3 million budget deficit in</p>	<p>Some grant money for initial trash capture installation has been secured. The requirement for trash capture was given a long time (2014) to phase in so that there would be sufficient time to secure adequate resources.</p>	

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				<p>FY09-10; it cannot absorb the estimated \$1.8 million treatment costs.</p> <p>State and/or Federal funding for this un-funded mandate must be in place before placing this requirement on local public agency Permittees.</p>		
San Leandro	19	C.10.a.ii. & v.	Trash Hot Spot selection & commercial/retail acres	<p>The data in the 2005 ABAG Land Use database is inaccurate. One fallacy that is right on their description web page is that all their land area calculations are to the middle of the public street. Where their other data errors are is unclear due to the lack of a map based on their data. However, in reviewing their full data many of their land use categories for which our City has land so categorized is shown as zero acreage in the ABAG data. Using the City's current General Plan data and GIS mapping system; the City is providing 2009 data in the appendix of this document. Raw and summarized data is also available as a separate excel workbook. The latest published (2008) General Plan land use data and map, found in chapter 3.1, is available on the City Web Site at http://www.ci.san-leandro.ca.us/pdf/slgpchap3_1.pdf. Using 2009 updated general plan data; Urban land area (Acres) should be listed at 7353, Total land area at 9915,</p>	<p>The street is of key concern with regard to trash impact generation. We have adjusted the Commercial land amount for San Leandro based on the information that a large portion of that total land area in the ABAG data was submerged under the Bay.</p>	

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				<p>Total commercial land area at 721, Retail/wholesale commercial only land area at 662 and 30% of retail/commercial at 199 acres respectively.</p> <p>What appears to be arbitrary doubling of population based hot spot locations from 2 to 4 is out of line with the majority of other agencies. It appears that the variance between population and retail/wholesale acreages for most agencies is 1 or less.</p> <p>The number of hot spot locations, given the current population and flaws in the ABAG acreage data, should be set at 3, not 4 in the fact sheet table Attachment 10.1.</p> <p>(ABAG 2005 Land Use Data, City of San Leandro 2009 Data, and General Plan Land Use Map**could not be included*)</p>		
San Leandro	20	C.10.b.i.	Trash hot spot assessment & reporting	<p>Typo error on results criteria of “If a trash assessment scores less than 10 pieces of trash per 100 feet.” This should be changed to 100 pieces of trash per 100 feet; as this would be consistent with the urban optimal listed in section C.10.a iv and the urban RTA tool guide.</p>	The RTA and Urban RTA are not required in the Final TO revision of the Provision C.10.	
Union City	5	C.10.	Trash Reduction –	This provision requires the permittees to implement a wider set of trash management and trash capture tools	Some grant money for initial trash capture installation has been secured. The requirement for	

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				<p>to prevent trash, litter and debris impact by installation of 5mm mesh screen at the inlets or catch basins. This requirement place significant financial burdens on the City with installation, maintenance, and reporting costs. In addition, flooding risk to the public and private properties may be increased due to potential clogging of the inlets. The City recommends the Board removing this provision.</p>	<p>trash capture was given a long time (2014) to phase in so that there would be sufficient time to secure adequate resources. The trash capture devices are designed with overflow capacity to prevent flooding.</p>	
US EPA	7	C.10.	Trash Control	<p>EPA is encouraged that the tentative order includes requirements to address trash impairments in San Francisco Bay and its watersheds. However, EPA believes that the permit should include measurable and enforceable goals for trash reduction. For additional Federal regulatory support for the fact sheet, we suggest you also cite 40 CFR 122.26(d)(2)(iv)(A)(1) which requires the following for a stormwater management program:</p> <p>A description of maintenance activities and a maintenance schedule for structural controls to reduce pollutants (including floatables) in discharges from municipal separate storm sewers (emphasis added)</p>	<p>The Final TO revision of Provision C.10 contains a requirement for 40% reduction of Trash Loads for the baseline by July 1, 2014.</p>	

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US EPA	8	C.10.	Trash Control	Commenters on the December 2007 version of the draft permit frequently expressed concern about the costs of the trash control program. For example, BASMAA in its comments to the Board estimated costs of \$8.6 to \$265 million (average of \$128 million) for member agencies to implement “full capture devices” for just the 5% of the Bay Area urbanized areas for which such devices would have been required by the previous draft permit. However, these cost estimates are not supported by the experiences of the City of Los Angeles, which as noted in the fact sheet, intends to install such devices in the entire City of Los Angeles (with an area roughly comparable to the area to be covered by the Bay Area permit) for \$72 million.	Noted.	
US EPA	9	C.10.	Trash Control	We recognize that in Los Angeles the requirements are being driven by TMDL requirements and similar requirements have yet to be developed for the Bay Area. However, the fact sheet for the Bay Area permit provides good support for the need for additional controls to reduce trash in Bay Area waterways, and the regulatory basis for the additional controls. Further, the San Francisco Bay Regional Board's draft 303(d) list	The Final TO revision of Provision C.10 contains a requirement for 40% reduction of Trash Loads for the baseline by July 1, 2014. The Long Term Trash Load Reduction Plan must propose a strategy to achieve 70% reduction by 2017 and cleanup and abatement of trash impacts to waters by 2022.	

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				<p>includes a long list of waters (the Bay shoreline and 24 tributaries) impaired for trash, which may well lead to TMDLs for trash in the near future. Given the accomplishments thus far in the Los Angeles area, and the data provided to the Regional Board that justified the draft 303(d) listings, we believe that setting a percent load reduction over each year of the permit life for all proposed listed waterbodies, at a minimum, would be necessary for compliance with the requirements for trash control to the maximum extent practicable (MEP) of section 402(p)(3)(B) of the Clean Water Act. We believe that the proposed "hot spot" identification and methodology in the draft permit language is unnecessary and not based on already identified impairment. We encourage trash control efforts in commercial and industrial areas in addition to the waterbodies identified on the draft 303(d) list as impaired for trash.</p>		
US EPA	10	C.10.	Trash Control	<p>Moreover, trash-control requirements in the previous MS4 permit were not completed, and thus it may be yet more compelling for the permittees to take more direct implementation actions to achieve reductions in loadings. This could be an optimal time to put in place already-tested</p>	Noted.	

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				methods from others and have a successful approach in place well before future trash TMDL adoption.		
CA Senator Leland Yee	4	C.10.	Trash Control	Specifically, I believe that the highest priority during the upcoming permit's five-year permit period should be to reduce the amounts of trash and litter that are reaching local waterways through stormwater conveyances.	Noted. Trash Load Reduction is a major priority in the Final TO.	
Carlino, Tom	1	C.10.	Trash Control	I would like to comment for the upcoming discussion on standards for trash in the Bay Area waterways. I have been a contributor of photos of some of the trash hot spots to Save the Bay and I have some recent updates of one particularly bad spot that I would like to bring to your attention to graphically illustrate the seriousness of the problems. I think that viewing the photos will make it clear why I am in favor of badly needed cleanup, much higher standards and strong enforcement. The area is along the east bank of Coyote Creek north of Bailey Avenue at the north end of Coyote Valley. In more than 2 years since I first documented the site there has been no change, and it appears to me now that the extent of the trash is much greater than I had originally believed. Attached are recent photos taken on	We agree that trash impacts to receiving waters is a major problem in the region. The Final TO includes major enforceable actions to reduce trash loads.	

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File	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
				<p>Mar 8, 2009.</p> <p>Attachments: Six Photos of Coyote Creek at Bailey Avenue **not included here**</p>		
Dublin	13	C.10.	Trash hotspots	<p>Under the Permit, the City of Dublin would be required to identify four (4) trash “hot spots” and develop measures to abate trash in these areas, as well as treat 30% of its’ commercial/ retail area with full trash capture devices. The City participated with several other local agencies in Alameda County in a pilot trash assessment study. Based on this study, as well as ongoing business inspections and discharge response, staff has identified a number of sites that marginally meet the Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPP) “hot spot” criteria of 100 pieces of trash per 100’ of creek length, as required in the permit. Nevertheless, the City of Dublin will attempt to meet the Permit requirements for trash reduction in these areas. However, in addition to trash abatement, the Permit requires that the City conduct ongoing surveying, photo documentation, and other monitoring of the sites, and report on the findings each year. The monitoring includes counting of</p>	<p>Reporting requirements have been simplified and trash hot spot assessments have been streamlined in the Final TO revision of the Provision C.10.</p>	

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				individual trash pieces by type, number, and location, as required by the SCVURPPP criteria. Based on the pilot trash assessment that was completed in 2008, survey of trash problem areas can be completed in ways that are far less time intensive than detailed counting of trash pieces, and the reporting requirements can be less rigorous without compromising cleanup efforts.		
Dublin	14	C.10.	Long Term Trash Management Plan	<p>Furthermore, the requirement for development of a Long Term Trash Management Plan by 2013 with the goal of “no” impacts to beneficial uses needs to be realistic in terms of municipalities’ ability to control trash. Based on the pilot trash assessment, the City found that the source of trash in waterways was more often than not due to random littering, windblown from other locations, or generated from freeways or school sites (over which the City has no code enforcement authority), as opposed to direct transport to the waterway by a storm drain. It is not appropriate that Permit compliance is dependent upon a municipalities’ correction of a problem over which it does not have full control.</p> <p>The added cost of the reporting</p>	<p>We agree that to the extent such trash impacts are not related to the MS4, they cannot be required to be abated under the Final TO. However, efforts to reduce such impact on waters could be credited under the Trash Load Reduction Tracking Method.</p> <p>The reporting has been streamlined in the Final TO, the requirement for a Long Term Trash Load Reduction Plan remains.</p>	

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				requirements for abating trash “hot spots” is estimated at \$2,000 per year. The cost of developing the Long Term Trash Management Plan is estimated at over \$8,000.		
Friends of Five Creeks	6	C.10.	Trash	This next cause appears to be trash. Others will comment in detail on the proposed measures to curb trash pollution. I will only say that, as with low-impact development, the Board should not adopt a cumbersome framework, vague long-term goals, and weak actual requirements and then move on thinking that the job is done.	We believe the framework is simple, the long term goals are clear, and the actual requirements are strong and straightforward.	
Hayward	2	C.10.	Trash Reduction	One major concern is the trash reduction component of the MRP, found in Provision C.10. The City recognizes that litter is a pervasive environmental problem and the City continues to make strides in its efforts and commitment to reduction of trash. The City appreciates the Board’s acquiescence in removing the rigid requirements of the Enhanced Trash Management Control Measures, replacing it with the more flexible menu of Trash Source Reduction management tools. Cost-effective measures such as public outreach should also be included as optional tools. The requirement to conduct	The Trash Hot Spot assessments have been streamlined to allow recording of volume and dominant types of trash cleaned up in the Final To revision of Provision C.10.	

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				trash assessments at trash hot spots, as per the prescribed methodology, dedicates staff resources that can be better utilized elsewhere. At a minimum, the City recommends documenting the weight of trash collected versus tabulating the number of individual pieces of trash deposited in these hot spots.		
Hayward	3	C.10.	Trash reduction	Further, the requirement to install full trash capture devices on a catchment area equal to 30% of Retail/Wholesale Commercial Land is of significant concern to the City. These structural devices are very costly to install and maintain.	Grant funds have been secured to assist with early installation of trash capture devices. The requirement is phased to July 1, 2014 to allow time for funding development.	
Hayward	4	C.10.	Trash Capture	In addition, the requirement of full trash capture devices to screen materials 5 mm in size poses significant flood risks when these devices become obstructed with leaves or debris during storm events.	The full trash capture devices are designed with overflow bypass features to prevent flooding.	
Hayward	5	C.10.	trash hot spots	Finally, determination of the number of trash hot spots and area required to drain to full trash capture devices is determined by Association of Bay Area Governments (ABAG) 2005 land use statistics. The City has found significant disparity between ABAG 2005 land use data and City records documenting retail/wholesale commercial land acreage statistics.	If the Permittee can present and document the sound basis for correction of this discrepancy, we can consider revising the acreage figure.	

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Livermore	13	C.10	Trash Reduction:	<p>This provision also requires that permittees identify “Trash Hot Spots”. Permittees must identify one “hot spot” per 100 acres of Retail/Wholesale Commercial Land as defined by ABAG 2005 Land Use Statistics. The “hot spots” must be at least 100 yards of creek length and spaced no more closely than ¼ mile from each other. By February 1, 2010, permittees must report the following: (1) Hot Spots’ Name/Location, and (2) Submit 4 photos documenting each hot spot’s upstream, downstream, and midstream conditions. These “Trash Hot Spots” will be posted on the Board’s website for public comment. By July 1, 2012, permittees shall achieve the “Trash Action Level” as defined as the Urban Optimal Level from SCVURPPP. Thus, permittees will be required to maintain these sites so that there exist less than 100 pieces of trash per 100 ft. of assessment reach and no visual impact from trash.</p>	Noted.	
Livermore	14	C.10.v.ii.	Trash Source Reduction:	<p>This provision requires permittees to take efforts to adopt, strengthen, and increase enforcement of local laws governing solid waste and litter. If permittees adopt significant laws (i.e. plastic bag or Styrofoam product bans) by 2012, the trash capture device</p>	Noted. This sub-provision has been removed from the Final TO revision of Provision C.10. If Permittees do enact these types of trash source control measures (ordinances or laws reducing trash and litter), credit can be	

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				requirement can be reduced from 30% to 20%.	proposed under the Trash Load Reduction Tracking Method, which the Permittees will propose in 2012.	
Livermore	15	C.10.b	Trash Source Reduction	<p>This provision requires permittees to utilize the SCVURPPP “Urban Rapid Trash Assessment” model to assess “Trash Hot Spots” twice per year at the beginning and end of the dry season commencing Summer 2009.</p> <p>The entire C.10 Trash Reduction provisions place significant financial burdens on the City in terms of capital costs (installation of trash capture devices), operational costs (trash capture device service and maintenance), increased record-keeping costs, and represents an ineffective and inefficient use of staff time to inspect creeks to count and categorize trash. Furthermore, the installation of devices which screens materials 5 millimeters in size poses significant risks in terms of flooding and damage to private property, as well as associated financial liabilities, when these devices become obstructed with leaves or debris during normal storm events.</p> <p>Provision C.10 is unrealistically ambitious and fails to recognize the</p>	<p>The RTA and Urban RTA are no longer required for Trash Hot Spot assessment in the Final TO.</p> <p>We disagree that the requirements of revised C.10 are ineffective and inefficient. Revisions in the Final TO simplify the requirements, and place great flexibility in the hands of the Permittees to effectively reduce trash loading within their jurisdictions.</p> <p>Grant funds have been secured to assist with early installation of trash capture devices. The requirement is phased to July 1, 2014 to allow time for funding development.</p> <p>The trash capture devices are designed with overflow bypasses to prevent flooding.</p> <p>The 2022 target for achievement</p>	

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				<p>last 40 years of anti-littering efforts that have been unable to eliminate this societal problem. The Regional Board itself acknowledges that this provision will not effectively reduce trash or improve water quality as indicated by the following quote which prefaces this provision in the Tentative Order:</p> <p>”The actions required in this 5-Year permit term are unlikely to eliminate the impact of trash or beneficial uses or achieve the Basin Plan Water Quality Standards for this pollutant.....” (C.10.a)</p> <p>While removing all trash from our creeks is a noble goal, it is simply not one that municipalities can afford at this time, and there is great uncertainty whether our communities would be willing to support with increased funding when asked.</p> <p>Costly requirements that are known to be ineffective, such as the C.10 Trash Provision, must be removed from the Tentative Order.</p>	<p>of abatement of trash impacts to receiving waters is achievable, as the major challenges are implementation of known workable solutions in the trash source areas of each Permittee’s jurisdiction. While littering and trash production may continue to occur, keeping it out of waters is a more narrowly defined goal.</p>	
Millbrae	15	C.10.	Trash Control	<p>The permit proposes a trash clean up (action) level for what it terms trash hotspots that should be expressed as a goal and not an inflexible mandate because of uncertainty about what</p>	<p>The TAL has been removed from the Final TO.</p>	

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				levels of trash reduction are needed to protect beneficial uses and what levels are reasonably achievable.		
Millbrae	16	C.10.	Trash Control	The requirement to install full capture devices on 30% of the ABAG 2005 Retail/Wholesale Commercial Land Use area is too ambitious at this stage. The installation of full capture on 20% of this land use is a reasonable level of implementation as part of what the permit characterizes as an initial pilot scale deployment.	In our judgment, 30% of Retail/ Wholesale Commercial Land is a relatively small segment of trash and litter generating urban land, so should not be further reduced.	
Newark Mayor	2	C.10.	Trash Control	It also requires co-permittees to implement costly but ineffective trash controls that may adversely impact flood control protection. These controls would require a constant level of maintenance that local jurisdictions cannot afford to provide.	Trash capture devices are effective, and the cost for installation and maintenance is reasonable (See Fact Sheet Provision C.10). The trash capture devices have overflow bypass features to prevent flooding.	
San Mateo	9	C.10.	Trash Control	We believe the permit should not be used to address trash and litter in creeks from direct dumping and littering and wind transport, as these sources are outside the definition of a "municipal storm sewer system" as defined in the Federal Clean Water Act. The City would continue to clean up these deposits as we always have.	We agree that to the extent such trash impacts are not related to the MS4, they cannot be required to be abated under the Final TO. However, efforts to reduce such impact on waters could be credited under the Trash Load Reduction Tracking Method. The reference in question is not in the Final TO revision of Provision C.10.	
San Mateo	10	C.10.	trash clean up	The permit proposes a trash clean up	The TAL has been removed from	

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			(action) level	(action) level for what it terms trash hotspots that should be expressed as a goal and not an inflexible mandate because of uncertainty about what levels of trash reduction is needed to protect beneficial uses and what levels are reasonably achievable.	the Final TO.	
San Mateo	11	C.10.	full capture devices	We believe the requirement to install full capture devices on 30% of the ABAG 2005 Retail/Wholesale Commercial Land Use area is too ambitious and does not guarantee meaningful trash reduction. As indicated above, direct littering and dumping into waterways can be a more significant source. We concur with the countywide Program comments that the installation of full capture on 20% of this land use is a reasonable level of implementation as part of what the permit characterizes as an initial pilot scale deployment.	In our judgment, 30% of Retail/ Wholesale Commercial Land is a relatively small segment of trash and litter generating urban land, so should not be further reduced.	

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Campbell	2	C.11/C.12	Phase in provisions	The MRP's proposed requirements for polychlorinated biphenols and mercury should be phased in more gradually and over a longer period of time than what is currently proposed.	<p>The requirements for these pollutants are intended to result in reduction of loads, eventually sufficient to meet TMDL load allocations. Requirements are taken or derived from TMDL implementation plans. Pilot scale implementation represents an appropriate beginning to this endeavor. However, in view of the fact that these load allocations must be met within 20 years, phasing in pilot projects is simply an inadequate level of effort. The pilot projects required in the permit must be implemented this permit term so we can gain experience. It is very likely that even more effort will be required in subsequent permit terms.</p> <p>We have provided additional time to complete certain elements of several C.11/C.12 provisions.</p> <p>We acknowledge that all pilot projects may not be completed by the 2013 Annual Report, but it is critical to report on progress and lessons learned in this report to inform actions in the subsequent permit.</p>	<p>We provided an additional year to develop training program for C.12.a. We provided an additional year to report on current regulations for C.12.b as well as an additional year to prepare the final report for this same provision. We provided an additional year to identify candidate drainages for C.11.c/C.12.c as well as an additional year to complete the surveys for these drainages. We provided flexibility in the early components for C.11.d/C.12.d and provided an additional year to identify candidate locations and treatment types for C.11.e/C.12.e.</p>
FSSD	27					
SMCWPPP	8					
Suisun City	27					
Sunnyvale	8					

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Campbell	3	C.11/C.12	Reduce or delay	New requirements for water quality monitoring, special studies, and pilot projects need to be reduced or delayed.	See response to Campbell comment 2.	
Mountain View	14	C.11/C.12	Defer actions	<p>The investigation and abatement requirements in the Regional Permit would require significant staff and budget and most likely would need to be conducted by professionals with specialized training investigating these sites.</p> <p>The City believes that completion of the activities to address legacy pollutants should be deferred until subsequent municipal storm water NPDES permits, which will allow municipal agencies to complete higher-priority tasks.</p>	See response to Campbell comment 2.	
NRDC & Baykeeper	58	C.11/C.12	Include allocations	<p>Once a TMDL has been adopted, NPDES permits are required to include WLAs and contain effluent limitations and conditions consistent with the assumptions and requirements of the TMDL from which they are derived. (40 C.F.R. §122.44(d)(1)(vii)(B).) However, nowhere in the Tentative Order is there any reference to specific</p>	The fact sheet states the aggregate and individual mercury WLAs for stormwater programs. The PCBs TMDL has not yet been approved by the State Board or USEPA so there are no applicable WLA yet in force.	

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				<p>WLAs for the two TMDLs that apply to the Permittees, nor is there any evidence to show that the Tentative Order has been drafted consistent with the requirements of the TMDLs.</p>		
NRDC & Baykeeper	58	C.11	Insufficiency of provisions	<p>The Tentative Order never references any controls to achieve WLAs or reduce mercury-related risks. However, Provision C.11. fails to require, or provide substantiation for, any specific control measures designed to meet the requirement above, granting instead almost unfettered discretion to the Permittees and requiring little more than the preparation of numerous plans and studies identified as “additional requirements for urban runoff management agencies” by the TMDL.</p> <p>The U.S. Environmental Protection Agency has recently stated that a permit should “explicitly state that the wasteload allocations (WLAs) established by . . . TMDLs are intended to be enforceable permit effluent limitations and</p>	<p>The TMDL provides a time period of 20 years to achieve the load allocations. Therefore, the mercury control measures, in total, required through this permit do not have to result in achievement of the allocations. We disagree with the commenter’s statement of the permittees having almost unfettered discretion regarding compliance with the permit requirements. On the contrary, there are measures of expected effort for every provision. The sum total of actions in provisions C.11 and C.12 represents a substantial level of effort and expense and a strong beginning toward achieving the load allocations in future permit terms. Finally, there is no requirement to employ the urban runoff load allocations as enforceable effluent limitations.</p>	

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				that compliance is a permit requirement.”		
Palo Alto Santa Clara County SCVURPPP BASMAA attachment SCVWD BASMAA FSSD CCCWP Sunnyvale West Valley Clean Water Program ACCWP Berkeley attachment 1 Newark Oakland Oakland attachment 1 Berkeley Contra Costa Board of	15, 16 26 7, Attachment A 56 72 16 60 33 39, 49 55 12 67 67 21 12 67 20 49	C.11/C.12	Combine C.11/C.12	Combine C.11 and C.12 into one provision to eliminate duplication and inconsistencies.	There are some benefits to combining these provisions, but drawbacks as well – especially as these provisions are adapted in future permits. And, there are elements that currently only apply to mercury or only to PCBs so combining provisions will be unwieldy in this respect. Our preference is to leave them separate and ensure consistency as much as possible. We have endeavored to remedy any inconsistencies between the two provisions.	

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Supervisors attachment SMCWPPP	89					
Palo Alto	17	C.11.c-f /C.12.c-f	Fewer retrofits and pilots	Due to the unknown effectiveness and pilot nature of retrofits, we request that the number of locations be reduced from 10 to 4 throughout the Permittee's jurisdictions (regional) and language be added to allow existing treatment systems to be utilized where applicable. Commenters also want number of all pilot projects in C.11 and C.12 reduced to 4 throughout the region.	There are three lines of argument supporting the level of effort required in the revised TO. First, POCs have been identified as a high priority for this permit so aggressive efforts here are warranted. Second, a large number of pilot projects need to be implemented during this permit term so that we have an opportunity to learn about technical details, costs, benefits and feasibility. Third, there needs to be early and sustained progress toward achieving TMDL load allocations. There is sufficient information available to allow Permittees to identify 5 suitable locations to implement pilot projects for C.11.d/C.12.d and 10 suitable locations to pilot test retrofits (C.11.e/C.12.e) throughout the entire Bay Area . Because there are several types of treatment retrofits, it is important to have multiple instances of these types of solutions so we gain experience. Scaling back the effort as suggested jeopardizes progress toward achieving load allocations in 20	We have provided some flexibility in timing as mentioned in response to Campbell comment 2. We have also provided some flexibility in provision C.11.e/C.12.e in that 2 of the 10 treatment systems to be evaluated can be pre-existing such that now 8 must be newly installed.
Santa Clara County	27					
CCCWP attachment	41, 43					
BASMAA attachment	64, 67, 69					
SCVURPPP	7, attachment A 60, 62					
FSSD	37, 38, 39					
Pacifica	29, 31					
San Pablo	11					
SMCWPPP	91, 95, 97					
ACCWP attachment, Berkeley attachment and Oakland attachment 1	74, 75, Attachment 1 78, 79, Berkeley attachment 1 comment 75, Oakland attachment					

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	1 comment 75, 78, 79				years.	
Contra Costa Board of Supervisors attachment A	50					
Palo Alto	18	C.11.f/C.1 2.f	Diversion	Proposed conditions require that a feasibility study on the diversion of dry weather and first flush flows to the sanitary system be conducted, and require implementation of a flow diversion pilot without regard for results and findings of the feasibility study. It is clear from even preliminary exploratory discussions that any potential storm water Diversion to the sanitary system will pose significant engineering, regulatory, financial, legal and institutional challenges. Therefore, we request that during this permit term a feasibility study be conducted and requirements in subsequent permits consider the findings of the feasibility study prior to requiring implementation of dry weather or first flush diversions.	We acknowledge that full scale diversion of stormwater has many challenges. This is why the TO calls for pilot scale implementation as a means to evaluate these challenges. Individual co-Permittees have, in the past, applied for state grant funding to implement a flow diversion project. We therefore can conclude project proponents had already confirmed feasibility of the project. Otherwise, they would never have applied for state resources to carry it out. We are likewise confident that there will be other feasible locations in the Bay Area where flow diversion can be implemented. Because TMDL load allocations must be achieved within 20 years, it is not appropriate merely to explore feasibility of control options during this permit term. Pilot tests must be conducted this permit term so	
Santa Clara County	27					
Pacifica	30, 32					
San Mateo	12					
ACCWP attachment 1, Oakland attachment 1	81					
SCVURPPP	7, attachment A 63					
West Valley Clean	14					

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Water Program					we can gain knowledge about the role of such retrofits in the overall strategy for pollutants of concern.	
SMCWPPP	99					
Burlingame	9					
Millbrae	17					
Sunnyvale	56					
San Jose	5				Numerous parties submitted similar comments on the original TO. Please see responses to the following comments from the original TO: SMCWPPP 15 and 16, Hayward 6 through 8, Santa Clara 2, and San Jose attorney 10, 24, and 76. See also the response to Palo Alto comment 18 on this revised tentative order.	
SCWWD	17	C.11/C.12	Diversions	Commenters request that more time be allowed for coordination with POTWs on this issue, that additional time be allowed for implementation of the feasibility study, and that subsequent requirements for implementation be contingent on the findings of the feasibility study.		
San Jose attachment A	25	C.11.e/C.12.b/C.12.e	Criteria for pilots	The City believes that a superior approach would be to base the location and number of sample sites on more objective, science-based considerations of variability, costs, and certainty needs.	This is identical to a comment submitted on the original tentative order. See response to San Jose comment 73 on the original TO.	
San Jose attachment A	26	C.11/C.12	Do feasibility	Implementation of diversion must be contingent on the results of the feasibility evaluation. This provision does not follow a logical course of action and is inconsistent with TMDLs. It assumes that	These comments are also identical to ones submitted on the original TO. Please see responses to San Jose Attachment A comment 25 above as well as our responses to comments received on the original TO cited in our response to San Jose comment 5	

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				<p>feasible opportunities for diversion to pump stations will be found in all counties, although we have little reason to believe that this is true. The City is committed to reducing the delivery of PCBs and Mercury to receiving waters in keeping with TMDLs, including possible diversions to the sanitary system when feasible, however we also believe that significant risk of non-compliance exists within these provisions as written if no or too few feasible diversion opportunities are found.</p> <p>The provision is inconsistent with the PCB TMDL. The TMDL states that opportunities for targeted diversions should be investigated, pilot tested and implemented where feasible, and further states under Regulatory Analysis (page 93): "No specific project to route stormwater to a wastewater treatment plant is currently required." Any such evaluation should be advanced methodically and specific requirements for diversion should be contingent on the</p>	<p>above.</p>	

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				results of the feasibility evaluation.		
SCVURPPP attachment A	57	C.11/C.12	Phase in	Based on cost estimates, it is clear that prioritizing and phasing these requirements over several permit terms is absolutely necessary. Thus, we have geared our suggested comments below and the redline/strike-out (see Attachment B) to address our concerns.	We consider the cited Attachment B as supplementary material and not comments requiring individual responses. Regarding suggestion of phasing in, see response to Campbell comment 2.	
SCVURPPP attachment A	58	C.11/C.12	Dates	The Water Board staff has not updated the dates in many of the provisions from the December 2007 TO. In Attachment B (redline/strike-out) we have included reasonable updates to the dates contained in the February 2009 Revised TO that are consistent with the time frames anticipated.	We have indeed updated the dates in an appropriate manner. We consider the cited SCVURPPP Attachment B as supplementary material and not comments requiring individual responses.	
CCCWP	50					
FSSD	35					
SCVURPPP attachment A	61	C.11.d/C.12.d	Do feasibility first	We request revision to specify an initial feasibility study and cost analysis of enhanced sediment management practices, including street sweeping, using existing information. This requirement should further be revised to require pilot testing of appropriate enhanced sediment	Making these requirements contingent on results of a feasibility study and cost analysis is not an acceptable level of accountability. Such an approach is not consistent with the efforts needed to address these pollutants of concern to achieve TMDL load allocations. There is already a good deal of information available about what practices to pilot and	

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				management practices (selected based on the results of the feasibility study) in no more than four drainages.	where to pilot them, and it is time to do pilot studies. See also response to Campbell 2.	
West Valley Clean Water Program	13	C.11/C.12	Reduce Pilots	Reduce the number of regional pilot projects and investigations and add language such that existing treatment systems can be utilized where applicable.	See response to Palo Alto 17.	
San Jose Attachment A	27	C.12.b	Demolition Wastes	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	This is identical to comment 79 submitted by the same party on the original TO. See response to that comment.	
San Jose Attachment A	28	C.12.b	Demolition Wastes	The City requests that explicit mention of ongoing grant-funded projects 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.	This is identical to comment 80 submitted by the same party on the original TO. See response to that comment.	

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San Jose Attachment A	29	C.12.e	Treatment retrofits	<p>This requirement may conflict with results of the technical and economic feasibility assessment if assessment recommendations do not “span treatment types and drainage characteristics.”</p> <p>The City requests adding “as possible within the constraints of the feasibility assessment outcomes in C.12.e.i.”</p> <p>Moreover, each county is now expected to do at least one, regardless of the outcome of the feasibility study. Requirements for implementation should be contingent upon the outcome of that study.</p>	<p>This is identical to comment 81 submitted by the same party on the original TO. See response to that comment.</p>	
SCVURPPP attachment A	59	C.12.b	Demolition Wastes	<p>– As written, the requirements for these pilot projects are overly prescriptive and do not allow for consistency with the scope and stakeholder process of an ongoing Proposition 50 grant-funded project that addresses the objectives of this provision. We request that these requirements are replaced with a requirement that BASMAA continues to participate in the Proposition 50 project as a stakeholder and project partner. In addition, it is extremely</p>	<p>This is essentially identical to comment 75 submitted by this party on the original TO. Please refer to that response.</p>	

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				<p>important to note that the sampling required by this subprovision could possibly lead to immediate abatement orders to protect human health at some sampling sites. This possibility will make it difficult or impossible to obtain permission to sample due to the potential liability to property owners. The Proposition 50 project is currently working with EPA and other parties to explore ways to resolve this issue, but an easy resolution is not anticipated. It is possible that any program to identify and abate PCBs in buildings will initially be driven by on-site human health risks rather than water quality concerns.</p>		
BASMAA attachment	61, 73	C.12	Quantify loads	<p>All references to quantifying pollutant loads and/or loads avoided should state "prepare quantitative estimates of loads and/or loads avoided" or something similar</p>	<p>The existing language communicates the intent adequately as written.</p>	

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BASMAA attachment	74	C.12.b	Less Prescriptive	Revise provision to be performance-based and much less prescriptive (i.e., it should state the required outcome and when it needs to be accomplished by, but it should not prescribe the exact methods and schedule for each step along the way) as this will facilitate coordinating this provision with the Proposition 50-funded "Taking Action for Clean Water" project, since the methods and schedule for the Proposition 50-funded project will largely be developed during its implementation through a stakeholder/advisory committee process	The virtues of the current phrasing of the provision (accountability in content and timing) outweigh purported benefits of the suggested changes. Prescribing our expectations for the nature of the provision and the pace of its accomplishment <i>is</i> a specification of expected performance.	
SMCWPPP	90					
BASMAA attachment	75	C.12.b.iii	Change Dates	Dates should be one year later.	We will provide an additional year for the report on the evaluation of current regulations and will provide an additional year to submit the final report on pilot program effectiveness evaluation. All other reporting dates remain unchanged.	We will provide an additional year for the report on the evaluation of current regulations and will provide an additional year to submit the final report on pilot program effectiveness evaluation.
ACCWP attachment, Berkeley attachment 1, Oakland attachment 1	73					

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File	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
BASMAA attachment	66, 76	C.12.c	Permittee responsibility	Delete last sentence "Permittees are responsible for contaminants located on public rights-of-way and the stormwater conveyance system." as unacceptable language to state that permittees are solely responsible for contaminants located on public right-of-way and in the stormwater conveyance system	The language is factually correct as written and purposeful. The language does not say "solely responsible". It may be true that other parties may have a role to play in addressing the origin of the pollutants when that origin is on private property. This fact is even explicitly stated in this provision.	
CCCWP attachment	42					
BASMAA attachment	77	C.12.c	Jurisdiction	Change language to eliminate phrase "under their jurisdiction" as this could refer to private properties located within a city that are not necessarily owned by that city	Language earlier in this provision has been clarified as to where permittee responsibility concerning contaminants on private property. The suggested edit is not necessary.	
SMCWPPP	94					
BASMAA attachment	68, 78	C.12.d.iv	Delete Provision	Delete provision as the PCBs TMDL Basin Plan Amendment specifies that PCBs actions during the five-year permit term should consist of cost-effective pilot studies, not implementation actions.	The commenter's interpretation that the meaning of "pilot project" does not include actually implementing the pilot project is inconsistent with the commonly understood meaning of pilot project. See also response to Palo Alto comment 17 above.	
Contra Costa Board of Supervisors attachment A	48	C.12.a.ii	Unreasonable Provision	It is unreasonable to refer locations of PCBs or PCB-related equipment to state agencies. Any Pacific Gas & Electric corporation yard or substation has transformers that may contain PCBs. There is little to be gained from making	This Provision is about far more than referring locations of PCBs to state agencies. We encourage the commenter to read the provision more carefully and consult the local stormwater program for background on how these types of sites may contribute to water quality impairment.	

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				such reports when these locations that may have reasonable presence of PCB containing equipment can be located by industry type or hazardous waste manifests already being routinely sent to DTSC for tracking purposes.		
Contra Costa Board of Supervisors attachment A	50	C.12.h	Do work under RMP	Fate and Transport Project in particular is more appropriate if undertaken by the RMP.	See response to CCCWP attachment, comment 58 concerning provision C.14.	
CCCWP attachment	48					
FSSD	36	C.12.b	Too Prescriptive	As written, the requirements for these pilot projects are overly prescriptive and do not allow for consistency with the scope and stakeholder process of an ongoing Proposition 50 grant-funded project that addresses the objectives of this provision. We request that these requirements are replaced with a requirement that BASMAA continues to participate in the Proposition 50 project as a stakeholder and project partner.	This comment is nearly identical to SCVURPPP comment 75 on the original TO. See response to that comment.	
ACCWP attachment, Berkeley attachment 1, Oakland attachment 1	71					

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Pittsburg	12	C.12.e	DTSC Permits	Removal of PCBs via on- site retrofit of existing storm drain systems may require permitting through the Department of Toxic Substances Control.	If levels of PCBs captured in on-site retrofits are high enough to require oversight and permitting by DTSC, then you will be removing large quantities of PCBs and making good progress toward achieving the load allocation.	
SMCWPPP	92	C.11.c/C.1 2.c	Permittee Authority	Modify the permit to state that the permittees will attempt to identify private properties that may be contributing to contamination of their MS4s, and will forward this information to the Water Board staff, and as appropriate other authorities, for their use in investigating and remediating potential contamination sources.	The suggested wording (“will attempt to identify”) could be satisfied by permittees by sending an email or letter to a private property owner. This would be an inadequate accountability mechanism for ensuring cleanup of contaminated sites.	Permit language has been edited to clarify how permittees may carry out their responsibilities for contamination found on private property.
Brisbane	16					
Pacifica	34					
San Mateo	13					
Millbrae	18					
Burlingame	10				However, the permit language can be clarified regarding permittee responsibility for either doing clean-up or by notifying authorities.	
SMCWPPP	93	C.11.c/C.1 2.c	Permittee Responsibility	The permit states that municipalities are responsible for contamination located on public right-of-way and the stormwater conveyance system. Contamination may occur on these properties that has not resulted from any actions by the municipalities, and the permit should not assign municipalities this responsibility. Delete language from the permit that states: “Permittees are	By the logic of this comment, stormwater programs should be allowed to discharge wastes at any level whatever as long as the contaminants were not the direct result of actions by the permittee. This is a problematic interpretation of state and federal water quality regulations governing permitted discharges. There are virtually no cases in which the bulk of contaminants in stormwater discharges is due to the actions by	

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				responsible for contaminants located on public rights-of-way and the stormwater conveyance system.”	municipalities. Nevertheless, permittees have an affirmative responsibility for the presence of those contaminants in stormwater.	
SMCWPPP	96	C.11.d/C.1 2.d	Pilot	The permittees should not be required to implement projects that are more than pilot scale unless it is demonstrated that this will make sense. A date for implementation should not be set in the permit because the pilot scale projects may determine that the benefits of removing sediment are not worthwhile.	This comment can be addressed by the response to Palo Alto comment 17.	
SMCWPPP	98				We acknowledge that all pilot projects may not be completed by the 2013 Annual Report, but it is critical to report on progress and lessons learned in this report because one of the chief motivations of doing the pilot projects during this permit term is to inform actions in the subsequent permit.	
Pacifica	33	C.11.e/C.1 2.e	Dates	The permit should be modified to require that progress on the pilot project be described in the 2013 Annual Report and that the final report be completed and submitted on the same schedule as the 2014 Annual Report.	It will not be satisfactory or helpful to receive the final report on these pilot projects until after the next permit should be adopted. This does not allow enough time to review results and craft appropriate provisions for the next permit term,	

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SMCWPPP	100	C.11.h/C.12.h	Fate and Transport	Modify the permit to include a clear description of the questions that these studies need to address. In addition, the permit should state that the types of studies needed will be handled through the existing financial contributions to the Regional Monitoring Program.	The permit contains sufficient details as to the categories of questions to be addressed. This provision comes directly from mercury and PCBs TMDLS so much more background can be found in those reports. Regarding suggestion of doing work through RMP, see response to CCCWP attachment, comment 58 concerning provision C.14.	
SMCWPPP	101	C.11.i/C.12.i	Risk Reduction	The permit's task description has broadened the scope of the work to include reducing mercury related risks to humans. This contrasts with the pervious draft permit that focused on reducing risks from consuming bay fish. The previous focus on reducing risks from consuming bay fish should be restored, and this change is consistent with the description of the task contained in section ii.	This Provision was re-written to be identical to language already appearing in NPDES wastewater permits and is consistent with the mercury and PCBs TMDLs implementation plans.	
BASMAA attachment	71	C.11.i	Risk Reduction	Focus scope on public education efforts that reflects the recent discussions with Water Board staff and approach described in the BACWA status report.	See response to SMCWPPP 101.	

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SMCWPPP	102	C.11.i/C.12.i	Risk Reduction	Modify the permit to allow permittees to comply with this task by participating in regionwide public outreach and education efforts conducted in cooperation with other agencies, such as BASMAA, BACWA, Water Board staff, and WSPA, to address risks from consuming bay fish.	The permit already explicitly allows collaborative efforts and thus provides adequate flexibility in this respect.	
ACCWP attachment 1, Oakland attachment 1	82					
ACCWP	22	C.11/C.12	Various	We request the Provisions C.11 and C.12 be combined into one provision to make it clear what is required. We also request that it be made explicit that a pilot project can be credited towards more than one provision (for example, a pump station diversion project could be credited toward both C.12.d and C.12.f.) and that ongoing projects such as the Ettie Street Project could be credited toward completion of the required pilot projects.	See response to Sunnyvale comment 55 regarding combining provisions. There may be cases when C.12.f projects may be credited toward satisfaction of C.12.d requirements. But, this is not universally true. There is currently no language in the permit that precludes such double credit for a diversion project.	
Berkeley	20					
Oakland	12					
Newark	21					

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ACCWP attachment, Berkeley attachment 1, Oakland attachment 1	69	C.12.a	Region Wide Implementation	<p>Per our previous comments, we disagree with the Fact Sheet assertion that “there is enough experience and/or background knowledge” to go directly to region-wide implementation. This is inconsistent with the Basin Plan Amendment recently adopted for the PCB TMDL which states “in the first five-year permit term, stormwater Permittees will be required to implement control measures on a pilot scale to determine their effectiveness and technical feasibility.” The Water Board appears to be attempting to mandate local agencies to circumvent existing hazardous waste laws such as RCRA & CIRCLA at the federal level and CCRs at the state level. Building inspectors and stormwater industrial facility inspectors do not have authority or jurisdiction in this area.</p>	<p>This is the only provision implemented region wide, and the implementation consists of training industrial inspectors to look for presence of PCBs. Thus, it is building on a program already in place. The Water Board is not mandating the circumvention of existing hazardous waste laws. Indeed, referral to these agencies upon finding PCBs is explicitly stated.</p> <p>All of the editorial changes suggested by the commenter are totally inappropriate as they intentionally undermine the scope, intent and effectiveness of the provision.</p>	<p>The permittees are expected to develop and report on training program in the 2010 Annual Report and report on continuing training program development as well as the inspections in annual reports thereafter.</p>
San Leandro	23			<p>Revise title of provision to “Conduct Pilot Projects” and make following revisions to text: Section i – Task Description – delete the last sentence “Permittees shall incorporate</p>	<p>We have provided some flexibility in developing the training program.</p>	

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				<p>such PCB identification into industrial inspection programs.” Scope should be limited to a few pilot projects in different communities reflecting the diversity of organizational approaches and experience with inspection and hazardous waste management.</p> <p>Section ii – Implementation Level – delete “document incident in inspection report and” as under the law a CUPA, Environmental Health Inspector or DTSC has no action it can take just because a facility has PCB containing electrical components on its site.</p> <p>Section iii – change to “Permittees shall report successes and failures with training and intra-discipline efforts of expanding knowledge regarding PCB containing materials.</p>		
ACCWP attachment, Berkeley attachment 1, Oakland	72	C.12.b	Editorial	Revise the first sentence of the Fact Sheet to “PCBs were historically used in a variety of building materials...” and revise C.12.b.i Task Description to	This suggested revision does not improve the clarity of the provision. The commenter is fully aware that Permittees will be piggy-backing on work completed through a grant-	

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attachment 1				read "Permittees shall evaluate potential presence of PCBs in legacy construction materials such as caulks and adhesives at construction sites..."	funded project, and there is no confusion about the materials being targeted.	
ACCWP attachment, Berkeley attachment 1, Oakland attachment 1	74	C.11.c	Editorial	C.11.c inconsistent with C.12.c, with inappropriate reference to private property and incorrect section numbering.	We will make the editorial changes suggested.	Edit header of C.11.c to strike word 'private property', and edit roman numerals for sub-elements of C.11.c.
BASMAA attachment	63			If not combined with C.12 per above recommendation, revise title of provision C.11.c to delete the words "private property". Second section numbered i should be ii. Third section numbered ii should be iii.		
ACCWP attachment, Oakland attachment 1	76	C.11.c/C.12.c	Liability	Requirement that Permittees "must ensure that cleanup occurs" is ambiguous and may imply excessive liability for Permittees. The Water Board has no authority via this permit to change federal law enacted via CERLA regarding who is a potentially responsible party due to a release or spill and	The Water Board is not changing federal law through this permit. The permit merely states the responsibility that municipalities already have to manage pollutants in their stormwater infrastructure and public rights-of-way as well as responsibility to ensure that private entities within their geographical boundaries are being managed so as not to be a source of	
BASMAA attachment	65					

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San Leandro	22, 25			<p>contamination. As holders of public lands in trust for its constituency, local agencies who exercise due diligence and perform all appropriate inquiries are actually protected from being named responsible parties. Deleting out the word parties after responsible from the previous draft does not change the context or make this statement legal.</p> <p>c) Revise provision C.11/12.c.ii(1) to reflect limits of Permittees' authority. Delete the last sentence of section ii, "Permittees are responsible for contaminants located on public right-of-way and the stormwater conveyance system.</p>	<p>pollutants to stormwater. Having responsibility to ensure oversight is not the same thing as having liability for the pollutants on private properties. See also responses to BASMAA attachment comment 76 and SMCWPPP comment 92.</p>	
ACCWP attachment, Oakland attachment 1	77	C.11.d/C.12.d	Dates	<p>Final reporting date has been updated in c.12.d.v but other dates for compliance or reporting are unchanged from previous version. This is a concern since it was assumed the initial evaluations would incorporate reports and analyses from the Proposition 13-funded Urban Runoff BMPs project.</p>	<p>See response to Campbell comment 2.</p>	

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				Revise C.12.d.iii and iv so that reporting dates are 1 year later, and to recognize uncertainty in actual availability dates for grant-funded products.		
ACCWP attachment 1, Oakland attachment 1	80	C.11.f/C.12.f	Diversions	<p>The infrastructure and system to cross connect stormwater pump stations to POTWs does not exist and there is no funding to accomplish this.</p> <p>POTWs are designed to treat conventional pollutants; i.e. BOD, TSS, Fecal Coliform and minimal pH stabilization. They are not designed to treat the priority pollutants of concern in this MRP. Hence the very restrictive NPDES limits on the</p>	<p>There will need to be expenditures for infrastructure.</p> <p>The remaining comments are nearly identical to those received by various parties on the original TO. See response to Santa Clara comment 2, and San Jose comments 24, 25 on the original TO.</p>	

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San Leandro	26			<p>POTW discharge and the mandated need for a pretreatment program and local limits implementation. The response to comments stating that it is the intent to use excess capacity of the POTW to treat stormwater appears to have a disconnect with the functional operation of POTWs in order to not violate their NPDES Permits. POTWs in order to meet their effluent limits and remain in compliance, have already allocated all capacities. The only excess capacity in the allocation methodology is a safety factor that the Water Board sets standards for. The only way to add additional capacity is to expand the POTW and the only way to allocate existing capacity to stormwater is completely redevelop local limits, permanently providing allocation to stormwater and permanently removing that allocation from the industrial discharger sector to the POTW.</p>		
ACCWP attachment 1	80	C.11.f/C.12.f	Diversions	<p>“Capacity and effluent limit considerations should be addressed during feasibility</p>	<p>There is no need to add the language regarding capacity and effluent considerations. The language does</p>	

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				<p>assessment component of these provisions. There is no requirement for POTWs to expand their capacity. The intent is to use existing spare capacity where it exists.” We ask that this language also be incorporated in the Fact Sheet along with recognition that capacity limitations other than flow volume, mercury or PCBs may affect feasibility.</p> <p>In addition, C.11/12.ii(1) and/or the Fact Sheet should be modified to emphasize the importance of developing consensus on a consolidated strategy between BASMAA, BACWA, all Permittees and all POTWs during the term of this permit, as the prerequisite to pilot studies.</p>	<p>not preclude such consideration, and it is not necessary to spell out every aspect of the feasibility assessment in every document associated with the permit. This is already implied in the provision itself anyway.</p> <p>Likewise, the permit already states the need to work with the wastewater agencies. It is not necessary to add the suggested language.</p>	
ACCWP Legal Comment	15	C.11.f/C.1 2.f	Diversions	It must be clarified that diversions and pilot projects are only required if the coordination with the relevant POTWs find that such diversions and pilot projects are legally, technically and economically feasible. We request that this be clarified either with additional language	Based on knowledge of planned diversion projects, the Water Board suggests that it will be possible to find 5 pilot diversion candidates in the entire Bay Area region that meet the criteria of feasibility that will be good opportunities for pollutant removal. See also response to Palo Alto 18.	

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				in these provisions or in further responses to comments.		
Alameda City	25	C.12.c	Exempt	This provision should be revised to specifically exempt areas such as former Alameda Naval Air Station (now known as Alameda Point) and the Naval Fleet Industrial Supply Center – Alameda (FISC-Alameda) where the RWQCB, the Department of Toxic Substances Control, and/or other state or federal environmental agencies already have responsibility for overseeing or implementing site remediation efforts for PCBs. Alameda Point and FISC-Alameda are federal facilities undergoing current (and recent) environmental remediation for contaminants including PCBs.	This comment was submitted in identical form on the original TO. See response to comment 25 from this commenter on original TO.	
Newark Attachment	91, 92	C.11.a	Mercury Recycling	Mercury is already regulated in accordance with the universal waste law, which is enforced at the local level by Certified Unified Program Agency (CUPA) staff and at the state level by the Department of Toxic Substances Control (DTSC). It is redundant to place these overly prescriptive requirements	This provision is not at all onerous and provides an excellent opportunity to quantify load reductions that may be credited toward mercury load allocations.	

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				<p>on Permittees.</p> <p>Acknowledge existing regulations and encourage Permittees to coordinate and cooperate with local and state regulators.</p> <p>The requirement to report an estimate of the mass of mercury collected is unreasonable. Mercury is collected at county run household hazardous waste sites and businesses routinely recycle mercury-containing wastes under the Universal Waste regulations implemented by DTSC. Permittees have no way of obtaining or tracking the amount removed from all the sources at the local level.</p> <p>Eliminate the requirement to report an estimate of the mass of mercury collected. Water Board staff should consult with DTSC to determine amounts of mercury waste managed as a universal waste.</p>		
San Leandro	24	C.12.a	Inspection	Since electrical components or	This provision represents a very	

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Pittsburg	11			<p>other equipment containing PCBs are already hazardous waste; it is assumed that the author is try to mandate the development of a program, via this board order, similar to current asbestos or lead based paint identification, containment and abatement programs. Local agencies do not possess the resources or expertise to accomplish this task and it has no place being pushed down to the local level. There are OSHA, employee (site worker), resident or occupant and adjacent property issues that local agencies cannot address. As in the case of asbestos or lead based paint there is a legal process to develop this at the state or federal level to put the force of law in place. Mandating it via this permit is not the legal process and does not involve all the stakeholders. Delete this section or revise to allow for Permittees to collaborate in research and development of knowledge to assist the Water Board in taking lead in developing state wide law commensurate with</p>	<p>modest effort to add a component to the existing industrial inspections whereby inspectors look for PCBs and PCB-containing equipment. This NPDES permit is an appropriate mechanism to require such an effort for PCBs.</p>	

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				Permittees ability to do so.		
U.S. EPA	11, 14	C.11/C.12	WLA's	Pursuant to 40 CFR 122.44(d)(1)(vii)(B), Water Quality-Based Effluent Limits (WQBELs) in NPDES permits must be consistent with the assumptions and requirements of all applicable TMDL Waste Load Allocations (WLA's) approved by EPA. The fact sheet for the permit notes the EPA policy memo of November 22, 2002 which recommends BMPs as the effluent limits for most municipal stormwater permits when complying with TMDLs and the WLA's assigned to MS4 permittees. The policy memo stated that when using BMPs as the effluent limits, the fact sheet needs to demonstrate	Consistent with the TMDLs for these pollutants, this permit requires implementation of Best Management Practices and control measures designed to achieve the load allocations or accomplish the load reductions derived from the allocations. However, this will be accomplished over the course of 20 years. We further note that applying numeric limits for stormwater discharges for the entire Bay Area is highly impractical owing to the immense expense required to determine compliance with those limits. In general, pollutants of concern are attached to sediment particles and mobilized during rain events. Monitoring suspended sediment and associated	

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				<p>that the BMPs are expected to be sufficient to comply with the WLAs. However, given the uncertainties in the performance of many of the BMPs commonly used for stormwater pollution control, it is often difficult to make such a demonstration. As such, for WLAs such as those applicable to the Bay Area MS4s, Region 9 encourages the use of numeric limits because these will provide greater assurance of consistency with the WLAs and will enhance the enforceability of the permit with regards to the WLAs.</p>	<p>contaminants is extremely resource intensive. There are efforts to measure these quantities strategically and ultimately develop robust models of region-wide loading, but it is not practical or useful to regulate according to those load estimates at this time.</p> <p>The permit requirements are consistent with the phased implementation plan of the TMDLs that recognizes current limited knowledge on BMP effectiveness and the need to identify and evaluate BMPs on a permit term basis.</p>	
U.S. EPA	12, 13	C.11	WLAs	<p>It is our position that the permit should include the numeric 10-year and 20-year WLAs for mercury for the MS4s even though the compliance deadlines for these WLAs extend beyond the anticipated term of the permit. In a letter from Region 9 to the State Board and the Regional Board dated October 31, 2007, Region 9 included a guidance memo from EPA Headquarters dated May 10, 2007 which stated that to ensure enforceability of a</p>	<p>There is no 10-year WLA for mercury. The intermediate load reduction goal discussed in the Basin Plan is an interim loading milestone, not a WLA. The WLA needs to be achieved in 20 years. See also response to EPA comment 11.</p>	

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				compliance schedule, a permit must include the full schedule, even if it extends beyond the term of the permit. This will ensure the requirements of the schedule can be enforced even in the event the permit is not reissued in a timely manner.		
Dublin	12	C.12.a	Inspections	The Permit requires that local agencies identify Polychlorinated Biphenyls (PCB's) on private property as part of ongoing clean water business inspections, and coordination with State/ Federal regulatory agencies to facilitate removal of PCB's. Local agency action should be limited to reporting knowledge of potential PCB releases or contamination on private property to the appropriate State and Federal agencies, with abatement of the problem by those agencies.	This Provision presents permittees with an excellent opportunity to take advantage of their ongoing industrial inspection program to potentially prevent releases of PCBs before they occur. See also response to San Leandro comment 24.	
Dublin	12	C.11.i/C.12.i	Risk Reduction	The Permit requires that local agencies develop or participate in a PCB and mercury health risk reduction program for fish consumed from San Francisco Bay. Again, this is an activity that is the responsibility of County, State, and Federal	This comment is nearly identical to comment 50 by ACCWP submitted regarding the original TO. See that response.	

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				public health agencies, and should not be delegated to the local level.		
Hayward	6	C.11.f/C.12.f	Diversions	Another major concern is the requirement to conduct pilot projects to divert discharges from stormwater pump stations to the sanitary sewer, found in Provisions C.8, C.11, and C.12. These requirements assume that local POTWs have the hydraulic and treatment capacity to handle stormwater discharges and the infrastructure in place to carry stormwater to the sanitary sewer, which is far from the case for many local jurisdictions. In addition, wastewater treatment plants are designed to treat biological waste and not the pollutants that the MRP is trying to address with the required diversion pilot projects (mercury and PCBs). Diverting such pollutants to the POTW could affect treatment processes and result in NPDES effluent limitation violations.	This comment is nearly identical to one submitted by the same commenter on the original TO. See response to comments 6-8 by Hayward on original TO.	
Livermore	16	C.11.f	Diversions	The diversion of dry weather stormwater pump station flows fails to acknowledge the technical and legal restrictions	See responses to other comments regarding diversions in this table. There is no contradiction as	

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				<p>on the use of POTW infrastructure and capacity for stormwater. Furthermore, since POTWs are not designed to treat or remove pollutants such as mercury and PCBs, this is not an overall practical environmental solution to this perceived problem. The net result of such a diversion merely results in a media transfer of the pollutant.</p> <p>Also, since Bay Area POTWs are being required to develop mercury reduction plans under the Mercury TMDL for San Francisco Bay, it seems contradictory that POTWs are now being asked to both reduce and accept mercury-containing discharges by separate Regional Board actions. Based on the draft MRP, Livermore will be modifying our mercury control plan for the Livermore Water Reclamation Plant to include a prohibition on dry weather stormwater diversions.</p>	<p>suggested by the commenter.</p> <p>The overall goal of the mercury TMDL is to reduce total mercury discharges, not just those of POTWs or stormwater.</p> <p>Further, the degree of reductions required of POTWs are extremely modest compared to those required of stormwater dischargers. There may be some situations where POTWs have sufficient capacity to accommodate diversions. For those situations where the same entity manages stormwater and wastewater discharges, diversions may provide an effective way to reduce the overall loading of mercury to receiving waters. That this commenter would recommend a pre-emptive prohibition against exploration of ways to reduce pollutants of concern to receiving waters is disappointing.</p>	

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ACCWP attachment 1, Berkeley attachment 1, Oakland attachment 1	68	C.11.a	Recycling	Through BACWA and CIWMB efforts consumer mercury is already being collected. Due to data gaps and in order to assist the Water Board most agencies are already making significant progress and reporting this requested information via BACWA's BAPPG committee and in individual NPDES P2 reports. Section i should be changed to acknowledge the existing program and consolidate those few stormwater Permittees into the existing framework and effort to facilitate efficiency and consistency.	There are opportunities for collaboration in reporting this information. This reporting issue can be resolved via the permit annual report format requirement.	
San Leandro	21			Section ii should contain an exemption for Permittees that are already reporting this information to the Water Board in their P2 reports or via BACWA regional reporting to eliminate double reporting and costs associated with the inefficient government mandates.		
ACCWP attachment 1, Berkeley	70	C.11.b	Methyl Mercury	Sampling method is inconsistent with updated C.8.f.iv. Revise provision to reference methods	Provision does not describe sampling method and explicitly refers to C.8.f already.	

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attachment 1, Oakland attachment 1				in C.8.f		
ACCWP Legal Comment	14	C.11.c/C.12.c	Private Property	It is our understanding that the pilot projects for mercury and PCBs in Provision C.12.c are being treated in a similar manner. In the heading for PCB Provision C.12.c the reference to "Private Property" has been deleted in response to our previous comments, but not in the similar heading for Provision C.11.c. For consistency and to avoid confusion, we request that the reference to "Private Property" be deleted in C.11.c heading as well.	We will make this change.	We deleted "private property" from the header of C.11.c as requested.
Alameda City	19	C.11	Burden	Considering the current economic situation, we suggest distributing the monitoring requirements over more than one permit cycle through prioritization of monitoring activities based on stormwater discharge relevance and an analysis of the water quality benefits and the costs associated with these proposed monitoring activities.	See response to Campbell comment 2.	

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NOAA	19	C.11/C.12	Support	We strongly support these provisions related to mercury controls especially the provisions related to retrofitting treatment systems and diverting dry weather and first flush flows to publically owned treatment works. We also strongly support similar provisions found later in the permit for polychlorinated biphenols (PCBs). These are novel, and needed, provisions to determine the effectiveness of the actions toward minimizing stormwater impacts to the maximum extent practicable.	Noted	
BASMAA attachment	62	C.11.b	Methyl Mercury	Data from study will not be useful; not smart expenditure.	Methyl mercury is the form of mercury that is most toxic and that bioaccumulates in fish, wildlife, and humans, and we have very little information on loads of methyl mercury from stormwater. Further, the remand of the SF Bay Hg TMDL specifically requires methyl mercury monitoring of all NPDES dischargers to the Bay.	
BASMAA attachment	70	C.11.f	Diversion	Unclear if section (2) is a repeat of section (1) or additional work.	Section (1) requires the feasibility study, and section (2) requires selection of the candidate sites from the feasibility study.	

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Caltrans	10	C.11.j	Caltrans allocation	[Caltrans proposed addition:] Alternatively, Caltrans may choose to implement load reduction actions on a watershed or regionwide basis in lieu of sharing a portion of an urban runoff management agency's allocation, In such a case, the Water Board will consider a separate allocation for Caltrans for which they may demonstrate progress toward attaining an allocation or load reduction in the same manner mentioned previously for municipal programs.	This language quoted directly from the Basin Plan amendment for the mercury TMDL will be added.	This text will be added.
CCCWP attachment	44	C.11.d,C.12.d	Inconsistent	Most of the text in this sub-provision does not match that in provision, C.12.d.i. This is another example of the inconsistencies between the two provisions that could be remedied by simply combining the two provisions into one.	On the contrary, the text matches very well. The provisions are consistent.	
CCCWP attachment	45	C.11.d/C.12.d	Inconsistent	Reporting deadlines given in this section do not match those contained in provision, C.12.d.iii. This is another example of the inconsistencies between the two provisions that could be remedied by simply combining the two provisions into one.	Reporting deadlines are the same. C.12.d has additional directive to implement beginning in 2011 that will also obviously apply to C.11.d, but dates of reporting are the same.	

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CCCWP attachment	46, 47	C.11.e/C.12.e/C.11.f, C.12.f	Delete Provision	Delete this provision. As written, it is not even possible for us to develop credible cost estimates to carry out these studies, especially at 10 locations. If Water Board staff intends for this provision to be carried out with funds in part derived from Prop 84, a statement to that effect should be added. It would be more feasible to carry out these provisions if they were explicitly linked to Prop 84 funding, to accurately convey Water Board staff's stated intentions and provide a reasonable explanation to the public for any delays in implementation should Prop 84 funding not be available to the pilot projects, or delayed because of the state's current fiscal situation.	This Provision is not contingent on obtaining Prop 84 monies. See also response to CCCWP attachment comments 41, and 43.	
CCCSD	3	C.11.d,C.12.d	Consider Issues for Diversion	If this alternative management practice becomes widespread, CCCSD considers this diversion of potential stormwater pollutants to its system to be a change in sources that should enable the RWQCB to incorporate allowances into the CCCSD NPDES Permit (e.g.	Comment Noted.	

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				process a SSO based copper limit in lieu of current final limit, current and future allocations of pollutants regulated through Total Maximum Daily Loads).		
CCCSD	4	C.11.f/D.1 2.f	Diversions	<p>CCCSD does not consider these proposed diversions to be feasible due to:</p> <ul style="list-style-type: none"> • Structural limitations related to collection system capacity; • Risk of maintaining compliance with our NPDES Permit; and • Risk of maintaining compliance with the Waste Discharge Requirements regarding controlling Sanitary Sewer Overflows (SSOs). <p>In addition, accepting these flows would consume available capacity of the CCCSD treatment plant's permitted capacity that would restrict residential and commercial development in the CCCSD service area.</p> <p>The standards incorporated into CCCSD's NPDES Permit are very strict for certain pollutants (e.g. mercury, dioxin</p>	This comment is identical to that submitted by the commenter on the original TO. Please see the response to that original comment (CCCSD comment 9).	

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				<p>compounds, copper). Accepting uncontrollable sources of stormwater flows could jeopardize CCCSD's ability to comply with the current effluent limits. A significant amount of CCCSD's pretreatment and pollution prevention program resources are used to control sources of pollutants from commercial, industrial and residential users. Adding stormwater flows with unknown and potentially variable pollutant loadings without requiring pretreatment technologies to be employed and without any allowances in the NPDES standards would set back many years of progress in identifying and controlling pollutant loading to the CCCSD treatment plant.</p> <p>RWQCB and US EPA expectations for CCCSD, and other POTWs, are to reduce, if not eliminate, SSOs from the collection system. Accepting stormwater flows would significantly increase the risk of SSOs occurring during the diversion of stormwater flows to the CCCSD collection system.</p>		

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				<p>Recommendation: Revise these Conditions to redirect the emphasis away from POTWs accepting these stormwater flows to having the Permittees implement appropriate pollution prevention measures to control mercury and PCB sources, and then conduct studies of the pollutant loadings to evaluate multi-year trends. Limit the use of dry season and first flush diversions to sanitary sewer agencies for temporary discharges to enable abatement of known contaminated sources of mercury and/or PCBs runoff from specific locations for limited durations.</p>		
<p>Contra Costa Board of Supervisors attachment A</p>	<p>44</p>	<p>C.11</p>	<p>Big Picture</p>	<p>The County is requesting consideration for the “bigger picture” of mercury contamination, which will yield better results in addressing this issue. The Delta is the sink for legacy mercury and it is inappropriate for the MRP to address only those relatively small sources that are under Permittees control, while ignoring historic activities,</p>	<p>The “bigger picture” was considered during the TMDL process, and it was determined that urban runoff represents one of the largest loads of mercury to the Bay at roughly 160 kg/yr. The MRP addresses MS4s responsibilities under the TMDL, and the TMDL itself addresses the other sources noted by the commenter.</p>	

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				naturally mercury-enriched soils atmospheric deposition, and geothermal springs.		
Contra Costa Board of Supervisors attachment A	45	C.11.d	Consistency	<p>As noted in comments regarding C.2, the requirement to evaluate the effectiveness of municipal BMPs (including street sweeping and catch basin cleaning) indicates that the Water Board expects Permittees to continue to undertake some level of these activities, which are no longer required by C.2.</p> <p>It should be noted that sanitary sewer districts may be unwilling to allow Permittees to discharge street cleaning wash water without some form of pretreatment and acquisition of permits (which appears to be expected by the MRP).</p>	The provisions referenced explicitly encourage working with sanitary sewer districts on issues of discharge of street wash water.	
Contra Costa Board of Supervisors attachment A	46	C.11.b	Methyl Mercury	Methylmercury sources should not be regulated until methylmercury controls have been developed. Permittees should not be required to undertake development of methylmercury controls.	Methyl mercury is not being regulated, but monitoring is required. There is no requirement to undertake methyl mercury controls	

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Contra Costa Board of Supervisors attachment A	47	C.11.g	Control Plan	It is not appropriate to require a control plan for the San Francisco Bay Areas until a control plan is in place for the upstream water bodies.	There are TMDLs either in process or already being implemented upstream of SF Bay. State and Federal law requires that all sources to the Bay must be managed to reduce the threat of mercury to fish, wildlife, and humans.	
FSSD	40	C.11.e/C.12.e	Why Solano?	City of Vallejo and the FSURMP only serve a combined 5% of the population covered by the Revised TO. We request that this requirement be revised to indicate that "the Permittees in Solano County that are covered under the Revised TO may comply with this provision by contributing their fair-share financially to these efforts."	It is implicit that permit requirements that apply to all permittees such as these will necessitate some form of responsibility and cost sharing among permittees. However, rather than prescribing a cost-sharing condition, we defer to the permittees to work out these arrangements among themselves.	
FSSD	41	C.11.f,C.12.f	Diversions	These requirements are premature, overly prescriptive and require actions outside of the jurisdiction and control of municipal stormwater agencies. In addition, the requirements are presumptuous in that they assume that the findings of the feasibility study will determine that diversions are feasible. In order to allow an iterative approach to be followed in this provision, we request that the language be revised to indicate	See response to FSSD 40 regarding the Solano County issue. See response to Palo Alto 18 concerning feasibility.	

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				<p>that ability of stormwater programs to implement a minimum number of diversions (one per county-wide program) will be based upon the required feasibility study. Because the Permittees in Solano County are not “county-wide” programs, we request that this requirement be revised to indicate that “the Permittees in Solano County that are covered under the Revised TO may comply with this provision by contributing their fair-share financially to these efforts.”</p>		
Kolb and James	55	C.11/C.12	Multiple Pollutant	<p>A strategy of addressing a host of pollutants of concern through implementation of BMPs is strongly supported and this strategy should be aggressively pursued rather than multiple programs targeting individual pollutants. Several of the devices including the CDS technology used to capture trash also are effective in capturing and retaining sediments. Over 600 of these types of devices have been installed in the Bay Area and quantification and characterization of the</p>	<p>Yes, we agree that required actions should, by design, yield benefits on a number of pollutants although some provisions do need to be targeted to known areas of contamination (e.g. PCBs).</p>	

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				sediments can provide an initial and early assessment of the devices capability to remove sediment bound TMDL pollutants. Devices installed at Oakland, San Leandro, Port of Oakland, South San Francisco, San Francisco and Port of San Francisco can be used for this initial assessment from samples collected during routine maintenance operations.		
San Pablo	10	C.11-C.14	Pilot Studies	Since there are two TMDLs for the Bay Area, the pilot studies should focus on these two, mercury and PCBs.	The pilot studies do focus on mercury and PCBs, but there are requirements for other pollutants of concern that may not originate in TMDLs. There is also a pesticide toxicity TMDL, a selenium TMDL in development, and a copper site-specific objective requiring implementation actions.	

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ACCWP Attachment-1	83	C.13.a	Architectural copper	Post-construction activities cannot be reasonably controlled by Permittees.	We disagree. Ensuring that installed copper architectural features are not constituting an ongoing copper source is fundamentally no different than myriad other activities stormwater programs already do for other pollutants. This can be accomplished without much effort.	
Berkeley attachment 1	77					
Berkeley attachment 2	33					
Newark attachment	93					
Oakland attachment 1	83					
Oakland attachment 2	33					
ACCWP Attachment-1	84	C.13.a	Architectural copper	Fact sheet implies that copper is a feature of most or all roofs, gutters and downspouts. Revise Fact Sheet provision to refer to "some roofs, gutters and downspouts"	The fact sheet is not factually incorrect and does not need to be revised. Wording of the fact sheet has no detrimental effect concerning interpretation of associated provision.	
Berkeley attachment 1	77					
Oakland attachment 1	84					
ACCWP Attachment-1	85	C.13.b	Redundant	Eliminate requirement or insert text in provision or Fact Sheet to clarify that this is a reference to source control activities already incorporated elsewhere in the permit (C.3 provision).	C.3 and C.13 are not redundant. C.3 governs only new and redevelopment and speaks only to swimming pools. C.13 governs pool, spa, and fountain discharge containing copper. These are complementary provisions, not redundant.	
Berkeley attachment 2	34					
Newark attachment	94					
Oakland attachment 1	85					
Oakland attachment 2	34					
ACCWP	86	C.13.c	Fact Sheet	Fact sheet does not mention recent	Fact sheet does not need to be	

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Attachment-1				introduction of proposed legislation (SB 346-Kehoe) to phase out copper in vehicle brake pads sold in California. Revise Fact sheet to refer to “voluntary or legislated reductions”		
Berkeley attachment 1	79		Change		changed. Provision specifically mentions legislation already.	
Oakland attachment 1	86					
ACCWP Attachment-1	87					
Berkeley attachment 1	80					
Berkeley attachment 2	35	C.13.d	Redundant	Eliminate requirement or insert text in provision or Fact Sheet to clarify that this is a reference to source control activities already incorporated elsewhere in the permit (C.4).	It is true that C.13.d will be implemented largely by implementing C.4. Still, the presence of C.13.d serves a purpose to inform the C.4 inspection to be vigilant regarding facilities that are likely copper sources. Therefore, keeping C.13.d as a distinct provision serves a useful purpose.	
Newark attachment	95					
Oakland attachment 1	87					
Oakland attachment 2	35					
ACCWP Attachment-1	88			Date for submitting proposed work plan has been updated but not reporting date for findings and results.		
Berkeley attachment 1	81	C.13.e	More Time		We will make the requested edit.	We will make the requested edit.
Oakland attachment 1	88			Revise last sentence to specify report on findings in 2013 Annual Report.		
Alameda City	20	C.13.b	Pools, Spas	Provision requires the installation of sanitary sewer discharge connections for new pools, spas, and fountains. This requirement may create undue long-term	Provision provides option to avoid connection to sanitary sewer. Thus, alleged financial hardship can be avoided.	

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				financial hardship for the City as we have a fixed allocation for discharges to the East Bay Municipal Utilities District (EBMUD) sanitary system. Furthermore, the City is not aware that EBMUD is in concurrence with this requirement and we recommend that the RWQCB seek approval from EBMUD prior to mandating this treatment method in the City.		
Alameda City	26, 27	C.13.a, b	No funding	This requirement will cause the City to incur additional staffing expense. While the City may not have any objection to adopting such an ordinance, no funding mechanism is identified for the additional staff time to enforce this requirement. The estimated annual increase in municipal staffing to approve and implement this ordinance effort is approximately 5% of a full-time staff person.	The Water Board is not required to identify funding mechanisms for permittees to comply with permit requirements.	
U.S. EPA	11	C.13	WLA	Pursuant to 40 CFR 122.44(d)(1)(vii)(B), Water Quality-Based Effluent Limits (WQBELs) in NPDES permits must be consistent with the assumptions and requirements of all applicable TMDL Waste Load Allocations (WLAs) approved by EPA. The fact sheet for the permit notes the EPA policy memo of November 22,	There is no TMDL for copper in our region so there are no WLAs with which to derive WQBELS.	

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				<p>2002 which recommends BMPs as the effluent limits for most municipal stormwater permits when complying with TMDLs and the WLAs assigned to MS4 permittees. The policy memo stated that when using BMPs as the effluent limits, the fact sheet needs to demonstrate that the BMPs are expected to be sufficient to comply with the WLAs. However, given the uncertainties in the performance of many of the BMPs commonly used for stormwater pollution control, it is often difficult to make such a demonstration. As such, for WLAs such as those applicable to the Bay Area MS4s, Region 9 encourages the use of numeric limits because these will provide greater assurance of consistency with the WLAs and will enhance the enforceability of the permit with regards to the WLAs.</p>		
Dublin	15	C.13	Copper not a problem	<p>The Permit requires additional copper-reduction measures, including specific changes to the municipal code regarding washing of buildings with copper architectural features. This is in spite of the San Francisco Estuary Institutes' 2007 Regional Monitoring Report indicating that copper levels in the Bay are below</p>	<p>All C.13 provisions come directly from the Basin Plan amendment for copper site-specific objectives and are intended to insure that copper levels remain below levels of concern. In order to justify raising the copper objectives in the Bay, we had to establish a credible implementation program that included copper control measures</p>	

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				allowable health standard levels, and that copper was removed as a contributing pollutant to the Bay's status as an impaired water body under Section 303(d) of the Clean Water Act. This was further substantiated by the 2008 Regional Monitoring Report, which did not even mention copper as a pollutant of current concern. Copper removal from storm runoff will continue under existing local agency activities; in fact, copper removal may be enhanced as a result of other required activities for mercury, PCB's, etc.	on known sources.	
Dublin	16	C.13	Copper measures not worth cost	The Permit requires continued participation by local agencies in the Brake Pad Partnership, which is developing means of reducing copper content in brake pads. This is a current cost and may achieve measurable statewide benefits. However, the Permit also requires copper-specific activities along with specific record keeping and reporting requirements, none of which contribute to copper or other pollutant removal or overall water quality improvements. Some of the requirements (such as an ordinance prohibiting washing of buildings with exterior copper) would impact a very limited source	See response to Dublin comment 15.	

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				<p>of copper and would be impractical to enforce.</p> <p>The added cost of copper reduction is estimated at \$16,000 per year.</p>		
San Jose	30	C.13	Adaptive management	<p>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, Permittees should be permitted to adapt efforts to make controls commensurate with the potential water quality threat.</p>	<p>These copper provisions were selected from a larger list of candidate actions when developing the copper site-specific objective Basin Plan amendment. Instead of requiring effort on a large number of copper sources, the Water Board and stakeholders decided to focus on a smaller number of measures. In exchange for this focus, meaningful efforts on this smaller set of actions must be maintained. The commenter's proposal to reduce effort on any of the remaining sources is not consistent with the copper implementation plan. Also see response to Dublin comment 15.</p>	
San Jose	31	C.13.a	Ordinance not needed	<p>The City requests removal of the requirement to adopt a separate ordinance prohibiting the discharge of washwater from copper architectural features. The City does not believe that the effort to establish and execute a new program to prohibit washwater from copper architectural features is commensurate with any water</p>	<p>The continued appearance of copper architectural features throughout the region suggests that "discouragement" of such features is not sufficient. If such features are allowed to come into existence, the resultant copper-containing wastewater must be kept out of stormdrains. See also response to San Jose comment 30.</p>	

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				quality benefit achieved by it. Discouraging the use of architectural copper and requiring BMPs to manage this source is sufficient.		
San Jose	32	C.13.b	Conflict with existing ordinance	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.	See response to San Jose comment 86 on the original TO.	
SCVURPPP attachment A	64	C.13	Too burdensome	Given that there is no longer a situation of copper impairment in receiving waters, we request that this Provision be made less burdensome. See Attachment B for requested language changes.	See response to Dublin comment 15 and San Jose comment 30. We consider SCVURPPP's Attachment B as supporting documentation rather than comments. Therefore we will not be responding to suggestions in that attachment.	
Sunnyvale	13	C.13	Need more time	The requirement to certify that all legal authority is in place by the September 2010 annual report deadline will be difficult, if not impossible to comply with, given all the other potential ordinance changes that are being required as part of the MRP. Consideration should be provided for the amount of time ordinance changes take within a city. Providing additional time for compliance at the outset will reduce a city's need to provide justification as to why the deadline for certification of legal authority	We will provide an additional year to accomplish this task.	We will provide an additional year to accomplish this task.

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				could not be met, and not put a city in jeopardy of permit non-compliance.		
CCCWP Attachment	57	C.13.e	Studies	Performing studies to reduce uncertainties related to impacts from copper are a legitimate subject of study. However, we believe it is not appropriate to conduct such a study as part of an NPDES permit, but rather belongs under the RMP, as a special study. The Program requests Regional Board staff state that this requirement may be fulfilled by an RMP special study, and commit to supporting the special studies at the RMP technical committee and steering committee.	This comment is identical to one submitted by the commenter on the original TO. See response to CCCWP comments 115-117 on the original TO.	
Central Contra Costa Sanitary District	5	C.13.a	Copper Waste	<p>Wastewater generated during post-construction cleaning, treating, and washing of architectural copper features could be disposed to the CCCSD system. The MRP text has been modified to instruct Permittees to develop BMPs on how to manage the wastes generated from post-construction activities.</p> <p>Consider adding text to instruct Permittees to work with sanitary sewer agencies when developing the disposal BMPs for these</p>	It is implicit that any BMP which results in discharge to a sanitary sewer system must be developed and implemented with its participation.	

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				wastes.		
Central Contra Costa Sanitary District	6	C.13.b	Copper Waste	<p>Add use of non copper-based chemicals as a primary implementation strategy to avoid having to employ more restrictive, and potentially more costly, strategies.</p> <p>Reorder the implementation strategies so that discharge of water with copper-based chemicals to sanitary sewer with a permit is the last option.</p> <p>Modify text to remove reference to connection to sanitary sewer and change it to discharge to sanitary sewer with a permit from the POTW. If the reference to connecting to the sanitary sewer is retained at this location, use the same text C.15.b.iv.(1)(c) to clarify that the connection is to facilitate draining events.</p>	<p>The local ordinances developed by Permittees can advocate for the use of alternatives. This provision is only concerned with discharges containing copper. The order of the control strategies does not indicate preference. The suggested modification regarding the sanitary sewer discharge does not materially change the provision and is not necessary.</p>	
Contra Costa Board of Supervisors Attachment A	51	C.13.d	Inspection	<p>Since inspectors have no feasible way of identifying and controlling elevated copper discharges without sampling, which cannot reasonably be conducted for every project, and is surely not the intent of the Water Board. While the County can ensure that adequate BMPs to prevent copper discharge are in</p>	<p>Provision states explicitly that “Permittees shall ensure industrial facilities do not discharge elevated levels of copper to storm drains by ensuring, through industrial facility inspections, that proper BMPs are in place. The Provision does not require sampling.</p>	

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				place, it will not be possible to ensure that discharges do not occur. The language of this provision should be modified accordingly.		
Contra Costa Board of Supervisors Attachment A	52	C.13.e	Studies	Any studies to investigate copper sediment toxicity will be irrelevant due to the "mothball fleet" of retired vessels in the Carquinez Strait. According to a study conducted in 2007, more than 21 tons of lead, zinc, and copper have fallen into the Bay from peeling paint from these ships. Until these ships have been removed, no technical study on copper sediment toxicity will be of any value.	There is value to these studies irrespective of the date of the mothball fleet, and these studies are required. See response to CCCWP comments 115-117 on the original TO.	
Pacifica	35	C.13.e	Studies	The language in this provision is vague and the responsibility of conducting such an investigation should lie with the Board, not the permittees.	See response above to CCCWP attachment comment 57.	

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Provision C.14. – Polybrominated Diphenyl Ethers (PBDE), Legacy Pesticides and Selenium**

File	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
San Jose Attachment A	33	C.14.a	Data already exists	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 and related data previously collected by BASMAA will be sufficient to demonstrate compliance with this provision.	This comment was addressed in response to comment 90 by San Jose on the original tentative order.	
San Jose Attachment A	34	C.14.a	Selenium not a problem	Since previous data have shown that selenium is not problematic in most urban creeks, the City requests that selenium be removed from this Provision.	This comment was addressed in response to comment 91 by San Jose on the original tentative order.	
San Jose Attachment A	35	C.14.a.v and C.14.a.vi	Consistency with fact sheet	The City requests that these provisions be modified to remain consistent with the fact sheet, which states this is primarily an information gathering exercise.	The Provision is already consistent with the fact sheet.	
SCVURPPP Attachment A	65	C.14	Too burdensome	Given that these are at most emerging issues and that other priorities will require resources, we request that this Provision be eliminated or made less burdensome. See Attachment B for requested language changes.	The timeline has been extended to make this Provision easier to accomplish. We consider Attachment B as supporting documentation rather than comments.	
SCWWD	7	C.14	Information already collected	The District also believes a more thorough review of data submitted to the Water Board from the	This comment was addressed in response to comment 90 by San Jose on the original tentative	

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				SCVURPPP in the last several annual reports may provide the information to answer the management questions regarding other legacy pollutants. Significant public resources have already been expended on studies, and to respond to existing or previous permit requirements. It is prudent to maximize this information in the development of regulations for the Revised TO rather than expending additional new resources for this purpose.	order.	
Sunnyvale	58	C.14		Sunnyvale support SCVURPPP's suggested edits on the redline/strikeout draft provided with their comments.	We consider SCVURPPP's Attachment B as supporting documentation rather than comments. Therefore we will not be responding to suggestions in that attachment.	
CCCWP Attachment	58	C.14	Should be RMP work	This type of investigation into emerging pollutants is a legitimate subject for study. However, we believe it is not appropriate to conduct such a study as part of an NPDES permit bur rather belongs under the RMP, as a special study. The Program requests Regional Board staff simply state that this requirement may be fulfilled by an RMP special study, and commit to supporting the special studies at the RMP technical committee and	It may be possible to accomplish this work through the RMP, but Permittees, rather than the RMP, have a responsibility to see that the work is accomplished. The RMP is not a regulated party under the stormwater permit.	

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Provision C.14. – Polybrominated Diphenyl Ethers (PBDE), Legacy Pesticides and Selenium**

File	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
				steering committee.		
CCCWP Attachment	59	C.14	Restrict jurisdiction	The permit reads “Characterize the representative distribution of PBDEs, legacy pesticides, and selenium in the urban areas of the entire Bay Region to determine.” Does the Water Board really intend to have Stormwater Programs conduct investigations in Bay Area counties that are not even included in the MRP? The Program requests that the language be changed to restrict it to only those counties and areas covered in the MRP.	The permit will be clarified in this section that “Bay Region” means the areas covered by this permit.	We will clarify that the requirements apply to areas covered by this permit.
Contra Costa Board of Supervisors Attachment	53	C.14	No Value to Provision	While compliance with many sections of the MRP will be expensive, they will yield water quality results. It appears, however, that money would be better spent on current challenges that will have an impact on our environment today and tomorrow rather than on legacy pesticides.	Permittees have a responsibility to manage all pollutants in stormwater. This Provision requires collection of information concerning a number of important pollutants.	

**Response to Comments on February 11, 2009 Revised Tentative Order
Provision C.15. – Exempted and Conditionally Exempted Discharges**

File	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
CALTRANS	11	C.15.	Define	<i>Define “unpolluted” in the goal statement using the state definition.</i>	The California Water Code does not have a definition for “unpolluted”.	
Pacifica	5	C.15.	Duplicative to Wastewater Permit Requirements	With its own wastewater NPDES Permit, City should be required to comply with that permit’s illicit discharge reporting, exempted and non exempted discharges, and water quality/testing associated with water processed via the POTW.	MRP levels the playing field for all Phase 1 stormwater programs in the Region. Illicit discharged into a POTW will most likely get some treatment while illicit discharge into a storm drain gets no treatment. City’s wastewater permit does not have the most current Standard Provisions.	None.
Pacifica	4	C.15.	Significant Increase in Staff Resources	The fiscal crisis has frozen and deleted positions forcing remaining staff workloads to increase. This Provision is asking for huge new amounts of monitoring, tracking, and reporting. There are no staff resources or funding to implement this.	We have reduced the monitoring and tracking in the Final TO.	See revisions in Final TO.
Moraga Oakley	2 2	C.15.	Too Expensive and Burdensome	Too expensive and burdensome.	We have reduced the monitoring and tracking in the Final TO.	See revisions in Final TO.
Palo Alto Santa Clara County	19 28	C.15.	Too Many Requirements with No Justification	Already commented that TO contained numerous new requirements for conditionally exempted discharges, and that it is unclear what specific problems have	Pumped groundwater, foundation drains, and water from crawl space pumps and footing drains; and potable water discharges are the only two categories of conditionally exempted discharges that do not contain similar BMPs to SCVURPPP’s <i>Conditionally Exempted Discharges Classification and Control Measures</i> . Untreated	The following has been added to C.15.b.iii.(1) and C.15.b.iii.(2), “... Permittees who are water purveyors must implement the following requirements on portions of the

arisen to justify the inclusion of these proposed changes in the existing municipal program. SCVURPPP asked that the implementation of BMPs for certain types of discharges

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				<p>be flexible, scaled to the nature of the threat posed, and subject to a municipality's discretion to require as appropriate and necessary given the threat posed (and secondary to public health and safety issues). Revised TO contains no changes to address these very important concerns. The changes made to this section simply provide more detail on how the monitoring, tracking and reporting of the various discharges needs to be done.</p>		
SCVURPPP	66	C.15.	Too Many Requirements with No Justification	<p>Already commented that TO contained numerous new and highly prescriptive and unworkable requirements for conditionally exempted discharges and asked that the implementation of BMPs for certain types of discharges be left flexible, scaled to the nature of the water quality threat posed (if any), and subject to a municipality's discretion to require as appropriate and necessary to avoid threats to water quality (with due consideration to more pressing public health and safety needs where applicable). Revised TO has even more prescription on how the monitoring, tracking and reporting of the various discharges are to be done. It also does not allow for the grandfathering of previously approved and</p>	<p>potable water discharges have caused fish kills and pumped groundwater from uncontaminated sites with no known plumes have tested high for some pollutants. It is not clear if municipalities have determined that all of the conditionally exempt discharges are not sources of pollutants to the receiving water and/or if the BMPs implemented for the conditionally exempt discharges minimize the adverse effects of the discharges. Should such data exist, please submit them. Final TO removes the responsible of Permittees to oversee potable water dischargers who are not Permittees.</p>	system they are responsible for...

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Provision C.15. – Exempted and Conditionally Exempted Discharges**

File	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
				successfully implemented conditionally		
Daly City Pacifica San Bruno	5 2 4	C.15.	Too Much Tracking, Monitoring, and Reporting	Requires too much staff time to deal with an unnecessary amount of information tracking and reporting unrelated to improving water quality.	We have reduced the monitoring and tracking in the Final TO.	See revisions in Final TO.
San Jose	6	C.15.	Too Prescriptive	This provision is highly burdensome and prescriptive. The requirements would pose a significant impact to City operations. There is no justification as to why the need to depart from the current, approved BMP approach to these discharges. <i>Revise this provision, emphasizing the implementation of BMPs in lieu of new regulatory programs.</i>	Pumped groundwater, foundation drains, and water from crawl space pumps and footing drains; and potable water discharges are the only two categories of conditionally exempted discharges that do not contain similar BMPs to SCVURPPP's <i>Conditionally Exempted Discharges Classification and Control Measures</i> . Untreated	
San Mateo	14	C.15.	Too Prescriptive	Provision is overly prescriptive, unnecessary, and disproportionate to the threat posed by these types of non-stormwater discharges. <i>Simplify Provision using the table entitled "BMPs and Implementation Procedures for Conditionally Exempted Discharges" that was prepared by the Countywide Program and approved by the Water Board in 2004 as an amendment to the Countywide Program's Permit.</i>	potable water discharges have caused fish kills and pumped groundwater from uncontaminated sites with no known plumes have tested high for some pollutants. If San Jose has data to demonstrate that its BMPs in <i>Conditionally Exempted Discharges Classification and Control Measures</i> have been successful in showing that conditionally exempted discharges are not sources of pollutants to the receiving water and/or if the BMPs implemented for the conditionally exempt discharges minimize the adverse effects of the discharges, please submit them.	
SMCWPPP	9	C.15.	Too Prescriptive	This Provision contains approximately seven pages of proposed requirements that are overly prescriptive, unnecessary, and disproportionate to the threat		

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Provision C.15. – Exempted and Conditionally Exempt Discharges**

File	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
				posed by these minor types of non-stormwater discharges. <i>Rewrite and simply Provision similar to the enclosed table titled "BMPs and Implementation Procedures for Conditionally Exempted Discharges" that was prepared by the Countywide Program and approved by the Water Board in 2004 as an amendment to the Countywide Program's permit.</i>		
Sunnyvale	59	C.15.	Too Prescriptive	Already commented that the revised MRP and the previous TO is overly burdensome for conditionally exempt discharges to storm drains. Revised TO does not address comments just more details on how things are to be done. <i>Rewrite to include a simplified list of practical and effective BMPs for each type of conditionally exempt discharge.</i>		
NRDC & SF Baykeeper	63	C.15. Legal Comment	Clean Water Act Requires Prohibition of all Non-Stormwater Discharges	Fails to include provisions that effectively prohibit all non-stormwater discharges, as required by the Clean Water Act. TO creates a host of non-stormwater discharge categories that are either categorically or conditionally exempt from prohibitions against non-stormwater discharge to the MS4 system. These exceptions violate of the clear language of the CWA.	We agree that the intent of the regulatory language is to prohibit all "polluted" non-stormwater discharges. It would be wholly impracticable to prohibit all non-stormwater discharges that pass through the MS4, as the MS4 in many circumstances has captured streams and existing baseflow present before the construction of the MS4. As the commenters state:	

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				<p>Section 402(p)(3)(B)(ii) requires that permits for discharge from municipal sewers “shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers.” 33 U.S.C. § 1342(p)(3)(B)(ii). Citing to the CWA’s implementing regulations under 40 C.F.R. § 122.26(d), however, the Fact Sheet asserts that “we recognize that certain types of non-stormwater discharges may be exempted from this prohibition if they are unpolluted and do not violate water quality standards. Other types of non-stormwater discharges may be conditionally exempted from Prohibition A.1. if the discharger employs appropriate control measures and BMPs prior to discharge and monitors and reports on the discharge.”</p> <p>TO creates limited control measures designed to reduce the potential impacts of these discharges but it does not prohibit them, as required by the CWA. Section 402(p) places a clear, mandatory duty on the Permittee to prohibit non-stormwater discharges to the MS4 system. The Permittee, or Regional Board, has no discretion to deviate from this requirement.</p> <p>The TO’s attempt to allow</p>	<p>“A clear reading of the statute, and one that elaborates on Section 402(p)(3)(B)(ii) of the Clean Water Act rather than contradicting it, is that while non-stormwater discharges must be prohibited by the text of the Act, illicit discharge enforcement programs need only specifically address the enumerated list of non-stormwater discharges set forth in the regulations where such discharges have been identified as a source of pollutants.”</p> <p>C.15 simply clarifies the standard for determining these enumerated discharges are not sources of pollutants.</p>	

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				<p>exemptions to the prohibition against non-stormwater discharges to MS4 systems is not supported by 40 C.F.R. § 122.26(d)(2)(iv)(B)(1), as the Fact Sheet implies. This provision merely states the circumstances under which the Permittee must specifically design a program to prevent certain illicit discharges. The cited regulation, providing for an enforcement program to “prevent illicit discharges,” simply does not support staff’s surmise, as stated in the Fact Sheet, that “certain types of non-stormwater discharges may be exempted from this prohibition if they are unpolluted and do not violate water quality standards.”</p> <p>Interpretation adopted in the TO is not found in the plain language of the regulation. The TO is inconsistent with both the regulations and the statute that they purport to implement.</p> <p>Even if the Permittees were afforded authority under 40 C.F.R. § 122.26(d) to exempt non-stormwater sources from the discharge prohibitions required by the CWA, the TO unlawfully allows exemption of irrigation water from lawns, gardens, or landscaping even though pollutants from these source are a</p>		

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				known, significant source of impairment in the Bay Area. Neither a finding that irrigation discharges are “not sources of pollutants to receiving waters,” nor an exemption based on the other conditions set forth in the TO, would be consistent with facts in the record.		
Alameda County Water District	1	C.15.a	Exempt Groundwater from Drinking Water Wells	<p><i>Pumped groundwater which satisfies the following conditions should be included in C.15.a:</i></p> <p>a) <i>Groundwater pumped from a well perforated in a drinking water aquifer(s) that is regularly tested for water quality parameters in accordance to California Department of Public Health (CDPH) requirements.</i></p> <p>b) <i>Groundwater pumped from monitoring wells used for groundwater basin management purposes provided there are no known sources of contamination are present in the immediate vicinity of the well where groundwater is being pumped.</i></p> <p>c) <i>Groundwater discharge activities which comply with Provision C.15.b.i(1)(i).</i></p>	<p>a) We have evaluated 3-years worth of data submitted by Zone 7 for its drinking water aquifers. The wells are tested three times a year in accordance to CDPH. The data shows that nearly all the parameters meet the benchmarks in CAG912004, and readily meet the benchmarks for pH and turbidity. Deep drinking water aquifers are not readily influenced by contamination. Therefore, C.15. exempts pumped groundwater from drinking water aquifers. Permittees who qualify for this exemption are advised to ensure that the detection limits used for the CDPH samples meet the benchmarks in CAG912004.</p> <p>b) Pumped groundwater from drinking water aquifer is exempted. Pumped groundwater from the shallower aquifers tend to be more readily influenced by contamination. Recognizing how often these wells from the shallow</p>	<p>a) C.15.a.i.(7) exempts pumped groundwater from drinking water aquifers.</p> <p>b) C.15.b.i.(1) is specific to pumped groundwater from non drinking water aquifers used for groundwater basin management.</p>

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					aquifers need to be purged, monitoring has been reduced for these specific wells in a new C.15.b.i.(1). c) In addition, the groundwater discharge activities must meet the benchmarks in the Water Board's NPDES General Permits: CAG912002, CAG912003, CAG912004.	
BASMAA	79	C.15.b.	Burdensome for Conditionally Exempt Discharges	Discharges are of minor concern to require such monitoring.	Discharges can only be exempted if known to be or demonstrated unpolluted. The rudimentary monitoring and reporting in C.15.b., which has been reduced in the Final TO, is to accomplish this.	
ACCWP Fremont Newark Oakland	10 5 22 6	C.15.b.	Conditionally Exempt Residential Car Washing	Residential car washing has not been included in the list of conditionally exempt discharges.	Residential car washing was inadvertently deleted from the list of conditionally exempt non-stormwater discharges. It has been added to the list again as the new C.15.b.iii. This is essentially the same as the December 2007 TO language for residential car wash conditional exemption.	See new C.15.b.iii. – Individual Residential Car Washing.
ACCWP Berkeley Hayward Newark	11 9 8 22.e.	C.15.b.	Conditionally Exempt Residential Car Washing	Federal Register that adopted the stormwater permitting requirements states "...in general, municipalities will not be held responsible for prohibiting some specific components of discharges or flows listed below [list includes 'individual residential care washing'] through their municipal separate storm sewer system even though such components may be considered non-storm water discharges, unless such discharges are specifically identified		

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				on a case-by-case basis as needing to be addressed.” (Vol.55, No.22, Friday, Nov. 16, 1990, page 47995) <i>Continue to conditionally exempt individual residential car washing as long as minimal amounts of water and pollutants are generated.</i>		
ACCWP Attachment-1 Berkeley Attachment 1 Newark Attachment SMCWPPP	98 91 106 112	C.15.b.	Conditionally Exempt Residential Car Washing	Individual residential car washing has been removed from this Provision. Fact Sheet does not explain why it was removed. Some of the language formerly in this Provision moved to C.7.e.i. <i>Residential car washing should continue to be conditionally exempt.</i>		
ACCWP Legal Comment	16	C.15.b.	Conditionally Exempt Residential Car Washing	Residential car washing is exempted in current permit. <i>Conditionally exempt residential car washing.</i>		
Alameda City	21	C.15.b.	Conditionally Exempt Residential Car Washing	Individual residential car washing has been deleted as conditionally exempt. The Federal Register of November 16, 1990, publishing the final rules for the Federal storm water program states, “It is unlikely Congress intended to require municipalities to effectively prohibit individual car washing or discharges resulting from efforts to extinguish a building fire and other seemingly innocent flows that are characteristic of human existence in urban environments and which discharge		

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				to municipal separate storm sewers.” <i>Restore this conditionally exempt discharge.</i>		
Brisbane Burlingame	7 2	C.15.b.	Conditionally Exempt Residential Car Washing	Inappropriate to delete. Water Board adopted the Countywide Program’s BMPs and Implementation Procedures for Conditionally Exempted Discharges, which includes individual car washing. <i>Recognize that individual residential car washing will occur and promote the use of appropriate BMPs.</i>		
Fremont	47	C.15.b.	Conditionally Exempt Residential Car Washing	Some of the language formerly in the Provision has been moved to C.7.e.i. This conditionally exempted discharge should continue to be allowed provided minimal amounts of water and pollutants are generated. <i>Restore this conditionally exempted discharge to the MRP.</i>		
Millbrae Pacifica San Mateo	20 8 16	C.15.b.	Conditionally Exempt Residential Car Washing	In 2004, the Water Board adopted the Countywide Program’s BMPs and Implementation Procedures for Conditionally Exempted Discharges, which includes residential car washing. <i>Recognize that residential car washing will occur. Promote the use of appropriate BMPs.</i>		
Oakland	5.e.	C.15.b.	Conditionally Exempt Residential	Residential car washing is not included in the list of conditionally exempt discharges. This may be too		

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			Car Washing	ubiquitous and burdensome to enforce. It is more appropriate to address through public education. <i>Add residential car washing to the list of conditionally exempt discharges.</i>		
Oakland Attachment #1	98	C.15.b.	Conditionally Exempt Residential Car Washing	Individual residential car washing has been removed from this Provision. Fact Sheet does not explain why it was removed. <i>Residential car washing should continue to be conditionally exempt.</i>		
NOAA	21	C.15.b.	Consider Dilution in Receiving Water	<i>Planned discharges should determine how much dilution, if any, is available in a receiving waterbody prior to the discharge. This examination may obviate the need for repeated chlorine concentration monitoring at some locations. In areas where regularly scheduled discharges may affect aquatic life (especially in streams that support ESA listed species), exploring alternative means of capturing the discharges may be warranted (e.g., flushing fire hydrants into a tanker truck).</i>	We would welcome this proposal in a reduced monitoring plan.	
Palo Alto Santa Clara County SCVURPPP SCVWD Sunnyvale	23 32 70 19.b. 59.b.	C.15.b.	Grandfather SCVURPPP's Conditionally Exempted Discharges Report	<i>Provision needs to emphasize the implementation of BMPs. Grandfather SCVURPPP's Conditionally Exempted Discharges submitted and approved by Water Board staff in 2000.</i>	The MRP levels the playing field for all Phase 1 Permittees. If the Permittees had data that the BMPs in the SCVURPPP's <i>Conditionally Exempted Discharges Classification and Control Measures</i> are	

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West Valley Clean Water Program	15				effectively removing pollutants, we would welcome the data.	
San Jose Attachment A	36	C.15.b.	Grandfather SCVURPPP's Conditionally Exempted Discharges Report	<i>Use the established non-stormwater conditionally exempt discharge programs previously approved by the Executive Officer.</i>		
SCVURPPP	8	C.15.b.	Grandfather SCVURPPP's Conditionally Exempted Discharges Report	Provision C.15.b. continues to be a set of highly prescriptive and burdensome requirements being imposed in the absence of any evidence that the existing Santa Clara Program approach to conditionally exempted discharges is insufficient in terms of protecting water quality. <i>Clarify that continued implementation of current program is sufficient for compliance; prescriptive approaches in the revised TO for specified subcategories are optional or are only required when there is evidence that the discharges in question are polluted to the point of threatening receiving water quality.</i>		
CCCWP CCCWP Attachment	12 60	C.15.b.	Meeting Please	In the comments submitted for the December 2007 Draft TO, CCCWP requested a meeting with the Water Board staff and other stakeholders to review and discuss a proper regulatory framework for addressing	Water Board staff met with BASMAA on July 1, 2009 to discuss Proposed Major Changes for C.15. CCCWP's representative to BASMAA was at this meeting.	

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				the listed conditionally exempted discharges. Summary Response to Comments acknowledges the request and stated that Water Board staff met with water utilities in February 2008 during the public comment period and substantial changes were incorporated into the February 2009 Draft TO as a result of that meeting. Water Board staff ignored CCCWP's meeting request, Water Board's directive to "work with the cities", "consult with municipalities", "come up with a more balance approach", etal. <i>Request meeting.</i>		
San Leandro	28	C.15.b.	Monitoring Too Expensive	In these days of massive budget deficits and declining revenue sources, local agencies cannot meet the monitoring requirements on the scale proposed. Permittees have been asking for two years that the Water Board prioritize and remove lower priority requirements. <i>Delete what cannot be financially accomplished.</i>	Deleted third party oversight of potable water purveyors.	See changes in C.15.b.iii.
Central Contra Costa Sanitary District	1.b.	C.15.b.	Reimburse Costs for Accepting & Treating Diverted Flows	Sanitary sewer agency cannot be required to accept a diverted flow from the stormwater system that would jeopardize its ability to comply with its requirements to comply with its NPDES Permits and standards to prevent SSOs. If diverted flow is	We understand.	

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				accepted, the sanitary sewer agencies' costs for accepting and treating the diverted flows need to be reimbursed by the business or Permittee responsible for diverting the approved flow.		
Contra Costa Brd of Sups Attch A	54	C.15.b.	Requirements Have No Water Quality Benefits	Provision requires Permittees to develop authorities where it may not be possible and requirements are burdensome to Permittees and property owners without real corresponding water quality benefits. <i>Water Board should regulate potable water dischargers.</i>	Deleted third party oversight of potable water purveyors. The Water Board intends to regulate potable water dischargers with a separate NPDES permit in the near future.	See changes in C.15.b.iii.
Central Contra Costa Sanitary District	1	C.15.b.	Thanks for Recognizing Sanitary Sewer Agencies' Authority	Appreciates the deferral to the sanitary sewer agency's authority to accept or reject diverted flows from the stormwater systems. TO promotes positive communications between Permittees and sanitary sewer agencies.	Noted	
Millbrae	3	C.15.b.	Too Prescriptive	Overly prescriptive and requires additional staff time to deal with a voluminous amount of information tracking and reporting, none which seems related to improving water quality.	If the City has data that the BMPs in the SMCPPPP's <i>BMPs and Implementation Procedures for Conditionally Exempted Discharges</i> are effectively removing pollutants, we could consider reduced monitoring.	
CCCWP	60.b.	C.15.b.i.	Crawl Space Pumps and Footing Drains	Unacceptable and bad public policy	Single family home's pumped groundwater, foundation drains, and water from crawl space pumps and footing drains are exempted in the	Single family home's pumped groundwater, foundation drains,

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ACCWP Berkeley Newark Oakland	12 10 23 7	C.15.b.i.	Exempt Single Family Homes' Crawl Space Pumps and Footing Drains	There are thousands of these in the county. Many are from single family residences. Monitoring and reporting from these are not feasible. <i>Delete requirement.</i> <i>Summary Response to Comments states that new language is likely to be added to the Provision to exempt discharges from single family homes and other small, temporary, and unpolluted discharges.</i> <i>Include detailed revised language in a supplemental Executive Officer report prior to the May 13th hearing.</i>	Final TO as long as the discharge is unpolluted. If there is any potential for pollutants in the groundwater, it should be referred to the Water Board.	and water from crawl space pumps and footing drains exempted in C.15.a.i.(6).
ACCWP Fremont Newark Oakland	10.b. 5.b. 22.b. 6.b.	C.15.b.i.	Exempt Single Family Homes' Crawl Space Pumps and Footing Drains	Monitoring and reporting should not be required for crawl space pumps and footing drains.		
Brisbane	4	C.15.b.i.	Exempt Single Family Homes' Crawl Space Pumps and Footing Drains	Unreasonable to require monitoring and treatment of pumped groundwater from foundation drains, crawl space pumps, and footing drains because there are a large number of residential properties that have them. <i>These types of discharges should be considered exempt unless the municipality has reason to believe the groundwater may contain pollutants.</i>		
Danville	8.g.	C.15.b.i.	Exempt	Monitoring of this Provision would		

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			Single Family Homes' Crawl Space Pumps and Footing Drains	consume a disproportionate amount of resources. <i>Delete requirements.</i>		
Fairfield Fairfield Suisun City SCVURPPP	28 42 28 67	C.15.b.i.	Exempt Single Family Homes' Crawl Space Pumps and Footing Drains	Continues to be too prescriptive and burdensome. This Provision can be interpreted to apply to discharges from residential foundation drains.		
San Jose	6.b.	C.15.b.i.	Exempt Single Family Homes' Crawl Space Pumps and Footing Drains	Permitting and monitoring of non-stormwater discharges such as pumped groundwater, foundation drains, water from crawl spaces, and footing drains to the storm drain system would be a new function of the City. Overly prescriptive monitoring requirements that would be cost-prohibitive and could create a situation where more unauthorized non-stormwater discharges occur. <i>Revise this provision, emphasizing the implementation of BMPs in lieu of new regulatory programs.</i>		
San Mateo	17	C.15.b.i.	Exempt Single Family Homes' Crawl Space Pumps and Footing Drains	Many San Mateo neighborhoods have natural springs and high water tables year-round. So sump pumps and drains are common and numerous. <i>Don't require monitoring unless they are proven to be sources of pollution.</i>		
Alameda Co	2	C.15.b.i.	Exempt	Unclear if discharges from municipal	Based on data submitted by Zone 7,	C.15.a.i.(7) exempts

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Flood Control Zone 7			Municipal Groundwater Production Wells	groundwater production wells would require monitoring consistent with this Provision. At startup, municipal groundwater production wells may require discharge of untreated groundwater into a storm drain prior to pumping the water into the system for chemical addition and delivery. At shutdown, wells may discharge into the storm drain but only after chemical addition has ceased.	C.15. exempts pumped groundwater from drinking water aquifers. Permittees who qualify for this exemption are advised to ensure that the detection limits used for the CDPH samples meet the benchmarks in CAG912004.	pumped groundwater from drinking water aquifers.
Daly City	20	C.15.b.i.	Exempt Potable Drinking Water Wells and Irrigation Wells	Pumped groundwater could be potable drinking water wells and irrigation wells which do not contain chlorine or other added chemicals and are considered safe. <i>Exempt potable drinking water from ground water wells.</i>	Based on data submitted by Zone 7, C.15. exempts pumped groundwater from drinking water aquifers. Permittees who qualify for this exemption are advised to ensure that the detection limits used for the CDPH samples meet the benchmarks in CAG912004. Please note, aquatic standards are lower than drinking water standards.	C.15.a.i.(7) exempts pumped groundwater from drinking water aquifers.
Fairfield Fairfield Suisun City	29 43 29	C.15.b.i. C.15.b.iv.	Too Much Tracking, Monitoring, and Reporting	Too much tracking, monitoring, and reporting of relatively minor discharges. This is a huge burden with little water quality benefit.	The Revised TO does not require reporting for pumped groundwater or for swimming pool discharges. In response to comments, the Final TO exempts single family home's pumped groundwater, foundation drains, and water from crawl space pumps and footing drains. Monitoring is necessary for the other pumped groundwater, foundation drains, and water from crawl space pumps and footing drains because	Single family home's pumped groundwater, foundation drains, and water from crawl space pumps and footing drains exempted in C.15.a.i.(6). The following underlined words have been added to

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					<p>high levels of pollutants have been found in groundwaters from uncontaminated sites and sites with no known or nearby plumes. Pool waters are highly chlorinated, may contain copper sulfate as an algacide, and could cause downstream erosion.</p> <p>We want assurance that these conditionally exempted discharge is not a source of pollutants to the receiving water and the BMPs implemented does minimize the adverse effects of the discharges.</p>	<p>C.15.b.iv.(2): “Permittees shall keep records of the authorized major discharges of dechlorinated pool, <u>hot tubs</u>, spa and fountain water <u>to the storm drain</u>, including BMPs employed; such records shall be available for inspection to the Water Board.”</p>
<p>Palo Alto Santa Clara County</p>	<p>20 29</p>	<p>C.15.b.i. and C.15.b.iv.</p>	<p>Burdensome Tracking, Monitoring, and Reporting</p>	<p>The amount of tracking, monitoring, and reporting for minor discharges such as pumped groundwater and swimming pool discharges is burdensome.</p>	<p>The Revised TO does not require reporting for pumped groundwater or for swimming pool discharges. In response to comments, the Final TO exempts single family home’s pumped groundwater, foundation drains, and water from crawl space pumps and footing drains. Monitoring is necessary for the other pumped groundwater, foundation drains, and water from crawl space pumps and footing drains because high levels of pollutants have been found in groundwaters from uncontaminated sites and sites with no known or nearby plumes. We want assurance that this conditionally exempted discharge is not a source of pollutants to the</p>	<p>Single family home’s pumped groundwater, foundation drains, and water from crawl space pumps and footing drains exempted in C.15.a.i.(6). The following underlined words have been added to C.15.b.iv.(2): “Permittees shall keep records of the authorized major discharges of dechlorinated pool, <u>hot tubs</u>, spa and</p>

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					receiving water and the BMPs implemented does minimize the adverse effects of the discharges.	fountain water <u>to the storm drain</u> , including BMPs employed; such records shall be available for inspection to the Water Board.”
ACCWP Attachment-1 Berkeley Attachment 1 Fremont Attachment Newark Attachment Oakland Attachment #1 SMCWPPP	89 82 37 96 89 103	C.15.b.i.(1) (a)	Language Change	Requirement to “render pumped groundwater free of pollutants” is unnecessarily onerous and inconsistent with Discharge Prohibition A.1. <i>Modify the language to qualify that the discharge should not have pollutants of concern at concentrations that cause an exceedance of water quality standards.</i>	The standard for exemption under C.15.b. is “unpolluted” water. The language is consistent with that requirement.	
San Jose Attachment A	37	C.15.b.i.(1) (b)	10,000 gallons/day, General Permit	<i>Those who discharge more than 10,000 gallons per day should be subject to the requirements in NPDES No. R2.2007-0033, NPDES No. CAG912004.</i>	We agree.	C.15.b.i.(1)(b) says, “Proposed new discharges of uncontaminated groundwater at flows of 10,000 gallons/day or more and all new discharges of potentially contaminated groundwater shall be reported to the

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						Water Board so that they can be subject to general NPDES permitting requirements.”
ACCWP Attachment-1 Berkeley Attachment 1 Fremont Attachment Newark Attachment Oakland Attachment #1 SMCWPPP	90 83 38 97 90 104	C.15.b.i.(1) (b)	Delete Language	NPDES-permitted discharges are exempt from the discharge prohibition. <i>Delete language about being “consistent with Order No. R2-2007-022 NPDES No. CAG912004 requirements.”</i>	Language has been deleted.	C.15.b.i.(1)(b) says, “Proposed new discharges of uncontaminated groundwater at flows of 10,000 gallons/day or more and all new discharges of potentially contaminated groundwater shall be reported to the Water Board so that they can be subject to general NPDES permitting requirements.”
San Jose Attachment A	38	C.15.b.i.(1) (c)	Less than 10,000 gallons/day	<i>If a Permittee determines that a proposed non-stormwater discharge of less than 10,000 gallons/day constitutes a significant source of pollutants, than the Permittee shall require the discharge to meet water quality standards consistent with the existing effluent limitations in the Water Board’s NPDES General Permit.</i>	All potentially contaminated groundwater shall be reported to the Water Board.	C.15.b.i.(2)(a) has been added, “Proposed new discharges of uncontaminated groundwater at flows of 10,000 gallons/day or more and all new discharges of

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						potentially contaminated groundwater shall be reported to the Water Board..."
Alameda County Water District	2	C.15.b.i.(1) (c)-(d)	Analytical Data, Municipal Groundwater Production Wells	<p>Groundwater basin management will no longer be economically feasible because of the analytical cost. For example, in order for ACWD's Groundwater Basin Monitoring Program to comply with this Provision, over 200 wells per year will have to be sampled for total suspended solids, total petroleum hydrocarbons, volatile organic compounds, and metals. Stringent water quality testing is continually being conducted at ACWD drinking water supply wells as required by CDPH and at ACWD Aquifer Reclamation Program and Salinity Barrier Protection wells as required by Regional Board.</p> <p><i>Existing water quality data from representative wells, such as production wells, should be accepted to fulfill the analytical requirements in this Provision. Another alternative is to allow sampling of a representative monitoring well from each aquifer instead of requiring sampling at every discharge point from the same aquifer.</i></p>	<p>We have evaluated 3-years worth of data submitted by Zone 7 for its drinking water aquifers. Deep drinking water aquifers are not readily influenced by contamination. Therefore, C.15. exempts pumped groundwater from drinking water aquifers. Permittees who qualify for this exemption are advised to ensure that the detection limits used for the CDPH samples meet the benchmarks in CAG912004. Pumped groundwater from the shallower aquifers tends to be more readily influenced by contamination. Recognizing how often these wells from the shallow aquifers need to be purged, monitoring has been reduced for these specific wells in a new C.15.b.i.(1). Monitoring is reduced to twice a year for each aquifer.</p>	<p>C.15.a.i.(7) exempts pumped groundwater from drinking water aquifers. C.15.b.i.(1) is specific to pumped groundwater from non drinking water aquifers used for groundwater basin management.</p>

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Central Contra Costa Sanitary District	9	C.15.b.i.(1)(d)	8260, Solid Waste Analytical Method	USEPA Method 8260 is a solid waste analytical method and not approved as a Water/Wastewater method according to 40CRF Part 136. In the wastewater field, use of methods not approved as Water/Wastewater methods can result in noncompliance. <i>Specify that water samples used to demonstrate compliance must be analyzed using approved Water/Wastewater methods.</i>	USEPA Method 8260 is approved for groundwater. This subprovision is for groundwater from pumped groundwater, foundation drains, water from crawl space pumps, and footing drains.	
ACCWP Attachment-1 Berkeley Attachment 1 Fremont Attachment Newark Attachment Oakland Attachment #1 Palo Alto SMCWPPP Santa Clara County	91 84 39 98 91 21 105 30	C.15.b.i.(1)(d)-(e)	Monitoring Burdensome	Unnecessary and burdensome to monitor the full suite of chemicals listed at the frequency of a minimum of once a month for small, incidental discharges of pumped groundwater, foundation drains, crawl space pumped water, and footing drains. <i>Require monitoring only for the rare situations of large discharge of potentially contaminated water.</i>	Monitoring is necessary for the other pumped groundwater, foundation drains, and water from crawl space pumps and footing drains because high levels of pollutants have been found in groundwaters from uncontaminated sites and sites with no known or nearby plumes. Revised TO exempts single family home's pumped groundwater, foundation drains, and water from crawl space pumps and footing drains It was not intended to require monitoring of full suite of chemicals each month. C.15.b.(2) in the Revised TO has been reformatted to show the intended relationships.	Single family home's pumped groundwater, foundation drains, and water from crawl space pumps and footing drains exempted in C.15.a.i.(6). See clarification changes made to C.15.b.(2).
Alameda County Water District	3	C.15.b.i.(1)(f)	Turbidity, Municipal Groundwater	Groundwater turbidity is strongly related to groundwater extraction processes and is not always	We have evaluated 3-years worth of data submitted by Zone 7 for its drinking water aquifers. Turbidity	C.15.a.i.(7) exempts pumped groundwater from

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			Production Wells	indicative of the water quality. Turbidity meters work by measuring the amount of light scattered by particles in the sample. Errors are introduced when large amount of air is entrained into the water sample. During well development, groundwater is surged up and down the well, which tends to trap air in the water and causes unreliable turbidity readings. <i>Turbidity may not be a good indicator of water quality for pumped groundwater.</i>	from those samples are well below the benchmark of 50 NUT. C.15. exempts pumped groundwater from drinking water aquifers.	drinking water aquifers.
San Jose Attachment A	40	C.15.b.i.(1)(g) and C.15.b.iii.(1)(c)(ii)	Increase pH	<i>To accommodate Hetch Hetchy water supply, increase the upper pH benchmark to accommodate the pH range commonly reported from Hetch Hetchy water supply.</i>	A pH of 9 or above violates water quality objectives and is not consistent with the Basin Plan, which requires a pH range between 6.5 and 8.5.	
Central Contra Costa Sanitary District	7	C.15.b.i.(1)(h)	Limit Dewatering into Sanitary Sewer to Contaminated Water	Permit assumes that water is contaminated until proven otherwise. In practice, the vast majority of subsurface drains do not intercept contaminated water. <i>Limit discharge to sanitary sewer to cases where contamination is known or suspected and only when the contamination is abated.</i>	The Revised and Final TOs only specifically require new and rebuilt pools, hot tubs, spas and fountains to have a connection to the sanitary sewer. Pool water is known to have high levels of chlorine.	
Alameda Co Flood Control Zone 7	3	C.15.b.i.(b)	10,000 gallons/day of Pumped Groundwater	Municipal groundwater production wells are used to meet demands during peak times or when a surface drinking water treatment facility is offline. Therefore, there will be times	We have evaluated 3-years worth of data submitted by Zone 7 for its drinking water aquifers. Turbidity from those samples are well below the benchmark of 50 NUT. C.15.	C.15.a.i.(7) exempts pumped groundwater from drinking water aquifers.

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				where wells are started up and shut down daily. <i>Clarify whether each startup or shutdown discharge is considered a "new" discharge and subject to the notification requirements.</i>	exempts pumped groundwater from drinking water aquifers.	
Alameda Co Flood Control Zone 7	4	C.15.b.i.(b)	10,000 gallons/day of Pumped Groundwater	Order No. R2-2007-0033 states that "new discharges of uncontaminated groundwater at flows of 10,000 gallons/day or more..." must comply with the Permit. This could be interpreted that discharges of 10,000 gallons/day or more which occur intermittently from an existing source such as a drinking water production well which is started up and directed to discharge to the stormwater system for a given period of time before being operated to feed into the drinking water system could be considered "new" and thus require notification to the Board every time they discharge for short time and likely at very infrequent intervals. <i>Should only apply to new "long term" discharges which were not before present as sources and are expected to discharge for extended periods of time.</i>	Final TO has new subprovision for groundwater from drinking water aquifers. It reduces the monitoring to twice a year for each aquifer.	See C.15.b.i.(1)
Contra Costa Brd of Sups Attch A	55	C.15.b.i.-ii.	Too many to Oversee	Not acceptable for County to oversee all discharges from all foundation drains, crawl space	Single family home's pumped groundwater, foundation drains, and water from crawl space pumps and	Single family home's pumped groundwater,

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				<p>pumps, footing drains, air conditioner condensate. Inappropriate to require property owners to conduct expensive monitoring of such discharges.</p> <p>Sanitary sewer agencies may not be willing to accept these sources to discharge into their systems. May not have the legal authority to regulate these types of discharges and does not maintain inventories of these types of mechanisms. It would be an extremely inefficient means of improving/protecting water quality.</p> <p><i>Source control requirements should only apply to new/replaced devices, and ongoing monitoring should only be required for devices that discharge in excess of 10,000 gallons per day. Less than 10,000 gallons per day should be listed in C.15.a.i as exempt discharges.</i></p> <p><i>County can provide public information and outreach regarding appropriate BMPs to minimize any water quality impacts associated with these discharges.</i></p>	<p>footing drains are exempted in the Final TO as long as the discharge is unpolluted. If there is any potential for pollutants in the groundwater, it should be referred to the Water Board.</p> <p>Requirements only applicable to new sources.</p> <p>Monitoring is necessary for the other pumped groundwater, foundation drains, and water from crawl space pumps and footing drains because high levels of pollutants have been found in groundwaters from uncontaminated sites and sites with no known or nearby plumes.</p> <p>Air Conditioning Condensate BMPs should already be part of the Permittees current list of BMPs as required by the Contra Costa's Permit, 99-058.</p>	<p>foundation drains, and water from crawl space pumps and footing drains exempted in C.15.a.i.(6). See clarification changes made to C.15.b.(2).</p>
ACCWP Attachment-1 Berkeley	92 85	C.15.b.ii.(1)(b)	Allow Discharges from Air	Discharges from air conditioning units are only allowed into landscaped areas or sanitary sewers	C.15.b.ii. is entitled "Air Conditioning Condensate." We have removed all references to discharges from air conditioning units. Air conditioning condensate is clean water. Both the San Mateo Countywide Pollution	C.15.b.ii. states, "Condensate from air conditioning units shall be directed to landscaped areas or the ground. If this is
Attachment 1 Fremont Attachment	40		Conditioning into Storm Drains	if allowed by the local sanitary sewer agency. This is more stringent than for air conditioning condensate.		

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Newark Attachment 1 Oakland Attachment #1 SMCWPPP	99 92 106			<i>Allow discharges from air conditioning units into the storm drain as long as it does not cause an exceedance of a water quality standard.</i>		
ACCWP Attachment-1 Berkeley Attachment 1 Fremont Attachment Newark Attachment 1 Oakland Attachment #1 SMCWPPP	93 86 41 100 93 107	C.15.b.ii.(1)(c)	Allow Air Conditioning Condensate into Storm Drains	Discharge Prohibition A.1. only requires that the discharge not impact beneficial uses or cause exceedances of water quality standards. Air conditioning condensate should not be prohibited to discharge to storm drains only when "adequate treatment measures are in place to meet water quality standards. <i>Allow air conditioning condensate to be discharged into storm drains provided it doesn't cause an exceedance of water quality standards.</i>	Prevention Program's "BMPs and Implementation Procedures for Conditionally Exempted Discharges" and the Santa Clara Valley Urban Runoff Pollution Prevention Program's Conditionally Exempted Discharges: Classification and Control Measures" list widely accepted BMPs for air conditioning condensate.	not feasible, condensate lines shall be plumbed to the sanitary sewer, with the sanitary sewer agency's approval. The storm drain should be the last disposal option for the condensate.
Central Contra Costa Sanitary District	8	C.15.b.ii.(1)(c)	Allow Air Conditioning Condensate to Landscape	Air conditioning condensate is unpolluted and does not need to be discharged to the sanitary sewer. It can supplement potable water use for landscape irrigation during the dry season. <i>Require discharge from larger air conditioning units to landscape areas and only allow discharge to the sanitary sewer if landscape is not an option and it is allowed by the sanitary sewer agency.</i>		

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Sunnyvale	60	C.15.b.ii.-v.	No Phase In Period	There is no phase in period. Some will require ordinance changes. <i>Need at least a year from adoption date to address ordinance changes required to implement C.15.b.ii.-v.</i>	It is unclear why the City would need a year to comply with C.15.b.ii. since it is already doing what the Provision requires. According to the City's website, small air conditioning units drain to a landscaped area or to the sanitary sewer line (SMC 16.24.040). It also states "New building should be designed so that all discharges from air conditioner condensation lines drain to the sanitary sewer." C.15.b.iii. has been modified so that Permittees do not have to implement if they are not water purveyors. City's website already tells residents to discharge pools into the sanitary sewer. C.15.b.v. is similar to the requirements in SCVURPPP's <i>Condition Exempted Discharges – Classification and Control Measures</i> .	
Sunnyvale	61	C.15.b.iii.	Burdensome Reporting	City's Water Utility would need to report on 1,600 hydrant flushes, 500 blow-offs, and the 250 meter tests it conducts each year. Lots of staff time needed to enter all the data required in provision (iii) as well as the ancillary costs of database development, quality control, and report preparation. It does not seem to provide any real benefit to	Potable water contains chlorine or chloramines, two very toxic chemicals to aquatic life. There have been potable water releases that have caused fish kill because the water was not treated or partially treated. Monitoring is necessary until we have enough data points to show that BMPs are treating appropriately.	Added C.15.b.iii.(1)(c)(iv) states "After 18 months of consecutive data gathering and depending on those results, the Permittees can propose monitoring

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				demonstrate compliance with the implementation of BMPs to reduce relatively minor impacts of potable water to aquatic systems. <i>Eliminate or greatly reduce reporting.</i>	In response to comments, we have added language that allows the Permittees to monitor 18 consecutive months and then propose to monitor only at “high-risk” or “environmentally sensitive” areas.	only at specific “high-risk” or “environmentally sensitive” areas, including areas that are prone to erosion and excess sedimentation at high flows, support rare or endangered species, or provide aquatic habitat with proven effective BMPs.”
SCVWD	24	C.15.b.iii.	Burdensome Reporting and Notification	Utility discharge programs that are already fully and effectively functioning in Santa Clara County. No need to increase reporting and notification requirements.	If SCVWD already has 18 months of consecutive data for planned and unplanned discharges as prescribed in the Revised TO, please submit it ASAP. Depending on the data, SCVWD can propose monitoring only at specific “high-risk” or “environmentally sensitive” areas, including areas that are prone to erosion and excess sedimentation at high flows, support rare or endangered species, or provide aquatic habitat with proven effective BMPs.	
Berkeley EBMUD Fremont Oakland	7 8 4 5	C.15.b.iii.	Burdensome Reporting and Recordkeeping	Monthly reporting on planned and unplanned potable water discharge is burdensome and not necessary to measure program compliance.	Potable water contains chlorine or chloramines, two very toxic chemicals to aquatic life. There have been potable water releases that have caused fish kill because	

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					the water was not treated or partially treated. Monitoring is necessary until we have enough data points to show that BMPs are treating appropriately.	
EBMUD	1	C.15.b.iii.	Burdensome Testing and Reporting	Imposes burdensome and labor intensive analytical testing and reporting requirements on discharges that pose a limited threat to water quality. Bay Area water utilities have developed and implemented BMPs that have been field tested and shown to be practical and effective for a wide range of planned and unplanned potable water discharges.	Potable water contains chlorine or chloramines, two very toxic chemicals to aquatic life. There have been potable water releases that have caused fish kill because the water was not treated or partially treated. We would welcome 18 consecutive months of existing data from EBMUD's planned and unplanned discharges.	
Brisbane	6	C.15.b.iii.	Delete Monitoring and Notification Requirements	While dechlorination systems and BMPs to protect downstream storm drain inlets are deployed, they do little to improve turbidity as long as the positive line pressure continues. <i>Requirements for monitoring and notification should be deleted. Municipalities who operate potable water systems should just be required to implement dechlorination, inlet protection BMPs, and post-event cleanup during unplanned discharges.</i>	Potable water contains chlorine or chloramines, two very toxic chemicals to aquatic life. There have been potable water releases that have caused fish kill because the water was not treated or partially treated. Monitoring is necessary until we have enough data points to show that BMPs are treating appropriately. Should excavation be necessary to repair line breaks, it is imperative to deploy appropriate sediment controls. If the storm drain inlet protections do little to improve turbidity then alternative BMPs, such as settling	

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					tanks, should be used.	
Mountain View	15	C.15.b.iii.	Excessive Record-Keeping	<p>Significantly increase fieldwork-related record-keeping task thus impeding operational efficiency. Is there information showing that discharges from municipal water utility operations are contributing to receiving water pollution and additional monitoring and controls are necessary?</p> <p><i>Regulate discharges from municipal water utility operations by continuing to require BMPs during routine and nonroutine activities.</i></p>	<p>There have been potable water releases that have caused fish kill because the water was not treated or partially treated. Monitoring is necessary until we have enough data points to show that BMPs are treating appropriately. In response to comments, we have added language that allows the Permittees to monitor 18 consecutive months and then propose to monitor only at "high-risk" or "environmentally sensitive" areas.</p>	<p>Added C.15.b.iii.(1)(c)(iv) states "After 18 months of consecutive data gathering and depending on those results, the Permittees can propose monitoring only at specific "high-risk" or "environmentally sensitive" areas, including areas that are prone to erosion and excess sedimentation at high flows, support rare or endangered species, or provide aquatic habitat with proven effective BMPs."</p>
Pittsburg	13	C.15.b.iii.	Exempt Planned Discharges from Turbidity Monitoring	<p>City's planned discharges involve flushing of potable water sources. <i>Exempt potable water discharges from turbidity monitoring.</i></p>	Turbidity monitoring is for the receiving water, when feasible.	
Fairfield Fairfield Suisun City	30 44 30	C.15.b.iii.	Monitoring and Reporting Too	Too prescriptive monitoring and reporting of planned, unplanned, and emergency discharges.	Potable water contains chlorine or chloramines, two very toxic chemicals to aquatic life. There	

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			Prescriptive	<i>Revised to emphasize the implementation of BMPs.</i>	have been potable water releases that have caused fish kill because the water was not treated or partially treated. Monitoring is necessary until we have enough data points to show that BMPs are treating appropriately.	
ACCWP Berkeley Newark Oakland	13 11 24 8	C.15.b.iii.	No Authority	Permittees do not have the resources to monitor and report on all of the planned and unplanned discharges from a potable water source. Permittees do not have the mechanism to require these agencies to report to the Water Board. <i>Delete requirements. Water Board should regulate potable water agencies directly.</i>	In response to comments, C.15.b.iii. is only applicable to Permittees who are water purveyors. Permittees who are not water purveyors are required to report all unplanned discharges discovered by the Permittees or reported to the Permittees to the water purveyor. The Water Board intends to regulate potable water purveyors with a General Permit in the near future.	Language has been added to C.15.b.iii. to clarify that it is only applicable to Permittees who are water purveyors.
ACCWP Legal Comment CCCWP	17 12.b.	C.15.b.iii.	No Authority	Permittees may not have jurisdiction within special water supply districts to implement requirements. <i>Regulate through Water Board general permit, individual permit, or in the Phase II Permitting process.</i>		
Contra Costa Brd of Sups Attch A Contra Costa Co Flood Control Attch A San Pablo	56 12 10	C.15.b.iii.	No Authority	Does not have the legal authority to require compliance from water districts and fire districts to require monitoring and reporting. <i>Should be regulated by the Water Board or State Board through a General Permit.</i>		
Danville	8	C.15.b.iii.	No Authority	Municipalities do not have the		

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				authority to oversee and regulate planned and unplanned potable water discharges from special districts. <i>Delete requirements.</i>		
San Leandro	27	C.15.b.iii.	No Authority	Potable water purveyors are not part of the ACCWP Permittees group. These special districts should be included under the Phase II Permit. ACCWP Permittees have limited to no authority and will never be able to achieve these prescribed requirements on independent special districts. <i>The notification & reporting requirements and monitoring requirements should be eliminated allowing current Permittees to continue to develop and work with future Phase II agencies on proper BMP implementation within in their jurisdiction.</i>		
Alameda City	30	C.15.b.iii.	Not Responsible for 3 rd Parties	<i>Modify this language to make it clear that local agencies must only notify and report to the Water Board information about planned discharges of potable water that they are responsible for implementing.</i>	We agree.	Language has been added to C.15.b.iii. to clarify that it is only applicable to Permittees who are water purveyors.
ACCWP Attachment-1	95	C.15.b.iii.	Not Responsible for 3 rd Parties	Permitttees should not have to monitor or require third parties to monitor.		
Berkeley Attachment 1	88			<i>Permitttees should only be</i>		
Fremont	43			<i>responsible for monitoring of potable</i>		

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Attachment Newark Attachment Oakland Attachment #1 SMCWPPP	102 95 109			<i>water discharges that they are responsible for and not discharges by third parties.</i>		
Palo Alto Santa Clara County	22 31	C.15.b.iii.	Not Responsible for 3 rd Parties	Prescriptive monitoring and reporting requirements will have significant impacts on municipal water operations and maintenance staff. <i>Change language to say that permittees should only be responsible for BMP usage, notifications, reporting, and monitoring of discharges they are responsible for and not discharges by potable water dischargers who are not Permittees.</i>		
ACCWP Fremont Newark Oakland	10.c. 5.c. 22.c. 6.c.	C.15.b.iii.	Planned & Unplanned Potable Water Discharge	Permittees are put in the position of managing potable water supply agencies.	In response to comments, C.15.b.iii. is only applicable to Permittees who are water purveyors. Permittees who are not water purveyors are required to report all unplanned discharges discovered by the Permittees or reported to the Permittees to the water purveyor.	Language has been added to C.15.b.iii. to clarify that it is only applicable to Permittees who are water purveyors.
BASMAA	80	C.15.b.iii.	Planned and Unplanned Potable Water Discharge	Inclusion of requirements on non-MS4 systems in an MS4 permit is inappropriate and unworkable.		
CCCWP	60.c.	C.15.b.iii.	Planned and Unplanned Potable Water	Unacceptable and bad public policy		

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			Discharge			
Pacifica	7	C.15.b.iii.	Redirection of Code Enforcement	Provision would force Code Enforcement Officer to shift focus from abating illicit discharge as defined in the existing NPDES permit to focus on less significant discharges in C.15.	Unclear why it would require the City to shift focus. Most of C.15. is already in SMCPPP's <i>BMPS and Implementation Procedures for Conditionally Exempted Discharges</i> .	
Sunnyvale	63	C.15.b.iii.	Too Much Monitoring	The monitoring outlined requires all water department employees to obtain training to a higher certification level (D-3). In most cases this will require up to two years of time for an individual to complete and cost the city upwards of \$2,000 per employee. No basis has been provided for the overly prescriptive requirements for monitoring these minor types of non-stormwater discharges that pose very limited threats to waterbodies. <i>Limited monitoring to what is in the SCVURPPP Conditionally exempted Discharges Report.</i>	Untreated potable water discharges have caused fish kills. <i>Conditionally Exempted Discharges Classification and Control Measures</i> refers to the WUDPPP. The WUDPPP recommends potable water discharges to storm drains and creeks if the chlorine level is less than 1.5 mg/l. 1.5 mg/l exceeds acute toxicity thresholds for many aquatic species. If Sunnyvale has data to show that potable water discharges are not sources of pollutants to the receiving water and/or if the BMPs implemented minimize the adverse effects of the discharges, please submit them.	
SCVWD	18	C.15.b.iii.	Too Much Tracking and Monitoring	The District and SCVURPPP developed a series of water utility discharge guidance documents, which include training materials. These documents have been shared with Water Board staff and have not received any critical comments. <i>Have co-permittees across the permit area adopt a similar Water</i>	Staff training on the uses of appropriate BMPs is vital. At the same time, there needs to be monitoring to demonstrate that the BMPs are effective. In response to comments, we have added language that allows the Permittees to monitor 18 consecutive months and then	Added C.15.b.iii.(1)(c)(iv) states "After 18 months of consecutive data gathering and depending on those results, the Permittees can

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				<i>Utility Discharge program rather than implementing the new tracking and monitoring requirements.</i>	propose to monitor only at “high-risk” or “environmentally sensitive” areas. If SCVWD already has the data, please submit them.	propose monitoring only at specific “high-risk” or “environmentally sensitive” areas, including areas that are prone to erosion and excess sedimentation at high flows, support rare or endangered species, or provide aquatic habitat with proven effective BMPs.”
San Jose	6.c.	C.15.b.iii.	Too Prescriptive and Costly	New monitoring requirements will have significant impacts on the operations of the City of San José Municipal Water System (MWS) and other water retailers and would require the City to monitor discharges from the system at point-of-discharge and at receiving waters. The MWS may also be at risk of exceeding the discharge benchmark for pH in some instances, due to the pH of Hetch Hetchy water, which can be outside the specified benchmark range. Meeting these provisions would require an investment in equipment and personnel that would have to be passed on to the MWS rate payers. Financial impacts of this provision	Untreated or partially treated potable water discharges have caused fish kills. If municipalities have data to demonstrate that its BMPs have been successful in showing that conditionally exempted discharges are not sources of pollutants to the receiving water and/or if the BMPs implemented for the conditionally exempt discharges minimize the adverse effects of the discharges, please submit them. The dechlorination process tends to move pH a bit towards alkaline.	Added C.15.b.iii.(1)(c)(iv) and C.15.b.iii.(2)(d)(iii) which state “After 18 months of consecutive data gathering and depending on those results, the Permittees can propose monitoring only at specific “high-risk” or “environmentally sensitive” areas, including areas that are prone to erosion and excess

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				will extend to the customers of the City's two private water retailers as well. <i>Revise this provision, emphasizing the implementation of BMPs in lieu of new regulatory programs.</i>		sedimentation at high flows, support rare or endangered species, or provide aquatic habitat with proven effective BMPs."
SCVURPPP	69	C.15.b.iii.	Too Prescriptive Monitoring and Reporting	Prescriptive monitoring and reporting requirements will have significant impacts on municipal water operations and maintenance staff.	Monitoring is necessary to demonstrate the effectiveness of BMPs. In response to comments, we have added language that allows the Permittees to monitor 18 consecutive months and then propose to monitor only at "high-risk" or "environmentally sensitive" areas.	Added C.15.b.iii.(1)(c)(iv) states "After 18 months of consecutive data gathering and depending on those results, the Permittees can propose monitoring only at specific "high-risk" or "environmentally sensitive" areas, including areas that are prone to erosion and excess sedimentation at high flows, support rare or endangered species, or provide aquatic habitat with proven effective BMPs."
ACCWP Attachment-1	94	C.15.b.iii.	Water Board Should Adopt	Permittees should only be responsible for reporting their own	In response to comments, C.15.b.iii. is only applicable to Permittees who	Language has been added to C.15.b.iii.

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Berkeley Attachment 1 Fremont Attachment Newark Attachment Oakland Attachment #1 SMCWPPP	87 42 101 94 108		General Permit	activities to the Water Board. Permittees should not be required to notify and report specific information by potable water dischargers nor should Permittees be required to require potable water discharger report to the Water Board. <i>Notification and reporting by third parties should be handled by the Water Board through a NPDES Permit or other regulatory mechanism.</i> <i>Modify language to make it clear that Permittees must notify and report to the Water Board information about these discharges only if they are responsible for implementing.</i>	are water purveyors. Permittees who are not water purveyors are required to report all unplanned discharges discovered by the Permittees or reported to the Permittees to the water purveyor.	to clarify that it is only applicable to Permittees who are water purveyors.
Millbrae Pacifica San Mateo	19 6 15	C.15.b.iii.	Water Board Should Adopt General Permit	Should not be required to make sure that local potable water purveyors who discharge potable water conduct the burdensome amount of sampling, testing, and reporting required. <i>Water Board should adopt a general permit for potable water dischargers who are not municipalities.</i>		
SCVWD	19	C.15.b.iii. (1)(b)(i)	Water Board Should Adopt General Permit	This notification procedure cannot be policed by Permittees. <i>Remove notification procedure from the Revised TO.</i> <i>Issues relative to private water purveyors should be handled in a separate NPDES permit issued to</i>		

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				<i>those private water purveyors.</i>		
Brisbane	5	C.15.b.iii.(1)(b)	Emergency Discharges Would Not Meet 7 day Notification Requirement	In cases where a water quality emergency arises that requires a planned, timely discharge of a water line or storage reservoir, the City may not be able to provide a week's notice prior to discharging. <i>Notification and reporting requirements should be deleted. Water Board should regulate non-municipal potable water discharge through a general permit.</i>	An emergency discharge is not from routine operations and maintenance that can be scheduled in advance. An emergency discharge is an unplanned potable water discharge. The Water Board intends to regulate potable water purveyors with a General Permit in the near future.	
Alameda City	22	C.15.b.iii.(1)(b)-(c)	Planned Potable Water Discharge	Monitoring and reporting for all planned discharges of potable water would be highly infeasible and time-consuming. <i>Clarify if the monitoring and reporting requirements only apply to discharges greater than or equal to 250,000 gallons per day, 500,000 gallons total, or for all volumes.</i>	All routine operation and maintenance in the potable water distribution system will need to be monitored. In response to comments, we have added language that allows the Permittees to monitor 18 consecutive months and then propose to monitor only at "high-risk" or "environmentally sensitive" areas. Notification requirements apply to discharges of 250,000 gallons per day or a total volume of 500,000 gallons.	Added C.15.b.iii.(1)(c)(iv) states "After 18 months of consecutive data gathering and depending on those results, the Permittees can propose monitoring only at specific "high-risk" or "environmentally sensitive" areas, including areas that are prone to erosion and excess sedimentation at high flows, support rare or endangered species, or provide

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						aquatic habitat with proven effective BMPs.”
EBMUD	2	C.15.b.iii.(1)(b)(i)	Planned Potable Water Discharge	Thank you for including specific and appropriate thresholds for planned discharge notifications (>250,000 gpd or >500,000 gallons total), which greatly reduces uncertainties in providing such notifications.	Comment noted.	
Contra Costa Co Water District	1	C.15.b.iii.(1)(b)(ii)	Monthly Reporting Burdensome	The information prescribed for monthly reports will be provided in the annual self-audit summary report. If the intent of the annual report is to provide a “self-audit”, it makes more sense to present the planned discharge information in the annual report as the basis to discuss the self-audit. <i>Eliminate monthly reporting requirement.</i>		Monthly reporting deleted from C.15.b.iii.(1)(b).
Contra Costa Co Water District	2	C.15.b.iii.(1)(b)(ii)	No Specified Reporting Period or Annual Report Due Date	Provision does not specify a reporting period or annual report submittal date. <i>Reporting period and submittal date should be consistent with the reporting period and submittal date (9/15) of the MRP.</i>	C.16. states that Annual Reports are due on September 16 th of each calendar year. The reporting period is from June 1 st of the previous year to July 31 st of the current year.	
San Jose Attachment A	39	C.15.b.iii.(1)(b)(ii)-(iii) and C.15.b.iii.(1)(c)	Reporting and Monitoring for Large Discharges Only	The reporting requirements as currently proposed significantly impact operational efficiency and costs. With no volume threshold for this element, stringent and costly BMPs and control measures	Potable water contains chlorine or chloramines, two very toxic chemicals to aquatic life. There have been potable water releases that have caused fish kill because the water was not treated or partially	C.15.b.iii.(1)(c)iv. added to reduce monitoring of planned discharges to 18 months. Monthly reporting

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				<p>requiring an increased amount of resources would be needed for every instance, which is not proportionate to the potential for water quality impairment.</p> <p><i>Reporting and monitoring requirements should only apply to discharges as defined in Provision C.15.b.iii.(1).(b).(i).</i></p> <p><i>Reporting should be provided with the Annual Report while maintaining records for review at the request of the Board.</i></p>	<p>treated. Monitoring is necessary on all planned discharges until we have enough data points to show that BMPs are treating appropriately. In response to comments, we have added language that allows the Permittees to monitor 18 consecutive months and then propose to monitor only at “high-risk” or “environmentally sensitive” areas.</p> <p>In response to comments, we have eliminated monthly reporting.</p>	deleted from C.15.b.iii.(1)(b).
Cupertino	5	C.15.b.iii.(1)(b)ii.	Excessive Reporting	<p>Monthly reporting is too much an unnecessary. It shifts focus from eliminating adverse water quality impacts to figuring out how to stretch municipal resources to hire staff to set up a database, collect data, and enter data.</p>		Monthly reporting deleted from C.15.b.iii.(1)(b).
Alameda City	31	C.15.b.iii.(1)(c)	Not Responsible for 3 rd Parties	<p><i>Modify this language to make it clear that local agencies must only monitor planned discharges of potable water that they are responsible for implementing.</i></p>	<p>In response to comments, C.15.b.iii. is only applicable to Permittees who are water purveyors. Permittees who are not water purveyors are required to report all unplanned discharges discovered by the Permittees or reported to the Permittees to the water purveyor.</p>	Language has been added to C.15.b.iii. to clarify that it is only applicable to Permittees who are water purveyors.
San Jose Attachment A	39.b.	C.15.b.iii.(1)(c)(i)	Monitoring of Receiving Water Can Be Unsafe	<p>The proposed monitoring requirements are problematic because any attempt to monitor receiving waters could be unsafe, would result in lengthy and</p>	<p>Turbidity monitoring is only required were feasible.</p>	

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				unpredictable work delays, do not account for flow from multiple inputs along the stormwater system, require a considerable increase in resources and associated costs, and would provide negligible water quality benefit. <i>Remove references to monitoring requirements at the receiving waters.</i>		
Contra Costa Co Water District	3	C.15.b.iii.(1)(c)(i)-(ii)	Language Inconsistent	The language in the first Provision implies that the monitoring results are compared to standards. The next Provision states that the benchmarks are used to evaluate BMPs effectiveness. CCWD believes the intent of the monitoring is to assess effectiveness, and report the findings accordingly in the annual self-audit summary report. <i>Revise as follows: "Permittees shall monitor or require monitoring of Planned Discharges...at the point where the discharge enters the receiving water to assess effectiveness of the employed BMPs."</i>	Monitoring should verify that employed BMPs meet the benchmarks.	C.15.b.iii.(1)(c)(i) revised to state just required monitoring parameters.
ACCWP Berkeley Newark Newark Oakland	14 12 25 105 9	C.15.b.iii.(2)	Make Hydrant Shearing an Emergency Discharge	Requirement to treat, monitor, and report on fire hydrant shearing discharges are not appropriate and place an unnecessary burden on fire fighters. Treatment of discharge is infeasible due to the large volume	Potable water contains chlorine or chloramines, two very toxic chemicals to aquatic life. There have been potable water releases that have caused fish kill because the water was not treated or partially	

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				and uncontrolled nature of the discharge. Since there is no treatment of the flow, there should be no monitoring or reporting. The chlorine and pH of the discharge will be typical of the potable water source. <i>Move fire hydrant shearing from C.15.b.iii.(2) into C.15.b.iii(3).</i>	treated. Because of the large volume released from hydrant shearing, dechlorination really is necessary. It is also necessary to have erosion controls in place.	
ACCWP Attachment-1 Berkeley Attachment 1 Fremont Attachment Newark Attachment 1 Oakland Attachment #1 SMCWPPP	96 89 44 103 96 110	C.15.b.iii.(2)	Not Responsible for 3 rd Parties	Permittees cannot be asked to require potable water dischargers to implement BMPs, notify, monitor, and report to the Water Board on unplanned potable water discharges. <i>Permittees should not be responsible for discharges by potable water dischargers who are not Permittees.</i>	In response to comments, C.15.b.iii. is only applicable to Permittees who are water purveyors. Permittees who are not water purveyors are required to report all unplanned discharges discovered by the Permittees or reported to the Permittees to the water purveyor.	Language has been added to C.15.b.iii. to clarify that it is only applicable to-Permittees who are water purveyors.
ACCWP Fremont Newark Oakland	10.d. 5.d. 22.d. 6.d.	C.15.b.iii.(2)	Onerous Monitoring and Reporting	Onerous monitoring and reporting requirements for sheared fire hydrants.	Potable water contains chlorine or chloramines, two very toxic chemicals to aquatic life. There have been potable water releases that have caused fish kill because the water was not treated or partially treated. Because of the large volume released from hydrant shearing, dechlorination really is necessary. It is also necessary to have erosion controls in place.	
San Jose	41	C.15.b.iii.(Set Threshold	<i>Recommends a minimum threshold</i>	It is unclear why it would be	

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Attachment A		2)		<i>of 50,000 gallons or more.</i>	appropriate to set the minimum threshold at 50,000 gallons. If San Jose has monitoring data, please submit it.	
ACCWP Attachment-1 Berkeley Attachment 1 Fremont Attachment Newark Attachment Oakland Attachment #1 SMCWPPP	97 90 45 104 97 111	C.15.b.iii.(2)	Too Prescriptive	Notifying the Board within two hours of becoming aware of any aquatic impacts and reporting times of discovery, notification, and responding crew arrival time are overly prescriptive and may interfere with responding to the unplanned discharge. Monitoring may be infeasible because it may be unsafe or the discharge may have ceased prior to being able to monitor. <i>Eliminate overly prescriptive record keeping and reporting that interferes with responding to unplanned potable water discharges. Monitoring requirements should be conditioned with the qualifier that the monitoring should only be done to the extent that time and resources allow and only where and when it is safe to do.</i>	Notification is necessary because we do get calls from concerned citizens. In response to comments, C.15.b.iii. is only applicable to Permittees who are water purveyors. Permittees who are not water purveyors must report to the responsible water purveyor all unplanned discharges discovered by the Permittees or reported to the Permittees. Monitoring is necessary to verify effectiveness of BMPs. Monitoring is required only on 10% of the unplanned potable water discharges.	Language has been added to C.15.b.iii. to clarify that it is only applicable to Permittees who are water purveyors.
Daly City	21	C.15.b.iii.(2)(c)	Onerous Reporting	This onerous reporting is not reasonable and is almost identical to reporting of sewage overflows. <i>Delete.</i>	Potable water contains chlorine or chloramines, two very toxic chemicals to aquatic life. There have been potable water releases that have caused fish kill because the water was not treated or partially treated. Monitoring is necessary on all planned discharges until we have	C.15.b.iii.(1)(c)iv. added to reduce monitoring of planned discharges to 18 months.

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					<p>enough data points to show that BMPs are treating appropriately. In response to comments, we have added language that allows the Permittees to monitor 18 consecutive months and then propose to monitor only at “high-risk” or “environmentally sensitive” areas.</p> <p>In response to comments, we have eliminated monthly reporting.</p>	
Palo Alto Santa Clara County SCVURPP	22.b. 31.b. 68	C.15.b.iii.(2)(c)-(d)	Too Prescriptive	<p><i>Eliminate overly prescriptive record keeping and reporting that interferes with responding to unplanned potable water discharges. Require monitoring only to the extent that time and resources allow and only where and when it is safe to do so.</i></p>	<p>Monitoring is necessary to verify effectiveness of BMPs. Monitoring is required only on 10% of the unplanned potable water discharges.</p>	
San Jose Attachment A	42	C.15.b.iii.(2)(c)(i)	More Time to Notify	<p>Allow time for resources to focus efforts on responding to potential endangerment of public health and safety. <i>Change notification to within 24 hours after becoming aware of any aquatic impacts.</i></p>	<p>We need to be aware of discharges that cause aquatic impacts or public health as soon as possible because of public inquiry.</p>	
EBMUD	3	C.15.b.iii.(2)(c)(i)	Too Prescriptive	<p>District field crews are trained and equipped to minimize potential impacts to public health and safety and consistently do so. <i>Eliminate the requirement to notify Water Board staff when unplanned discharges might endanger or</i></p>	<p>We need to be aware of discharges that cause aquatic impacts or public health as soon as possible because of public inquiry.</p>	

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				<i>compromise public health and safety because this is a highly subjective judgment and does not seem to be a water quality issue under the Water Board's jurisdiction.</i>		
EBMUD	4	C.15.b.iii.(2)(c)(ii)	Too Prescriptive	This requirement is burdensome, particularly given the requirement to report <u>all</u> unplanned discharges monthly under Provision No. C.15.b.iii(2)(c)(iv). The reportable quantity for chlorine under water quality regulations is 10 pounds, which is equivalent to approximately 600,000 gallons of distribution system water having a chlorine concentration of 2 mg/l. <i>Eliminate the requirement to notify Water Board staff as soon as possible, but not later than 24 hours after becoming aware of any unplanned discharge having a total chlorine residual >0.08 mg/L and >50,000 gallons.</i>	2 mg/l of chlorine residual is drinking water standard. This way exceeds the acute toxicity thresholds for many aquatic species including ESA listed salmonids. Notification is necessary because we do get calls from concerned citizens.	Monthly reporting deleted from C.15.b.iii.(1)(b).
EBMUD	5	C.15.b.iii.(2)(c)(iii)	Language Revision	<i>To be consistent with the comment to eliminate the requirement for notifications within 24 hours, change the requirement to document and report complaints and corrective actions from "within 5 working days after the 24-hour telephone or e-mail report" to "within 5 working days after receiving the complaint"</i>	Revised TO language not changed.	
Contra Costa	4	C.15.b.iii.(Burdensome	Monthly reports are unnecessary		Monthly reporting

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Co Water District		2)(c)(iv)	Reporting	burdens that add no value since they contain the same information as the annual reports. <i>Remove requirement for monthly reporting.</i>		deleted from C.15.b.iii.(1)(b).
San Jose Attachment A	43	C.15.b.iii.(2)(c)(iv)	Monthly Reporting Burdensome	Too burdensome to report monthly and inconsistent with the rest of the reporting requirements in the TO. <i>Reporting should be done in the Annual Report while maintaining records for review at the request of the Board.</i>		Monthly reporting deleted from C.15.b.iii.(1)(b).
Contra Costa Co Water District	4.b.	C.15.b.iii.(2)(c)(iv)	No Specified Reporting Period or Annual Report Due Date	Provision does not specify a reporting period or annual report submittal date. <i>Reporting period and submittal date should be consistent with the reporting period and submittal date (9/15) of the MRP.</i>	C.16. states that Annual Reports are due on September 16 th of each calendar year. The reporting period is from June 1 st of the previous year to July 31 st of the current year.	
EBMUD	6	C.15.b.iii.(2)(c)(v)	Too Prescriptive	Requiring all of this information for all unplanned discharges is extremely burdensome and of limited value. Obtaining and documenting this information is difficult and resource intensive, and some of these estimates will be imprecise and subject to uncertainty. <i>Eliminate the requirements to identify and report receiving water body(ies), duration of discharge, estimated volume, time of discharge discovery, time of notification, and time of inspector/responding crew arrival</i>	Potable water contains chlorine or chloramines, two very toxic chemicals to aquatic life. There have been potable water releases that have caused fish kill because the water was not treated or partially treated. Monitoring is necessary on all planned discharges until we have enough data points to show that BMPs are treating appropriately. In response to comments, we have added language that allows the Permittees to monitor 18 consecutive months and then	C.15.b.iii.(1)(c)iv. added to reduce monitoring of planned discharges to 18 months. Monthly reporting deleted from C.15.b.iii.(1)(b).

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				<i>times for all unplanned discharges.</i>	propose to monitor only at “high-risk” or “environmentally sensitive” areas. In response to comments, we have eliminated monthly reporting.	
NOAA	20	C.15.b.iii.(2)(d)(i)	0.080 ppm Chlorine Residual too High	Allowable chlorine residual of 0.080 ppm is too high to ensure the protection of aquatic life. Best available data show that this concentration exceeds acute toxicity thresholds for many aquatic species including ESA listed salmonids and their prey items. <i>Explore or cause to be explored available test kits and determine which kits with lower detection limits are reliable enough to be used for this permit.</i> <i>Require the generation of lab data to validate the performance of the field tests and dechlorination BMPs.</i>	Many field test kits can get down to 0.02 mg/L. However, it requires calibration, which may not be available out in the field. But we have lowered the allowable chlorine residual to 0.05 mg/L to be consistent with the San Francisco Public Utilities Commission Permit, Order No. R2-2008-0102. By the time a sample reaches a lab, it will no longer be a representative sample for chlorine.	We have lowered the allowable chlorine residual to 0.05 mg/L.
Contra Costa Co Water District	5	C.15.b.iii.(2)(d)(i)	Hard to Monitor Unplanned Discharges	Unplanned discharges cannot be anticipated. With only one field turbidimeter, it would be difficult to mobilize and sample turbidity of unplanned discharges. MRP language should recognize that a 10% minimum objective may not always be achievable. We also believe that the intent of the monitoring is to assess rather than verify the BMPs’ effectiveness, relative to the turbidity benchmarks.	Sampling 10% of these unplanned discharges is reasonable and will provide a representative set of data. If BMPs do not meet benchmarks, other BMPs need to be employed.	

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				<p><i>Revise as follows: "Pre and post-BMP turbidity in NTU shall attempt to be measured for at least 10% of the unplanned discharges to evaluate the effectiveness of the BMPs employed."</i></p>		
EBMUD	6	C.15.b.iii.(2)(d)(i)	Unplanned Potable Water Discharge	<p>Requirement to conduct pre- and post-BMP monitoring of "turbidity in NTU" for at least 10% of all unplanned discharges is highly burdensome, resource intensive, and of limited benefit.</p> <p>Significant concerns regarding the types of BMP improvements that the Water Board might consider for unplanned discharges if pH, chlorine residual, or turbidity are outside ranges. Corrosion control within water conveyance and distribution systems is of critical importance and unplanned discharges, by their nature, cannot be anticipated.</p> <p>Significant practical and technical limitations exist in implementing pH and sediment control BMPs for unplanned discharges.</p> <p><i>Reduce % of unplanned discharges to be sampled for turbidity.</i></p>	<p>122.26(d)(2)(iv)(B)(1) requires a program to prevent illicit discharges to the municipal separate storm sewer system. Potable water sources can be identified as illicit discharges if they are identified as sources of pollutants to waters of the United States. In the past, we have conditionally exempted discharges from potable water sources as long as BMPs were implemented. But we have no data indicating the BMPs are effective. We know that potable water's chlorine residual exceeds acute toxicity thresholds for many aquatic species including ESA listed salmonids. We know that unplanned discharges, such as line breaks, flushes large volumes of sediment out into the streets when excavation is done to repair the lines. There must be data to show that potable water discharges are not a source of pollutants. EBMUD, alone, has between 300-550 unplanned discharges each month. Sampling 10% of these unplanned</p>	

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					discharges is reasonable and will provide a representative set of data. Water purveyors have the flexibility to determine appropriate and effective BMPs to meet the pH, chlorine residual, and turbidity benchmarks when the potable water is discharged.	
Contra Costa Co Water District	6	C.15.b.iii.(2)(d)(ii)	Revise Data Gathering Period to Reflect Permit Changes	If monthly reporting is eliminated per our recommendations in Comments #1 & #3, the data gathering period language should be revised. <i>Revise as follows: "After <u>2 consecutive reporting years</u> of data gathering and depending on those results, the dischargers can propose monitoring..."</i>	Anytime the Permittee has 18 consecutive months of data, it may propose a reduced monitoring plan.	
Dublin	17	C.15.b.iii.(3)	Can Control Third Parties	Many of these exempted non-stormwater discharges are beyond the control of local agencies (the Permit includes a requirement that fire departments consider storm inlet protection prior to conducting firefighting activities). Failure to monitor and control activities by other agencies could put local agencies in noncompliance with the Permit. Cost of monitoring and recordkeeping estimated at \$8,000.	40 CFR 122.26(d)(2)(iv)(B)(1) requires Permittees to address flows from fire fighting activities if the discharges are identified as significant sources of pollutants to waters of the United States. Highly chlorinated potable water used in fire fighting activities is known to be toxic to aquatic life. In addition if there are toxic substances on the property where the fire is, this discharge is toxic to aquatic life. Therefore, Permittees should already be addressing flows from fire fighting activities. Reporting for this provision is on a case by case	Final TO has the underlined language added to C.15.b.iii.(3)(b), "Permittees shall <u>implement or require fire fighting personnel to implement effective BMPs.</u> "

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					basis. Also, the priority for implementing BMPs is last, after efforts have been directed toward life and property. However, in response to this comment, we have added language so that this subprovision has more BMP orientation.	
Fremont Attachment	46	C.15.b.iii.(3)	Emergency Discharge	In an emergency situation, diverting resources to focus on pollution prevention and BMPs is not feasible. <i>Eliminate requirement.</i>	C.15.b.iii.(3)(b) gives a priority on what efforts should be directed towards in a emergency.	
Contra Costa Brd of Sups Attch A	57	C.15.b.iv.	Can't Monitor All Pool Discharges	Unreasonable for County to monitor all discharges from swimming pools, spas, hot tubs and fountains located on private property. The County does not maintain an inventory of these features, and may not have the legal authority to regulate these discharges (especially for existing facilities). Permit language presumes that sanitary sewer agencies will be willing to accept discharges from these sources. The sanitary sewer agencies may not be willing to even accept filter backwash discharges, and are even more likely to object to accepting discharges associated with pool draining events. <i>County should just continue providing information regarding appropriate BMPs to prevent water quality impacts.</i>	40 CFR 122.26(d)(2)(iv)(B)(1) requires a program to prevent illicit discharges to the municipal separate storm sewer system. Pool water tends to be highly chlorinated and may contain a copper algaecide, both shown to be toxic to aquatic life and therefore can be considered an illicit discharge. But instead of listing such waters as illicit discharges, we are continuing to list these discharges as conditionally exempted because sanitary sewer agencies have given indications that they are willing to accept pool discharges. Many POTWs, especially those who are also Permittees, already except pool discharge through a clean out.	

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ACCWP Attachment-1 Berkeley Attachment 1 Fremont Attachment Newark Attachment Oakland Attachment #1 SMCWPPP	99 92 48 107 99 113	C.15.b.iv.(1)(c)	Don't Require Permittees to Work With POTW	Enabling "the installation of a sanitary sewer discharge location to allow draining events for pools, spas, and fountains to occur with the proper permits from the local sanitary sewer agency" is unclear. <i>Permittees should only be responsible for providing owners of these features with information about how they may apply for the proper permits to discharge into the sanitary sewer.</i>	40 CFR 122.26(d)(2)(iv)(B)(1) requires a program to prevent illicit discharges to the municipal separate storm sewer system. Pool water tends to be highly chlorinated and may contain a copper algaecide, both shown to be toxic to aquatic life and therefore can be considered an illicit discharge, not allowed into the sanitary sewer. But instead of listing such waters as illicit discharges, we are continuing to list these discharges as conditionally exempted because sanitary sewer agencies have given indications that they are willing to accept pool discharges.	
Livermore	17.b.	C.15.b.iv.(1)(c)	Water Board Should Work to Change Plumbing Code	<i>Requirement to have drains for pools and spas would be more effectively addressed through a change in the plumbing code rather than adding it to stormwater permits. As with pesticide usage, the Board should work with other state agencies to address this issue statewide.</i>	We agree. But at the same time 40 CFR 122.26(d)(2)(iv)(B)(1) requires a program to prevent illicit discharges to the municipal separate storm sewer system. Pool water tends to be highly chlorinated and may contain a copper algaecide, both shown to be toxic to aquatic life and therefore can be considered an illicit discharge, not allowed into the sanitary sewer. But instead of listing such waters as illicit discharges, we are continuing to list these discharges as conditionally exempted because sanitary sewer agencies have given indications that	C.15.b.v.(1)(c) has a footnote that says, "This connection could be a drain in the pool or could be a sanitary sewer clean out located close enough to the pool so that a hose can readily direct the pool discharge into the sanitary sewer clean out."

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					they are willing to accept pool discharges. A drain in the pool/spa, or a hose or other temporary system directed to the sewer clean out would facilitate the discharge.	
Livermore	17	C.15.b.iv.(2)	Recordkeeping Unnecessary	Recordkeeping for authorized major discharges of dechlorinated pool, spa and fountain water, including BMPs employed, is cumbersome, unnecessary, and have no beneficial impact on water quality. <i>Remove requirement.</i>	Pool water tends to be highly chlorinated and may contain a copper algaecide, both shown to be toxic to aquatic life and therefore can be considered an illicit discharge, not allowed into the sanitary sewer. If they are being discharged into the storm drain, they must be employing BMPs. We modified the Final TO to clearly state that only authorized discharges to the <u>storm drain</u> need a record.	See addition to C.15.b.v.(2).
Contra Costa Brd of Sups Attch A	57.b.	C.15.b.iv.(c)	Prohibits Pools from Being Built	This Provision seems to prohibit pools from being constructed in areas that do not have sanitary sewer systems, which accounts for much of the unincorporated portion of Contra Costa County.	The Revised TO requires that swimming pools, spas, hot tubs, and fountains be connected to sanitary sewer systems where it is feasible and if approved by local sanitary sewer agencies. In remote areas, where there is no access to sanitary sewer systems, these types of discharges shall be directed to landscaping or vegetated areas away from water ways.	
NRDC & SF Baykeeper	66	C.15.b.v.	Conditional Exemption Violates CWA	The BMPs under C.15.b.v. are vague and fail to set out any measurable requirement, and violates the clear requirements of the	The overwhelming majority of discharges from irrigation runoff within the jurisdictions covered by the permit will be from single family	

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				<p>Clean Water Act and its implementing regulations. These BMPs that will not result in non-stormwater irrigation flows free of pollutants under 40 C.F.R. § 122.26. The TO does not provide any evidence to support that BMPs will either effectively prohibit such discharges or even allow water quality standards to be met. The provisions of C.15.b.v, requiring that Permittees promote “conservation programs that minimize discharges” or send “outreach messages regarding use of less toxic options,” are not in themselves management practices. They constitute proposals for categories of BMPs to be developed. They have been introduced in previous permits and that have been tried—and failed—to prevent impacts to receiving waters from irrigation runoff. Pollution from pesticides and other contaminants constitutes a serious and ongoing problem in receiving waters under the jurisdiction of the Permittees.</p>	<p>residential lots. A program of prohibition may be simple and straightforward, but would be extremely difficult to enforce. In times of severe drought such enforcement is attempted with varying results. The approach in this permit is primarily educational outreach to these residential users. The presence of nutrient or pesticide pollutants in irrigation runoff is not certain, however, runoff is apt to contain chlorine or chloramines if it is excessive and above seepage level. This discharge is on par with residential car washing, which is also controlled through education rather than enforcement in this permit.</p>	
NRDC & SF Baykeeper	65	C.15.b.v.	Does Not Effectively Prohibit Non-Stormwater Discharges As Required in CWA	<p>There has been no evidence that the BMPs required under Provision C.15.b.v. are sufficient to meet the regulatory requirements of the CWA. 40 C.F.R. § 122.26 provides that illicit discharge programs must address non-stormwater discharges</p>	<p>We agree that the intent of the regulatory language is to prohibit all “polluted” non-stormwater discharges. It would be wholly impracticable to prohibit all non-stormwater discharges that pass through the MS4, as the MS4 in</p>	

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				<p>“where such discharges are identified by the municipality as sources of pollutants.” It does not provide that requiring BMPs may supplant the requirement that discharges contain “no pollutants,” nor is TO’s approach equivalent to “effectively prohibit[ing] non-stormwater discharges into the storm sewers.” (33 U.S.C. § 1342(p)(3)(B)(ii).)</p>	<p>many circumstances has captured streams and existing baseflow present before the construction of the MS4. As the commenters state: “A clear reading of the statute, and one that elaborates on Section 402(p)(3)(B)(ii) of the Clean Water Act rather than contradicting it, is that while non-stormwater discharges must be prohibited by the text of the Act, illicit discharge enforcement programs need only specifically address the enumerated list of non-stormwater discharges set forth in the regulations where such discharges have been identified as a source of pollutants.”</p> <p>C.15 simply clarifies the standard for determining these enumerated discharges are not sources of pollutants.</p>	
NRDC & SF Baykeeper	64	C.15.b.v.	Irrigation and Lawn Water should not be Exempt	<p>Studies have consistently shown that non-stormwater discharges from irrigation water or lawn water are a significant source of pollutants for which SF Bay region waters are impaired. A non-source of pollutants finding is contrary to this.</p>	<p>We agree that the intent of the regulatory language is to prohibit all “polluted” non-stormwater discharges. It would be wholly impracticable to prohibit all non-stormwater discharges that pass through the MS4, as the MS4 in</p>	

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				<p>The TO notes that violations of water quality standards are a problem for “pesticide associated toxicity in all urban creeks,” (Tentative Order, at Finding 11), and garden use has been identified as one of the main sources of pesticides found in urban streams.</p> <p>Lawns have further been identified as a “hot spot” for nutrient contamination in urban watersheds—lawns “contribute greater concentrations of Total N, Total P and dissolved phosphorus than other urban source areas ... source research suggests that nutrient concentrations in lawn runoff can be as much as four times greater than other urban sources such as streets, rooftops or driveways.”</p> <p><i>Remove exemption for irrigation and lawn water.</i></p>	<p>many circumstances has captured streams and existing baseflow present before the construction of the MS4. As the commenters state: “A clear reading of the statute, and one that elaborates on Section 402(p)(3)(B)(ii) of the Clean Water Act rather than contradicting it, is that while non-stormwater discharges must be prohibited by the text of the Act, illicit discharge enforcement programs need only specifically address the enumerated list of non-stormwater discharges set forth in the regulations where such discharges have been identified as a source of pollutants.”</p> <p>C.15 simply clarifies the standard for determining these enumerated discharges are not sources of pollutants.</p>	
Fremont Attachment	49	C.15.b.v.(1)(e)	Ongoing, Large-Volume Landscape Irrigation Runoff	<p>Corrective action and enforcement for ongoing, large-volume landscape irrigation runoff to the MS4 falls under the authority of the water supply entity as part of their water conservation program.</p> <p><i>Modify so this requirement applies to the water supply entity. Permittee will notify the water supply entity of any noticeable discharge of this type.</i></p>	<p>Many Permittees already provide education for irrigation and watering. We added language that allows Permittees to also work with the potable water purveyor to promote BMPs.</p>	See modifications to C.15.b.vi.

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Sunnyvale	62	C.15.b.v.(e)	Too Prescriptive	<p>City will need to include Illicit Discharge enforcement actions for “large volume landscape irrigation runoff” to the MS4. No definition is provided as to what is considered a “large volume” discharge. This is overly prescriptive requirement and requires cities to devote limited resources to responding to relatively minor potential impacts of irrigation water discharges.</p> <p><i>Remove from permit and allow cities to continue to promote good irrigation practices and the wise use of water resources.</i></p>	<p>Irrigation water and lawn water can be sources of pollutants if pesticides and fertilizers are used and then water at inappropriate times. TO continues to require Permittees to promote good irrigation practices and wise use of water. Should there be ongoing, large volumes of irrigation water, then the Permittee can proceed with enforcement. “Large” is not defined so that Permittees have flexibility and discretion.</p>	

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CCCWP	2	General	30 Days to Review Final Revised TO and Response to Comments	Regulated community must be provided a sufficient and reasonable period of time for its review. The Program requests it be provided a minimum of 30 days, prior to the adoption hearing, for review of the final TO and for review of the anticipated formal and complete response to comments.	By law, we are only required to provide a 30-day comment period. We provided a 50-day comment period, well beyond the requirement. By law, we are not required to provide a response to comments on the TO. The response to comments is provided as a courtesy.	
Kolb, Larry and James, Roger	4	General	Add language to C1	<u>PROVISION C.1.a.-page 9</u> This provision must also apply to "violation of discharge prohibitions" by adding this phrase after "exceedance of applicable WQS".	Water quality-based prohibitions are subject to the iterative stormwater compliance process per the applicable State Water Board Order WQ 1999-05.	
Kolb, Larry and James, Roger	3	General	Add language to Finding 16	<u>FINDING 16-page 7</u> While Permittees have limited jurisdiction over certain pollutants, they are the ultimate dischargers and responsible for compliance water quality standards and discharge prohibitions. This should also be noted in this finding.	As this finding does not state that this circumstance removes any responsibility from the Permittees, the change is not necessary.	
ACCWP Berkeley Newark	9 8 5	General	Annual Reporting Format	Cumulative burden of all the reporting requirements can be overwhelming and onerous, especially for municipalities with shrinking staff resources. Annual Reports are very time-consuming to produce and difficult to review. Annual Reports have been given very little if any timely review.	The MRP requires submittal of specific information and data that demonstrates accountability and success towards reducing pollutants. In many ways, this should reduce the volume of materials submitted by	

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				Water Board has broad authority to request additional information from specific Permittees as may be needed in specific situations.	Permittees. This will relieve municipalities of compiling hundreds of pages of all street sweeping reports, all inspection forms, stormwater pollution prevention plans, site plans, public education materials, reports, etc. each year. This type of materials, currently submitted, don't necessarily demonstrate the level of program implementation or success of the program towards reducing pollutants. We used the information provided in the Annual Reports to develop the MRP.	
Berkeley Attachment 2 Oakland Attachment 2	1 1	General	Annual Reporting Format	Concerned with proposed approach of developing annual reporting forms by way of a collaborative process between Board staff and the Permittees, with final approval by the Executive Officer. Annual reporting process should not impose a significant incremental burden on local agency staff with little, if any, resulting benefit to water quality. The annual reporting forms to be negotiated with Water Board staff should substantially decrease the reporting requirements to the level of summary presentations of the least amount of relevant material needed to document compliance with permit requirements		
Campbell	6	General	Assist with Getting Grants and Loans	Assist local governments in obtaining federal and state grants and forgivable loans that may be used to help local public agencies with their efforts to improve stormwater quality.	The Water Board is attempting to assist some MRP efforts through grant funding.	
Monte Sereno	2	General	Assist with Getting Grants and Loans	Assist local governments in obtaining federal and state grants and forgivable loans that may be used to help local public agencies with their efforts to improve stormwater quality.		
West Valley Clean	3	General	Assist with Getting Grants and Loans	Assist local governments in obtaining federal and state grants and forgivable		

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Water Program				loans that may be used to help local public agencies with their efforts to improve stormwater quality.		
Alameda County City Manager's Assoc.	4B	General	Balance Cost with Benefit	The most significant problems are in the areas of conditionally exempt dischargers, increased monitoring and new development (c.3) requirements. Solutions that are based on quantifiable scientific data that can be measured over time to determine their efficacy, as well as a balance in the financial implications of such solutions, is essential to support and strength of any proposal	Comment noted.	
Berg and Berg	1	General	C.3. Costly and Prescriptive	Projected costs of compliance with the 2001 Santa Clara County dischargers NPDES permit dwarf the acreage/unit fees for municipal area storm water fees and sanitary sewer fees. MRP should consider decreasing requirements and rolling back requirements, not increasing requirements. Projects should be allowed the election to pay reasonable in lieu fees. Municipalities should be able to bank in lieu fees and apply them to projects at their discretion and timing. Parcels of 5 acres and less should be totally exempt. Requirements for redevelopment of existing projects with no change in land use are equally if not more onerous because of trying to retrofit existing systems and should be exempted from	We cannot verify the accuracy of your cost estimates or your statements. Current permits requirements already require implementation of C.3. if redevelopment projects add or replace 10,000 square feet or more. Neither the Permittees nor the developers have expressed the commenter's concerns. We have worked closely with NRDC, BASMAA, Homebuilders, and EPA on the MRP.	

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				<p>the permit regulation. Cost of TO compliance is significantly above historical storm and sewer fees, indicating there is a very high incremental compliance cost that fails the cost/benefit test. Meaningful regional mitigation/restoration projects would lower compliance costs and produce significantly better results. Significant hidden costs in the form of additional municipal staffing and inspection fees, additional permit processing time and resultant land carry cost, additional engineering consultant costs, loss of site design flexibility, loss of land, loss of units or building area, diminution of property values near treatment/detention facilities, additional storm line footage to divert waters to central detention/retention areas, higher ongoing maintenance costs , vector control, health related costs due to West Nile and Malaria, firms that might otherwise redevelop existing industrial facilities will defer making improvements due to the onerous nature requirements</p>		
Alameda County City Manager's Assoc.	4C	General	Collaborate to Modify Prop 218 Limitations	<p>Municipalities, stormwater agencies, Regional Board staff, and State Water Resources Control Board should jointly pursue modifications to Proposition 218 requirements, as well as changes to the State Revolving Fund Loan</p>	We are willing to assist in any such effort.	

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				program to provide funding for any infrastructure associated with the MRP, such as "full-capture" trash controls.		
Danville	2	General	Collaborative Approach to Implementation	Take a practical and collaborative approach to implementing the new MRP, especially in the areas of water quality monitoring, pilot projects, trash assessments, data gathering and annual reporting.	We are always willing to assist implementation in a collaborative manner.	
SCVWD	5	General	Completed Studies Not Used to Establish Pollutant Reduction Strategies	Concerned that studies completed by the SCVURPPP, its co-permittees, other scientific agencies and institutions, and even other Water Boards, have not been fully utilized to determine current water quality characteristics, and pollutant reduction strategies, in a fiscally responsible way.	We can review previous studies to guide future work, where appropriate.	
Sunnyvale	4	General	Compliance Deadlines too Aggressive	Timelines for implementation for new or expanded requirements as written are very short. Adequate time is needed where changes to ordinances, municipal plans or significant capital expenditures are required. With the current timelines for certain provisions in this TO, it is very likely that the City will not be able to meet compliance deadlines for some provisions.	The Revised TO eliminated the lower priority ones, scaled back on others, and replaced some with tasks that are easier to implement. C.2.- C.7. have already been scaled back to provide feasibility while maintaining accountability and are based on current implementation levels. New requirements, monitoring, and studies have been scaled back and/or pushed off into future years of the	
SCVWD	2	General	Compliance Not Achievable /Fiscal Crisis	Concerned with several sections, and feel compliance may not be achievable in the time frame identified in the Revised TO. Fiscal crisis reduces resources.		

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					next permit term.	
Daly City	7	General	Compliance Unpredictable	Control actions needed to comply with some of the TO's requirements are unpredictable because they may be triggered by monitoring results, such as Provision C.8.e.i.(3). Trash and litter clean up level is arbitrary and potentially unrealistic.	Noted. The TAL has been removed from the Final TO.	
Sunnyvale	7	General	Concern About Performance Standards	Concerned about consistent implementation of current performance standards	It is unclear what specific current performance standards the commenter is concerned with. Most of the requirements in the Revised TO are based on current implementation levels. In addition, the MRP is intended to level the playing field.	
San Leandro Mayor	1	General	Costly and Prescriptive With Little Benefit to Water Quality	Revised TO remains unnecessarily prescriptive in many areas and requires the co-permittees to implement costly and ineffective new mandates. As drafted, this TO has significant cost implications and operational impacts on the City and other co-permittees, while offering very limited benefits in terms of improving water quality when compared to existing permit requirements.	The Revised TO already eliminated the lower priority requirements, scaled back on others, and replaced some with tasks that are easier to implement. C.2.-C.7. have already been scaled back to provide flexibility while maintaining accountability. And most of these requirements are set at current levels of implementation. The Final TO scales back and/or pushes off into future years	
Dublin	4	General	Costly Without Water Quality Improvement	As expressed in our comment letter from last year, many requirements of the Permit will result in questionable or marginal improvements to actual water		

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				quality, and may detract from local agencies' ability to carry out existing or improved local clean water programs due to demands on funding, staff, and other resources.	of the next permit term new requirements, monitoring, and studies. The MRP requirements level the playing field for all Phase 1 Permittees and reflect some improvements over existing requirements to reflect MEP. We believe that the requirements will have significant water quality impact.	
Millbrae	3	General	Costly Without Water Quality Improvement	A number of the permit's provisions, such as Provisions C.3, C.6, and C.15, remain overly prescriptive and will require additional staff time dealing with a voluminous amount of information tracking and reporting which seems unrelated to improving water quality.		
Newark	2	General	Costly Without Water Quality Improvement	In addition to the remaining concerns with the previous TO that were not addressed, there are many new requirements in the Revised TO that we find unacceptable. Many of these requirements impose significant cost without providing a commensurate improvement in water quality.		
Newark Mayor	3	General	Costly Without Water Quality Improvement	MRP still has significant cost implications and operational impacts, while offering very limited benefits in terms of improving water quality standards relative to the existing permit requirements.		
Oakland	2	General	Costly Without Water Quality Improvement	New elements in Revised TO may be costly and at the same time may not contribute significantly to improving water quality.		
Pleasanton	2	General	Costly Without Water	Revised TO has significant additional		

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			Quality Improvement	cost implications and operational impacts to the City and other co-permittees while offering very limited benefits in improving water quality over and above those urban water quality measures, programs and requirements that we are currently imposing on residents and businesses under our existing NPDES stormwater permit. To costly during fiscal crisis.		
Mountain View	16	General	Data to Show Sources Before Increased Requirements	Revised TO will be the fourth Municipal NPDES Storm Water Permit that the City will implement. Mountain View has a comprehensive storm water pollutions prevention program and is committed to implementing measures to reduce pollutants found to cause impairment to local waterways and San Francisco Bay. The City also supports using comprehensive and conclusive data to show that a source exists and that the required measures will effectively control the pollutant of concern. The City's position is that this data should be used as the basis for the enhanced requirements in the Regional Permit.	Noted. The requirements of the TO are all necessary for protection or improvement of water quality.	
Newark Mayor	4	General	Delay Adoption and Work With Permittees/Fiscal Crisis	Delay adoption of Revised TO and direct staff to continue to work with co-permittees to develop a practical and effective permit that gives appropriate consideration to fiscal crisis.	We have been working with BASMAA and other stakeholders.	
ACCWP Legal	1	General	Short Public	We appreciate the revisions made by	By law, we are only required	

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			Comment Period	your staff to the TO. While some progress has been made in the 15 months since that TO was issued, substantial technical, resource and legal issues remain unresolved and are not effectively addressed by the Revised TO. Preparation of these comments have been made more difficult due to the compressed formal comment period (less than 60 days) and the late issuance of the summary response to our comments that were made at the end of February 2008 – Comments and Responses Summary were not provided until March 18, 2009. Under these circumstances, the ACCWP and Co-Permittees have made their best efforts to assure adequate internal staff review and seek guidance from their elected public officials.	to provide a 30-day comment period. We provided a 50-day comment period, well beyond the requirement. By law, we are not required to provide a response to comments on the TO. The response to comments is provided as a courtesy.	
SCVWD	21	General	Does Not Consider Existing Information	Revised TO did not fully consider existing information from recent federal, state and local studies.	There is adequate basis for the requirements in the TO with respect to previous applicable water quality studies.	
NRDC and SF Baykeeper	12	General	Does Not Effectively Prevent Non-Stormwater Discharge	Revised TO fails to effectively prohibit non-storm water discharges, as required by the Clean Water Act, including toxic discharges to urban streams that are well-known to the Regional Board.	We disagree. The TO does adequately prohibit polluted non-stormwater discharges.	
NRDC and SF	13	General	Does Not Ensure	Revised TO does not ensure	We disagree. Through the	

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Baykeeper			Compliance With Water Quality Standards	compliance with water quality standards and is designed not to ensure compliance, contrary to state and federal law.	provisions, the Final TO does ensure compliance with water quality standards.	
NRDC and SF Baykeeper	14	General	Does Not Require Compliance with Wasteload Allocations	Revised TO does not require compliance with wasteload allocations in adopted TMDLs, contrary to law.	We disagree. Through the provisions the Final TO requires compliance with wasteload allocations in adopted TMDLs.	
Burlingame	1	General	Don't Shift State Responsibilities on Locals	Permit cannot shift Water Board pollutant control and cleanup responsibility to local public agencies.	The Final TO places appropriate requirements on the Permittees.	
SCVURPPP Legal Supplemental	1	General	Edit Attachment J	Proposed TO Attachment J (Standard Provisions for Stormwater) appears to be overbroad and contains a number of subprovisions that go beyond the standard provisions required by US EPA under the NPDES regulations and are otherwise irrelevant to or not appropriate for -- and likely not intended to apply to -- municipal stormwater dischargers. The Santa Clara Program therefore requests that Attachment J be edited to exclude such inappropriate provisions (for example, without limitation,).	We agree. Portions of the Standard Provisions that obviously apply to sewage or industrial wastewater treatment plants, rather than municipal stormwater NPDES permitted entities do not apply, and have been removed. We have removed all of subprovision B, subprovision C.5, and many of the definitions in subprovision E	
SCVURPPP Legal Supplemental	2	General	Edit C.18 Language	The phrase "to the extent they are reasonably applicable to municipal stormwater programs covered by this Permit (as distinct from separately permitted facilities that discharge stormwater) and are not otherwise addressed through the Provisions set	We agree. Portions of the Standard Provisions that obviously apply to sewage or industrial wastewater treatment plants, rather than municipal stormwater NPDES permitted entities	

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				forth herein" should also be inserted at the end of the current language in Permit Provision C.18.	do not apply, and have been removed. Rather than change Provision C.18, we have removed all of subprovision B, subprovision C.5, and many of the definitions in subprovision E	
Concord	3	General	Excessive Reporting	Revised TO has over 100 new reports, databases, tabular files, inspections and records. Almost every page of the 191 page permit specifies something the City would have to start maintaining or sending to the Regional Board. The City's 2007-2008 annual report was excessively long, 1,200 pages. The Revised TO would expand reporting requirements even more and does not gain anything.	The MRP requires submittal of specific information and data that demonstrates accountability and success towards reducing pollutants. In many ways, this should reduce the volume of materials Permittees feel they need to submit to comply. This will relieve municipalities of compiling hundreds of pages of all street sweeping reports, all inspection forms, stormwater pollution prevention plans, site plans, public education materials, reports, etc. each year. This type of materials, currently submitted, don't necessarily demonstrate the level of program implementation or success of the program towards reducing pollutants.	
Alameda City	1	General	Extend Current	Considering the costs and fiscal	We cannot extend the	

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Alameda City San Leandro Mayor	2 3		Permit	challenges, extend current permit for 3-years. Extension would allow for the development of statewide approaches to fund stormwater programs such as water quality monitoring, stormwater treatment, and trash controls.	current permits. Two of permits already expired in 1999. We cannot reissue the existing permit either since they are not MEP. But recognizing the fiscal crisis, the Final TO scales back and/or pushes off into future years new requirements, monitoring, and studies. We have also worked with stakeholders to build consensus.	
Alameda County City Manager's Assoc.	2, 4A	General	Extend Current Permit	Extend or reissue the existing permit for up to three years to allow economic recover. Allow time to develop longer term solutions to issues of mutual concern to the Board as well as our member cities. Need time to understand onerous requirements.		
Alameda Co City Mgr's Assoc	3	General		An extension of the current permit would provide us all the opportunity to hopefully benefit from a recovering economy, as well as develop longer term solutions to what are certainly issues of mutual concern to the Board as well as our member cities. The objectives are clearer than the steps to effective implementation: we need a strategic approach to the latter to reach our desired outcomes in a reasoned and realistic way. The most significant problems are in the areas of conditionally exempt dischargers, increased monitoring and new development (c.3) requirements. Solutions that are based on quantifiable scientific data that can be measured over time to determine their efficacy, as well as a balance in the financial implications of such solutions,		

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				is essential to support and strength of any proposal.		
Livermore	4	General	Extend Current Permit	Regional Board could reissue or extend the current stormwater permits for an interim period of perhaps 3 years to allow economic conditions to stabilize before undertaking a new permit with significant new requirements.		
Pleasanton	3	General	Extend Current Permit	<p>Extend existing permit for three years because of fiscal crisis. Decision to extend the permit will provide the following benefits: 1) Bay Area countywide clean water programs have been operating under successfully under current permit; 2) allow time for board staff and stakeholders to collectively address and solve the technical and implementable challenges that still exist in the Revised MRP; and 3) allow public agencies to weather fiscal crisis without the extra financial and workload burden of this unfunded mandate.</p> <p>Existing permits have been successfully implemented by all programs and this implementation has made great benefits to water quality in the Bay Area.</p> <p>Or the Regional Board could reissue the current stormwater permits for three years to allow economic conditions to stabilize before</p>		

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				undertaking a new permit with significant new requirements.		
San Leandro	2	General	Extend Current Permit	Extend existing permit so that there is more time to come up with a viable TO.		
Daly City	8	General	Extend Reporting Dates	Some of the permit's implementation and reporting dates are unrealistic and should be extended.	The commenter did not provide specific provisions where the dates are unrealistic.	
ACCWP	3	General	Fiscal Crisis	Fiscal Crisis	We do recognize the economic situation for all Permittees. The Revised TO eliminated the lower priority ones, scaled back on others, and replaced some with tasks that are easier to implement. C.2.-C.7. have already been scaled back to provide feasibility while maintaining accountability and most Permittees are already implementing what the Revised TO requires. New requirements, monitoring, and studies have been scaled back and/or pushed off into future years of the next permit term.	
Alameda County	1	General	Fiscal Crisis	With the serious decline in government revenues over the past few years, local agencies are having difficulty funding the current stormwater programs and do not have the resources to take on additional costly and burdensome requirements.		
Alameda County City Managers Assoc	1	General	Fiscal Crisis	While the Revised TO is an improvement, it fails to recognize or account for the fiscal crisis. Future permits must recognize local governments' constraints in our ability to fund such requirements		
Antioch	4	General	Fiscal Crisis	Already at maximum assessment for storm water funding. Based on current budget estimates, a contribution from the General Fund may be necessary as soon as next Fiscal Year 2009-10 (FY 09-10) just to maintain compliance with existing NPDES provisions. However, the City of Antioch has a more critical financial situation. The City foresees three (3) possible		

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				<p>scenarios if these permit provisions are passed in current form: 1) Additional reductions in General Fund expenditures will be necessary to meet compliance. Reductions will come from public safety; 2) The City will operate with a fixed storm water budget and risk non-compliance; and/or, 3) The City maintains current public safety funding levels and provides a contribution from the General Fund to cover added MRP costs. If this occurs, the City will be operating below a prudent level of reserves. MRP is contributing unnecessarily to the financial crisis. The Regional Board is obligated, if not legally than morally, to look at the financial impacts of these provisions</p>		
CA Assembly Member Jerry Hill	1	General	Fiscal Crisis	Request that you consider the economic hardships faced by many local governments as part of the national recession.		
CA Senator Leland Yee	1	General	Fiscal Crisis	Work with the municipal storm-water staff to modify Revised TO. The objective is to make reasonable progress in protecting water quality while recognizing the fiscal challenges/limitations and declining revenues facing California's local governments in light of what most expect to be a prolonged economic downturn.		

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Dublin	1	General	Fiscal Crisis	A year ago, we would have described many of the requirements in the permit as fiscally unreasonable; today we must describe them as fiscally unrealistic.		
Livermore	1	General	Fiscal Crisis	Fiscal crisis. The decision to issue a MRP that includes significant new costs and requirements at a time when local agencies are already facing an unprecedented fiscal crisis is particularly troubling; especially since there appears to be no overwhelming or immediate need to issue the permit now.		
Newark	3	General	Fiscal Crisis	Fiscal crisis. The increased costs associated with the Revised TO and the realities of budget shortfalls continue to be minimized by Regional Board staff. Given current economic conditions, we simply cannot afford to implement costly requirements that provide little or no relative water quality benefits.		
San Leandro Mayor	2	General	Fiscal Crisis	Fiscal crisis. The decision to issue a Municipal Regional Permit that includes significant new costs and requirements at a time when local agencies are already facing an unprecedented fiscal crisis is not prudent public policy.		
San Ramon	1	General	Fiscal Crisis	Fiscal crisis. Local assessments for funding stormwater activities have reached their maximum while the cost		

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				of providing services continue to increase. The prospect of increasing the existing assessment, or creating a new assessment to provide additional funding, is dim during the current and deepening recession.		
Cupertino	2	General	Fiscal Crisis and Compliance Deadlines too Aggressive	Cupertino, like other local government agencies, is facing fiscal challenges on an unprecedented scale. Myriad of new stormwater requirements create deadlines that barely provide time for training, as well as the difficult tasks of developing guidance for stakeholders and introducing new ordinances to Council. Each of these implementation efforts requires extensive staff time and cost, in addition to the resources City staff already devotes to maintaining, evaluating and improving the current stormwater standards that the City has worked hard to achieve.		
Saratoga	1	General	Fiscal Crisis and MEP is Flexible	Modified MRP to better harmonize making reasonable further progress in protecting water quality with the long term fiscal crisis in mind. Such a modification appears to be fully consistent with the federal Clean Water Act as it provides the Board with considerable flexibility in identifying what comprises a "MEP" level of effort for reducing pollutants in discharges of stormwater from municipal separate storm sewer systems		

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Burlingame	12	General	Fiscal Crisis and Unfunded Mandates	Revised TO should take into consideration the current economic crisis and not break the small cities back by enforcing these unfunded mandates as many cities are struggling to provide basic public health and safety services and the City cannot afford to add this work program at this time.		
ACCWP Legal	9	General	Fiscal Crisis, Phase Implementation, and Unfunded Mandates	<p>Revised TO imposes many obligations that both exceed those set forth in federally-issued municipal stormwater permits and that exceeds those required by federal law, making them State mandates for "new programs and/or higher levels of service" intended to provide greater benefits to the public. Unless state funding is provided for the implementation of these state imposed obligations by local governments for these aspects of the MRP, they will violate Article XIII B, Section 6, of the California Constitution.</p> <p>Many of the new programs and higher levels of service envisioned in the Revised TO are extremely expensive, staff intensive, or otherwise impracticable without such measures moderating their burden on local governments. These burdens have been explained at length in comments separately submitted by the Bay Area municipalities, Countywide Stormwater</p>	<p>The Revised TO does not impose unfunded mandates. The requirements in the Revised TO are necessary to comply with the federal requirement that stormwater permits control discharges of pollutants to the maximum extent practicable. Mandates imposed by federal law are exempt from the requirement that the local agency's expenditures be reimbursed.</p> <p>The State Constitution's prohibition on unfunded mandates applies only to a new program or a higher level of service. Many of the challenged provisions are continuations of requirements already in permits previously issued to Permittees.</p>	

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				<p>Programs, and the Bay Area Stormwater Management Agencies Association. Regional Board staff members have acknowledged the significant funding problems facing local governments. To avoid contentious advocacy proceedings that may consume large amounts of resources on detailed administrative appeals and litigation that could instead be spent on water quality improvement, the Revised TO should be further modified in a manner reflecting consensus with Bay Area local governments on priorities and realistic implementation timetables (which in some cases may have to be phased into future permit terms) and/or the relevant requirements must be conditioned on the receipt of State funding guaranteed to help the municipalities staff and finance their implementation. This approach could be a significant benefit for the improvement of water quality and beneficial uses in the San Francisco Bay area.</p> <p>Examples of some of the more obvious required new programs and/or higher levels of service are the following: green streets pilot projects (Provision C.3.b.iii); low impact development requirements (Provision C.3.c); site design measures for small projects (Provision C.3.i); various monitoring</p>		

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				mandates (Provisions C.8.b-g); various trash control mandates (Provisions C.10.a-d); mercury and PCB control Programs (Provisions C.11&12); and BMP/control measure requirements for conditionally exempted non-stormwater discharges (Provision C.15.b). Regional Board should either (1) direct staff to revise those aspects of the Revised TO that exceed federal minimum requirements in a manner reflective of a consensus with local governments concerning priority-setting and phasing over time, <u>or</u> (2) absent the achievement of such a consensus, condition the effectiveness of such discretionarily imposed stormwater management, monitoring, and reporting requirements on local government receipt of funding from the State.		
Union City	7	General	Fiscal Crisis/Delay Implementation	The City is urged the Board to consider delaying the implementation measures due to the currently financial challenges.	We do recognize the economic situation for all Permittees. The Revised TO eliminated some lower priority tasks, scaled back on others, and replaced some with tasks that are easier to implement. C.2.-C.7. have already been scaled back to provide feasibility while maintaining accountability and most Permittees are already	
Fremont	1	General	Fiscal Crisis/Limit New Requirements	TO comments not addressed. Alarmed at some of the new requirements added in the Revised TO. Increased requirements come at a time of shrinking municipal budgets and declining resources. Issuing a permit that ignores fiscal reality will likely put many jurisdictions in a position of non-compliance. Local		

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				governments must focus their efforts on retaining effective core stormwater management programs and limit new initiatives to high priority items such as trash reduction.	implementing what the Revised TO requires. New requirements, monitoring, and studies have been scaled back and/or pushed off into future years of the next permit term.	
Menlo Park	2	General	Fiscal Crisis/Phase Implementation	City staff attended your presentation at the San Mateo County Board of Supervisors' Environmental Quality Committee meeting on November 18, 2008. We were encouraged by your remarks that the MRP would allow for implementation over a four-year period as your agency was cognizant of the financial limitations of the permittees.	The major new requirements are phased over several years. The requirements have been further streamlined in the Final TO. The requirements in the Final TO represent the highest priorities. The major new requirements are phased over several years. The requirements have been further streamlined in the Final TO.	
BASMAA	6	General	Fiscal Crisis/Prioritize	We need a smarter permit – one that is affordable, cost-effective, based on a real prioritization of objectives/new requirements, reflects a phased approach to addressing them in the next five years and across several future permit terms, and provides the biggest environmental benefit-for-the-buck. Fiscal constraints and competing local needs make it critical to both prioritize and phase municipal stormwater program actions so the most important issues and legal mandates (including TMDLs adopted by the Regional Water Board) are addressed.		
Concord	4	General	Fiscal Crisis/Prioritize	Reduce reporting, recordkeeping, inspecting, and monitoring so that it will free up resources to do things that		

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				<p>have a real impact like creek repair, drainage systems maintenance, and public education.</p> <p>Stormwater program has a limited budget and faces significant economic, procedural, and political restrictions to increasing budgets to address new permit requirements – we need and are prepared to support a permit that is affordable. We need a smarter permit – one that is affordable, cost-effective, based on a real prioritization of objectives/new requirements, reflects a phased approach to addressing them in the next five years and across several future permit terms, and provides the biggest environmental benefit-for-the-buck.</p>		
San Bruno	7,8,9	General	Fiscal Crisis/Prioritize	<p>The MRP is not sufficiently prioritized; thereby demonstrating both a lack of understanding by the State of cities' limited resources as well not recognizing the near impossibility of municipalities gaining new financial resources through the ballot box. The City recommends the following improvements.</p> <p>Focus should continue to be placed on the most cost effective measures. For example, BMPs and regulations such as SWPPPs for new housing construction development, basins for sediment removal, and grassy swales to capture parking lot runoff have made</p>		

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				<p>a positive impact with modest cost implications.</p> <p>The most important water quality issues should be addressed first; with prioritization based on scientific studies of the local receiving waters and not by observation or assumptions.</p> <p>A permit that does not focus on local issues lessens that permit's effectiveness, reduces resources by remedying less critical issues and curtails a municipality's ability to accomplish the greatest public and environmental good.</p>		
Santa Clara County	1	General	Fiscal Crisis/Prioritize	<p>Permit needs to account for the current economic downturn and consider the most cost-effective measures to fulfill the base stormwater management measure requirements, thus focusing on the following priority areas:</p> <p>Consistent and cost-effective implementation of current performance standards;</p> <p>Phase-in implementation of measures consistent with currently adopted pesticides, mercury and PCB TMDLs;</p> <p>Focus on cost-effective efforts to address trash in or likely to be conveyed by stormwater in our waterways, with assessment work and data analysis informing the nature and location of the measures implemented;</p> <p>and,</p> <p>Limit cost-effective monitoring linked to</p>		

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				relevant management questions.		
Vallejo Sanitation and Flood Control District	1	General	Fiscal Crisis/Work With Permittees	Fiscal crisis limits funding sources. Work collaboratively with BASMAA and other permittee representatives to limit the fiscal impact of the MRP.	We do recognize the fiscal crisis of the Permittees and have been working with BASMAA on the Final TO.	
ACCWP Berkeley	6 5	General	Focus on TMDL Pollutants	Board member McGrath stated at the March 11, 2008 hearing that his first priority is TMDL pollutants. We agree, and believe the monitoring requirements should be focused on those pollutants. Monitoring provision has costly requirements that are not a priority, such as: sampling for and conducting taxonomic identification of algae; sampling for silica, dry weather suspended sediment concentration, temperature, and pathogens; and, additional sediment chemistry and toxicity monitoring to evaluate ambient conditions. Many of these requirements need to be reduced or deferred to allow us to have the resources necessary to accomplish high priority objectives such as mercury and PCB TMDL implementation and trash reduction. Estimate a \$750,000 per year increase in monitoring costs plus an additional \$250,000 per year to cover the mercury and PCB provisions. Our current annual budget for the entire Program is \$1.8 million. Our member agencies cannot afford a 55% increase	The Final TO does place a strong emphasis on implementing TMDL Waste Load Allocations. The monitoring requirements represent priority work aimed answering specific water quality management questions. The costs are reasonable and conform to MEP.	

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				in their contributions to the Program to cover these additional costs.		
Daly City	1	General	Implementation Cost Excessive	The costs to implement the provisions contained within the MRP are significant. A preliminary cost analysis conducted by staff for the 2007 version indicates that costs for just the City's program will be upwards of \$3.6 million for labor and approximately \$8.2 million for capital during the 5-year permit cycle. It is estimated that this new version reduces that amount by only 10%, retaining upwards of \$3.24 million for labor and just under \$7.4 million for capital improvements.	We cannot verify the accuracy of your cost estimates.	
Danville	1	General	Implementation Cost Excessive	Requirements still represent a significant unfunded cost liability for local agencies. Preliminary estimates prepared indicate that the new MRP requirements will increase program costs for Danville approximately \$221,000 annually or \$1,105,000 over the permit cycle. The magnitude of these increased costs represents a 33% increase over the current 2008-09 stormwater budget. Absent the ability to identify a dedicated revenue source, municipalities are not in a position to support and fund additional requirements on a permanent, on-going basis.	We cannot verify the accuracy of your cost estimates. The Revised TO does not impose unfunded mandates. The requirements in the Revised TO are necessary to comply with the federal requirement that stormwater permits control discharges of pollutants to the maximum extent practicable. Mandates imposed by federal law are exempt from the requirement that the local agency's expenditures be reimbursed.	

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					<p>The State Constitution's prohibition on unfunded mandates applies only to a new program or a higher level of service. Many of the challenged provisions are continuations of requirements already in permits previously issued to Permittees.</p>	
<p>Santa Clara County Creeks Coalition</p>	<p align="center">1</p>	<p align="center">General</p>	<p align="center">Include Finding Regarding Stream Erosion</p>	<p>Please include the following finding in the MRP permit: In many streams, reducing the erosive impacts of stormwater discharge will require utilizing four tools: (1) re-shaping the streams to a more hydro-geomorphically stable condition, (2) preventing increases in the erosive force of stormwater discharges from new development and (3) reducing the erosive force of stormwater discharges from existing development and (4) acquiring sufficient riparian corridor width to allow for stable stream conditions. This permit addresses only the impacts of stormwater discharge from large new development and re-development projects and therefore will not address the erosive impacts of stormwater discharges in many streams. A comprehensive approach to stormwater discharges will require implementation of other planning and permit processes to complement the</p>	<p>2 and 3 are addressed through the requirements in Provision C.3.g. 1 and 4 are outside the scope of this permit. The LID requirements will assist with this also.</p>	

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				actions of this permit.		
Santa Clara County Creeks Coalition	2	General	Include Requirement Regarding Stream Erosion	Or please include the following requirement in the MRP Permit: Submit an analysis of erosion in streams and a conceptual plan for reducing that erosion to create physically stable streams to the extent that such erosion is related to the discharge of stormwater.	This concern is addressed through the requirements in Provision C.3.g to the extent in currently falls within stormwater regulation. The LID requirements will assist with this also.	
Mountain View	1	General	Increased Costs	Some of the proposed requirements will result in increased demands on City resources and significant increases to the City's budget. These cost increases would be realized in the need for additional staff due to increased service levels, installation and maintenance of costly control mechanisms and increased cost to participate in SCVURPPP, which anticipates an increased operating budget of as much as 40% increase.	We do recognize the economic situation for all Permittees. The Revised TO eliminated the lower priority ones, scaled back on others, and replaced some with tasks that are easier to implement. C.2.- C.7. have already been scaled back to provide feasibility while maintaining accountability and most Permittees are already implementing what the Revised TO requires. New requirements, monitoring, and studies have been scaled back and/or pushed off into future years of the next permit term.	
Pittsburg	1	General	Inspection, Monitoring, and Reporting Requirements Costly	Additional responsibilities for permittees have been added, with respect to reporting and monitoring. It is unclear what objectives the Water	We do understand the fiscal crisis and have prioritized and scaled back on the requirements. C.2.- C.7.	

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				Board hopes to achieve with the extensive reporting. The amount of effort required for compliance with these provisions is disproportionate to the availability of City staff. Added inspection requirements require specialized staff; our staff does not possess the expertise or the qualifications required for these types of inspections. These extensive requirements would be very costly for this City to meet, as we would be forced to expend already severely depleted resources to seek the services of consultants to meet them.	have already been scaled back to provide feasibility while maintaining accountability and most Permittees are already implementing what the Revised TO requires. It is unclear what are the added inspections referenced in the comments. Monitoring has been scaled back and/or pushed off into future years of the next permit term.	
SF Baykeeper	1	General	Lacks Accountability	Baykeeper has always advocated for a permit that is transparent, holds permittees accountable, and has quantifiable endpoints that can determine effectiveness and compliance. Vague language has plagued each iteration of this Permit. While this draft Permit limits vagueness and permittee discretion, many sections of the Permit still appear confusing and lack accountability. The Permit's prescriptive measures have been gutted (according to the Response to Comments, this was done to facilitate implementation) but the Regional Board has failed to provide any clearly enforceable regulation in place of the deleted measures. The end result is a	We believe that the Revised TO contains clear expectations and accountability while allowing for necessary flexibility. <ol style="list-style-type: none"> 1. We believe that the Revised TO complies with the Clean Water Act's mandate to require pollution reduction to the MEP. 2. We believe that the Revised TO includes requirements to protect and improve water quality by requiring clear expectations and accountability. 3. The provisions expressly 	

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				<p>permit that is weak and relies too heavily on suggested activities with no real measure of compliance or assurance of water quality improvements.</p> <p>The Permit contains many significant flaws, including:</p> <ol style="list-style-type: none"> 1. C.3 provisions that do not achieve the MEP standard. 2. Permit provisions/requirements that are not designed to protect or improve water quality. 3. Permit Provisions that do not require progress towards attainment of TMDL WLAs. 4. Receiving Water Limitations and Discharge Prohibitions that are inconsistent with state and federal authorities. 5. A failure to estimate pollutant reductions as required by the Clean Water Act regulations governing MS4 permit applications. 6. Findings wholly insufficient to support a conclusion that the provisions comply with federal and state Clean Water Act requirements. 	<p>require progress toward implementation of TMDL WLAs.</p> <ol style="list-style-type: none"> 4. The commenter did not provide facts in this comment as to the nature of the problems asserted to exist. It is not possible to respond substantively. 5. Estimates of pollutant reductions are not practical to accomplish with the current state of knowledge, with the possible exception of trash. 6. We disagree. The findings and Fact Sheet are sufficient to support compliance with Federal Clean Water Act requirements. 	
Save the Bay	1	General	Lacks Enforceable Provisions and Numeric Effluent Limits	Revised TO fails to provide the measurable, enforceable provisions necessary to make progress on attaining the water quality standards required by law. Revised TO does not	We believe that the Revised TO contains clear expectations and accountability while allowing for necessary flexibility.	

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				<p>ensure the beneficial uses of water bodies within the Board's jurisdiction. <u>Each successive draft of the MRP has moved farther away from achieving water quality standards.</u> Revised TO lacks numeric effluent limits for several key pollutants of concern, including mercury and pesticides, and its Low Impact Development provisions also lack quantitative requirements.</p>		
San Bruno	1	General	Limited Funding for Opportunities	<p>City's stormwater parcel tax generates \$540,000 to fund stormwater activities, which is used to comply or exceed compliance with existing regulations. Existing stormwater permit is the result of a well-intentioned and thoughtful process based on building and adopting best management practices. MRP does not seem to have been thoughtfully developed with sufficient consideration to cost and outcomes. MRP significantly increases compliance costs due to new requirements such as new drainage plans, new ordinances, new engineering standards, new pump station inspections, increased inspection of stormwater treatment devices, new stormwater quality measures on redevelopment projects, and new trash control measures. Fiscal crisis makes passage of a parcel tax increase or other financial burden on the public a low level of success.</p>	<p>We do understand the fiscal crisis and have prioritized and scaled back on the requirements. In the Revised TO, C.2.- C.7. have already been scaled back to provide feasibility while maintaining accountability and most Permittees are already implementing what the Revised TO requires. Monitoring, studies, new requirements have been scaled back and/or pushed off into future years of the next permit term.</p>	

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BASMAA	1	General	Limited Funding Opportunities	<p>Because of fiscal crisis, Permit needs to be affordable. Proposition 218 requires local voter approval of certain stormwater related fees and assessments. Over the last 15+ years the requirements and scope of the stormwater quality program have increased significantly from simply developing stormwater management programs as envisioned in USEPA's regulations. Increased requirements have significantly increased the cost of compliance for cities and counties. Many local governments have reached the maximum funding levels approved for funding their stormwater management programs, and Proposition 218 and other factors severely constrain local governments' ability to fund at higher than current levels.</p> <p>Over the last six years, there have been three attempts to pass State legislation (ACA 10, ACA 13, and SCA 12) that would allow the State to place before California voters for approval a State Constitutional Amendment on the ballot. None of the three legislative attempts were successful in moving the bills out of their house of origin. In addition, while we appreciate the efforts of the Regional Water Board staff to help seek funding for stormwater, including grant funds, those funds, if received are small and</p>	<p>We agree that it is difficult to secure new funding resources under the State's laws and the current fiscal climate. The major new requirements in the Final TO are phased to allow implementation time, and we are seeking and have assisted in obtaining some grant funding to assist implementation.</p>	

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				<p>short-lived when compared to the very significant and long-term capital and operations and maintenance expenditures necessary to address the plethora of requirements that have been included in the Revised TO. Potential funding for stormwater quality, such as the State's \$90 million Proposition 84 Storm Water Grant Program have vanished. \$140 million in potential funding from the Federal government's American Recovery and Reinvestment Act of 2009 has been diverted from flowing to local governments for new water-related projects to covering State obligations.</p>		
CCCWP	3	General	Limited Funding Opportunities	<p>Program established in 1993 a Stormwater Utility Assessment to pay all associated costs. This assessment has provided a dedicated source of revenue for implementation of our NPDES permits and stormwater quality protection programs over the past 15 years. The permit requirements and scope of our stormwater quality protection programs have increased dramatically. The Program presently spends approximately <u>\$16 million per year</u> to implement its current NPDES Permit. Co-permittees are at their maximum allowable assessment rates. The revised TO will most likely double the compliance costs over the next five years. Fiscal crisis makes it too</p>	<p>We agree that it is difficult to secure new funding resources under the State's laws and the current fiscal climate. The major new requirements in the Final TO are phased to allow implementation time, and we are seeking and have assisted in obtaining some grant funding to assist implementation.</p>	

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				difficult to ask for more assessment. General Fund for program reduces even more the public safety programs that are already impacted by fiscal crisis. MRP can be more affordable and implementable over the next five to ten years and still achieve our water quality objectives.		
San Bruno	6	General	Limited Funding Opportunities	New requirements will likely double San Bruno's stormwater operating costs to nearly \$1,000,000. Fiscal crisis and the restrictions for raising revenue under Proposition 218 make finding resources to meet these overly prescriptive requirements in a short time frame impossible.	We agree that it is difficult to secure new funding resources under the State's laws and the current fiscal climate. The major new requirements in the Final TO are phased to allow implementation time, and we are seeking and have assisted in obtaining some grant funding to assist implementation.	
ACCCWP Legal	8	General	Limited Funding Opportunities and Fiscal Crisis	Revised TO significantly increases cost of stormwater program; stormwater-specific costs and also to funding of certain other municipal programs that are beneficial to achievement of stormwater related water quality improvements. Certain fee increases and assessments for stormwater improvement must go through a vote as mandated by Prop 218. Grant funding requires up front money and is not guaranteed. State grants are not currently available. Even when	We agree that it is difficult to secure new funding resources under the State's laws and the current fiscal climate. The major new requirements in the Final TO are phased to allow implementation time, and we are seeking and have assisted in obtaining some grant funding to assist implementation.	

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				<p>available, grants are limited and the application process for grants can be very time consuming - many costs are not eligible for reimbursement; matching funding is often required; the applicant must advance funds; and there is no guarantee of receiving a grant. Potential funding under the federally enacted American Recovery and Reinvestment Act is of limited value as few municipal stormwater related projects are "shovel ready" and may not have satisfied relevant NEPA requirements. With so little funding available from grants, decreasing municipal revenues, and general revenues being constrained by competing service demands, it is a monumental task to fund new or increased stormwater programs. Situation has become worse since the last public comment period. While Water Board staff in the Fact Sheet to some extent have acknowledged the financial difficulties and challenges, Revised TO stops far short of adequately recognizing it. Reduce the scope of new requirements for this permit term.</p>		
Brisbane	1	General	Limited Funding Opportunities and Fiscal Crisis	Fiscal crisis is worsening. We continue to face severe restrictions under Proposition 218 from increasing our local stormwater management fees, yet were subjected to higher	We agree that it is difficult to secure new funding resources under the State's laws and the current fiscal climate. The major new	

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				stormwater permit fees to cover a portion of the State Water Resources Control Board's budget shortfall.	requirements in the Final TO are phased to allow implementation time, and we are seeking and have assisted in obtaining some grant funding to assist implementation.	
Hayward	2	General	Limited Funding Opportunities and Fiscal Crisis	Fiscal crisis. Agencies' ability to increase stormwater fees to fund additional requirements is severely hampered by Proposition 218's amendment to the California Constitution.	We agree that it is difficult to secure new funding resources under the State's laws and the current fiscal climate. The major new requirements in the Final TO are phased to allow implementation time, and we are seeking and have assisted in obtaining some grant funding to assist implementation.	
Menlo Park	1	General	Limited Funding Opportunities and Fiscal Crisis	Mandating additional unfunded needs during fiscal crisis creates a "Catch 22" for cities that will be very difficult, if not impossible, to overcome. Need to balance the budget while remaining responsive to community and infrastructure needs. Additional financial burdens placed upon municipalities will cause other critical needs to go unmet. Revised TO will add over \$300,000 each year in new costs, an increase of over 60%. Stormwater program management is	We agree that it is difficult to secure new funding resources under the State's laws and the current fiscal climate. The major new requirements in the Final TO are phased to allow implementation time, and we are seeking and have assisted in obtaining some grant funding to assist implementation.	

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				primarily funded through a regulatory fee which does not contain provisions for increases. Any stormwater program budget increases will need to be borne by the General Fund until a future successful Proposition 218 vote. An independent funding needs report prepared for the SMCWPPP indicated that passage of a vote for stormwater increases is not probable now.		
Millbrae	12	General	Limited Funding Opportunities and Fiscal Crisis	Fiscal crisis. Does not object to many of the proposed MRP requirements if the State funds them or provides us the ability to increase fees to support them which do not require a vote of the taxpayers. Proposition 218 does not make an exception for storm water fees as it does for water and waste water and garbage. Millbrae's only source of storm water management revenues is from a pre-Proposition 218 parcel tax.	We agree that it is difficult to secure new funding resources under the State's laws and the current fiscal climate. The major new requirements in the Final TO are phased to allow implementation time, and we are seeking and have assisted in obtaining some grant funding to assist implementation.	
Oakland	3	General	Limited Funding Opportunities and Fiscal Crisis	Fiscal crisis. Proposition 218 limits the ability of public agencies to raise stormwater fees and other fees that help to pay for stormwater quality activities. It is more important now that regulations focus on activities that benefit water quality because municipalities simply don't have the funds. We have attempted to focus our comments on creating efficiencies and promoting water	We agree that it is difficult to secure new funding resources under the State's laws and the current fiscal climate. The major new requirements in the Final TO are phased to allow implementation time, and we are seeking and have assisted in obtaining some grant funding to assist	

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				quality benefits while reducing financial burdens.	implementation.	
Santa Clara County	4	General	Limited Funding Opportunities and Fiscal Crisis	<p>Revised TO has several new requirements and programs that will require a significant amount of funding, which is difficult during this fiscal crisis. Limited options to help offset the cost of implementing a stormwater quality program. Proposition 218 severely limits the County's ability to levy new taxes to pay for the stormwater quality program. Fiscal crisis significantly precludes the County's ability to consider imposing new fees and taxes to fund any new program requirements.</p> <p>In the nearly 20 years of stormwater permits, the requirements and scope of the stormwater quality programs have significantly increased from simply developing stormwater management programs as envisioned in USEPA's regulations. Program costs for compliance with the NPDES Permit have also increased. County is faced with having to make major cuts in staff and services. Potential funding for stormwater quality, such as the State's Proposition 84 Storm Water Grant Program are currently unavailable and we cannot be certain if these funds will ever be available to us. The Federal Government's American Recovery and Reinvestment Act has diverted funding</p>	We agree that it is difficult to secure new funding resources under the State's laws and the current fiscal climate. The major new requirements in the Final TO are phased to allow implementation time, and we are seeking and have assisted in obtaining some grant funding to assist implementation.	

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				for local governments for new water-related projects to cover State obligations. No alternative funding sources are available to the County.		
Sunnyvale	13	General	Limited Funding Opportunities and Fiscal Crisis	<p>Requirements have increased significantly during the past 15 years from simply developing stormwater management programs as envisioned by US EPA's regulations. Increased requirements have significantly increased the cost of compliance for cities. Maximum funding levels available to their stormwater management programs have been reached. Proposition 218 severely constrain local governments' ability to fund at higher than current levels. Fiscal crisis limits funding options and cuts into current services. State's \$90 million Proposition 84 Storm Water Grant Program have vanished. The approximately \$140 million in potential funding from the Federal government's American Recovery and Reinvestment Act of has been diverted from flowing to local governments for new water-related projects to covering State obligations. There is no "new money" to be found. A permit with a significant jump in the cost, while the cost and expenditures of every other aspect of government are being held at current levels or reduced, does not demonstrate a sound public policy</p>	We agree that it is difficult to secure new funding resources under the State's laws and the current fiscal climate. The major new requirements in the Final TO are phased to allow implementation time, and we are seeking and have assisted in obtaining some grant funding to assist implementation.	

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				direction.		
Daly City	10	General	Limited Funding Opportunities, Fiscal Crisis, Don't Shift POC Responsibility to Locals	Need a permit that is practical, predictable, and cost-effective. City is in fiscal crisis. Proposition 218 vote to raise funds is futile. A number of aspects contained within the MRP require additional and focused work aimed toward achieving water quality benefits that will increase costs by 100% in some cases. Permit cannot shift Water Board pollutant control and cleanup responsibility to local public agencies.	We agree that it is difficult to secure new funding resources under the State's laws and the current fiscal climate. The major new requirements in the Final TO are phased to allow implementation time, and we are seeking and have assisted in obtaining some grant funding to assist implementation.	
NRDC and SF Baykeeper	4	General	List of Entities Receiving Portions of MRP Revised TO Prior to Adoption	Request that the Regional Board state prior to the conclusion of the adoption hearing on this matter whether any person or entity (other than Regional Board staff) received a copy of the Tentative Order or any section or provision contained therein prior to the release of the Tentative Order to the general public on or about February 11, 2009.	No person or entity (other than Regional Board staff) received a copy of the Tentative Order or any section or provision contained therein prior to the release of the Tentative Order to the general public on or about February 11, 2009.	
Hayward	1	General	Little Improvement to Water Quality for Cost	While the City appreciates many of the changes included in the MRP since the initial 2007 Tentative Order, the draft MRP, as recently revised, still contains many new requirements that are potentially very costly and may be of questionable efficacy in addressing stormwater pollution.	We do understand the fiscal crisis and have prioritized and scaled back on the requirements. C.2.- C.7. have already been scaled back to provide feasibility while maintaining accountability and most Permittees are already implementing what the	
Livermore	2,5	General	Little Improvement to	TO has significant cost implications		

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			Water Quality for Cost	and operational impacts on the City and other co-permittees, while offering very limited benefits in terms of improving water quality when compared to existing permit requirements. If the Board and staff are intent on moving forward with the permit despite the economic realities of the day, then significant changes to the requirements are still needed. In these troubling times, it becomes even more imperative that we utilize public funds and resources in the most prudent, efficient, and effective manner possible. With these facts in mind, it is very interesting to note the following quote taken from the TO regarding the Trash Provision in section C.10.a.: "The actions required in this 5-Year permit term are unlikely to eliminate the impact of trash on beneficial use or achieve the Basin Plan Water Quality Standards for this pollutant..."	Revised TO requires. Monitoring has been scaled back and/or pushed off into future years of the next permit term.	
SCVWD	25	General	Make Requirements Less Stringent	Revised TO could use less stringent requirements. They are cumbersome and will be problematic for the District and SCVURPPP co-permittees.	It is unclear which portions of the Revised TO could use less stringent requirements. We have already scaled back on the requirements in recognition of the fiscal crisis.	
SMCWPPP	10	General	MEP Different Now	Fiscal crisis already provides significant challenges in providing existing levels of service for	We agree that obtaining sufficient resources for stormwater programs	

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				<p>stormwater program. Even more challenging to finance stepped-up stormwater pollutant and flow-duration controls. Revenues have declined and state is diverting funds. Layoffs and furloughs are in effect.</p> <p>In June 2008, Countywide Program hired HFH Consultants to evaluate potential stormwater funding options. The report concludes, in part, the following:</p> <p>“Surveys indicate the public is unwilling to pay fees directly for stormwater requirements. Significant lead time (e.g., multiple years rather than months) is required to try to secure these funds with no guarantee of success. In the current economic environment and given the recent results of public surveys, success will probably be minimal.”</p> <p>Appreciates the Water Board staff’s willingness to try to help municipalities secure grant and federal stimulus funding for the new stepped-up pollutant controls. New funding resources from state grants are currently on hold because of the state’s lack of creditworthiness. Few pollutants have completed the total maximum daily loads process necessary to be eligible to compete for grant funds. The Federal American Recovery and Reinvestment Act of 2009 subsidy funds, will be used primarily to restart</p>	<p>implementation is a challenge. The requirements in the MRP are reasonable and are fundable under the current economy. In addition, requirements in the MRP cannot be tied to funding availability. We have worked with BASMAA on the Final TO.</p>	

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				State Water Resources Control Board projects that lost previously committed state grants or will be directed to other priorities. It is important that the Water Board recognize that what is now considered "maximum extent practicable" is less than it was when the December 2007 TO was released for public comment.		
CA Senator Leland Yee	2	General	MEP is Flexible	MEP in the Clean Water Act gives the Board the flexibility to recognize the fiscal crisis and reduce the requirements.	All dischargers of pollutants must comply with the federal Clean Water Act. The requirement that they comply with the Clean Water Act is as a result of their status as persons who discharge pollutants to waters of the United States.	
Campbell	4	General	MEP is Flexible	MEP in the Clean Water Act gives the Board the flexibility to recognize the fiscal crisis and reduce the requirements.		
SMCWPPP	10	General	MEP Needs Recognition	Revised TO does not recognize what is MEP during this current economic conditions. The federal Clean Water Act requires, in part, that permits "shall require controls to reduce the discharge of pollutants to the maximum extent practicable..." The types of factors that the State Water Resources Control Board's staff has identified as needing to be considered in achieving the maximum extent practicable standard include regulatory compliance, public acceptance, cost, and technical feasibility.	The programmatic requirements are in lieu of a traditional discharge permit with strict numerical effluent limitations, and operate to allow municipalities to comply with the Clean Water Act in a more flexible manner than other dischargers. If the municipalities so requested, the Regional Board could issue them a permit without any of the programmatic requirements, but that permit would require strict	
Sunnyvale	19	General	Continue Program Expansion	Continual expansion of stormwater requirements is burdensome because		

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			Burdensome	staff must devote additional time and resources, at the expense of overall project quality and other project features. Although water quality and stormwater issues are important, they are among dozens of other critical issues that must be addressed in project planning and review.	compliance, in-stream or end of pipe, with the requirements of the Clean Water Act. Therefore, requirements in the MRP cannot be tied to funding availability.	
CCCWP	4	General	Monitoring Requirements Unaffordable	The proposed water quality monitoring and POC requirements in the revised MRP represent the single most significant increase in requirements and the Program's compliance costs. The MRP water quality monitoring and pollutants of concern requirements are estimated to increase the Program's monitoring costs nearly 300% over the next five years (from approximately \$2 million to almost \$6 million). We will not be able to afford the required monitoring, special studies, and pilot projects with our current fiscal resources.	The monitoring requirements in the Final TO have been further reduced and streamlined, are affordable, and represent MEP.	
NRDC and SF Baykeeper	5	General	MRP Does Not Adequately Protect Water Quality, Meet MEP, or other CA MS4 Permits	Objects to the Revised TO because it is inadequate to control pollution and protect the region's waters. Revised TO is inconsistent with state and federal law in numerous respects, including failing to meet the MEP Standard and failing to ensure compliance with applicable water quality standards. Revised TO is out-of-step with similar permits in California and elsewhere in the nation.	We believe that the Revised TO complies with the Clean Water Act's mandate to require pollution reduction to the maximum extent practicable. Without the commenters stating specifics, the Revised TO, as a whole, is equivalent to other stormwater permits in California.	

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NRDC and SF Baykeeper	1	General	MRP Inconsistent with State and Federal Law and Far Weaker than 2007 TO	Revised TO inconsistent with state and federal law and is also far weaker than the TO released over one year ago. Indeed, it appears that the considerable time period between drafts has been devoted to serially weakening a large number of provisions. A principle purpose of staff's response to comments appears to be making clear that the TO is generally weaker than previous drafts: "We have reviewed requirements in each Provision and eliminated the lower priority ones, scaled back on others, and replaced some with tasks that are easier to implement. Each Provision that contains new requirements has effective dates later than the MRP effective date to allow adequate time for implementation.	We believe that the Revised TO complies with the Clean Water Act's mandate to require pollution reduction to the maximum extent practicable. Scaling back and prioritizing does not necessarily make the Revised TO weaker. Changes were made to the Revised TO to allow the necessary flexibility in the day-to-day Permit implementation for each Permittee, thus easier to implement. However, there is an end accountability and achievement "hook" for each Provision. Permittees need time to implement new requirements. They need to get resources together, provide training to staff and the public, change ordinances, and/or change standard operating procedures.	
NRDC and SF Baykeeper	28	General	MRP Requirements Too Vague	As noted in our February 29, 2008, letter, the TO's fact sheet establishes the need for "more specificity in NPDES permit language and requirements," including the creation of "a specific level of implementation for each action or set of actions." The TO	The MRP levels the playing field for all Phase 1 Permittees. The requirements and expectations are the same for all Phase 1 Permittees under the MRP. We believe	

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				<p>also notes that "Water Board staff found it difficult to determine the permittees' compliance with the current permits, due to the lack of specific requirements and measurable outcomes of some required actions." This observation comports with our observations and the observations of governmental agencies, as mentioned above. Despite this acknowledgement and our repeated attempts to call attention to the vague language of the TO, however, the new draft falls far short of establishing the "specific requirements and measurable outcomes" whose necessity no one questions and which are necessary for the TO to be lawful.</p>	<p>that the requirements in the Revised TO are specific enough to provide the required outcomes.</p>	
NRDC and SF Baykeeper	57	General Provision C.1	MRP Will Not Ensure the Attainment of or Progress Towards Water Quality Standards	<p>Revised TO must impose stormwater mitigation to prevent discharges from causing or contributing to violations of water quality standards. All NPDES permits, including those for MS4s, must require controls to meet water quality standards. (33 U.S.C. § 1311(b)(1)(C).) Federal regulations also state that "no permit may be issued" when "the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected States." (40 C.F.R. § 122.4(d) (emphasis added).) In a precedential order, the State Board elaborated on this</p>	<p>While it is very difficult to state with certainty that water quality standards will be met within this permit term, all of the actions required in the Final TO are specifically designed and supported within the Fact Sheet and response to comments as intended to meet those standards. The actions represent MEP, which is the regulatory standard for required actions to address attainment of water quality</p>	

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				<p>requirement and determined that municipal stormwater permits must prohibit discharges of pollution that cause or contribute to a violation of water quality standards, and the program to meet this requirement must be designed to achieve compliance. The MRP itself identifies stormwater discharges as "significant sources of certain pollutants that cause or may be causing or threatening to cause or contribute to water quality impairments." (TO, at Finding 11.) It further states that the Permittees shall achieve compliance with the requirement not to cause or contribute to violations of water quality standards through implementation of the TO. (See TO C.1.) The TO, Fact Sheet and Response to Comments are devoid of analysis demonstrating the beneficial impacts of the TO's requirements as a whole or the post-construction requirements specifically. There is no evidence whatsoever that the TO's provisions C.2 through C.15 will lead to compliance with water quality standards or that the provisions are reasonably designed to attain compliance. The Regional Board has no idea how, or even whether, the TO will ensure the attainment of water quality standards.</p>	<p>standards. Monitoring will allow us to examine the success of those efforts, and determine if further actions are required.</p>	
SF Baykeeper	2	General	Municipal Action	Incorporate Municipal Action Levels	MALs are not included in	

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			Levels	("MALs") into the Permit because they are a key step towards creating a permit that is effective and accountable, and that also provides the Clean Water Agencies with the flexibility they desire in implementing stormwater management plans.	the Final TO. In one sense, the water quality standards, through Provision C.1 serve as MALs.	
San Ramon	4	General	Need More Flexibility	TO forces city to reduce services that have proven to be effective in order to attempt to implement unproven and potentially cost prohibitive mandates included in the Revised TO. The Revised TO does not provide flexibility to implement programs.	It is unclear which requirements in the Revised TO does not provide flexibility. We believe that the Revised TO affords the necessary flexibility for Permittees to customize their programs while providing the necessary accountability.	
Sunnyvale	3	General	Need More Flexibility	The highly prescriptive nature of the TO limits the permittees' ability to evaluate local alternatives and implement cost-effective methods to achieve water quality improvements in their jurisdiction. The financial burden to the municipalities and agencies who must implement these requirements is significant, and flexibility must be allowed in order for permittees to maximize water quality benefits with limited resources.	The Final TO contains a great deal of flexibility in the provisions for Permittees to use efficient actions to address polluted runoff.	
US EPA	1	General	Need Prescriptive Requirements	The revised draft permit needs additional, prescriptive requirements related to low impact development, trash control, and incorporation of TMDLs. EPA may consider objecting to the permit, if these issues cannot be addressed satisfactorily.	We have been working with the commenter and believe that we have reached consensus in this Final TO.	

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				Audit reports from nearly 50 MS4 programs in Region repeatedly show the need for prescriptive requirements to clarify the permits and to ensure measurable, enforceable requirements.		
Alameda City	32	General	No Funding	Revised TO does not include or identify any State funding mechanisms to implement proposed new initiatives. Unless the Water Board provides for a new revenue stream to fund these additional mandates, the City will not be able to implement new requirements within our financially constrained resources without ceasing other stormwater quality protection efforts.	The major requirements in the Final TO are phased to allow time to secure funding. We are assisting with securing grant funding for some aspects of the permit.	
NRDC and SF Baykeeper	11	General	No Numeric Effluent or Narrative Effluent Limits	Many provisions of the Revised TO do not contain either numeric or narrative effluent limits, a minimum requirement of law, but merely require that unspecified limitations (in the form of BMPs) be developed in the future, contrary to law.	The programmatic requirements are in lieu of a traditional discharge permit with strict numerical effluent limitations, and comply with the Clean Water Act.	
Dublin	19	General	No Response to Comments	Most of these issues have been raised in previous letters from the City on November 30, 2006, July 13, 2007, and February 6, 2008. None of which has received a reply.	Staff has said it would not provide response to comments on the Administrative Drafts. Rather, those comments were incorporated as appropriate into subsequent drafts. We are not required by law to provide a response to comments on	

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					the TO. The response to comments is provided as a courtesy.	
Millbrae	1	General	No Response to Comments and Extend Comment Period	Disappointed with decision to publish the Revised TO without first addressing previous comments. The response to comments was finally released on March 18, 2009, over a month after the TO was released for public comments. Extend the comment deadline by another 30 days to allow more time for review and comment on the voluminous document.	We are not required by law to provide a response to comments on the TO. The response to comments is provided as a courtesy. By law, we are only required to provide a 30-day comment period. We provided a 50-day comment period, well beyond the requirement.	
Dublin	3	General	No Response to Comments and Limited Opportunity for Comment	While Board staff has provided "previews" of the revised Permit over the last year, there has been little opportunity for input from stakeholders. Although a full year has passed since the public hearing, a response to comments has not been received from the Board. Board staff had indicated that a 60-day comment period would be provided for the new Permit; given that extensive comments on the last Permit and the substantial rewrites; we believe that this provided marginal time for review and comment. However, when the Permit was issued on February 13, the deadline for submittal of written comments was listed as April 3, which is only a 50-day comment period.	Permittees were represented through the meetings we have had with BASMAA. If Permittees didn't feel that BASMAA represented their views or positions well, they should have told their respective BASMAA representative that they rather represent themselves at the meetings. We are not required by law to provide a response to comments on the TO. The response to comments is provided as a courtesy. We made our best attempt to provide a longer than required comment period. As stated by the	

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					commenter, we provided 50 days but we are only required to provide 30 days.	
CCCWP	1	General	No Response to Comments and Too Short of Comment Period	<p>It has taken nearly five years for development of the February 11, 2009 Revised TO. Program has yet to receive comments on the December 2007 draft MRP. The February 11, 2009 "Revised MRP Transmittal" letter states: "We have included a summary of the major changes made in response to comment, and we also plan to distribute by the first week in March more comprehensive responses to comments received on the December 14, 2007 Tentative Order." On March 18, 2009 (third week in March), Water Board staff released "General Comments and Responses – MRP November 2007 Tentative Order." With this submittal, Water Board staff indicated: "This Summary of Responses to Comments is provided in advance of the comprehensive responses to comments that will accompany the Tentative Order that the Water Board will consider at its adoption hearing." Revised TO contains many significant revisions and new provisions. The short public review period, and the confusing, fragmented and incomplete response to comments made municipal review of the revised MRP a very</p>	<p>We are not required by law to provide a response to comments on the TO. The response to comments is provided as a courtesy. We made our best attempt to provide a longer than required comment period. As stated by the commenter, we provided 50 days but we are only required to provide 30 days.</p>	

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				<p>hurried and difficult process. We assume the reference to a "November 2007 Tentative Order" above is an error (i.e., should be "December 2007 Tentative Order".) Without the benefit of formal comprehensive responses to our comments municipalities have not been able to fully evaluate why certain previous comments were not addressed or why other additions and revisions are being proposed. This is unacceptable. Water Board staff's March 18, 2009 release of "General Comments and Responses," less than 3 weeks before the April 3, 2009 written comment deadline, did provide some insight into Water Board staff's proposed changes; however, these comments are "general" and incomplete. Many of the responses completely fail to respond to the specific comments. Municipalities have had less than 60 days (i.e., 51 days) to review over 650 pages (see below) of revised and/or new complex and highly technical permit provisions.</p>		
SF Baykeeper	3	General	Numeric Effluent Limits	<p>Stormwater permits must ensure that permittees take sufficient actions to protect water quality. The most effective way to achieve this is through the establishment of numeric effluent limits. In the absence of numeric effluent limits, there is currently no means to objectively assess how</p>	<p>MALs are not included in the Final TO. In one sense, the water quality standards, through Provision C.1 serve as MALs.</p>	

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				<p>effective permittees' strategies have been or whether permittees are in compliance with their permits. In 2005, the State Water Resources Control Board ("SWRCB") released the findings of a panel of experts that evaluated the feasibility of including numeric effluent limits in MS4 permits – the panel recommended that numeric effluent limits were not currently feasible, but recommended that as an interim step towards developing rigorous scientific and legally defensible numeric effluent limits, that permits should adopt Municipal Action Levels. It proposed setting MALs at "an 'upset' value, which is clearly above the normal observed variability" of storm water. This approach has been proposed by the Los Angeles Regional Water Quality Control Board ("LA Regional Board") for its draft MS4 permit for Ventura County.</p> <p>Despite objections from municipalities both inside and outside of the county, the draft Ventura permit continues to include what are apparently first-in-the-nation numeric limits on discharges of certain pollutants—total suspended solids (TSS), nitrates and nitrite, copper, zinc, and lead—from stormwater systems. Implementation of MALs in this permit would provide a quantifiable measure of program effectiveness, while at the same time</p>		

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				helping to prioritize which stormdrain catchments require immediate management actions.		
NRDC and SF Baykeeper	3	General	Opposed to Removal of Street Sweeping and Storm Drain Cleaning	TO fails to reflect well-established water-pollution-reduction science and practice. One example illustrates issues that arise many times in the TO: the failure to fully utilize core best management practices that actually reduce mass emissions of pollutants and are standard operating procedure for Phase I and II MS4 permits. As these excerpts from the Response to Comments demonstrate, staff have entirely deleted commonplace practices such as street sweeping and storm drain inlet cleaning: "Street Sweeping Frequency - The entire sub-Provisions C.2.a and C.2.b., which contain the street sweeping related requirements, are deleted from the Revised TO." " Inlet Cleaning - The entire Provision C.2.f. is deleted from the TO."	Permittees will sweep and clean storm drains without the requirements in stormwater permits. These tasks are part of their municipal activities. If they didn't sweep on time or adequately, Permittees will hear personally from their residents. If they don't clean storm drains, it will cause flooding and the Permittees will have to answer to their residents and elected officials.	
Saratoga	4	General	PCBs and Mercury Should be Lower Priority	"Legacy" pollutants, polychlorinated biphenols and mercury, should be phased in over a longer period of time.	TMDLs and WLAs exist for PCBs and Mercury, and must be implemented.	
Kolb, Larry and James, Roger Attachment	1	General	Permit Not Regional	The Tentative MRP is not regional in that it does not include Marin, Sonoma, Napa and Solano Counties and the non-CSO portion of the City and County of San Francisco, Caltrans, BART and the public agencies listed in	The MRP covers the Phase 1 communities in the Bay Area. It was never intended to cover the Phase 2 communities in this permit term. The commenter has	

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				Attachment 3 to the SWRCB's Phase II NPDES Permit as permittees. There are over 170 public agencies listed in Attachment 3 that are not regulated by storm water programs. Many of these facilities mimic smaller municipalities that are regulated by the TO and are primarily schools, community colleges and universities. They have extensive operations with impervious surfaces including buildings, roadways, large parking lots, paved playgrounds, athletic facilities, maintenance operations, etc. They generate huge volumes of traffic. The schools, community colleges and universities represent the single largest entity in a municipality with the largest area of impervious surface. It will be extremely difficult for the Permittees to comply with the MRP Prohibitions and Water Quality Standards unless these agencies implement programs comparable to those required by the MRP.	named Phase 2 municipalities that are covered or can be covered under the State's Phase 2 Permit.	
Santa Clara County	5	General C.11, C.12	Phase Implementation	Adopting a permit with significant new costs, while cost and expenditures of every other aspect of government are being held at current levels or reduced, is not sound public policy. All jurisdictions need an opportunity to successfully achieve permit compliance by allowing an adequate phase-in period to allow jurisdictions	The Final TO adds additional phase-in periods for new requirements.	

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				the possibility to secure additional funding; this is particularly applicable for Provisions C.11 and C.12.		
Sunnyvale	14	General	Phase Implementation	The Water Board should recognize that municipalities such as Sunnyvale need an opportunity to achieve permit compliance by allowing an adequate phase-in period to attempt to secure additional sources of revenue. This is especially true for the Trash Reduction – full capture device retrofit requirements in provision C.10 and POC requirements in provisions C.11 (mercury) and C.12 (PCBs).		
CA Assembly Member Jerry Hill	2	General	Phase Implementation, Allow Flexibility, and Work with Permittees	During such fiscal crisis, allow phasing and flexibility. This will allow local governments to focus their limited resources on priority water quality and stormwater management efforts. Work with Permittees to develop a road map for stormwater permitting requirements in future permit terms that ensures strong water quality regulation and at the same time recognizes the significant resource limitations facing these programs.	We do recognize the economic situation for all Permittees. The Revised TO eliminated the lower priority ones, scaled back on others, and replaced some with tasks that are easier to implement. C.2.-C.7. have already been scaled back to provide feasibility while maintaining accountability and most Permittees are already implementing what the Revised TO requires. New requirements, monitoring, and studies have been scaled back and/or pushed off into future years of the next permit term. Ahead of	

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					the release of the Final TO, we have worked with the Permittees' representative, BASMAA.	
Fairfield Fairfield Suisun City Suisun City	2 4 2 4	General	Phase Implementation/Fiscal Crisis	Fiscal crisis limits funding options for new significant permit requirements. Need an adequate phase-in period to secure sources of revenue and to achieve permit compliance. In some cases, particularly for trash, phasing should be over more than one Permit term.	We do recognize the economic situation for all Permittees. The Revised TO eliminated the lower priority ones, scaled back on others, and replaced some with tasks that are easier to implement. C.2.-C.7. have already been scaled back to provide feasibility while maintaining accountability and most Permittees are already implementing what the Revised TO requires. New requirements, monitoring, and studies have been scaled back and/or pushed off into future years of the next permit term.	
Sunnyvale	5	General	Phase Implementation/Fiscal Crisis	Phasing is needed to reflect the fiscal crisis and revise existing programs to meet new provision requirements. The permit's compliance dates should be adjusted to acknowledge the need to secure and accrue funding for significant new permit requirements.		
San Jose	1	General	Positive Changes	Considerable improvements made to several of the permit provisions, which are responsive to our previous comments. Requirements related to treatment measures for trails and road rehabilitation projects have been redirected in a manner that successfully addresses previous concerns. Revised TO includes	Comment noted.	

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				greater flexibility in how permittees meet objectives for several established programs in municipal maintenance and enforcement inspection programming.		
SCVURPPP	2	General	Positive Changes	Acknowledges considerable modifications and improvements to Revised MRP that provide flexibility, in particular municipal and industrial operations, construction inspection and public information and outreach. Appreciates clear improvements to the Revised TO's trash section.	Comment noted.	
Sunnyvale	6	General	Positive Changes	<p>Previous comments that resulted in the following changes:</p> <ul style="list-style-type: none"> • Allowing the city to select street sweeping equipment to meet sweeping requirements • Focusing on more significant impervious surface data collection rather than on small "unregulated" development or redevelopment projects • Modifying some of the most prescriptive requirements of Enforcement Response Plans for provisions C.4 and C.5 • Focusing on developing BMPs for mobile business operations and their inspections on an as-needed basis. 	Comment noted.	
Daly City	9	General	Prescriptive, Lacks Prioritization, and Too	Revised TO continues to establish unnecessary, prescriptive and	The Revised TO eliminated the lower priority ones,	

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			Aggressive With Implementation	inflexible approaches to stormwater regulations and encompasses a number of performance deadlines for implementation that are unreasonably aggressive to accomplish both from available local resources and the technology now in practice. The element is especially evident as it pertains to the monitoring effort and expense that is anticipated absent any real substantive benefit to water quality. Comments on the TO is not an objection of its responsibility to improve water quality, but rather what can be reasonably accomplished in the next five years. Needs to be prioritized and phased in over a number of permit cycles, not just one in order to gain success and desired improvements	scaled back on others, and replaced some with tasks that are easier to implement. C.2.- C.7. have already been scaled back to provide feasibility while maintaining accountability and most Permittees are already implementing what the Revised TO requires. New requirements, monitoring, and studies have been scaled back and/or pushed off into future years of the next permit term.	
Union City	1,2	General	Prescriptive/Fiscal Crisis	Too burdensome during fiscal crisis. City is very concerned that many requirements of the Revised TO will have marginal improvement to our water quality but will result in huge a financial burden to the City.	We do recognize the economic situation for all Permittees. The Revised TO eliminated the lower priority ones, scaled back on others, and replaced some with tasks that are easier to implement. We believe that the requirements will result in water quality improvement. The commenter did not provide specifics on which requirements will have little water quality improvement	

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Palo Alto	1	General	Priorities for City	<p>In our previous comments, we requested that the TO focus on the following priority areas:</p> <ul style="list-style-type: none"> • Consistent implementation of current performance standards; • Phased-in implementation of measures consistent with currently adopted pesticide, mercury and PCB TMDLs; • Focused and cost-effective efforts to address trash in or likely to be conveyed by storm water into our waterways, with assessment work and data analysis informing the nature and location of the measures to be implemented; • Limited, streamlined reporting based on summary presentations of the least amount of relevant material needed to document compliance with permit requirements; and • Limited and cost-effective monitoring linked to relevant management questions. 	The Final TO does address all of these priority comments.	
Santa Clara County	3	General	Prioritize	Establish priorities among POC control programs and monitoring. Phase-in requirements over several permit cycles.	The Revised TO eliminated the lower priority ones, scaled back on others, and replaced some with tasks that are easier to implement. New requirements, monitoring, and studies have been scaled back and/or pushed off into future years of the	
Sunnyvale	1, 2	General	Prioritize and Link Entire Permit	In our previous comments on the Tentative Order issued on December 4, 2007 we requested: The linkages between new or expanded requirements need to be practical,		

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				understandable, and address the implementation of efforts that will benefit water quality. There is a need for prioritization of any new or expanded requirements. (This means prioritization across all the requirements of the permit, not just amongst those within a specific provision.)	next permit term.	
Cupertino	3	General	Prioritize and Phase Implementation	Has worked with Board staff over the past four years to create a regional permit that achieves consistency throughout the Bay Area. This intensive effort is truly worthwhile. But it is doubtful that we will successfully implement every water quality and watershed restoration if we make each a top priority and rush to implement all of them.		
Cupertino	6	General	Prioritize and Phase Implementation	Strongly second the comments from SCVURPPP Management, SCVURPPP Legal Counsel and BASMAA's Chair to phase in certain of the proposed provisions over a longer period, carefully prioritize or consider others before their inclusion in the MRP and provide a reasonable threshold for implementation		
Fairfield Suisun City	2 3	General	Prioritize and Phase Implementation	Revised TO does not attempt to set priorities among the many new requirements; and requires the "immediate implementation" or implementation within the first few		

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				years of the revised TO.		
Fairfield Suisun City	45 31	General	Prioritize and Phase Implementation	Revised TO includes many potential new or significantly expanded requirements that would represent a significant inequitable expenditure of District and FSURMP resources that are not available and are unlikely to produce increased water quality benefits. Revised TO must be prioritized to address known, significant water quality problems and phased-in over time based on a realistic assessment of current resources and other burdens already being placed on the District and the FSURMP at this time.		
Fairfield-Suisun Sewer District	2	General	Prioritize and Phase Implementation	The Revised TO does not attempt to set priorities among the many new special studies and pilot projects required. Allow for sufficient phasing of associated requirements in the non-core stormwater management program areas over more than one Permit term.		
Monte Sereno	1	General	Prioritize and Phase Implementation	Need to prioritize and focus on cost-effective stormwater management measures. MRP lacks priorities and lacks phase-in of requirements over several permit cycles. Many individual measures, which may well be aimed to improve water quality, cause an aggregate burden that would place a considerable strain on public agency resources	We do recognize the economic situation for all Permittees. The Revised TO eliminated the lower priority ones, scaled back on others, and replaced some with tasks that are easier to implement. C.2.- C.7. have already been scaled back to provide	

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				<p>without likely, significant improvement to water quality (i.e., stringent and prescriptive controls on conditionally exempted discharges). In addition, the proposed permit lacks priority among high-cost resource allocation and capital costs requirements (i.e., multiples of special studies, pilot projects, new monitoring requirements, and structural controls). We request the following modifications to the proposed MRP:</p> <ul style="list-style-type: none"> • Prioritize requirements and propose improvements or enhancements of existing municipal stormwater programs; • Implement requirements, particularly those already in place, consistent with current (already approved) performance standards, which have been developed for nearly every element of our current permit and have effectively served as guiding principles for MEP • Scale back or further phasing out the more fiscally burdensome of these requirements into future permits 	<p>feasibility while maintaining accountability and most Permittees are already implementing what the Revised TO requires. New requirements, monitoring, and studies have been scaled back and/or pushed off into future years of the next permit term. Should the commenter have data to demonstrate that its performance standards are effectively reducing, it should have submitted it.</p>	
Saratoga	2	General	Prioritize and Phase Implementation	<p>Specific requirements need to be better prioritized and the more fiscally burdensome of these requirements need to be scaled back or further phased out into future permit rounds.</p>	<p>The Revised TO eliminated the lower priority ones, scaled back on others, and replaced some with tasks that are easier to implement. C.2.- C.7. have</p>	
SCVURPPP	1	General	Prioritize and Phase	<p>Achieve consistent implementation</p>	<p>already been scaled back to</p>	

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			Implementation	<p>across the Bay Area with respect to “core” municipal stormwater management program elements (as reflected in Provisions C.2 to C.7 and C.9, C.13, and C.15), with only limited prescriptiveness so that unnecessary and costly changes to the Santa Clara Program’s existing, award-winning MEP-based performance standards can be avoided.</p> <p>Limit the expansion of the proposed Permit’s monitoring requirements to more affordable levels reflective of the Santa Clara Program’s already-leading monitoring and assessment efforts (as judged by EPA) and linking them to relevant management questions.</p> <p>Focus the proposed Permit’s trash management requirements (Provision C.9) more specifically on trash entering our waterways from municipal stormwater conveyances, with assessment work and data analysis (based on our Trash Tool Box) first informing the nature and location of the measures to be implemented so as to try and ensure they will be cost effective.</p> <p>Phase-in over a more extended time period extending beyond this Permit’s term, the implementation of measures addressing the mercury and PCB TMDLs and limit the number of special studies and pilot projects so as to make those efforts more affordable</p>	<p>provide feasibility while maintaining accountability and most Permittees are already implementing what the Revised TO requires. New requirements, monitoring, and studies have been scaled back and/or pushed off into future years of the next permit term.</p> <p>The requirements in the Final TO represent the highest priorities. The major new requirements are phased over several years. The requirements have been further streamlined in the Final TO</p>	

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				given the remainder of the MRP's proposed requirements and other priorities (e.g., such as trash).		
Sunnyvale	16	General	Prioritize and Phase Implementation	TO needs to be prioritized to address identified, significant water quality problems (i.e., TMDLs and trash) and be phased in over time based on fiscal crisis.		
West Valley Clean Water Program	1	General	Prioritize and Phase Implementation	<p>Prioritize and focus on cost-effective stormwater management measures in the. In general we request the following modifications to the draft MRP:</p> <ul style="list-style-type: none"> • Implement requirements consistent with current ones, which have been developed for nearly every element of our current permit and have effectively served as guiding principles for MEP; • Prioritize requirements • Scale back or further phase out the more fiscally burdensome of these requirements into future permits; particularly measures consistent with currently adopted pesticide, mercury and PCB TMDLs. <p>Revised TO lacks priorities and lacks phasing-in of requirements over several permit cycles, to take into consideration the fiscal crisis.</p>		
Palo Alto Santa Clara County	25 33	General	Prioritize and Phase Implementation and Work with Permittees	Revised TO includes many potential new or significantly expanded requirements that: (1) are not mandated by law or reflected in USEPA-issued municipal storm water	The programmatic requirements are in lieu of a traditional discharge permit with strict numerical effluent limitations, and operate to	

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				<p>permits; (2) would represent a significant expenditure of public resources that are not available at the local level; and (3) with a few notable exceptions involving pollutants of concern are unlikely to produce a significant return in terms of increased water quality benefits. It is essential that the MRP requirements be prioritized to address identified, significant water quality problems (TMDLs and trash) and phased over time based on the fiscal crisis. Work with Permittees to eliminate elements that lack the potential for real water quality benefits, prioritize, and allow phase-in over several permit cycles in light of the fiscal crisis.</p>	<p>allow municipalities to comply with the Clean Water Act in a more flexible manner than other dischargers. If the municipalities so requested, the Regional Board could issue them a permit without any of the programmatic requirements, but that permit would require strict compliance, in-stream or end of pipe, with the requirements of the Clean Water Act.</p> <p>The Revised TO eliminated the lower priority ones, scaled back on others, and replaced some with tasks that are easier to implement. We do recognize the fiscal crisis. In the Final TO, new requirements, monitoring, and studies have been scaled back and/or pushed off into future years of the next permit term. We have worked closely with BASMAA in this Final TO.</p>	
Mountain View	3	General	Prioritize and Phase Implementation/Fiscal Crisis	Individually, many of the increased requirements included in the Regional Permit would not be hard to accomplish. Requiring implementation	The Revised TO eliminated the lower priority ones, scaled back on others, and replaced some with tasks	

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				<p>of all of these requirements, especially with respect to the requirements related to mercury, PCBs and other legacy pollutants, during one 5-year permit cycle represents a significant impact to the City's resources and operating budget.</p> <p><i>Reevaluate priorities. Prioritizing major goals and long-term phasing of these requirements over a 10-year period will provide municipalities the opportunity to successfully accomplish the challenge of meeting the enhanced requirements using a phased approach. Phasing will be critical in an increasingly difficult financial climate. Defer the special studies and pilot programs related to mercury, PCBs and other legacy pollutants until future NPDES permits.</i></p>	<p>that are easier to implement. C.2.- C.7. have already been scaled back to provide feasibility while maintaining accountability and most Permittees are already implementing what the Revised TO requires. We do recognize the fiscal crisis. In the Final TO, new requirements, monitoring, and studies have been scaled back and/or pushed off into future years of the next permit term.</p>	
Palo Alto	3	General C11, C12	Prioritize and Phase Implementation/Fiscal Crisis	<p>Monitoring and POC Control Programs were not adequately addressed or prioritized to allow phasing-in of requirements over several permit cycles to take into consideration limited municipal resources.</p> <p>Local governments face very real and serious fiscal challenges not only with respect to funding new permit requirements, but in continuing to implement current programs. Requirements and scope of the storm water program have increased significantly from simply developing</p>	<p>We agree that it is difficult to secure new funding resources under the State's laws and the current fiscal climate. The major new requirements in the Final TO are phased to allow implementation time, and we are seeking and have assisted in obtaining some grant funding to assist implementation.</p> <p>The requirements in the</p>	

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				<p>storm water management programs as envisioned in USEPA's regulations. These increased requirements have significantly increased the cost of compliance for cities and counties. But the City's available resources for its storm water program are constrained by the provisions of its property owner-approved funding source and Proposition 218. In light of current economic conditions, securing property owner approval for higher fees cannot be considered a feasible alternative at this time.</p> <p>Can't raise funds and recession is deepening. Local agencies are being forced to make major cuts in staffing and services. Potential funding for storm water quality protection measures, such as the State's \$90 million Proposition 84 Storm Water Grant Program and \$140 million in funding from the Federal government's American Recovery and Reinvestment Act of 2009 have vanished. There is no "new money" to be found and designing and adopting a permit with a significant increase in compliance costs, while the cost and expenditures of every other aspect of government are being held at current levels or reduced, does not demonstrate sound public policy direction.</p> <p>Allow phase-in period for municipalities to attempt to secure additional revenue</p>	<p>Final TO represent the highest priorities. The major new requirements are phased over several years. The requirements have been further streamlined in the Final TO</p>	

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				to successfully implement program, especially for the C.11 (Mercury) and C.12 (PCBs).		
San Jose	7	General	Prioritize and Phase Implementation/Fiscal Crisis	New regulatory requirements need to be prioritized to address identified, significant water quality problems and be phased over time, based on a realistic assessment of municipal resources.	We do recognize the fiscal crisis. In the Final TO, new requirements, monitoring, and studies have been scaled back and/or pushed off into future years of the next permit term.	
SCUVRPPP	3	General	Prioritize and Phase Implementation/Fiscal Crisis	Monitoring requirements, mercury and PCB-specific programs, and conditionally exempted discharge requirements have not yet been adequately addressed. Not sufficient effort to set priorities among the many new special studies and pilot projects being required in this Permit. Not sufficient phasing of some associated requirements in the non-core stormwater management program areas to a point beyond this Permit's term (so as to provide more time to reflect on the lessons to be learned over the next five years and to take into consideration the current limits on municipalities abilities to raise resources, particularly in the absence of State-provided funding).	Monitoring requirements, mercury and PCB-specific programs, and conditionally exempted discharge requirements have all been revised in the Final TO to some extent after extensive discussions with stakeholders. The requirements are phased to allow time for resource development.	
SCWWD	2	General	Prioritize and Phase Implementation/Fiscal Crisis	Very challenging to fund the requirements of the Revised TO. Permit should prioritize pollutants that need to be addressed through this or	We do recognize the fiscal crisis. The Revised TO eliminated the lower priority ones, scaled back on	

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				several permit cycles.	others, and replaced some with tasks that are easier to implement. C.2.- C.7. have already been scaled back to provide feasibility while maintaining accountability and most Permittees are already implementing what the Revised TO requires. In the Final TO, new requirements, monitoring, and studies have been scaled back and/or pushed off into future years of the next permit term.	
Sunnyvale	12	General	Prioritize and Phase Implementation/Fiscal Crisis	Prioritize and phase in so that Permittees can ramp up as more resources become available. Very concerned that the very tight compliance timelines are unattainable, given the fiscal crisis.		
Brisbane	2	General	Prioritize and Reduce Requirements	Prioritization and pruning of the proposed permit requirements must occur to prevent overwhelming municipal resources.		
Berkeley	3	General	Prioritize and Work with Permittees/Fiscal Crisis	Fiscal Crisis. Cities and agencies cannot afford to implement costly requirements that provide little or no water quality benefits. The City hopes that the Board realizes this depressed financial situation will require many years to return to normal and that the Board will allow the permittees to work with the Board in establishing a prioritized plan to attack urban runoff pollution that accounts for the available finances.	We do recognize the fiscal crisis. In the Final TO, new requirements, monitoring, and studies have been scaled back and/or pushed off into future years of the next permit term. We also disagree that the requirements provide little or no water quality benefits. The requirements reflect improvement over existing requirements. We believe that the MRP requirements will have significant water quality impact.	
Sunnyvale	11	General	Prioritize Monitoring, Trash and	Previous concerns expressed by the City and SCVURPPP related to	We disagree. We have prioritized and phased. The	

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			POCs/Fiscal Crisis	monitoring requirements, POC programs for mercury and PCB controls, and trash control requirements were not adequately addressed in the Revised TO. There is no prioritization to allow phase in over more than one permit cycle and to take into consideration the fiscal crisis. The combination of all these requirements places a considerable strain on the city's resources, given that storm sewer infrastructure changes would need to be addressed as part of the TO requirements (e.g., pump station connections or storm drain collection system retrofits to meet trash full-capture criteria).	Revised TO eliminated the lower priority ones, scaled back on others, and replaced some with tasks that are easier to implement. C.2.- C.7. have already been scaled back to provide feasibility while maintaining accountability. To take into consideration the current economic situation, new requirements, monitoring, and studies have been scaled back and/or pushed off into future years of the next permit term in the Final TO.	
Antioch	1	General	Prioritize Requirements	Draft permit continues to lack focus and prioritization. Lack of focus and prioritization is exasperated by the number of required pilot and study projects as well as monitoring requirements.	We disagree that the MRP continues to lack focus and prioritization. The Revised TO eliminated the lower priority ones, scaled back on others, and replaced some with tasks that are easier to implement. C.2.- C.7. have already been scaled back to provide feasibility while maintaining accountability and most Permittees are already implementing what the Revised TO requires. We do recognize the fiscal crisis. In the Final TO, new	

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					requirements, monitoring, and studies have been scaled back and/or pushed off into future years of the next permit term.	
CA Senator Leland Yee	3, 5	General	Prioritize Requirements	Prioritize Revised TO. The many new requirements for water quality monitoring, special studies, and pilot projects need to be reduced so that local governments can focus their limited and likely declining streams of available resources on continuing to implement their existing core stormwater management programs while making further concrete progress on trash.	In the Final TO, new requirements, monitoring, and studies have been scaled back and/or pushed off into future years of the next permit term.	
Campbell	1	General	Prioritize Requirements	Specific requirements proposed for improvements in existing municipal stormwater programs need to be better prioritized and the more fiscally burdensome of these requirements need to be scaled back or further phased out into future permits.	The requirements in the Final TO are prioritized.	
Concord	1	General	Prioritize Requirements	Permit requirements should be prioritized.	The Revised TO eliminated the lower priority ones, scaled back on others, and replaced some with tasks that are easier to implement. C.2.- C.7. have already been scaled back to provide feasibility while maintaining accountability and most Permittees are	
SCVWD	20	General	Prioritize/Fiscal Crisis	Revised TO contains new or significantly expanded requirements that would represent a significant financial burden during fiscal crisis. Prioritize TO to address identified, significant water quality problems (TMDLs and trash), and phased over time bearing in mind fiscal crisis.		

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					already implementing what the Revised TO requires. In the Final TO, new requirements, monitoring, and studies have been scaled back and/or pushed off into future years of the next permit term.	
Palo Alto Mountain View	24 2	General	Pump Station Diversions to POTW	Revised TO requires Bay Area municipalities to monitor pump stations and study the feasibility of diverting first-flush and dry-weather flows from storm water pump stations to POTWs. Revised TO outlines monitoring and feasibility investigations but presumes that pump station diversions would be beneficial and feasible by requiring diversions from five pilot pump stations. Diversions from storm water pump stations would not only be potentially costly to implement, but would increase POTW treatment costs. Recommends modifications to the Revised TO which would allow municipalities and POTWs the opportunity to evaluate the potential benefits, impact and cost implications of proposed diversions to POTWs in an organized, controlled and fiscally responsible manner.	Diversions from stormwater pump stations to the sanitary sewer are pilot projects for the TMDL waste load allocation implementation, and are only to be explored where they are reasonable, low risk and high benefit.	
Saratoga	5	General	Reduce Monitoring, Special Studies and Pilot Projects	Reduce water quality monitoring, special studies, and pilot projects so that local governments can focus on implementing their existing core	New requirements, monitoring, and studies have been scaled back and/or pushed off into future	

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				stormwater management programs while making further concrete progress on trash.	years of the next permit term in the Final TO.	
Newark	1	General	Reduce Recordkeeping	There have been improvements to the reporting and recordkeeping requirements, including removal of the reporting template. However, these requirements are still onerous and many do not provide significant improvements for accountability. Examples of excessive reporting and recordkeeping requirements include: (1) for each construction site inspection, record the inches of rain since the last inspection (Provision C.6.e.ii.(4).(d)); (2) many of the Public Information and Outreach provisions include extensive reporting and evaluation requirements; (3) Provision C.15, monthly reporting on planned and unplanned potable water discharges; and (4) unrealistically short timeframes for submitting monitoring data and reports.	Reporting and record keeping has been reduced and streamlined in the Final TO.	
Kolb, Larry and James, Roger	1	General	Reduce Use of "As Appropriate"	The MRP would benefit from a thorough editorial review to delete language that is redundant or unclear, that could lead to endless debates when requirements are interpreted or enforced. Wherever we can we should avoid providing attorneys the opportunity to later debate the meaning of the MRP language, or give Permittees and their consultants the chance to use studies	We have reduced us of these conditional phrases in the Final TO.	

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				to delay solutions. There are over 50 places where "appropriate" is used and an additional 50 where words - like timely, proper, adequate, effectively, improper, reasonably, as needed, significant, if needed, make efforts, substantial, should and as necessary - are used to specify permit requirements. We found that in almost every instance "appropriate" can be eliminated. The other words or phrases will only serve to create debate of the original intent or allow Permittees to argue that their efforts, no matter how minimal, comply with the permit.		
San Jose Attachment A	44	General	Remove Attachment J	The Standard Provisions included as Attachment J are not written for application to a municipality but rather a single facility discharger. The City recommends removal of this Attachment.	We have removed the non-applicable parts of the Standard Provisions in response to this and other comments.	
NRDC and SF Baykeeper	2	General	Request for Information Regarding Meeting Dates	We request that the Regional Board provide us with a list of the dates of all meetings held between the Regional Board, or any member(s) of its staff, and any interested stakeholder regarding the Tentative Order. We further request that any agenda, list of attendees, or any other documents created or exchanged with any such stakeholders(s) be provided to us. We request that all such information be included in the administrative record	We will include all relevant information in the administrative record regarding this permit adoption and make it available to and any interested stakeholder	

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				regarding this matter.		
BASMAA	3	General	Requirements Expose Permittees and RWQCB to Legal Liability	Specific provisions create untenable legal liability for or assume non-existent legal authority of both the permittees and the Regional Water Board; or are inconsistent with Clean Water Act and Porter-Cologne.	We disagree with this general assertion.	
Danville	3	General	Requirements Too Aggressive and Costly	Many of the new requirements are still too aggressive and costly, and will not translate to a commensurate improvement in water quality for our community. Requirements need to give tangible benefits for community in cost effective ways.	We disagree. The requirements reflect some improvements over existing requirements to reflect MEP. We believe that the MRP requirements will have significant water quality impact.	
Dublin	18	General	Requirements Too Expensive, Reduce Costs	The City of Dublin has completed an analysis of the fiscal and staffing impacts of the Permit. The City of Dublin currently spends approximately \$179,000 per year on activities directly related to its water-quality program, including staff time, materials, and the contribution to the Alameda County Clean Water Program. This amount does not include an additional \$203,000 per year for maintenance activities such as street sweeping, storm drain inlet cleaning, spill cleanup, and trash removal from City parks, nor does it include costs associated with review of land development which are reimbursed by developers. Based on new or	We cannot verify the accuracy of your cost estimates. Nevertheless the Final TO scales back and/or pushes off into future years of the next permit term new requirements, monitoring, and studies.	

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				<p>enhanced activities required under the new permit, it is estimated that the annual cost of clean water activities will increase to \$403,000, an annual increase of \$224,000 or 125%. This cost does not include likely proportionate cost increases in maintenance and development review. City is dependent upon its General Fund to provide funding for stormwater activities. General Fund is used to fund numerous other municipal services, including public safety. There is no "surplus" of funds available for increased stormwater costs under the new Permit. In order to achieve compliance with the requirements of the Permit, the City will need to transfer funds currently used for other services, which will result in a cutback of those services. Modifying the Permit to address the items discussed above would reduce the increased annual costs to the City by up to \$89,000, without significantly reducing the effectiveness of water quality programs provided by the City.</p>		
Berkeley	2	General	Significant Cost Without Benefit To Water Quality	<p>Many of the City's concerns with the previous Tentative Order have not been addressed and some of the new requirements in the Revised TO are of great concern. Many of these concerns regard requirements that impose significant costs to implement without</p>	<p>We disagree. The requirements reflect some improvements over existing requirements to reflect MEP. We believe that the MRP requirements will have significant water quality</p>	

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				providing a commensurate improvement in water quality.	impact.	
Fremont	2	General	Significant Cost Without Benefit To Water Quality	It is essential that additional changes be made to the Revised Tentative Order to eliminate requirements that are either costly without providing a commensurate improvement in water quality, or that are fiscally unfeasible for jurisdictions to undertake at this time.	The requirements reflect some improvements over existing requirements to reflect MEP. We believe that the MRP requirements will have significant water quality impact. The Final TO scales back and/or pushes off into future years of the next permit term new requirements, monitoring, and studies.	
Dublin	2	General	Stakeholder Process	At the March 2008 public hearing held by the Regional Board on the prior version of the Permit, the City of (along with numerous other local agencies) expressed concerns regarding many prescriptive and costly components of the Permit that did little to improve water quality. The Board directed their staff to revise the Permit to take into consideration the comments expressed at the meeting, and to set up a process whereby stakeholders could provide input to the revisions. Over a year later, we must express our deep disappointment in both in the process used to develop the current version of the Permit and the content of the Permit.	Board staff has held numerous meetings with stakeholders. Permittees were represented by BASMAA. If Permittees didn't feel that BASMAA represented their views or positions well, they should have told their respective BASMAA representative that they rather represent themselves at the meetings. The Revised TO already eliminated the lower priority requirements, scaled back on others, and replaced some with tasks that are easier to implement. C.2.-C.7. have already been	

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					scaled back to provide feasibility while maintaining accountability and most Permittees are already implementing what the Revised TO requires. In the Final TO, new requirements, monitoring, and studies have been scaled back and/or pushed off into future years of the next permit term	
Crabbe, David	1	General	Support MRP Requirements Would Pay More Property Taxes	San Carlos resident adamantly disagrees with City Council's position against the Revised TO to strengthen requirements for keeping storm water pollution out of San Francisco Bay. Willing to pay a little more on my local property taxes to support a cleaner and healthier bay and find City Council's negative position totally irresponsible.	Comment noted.	
Palo Alto Santa Clara County	2 2	General	Support Flexibility C2, C4, C5, C6	We appreciate that Water Board staff made significant changes to the standard operational components of the permit (i.e. Provisions C.2., C.4., C.5., and C.6.), allowing flexibility in implementation toward stated goals and outcomes.	Comment noted.	
Friends of Five Creeks	1	General	Supports Revised TO	Revised TO is simpler and more flexible than current rules or earlier drafts – probably too simple and too flexible in some areas. The overall trend is desirable. Supports adoption	Comment noted.	

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				of this TO.		
NOAA	1	General	Supports Revised TO	Supports Revised TO. Revised TO should result in significant improvement to water quality over time with benefits to the aquatic life related beneficial uses logically following. Expects these improvements to aid in the recovery of ESA listed salmonids and an improvement of EFH conditions.	Comment noted.	
CA Assembly Member Jerry Hill	3	General	Tie Requirements to Receipt of Grants and Loans	Assist local governments in obtaining federal and state grants and forgivable loans that may be used to help local public agencies with their efforts to improve stormwater quality and to tie the most fiscally demanding new permit requirements to the receipt of such funds.	The Revised TO already eliminated the lower priority requirements, scaled back on others, and replaced some with tasks that are easier to implement. C.2.-C.7. have already been scaled back to provide feasibility while maintaining accountability. The Final TO scales back and/or pushes off into future years of the next permit term new requirements, monitoring, and studies. The requirements in the MRP are reasonable and are fundable under the current economy. Requirements in the MRP cannot be tied to funding availability. The Water Board is attempting to assist some MRP efforts through grant funding.	
CA Senator Leland Yee	7	General	Tie Requirements to Receipt of Grants and Loans	Assist local governments in obtaining federal and state grants and forgivable loans that may be used to help local public agencies with their efforts to improve stormwater quality and to tie the most fiscally demanding new permit requirements to the receipt of such funds.		
Saratoga	6	General	Tie Requirements to Receipt of Grants and Loans	Assist local governments in obtaining federal and state grants and forgivable loans that may be used to help local public agencies with their efforts to improve stormwater quality and to tie the most fiscally demanding new permit requirements to the receipt of		

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				such funds.		
SCVWD	4	General	Tiered Approach	A more tiered approach to implementing the monitoring, trash, and other requirements is recommended to incorporate better studies, and pollutant reduction results, through the adaptive management concepts the Water Board encouraged in the past.	The Final TO scales back and/or pushes off into future years of the next permit term new requirements, monitoring, and studies.	
NRDC and SF Baykeeper	16	General	TO Based on Incomplete Application	Revised TO is based on an incomplete application, which deprived the Regional Board of critical estimates of pollution control to be achieved and renders its subsequent decisions not to include effective pollution control provisions arbitrary and unsupported.	The application does not contain the cited information and no application nationwide would as this is not obtainable in any meaningful fashion with the current state of knowledge.	
Contra Costa Board of Sups	2	General	Too Costly Without Additional Funding	Now more than ever the Regional Board should not be promulgating such costly regulation without providing offsetting funds and flexibility. Work with municipalities to develop funding sources and to develop implementation schedule as funding is available. Allow municipalities flexibility on how to meet goals. Allow Permittees to work with Board to de develop the most effective implementation measures to the extent our resources will allow.	The Revised TO already eliminated the lower priority requirements, scaled back on others, and replaced some with tasks that are easier to implement. C.2.-C.7. have already been scaled back to provide flexibility while maintaining accountability. And most of these requirements are set at current levels of implementation. The Final TO scales back and/or pushes off into future years of the next permit term new requirements, monitoring,	

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					and studies. The requirements in the MRP are reasonable and are fundable under the current economy. Requirements in the MRP cannot be tied to funding availability.	
Daly City	3,4	General	Too Much	Level of effort required to accomplish the numerous tasks is overly ambitious and limits the permittees ability to be successful. An exemption needs to be included when a permit requirement is considered unattainable (such as trash requirements when pipes are mostly subterranean).	We cannot pre-exempt from the permit requirements. The Final TO scales back and/or pushes off into future years of the next permit term new requirements, monitoring, and studies.	
Cupertino SCVWD	1 22	General	Too Prescriptive and Burdensome Monitoring	Far too prescriptive and burdensome monitoring program with a compressed time frame that will likely not allow for adaptive management, and is unlikely to produce a significant return in terms of water quality benefits.	We disagree. The requirements reflect some improvements over existing requirements to reflect MEP. We believe that the MRP requirements will have significant water quality impact. The Final TO scales back and/or pushes off into future years of the next permit term new requirements, monitoring, and studies.	
Burlingame	11	General	Too Prescriptive and Costly	City believes that the draft permit is excessively prescriptive, cost prohibitive, and cannot be fully implemented in the time frame as currently written.	The Revised TO already eliminated the lower priority requirements, scaled back on others, and replaced some with tasks that are	

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Livermore	1	General	Too Prescriptive and Costly	Revised TO is unnecessarily prescriptive in many areas, requires the implementation of costly pilot projects of dubious utility, and mandates the development of numerous written plans, ordinances, and databases which don't enhance water quality. It also requires the co-permittees to implement costly and ineffective trash controls, which are likely to increase the risks of flooding and damage to private property without a level of constant maintenance that cities and counties simply cannot afford or provide.	easier to implement. C.2.-C.7. have already been scaled back to provide flexibility while maintaining accountability. And most of these requirements are set at current levels of implementation. The requirements in the MRP are reasonable and are fundable under the current economy. The Final TO scales back and/or pushes off into future years of the next permit term new requirements, monitoring, and studies.	
Newark Mayor	1	General	Too Prescriptive and Costly	The draft permit remains overly prescriptive in many areas, requires implementation of very costly pilot projects of questionable value, and mandates the creation of numerous written plans, ordinances, and databases that do not serve to enhance water quality.	In the Revised TO, C.2.-C.7. have already been scaled back to provide flexibility while maintaining accountability. Most of these requirements are set at current levels of implementation. After over 15 years of program implementation, municipalities should already have ordinances and written standard operating procedures. We feel strongly that written standard operating procedures are necessary	

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					to ensure that the investment that municipalities make into its staff is continued when staff leaves. The Final TO scales back and/or pushes off into future years of the next permit term new requirements, monitoring, and studies.	
Menlo Park	5	General	Too Short of Comment Period	Comment period allowed for this version of the MRP was insufficient and unreasonable given the extent of the changes made by the Regional Board without consultation with the permittees.	We made our best attempt to provide a longer than required comment period. We provided 50 days but we are only required by law to provide 30 days.	
West Valley Clean Water Program	2	General	Too Stringent	Most of the TO puts a considerable strain on public agency resources without likely improvement to water quality (i.e., stringent and prescriptive controls on conditionally exempted discharges).	Discharges can only be exempted if known to be or demonstrated unpolluted. The rudimentary monitoring and reporting in C.15.b., which has been reduced in the Final TO, is to accomplish this.	
Campbell Saratoga	5 3	General	Trash and Litter Should be Highest Priority	Highest priority for TO should be to reduce the amounts of trash and litter that are reaching local waterways through stormwater conveyances	Noted. Trash Load Reduction is a high priority in the Final TO.	
Daly City	2	General	Trash, Social Issue	It is not appropriate to saddle permittees for personal and individual behaviors (littering) or for distributing legal products (plastic bags, Styrofoam; pesticides etc.) The MRP	The Trash Load Reduction requirements in the Final TO are appropriate.	

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				attempts to have agencies cure these societal issues. Daly City has conducted a study session to look at various options to reduce this type of waste. There is an informal policy that bans the use of Styrofoam at city facilities. The City Council is in the process of determining if a Citywide ban is achievable.		
Brisbane Millbrae Pacifica San Mateo	3 2 1 1	General	Unfunded Mandate	Essential to have a permit that is practical, predictable, and cost-effective. Important to us that the permit avoid placing an unfunded mandate on local public agencies for regional pollutant control and cleanup.	The Revised TO does not impose unfunded mandates. The requirements in the Revised TO are necessary to comply with the federal requirement that stormwater permits control discharges of pollutants to the maximum extent practicable. Mandates imposed by federal law are exempt from the requirement that the local agency's expenditures be reimbursed.	
Menlo Park	4	General	Unfunded Mandate	MRP create potential conflicts with California Government Code §65300, et seq. (City's General Plan authority), the California Building Code, California drainage law and the Americans with Disability Act. New provisions require significant legal interpretation, along with technical and economic analyses by the Regional Board, prior to being incorporated into the permit. The Porter-Cologne Water Quality Control Act (§ 13241, Water quality objectives) requires the Regional Board to factor economic considerations into its water quality control plans. The draft TO issued to the Ventura County Watershed Protection District, et al, attempts to argue that the order is not an "unfunded mandate" by citing court	The State Constitution's prohibition on unfunded mandates applies only to a new program or a higher level of service. Many of the challenged provisions are continuations of requirements already in permits previously issued to Permittees. All dischargers	

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				decisions that include such statements as "permittees...voluntarily availed themselves of the permit" and "...permittees have the authority to levy service charges, fees, or assessments sufficient to pay for compliance with this Order subject to certain voting requirements contained in the California Constitution." These arguments are unconvincing when considered in light of the fact that neither discharging stormwater nor levying fees subject to voting requirements are activities the City would initiate on a voluntary basis.	of pollutants must comply with the federal Clean Water Act. The requirement that they comply with the Clean Water Act is as a result of their status as persons who discharge pollutants to waters of the United States. The programmatic requirements are in lieu of a traditional discharge permit with strict numerical effluent limitations, and operate to allow municipalities to comply with the Clean Water Act in a more flexible manner than other dischargers. If the municipalities so requested, the Regional Board could issue them a permit without any of the programmatic requirements, but that permit would require strict compliance, in-stream or end of pipe, with the requirements of the Clean Water Act.	
Sunnyvale	15	General	Unfunded Mandates	TO includes many potential new or significantly expanded requirements that: (1) Are not mandated by law or reflected in USEPA-issued municipal stormwater permits; (2) Would represent a significant expenditure of public resources that are not available at the local level; and (3) With a few notable exceptions involving pollutants of concern (which still need to be fine-tuned to avoid wasting resources), are unlikely to produce a significant return in terms of increased water quality benefits.		
NRDC and SF Baykeeper	10	General	Unlawful Allowance of Pollutants from New Sources	Revised TO unlawfully would allow the discharge of pollutants from new sources or dischargers to impaired waters.	We disagree that the Final TO must prohibit all new sources. Provision C.3 requires pollutants from new	

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					development be treated.	
Kolb, Larry and James, Roger	2	General	Update for Recent 303d Listings	<u>FINDING 11-page 5</u> This finding must be updated to reflect the recent listing of impaired water bodies. A table of the 26 water bodies impaired by trash and the Permittees in each water body's watershed must be included.	The listing has been proposed, but is not final.	
NRDC and SF Baykeeper	15	General	Violates "Anti-backsliding" Provisions	Revised TO violates the Clean Water Act's "anti-backsliding" provisions by weakening previously adopted effluent limits.	We are not aware of any provisions that are weaker than previously adopted effluent limits.	
BASMAA	2	General	Work with Permittees	Staff needs to work collaboratively with BASMAA and permittee representatives to: 1) remove unnecessary and burdensome prescriptive requirements (e.g., C.15); 2) limit the expansion of the proposed monitoring requirements (C.8) to more affordable levels and to answering existing questions directly linked to adaptively managing stormwater discharges; 3) focus the trash requirements (C.10) to try and ensure they will be cost-effective; and 4) better coordinate between, and phase-in over a more extended time period the implementation of measures addressing the mercury and PCBs TMDLs (C.11 and 12) and limiting the number of special studies and pilot	We have worked with BASMAA as well as other stakeholders.	

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				projects so as to make those efforts more affordable considering other priorities in this proposed permit (e.g., such as trash).		
CA Senator Leland Yee	6	General	Work with Permittees	Direct your staff to work with the municipal storm-water staff too determine the appropriate phasing and reduction in the proposed requirements for monitoring, PCB's and mercury consistent with resource limitations.	We have worked with the Permittees through BASMAA.	
Danville	9	General	Cost of Implementation Excessive, Phase Requirements	The following table summarizes additional costs associated with the revised five year MRP, above and beyond the Town's current \$662,000 annual budget.	We are not certain that these cost estimates are reasonable. Some new resources will be required. The Final TO requirements are phased allowing time to develop new funding resources.	
Menlo Park	6	General	Work with Permittees	Direct staff to meet with the permittees to discuss appropriate modifications to the permit, and to consider this and other comment letters submitted by members of SMCWPPP, the List of Issues Table included with the SMCWPPP comment letter, comments submitted by the BASMAA, and the Santa Clara Valley Urban Runoff Pollution Prevention Program's comments.	Water Board Staff met extensively with stakeholders to discuss comments and issues.	

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NRDC & SF Baykeeper	8	C.3.c.i.(4)-(6)	Unlawful delegation	The New Development and Redevelopment provisions unlawfully delegate authority to the Executive Officer to determine key control requirements of the Tentative Order;	The commenter has not provided specific information in this comment as to the facts regarding what measures are asserted improperly delegate authority to the Executive Officer so it is not possible to respond substantively.	
NRDC & SF Baykeeper	9	C.1		The Receiving Water Limitations provisions are inconsistent with State Board precedential orders and fail to require that the Tentative Order and municipal compliance documents ensure compliance with water quality standards;	The commenter did not provide facts in this comment as to the nature of the problems asserted to exist. It is not possible to respond substantively.	
NRDC & SF Baykeeper	17		Inadequate evidentiary support	<p>The Tentative Order must be supported by evidence that justifies the Regional Board's decision to include, or not to include, specific requirements....[It must] contain findings that explain the reasons why certain control measures and standards have been selected and others omitted....</p> <p>The administrative decision must be accompanied by findings that allow the court reviewing the order or decision to "bridge the analytic gap between the raw evidence and ultimate decision or order." Topanga Ass'n for a Scenic Cmty. v. County of Los Angeles (1974) 11 Cal.3d 506, 515....Currently, the Tentative Order's provisions are not supported by more than anecdotal evidence, as discussed below, and the Regional Board has failed to explain its decision not to adopt control measures and standards that have been adopted by other jurisdictions and proven by scientific studies to be more</p>	We agree that the Topanga decision cited by the commenter requires that a public agency such as the Regional Board must bridge the analytical gap between the evidence before it and the requirements in its order. We disagree that the Topanga case requires the Board to include findings explaining why it rejected alternative proposals. We believe that the order is supported by substantial evidence and that the record contains the analytical bridge between the Tentative Order's requirements and the evidence.	

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				effective than the control measures and standards in the Tentative Order. The lack of substantial evidence to support the Tentative Order renders it unlawful. See, e.g., Bangor Hydro-Elec. Co. v. F.E.R.C. (D.C. Cir. 1996) 78 F.3d 659, 664.		
NRDC & SF Baykeeper	21		MEP standard not met	The Tentative Order...[fails] to require pollution reduction to the maximum extent practicable, as mandated by the Clean Water Act;	Board staff believes that the Tentative Order complies with the Clean Water Act's mandate to require pollution reduction to the maximum extent practicable. This comment does not provide any facts to support a contrary conclusion.	
NRDC & SF Baykeeper	22		Inconsistent with CWA	The Tentative Order's failure to impose stormwater mitigation BMPs pursuant to the requirements of the Clean Water Act....	Staff believes that the Tentative Order complies with the Clean Water Act's requirements, including those related to imposition of BMPs. This comment does not provide any facts to support a contrary conclusion.	
NRDC & SF Baykeeper	24		Anti-backsliding	The Tentative Order...violat[es]... the Clean Water Act's anti-backsliding prohibition through the alternative compliance program...	The commenters noted this comment without an explanation because they apparently intended it as a summary of a comment raised separately in their letter. Please refer to our response below to that other comment. The alternate compliance provision of C.3 does not constitute backsliding, as the C.3 d. water quality stormwater volume is treated at an alternate	

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					location in the watershed.	
NRDC & SF Baykeeper	32	C.3	MEP not met	Despite this lack of a numeric performance requirement, the Fact Sheet states in conclusory fashion that the hierarchy of treatment measures will ensure that “the amount of runoff stored and recycled or infiltrated ... and treated[sic] by landscape-based measures is maximized.” (Fact Sheet, at 25.) Such conclusory statements are a hallmark of this Tentative Order’s supporting documentation, and by failing to define a level of performance as is explicitly required by federal and state law, the Tentative Order would allow far less than the Tentative Order’s self-proclaimed “maximization” of recycling, infiltration, and treatment by landscape-based measures and could be interpreted in numerous ways that conflict with the Clean Water Act’s mandate. ¹ The Tentative Order’s failure to define “MEP” in a meaningful way is particularly problematic because it allows the Permittees to self-regulate by defining for themselves what constitutes MEP. This is poor policy and flatly unlawful. (See, e.g., Environmental Defense Center, Inc. v. U.S. E.P.A. (9th Cir. 2003) 344 F.3d 832, 855-56.)	Staff believes that the proposed order meets applicable legal requirements and does not allow inappropriate self-regulation. The revised TO includes enhanced LID requirements that are more specific than those included in the original TO. They would require that the C.3.d design storm runoff be treated by LID with few exceptions. It is necessary to incorporate some flexibility in the C.3 requirements so that Permittees can work with developers, while maintaining minimum implementation levels commensurate with MEP.	
NRDC & SF Baykeeper	38		EO approval	The general lack of guidance in these notification/approval provisions would allow the Permittees and the Executive Officer to	We disagree that the proposed TO would be inconsistent with the Environmental Defense Center	

¹ The first option in the hierarchy, provision (e), omits a standard altogether, although presumably this was a typographical error and the practicability standard should have been applied to this section, as well.

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				<p>make all meaningful decisions related to stormwater mitigation. Under <i>Environmental Defense Center, Inc.</i>, this type of self-regulatory system is unlawful, as explained above and in previous comment letters. (See 344 F.3d at 854-56.) State law also does not allow the Regional Board to delegate the aforementioned decision-making powers to the Executive Officer. (Cal. Water Code § 13223(a).) Such a delegation would constitute, in effect, the “issuance [or] modification . . . [of a] waste discharge requirement” because the Executive Officer would have the broad authority to determine what level of stormwater mitigation is required of Regulated Projects. The Tentative Order, in contrast, would preclude both because neither the public nor the Regional Board could currently determine what the likely result of the Tentative Order’s provisions would be—the meaningful requirements, such as what percentage of a Regulated Project’s stormwater runoff will be treated with LID techniques, are left entirely to the discretion of the Permittees and/or the Executive Officer. (Tentative Order ¶ C.3.c.1(2).)</p>	<p>case. It would not allow impermissible self-regulation because this provision has been significantly revised, and there is no longer an issue subject to EO determination.</p>	
NRDC & SF Baykeeper	40	C.3	Post-construction & MEP	<p>Our February 9, 2008, letter discussed various failings of the Tentative Order that prevent it from meeting the MEP standard. Little has changed from the prior draft of the Tentative Order, unfortunately, as noted above, and the Tentative Order’s post-construction provisions are still far from legally adequate.</p>	<p>Many changes have been made to the prior draft Tentative Order. Staff believes that the proposed post-construction provisions were and are legally adequate. This comment is too general to allow for a specific response.</p>	

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NRDC & SF Baykeeper	40a	C.3	Post-construction & MEP	<p>Section 402(p) of the Clean Water Act establishes the MEP standard as a requirement for pollution reduction in stormwater permits. Regional Board staff have failed to implement this standard, apparently believing that it grants them unbridled discretion and allows them to exclude effective practices commonly implemented....[I]n the Bay Area, we have demonstrated that an onsite retention standard based on the effective impervious area of a site would be a technologically feasible approach that would reduce stormwater discharges and pollution far more than the measures contained in the Tentative Order.² We have even called to the Regional Board's attention an EPA study which found that LID practices are frequently less costly than conventional stormwater BMPs,³ and we have submitted our own technical analyses highlighting the cost savings that accrue from saving water through LID.⁴ [Note: Footnotes omitted from summary.] Additionally, no one has offered concrete evidence that a single site in the Bay Area could not meet this standard, assuming that—as we have</p>	<p>We have revised C.3 to require that 100% of the C.3.d design storm runoff to be treated with LID measures, with a few exceptions.</p>	

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				consistently recommended—the Tentative Order includes an appropriate infeasibility provision tied to a technically equivalent alternative compliance requirement. The Tentative Order, as written, fails to uphold the MEP standard because it does not impose anything close to the maximum technologically practicable, but not disproportionately expensive, stormwater management BMPs with an accompanying quantitative performance requirement.		
NRDC & SF Baykeeper	61		TMDLs	<p>Approval of the Tentative Order will authorize the discharge of pollutants to impaired water bodies from “new sources” or “new dischargers” in violation of the CWA’s implementing regulations. 40 C.F.R. § 122.4(i) explicitly prohibits discharges from these sources</p> <p>Under 40 C.F.R. § 122.2, a “new discharger” is defined as “any building, structure, facility, or installation: (a) From which there is or may be a ‘discharge of pollutants;’ . . . (c) Which is not a ‘new source;’ and (d) Which has never received a finally effective NDPES permit for discharges at that ‘site.’” (40 C.F.R. § 122.2.) A “new source” is defined as “any building, structure, facility, or installation from which there is or may be a ‘discharge of pollutants . .</p>	<p>The commenter in effect argues that the Tentative Order may not authorize the development or redevelopment of any building or structure if its runoff would add any pollutant to discharges from the MS4 that “will cause or contribute to the violation of water quality standards” for a water body impaired for that pollutant. The commenter asserts that all such discharges are “new discharges” from “new dischargers” under the federal regulations. We disagree. New buildings, developments, and construction projects are not in fact “new sources” or “new dischargers”</p>	

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				<p>.” that may be subject to applicable standards of performance under section 306 of the Clean Water Act. (40 C.F.R. § 122.2.) Thus, the Tentative Order may not authorize the development or redevelopment of any building or structure, including, without limitation, a new subdivision, industrial facility, or commercial structure, within the Permittees’ jurisdiction, if runoff from the new discharge adds any pollutant to discharges from the MS4 that “will cause or contribute to the violation of water quality standards” for a water body impaired for that pollutant. Furthermore, the applicant for the permit must prove the availability of any exception to this provision, as set forth above.</p> <p>In <i>Friends of Pinto Creek v. U.S. E.P.A.</i>, ((9th Cir. 2007) 504 F.3d 1007), the Ninth Circuit Court of Appeals vacated an NPDES permit issued by the U.S. Environmental Protection Agency to a new discharger on the grounds that the Permittees’ “discharge of dissolved copper into a waterway that is already impaired by an excess of the copper pollutant” would violate the CWA. (Id. at 1011.) Citing to 40 C.F.R. § 122.4(i), the court stated that “The plain language of the first sentence of the regulation is very clear that no permit may be issued to a new discharger if the discharge will contribute to the violation of water quality standards.” (Id. at 1012.) The court noted that</p>	<p>under the Clean Water Act or the federal regulations unless there is a discharge of a pollutant to waters of the United States from a “point source”. The definition of “new discharger” quoted by the commenter was not intended to reach each and every construction project up gradient of an MS4 permitted discharge point. Construction projects and municipal separate storm sewer systems are regulated under the federal permitting program, but not under Clean Water Act section 402(a) and (b) as urged by the commenter, but rather under section (402)(p)(2)(E) and (p)(3). The <i>Friends of Pinto Creek</i> case cited by the commenter is inapplicable to the MRP because the case involved a new point source’s discharge directly into waters of the United States rather than into a municipal separate storm sewer system.</p>	

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				<p>a single exception to this rule exists where a TMDL has been performed, and the “new source can demonstrate that, under the TMDL, the plan is designed to bring the waters into compliance with applicable water quality standards.” (Id.) Thus, where no TMDL has been completed for a specified water body and pollutant, new discharges that add pollutants that will cause or contribute to a violation of water quality standards are prohibited absolutely. Further, the court in Pinto Creek observed that unless a TMDL explicitly provides that existing discharges into the impaired water body are “subject to compliance schedules designed to bring the segment into compliance with applicable water quality standards,” issuance of a permit for new discharge was also prohibited under 40 C.F.R. § 122.4(i). (Id. at 1013.) In effect, a permit for new discharges may not be issued even when a TMDL for the relevant pollutant exists, unless it firmly establishes that “there are sufficient remaining pollutant load allocations under existing circumstances.” (Id. at 1012.) Under this holding, the Regional Board is prohibited from approving a permit that allows new sources or discharge of any pollutant to water bodies already impaired by that pollutant, unless an existing TMDL specifically provides sufficient waste load allocations for the discharge.</p> <p>There are “more than 270 listings in 88 water bodies”⁵ identifying water bodies or water body</p>		

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				<p>segments as impaired for one or more pollutants within the jurisdiction of the San Francisco Regional Board. Many of these are located in jurisdictions and municipalities covered by the Tentative Order.⁶ Water bodies within the Permittees' jurisdictions are impaired for, among other pollutants, mercury, PCBs, bacteria, nutrients, pesticides, and metals, including selenium.</p> <p>The Tentative Order fully acknowledges that these and other pollutants of concern are known contaminants within stormwater in the San Francisco Bay region. Tentative Order Finding 15 states that “[p]ollutants of concern in these discharges are certain heavy metals; excessive sediment production from erosion due to anthropogenic activities; petroleum hydrocarbons from sources such as used motor oil; microbial pathogens of domestic sewage origin from illicit discharges; certain pesticides associated with acute aquatic toxicity; excessive nutrient loads, which can cause or contribute to the depletion of dissolved oxygen and/or toxic concentrations of dissolved ammonia; trash, which impairs beneficial uses including, but not limited to, support for aquatic life; and other pollutants which can cause aquatic toxicity in the receiving waters.” The Tentative Order itself emphasizes that “stormwater discharges from urban and developing areas in the San Francisco Bay Region” have been found by the Water Board “to be significant sources of</p>		

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				<p>certain pollutants that cause or may be threatening to cause or contribute to water quality impairment in waters of the Region.” (Tentative Order, at Finding 11.) Specifically, “the Water Board has found that there is a reasonable potential that municipal stormwater discharges cause or may cause or contribute to an excursion above water quality standards for the following pollutants: mercury, PCBs, furans, dieldrin, chlordane, DDT, and selenium in San Francisco Bay segments; pesticide associated toxicity in all urban creeks; and trash and low dissolved oxygen in Lake Merritt, in Alameda County.” (Id.)[The commenters went on to discuss some of the pollutants found in stormwater.]As no TMDLs have been adopted to address water quality impairments formally identified by the Regional Board and U.S. EPA and caused by pollutants including bacteria, nutrients, pesticides, PCBs, and metals such as selenium, any new discharge of these pollutants would violate the terms of 40 C.F.R. § 122.4(i) and the court’s holding in Pinto Creek. Such discharges are prohibited. Furthermore, the Tentative Order states that “two TMDLs . . . have been fully approved and are effective for the Permittees. These TMDLs apply to pesticide-related toxicity in urban creeks and mercury in San Francisco Bay.”⁷ Following the court’s holding in Pinto Creek, a permit allowing new dischargers or sources of mercury or pesticides could be approved and issued only in the event that the applicable</p>		

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				<p>TMDL explicitly establishes that (1) existing discharges into the impaired water body are “subject to compliance schedules designed to bring the segment into compliance with applicable water quality standards,” and (2) additional allocations are available for the specified water body. (Pinto Creek, 504 F.3d at 1013.) The Tentative Order does not establish that such allocations exist and are available. As a result, new discharges of mercury or pesticides to impaired water bodies are prohibited, and there is no authority for the Regional Board to issue the Tentative Order. In order to be lawful, the Tentative Order must establish measures to ensure that stormwater discharges, from existing or future sources, do not cause or contribute to such impairments, and the Tentative Order has not done so.</p>		
NRDC & SF Baykeeper	62	C.1	Receiving water limitations	<p>The Tentative Order’s Receiving Water Limitations exclude language required by U.S. EPA and addressed by the State Water Resources Control Board in Water Quality Order No. 99-05 (“Order 99-05”). Specifically, the State Board ordered that the “following receiving water limitation language shall be included in future municipal storm water permits.”⁸ Order 99-05 then sets forth language that includes the following: “the</p>	<p>We agree that the Tentative Order does not include the quoted sentence from the State Board’s order. The omitted language pertained to SWMPs but dischargers are no longer required to submit SWMPs so the language is no longer relevant. We also agree with the commenters’ observation that the Tentative</p>	

⁸ Water Quality Order 99-05 at 2.

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				<p>SWMP shall be designed to achieve compliance with Receiving Water Limitations.⁹ However, Tentative Order provisions C.1 and C.1.a exclude the required sentence, substituting instead a reference to certain substantive provisions of the Tentative Order. This alteration is impermissible because it deviates materially from language that the State Board ordered "shall be included in future municipal storm water permits."¹⁰ The included language is not comparable because the cited sections of the Tentative Order are not designed to achieve compliance with water quality standards, and there is, likewise, no finding or evidence in the record that would even tend to support any other conclusion. Moreover, many provisions of the Tentative Order would require the development of compliance plans not yet before the Regional Board, rendering premature any judgment about their adequacy to "achieve Receiving Water Limitations." Indeed, the Tentative Order includes dozens of provisions that require the development of substantive pollution control requirements. (See, e.g., Tentative Order ¶ C.5.d.)</p>	<p>Order includes other language instead that references "certain substantive provisions of the Tentative Order". Those provisions are the specific "pollutants of concern" provisions. We disagree that the referenced language is "not designed to achieve compliance with water quality standards". In fact all of the "pollutants of concern" provisions are intended to achieve such compliance, albeit through iterative MEP-based steps.</p>	

⁹ *Id.*

¹⁰ *Id.*

¹¹ Water Quality Order 99-05, at 3 (emphasis added).

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				<p>Tentative Order Provision C.1.a not only excludes required restrictions, but it also includes new language that weakens the Tentative Order in a fashion inconsistent with precedential state decisions. Provision C.1.a would allow Permittees to cause or contribute to violations of water quality standards for “pesticides, trash, mercury, polychlorinated biphenols, copper polybrominated diphenyl ethers, and selenium” without submitting a report to the Regional Water Board or proposing new BMPs to eliminate the violation(s). This loophole threatens public health and the environment. It is irreconcilable with the explicit requirement in Order 99-05 stating that “discharges” that are “causing or contributing to an exceedence of any applicable WQS” trigger notification and submittal of a plan setting forth “additional BMPs that will be implemented to prevent or reduce any pollutants that are causing or contributing to the exceedence of WQSs.”¹¹</p>		
NRDC & SF Baykeeper	63	C.15	Conditionally exempted discharges	<p>[T]he Tentative Order itself, and supporting sections of the Fact Sheet, create a host of non-stormwater discharge categories that are either categorically or conditionally exempt from prohibitions against non-stormwater discharge to the MS4 system. These exceptions violate of the clear language of the Clean Water Act. Section 402(p)(3)(B)(ii)</p>	<p>Staff believes that the exceptions are proper, and the provisions as a whole implement the requirement to “effectively” prohibit nonstorm water discharges into the storm sewers. Discharges from NPDES permitted facilities are as a matter</p>	

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				<p>requires that permits for discharge from municipal sewers “shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers.” 33 U.S.C. § 1342(p)(3)(B)(ii).¹²</p> <p>Citing to the CWA’s implementing regulations under 40 C.F.R. § 122.26(d), however, the Fact Sheet asserts that “we recognize that certain types of non-stormwater discharges may be exempted from this prohibition if they are unpolluted and do not violate water quality standards. Other types of non-stormwater discharges may be conditionally exempted from Prohibition A.1. [of the Tentative Order] if the discharger employs appropriate control measures and BMPs prior to discharge and monitors and reports on the discharge.” Section C.15 of the Tentative Order creates “Exempted and Conditionally Exempted Discharges” for non-stormwater, with a stated objective to “exempt unpolluted non-stormwater discharges from Discharge Prohibition A.1. and to conditionally exempt non-stormwater discharges that are potential sources of pollutants.” (Tentative Order, at 102.)</p> <p>While the Tentative Order creates limited control measures designed to reduce the potential impacts of these discharges, it does</p>	<p>of law required to comply with water quality standards. The remaining exceptions only apply if the discharges are not a source of pollutants that exceed standards. The word “effectively” recognizes the limitations of the existing infrastructure and provides the flexibility to authorize some types of non-storm water drainage when it does not adversely affect the quality of storm water in the MS4. The commenter neglects to recognize the import of the words “identified by the municipality...” in the analysis.</p> <p>The commenter has offered no proposals on how the Regional Board would implement the law and regulations as interpreted by the commenter.</p>	

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				<p>not prohibit them, as required by the CWA. Section 402(p) places a clear, mandatory duty on the Permittee to prohibit non-stormwater discharges to the MS4 system. The Permittee, or Regional Board, has no discretion to deviate from this requirement....</p> <p>The Tentative Order's attempt to allow exemptions to the prohibition against non-stormwater discharges to MS4 systems is not supported by 40 C.F.R. § 122.26(d)(2)(iv)(B)(1), as the Fact Sheet implies.... A clear reading of the statute, and one that elaborates on Section 402(p)(3)(B)(ii) of the Clean Water Act rather than contradicting it, is that while non-stormwater discharges must be prohibited by the text of the Act, illicit discharge enforcement programs need only specifically address the enumerated list of non-stormwater discharges set forth in the regulations where such discharges have been identified as a source of pollutants. As written, the entire scheme in the Tentative Order is inconsistent with both the regulations and the statute that they purport to implement.</p> <p>Further, even if the Permittees were afforded authority under 40 C.F.R. § 122.26(d) to exempt non-stormwater sources from the discharge prohibitions required by the CWA, the Tentative Order unlawfully allows exemption of irrigation water from lawns, gardens, or landscaping even though pollutants from these source are a known,</p>		

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				significant source of impairment in the Bay Area. Neither a finding that irrigation discharges are “not []sources of pollutants to receiving waters,” (Tentative Order Fact Sheet, at 85), nor an exemption based on the other conditions set forth in the Tentative Order, would be consistent with facts in the record.		
NRDC & SF Baykeeper	67a		Incomplete application	The permit application is significantly incomplete, as it fails to include information required under 40 C.F.R. § 122.26(d)(2) that is necessary to ensure that the selection of controls for reducing the discharge of pollutants is not arbitrary and capricious. A permit application for discharge from a large- or medium-sized MS4 must contain an assessment of controls, including “[e]stimated reductions in loadings of pollutants from discharges of municipal storm sewer constituents from municipal storm sewer systems expected as the result of the municipal storm water quality management program.” (40 C.F.R. § 122.26(d)(2)(v).)	The application does not contain the cited information on estimates of pollutant load reduction from BMPs as we do not believe it is obtainable with the current state of stormwater management knowledge. Broad estimates for PCBs and Hg load allocations for Stormwater permits are contained in the background materials for provisions C.11 and C.12. However, we do not know what actions will be required to obtain those load reductions. Trash discharges to receiving waters are to be abated by 2022, but that is a proposed requirement, not an estimate of trash pollutant reduction based on knowledge of actions and their effectiveness.	
NRDC & SF Baykeeper	67b		Incomplete application	Rather than providing such estimates, neither the application, the Tentative Order, nor the Fact Sheet includes any required information or other discussion of the amount of pollution	Measures are selected because in our judgement they are MEP. We will be addressing in specific technical comments related to	

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				that will be reduced through its controls. In effect, the Tentative Order and its provisions have evidently been selected, and other provisions rejected, based on arbitrary guesswork.	choices of certain BMPs were included, in the context of specific comments.	
NRDC & SF Baykeeper	67c		Incomplete application	The lack of information related to pollutant loadings not only contravenes the requirements of 40 C.F.R. 122.26(d)(2) but also exposes an underlying flaw of the Tentative Order as a whole—it has diminished the extent of, and in many instances entirely deleted, effective BMPs without evidence that management practices included in the Tentative Order are adequate to meet relevant requirements and standards. The approval of the Tentative Order without this information fundamentally violates basic precepts of administrative procedure, not only because required evidence in the record is lacking, but also because the findings and related subfindings in the record are totally devoid of necessary guideposts as to why and how provisions were included or rejected.	There is no legal requirement that the Board explain why provisions were rejected. Board staff believes that the record adequately explains why measures were included as requirements.	
NRDC & SF Baykeeper	67d		Incomplete application	Permittees may have relied on guidance from EPA purporting to “allow[] permitting authorities to develop flexible reapplication requirements that are site-specific.” (61 F.R. 41698.) However, nothing in the CWA’s implementing regulations permits such flexibility, and the guidance cannot reduce or remove the regulatory requirement that the Tentative Order include estimated reductions in pollutant loadings....In order for the Tentative Order application to meet the	We disagree that this is a first time permit application. All permittees have been through several permit cycles and the requirements are quite “mature”. The application does not contain the cited information on estimates of pollutant load reduction from BMPs as we do is not believe it is obtainable with the current state of stormwater management	

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				<p>requirements of the CWA, the Tentative Order must include an estimate of the pollutant load reduction that it is expected to achieve.</p> <p>Even if the guidance were not in direct conflict with the regulations, the guidance does not in itself specifically exempt permits from including this information. The guidance states that "as a practical matter, most first-time permit application requirements are unnecessary for purposes of second round MS4 permit application;" it does not state that all such information is unconditionally unnecessary. (61 F.R. 41698 (emphasis added).) The omitted pollutant reduction estimates represent a fundamentally different type of information from that required by most of the other provisions of 40 C.F.R. § 122.26(d)(2), such as identifying already identified "major outfalls," for which repeating the exercise "would be needlessly redundant," especially "where it has already been provided and has not changed." (61 F.R. 41698.) However, the required pollutant load reduction estimates, which apply when a new application for a new permit is received, are not like "most" provisions addressed in the guidance and are, instead, self-evidently relevant to crafting and assessing the core requirements of the new permit. Such estimates are an essential means of determining whether or not the permit will ensure that water quality standards will be met and what improvements can be expected; they are not merely an</p>	<p>knowledge. Broad estimates for PCBs and Hg load allocations for Stormwater permits are contained in the background materials for provisions C.11 and C.12. However, we do not know what actions will be required to obtain those load reductions.</p>	

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				<p>administrative detail that has no effect on the permit's functionality. This information is further indispensable when, as here, staff have rejected more effective BMPs, since—absent information that such BMPs are not necessary to meet fundamental Clean Water Act goals—this rejection is entirely arbitrary.</p> <p>Additionally, the first issuance of a regional stormwater permit makes the required estimated reduction in pollutant load particularly critical. Here, the area and entities covered by the MRP and the requirements imposed on the Permittees have changed from the last round of adopted permits. The MRP is, essentially, a first-time application for a permit that will largely determine the level of urban runoff control in most of the Bay Area. Given this, the necessity of basing the Tentative Order on information about its estimated efficacy should be obvious and the inapplicability of guidance to the contrary equally clear.</p>		
NRDC & SF Baykeeper	68		Insufficient findings	<p>...An administrative decision must be accompanied by findings that allow a court reviewing the order or decision to “bridge the analytic gap between the raw evidence and ultimate decision or order.” (Topanga Ass’n for a Scenic Cmty. v. County of Los Angeles (1974) 11 Cal.3d 506, 515.)...</p> <p>However, far from revealing lines of factual and legal conclusion or providing a means to “bridge the analytic gap” between evidence and decision, the Tentative Order, as</p>	<p>The permit is supported by adequate findings in compliance with the Topanga decision cited by the commenter. The Fact Sheet discusses compliance with water quality standards numerous times. It identifies the water quality standards that provide the general basis for the permit's requirements (pp. 7-9), then details the specific requirements that are</p>	

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				<p>previously noted, contains only a bare minimum of findings overall and absolutely no findings with respect to critical areas of the Tentative Order, such as compliance with water quality standards, consistency with the MEP standard, section C.3, which details the requirements for new development and redevelopment, or C.15, which details the exemption or conditional exemption of certain non-stormwater sources from the Tentative Order's discharge prohibitions. In this respect as well, the Tentative Order is deficient and unlawful. This violation is particularly glaring because the lack of information on how decisions were made as to the contents of the Tentative Order obfuscates the basis of decision-making and acts as a barrier to transparency. By not attempting to support the Tentative Order or showing clearly why it includes certain practices and excludes others that have been well-supported, the Regional Board avoids laying out clearly for the public the basis of its actions.</p>	<p>implemented for each provision. Further it explains that the draft TO does not require strict compliance with water quality standards and cites the precedential order issued by the State Water Resources Control Board. (SWRCB Order No. WQ 2001-15.) That order indicates that stormwater permits issued by Regional Boards do not need to "not require strict compliance with water quality standards. Our language requires that storm water management plans be designed to achieve compliance with water quality standards. Compliance is to be achieved over time, through an iterative approach requiring improved BMPs...[T]here is nothing inconsistent between this approach and the determination that the Clean Water Act does not mandate strict compliance with water quality standards. Instead, the iterative approach is consistent with U.S. EPA's general approach to storm water regulation, which relies on BMPs instead of numeric effluent limitations." The Fact Sheet cites the legal basis for the MEP standard and</p>	

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					contains numerous references to the "Maximum Extent Practicable" (MEP) standard. It explains that permittees' implementation of technically and economically feasible control measures will reduce pollutants in stormwater discharges to the maximum extent practicable. The Fact Sheet further explains the basis for C.3 and C.15, which are the other permit provisions cited by the commenter. C.3 has been revised partly in response to NRDC and BayKeeper's comments. C.15 is adequately reflective of MEP requirements for the exempted non-stormwater pollutants addressed in that provision.	
NRDC & SF Baykeeper	69		General	For the many aforementioned reasons, the Tentative Order is unlawful under federal and state law. It is a long way from legally adequate and needs broad and significant revisions, as well as more thorough documentation, to pass legal muster. We urge the Regional Board to reject the Tentative Order and provide staff with clear direction on the numerous modifications that are required, as discussed above.	Staff believes that the Tentative Order complies with federal and state laws as discussed above in response to the commenters' specific comments	
San Jose	1		Insufficient evidence	We do not believe that the record demonstrates that many of the provisions identified in the City's technical comments meet either the "nexus" requirement that is	The commenter asserts that the Tentative Order is inconsistent with a "nexus" standard in two sections of the Water Code.	

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				<p>required under the Porter-Cologne Act (Cal. Water Code §§13241 and 13263) or the maximum extent practicable ("MEP") standard, which is the applicable statutory standard governing the substance of permits regulating municipal stormwater discharges under the Clean Water Act ("CWA"). Many of the provisions referenced in the City's technical comments are deficient under these standards. Of special concern are provisions that are costly or will increase workload or with no demonstrable water quality benefit, such as Provisions CA.b.ii.1.g, C.6.e.ii.(4)(d); C.13.a, C.14, C.15.b.i & ii.</p>	<p>Neither of the sections identified by the commenter includes the word "nexus". The cited provisions impose requirements that apply to the Board's issuance of NPDES permits (which include stormwater permits). The California Supreme Court has held that the statutes' requirements to requirements in those permits to the extent that the requirements exceed the requirements of the federal Clean Water Act. (<i>City of Burbank v. State Water Resources Control Board</i> (2005) 35 Cal. 4th 613, 627.) As discussed above the Clean Water Act requires that stormwater permits include requirements that will result in reductions of discharge of pollutants in stormwater to the maximum extent practicable. The commenter asserts that many of the Tentative Order's requirements do not meet that standard. The staff believes that the Tentative Order complies with the maximum extent practicable standard. Although the commenter has identified some permit provisions that are asserted not to comply with the standard, the comment does not include any details about how</p>	

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					those specific provisions are believed to exceed the maximum extent practicable standard under federal law.	
San Jose	2		Prescriptive requirements	Porter-Cologne specifically prohibits the Board from specifying the "design, location, type of construction, or particular manner in which compliance may be had" Cal. Water Code §13360. Most of the provisions in the Revised Tentative Order violate this prohibition by prescribing, sometimes in minute detail, how the City should conduct municipal operations or operate local programs. The overly prescriptive nature of the provisions related to exempted and conditionally exempted discharges [Provo C.15] and provisions which do not sufficiently allow for Adaptive Management [Table 8.1, Provisions C.11.e & f, C.12. b & e, C.13] or preclude use of Alternative Compliance [Provision C.3.e.i]	We disagree that the proposed permit would violate Water Code section 13360, which provides that a water board shall not specify in an order the "design, location, type of construction, or particular manner in which compliance may be had". First, the proposed permit does not specify such matters as design, location, type of construction or particular manner of compliance. Even if the proposed permit were to include such specifications, it would not violate section 13360. The Court of Appeal held in <i>City of Rancho Cucamonga v. Regional Water Quality Control Board, Santa Ana Region</i> (2006) 135 Cal. App. 4 th 1377 held that section 13360 is not applicable to issuance of a stormwater permit issued under the federal Clean Water Act. (id., at 1389.)	
San Jose	3		Unfunded mandate	The legal basis for the City's unfunded mandate objection, including an analysis of why many of the provisions included in the City's technical comments go beyond the	The commenter references comments submitted by Mr. Falk. We have responded to Mr. Falk's comments separately.	

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				requirements of the federal CWA, is set forth in Mr. Falk's comment letter.		
San Jose	4		Economic impacts	For the provisions in the Revised Tentative Order that go beyond requirements of the federal CWA, the Board is required to conduct an analysis of economic impacts and burdens pursuant to sections 13241 and 13263 of the Porter-Cologne Act. <i>See City of Burbank v. State Water Resources Control Board</i> , 35 Cal. 4th 613 (2005). Although the TO Fact sheet purports to contain an economic analysis, the studies cited did not address the requirements of this TO and there is no analysis of the extent to which the programs included in those studies are comparable to the requirements in this TO. As indicated in more detail in the City's technical comments, specific provisions that are of particular economic concern to San Jose include: [Provisions C.3.b.iii., C.10, C.11 & 12.e & f.]	The staff does not agree that any provisions of the permit exceed the requirements of federal law thus we do not agree that an economic analysis is needed under the case cited by the commenter. The City's technical comments and concerns are responded to elsewhere.	
San Jose	5		CEQA	The California Environmental Quality Act (CEQA) applies to permits issued by the Regional Board to the extent the permit contains provisions which are not required under the federal CWA. <i>City of Arcadia v. State Board</i> , 135 Cal. App. 4th 1392 (2006). As indicated above, many provisions in the Tentative Order are not required by the CWA. The need for a CEQA analysis is particularly relevant for provisions which specify the manner in which the permittees can and cannot construct public improvements and those which require the permittees to implement specific public improvement projects, even if	The commenter asserts that the Board is required to comply with CEQA when it issues a permit to the extent that the permit includes provisions which are not required by federal law. In fact, Water Code section 13389 exempts the Board from complying with CEQA when it issues an NPDES permit (including a stormwater permit). (See <i>State Water Resources Control Board Order No. WQ 2000-11, In the Matter of the Cities of Bellflower et al.</i>) The	

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				they are only pilot projects.	case cited by the commenter concerns a Regional Board's obligations to comply with CEQA when it adopts a TMDL. The Board's adoption of a TMDL is not subject to the CEQA exemption that applies to NPDES permits thus the case is inapplicable to the proposed permit.	
San Jose	6		Board lacks authority	As a state agency, the Regional Board only has the regulatory authority delegated to it by statute. The scope of this delegated authority does not include jurisdiction over local land uses decisions under state or federal law. Provision C.3 of the Revised Tentative Order contains numerous instances where the Regional Board is exceeding its statutory authority, with the following provisions being of specific concern as indicated in the City's technical comments: Provisions C.3.b.ii(1) and C.3.c.i.(4)-(6).	We agree that the Board does not have the authority to regulate land use but disagree that the Tentative Order includes provisions that impermissibly regulate the use of land. While local governments make decisions on what land uses they will permit within their jurisdictions, the Board regulates those local governments' discharge of stormwater. The proposed provisions at issue would require the permittees to in turn require that new development in their jurisdictions meet certain technical requirements related to reducing the discharge of pollutants into stormwater to the maximum extent practicable. Those provisions would not result in the Board usurping local governments' authority to make land use decisions. The commenter has	

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					not explained otherwise.	
San Jose	6		C.2 and C.10	The Regional Board is also limited in this proceeding to dealing with municipal storm water discharges. There are several provisions in the Revised Tentative Order which attempt to regulate activities simply on the basis of impact on water quality, even though there is no demonstrated connection between these activities and the permittees' storm sewer systems, including Provisions C.2.c. d &e and C.10.a.ii.2	The commenter has cited two permit provisions to support her assertion that the Tentative Order would regulate activities that may not be connected with discharges to the permittees' storm sewer systems. To the extent that the discharges in the cited sections in the Permittees' jurisdictions do not fit within the broadly defined MS4, those discharges are not regulated by the Final TO	
SCVURPP	Legal 1a		Receiving water limitations and C.1	The Proposed TO represents a substantial improvement over prior drafts of the MRP (especially with regard to its "core" municipal stormwater management program provisions C.2-C.7), and it largely addresses the prior legal deficiencies entailed in the Permit's Discharge Prohibitions, Receiving Water Limitations and C.1 Provision. As set forth in the non-legal comments being submitted by the Santa Clara Program, several aspects of the Proposed TO (including, but not limited to, certain aspects of the Trash, Pollutant-specific, Monitoring, and Conditionally Exempt Discharge Provisions) nevertheless continue to require additional streamlining and/or phasing into future permits in order to make the MRP feasible absent State-provided funding for such "add-ons," however desirable they may arguably be from a potential water quality improvement perspective. In addition	We agree that the proposed permit has been revised but disagree that there were legal deficiencies in the previously proposed Tentative Order. The commenter also notes that the Santa Clara Program has submitted comments that suggest that several aspects of the proposed Tentative Order require additional changes. To the extent that those submittals constitute comments, staff will respond to those comments separately.	

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				to this fundamental policy-level issue, there are also a number of wording changes the Santa Clara Program is suggesting that are needed to better clarify the scope or intent of various requirements.		
SCVURPPP	Legal 1b		Finding 1	The TO's proposed Finding Number 1's attempt to "incorporate" the entire Fact Sheet (which, among other things, is not composed entirely of subject matter appropriate for findings, will not be considered by the Water Board members in a manner enabling them to legally make findings, and which has numerous errors and omissions within it) and responses to comments into the Permit itself (as opposed incorporating these documents into the record associated with the Permit) by reference needs to be revised to avoid a potentially substantial legal procedural and significant abuse of discretion problem that could undermine adoption of the TO.	Staff believes that it is proper to incorporate the Fact Sheet by reference. The commenter has not cited any State Board orders or judicial precedent to support the claim that the practice is legally improper.	
SCVURPPP	Legal 2		C.1	The revisions to the Permit's Discharge Prohibitions, Receiving Waters Limitations, and C.1 Provision have corrected serious potential legal deficiencies, represent substantial improvement, and are to be commended. (That said, we request clarification of the intent of the particular placement of the exemption language currently appearing in Provision C.1.a and, as shown in Attachment 1, believe it would make more sense for it to appear earlier in the same paragraph.)	The intent is of the "exemption language" is to recognize the permit's specific pollutants of concern provisions (C.8 - C.14) as the requirements for Permittees' actions during this permit term to manage their causes and contributions to exceedances of water quality standards (WQSs) associated with those pollutants. As such, there is no need to submit an additional report. However, Permittees must still	

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					<p>notify the Board when they determine they are causing or contributing to an exceedance of a WQS in order to explicitly associate the exceedance with a specific pollutant of concern provision. As such, it is in the Permittees' interest to notify the Board whenever they have new evidence of an exceedance of an applicable WQS in order to associate it with the appropriate C.8 - C.14 provision, and to explicitly claim the safe harbor provided.</p>	
SCVURPPP	Legal 3		C.2-C.7	<p>Provisions C.2 through C.7 of the Permit have been substantially improved by reducing prescriptiveness, increasing co-permittee flexibility, and by providing for a substantial reduction of data gathering and reporting requirements (at least initially with respect to the latter – see comment concerning Provision C.16's Annual Reporting requirements below). There are still, however, a few specific aspects of these Provisions that either exceed the Clean Water Act's maximum extent practicable ("MEP") standard for municipal stormwater NPDES permitting and/or go beyond the existing NPDES municipal stormwater</p>	<p>We disagree that the cited permit provisions "<i>either exceed the Clean Water Act's maximum extent practicable ("MEP") standard for municipal stormwater NPDES permitting and/or go beyond the existing NPDES municipal stormwater permitting program as defined by US EPA and represent discretionarily-imposed new program elements or higher levels of service constituting State unfunded mandates.</i>" As explained in the</p>	

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				<p>permitting program as defined by US EPA and represent discretionarily-imposed new program elements or higher levels of service constituting State unfunded mandates.¹³</p> <p>In fact, among others, the following subprovisions of the Core Program Provisions are particularly subject to this legal comment and should be either be eliminated or expressly conditioned on the co-permittees' <i>receipt</i> of funding from the State:</p> <ul style="list-style-type: none"> • Provision C.3.b.iii (Required Municipal Implementation of State Conceived Green Streets Pilot Projects) • Provision C.3.c (Required Municipal Implementation of State-Created Low Impact Development Mandates)¹⁴ • Provision C.3.h (Required Municipal Recordkeeping, Inspection and Reporting on Operation and Maintenance of Private Stormwater Treatment Systems) • Provision C.3.i (Required Municipal Implementation of State Conceived Site Design Measures for Small Projects and Detached Single-Family Home Projects) 	<p>proposed permit's unfunded mandates finding, this permit provisions are required under federal law. Staff disagrees that the cited provision are unfunded mandates subject to subvention, and will respond accordingly if a claim is filed with Commission on State Mandates.</p>	

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				<ul style="list-style-type: none"> Provision C.6.e (Required Highly Prescriptive Municipal Implementation of State Conceived Inspection, Notification, Recordkeeping, and Reporting Requirements related to Construction Inspections).¹⁵ 		
SCVURPPP	Legal 4		C.8	<p>Provision C.8, as currently crafted, continues to represent a vast expansion of stormwater discharge-related monitoring effort by the co-permittees, the scope of which goes far beyond that demanded by under the Clean Water Act or which appears in municipal stormwater permits US EPA has issued.¹⁶ The proposed expansion of the Santa Clara Program's existing monitoring program therefore represents a discretionary imposition of additional requirements by the State that needs to be scaled back or expressly conditioned on the co-permittees' receipt of State-provided funding for their implementation. A number of the requirements that focus on assessment of the condition of receiving waters (such as subprovision C.8.d) as opposed to the municipal stormwater discharges or their confluence with receiving waters also go beyond the Clean Water Act and represent an illegal attempt to delegate the Water Board's own data gathering and analysis responsibilities to the co-permittees without an</p>	<p>The monitoring requirements adhere to the federal MEP standard, and the scope of monitoring is appropriate to determine the impacts of the Permittees' discharges of stormwater runoff through the MS4 into the receiving waters.</p>	

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				associated advanced provision of State funding for the task to be accomplished. Further, the State's own collection of permit fees ostensibly to be used in part for purposes of funding such broad-based monitoring and subsequent attempt to require the co-permittees to again fund these efforts through the imposition of monitoring requirements in the MRP amounts to double-dipping from the same pot and adds insult to municipal injury.		
SCVURPPP	Legal 5		C.9	Provision C. 9 of the Permit contains at least one element (subsection C.9.e) that should be eliminated as it extends well beyond efforts contemplated under the NPDES permit program and illegally attempts to require inter-agency cooperation and compel free speech.	The requirements of Provision C.9 are within the federal standard of MEP and also implement the actions previously adopted in the Urban Pesticides TMDL.	
SCVURPPP	Legal 6		C.10	While the Santa Clara Program and its co-permittees recognize the importance of better trash control to the Bay Area community and endorse a decision by the Water Board to make a reduction in floatables in Bay Area waters a priority, they have a number of legal concerns regarding proposed Provision C.10. First , the scope of the Provision as currently drafted extends well beyond the improved management and reduction of trash conveyed through their municipal separate storm sewer systems, which is the limit of the reach of the Clean Water Act's NPDES permit program. Management/reduction of trash that	Staff disagrees that the permit would impose unfunded mandates. Provision C.10 requirements are focused on trash discharged through the MS4. Lack of permitting for other entities in the region is no excuse for delaying these requirements. Installation of trash capture devices falls within the definition of MEP, and is therefore not and	

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				<p>reaches Bay Area waters through other means (including, but not limited to, wind) constitutes non-point source pollution (not a control on the discharge of a pollutant from a point source).¹⁷ Second, to the extent the proposed requirements reach into trash that ends up in receiving waters via non-point sources, they require analysis for technical feasibility and economic reasonableness pursuant to sections 13263 and 13241 of the Water Code and constitute non-federal mandates which must be conditioned on the prior receipt of State funding.¹⁸ Third, there is no reason why the Water Board should impose trash pollution control requirements on some Bay Area municipalities in an NPDES permit (which, among other things is potentially enforceable via citizens suits), while other Bay Area municipalities whose occupants' activities contribute trash directly to the Bay or its tributaries have no parallel federally enforceable Clean Water Act permit requirements imposed on them – such practice is not just bad policy in terms of creating an unlevel playing field among Bay Area municipalities, it offends the fundamental principle of equal treatment under the law.¹⁹</p>	<p>unfounded mandate. The TAL has been removed from the Final TO.</p>	

¹⁹ As an alternative, the Water Board should consider issuing, under its authorities under the Water Code, a separate set of region-wide Waste Discharge Requirements containing trash control requirements applicable to *all* Bay Area municipalities.

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				<p>Fourth, the Permit's Trash Provision goes beyond even the broadest interpretation of the legal authority conveyed to an NPDES permit writer under Clean Water Act section 402(p)(3)(B)(iii) by making receiving water conditions that are in large part beyond the permittees' control and which may be affected by other point and non-point sources of trash pollution the relevant parameter to be addressed. Fifth, Provision C.10's requirement to install full capture devices, is not only an unfunded mandate unheard of in US EPA-issued municipal stormwater permits, it illegally specifies the manner of performance in violation of Water Code section 13360. Finally, the Fact Sheet concerning this Provision confuses the concept of a trash action level ("TAL") with a numeric effluent limitation; does not explain basis for the calculation of the particular TAL proposed or contain an analysis of its feasibility or economic reasonableness; and ignores the views expressed by the panel of experts previously assembled by the State Water Board in assessing how an action level of this nature might properly be set for use in a municipal stormwater permit.</p>		
SCVURPPP	Legal 7		C.11 & C.12	Permit Provisions C.11 and C.12 contain a number of requirements that go beyond the NPDES municipal stormwater permitting program, are unfunded State mandates, and/or which represent an illegal attempt to	The requirements of C.11 and C.12 fall within the federal MEP regulatory basis and are therefore not unfunded mandates. The actions in these Provisions also	

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				<p>delegate the Water Board's own assigned responsibilities to the co-permittees without providing State funding for such tasks in advance. As shown in Attachment 1, US EPA-issued municipal stormwater permits contain no requirements to study or remediate mercury, PCBs, or any other specific pollutant – indeed, unlike CERCLA, RCRA, or the Water Code's provisions concerning waste discharges to land that threaten surface or ground waters, the Clean Water Act's NPDES program is not intended to be a vehicle for effectuating corrective action/site cleanup for historical releases of hazardous substances/wastes be them from cinnabar mine tailings or fluids used in electrical transformers. Nor is there any authority under the NPDES municipal stormwater permitting program for requiring municipalities to effect abatement of mercury or PCBs on private properties (as opposed to just prohibiting the discharge into their storm sewers). Subprovisions C.11.f's and C.12.f's requirements for co-permittees to divert certain non-sanitary waste discharges to POTWs is also unprecedented in terms of US EPA's permitting practices, flies in the face of the NPDES regulations' directive for them to eliminate cross-connections between the separate stormwater and sanitary sewer systems, and specifies the manner of</p>	<p>follow the implementation actions specified in the Mercury and PCB TMDLs.</p>	

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				<p>performance in violation of Water Code section 13360.²⁰ In terms of sub-provisions C.11.h, C.12.h and C.11.j, the monitoring requirements that may be imposed through the NPDES program do not extend to conducting fate and transport studies in complex downstream waters on behalf of state agencies like the Water Board that have been assigned responsibilities for setting, evaluating, or effectuating attainment of water quality standards, including through promulgating TMDLs and devising waste load and load allocations – these tasks, as well as undertaking public health programs like those specified under subprovisions C.11.i and C.12.i for subsistence fishers, are beyond the scope of the NPDES program, US EPA's own municipal stormwater permitting practices, and, if they are to be imposed on local governments via the Water Code, require the advanced provision of necessary funding from the State.</p>		
SCVURPPP	Legal 8		C.13	<p>Since Bay Area receiving waters are no longer identified under Clean Water Act section 303(d) as impaired for copper, these pollutant-specific requirements should either be eliminated or must be the manifestation of discretionary requirements based on the Water Board's discretionary authority which necessitates the <i>advanced</i> provision of funding for them from the State. US EPA-</p>	<p>As copper remains a pollutant of concern in the South Bay, the actions required are commensurate with the federal regulatory standard of MEP. Ongoing actions are required to maintain the receiving waters status that allowed for delisting of copper.</p>	

²⁰ This also applies with regard to subprovision C.2.d's pump station to POTW requirements.

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				<p>issued municipal stormwater permits contain no parallel or broadly sweeping copper-specific requirements.²¹ In addition to being beyond the NPDES scope, subprovision C.13.c's attempt to direct the co-permittees to participate in the Brake Pad Partnership and to advocate for associated legislation illegally attempts to require inter-agency cooperation and compel free speech. Subprovision C.13.e's command for the co-permittees to conduct studies on copper's sediment toxicity and sub-lethal effects on salmonids is not tied to municipal stormwater or existing water quality impairment, and represents yet another beyond-NPDES attempt to delegate the Water Board's own work or wishes to local governments without the advanced provision of State funding for the tasks involved.</p>		
SCVURPPP	Legal 9		C.14	<p>This Provision [C.14] should be eliminated in its entirety. Its requirements represent a beyond-NPDES attempt to delegate the Water Board's own potential pre-303d listing/TMDL work to local governments without the advanced provision of State funding for the tasks involved; it illegally attempts to require inter-agency cooperation; and there is no evidence in the record that ties these pollutants to the Santa Clara Program's co-permittees' municipal storm sewers or reasonably related conditions of water quality impairment so as to establish a legal</p>	<p>Selenium pollutant impacts are of concern. The actions in Provision C.14 are consistent with the federal regulatory standard of MEP.</p>	

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				foundation for the imposition of these requirements under State law.		
SCVURPPP	Legal 10		C.15	There is no evidence in the record that the Santa Clara Program's existing conditionally exempt discharge program, which was previously approved by the Water Board staff, has not achieved effective control over the discharge of pollutants in non-stormwater. US EPA's municipal stormwater permits do not contain prescriptive requirements for conditionally exempt non-stormwater discharges absent an affirmative and specific showing in the record that they have proven to be sources of pollutants at levels that affect receiving water quality. The proposed requirements of subprovisions C.15.b.1-v are therefore unnecessary, unjustified, and represent a demand by the State for a higher level of local government service than the NPDES program and its MEP standard requires and necessitate the advanced provision of State funding if they are to be imposed.	We disagree that the cited requirements would result in an unfunded mandate. Provision C.15 represents a consistent approach for exempting unpolluted non-stormwater discharges. The requirements meet the federal regulatory standard of MEP.	
SCVURPPP	Legal 11		C.16	With respect to annual reports beyond that required for 2009, under both the NPDES regulations and fundamental principles of due process, the Permit may not legally command compliance with requirements to be established in the future (even if through a collaborative process) and which are not available to the Santa Clara Program and its	The format of the annual reports does not constitute a new requirement, the reporting requirements are included in the individual provisions. Provision C.16 provides for the development of a convenient template that all of the Permittees will use, thus	

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				co-permittees for review and comment in advance of the MRP's adoption. Accordingly, the Permit should include a reopener if annual reporting formats or requirements are changed in the future.	increasing efficiency and reducing redundant work.	
SCVURPPP	Table			Table comparing other permits issued directly by EPA rather than the States. Table primarily indicates that there are no similar provisions that are comparable in other permits presented.	These permits are for different regions of the country, that may not be facing similar impairing pollutant issues to our region.	
ACCWP	Legal #7		C.3	<p>Provision C.3.c.i sets forth minimum Low Impact Development ("LID") measures that must be implemented for all regulated projects. However, C.3.c.i.(6) then further provides that the Executive Officer must approve any regulated project that proposes to install vault-based treatment systems to provide primary treatment for more than 50% of the total Provision C.3.d specified runoff.</p> <p>The Fact Sheet states "Executive Officer approval of projects will ensure that vault-based systems are installed only at sites with site constraints that make landscaped-based measures truly infeasible." However, no standards for determining "infeasibility" are set forth. Further, there is no indication that such systems would contribute to water quality problems. In effect, this required approval inappropriately attempts to transfer local planning approval authority away from local governments and is contrary to Water Code section 13360. Assurances and</p>	<p>The approval by the EO of LID measures has been removed from the Final TO.</p> <p>Under the Final TO, the Permittees will report on the manner that infeasibility is determined eighteen months after the permit effective date.</p>	

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				<p>determinations regarding these treatment systems can be provided to the Permittees and they can make these decisions much more expeditiously in accord with the other requirements of this Provision. The ACCWP and some of its Co-Permittees provide in their comments why such an additional requirement of Executive Officer approval is cumbersome and in some cases unworkable.</p> <p>Recommended Action</p> <p>We request that the Executive Officer approval as set forth in Provision C.3.c.i.(6) be deleted</p>		
ACCWP	Legal #6		C.15.b	<p>The Revised Tentative Order Provisions C.15.b.i-vii describe various non-stormwater “discharge types” that may be entitled to conditional exemptions from the discharge prohibition and therefore allowed to discharge to the storm drain system. However, these conditional exemptions as set forth in Provisions C.15.b.i-vii are narrowly drawn and are overly prescriptive in nature, thus, going well beyond requirements of federal law. In fact the Revised Tentative order not only fails to respond to our previous comments but is more detailed and prescriptive in many respects than the previously issue Tentative Order.</p>	<p>Provision C.15 has been revised to streamline and reduce requirements. For instance, groundwater discharged from single family residences is exempted outright. We disagree that the revised introductory paragraph is necessary to clarify Provision C.15. In the Final TO, the revisions have sufficiently clarified and reduced previously burdensome requirements.</p>	

²² The ACCWP comments note that that there are thousands of these discharges in the Alameda County area alone.

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				<p>NPDES Municipal Stormwater Permits issued by the Environmental Protection Agency ("EPA") address this issue by simply permitting these types of non-stormwater discharges unless there is an affirming showing that they are a source of pollution. In contrast with the EPA approach, the Revised Tentative Order sets up detailed requirements described therein to allow these discharges regardless of whether it is known or suspected of being a source of pollutants.</p> <p>Provision C.15.b.i provides a good example of this overly prescriptive and cumbersome approach - for a very common type of non-stormwater discharge: pumped groundwater, foundation drains, water from crawl space pumps and footing drains.²² Regardless of the nature or magnitude of threat of the non-stormwater discharge to water quality posed from these common discharges, unless the Tentative Order is revised so as to made clear that municipalities have discretion in determining the extent to which they are appropriately applied to the situation, the BMPs would have to include 1) treatment if necessary to remove total suspended solids or silt to allowable levels (levels not specified) with methods suggested; 2) reporting of uncontaminated groundwater at flows greater than 10,000 gallons per day before</p>		

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				<p>discharging; 3) assurance that the discharges must meet water quality standards consistent with effluent limits in Water Board general permits; 4) required monitoring with prescribed methods for a required duration; 5) attainment of prescribed turbidity levels; 6) attainment of prescribed pH limits; 7) dewatering discharges to be discharged to landscape areas or the sanitary sewer if available; 8) erosion prevention requirements; and 9) maintenance of records of the discharges, BMPs implemented and monitoring activity. Finally, if the dischargers are unable to comply with these requirements, the dischargers would be directed to the Water Board for approval.</p> <p>Other categories of conditionally exempted non-stormwater discharges set forth in Provision C.15.b of the Revised Tentative Order contain similar control measures and requirements. The Revised Tentative Order in effect sets up an entirely new and detailed permitting system that must now be implemented by the Permittees requiring lengthy applications, water quality sampling, monitoring and reporting. The municipalities must be allowed more discretion in the determination of the applicable control measures relating to discharges that may be sources of pollutants to receiving waters as envisioned in and as intended by the federal regulations.</p>		

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				<p>Recommended Action: We request that the introductory paragraph of Provision C.15.b. be revised to read as follows:</p> <p>“The following non-stormwater discharges are also exempt from Discharge Prohibition A.1 if they are either identified by the Permittees or the Executive Officer as not being sources of pollutants to receiving waters, or if they are identified as sources of pollutants to receiving waters, that BMPs/control measures are developed and implemented, as the Permittee deems appropriate to address the threat posed to water quality, including consideration of the tasks and implementation levels of each category of Provision C.15.b.i-vii below.”</p> <p>The language of each of the discharge types should also be modified accordingly.</p>		