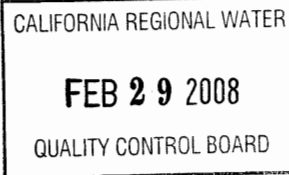




PUBLIC WORKS DEPARTMENT
Administration Division



February 28, 2008

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

SUBJECT: COMMENTS ON MUNICIPAL REGIONAL STORMWATER NPDES
PERMIT TENTATIVE ORDER

Dear Bruce:

These comments are filed on behalf of the City of Berkeley with regard to the Tentative Order for the Municipal Regional Stormwater NPDES Permit for Discharges from Municipal Phase I permittees in the San Francisco Bay Region (Tentative Order) issued on December 4, 2007 as amended. We request that you distribute a copy of these comments to the Regional Board members and include the comments in the record of this administrative proceeding. We support and concur with legal comments filed by the legal counsel for the Alameda Countywide Clean Water Program (ACCWP), Gary Grimm. Additionally, we support and concur with the comments filed by the Bay Area Association of Stormwater Management Agencies (BAASMA) and the legal comments filed by Bob Falk on behalf of the Santa Clara Valley Urban Runoff Pollution Prevention Program.

The City of Berkeley is a member of the Alameda Countywide Clean Water Program (ACCWP). The City and the ACCWP strongly support the Water Board's goal of protecting our creeks and San Francisco Bay from the detrimental impacts of stormwater runoff and in particular from the impacts of litter and illegal dumping. The U.S. EPA has recognized the ACCWP specifically for national awards, and programs we have developed by the ACCWP have been used as models for stormwater programs throughout the State.

The success of the City and the ACCWP has been due, in large part, to the passion and creativity of the member agency staff that are committed to protecting our water resources. We are concerned that some of the very prescriptive requirements in the Tentative Order will hamper our efforts. We understand the need for specific requirements: specific requirements allow us to focus our efforts and obtain dedicated resources. However, some of the specific requirements

are inappropriate for the City and other member agencies that would divert resources toward unproductive tasks and prevent us from accomplishing our goals.

We understand that your staff who developed these requirements believes that the requirements are appropriate and that they will help us reach our common goal of protecting water quality. However, your staff does not and cannot know the operational, institutional, and financial realities within all of the counties and cities of the Bay Area. Your staff has made assumptions regarding the practicality and appropriateness of some of these requirements that are incorrect.

The Tentative Order contains hundreds of new or enhanced requirements, including new requirements to reduce the discharge of mercury, PCBs, copper, and trash. We are comfortable with, and can implement, many of the requirements. However, some of these requirements are inappropriate or impose a severe burden, such as the extensive database development and maintenance, which are spread throughout the Tentative Order, on the City, without a corresponding benefit to water quality. We have described our primary concerns below. Proposed revisions to permit provisions are provided in Attachment 1. We hope that you and your Board will direct your staff to work with local agencies to address these concerns so that we can move forward with dealing with pressing water quality problems quickly and efficiently.

Provision C.2: Municipal Operations

Background: The requirements for conducting municipal operations in a manner to reduce pollution have been included in the permits from the beginning. These activities include street sweeping, storm drain cleaning, and employing appropriate Best Management Practices (BMP) in municipal operations. The Tentative Order modifies the street sweeping standard.

Concerns: We have concerns with the clarity and description of many requirements contained in the Tentative Order. Reference is made to public parking lots, which could be interpreted to mean publicly (or agency) owned parking lots, or privately owned parking lots for public use. The agencies cannot take on responsibility for sweeping privately owned facilities. The language for streets and roads needs to be clarified in regards to public ownership as well for the same reasons discussed for parking lots. The text includes references to "high-traffic", "medium-traffic", and "light-traffic" zones. These terms are not defined in the glossary of the Tentative Order, and are vague, and can have conflicting interpretation in other common usage (use in Traffic Engineering for example) within the City and other agencies. The implementation date is unrealistic for launching a radically revised street sweeping program. The text includes the term "technically infeasible", without defining how this is to be determined. The requirements do not address covered or multi-level parking facilities, where there is limited or no runoff and severely limited headroom for sweeping equipment.

Confirming and reporting on street sweeper rates and speeds is overly onerous. It is an example of a reporting requirement that would not improve water quality and diverts limited staff resources from far more productive activities.

Catch basin or storm inlet inspection and cleaning states that "all" inlets and catch basins are to be inspected and cleaned. This language requires the City to maintain inlets and catch basins on private property

Proposed Resolution:

- 1) Specify that the streets, roads, and parking lots included in sweeping operations are publicly owned facilities.
- 2) Define "high-traffic", "medium-traffic", and "light-traffic" zones. The definition should be coordinated with other uses throughout this Tentative Order and common usage in the Traffic Engineering profession.
- 3) The implementation date needs to be set back to July 1, 2009.
- 4) Define "technically infeasible".
- 5) Parking areas not exposed to rainfall need to be exempted from sweeping.
- 6) In Section C.2.b.iii, eliminate "Report on efficient street sweeping methods, including the manner of specifying and confirming rate or speed at which street miles are covered by sweeper operators."
- 7) Modify the language regarding catch basins and inlets to reflect that only City owned facilities are included in Municipal Operations.

Provision C.3: New Development and Redevelopment

Background: Most of the requirements of Provision C.3 were incorporated in the last permit re-issuance in 2003. The City has spent a tremendous amount of time and resources developing and incorporating these requirements for stormwater treatment controls into our planning and project approval process. The requirements for managing increases in flow from development projects were just adopted by your Board last year and are just starting to be implemented. The requirements for inspection and maintenance of the treatment controls are also just starting to ramp up as more of these facilities are installed.

Concerns: Our concerns with the requirements in the Tentative Order are essentially the same as the concerns we had when the C.3 requirements were adopted in 2003. At that time your staff proposed a size threshold for treatment of 5,000 square feet and proposed requiring the installation of treatment control devices for road reconstruction projects within the existing right-of-way. Our member agencies vehemently opposed those requirements for the reasons outlined below. After a great deal of acrimonious debate, a mutually agreeable solution was reached. Now, your staff is attempting to insert the same requirements that were rejected last time. These requirements were inappropriate before and they are inappropriate now.

1. Requiring treatment on projects between 5,000 and 10,000 square feet:

The Tentative Order currently proposes that two years after Permit adoption, the size threshold of projects requiring stormwater treatment would be lowered from 10,000 to 5,000 square feet for several categories of development. There are a number of compelling reasons why small new development and redevelopment projects that create or replace from 5,000 – 10,000 square feet of imperviousness should be excluded.

- a. *The costs associated with operating and maintaining small treatment devices is too high relative to the benefit.* A disproportionate amount of the implementation costs will be directed at inspecting small treatment devices and conducting enforcement actions against parties that are not conducting adequate maintenance. Once these devices are installed, they will need to be inspected and maintained in perpetuity; thus, the cost of inspection and enforcement will continue to increase over time. It is not a wise use of public funds 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.

A related issue is the cost to the Alameda County Mosquito Abatement District (ACMAD). The ACMAD may need to conduct mosquito inspection and suppression activities at each of these treatment devices that create standing water. We are advised that this will require ACMAD staff to inspect these sites up to seven times each year. Again, these inspection activities will need to be conducted in perpetuity and each year additional devices will be installed.

- b. The total area covered by projects of less than 10,000 square feet is very small. Water Board staff conducted a study in conjunction with five Bay Area municipalities to determine the percentage of land area developed that is less than 10,000 square feet. The results of that study indicated that land development on projects of less than 10,000 square feet accounted for less than 1% of total development. It is not a wise use of public resources to put a great deal of effort into capturing the last 1% of development.

2. Requiring structural treatment controls for road reconstruction projects within existing right-of-way.

Under the City's existing permit, road reconstruction within the existing right-of-way in areas where there is existing development on both sides of the road are excluded from the numeric treatment requirements. This type of project was excluded for good reason. There are severe logistical constraints when trying to stormwater treatment controls within an existing roadway. Available treatment systems require gravity fall in order to function, requiring significant redesign and, in some cases, installation of new storm drainage systems where none exist today.

The costs for providing treatment on a typical road reconstruction project in Berkeley could range from \$100,000 to \$280,000 per acre of roadway construction. The construction cost

for 5 recent pavement projects in Berkeley averaged \$299,000 per acre. Adding the cost for treatment to the cost of construction would increase the cost per acre by 37% to 94%. Requiring the installation of these treatment systems in these situations would place a significant economic burden on already under funded municipal street maintenance programs.

Proposed Resolution:

- 1) Keep the current 10,000 square foot threshold.
- 2) Keep the current exemption for roadway reconstruction projects within existing right-of-way.
- 3) Remove the requirement to conduct a pilot study to assess the amount of development that falls into the 1,000 to 10,000 square foot range.

Provision C.4: Industrial and Commercial Site Controls

Background: The City has been conducting industrial and commercial facility stormwater inspections for over fifteen years. Under our current permit, the City is required to develop a five-year work plan that lists all facilities deemed to have a potential to contribute to stormwater pollution and a list of priority facilities.

Concerns: The required inspection frequency for types of industrial and commercial facilities is too prescriptive and is not appropriate. Of particular concern is the requirement to inspect SARA Title III and General Industrial Permit facilities every year. SARA Title III facilities include facilities that have compressed natural gas on site. This may include facilities for which the only industrial activity is operating a soda machine. It would be a waste of public resources and contrary to common sense to require that such a facility would require an annual stormwater inspection. Similarly, it is not appropriate to require inspections of all General Industrial Permit facilities every year. Some of these facilities have a very low likelihood of contributing to stormwater pollution. In addition, General Industrial Permit facilities pay an annual fee of \$700 per year to the State, thus providing the State with the financial resources to inspect and enforce stormwater permit requirements at those sites. Our inspectors are dedicated professionals, with on-the-ground knowledge and are in the best position to determine which facilities should be high priority facilities.

Proposed Resolution: Remove the designated frequency of inspection by business type. Require that all businesses with a potential to contribute to stormwater pollution be inspected at least once during the five year permit term, and allow the municipalities to develop their own list of high-priority facilities as they are currently doing.

Provision C.6: Construction Site Control

Background: Construction sites can disturb the earth, creating areas subject to erosion and mobilizing pollutants.

Concerns: The time requirements are too short for the City to meet, given all the other items in the permit. This provision requires significantly increased efforts to inspect all construction sites, create new databases, and maintain these new databases. These requirements divert resources away from activities which can directly improve water quality.

Proposed Resolution: Allow the City to establish the appropriate inspection frequency for the location of the work and potential for pollutant discharge.

Provision C.7: Public Information and Outreach

Background: Public information and outreach educates the target audience to the problems associated with stormwater pollution and the need and benefits for using appropriate actions to minimize pollution.

Concerns: The Tentative Order requires all inlet marking to be inspected and maintained at least once per 5-year permit cycle, without regard to ownership. The City cannot be responsible for maintaining private facilities such as inlets or markings. The Tentative Order requires that the City conduct a retroactive inlet marking program. Existing facilities and improvements have grandfathered rights which prevent the City from enforcing this action. What is the definition of "watershed characteristics"?

Proposed Resolution: Clarify in the text that the City is responsible for inlet markings on its facilities only, not privately owned facilities. Remove the requirement for retroactive inlet marking from Provision C.7 Public Information and Outreach. The logical place for this requirement will be in Provision C.3 where permit requirements can be imposed as properties are improved or redeveloped. Define "watershed characteristics".

Provision C.8: Water Quality Monitoring

Background: The ACCWP has been recognized as having an excellent and proactive monitoring and special studies program since the Program first formed in 1989. The ACCWP worked with Water Board staff to identify diazinon related toxicity as a significant concern for Bay Area creeks. After the extent of the toxicity was determined, the ACCWP spent many years conducting studies to determine the specific sources of the diazinon. These studies were cited by the U.S. EPA in their decision to ban diazinon. This success and others were possible because our permit allowed us to identify and follow up on water quality issues as they arose.

Concerns: The Tentative Order indicates that some requirements can be satisfied by regional collaborative efforts. Indicating that some requirements can be satisfied by collaborative efforts is not consistent in the document. The Tentative Order represents a significant increase in Program effort for monitoring and technical studies. While many of the proposed provisions are continuations of existing efforts, or have been identified in regional stakeholder discussions as logical extensions of existing efforts, others are not directly related to urban runoff; and, while perhaps worthwhile for informing comprehensive land-use and watershed management efforts, are not appropriate in a stormwater NPDES permit. In the attached table of specific comments, we suggest some prioritization, but the monitoring objectives (listed in Fact Sheet C.8-2) also need to be considered in the overall context of municipal resources available for both monitoring and Performance Standard implementation.

As with other areas in the Tentative Order, excess specificity in monitoring language is inappropriate and in some cases will obstruct cost-effective solutions to monitoring implementation. (For discussion of legal issues raised in Fact Sheet C.8-4, see separate comments by Gary Grimm). While the Fact sheet acknowledges the important contributions of the Program's past monitoring and collaboration with other monitoring initiatives such as the RMP and SWAMP, it ignores the adaptive nature of these efforts, where the results of initial studies informs the details of data collection in subsequent years. We suggest corrections or additions to address these concerns in comments MP1-11.

Some specific methods or approaches prescribed in the Tentative Order are inconsistent with good monitoring design or are poorly linked to specific monitoring objectives. Lack of internal coordination is also seen in overlapping or conflicting provisions in different parts of the Tentative Order. This is particularly true of the pump station monitoring requirements in Provisions C.8.e.iii, C11 and C12. We have proposed specific corrections to achieve the monitoring objectives efficiently through sound scientific approaches, in MP-2,3 and 9.

Reporting timelines in the TO are unrealistic and inappropriate; the annual Urban Creeks Monitoring Reports should have a due date at least 6 months after the due date for the Electronic Data Reports as originally written in the Administrative Draft. The Tentative Order's November 30 due date for both reports has several detrimental effects:

- It would effectively require local agencies to complete sample processing, lab analysis and QA/QC several months before the November due date for Electronic Data Reports. This increases the likelihood of resource scheduling problems and premium charges for rush analysis and QA/QC of data collected in spring and summer.
- It would force local agencies to request adjustment of reporting schedules for any regional collaboratives, per C.8.a.ii. Without assurance that the Executive Officer will consider such adjustments reasonable or that the adjusted schedule will be acceptable to stakeholders of the collaboratives, this can effectively discourage local agency participation in regional collaboratives (beyond the concern in MP-1 below).
- It will greatly reduce opportunities for creek groups, local managers or other stakeholders to review the data or have input to the Urban Creeks Monitoring Reports.

Proposed Resolution: Clarify which requirements are the responsibility of the individual permittee and which requirements can be satisfied through regional collaborative efforts. Proposed resolutions to our specific concerns are included in Attachment 2.

Provision C.9: Pesticides Toxicity Control

Background: Pesticide use in an urban environment can create significant toxicity issues in urban creeks and the Bay environments. Local government bodies can control their own use of pesticides, but typically do not have the ability or authority to regulate pesticide use within their jurisdictions.

Concerns: This provision requires the City to exercise control in the free market place as well as beyond the City's authority for regulating sales and purchases. Specifically, this provision requires the City to conduct a point of purchase outreach program which will target pesticide purchasers. Capturing this audience at the point of purchase will require the cooperation of the local merchant, an essential piece for the success of this requirement, yet with entirely uncertain availability. This provision requires the City to conduct outreach to residents who use or contract for structural or landscape pest control. There is no practical way for the City to identify this audience.

Proposed Resolution: The outreach requirements discussed above should be removed from Provision C.9 Pesticides Toxicity Control, and incorporated into Provision C.7 Advertising Campaign. Provision C.7.b already includes pesticide outreach.

Provision C.10: Trash Reduction

Background: Litter is a serious problem in many communities in the Bay Area as well as in local creeks and the Bay. The City has enacted many significant litter reduction activities including: sponsoring and participating in Coastal Cleanup events; banning expanded styrene food containers; street sweeping; cleaning up hotspot dumping areas; participating in public outreach campaigns; and implementing an Adopt-a-Drain program.

Concerns:

- 1) The requirement to implement full trash capture measures to treat all runoff from at least 5% of the land area of every municipality may not be appropriate for Berkeley as well as many other cities in the Bay Area. The level of urbanization and associated litter problems varies widely between municipalities. Structural litter control mechanisms are expensive to construct and maintain and they do not address the issue of litter in our communities.
- 2) The requirements of the enhanced litter control measures are too prescriptive. The tentative order requires that the enhanced control measure areas include weekly street sweeping and

parking restrictions. These measures may not be appropriate in many areas that municipalities would like to conduct enhanced litter control activities. In some areas enhanced enforcement or litter pickup would be a more appropriate measure.

3) The requirement to conduct enhanced litter control in areas where structural control measures will be installed should be removed. This would require municipalities to revise street sweeping routes and install no-parking signs, which would be very expensive, only to remove the signs and revise the routes again a year or so later when the structural control measures are in place.

Proposed Resolution: The problem of litter in our creeks and the Bay cannot be solved through controls on stormwater discharges alone. This will require a coordinated effort between local and State agencies. At the stormwater workshop the Water Board held last year, your Board recommended that you establish a trash task force of State and local agency representatives. This is an excellent idea. Before the Bay Area municipalities we spend tens of millions of dollars on control measures that may not make a significant dent in the problem of litter in our creeks, we should work together to develop a comprehensive trash and litter control plan.

The City requests that the permit requirement of a minimum of 5% structural retrofit by 2012 be eliminated, allowing the City to select the balance between enhanced management and full capture methods to achieve trash reduction within the 10% targeted area. This will allow the City and other municipalities an opportunity to assess the effectiveness of various structural control methods, and allow for a wider selection in the mix of enhanced management and full capture methods, to help determine what strategies to follow when it is time to develop the Long Term 15-Year Trash Reduction Plan due in 2012. We also request that the options for enhanced management measures be revised to allow for selecting from a menu that includes items such as enhanced enforcement and litter pickup, rather than be required to implement all the items listed in C.10.b.i.1.

Provision C.11: Mercury Controls

Background: Mercury is a pollutant of concern being addressed through individual and regional collaborative efforts.

Concerns: The Tentative Order is not clear on which requirements can be fulfilled by individual or regional collaborative efforts.

Proposed Resolution: Add text throughout this provision to clarify that the requirements can be fulfilled by individual permittee efforts, by regional collaborative efforts, or by both.

Provision C.12: PCB Controls

Background: PCB is a legacy pollutant of concern being addressed through individual permittee and regional collaborative efforts.

Concerns: The Tentative Order is not clear on which requirements can be fulfilled by individual or regional collaborative efforts. The Tentative Order requires that PCBs and PCB-containing equipment be identified in industrial inspections.

Proposed Resolution: Revise the Tentative Order to identify which requirements can be fulfilled through regional collaborative efforts and which requirements can be fulfilled by individual permittee efforts, by regional collaborative efforts, or by both. The effort to require that PCBs and PCB-containing equipment be identified during industrial inspections will be performed on a pilot study basis to evaluate the feasibility of using this methodology.

Provision C.13: Copper Controls

Background: Copper is exposed to the urban environment through architectural applications, use in pools and spas, and motor vehicle brake pads.

Concerns: The Tentative Order is not clear on which requirements can be fulfilled by individual or regional collaborative efforts.

Proposed Resolution: Revise the Tentative Order to identify which requirements can be fulfilled through regional collaborative efforts and which requirements can be fulfilled by individual permittee efforts, by regional collaborative efforts, or by both.

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

Background: PBDEs, legacy pesticides, and selenium may be conveyed to the Bay by runoff.

Concerns: The Tentative Order requirement to complete and report on the initial characterization phase by Oct 2010 does not allow enough time to ramp up resources, particularly in view of many other Year 2 requirements and the high cost of PBDE analyses. Data requirements and reporting are not coordinated with C.8.f provisions.

Proposed Resolution: Clarify that information needs for characterization in C.14.1.i may be fulfilled by 1) data collected to comply with C.8 provisions; 2) existing stormwater program data from previous bedded sediment surveys; or 3) other existing data (see also MP-1). Change the October 2010 Annual Report requirement to consist of a summary of the sampling plan and status update. Change the October 2011 Annual report requirement to include results of characterization in addition to information for computing loads.

Provision C.15: Exempted and Conditionally Exempted Discharges

Background: Exempted discharges and conditionally exempted discharges requirements govern how non-stormwater discharges can be handled.

Concerns: The Tentative Order will require testing of all conditionally exempt discharges for the City to identify the discharge as not a source of pollutants and be considered an exempt discharge. The Tentative Order will require developing and implementing (including staffing) a plan that will sample, test, and maintain a database of exempted and conditionally exempted discharges. The Tentative Order requires extremely burdensome analytical testing and reporting on discharges (C.15.b) that are unlikely to contribute pollutants to the storm drains, creeks and Bay. This will be labor intensive, wasteful of limited staff resources and not provide water quality benefits.

Proposed Resolution: The issue of conditionally exempted discharges has been discussed for many years. Resolving this issue cannot be accomplished within the time frame allotted for this Tentative Order. Extend the review process for this Tentative Order by 6 months. Delete C.15.b.

Record Keeping and Reporting:

Background: The City is currently submitting very extensive annual reports. Many aspects of these reports have been revised to respond to Water Board staff requests for additional information; for example, we recently revised our industrial/commercial inspection database to allow for the long-term tracking of the resolution of violations or potential violations. To complete the current level of reporting for the City requires the allocation of a several staff members' time for several weeks. These reports are often not reviewed due to lack of Water Board staff resources. A stated goal of both Water Board staff and stormwater representatives at the start of the development of the MRP was to have streamlined reporting.

Concerns: The level of record keeping and reporting described in the Tentative Order will require several times as much effort as our current reporting; including, the development of six new databases. Staff resources dedicated to record keeping and reporting will not be available to conduct activities that will actually benefit water quality. This level and type of reporting will turn our stormwater programs into a "bean-counting" exercise rather than an effort to solve pressing water quality issues; and, due to lack of Water Board staff resources, these reports may never be thoroughly reviewed.

Proposed Resolution: Direct your staff to work with local agencies to significantly revise the reporting requirements. Any record keeping and reporting that is not essential should be eliminated.

City and County Representation on the Water Board

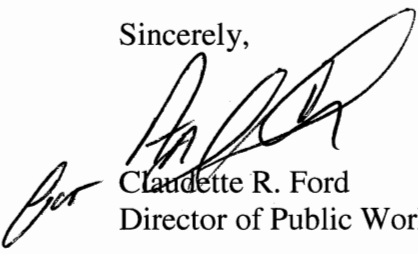
The Regional Water Quality Control Boards were established as nine-member Boards with each member representing a particular interest. Your Board currently has three vacancies. Two of those vacancies are for representatives of local government, which means that there are currently no representatives for local government on your Board. The requirements of the Tentative Order represent a potential cost of several hundred million dollars for local governments. This burden should not be placed on local government in the absence of local government representation on the Board.

These vacancies should be filled before the Tentative Order is adopted. The current Board members are very capable of representing their designated interests. However, they cannot represent the interest of local government. Elected members of city councils and county boards of supervisors understand the financial and institutional reality that local governments face.

We understand that the Chair of your Board will not be able to participate in the adoption of the Tentative Order due to his position as an elected representative of the City of Half Moon Bay. This illustrates a fundamental problem with the adoption of a Region-wide permit. Future Board members representing local government will not be able to participate in the adoption of stormwater permits in the Region unless they are from San Francisco or Marin. This suggests that your Board should consider continuing the practice of adopting county-wide permits rather than a Region-wide permit. Otherwise, local governments may be disenfranchised.

We look forward to continuing our dialog with you and your staff on the issues described in this letter, and we request your consideration of the ACCWP's recommended changes to the Tentative Order.

Sincerely,



Claudette R. Ford
Director of Public Works

cc: ACCWP Management Committee Representatives

Enc: Attachment 1) Table of Proposed Revisions to T.O.

ATTACHMENT 1 – Table of Proposed Revisions to Tentative Order

Item	Permit Section	Subject	Concern	Requested Language – changes shown in reline
1	C.2.a.i	Street Sweeping – Task Description	The definition of high frequency areas is too broads and could obligate Permittees to frequently sweep areas that include the described land uses but do not accumulate high volumes of trash.	Modify the language as follows: <u>This designation shall include areas that consistently accumulated high volumes of trash, debris and other stormwater pollutants</u> Street, road segments and public parking lots designated as high frequency-and may include <u>include at least, but are not limited to, high traffic zones, commercial and industrial districts, shopping malls, large schools, high-density residential dwellings, sport and event venues and plazas. This designation shall include areas that consistently accumulated high volumes of trash, debris and other stormwater pollutants.</u>
2	C.2.a.i	Street Sweeping - Implementation	November 2008 is an unreasonable deadline for identifying and mapping all designated streets, road and public parking lots for sweeping frequency given other items also due November 2008.	Modify the language as follows: Permittees shall identify and map all designated streets, roads, and public parking lots for sweeping frequency by <u>November 30 June 30, 2009.</u>
3	C.2.b.i	Sweeping Equipment Selection and Operation – Task Description	The requirement for 75% of replaced street sweepers to have particulate removal of regenerative air sweepers or better does not give cities flexibility to use equipment that is most appropriate for specific applications. In some circumstances bush sweeper may be more effective than regenerative air sweepers even though the rate of particulate removal may be less.	Modify the language as follows: <u>At least 75% of the sweepers replaced during the Permit term shall have the particulate removal performance of regenerative air sweepers or better, unless the cities can demonstrate how an alternative sweeper is more effective for a specific application even though the rate of particulate removal may be less than that of a regenerative air sweeper.</u>
4	C.2.b.iii	Sweeping Equipment Selection and Operation - Reporting	Confirming and reporting on street sweeper rates/speeds is overly onerous. It is an example of a reporting requirement that would not improve water quality and diverts limited staff resources from far more productive activities.	Eliminate following language: <u>Report on efficient street sweeping methods, including the manner of specifying and confirming rate or speed at which street miles are covered by sweeper operators.</u>
5	C.2.f.i	Catch Basin or Storm Drain	The requirement to inspect and maintain all inlets (regardless of ownership) would require	Modify the language as follows: Permittees shall annually inspect, before the wet season, all

ATTACHMENT 1 – Table of Proposed Revisions to Tentative Order

	Inlet Inspection and Cleaning – Task Description	Permittees to maintain inlets on private property. This is not feasible.	municipally owned catch basins or storm drain inlets, and clean them to remove....
7	C.2.h.ii Rural Public Works Construction and Maintenance – Implementation Level	Most, if not all, jurisdictions have significant road maintenance backlogs due to inadequate funding. Requiring Permittees to divert funding from more urgent road maintenance needs to rural roads simply due to the proximity of such roads to streams and riparian habitat is not feasible nor is it an effective use of limited resources.	Modify the language as follows: Permittees shall implement the following appropriate BMPs during and post construction and maintenance of stream crossing and drainage culverts to comply with water quality standards <u>when rehabilitating or maintaining rural roads:</u> (a) Increase maintenance for <u>Modify rural roads adjacent</u> to streams and riparian habitat to reduce erosion, replace damaging shotgun culvert, re-grade roads to slope outward, and install water bars; and (b) Rehabilitate existing and design new culverts and bridge crossings with measures to reduce erosion, provide fish passage and maintain natural stream geomorphology in a stable manner
8	C.3.b New & Redevelopment – Regulated Projects	Reducing the project threshold to 5,000 on specific categories of development would result in a disproportionate amount of implementation costs directed at inspecting small treatment devices. In addition, the total area covered by these types of projects is very small, less than 1% of development. This would result in diverting limited resources toward activities that provide minimal benefit water quality benefit and would be wasteful of public resources.	Delete the following paragraph in its entirety: Beginning July 1, 2010, all references to 10,000 square feet in Provision C.3.b.i.(1) change to 5,000 square feet. For development projects---
9	C.3.b.i (5) New & Redevelopment – Road Expansion or Rehabilitation Projects	Most, if not all, jurisdictions have significant road maintenance backlogs due to inadequate funding. Regulated the replacement of arterial roads within the existing footprint will add significant cost and complexity to maintaining roads and will significantly contribute to the backlog.	Modify the language as follows: (5) Road expansion or Rehabilitation projects Arterial streets or roads that are: (a) Rehabilitated down to the gravel base (i.e. roads or pavement that are demolished and rebuilt from the gravel base up): (b) (a) Widened with additional lanes, sidewalks, or medians; or

ATTACHMENT 1 – Table of Proposed Revisions to Tentative Order

				(e)Replaced, and that create and/or replace 10,000 square feet or more of contiguous impervious surface. Delete section C.3.j in its entirety.
11	C.f.3	Collection of Impervious Surface Data for Small Projects	Collecting this information, even on a pilot basis, will be labor intensive, wasteful of limited staff resources and will provide not tangible water quality benefit.	
13	C.10.a.i	Trash reduction - requirement	Requirement to identify and implement trash management controls or catchments on 10% of specified land area does not consider variations of severity of litter problems in jurisdictions and penalizes cities with large land areas that may not have severe litter problems. Cities may have to waste resources installing trash capture devices or implementing enhanced trash control measures in areas with minimal trash simply to meet the number.	Options 1. Reduce percentage – “Permittees shall identify high trash and letter (trash) impact catchments totaling at least 40 5 percent.” 2. Increase excluded area – “Urban and Suburban Land Area is defined as the entire land area of a Permittee’s jurisdiction, less... <u>estate single family residential</u> development areas.”
14	C.10.a.ii	Trash Reduction- selection of catchments	The proposed language limits permittees flexibility for catchment placement.	Eliminate following language (4) These catchments shall, to the extent possible, be in the lower reaches or upstream tidal reaches of major tributaries following through the Permittees urbanized watersheds.
15	C.10.b.i	Trash Reduction- implementation	Permittees need flexibility in defining areas with full capture devices. For some areas enhanced trash management control that prevents trash from entering the storm drain system in the first place may be more productive than capturing trash after it has entered the system. Why install capture devices if the enhanced trash management is effective at keeping the material out of the storm drains?	Delete ...and install full trash capture devices by July 1, 2012. Half or more of the total catchment area to be addressed as described in Provision c.10.a.1., must be managed through installation of full trash capture devices. Replace with <u>Permittees may address implementation with full trash capture devices or with enhanced trash management control. Full trash capture devices must be installed by July 1, 2012.</u>
16	C.10.b.i	Trash Reduction- implementation	Prescriptive two-step process of enhanced trash management control followed by installation of full trash capture devices will likely waste limited city waste resources. Permittees will	<u>Language requested in item 4 would address this concern.</u>

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			have to invest in equipment, staff and other resources to implement enhanced trash measures, which may be unnecessary or duplicative in areas ultimately treated with trash capture devices. Also, why install capture devices if the enhanced trash management is effective at keeping the material out of the storm drains?		
17	C.10.b.i (1)	Trash Reduction-implementation	Required trash control measures are overly prescriptive, resources intensive and provide no flexibility for the jurisdiction to cost effectively implement enhanced trash control measures. Jurisdictions have to implement all of these measures regardless of cost, efficiency or effectiveness or long-term benefit. Enforceable parking restrictions for example result in significant capital costs for signage placement and enforcement (police) resources. Increase street sweeping, inlet inspection and will require additional capital These measures may be unnecessary or duplicative with the installation on trash capture devices. In addition, increased litter collection and creek cleanups should qualify as trash control measures.	Modify the language as follows: Enhanced Trash Control Measures shall <u>may</u> consist of the following at a minimum <u>within the target catchment:</u> <u>increased litter collection or litter abatement, creek cleanups...</u>	
18	C.10.b.i (1)	Trash Reduction-implementation	Permittees received no credit for enhanced trash control measure already in place and could be penalized for existing proactive efforts.	Add following language to end of section. <u>Credit can be claimed for enhanced trash management control measures implemented before 2009.</u>	
19	C.10.b.ii	Trash Reduction-assessment and reporting	Trash assessments are expensive and divert resources from other beneficial activities. This measure is unnecessary and duplicative when quantitative measurement of volumes collected in trash capture devices or enhanced trash capture devices can be obtained.	Add following language to end of section: Permittees shall assess trash in stream immediately downstream of enhanced trash management control catchments using SWAMP...a <u>modification of the Swamp RTA or though other quantitative measures.</u>	
20	C15.a	Exempted and	Permittees are required to regulate discharges	Add the following language as follows:	

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		Conditionally Exempted Discharges	that are not co-permittees under the MRP. Permittees are required to allocated significant resources to identify, test, monitor and report discharges that are unlikely to contribute pollutants to the storm drain system (e.g. pumped ground water). These discharges should be considered exempted non-stormwater discharges.	C.15.a. Exempted Non-Stormwater Discharges 1: Discharge Type (7) Pumped groundwater
MP-1	C.8.a + others	Regional collaboration	a. C.8.a.i recognizes existing collaborative bodies as a means of compliance for C.8 activities but does not recognize existing Program participation in collaboratives that directly address control provisions for specific pollutants. b. This provision shows limited recognition that regional collaboratives have separate planning and decision-making bodies that may require some flexibility in timeframe for completion of efforts, but does not permit those collaboratives to deviate from the highly specific “types, quantities and quality of data” prescribed in C.8, even if alternative designs are supported by scientific panels or expert reviewers. This may effectively prevent permittees from participating in collaboratives if other participants don’t accept all of the MRP prescriptions.	a. Insert language similar to C.8.a.i in the other provisions listed below, or specifically cross-reference C.8.a.i as also applying to provisions in other sections that - relate to collaborations already underway, specifically: C.8.f.v (RMP); C.12.b (Proposition 50 grant managed by SF Estuary Project); C.11/12h (RMP) - are more appropriate or only feasible for regional implementation: C.9.e; C.9.g; C.11/12.c & d (in part) C.11/12.e; C.11/12.f (but see also comment MP-6); C.11/12g; C.11/12.i; C.13.c; C.13.e; C.14.a Also, we request clarification that products already produced by regional efforts prior to the effective date of permit can be counted for compliance. b. Revise 2nd paragraph of C.8.a.i to allow programs to submit an alternative monitoring plan prepared by a regional collaborative, which includes specific justification for addressing MRP objectives.
MP-2	C.8.c.i Table 8.1	Status monitoring-Parameters, methods, frequencies	a. Our general concerns about excess specificity are described in separate comments by Gary Grimm, but this table also includes numerous examples of specific monitoring prescriptions that are confusing, inappropriate or otherwise lacking as the basis for a rational monitoring program, and should be further discussed before attempting to finalize this permit. b. While some of the proposed parameters are	b. Delete from table:

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		consistent with the stated objectives the TO includes several that are not appropriate and/or represent excessive expenditure of resources for dubious interpretive benefit. These include: • Nutrients – especially sampling during storm events, which is redundant with Table 8.5. Dry weather grabs represent excessive field mobilization if water column toxicity is revised per comment MP-2c. • Temperature – may be a useful indicator for aquatic habitat but is most often dependent on the condition of riparian vegetation cover, and redundant with other indicators already required (see also MP-4a) • Trash assessments – required at Bedded Sediment sampling sites regardless of whether these sites are representative of trash accumulation, and also an unknown number of enhanced trash management areas required in C.10. These labor-intensive procedures are not cost-effective when dissociated from management areas. c. Storm event sampling methods and approach for toxicity and diazinon prescribed in this provision are inconsistent with the regional Urban Creeks Monitoring Plan (CEP 2004, 2005, 2006) d. Table footnote 18 unnecessarily increases the required effort for biological assessment. While the cited protocol (Ode 2007) contains ambiguities and unresolved issues, using the “basic” procedure as currently described therein	• Nutrients – storm events and dry weather grabs • Trash assessments and also consider eliminating Temperature
		c. Delete grabs for water toxicity and diazinon (OP pesticides) from Table 8.1, and add them to the list of Category 1 pollutants in Table 8.5, with sampling frequency reduced to average 1 or 2 wet and 1 dry event per year. See also Comment MP-6b. d. Revise footnote to allow coordination with Region 2 SWAMP in implementing allowable deviations from SWAMP protocols as described in Appendix A of Ode (2007). An example would be holding samples collected using the “Reach wide benthos” protocol and deferring	

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		will more than double the field and laboratory effort per site for sampling of benthic macroinvertebrates compared to the previous California protocol. Further, requiring the following additional site measurements is excessive and frequently inappropriate for the urban stream reaches targeted in C.8.c.ii: • Depth and pebble count+CPOM requires 420 individual measurements or observations that must be recorded for stones at each sampling site. • cobble embeddedness prescribes a “random walk” search for stones of a certain size to augment the preceding measurements if a minimum of 25 cobbles have not been found. Visual assessment that cobbles are absent from the reach is not allowed. In addition, the footnote commits permittees to periphyton (algae) sampling using a future SWAMP bioassessment protocol that has not been developed, but would be likely to add significantly to per-site cost with unknown benefits. Periphyton quantification as described in the T.O. may differ significantly from the SWAMP periphyton indicator anticipated in the cited reference, which calls it an “optional” measurement of “food resource quantification”; this is not appropriate for the Status monitoring which should focus on basic screening indicators. e. Table footnote 25 contains an incomplete reference to “MacDonald”; assuming this is the same document as referenced in footnote 78, it	Laboratory processing until and if SWAMP reaches a consensus about its “interim” recommendation to collect samples with two partly duplicative protocols. Either delete the periphyton monitoring requirement or state that a SWAMP periphyton bioassessment method will only be required after a SWAMP protocol has been written, accepted by the scientific review panel as useful for urban streams, and identification tools or a list of approved laboratories are available to support its implementation. Delete requirements for other procedures that are not included in the SWAMP basic level protocol.
			e. Revise footnote and/or table to exclude unnecessary analytes.

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			includes several analytes not specifically named in the T.O., some of which may not be considered to have reasonable potential for stormwater impacts in the Bay Area, due to extensive controls and/or bans implemented in the decades since these were placed on USEPA's priority pollutant list. • Trace Metals: As, Cd, Cr, Pb, and Zn • Organochlorine Pesticides: Endrin, Heptachlor epoxide, and Lindane (gamma-BHC)		
MP-3	C.8.c.ii	Status monitoring-locations	While we appreciate staff efforts to provide some alternative choices among waterbodies, most of the options for Alameda permittees will not meet the criterion added in the T.O. that each sampling reach drain a catchment with "60% or more urban or suburban land use".	Restore or modify the Administrative Draft criterion that "surrounding land uses are predominantly urban or suburban", or adapt Findings statement on p. 51 that sample locations "be based on surrounding land use, [and] likelihood of urban runoff impacts..."	
MP-4	Table 8.1, also C.8.e.i	Status Results that Trigger Stressor ID Project	a. Single factor triggers are inappropriate and may lead to ineffective and unnecessary expenditure of resources. • USEPA guidance indicates that the Stressor Identification process is intended for use <u>after</u> you have biological assessment data indicating that a biological impairment has occurred. • The table includes trigger levels that may not apply to all urban streams, such as temperature guidelines for supporting salmonid populations, which are irrelevant for lower reaches of streams used only during wet season migrations. Stressor Identification investigations triggered by a single-factor exceedance of WQ standards may lead to uninformative conclusions for lack of data. Stressor Identification is a complex	a. Modify the trigger requirement for all indicators except the "triad" group addressed in Attachment G, through one or more revisions such as: • Delete last column of Table 8.1, adding footnote to refer to new C.8.c.iii below • Modify column heading to indicate that Stressor Identification follow-up is only required for data results that are evaluated per Attachment G. • Include a reference for Table G-1; which is adapted from a consensus-based framework developed by the Southern California Stormwater Monitoring Coalition (SMC). Provide a rationale for Footnote 78, which prescribes a generic pollutant analyte list instead of a shorter regional priority list as recommended by the SMC for routine sampling.	

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			process and should only be initiated when more than one line of evidence suggests a problem, as indicated in Appendix G Table G-1. b. Follow-up actions or monitoring prescribed in C.8.e.i could require extensive effort in areas not directly related to stormwater runoff impacts, or require cooperation of non-stormwater stakeholders. (For example, reports by Region 2 SWAMP, among others, indicate that temperature exceedances are most directly related to lack of tree canopy in the riparian zone). Some recurring patterns of exceedances in a single indicator may be more efficiently investigated through Illicit Discharge responses, as a function of Permittee's discretion based on best professional judgment	b. Add C.8.c.iii "Follow-up" language indicating that "trigger" results can lead to one or more of the following, with rationale to be reported in the next Urban Creeks report and/or Annual Report as appropriate: • Review of potential causes and recommendations for follow-up options to be reported in the next Urban Creeks n Report. • Referral to local agency responsible for stormwater or other applicable management issues. • Countywide or regional Stressor Identification project per C.8.e.i. Coordinate with revisions in C. 8.e.i. (MP-8). • Other reporting as described in C.1
MP-5	C.8.d.i, Table 8.2	Long Term Trends Locations	Monitoring as specified is likely infeasible at the location prescribed in Table 8.2 for Alameda Permittees. Alternative selection criteria, which are copied from the CEP Urban Creeks Monitoring Plan, are inconsistent with criteria for SWAMP integrator or indicator sites. See also MP-6	Revise to state that "each countywide program shall select one site, among Status watersheds chosen according to C.8.c, for long-term trends monitoring in Years 2 and 4. the sites will be chosen in consultation with regional SWAMP managers and considering criteria in the statewide draft Trends Monitoring design." (see also MP-6)
MP-6	C.8.d.ii, Table 8.3	Long Term Trends parameters, methods, frequencies	a. Prescriptive monitoring requirements are not tied to specific objectives, and not coordinated with similar provisions elsewhere in C.8. In particular, a separate wet-weather flow-weighted composite sampling station with capability to sample suspended sediment concentration (SSC) is extremely costly and labor-intensive for little recognizable added benefit. Criteria for sampled storm events are inconsistent with those in C.8.f and there is no existing or planned SWAMP monitoring efforts of this type, obstructing the TO directive to conduct this "in conjunction"	a. Delete all references in text and Table 8.2 to wetweather sampling, and add Dissolved & total metals to Category 2 in Table 8.5. Clarify what if any "organics" should be added to Category 1 or Category 2 in Table 8.5.

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			with those other efforts where possible. b. Requirements for water column toxicity sampling are inconsistent with the CEP Urban Creeks Monitoring Plan. c. The remaining portion of Table 8.3 contains other inconsistencies and errors, including: • Toxicity in Bedded Sediment should not be sampled during a storm event; this sampling should be in conjunction with Pollutants in Bedded Sediment. • Toxicity references in the column for Results That Trigger Monitoring Project are applicable only to water column tests, not to sediment (also see MP-4 above regarding triggers). • Draft SWAMP protocols for Trends Monitoring specify only spring sampling for urban sites	b. Delete water toxicity from text and table, see related recommendation in MP-2c above. c. Delete rest of table and instead add a footnote or cross-reference that one of the prescribed locations for Sediment Toxicity and Pollutants in Table 8.1 will be repeatedly sampled as the selected Long Term site each year, in either spring or fall. Confirm that fall sampling is acceptable.
MP-7	C.8.d.ii, Table 8.3	Long Term Trends Results that Trigger Project	Single line of evidence is inappropriate to trigger Stressor Identification: see MP-4. The T.O. requirement for Toxicity Identification Evaluation “in the event that toxicity is detected and confirmed” is too rigid, based solely on 50% of organisms affected in 2 tests. Stressor Identification should be one of several tiered options to follow-up on monitoring results. See MP-4.	Delete or modify in conjunction with recommendations for MP-4, MP-6a and b, and MP-8. (note: toxicity testing triggers in this table only apply to water column toxicity).
MP-8	C.8.e.i	Monitoring projects - Stressor Identification		Coordinate revisions with suggestions for MP-4.
MP-9	C.8.e.iii, C.11f, C.12f	Pump station and dry weather /first flush studies	a. We agree with and support the general concerns expressed in a separate BASMAA letter concerning these provisions. Some additional specific concerns about these provisions are the following: b. C.8.e.iii makes an erroneous apriori assumption that diversion is an effective one-	a. Replace these provisions with a single integrated provision that requires stormwater programs to work with BACWA first to use existing data to develop a plan for and perform a feasibility study followed by a workplan for characterization of potential stormwater pollution problems at pump stations and identifying potential and recommended solutions. The feasibility study should include an analysis of

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			size-fits-all solution to a variety of potential impacts from pump stations. Other problems include: • Design overly specific, inconsistent with monitoring objectives or established procedures for monitoring and pollutant characterization. • Confounds screening for dry weather localized impacts with reducing TMDL pollutant loads to Bay. • Completely uncoordinated with C.11/12.f provisions that were based on stakeholder discussions. c. The scope of C.11.f and C.12.f is likely too extensive to be cost-effective in specifying that “Permittees shall select 20% of the existing stormwater pump stations in their jurisdictions and evaluate drainage characteristics and the feasibility of diverting flows to sanitary sewers to be treated by the local POTWs.”	the cost/benefits of diverting dry weather and first flush flows from stormwater pump stations to POTWs. This may also affect other provisions of C.11 and C.12, see MP-10 and MP-11) b, c. See above.
MP-10	C.11,	Mercury controls	Although the conceptual outlines of these provisions were discussed during development of the TMDLs for SF Bay, the T.O. specifies levels of implementation that go beyond the previous discussions between WB staff and BASMAA and other stakeholders, or what we can confidently say is cost-effective with current knowledge. Provisions C.11.d-f should be consistent with the intent expressed on Findings Page 69 that pilot study sites “will be chosen primarily on the basis of the potential for reducing PCB loads, but consideration will be given to mercury removal in the final design and implementation of the studies”.	Clarify that any prioritization or selection of pilot sites for C.11.d-f will be made on the basis of potential PCB reductions. See comments MP-11c-g which also apply to the corresponding lettered provisions in C.11, also MP-1.
MP-	C.12	PCB Controls	a. C.12.a.ii requires all permittees to incorporate	a. Revise to begin with pilot programs in (two) communities

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11	identification of PCBs and PCBs equipment into existing industrial inspection programs. We disagree with the Findings 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.” b. C.12.b, Pilot Projects to Evaluate Managing PCB-Containing Materials During Building Demolition and Renovation, is overly prescriptive and inconsistent with the scope and stakeholder process of a regional project already underway via a Proposition 50 grant to SFEP (see also MP-1). c. C.12.c, Pilot Projects to Investigate and Abate On-Land Locations, requires identification of five suspect drainage areas by November 30, 2008, which is too short a time frame for completing the tasks and discussion involved. Also, provision C.12.c.v is ambiguous and potentially open-ended. While municipally-owned properties would fall under this provision, the T.O. should recognize that source control on private properties is by far the most cost-effective strategy for reducing PCBs, and that abatement activities at downstream areas before abatement of source properties may produce only temporary reductions, as experienced in the pilot abatement project in the Ettie Street Pump Station watershed. d. C.12.d regarding pilot projects toward	to identify cost-effective and efficient ways to implement this type of program. b. Revise to state that this requirement can be fulfilled by good faith participation by BASMAA in the Proposition 50 grant project as a stakeholder and project partner, and acknowledge that this effort is already underway prior to permit issuance (see also MP-1. In addition, it is extremely important to note that the sampling required by this provision would 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 USEPA 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 primarily by on-site human health risks rather than water quality concerns. c. Reinstate the Administrative Draft’s version of the timeline, with both suspect locations and survey results to be reported in October 2009; preliminary results of reconnaissance data and candidate sites can be shared informally with TMDL staff during early to mid-2009. Clarify that the C.12.v requirement to “conduct an abatement program in portions of drainages under their jurisdiction.” does not require municipalities to be responsible for abating PCB contamination on private properties. This provision should state that permittees will work with responsible parties and state agencies to develop an abatement program for right-of-way PCBs originating on private property.
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		enhancing sediment/pollutant removal via municipal operations: • lists multiple forms of sediment management as examples of “street sweeping” in C.12.d.i • too prescriptive and broad in its requirement to conduct this pilot study in conjunction with the studies in C.12.c • Requires too rapid implementation regionwide by 2011, based on 1) above pilot study for enhancing sediment/pollutant removal via municipal operations and 2) an evaluation of high-efficiency street sweepers.	d. (see note MP-9c) Revise to • State in C.12.d.i that the focus is sediment management activities including but not limited to practices listed, but that not all of the practices listed as examples may be feasible in pilot watersheds. • Delete requirement in C.12.d.iv that Permittees “implement the most potentially effective measure(s)...throughout the region” and instead specify that an initial feasibility study and cost analysis of enhanced sediment management practices be performed using available information, which may include results of other pilots., followed by pilot testing of appropriate enhanced sediment management practices in up to two drainages, contingent on their suitability being supported by the feasibility study results and availability of grant or other special funds for test implementation in the selected drainages.
		e. C.12.e requirement is too broad to be cost effective, in asking Permittees to identify at least 10 locations for pilot studies of on-site treatment systems. Also the “evenly distributed” criterion is unnecessary and may be counterproductive (given existing information about the distribution of legacy PCBs in urban areas). f. C.12.h Studies aimed at better understanding the fate, transport, and biological uptake of PCBs discharged in urban runoff are appropriately conducted by the RMP. See MP-1 g. C.12.i, Risk Reduction Program, unnecessarily limits the types of actions or	e. Remove “evenly distributed” criterion from C.12.e.i, and revise C.12.e.iii to require pilot testing of appropriate on-site stormwater treatment retrofits at up to three sites, contingent on availability of grant or other special funds for suitable sites (these may or may not be the same as priority sites identified through provision C.12.c). f. Revise to state that this requirement will be fulfilled through participation in the RMP, coordinate with MP-1. g. Revise requirement to consist of participation in public

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			collaborations Permittees can use to manage human health risks	outreach and education efforts conducted in cooperation with BACWA, OEHHS, and Department of Public Health to address PCB-related risks from consuming Bay fish.
MP-12	C.13	Copper Controls	a. C.13.b Pools Spas Fountains: Overly prescriptive language requires adoption of local ordinances prohibiting copper-containing PSF discharge, as well as installation of sanitary sewer discharge connection including “a proper permit from POTWs”. This contradicts the recommendations in the CEP’s Copper Management Strategy Development Resources (2006), which identified these steps not as the initial stages of implementation, but only as possible endpoints of a series of progressive steps if adequate control is not achieved at lower implementation levels. The CEP document notes many potential obstacles to these final steps including:: • Politically challenges to using fees to recover costs associated with regulating this class of facilities • Practical problems finding responsible dischargers given the regional and mobile nature of the pool service business, and the fact that many private pool owners conduct their own maintenance and do not use a service • Political and logistical challenges in modifying building and plumbing codes to require sewer discharge connection retrofits on existing PSF facilities. b. C.13.c.iii, Brake Pads: requirement for a desktop study to evaluate implementation of enhanced treatment, O&M, which also “shall consider pilot tests” is excessive, given CEP	a. Revise to follow the CEP document’s progressive implementation sequence (pp 13-26): • refine regional loading estimate with available data to determine if PSF is in fact a significant source. • If yes, begin targeted outreach in Years 2-3. • Through outreach, establish discussions about regulatory options for discharge with PSF managers and service companies as well as POTWs, report progress in Year 4. b. We ask the Water Board to confirm that the desktop study may be a review of similar implementation strategies evaluations by other stormwater programs, including a number of reports recently released or soon to be available

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			document's assessment that "Typical runoff treatment systems have incomplete copper removal; removal of dissolved copper is even more difficult than removal of total copper." c. C.13.e. Studies to reduce uncertainties: The requirement to investigate possible copper sediment toxicity and sublethal effects on salmonids is overly burdensome and potentially infeasible for stormwater programs to implement as intended. It does not recognize the extensive research and recent publications by NOAA which have added considerably to the knowledge base on this topic. This requirement is a last-minute addition to the T.O. - Water Board staff did not identify these uncertainties as priority items for permits in previous stakeholder discussions involving all dischargers, or in previous MRP discussions.	from other California stormwater programs in response to metals TMDLs. c. Revise requirement to one or more of: • "Conduct or cause to be conducted a literature review on potential copper sediment toxicity and sublethal effects on salmonids in SF Bay." • "Participate in a regional workgroup convened by WB to discuss steps for joint discharger implementation of studies to address uncertainties in copper impacts to biota in the Bay" (see also MP-1)
MP-13	C.14.a	PBDEs, Legacy Pesticides, Selenium	The T.O. requirement to complete and report on the initial characterization phase by Oct 2010 does not allow enough time to ramp up resources, particularly in view of many other Year 2 requirements and the high cost of PBDE analyses. Data requirements and reporting are not coordinated with C.8.f provisions.	Clarify that information needs for characterization in C.14.a.i may be fulfilled by 1) data collected to comply with C.8 provisions; 2) existing stormwater program data from previous bedded sediment surveys; or 3) other existing data. (see also MP-1). Change the October 2010 Annual Report requirement to consist of a summary of the sampling plan and status update; Change the October 2011 Annual report requirement to include results of characterization in addition to information for computing loads.