

FACT SHEET/RATIONALE

TECHNICAL REPORT

FOR

TENTATIVE ORDER NO. R2-2008-00XX

NPDES Permit No. CAS612008

Municipal Regional Stormwater NPDES Permit

and

Waste Discharge Requirements

FOR

The cities of Alameda, Albany, Berkeley, Dublin, Emeryville, Fremont, Hayward, Livermore, Newark, Oakland, Piedmont, Pleasanton, San Leandro, and Union City, Alameda County, the Alameda County Flood Control and Water Conservation District, and Zone 7 of the Alameda County Flood Control and Water Conservation District, which have joined together to form the Alameda Countywide Clean Water Program

The cities of Clayton, Concord, El Cerrito, Hercules, Lafayette, Martinez, Orinda, Pinole, Pittsburg, Pleasant Hill, Richmond, San Pablo, San Ramon, and Walnut Creek, the towns of Danville and Moraga, Contra Costa County, and the Contra Costa County Flood Control and Water Conservation District, which have joined together to form the Contra Costa Clean Water Program

The cities of Campbell, Cupertino, Los Altos, Milpitas, Monte Sereno, Mountain View, Palo Alto, San Jose, Santa Clara, Saratoga, and Sunnyvale, the towns of Los Altos Hills and Los Gatos, the Santa Clara Valley Water District, and Santa Clara County, which have joined together to form the Santa Clara Valley Urban Runoff Pollution Prevention Program

The cities of Belmont, Brisbane, Burlingame, Daly City, East Palo Alto, Foster City, Half Moon Bay, Menlo Park, Millbrae, Pacifica, Redwood City, San Bruno, San Carlos, San Mateo, and South San Francisco, the towns of Atherton, Colma, Hillsborough, Portola Valley, and Woodside, the City/County Association of Governments (C/CAG) of San Mateo County, and San Mateo County, which have joined together to form the San Mateo Countywide Water Pollution Prevention Program

The Fairfield-Suisun Sewer District and the cities of Fairfield and Suisun City, which have joined together to form the Fairfield-Suisun Urban Runoff Management Program

The city of Vallejo and the Vallejo Sanitation and Flood Control District

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I. CONTACT INFORMATION

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The Permit and other related documents can be downloaded from the Water Board website at:

<http://www.waterboards.ca.gov/sanfranciscobay/mrp.htm>

Comments can be electronically submitted to mrp@waterboards.ca.gov.

All documents referenced in this Fact Sheet and in Order No. R2-2008-00XX are available for public review at the Water Board office, located at the address listed above. Public records are available for inspection during regular business hours, from 9:00 am to 4:00 pm, Monday through Friday, 12 - 1 pm excluded. To schedule an appointment to inspect public records, contact Melinda Wong at 510-622-2430.

II. PERMIT GOALS AND PUBLIC PROCESS

Goals

The Goals for the Municipal Regional Stormwater Permit (hereinafter, the Permit) Development Process include:

1. Consolidate six Phase I municipal stormwater NPDES permits into one consistent permit which is regional in scope.
2. Include more specificity in NPDES Permit Order language and requirements. Create (A) required stormwater management actions, (B) a specific level of implementation for each action or set of actions, and (C) reporting and effectiveness evaluation requirements for each action sufficient to determine compliance.
3. Incorporate the Stormwater Management Plan level of detail and specificity into the Permit. Stormwater Management Plans have always been considered integral to the municipal stormwater NPDES permits, but have not received the level of public review in the adoption process necessary relative to their importance in adequate stormwater pollutant management implementation.
4. Implement and enhance actions to control 303(d) listed pollutants, pollutants of concern and achieve Waste Load Allocations adopted under Total Maximum Daily Loads.
5. Implement more specific and comprehensive stormwater monitoring, including monitoring for 303(d) listed pollutants.

Public Process

Water Board staff conducted a series of stakeholder meetings and workshops with the Permittees and other interested parties to develop this Permit over the past 3 years. These meetings included Water Board staff, representatives of the Permittees, representatives of environmental groups, homebuilders, private citizens, and other interested parties. The following is a summary of the lengthy stakeholder process.

Stage 1 (2004–2005) Water Board staff and Bay Area Stormwater Management Agencies Association (BASMAA) agreed to develop a municipal regional stormwater permit. Board staff and BASMAA held monthly meetings to agree on regional permit approach, developed concepts and ground rules for a Steering Committee. Steering Committee for the Permit began regular monthly meetings, and there was agreement to form work groups to develop options for permit program components in table format.

Stage 2 (2006) Water Board staff, BASMAA, and nongovernmental groups met and discussed the Performance Standard (i.e., actions, implementation levels, and reporting requirements) tables from six workgroups. In addition to the Steering Committee, Work Group Stakeholder meetings focused on the six program elements to complete the Performance Standard Tables and discuss other issues in preparation for creating the first Draft Permit Provisions. Two large public workshops were held in November with all interested stakeholders to discuss Work Group products.

Stage 3 (2007) Water Board held a public workshop in March to receive public input. Water Board staff distributed an Administrative Draft Permit dated May 1, 2007, held multiple meetings and received comment.

Stage 4 Next Steps (2007-Early 2008) In December 2007, Water Board staff distributed the Tentative Order for an extended written public comment before Water Board consideration. Water Board consideration of the Tentative Order began with a Testimony Hearing in February 2008, followed by written response to comments and consideration of the Revised Tentative Order for the Permit in Spring 2008.

The Tentative Order was released for public comment on December 4, 2007, by surface mail, electronic mail and posting on the Water Board website. Comments on the Tentative Order were accepted until February 1, 2008. Based on comments received, appropriate revisions were made and submitted to the Water Board as a Revised Tentative Order for Water Board consideration on XXXX, 2008.

Implementation

It is the Water Board's intent that this Permit shall ensure attainment of applicable water quality objectives and protection of the beneficial uses of receiving waters and associated habitat. This Permit requires that discharges shall not cause exceedances of water quality objectives nor shall they cause certain conditions to occur that create a condition of nuisance or water quality impairment in receiving waters. Accordingly, the Water Board is requiring that these standard requirements be addressed through the implementation of technically and economically feasible control measures to reduce pollutants in stormwater discharges to the maximum extent practicable as provided in

Provisions C.1 through C.15 of this Permit and section 402(p) of the CWA. Compliance with the Discharge Prohibition, Receiving Water Limitations, and Provisions of this Permit is deemed compliance with the requirements of this Permit. If these measures, in combination with controls on other point and nonpoint sources of pollutants, do not result in attainment of applicable water quality objectives, the Water Board may invoke Provision C.1 and may reopen this Permit pursuant to Provisions C.1 and C.15 of this Permit to impose additional conditions that require implementation of additional control measures.

Each of the Permittees is individually responsible for adoption and enforcement of ordinances and policies, implementation of assigned control measures or best management practices (BMPs) needed to prevent or reduce pollutants in stormwater, and for providing funds for the capital, operation, and maintenance expenditures necessary to implement such control measures/BMPs within its jurisdiction. Each Permittee is also responsible for its share of the costs of the area-wide component of the countywide program to which the Permittee belongs. Enforcement actions concerning non-compliance with the Permit will be pursued against individual Permittee(s) responsible for specific violations of the Permit.

III. BACKGROUND

Early Permitting Approach

The federal Clean Water Act (CWA) was amended in 1987 to address urban stormwater runoff pollution of the nation's waters. One requirement of the amendment was that many municipalities throughout the United States were obligated for the first time to obtain National Pollutant Discharge Elimination System (NPDES) permits for discharges of urban runoff from their Municipal Separate Storm Sewer Systems (MS4s). In response to the CWA amendment (and the pending federal NPDES regulations which would implement the amendment), the Water Board issued a municipal storm water Phase I permits in the early 1990s. These permits were issued to the entire county-wide urban areas of Santa Clara, Alameda, San Mateo and Contra Costa Counties, rather than to individual cities over 100,000 population threshold. The cities chose to collaborate in countywide groups, to pool resources and expertise, and share information, public outreach and monitoring costs, among other tasks.

During the early permitting cycles, the county-wide programs developed many of the implementation specifics which were set forth in their Stormwater Pollution Prevention Management Plans (Plans). The permit orders were relatively simple documents that referred to the stormwater Plans for implementation details. Often specific aspects of permit and Plan implementation evolved during the five year permit cycle, with relatively significant changes approved at the Water Board staff level without significant public review and comment.

Merging Permit Requirements and Specific Requirements Previously Contained in Stormwater Management Plans

US EPA stormwater rules for Phase I stormwater permits envisioned a process in which municipal stormwater management programs contained the detailed BMP and specific level of implementation information, and are reviewed and approved by the permitting agency before the

municipal NPDES stormwater permits are adopted. The current and previous permits established a definition of a stormwater management program and required each Permittee to submit an urban runoff management plan and annual work plans for implementing its stormwater management program. An advantage to this approach was that it provided flexibility for Permittees to tailor their stormwater management programs to reflect local priorities and needs. However, Water Board staff found it difficult to determine Permittees' compliance with the current permits, due to the lack of specific requirements and measurable outcomes of some required actions. Furthermore, federal stormwater regulations require that modifications to stormwater management programs, such as annual revisions to urban runoff management plans, be approved through a public process.

Recent court decisions have reiterated that federal regulations and State law require that the implementation specifics of Municipal Stormwater NPDES permits be adopted after adequate public review and comment, and that no significant change in the permit requirements except minor modifications can occur during the permit term without a similar level of public review and comment.

This Permit introduces a modification to these previous approaches by establishing the stormwater management program requirements and defining up front, as part of the Permit Development Process, the minimum acceptable elements of the municipal stormwater management program. The advantages of this approach are that it satisfies the public involvement requirements of both the federal Clean Water Act and the State Water Code. An advantage for Permittees and the public of this approach is that the permit requirements are known at the time of permit issuance and not left to be determined later through iterative review and approval of work plans. While it may still be necessary to amend the Permit prior to expiration, any need to this should be minimized.

This Permit does not include approval of all Permittees' stormwater management programs or annual reports as part of the administration of the Permit. To do so would require significantly increased staff resources. Instead, minimum measures have been established to simplify assessment of compliance and allow the public to more easily assess each Permittee's compliance. Each Permit provision and its reporting requirements are written with this in mind. That is, each provision establishes the required actions, minimum implementation levels (i.e., minimum percentage of facilities inspected annually, escalating enforcement, reporting requirements for tracking projects, number of monitoring sites, etc.), and specific reporting elements to substantiate that these implementation levels have been met. Water Board staff will evaluate each individual Permittee's compliance through annual report review and the audit process.

The challenge in drafting the Permit is to provide the flexibility described above considering the different sizes and resources while ensuring that the Permit is still enforceable. To achieve this, the Permit frequently prescribes minimum measurable outcomes, while providing Permittees with flexibility in the approaches they use to meet those outcomes. Enforceability has been found to be a critical aspect of the Permit. To avoid these types of situations, a balance between flexibility and enforceability has been crafted into the Permit.

Current Permit Approach

In the previous permit issuances, the detailed actions to be implemented by the Permittees were contained in Stormwater Management Plans, which were separate from the NPDES permits, and incorporated by reference. Because those plans were legally an integral part of the permits and were subject to complete public notice, review and comment, this permit reissuance incorporates those plan level details in the permit, thus merging the Permittees' stormwater management plans into the permit in one document. This Permit specifies the actions necessary to reduce the discharge of pollutants in stormwater to the maximum extent practicable, in a manner designed to achieve compliance with water quality standards and objectives, and effectively prohibit non-stormwater discharges into municipal storm drain systems and watercourses within the Permittees' jurisdictions. This set of specific actions is equivalent to the requirements that in past permit cycles were included in a separate stormwater management plan for each Permittee or countywide group of Permittees. With this permit reissuance, that level of specific compliance detail is integrated into permit language and is not a separate document.

The Permit includes requirements for the following components:

- Municipal Operations
- New Development and Redevelopment
- Industrial and Commercial Site Controls
- Illicit Discharge and Elimination
- Construction Site Controls
- Public Information and Outreach
- Water Quality Monitoring
- Pesticides Toxicity Controls
- Trash Reduction
- Mercury Controls
- PCBs Controls
- Copper Controls
- Polybrominated Diphenyl Ethers (PBDE), Legacy Pesticides, and Selenium
- Exempt and Conditionally Exempt Discharges

IV. ECONOMIC ISSUES

Economic discussions of urban runoff management programs tend to focus on costs incurred by municipalities in developing and implementing the programs. This is appropriate, and these costs are significant and a major issue for the Permittees. However, when considering the cost of implementing the urban runoff programs, it is also important to consider the alternative costs incurred by not fully implementing the programs, as well as the benefits which result from program implementation.

It is very difficult to ascertain the true cost of implementation of the Permittees' urban runoff management programs because of inconsistencies in reporting by the Permittees. Reported costs of compliance for the same program element can vary widely from Permittee to Permittee, often

by a very wide margin that is not easily explained.¹ Despite these problems, efforts have been made to identify urban runoff management program costs, which can be helpful in understanding the costs of program implementation.

In 1999, United States Environmental Protection Agency (USEPA) reported on multiple studies it conducted to determine the cost of urban runoff management programs. A study of Phase II municipalities determined that the annual cost of the Phase II program was expected to be \$9.16 per household. USEPA also studied 35 Phase I municipalities, finding costs to be similar to those anticipated for Phase II municipalities, at \$9.08 per household annually.²

A study on program cost was also conducted by the Los Angeles Regional Water Quality Control Board (LARWQCB), where program costs reported in the municipalities' annual reports were assessed. The LARWQCB estimated that average per household cost to implement the MS4 program in Los Angeles County was \$12.50.

The State Water Resources Control Board (State Water Board) also commissioned a study by the California State University, Sacramento to assess costs of the Phase I MS4 program. This study is current and includes an assessment of costs incurred by the City of Encinitas in implementing its program. Annual cost per household in the study ranged from \$18-46, with the City of Encinitas representing the upper end of the range.³ The cost of the City of Encinitas' program is understandable, given the City's coastal location, reliance on tourism, and consent decree with environmental groups regarding its program. For these reasons, as well as the general recognition the City of Encinitas receives for implementing a superior program, the City's program cost can be considered as the high end of the spectrum for permittee urban runoff management program costs.

It is important to note that reported program costs are not all attributable to compliance with MS4 permits. Many program components, and their associated costs, existed before any MS4 permits were issued. For example, street sweeping and trash collection costs cannot be solely or even principally attributable to MS4 permit compliance, since these practices have long been implemented by municipalities. Therefore, true program cost resulting from MS4 permit requirements is some fraction of reported costs. The California State University, Sacramento study found that only 38% of program costs are new costs fully attributable to MS4 permits. The remainder of program costs were either pre-existing or resulted from enhancement of pre-existing programs.⁴ The County of Orange found that even lesser amounts of program costs are solely attributable to MS4 permit compliance, reporting that the amount attributable to implement its Drainage Area Management Plan, its municipal stormwater permit requirements, is less than 20% of the total budget. The remaining 80% is attributable to pre-existing programs.⁵

It is also important to acknowledge that the vast majority of costs that will be incurred as a result of implementing Order No. R2-2008-00XX are not new. Urban runoff management programs

¹ LARWQCB, 2003. Review and Analysis of Budget Data Submitted by the Permittees for Fiscal Years 2000-2003.p.2

² Federal Register / Vol. 64, No. 235 / Wednesday, December 8, 1999 / Rules and Regulations. P. 68791-68792.

³ State Water Board, 2005. NPDES Stormwater Cost Survey. P. ii

⁴ Ibid. P. 58.

⁵ County of Orange, 2000. A NPDES Annual Progress Report. P. 60. More current data from the County of Orange is not used in this discussion because the County of Orange no longer reports such information.

have been in place in this region for over 15 years. Any increase in cost to the Permittees will be incremental in nature.

Urban runoff management programs cannot be considered in terms of their costs only. The programs must also be viewed in terms of their value to the public. For example, household willingness to pay for improvements in fresh water quality for fishing and boating has been estimated by USEPA to be \$158-210.⁶ This estimate can be considered conservative, since it does not include important considerations such as marine waters benefits, wildlife benefits, or flood control benefits. The California State University, Sacramento study corroborates USEPA's estimates, reporting annual household willingness to pay for statewide clean water to be \$180.⁷ When viewed in comparison to household costs of existing urban runoff management programs, these household willingness to pay estimates exhibit that per household costs incurred by permittees to implement their urban runoff management programs remain reasonable.

Another important way to consider urban runoff management program costs is to consider the implementation cost in terms of costs incurred by not improving the programs. Urban runoff in southern California has been found to cause illness in people bathing near storm drains.⁸ A study of south Huntington Beach and north Newport Beach found that an illness rate of about 0.8% among bathers at those beaches resulted in about \$3 million annually in health-related expenses.⁹ Extrapolation of such numbers to the beaches and other water contact recreation in San Francisco Bay and the tributary creeks of the region could result in huge expenses to the public.

Urban runoff and its impact on receiving waters also places a cost on tourism. The California Division of Tourism has estimated that each out-of-state visitor spends \$101.00 a day. The experience of Huntington Beach provides an example of the potential economic impact of poor water quality. Approximately 8 miles of Huntington Beach were closed for two months in the middle of summer of 1999, impacting beach visitation and the local economy.

Finally, it is important to consider the benefits of urban runoff management programs in conjunction with their costs. A recent study conducted by USC/UCLA assessed the costs and benefits of implementing various approaches for achieving compliance with the MS4 permits in the Los Angeles Region. The study found that non-structural systems would cost \$2.8 billion but provide \$5.6 billion in benefit. If structural systems were determined to be needed, the study found that total costs would be \$5.7 to \$7.4 billion, while benefits could reach \$18 billion.¹⁰ Costs are anticipated to be borne over many years – probably ten years at least. As can be seen, the benefits of the programs are expected to considerably exceed their costs. Such findings are corroborated by USEPA, which found that the benefits of implementation of its Phase II storm water rule would also outweigh the costs.¹¹

⁶ Federal Register / Vol. 64, No. 235 / Wednesday, December 8, 1999 / Rules and Regulations. P. 68793.

⁷ State Water Board, 2005. NPDES Stormwater Cost Survey. P. iv.

⁸ Haile, R.W., et al, 1996. An Epidemiological Study of Possible Adverse Health Effects of Swimming in Santa Monica Bay. Santa Monica Bay Restoration Project.

⁹ Los Angeles Times, May 2, 2005. Here's What Ocean Germs Cost You: A UC Irvine Study Tallies the Cost of Treatment and Lost Wages for Beachgoers Who Get Sick.

¹⁰ LARWQCB, 2004. Alternative Approaches to Stormwater Control.

¹¹ Federal Register / Vol. 64, No. 235 / Wednesday, December 8, 1999 / Rules and Regulations. P. 68791.

V. LEGAL AUTHORITY

The following statutes, regulations, and Water Quality Control Plans provide the basis for the requirements of Order No. R2-2008-00XX: CWA, California Water Code (CWC), 40 CFR Parts 122, 123, 124 (National Pollutant Discharge Elimination System Permit Application Regulations for Storm Water Discharges, Final Rule), Part II of 40 CFR Parts 9, 122, 123, and 124 (National Pollutant Discharge Elimination System – Regulations for Revision of the Water Pollution Control Program Addressing Storm Water Discharges; Final Rule), Water Quality Control Plan – Ocean Waters of California (California Ocean Plan), Water Quality Control Plan for the San Francisco Bay Basin (Basin Plan), 40 CFR 131 Water Quality Standards; Establishment of Numeric Criteria for Priority Toxic Pollutants for the State of California; Rule (California Toxics Rule), and the California Toxics Rule Implementation Plan.

The legal authority citations below generally apply to directives in Order No. R2-2008-00XX, and provide the Water Board with ample underlying authority to require each of the directives of Order No. R2-2008-00XX.. Legal authority citations are also provided with each permit provision in this Fact Sheet.

CWA 402(p)(3)(B)(ii) – The CWA requires in section 402(p)(3)(B)(ii) that permits for discharges from municipal storm sewers “shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers.”

CWA 402(p)(3)(B)(iii) – The CWA requires in section 402(p)(3)(B)(iii) that permits for discharges from municipal storm sewers “shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.”

40 CFR 122.26(d)(2)(i)(B,C,E, and F) – Federal NPDES regulations 40 CFR 122.26(d)(2)(i)(B,C,D,E, and F) require that each Permittee’s permit application “shall consist of: (i) Adequate legal authority. A demonstration that the applicant can operate pursuant to legal authority established by statute, ordinance or series of contracts which authorizes or enables the applicant at a minimum to: [...] (B) Prohibit through ordinance, order or similar means, illicit discharges to the municipal separate storm sewer; (C) Control through ordinance, order or similar means the discharge to a municipal separate storm sewer of spills, dumping or disposal of materials other than storm water; (D) Control through interagency agreements among co-applicants the contribution of pollutants from one portion of the municipal system to another portion of the municipal system; (E) Require compliance with condition in ordinances, permits, contracts or orders; and (F) Carry out all inspection, surveillance and monitoring procedures necessary to determine compliance and noncompliance with permit conditions including the prohibition on illicit discharges to the municipal separate storm sewer.”

40 CFR 122.26(d)(2)(iv) – Federal NPDES regulation 40 CFR 122.26(d)(2)(iv) requires “a comprehensive planning process which involves public participation and where necessary intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent

practicable using management practices, control techniques and system, design and engineering methods, and such other provisions which are appropriate. The program shall also include a description of staff and equipment available to implement the program. [...] Proposed programs may impose controls on a system wide basis, a watershed basis, a jurisdiction basis, or on individual outfalls. [...] Proposed management programs shall describe priorities for implementing controls.”

40 CFR 122.26(d)(2)(iv)(A -D) – Federal NPDES regulations 40 CFR 122.26(d)(2)(iv)(A -D) require municipalities to implement controls to reduce pollutants in urban runoff from new development and significant redevelopment, construction, and commercial, residential, industrial, and municipal land uses or activities. Control of illicit discharges is also required.

CWC 13377 – CWC section 13377 requires that “Notwithstanding any other provision of this division, the state board or the regional boards shall, as required or authorized by the CWA, as amended, issue waste discharge requirements and dredged or fill material permits which apply and ensure compliance with all applicable provisions of the act and acts amendatory thereof or supplementary, thereto, together with anymore stringent effluent standards or limitation necessary to implement water quality control plans, or for the protection of beneficial uses, or to prevent nuisance.”

Order No. R2-2008-00XX is an essential mechanism for achieving the water quality objectives that have been established for protecting the beneficial uses of the water resources in the San Francisco Bay Region. Federal NPDES regulation 40 CFR 122.44(d)(1) requires MS4 permits to include any requirements necessary to “achieve water quality standards established under CWA section 303, including State narrative criteria for water quality.” The term “water quality standards” in this context refers to a water body’s beneficial uses and the water quality objectives necessary to protect those beneficial uses, as established in the Basin Plan.

State Mandates. This Permit does not constitute an unfunded local government mandate subject to subvention under Article XIII B, Section (6) of the California Constitution for several reasons, including, but not limited to, the following. First, this Permit implements federally mandated requirements under CWA section 402, subdivision (p)(3)(B). (33 U.S.C. § 1342(p)(3)(B).) This includes federal requirements to effectively prohibit non-stormwater discharges, to reduce the discharge of pollutants to the maximum extent practicable, and to include such other provisions as the Administrator or the State determines appropriate for the control of such pollutants. Federal cases have held that these provisions require the development of permits and permit provisions on a case-by-case basis to satisfy federal requirements. (*Natural Resources Defense Council, Inc. v. U.S. E.P.A.* (9th Cir. 1992) 966 F.2d 1292, 1308, fn. 17.) The authority exercised under this Permit is not reserved state authority under the CWA’s savings clause (*cf. Burbank v. State Water Resources Control Bd.* (2005) 35 Cal.4th 613, 627-628 [relying on 33 U.S.C. § 1370, which allows a state to develop requirements that are not *less stringent* than federal requirements]), but instead, is part of a federal mandate to develop pollutant reduction requirements for MS4. To this extent, it is entirely federal authority that forms the legal basis to establish the permit provisions. (See, *City of Rancho Cucamonga v. Regional Water Quality Control Bd.-Santa Ana Region* (2006) 135 Cal.App.4th 1377, 1389; *Building Industry Association of San Diego County v. State Water Resources Control Bd.* (2004) 124 Cal.App.4th 866, 882-883.)

Likewise, the provisions of this Permit to implement total maximum daily loads (TMDLs) are federal mandates. The CWA requires TMDLs to be developed for waterbodies that do not meet federal water quality standards. (33 U.S.C. § 1313(d).) Once USEPA or a state develops a TMDL, federal law requires that permits must contain effluent limitations consistent with the assumptions of any applicable WLA. (40 CFR 122.44(d)(1)(vii)(B).)

Second, the local agency Permittees' obligations under this Permit are similar to, and in many respects less stringent than, the obligations of nongovernmental dischargers who are issued NPDES permits for stormwater discharges. With a few inapplicable exceptions, the CWA regulates the discharge of pollutants from point sources (33 U.S.C. § 1342) and the Porter-Cologne regulates the discharge of waste (Water Code, section 13263), both without regard to the source of the pollutant or waste. As a result, the *costs incurred by local agencies* to protect water quality reflect an overarching regulatory scheme that places similar requirements on governmental and nongovernmental dischargers. (See *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 57-58 [finding comprehensive workers compensation scheme did not create a cost for local agencies that was subject to state subvention].)

The CWA and the Porter-Cologne Water Quality Control Act largely regulate stormwater with an even hand, but to the extent that there is any relaxation of this evenhanded regulation, it is in favor of the local agencies. Except for MS4s, the CWA requires point source dischargers, including discharges of stormwater associated with industrial or construction activity, to comply strictly with water quality standards. (33 U.S.C. § 1311(b)(1)(C), *Defenders of Wildlife v. Browner* (1999) 191 F.3d 1159, 1164-1165 [noting that industrial stormwater discharges must strictly comply with water quality standards].) As discussed in prior State Water Board decisions, this Permit does not require strict compliance with water quality standards. (SWRCB Order No. WQ 2001-15, p. 7.) The Permit, therefore, regulates the discharge of waste in municipal stormwater more leniently than the discharge of waste from nongovernmental sources.

Third, the Permittees have the authority to levy service charges, fees, or assessments sufficient to pay for compliance with this Permit. The fact sheet demonstrates that numerous activities contribute to the pollutant loading in the MS4. Permittees can levy service charges, fees, or assessments on these activities, independent of real property ownership. (See, e.g., *Apartment Association of Los Angeles County, Inc. v. City of Los Angeles* (2001) 24 Cal.4th 830, 842 [upholding inspection fees associated with renting property].) The ability of a local agency to defray the cost of a program without raising taxes indicates that a program does not entail a cost subject to subvention. (*County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487-488.)

Fourth, the Permittees have requested permit coverage in lieu of compliance with the complete prohibition against the discharge of pollutants contained in CWA section 301, subdivision (a) (33 U.S.C. § 1311(a)) and in lieu of numeric restrictions on their discharges. To the extent Permittees have voluntarily availed themselves of the Permit, the program is not a state mandate. (Accord *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 107-108.) Likewise, the Permittees have voluntarily sought a program-based municipal stormwater permit in lieu of a numeric limits approach. (See *City of Abilene v. U.S. E.P.A.* (5th Cir. 2003) 325 F.3d 657, 662-663 [noting that municipalities can choose between a management permit or a permit with numeric limits].) The Permittees' voluntary decision to file a report of waste discharge proposing a program-based permit is a voluntary decision not subject to subvention. (See *Environmental Defense Center v. USEPA* (9th Cir. 2003) 344 F.3d 832, 845-848.)

Fifth, the Permittees' responsibility for preventing discharges of waste that can create conditions of pollution or nuisance from conveyances that are within their ownership or control under state law predates the enactment of Article XIII B, Section (6) of the California Constitution.

This Permit is based on the federal CWA, the Porter-Cologne Water Quality Control Act (Division 7 of the CWC, commencing with Section 13000), applicable state and federal regulations, all applicable provisions of statewide Water Quality Control Plans and Policies adopted by the State Water Board, the Basin Plan, the California Toxics Rule, and the California Toxics Rule Implementation Plan.

Discussion: In 1987, Congress established CWA Amendments to create requirements for storm water discharges under the NPDES program, which provides for permit systems to regulate the discharge of pollutants. Under the Porter-Cologne Water Quality Control Act, the State Water Board and Regional Water Quality Control Boards (Water Boards) have primary responsibility for the coordination and control of water quality, including the authority to implement the CWA. Porter-Cologne (section 13240) directs the Water Boards to set water quality objectives via adoption of Basin Plans that conform to all state policies for water quality control. As a means for achieving those water quality objectives, Porter-Cologne (section 13243) further authorizes the Water Boards to establish waste discharge requirements (WDRs) to prohibit waste discharges in certain conditions or areas. Since 1990, the Water Board has issued area-wide MS4 NPDES permits. The Permit will re-issue Order Nos. 99-058, 99-059, 01-024, R2-2003-0021, R2-2003-0034 to comply with the CWA and attain water quality objectives in the Basin Plan by limiting the contributions of pollutants conveyed by urban runoff. Further discussions of the legal authority associated with the prohibitions and directives of the Permit are provided in section XX this document.

This Permit supersedes NPDES Permit Nos. CAS029718, CAS029831, CAS029912, CAS029921, , CAS612005, and CAS612006.

Basin Plan

The Urban Runoff Management, Comprehensive Control Program section of the Basin Plan requires the Permittees to address existing water quality problems and prevent new problems associated with urban runoff through the development and implementation of a comprehensive control program focused on reducing current levels of pollutant loading to storm drains to the maximum extent practicable. The Basin Plan comprehensive program requirements are designed to be consistent with federal regulations (40 CFR Parts 122-124) and are implemented through issuance of NPDES permits to owners and operators of storm drain systems. A summary of the regulatory provisions is contained in Title 23 of the California Code of Regulations at section 3912. The Basin Plan identifies beneficial uses and establishes water quality objectives for surface waters in the Region, as well as effluent limitations and discharge prohibitions intended to protect those uses. This Permit implements the plans, policies, and provisions of the Water Board's Basin Plan.

Statewide General Permits

The State Water Board has issued NPDES general permits for the regulation of stormwater discharges associated with industrial activities and construction activities. To effectively implement the New Development (and significant redevelopment) and Construction Controls, Illicit Discharge Controls, and Industrial and Commercial Discharge Controls components in this Permit, the Permittees will conduct investigations and local regulatory activities at industrial and construction sites covered by these general permits. However, under the CWA, the Water Board cannot delegate its own authority to enforce these general permits to the Permittees. Therefore, Water Board staff intends to work cooperatively with the Permittees to ensure that industries and construction sites within the Permittees' jurisdictions are in compliance with applicable general permit requirements and are not subject to uncoordinated stormwater regulatory activities.

Regulated Parties

Each of the Permittees listed in this Permit owns or operates a MS4, through which it discharges urban runoff into waters of the United States within the San Francisco Bay Region. These MS4s fall into one or more of the following categories: (1) a medium or large MS4 that services a population of greater than 100,000 or 250,000 respectively; or (2) a small MS4 that is "interrelated" to a medium or large MS4; or (3) an MS4 which contributes to a violation of a water quality standard; or (4) an MS4 which is a significant contributor of pollutants to waters of the United States.

Permit Coverage

The Permittees each have jurisdiction over and maintenance responsibility for their respective MS4s in the Region. Federal, state or regional entities within the Permittees' boundaries, not currently named in this Permit, operate storm drain facilities and/or discharge stormwater to the storm drains and watercourses covered by this Permit. The Permittees may lack jurisdiction over these entities. Consequently, the Water Board recognizes that the Permittees should not be held responsible for such facilities and/or discharges. The Water Board will consider such facilities for coverage under NPDES permitting pursuant to USEPA Phase II stormwater regulations. Under Phase II, the Water Board intends to permit these federal, State, and regional entities through use of a Statewide Phase II NPDES General Permit.

Discussion: Section 402 of the CWA prohibits the discharge of any pollutant to waters of the United States from a point source, unless that discharge is authorized by a NPDES permit. Though urban runoff comes from a diffuse source, it is discharged through MS4s, which are point sources under the CWA. Federal NPDES regulation 40 CFR 122.26(a) (iii) and (iv) provide that discharges from MS4s, which service medium or large populations greater than 100,000 or 250,000 respectively, shall be required to obtain a NPDES permit. Federal NPDES regulation 40 CFR 122.26(a)(v) also provides that a NPDES permit is required for "A [storm water] discharge which the Director, or in States with approved NPDES programs, either the Director or the USEPA Regional Administrator, determines to contribute to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States." Such sources are then designated into the program.

VI. PERMIT PROVISIONS

A. Discharge Prohibitions

Prohibition A.1. Legal Authority - CWA 402(p)(3)(B)(ii) – The CWA requires in section 402(p)(3)(B)(ii) that permits for discharges from municipal storm sewers “shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers.”

Prohibition A.2. Legal Authority – San Francisco Bay Basin Plan, 2006 Revision, Chapter 4 Implementation, Table 4-1, Prohibition 7.

B. Receiving Water Limitations

Receiving Water Limitation B.1. Legal Authority – Receiving Water Limitations are retained from previous Municipal Stormwater Runoff NPDES permits. They reflect applicable water quality standards from the Basin Plan.

Receiving Water Limitation B.2. Legal Authority – Receiving Water Limitations are retained from previous Municipal Stormwater Runoff NPDES permits. They reflect applicable water quality standards from the Basin Plan.

C. Provisions

C.1. Water Quality Standards Exceedances

Legal Authority

Broad Legal Authority: CWA sections 402(p)(3)(B)(ii-iii), CWC section 13377, and Federal NPDES regulations 40 CFR 122.26(d)(2)(i)(B, C, E, and F) and 40 CFR 122.26(d)(2)(iv).

Specific Legal Authority: The Water Board’s Water Quality Control Plan for the San Francisco Bay Basin (Basin Plan) contains the following waste discharge prohibition: “The discharge of waste to waters of the state in a manner causing, or threatening to cause a condition of pollution, contamination, or nuisance as defined in California Water Code Section 13050, is prohibited.”

California Water Code section 13050(l) states “(1) ‘Pollution’ means an alteration of the quality of waters of the state by waste to a degree which unreasonably affects either of the following:

(A) The water for beneficial uses. (B) Facilities which serve beneficial uses. (2) ‘Pollution’ may include “contamination.”

California Water Code section 13050(k) states “‘Contamination’ means an impairment of the quality of waters of the state by waste to a degree which creates a hazard to public health through poisoning or through the spread of disease. ‘Contamination’ includes any equivalent effect resulting from the disposal of waste, whether or not waters of the state are affected.”

California Water Code section 13050(m) states “‘Nuisance’ means anything which meets all of

the following requirements: (1) Is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property. (2) Affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal. (3) Occurs during, or as a result of, the treatment or disposal of wastes.”

California Water Code section 13241 requires each water board to “establish such water quality objectives in water quality control plans as in its judgment will ensure the reasonable protection of beneficial uses and the prevention of nuisance [...].”

California Water Code Section 13243 provides that a water board, “in a water quality control plan or in waste discharge requirements, may specify certain conditions or areas where the discharge of waste, or certain types of waste, will not be permitted.”

California Water Code Section 13263(a) provides that waste discharge requirements prescribed by the water board implement the Basin Plan.

Federal NPDES regulations 40 CFR 122.26(d)(2)(iv)(A -D) require municipalities to implement controls to reduce pollutants in urban runoff from commercial, residential, industrial, and construction land uses or activities.

Federal NPDES regulations 40 CFR 122.26(d)(2)(i)(A -D) require municipalities to have legal authority to control various discharges to their MS4.

Federal NPDES regulation 40 CFR 122.44(d)(1) requires municipal storm water permits to include any requirements necessary to “[a]chieve water quality standards established under section 303 of the CWA, including State narrative criteria for water quality.”

Federal NPDES regulation 40 CFR 122.44(d)(1)(i) requires NPDES permits to include limitations to “control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Director determines are or may be discharged at a level which will cause, have reasonable potential to cause, or contribute to an excursion above any State water quality standard, including State narrative criteria for water quality.”

C.2. Municipal Operations

Legal Authority

The following legal authority applies to Provision C.2:

Broad Legal Authority: CWA sections 402(p)(3)(B)(ii-iii), California Water Code (CWC) section 13377, and Federal NPDES regulations 40 CFR 122.26(d)(2)(i)(B, C, E, and F) and 40 CFR 122.26(d)(2)(iv).

Specific Legal Authority: Federal NPDES regulation 40 CFR 122.26(d)(2)(iv)(A)(1) requires, “A description of maintenance activities and a maintenance schedule for structural controls to reduce pollutants (including floatables) in discharges from municipal separate storm sewers.”

Federal NPDES regulation 40 CFR 122.26(d)(2)(iv)(A)(3) requires, “A description for operating and maintaining public streets, roads and highways and procedures for reducing the impact on receiving waters of discharges from municipal storm sewer systems, including pollutants discharged as a result of deicing activities.”

Federal NPDES regulation 40 CFR 122.26(d)(2)(iv)(A)(4) requires, “A description of procedures to assure that flood management projects assess the impacts on the water quality of receiving waterbodies and that existing structural flood control devices have been evaluated to determine if retrofitting the device to provide additional pollutant removal from storm water is feasible.”

Federal NPDES regulation 40 CFR 122.26(d)(2)(iv)(A)(5) requires, “A description of a program to monitor pollutants in runoff from operating or closed municipal landfills or other treatment, storage or disposal facilities for municipal waste, which shall identify priorities and procedures for inspections and establishing and implementing control measures for such discharges.”

Federal NPDES regulation 40 CFR 122.26(d)(2)(iv)(A)(6) requires, “A description of a program to reduce to the maximum extent practicable, pollutants in discharges from municipal separate storm sewers associated with the application of pesticides, herbicides, and fertilizer which will include, as appropriate, controls such as educational activities, permits, certifications, and other measures for commercial applicators and distributors, and controls for application in public right-of-ways and at municipal facilities.”

Federal NPDES regulation 40 CFR 122.44(d)(1)(i) requires NPDES permits to include limitations to “control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Director determines are or may be discharged at a level which will cause, have reasonable potential to cause, or contribute to an excursion above any State water quality standard, including State narrative criteria for water quality.”

Fact Sheet Findings in Support of Provision C.2

C.2-1 Municipal maintenance activities are potential sources of pollutants unless appropriate inspection, pollutant source control, and cleanup measures are implemented during

routine maintenance works to minimize pollutant discharges to storm drainage facilities.

Sediment accumulated on paved surfaces, such as roads, parking lots, parks, sidewalks, landscaping, and corporation yards, is the major source of point source pollutants found in urban runoff. Thus, Provision C.2 requires the Permittees to designate minimum BMPs for all municipal facilities and activities as their ongoing pollution prevention efforts as set forth in this Permit. Such prevention measures include, but not limited to, activities as described below. The work of municipal maintenance personnel is vital to minimize stormwater pollution, because personnel work directly on municipal storm drains and other municipal facilities. Through work such as inspecting and cleaning storm drain drop inlets and pipes and conducting municipal construction and maintenance activities upstream of the storm drain, municipal maintenance personnel are directly responsible for preventing and removing pollutants from the storm drain. Maintenance personnel also play an important role in educating the public and in reporting and cleaning up illicit discharges.

- C.2-2** Road construction and other activities can disturb the soil and drainage patterns to streams in undeveloped areas, causing excess runoff and thereby erosion and the release of sediment. In particular, poorly designed roads can act as man-made drainages that carry runoff and sediment into natural streams, impacting water quality.

Provision C.2 also requires the Permittees to implement effective BMPs for the following rural works maintenance and support activities: (a) management and preservation of large, woody debris and live vegetation from stream channels; (b) stream bank stabilization projects; (c) road construction, maintenance, and repairs in rural areas to prevent and control road-related erosion; and (d) environmental permitting for rural public works activities. Road construction, culvert installation, and other rural maintenance activities can disturb the soil and drainage patterns to streams in undeveloped areas, causing excess runoff and thereby erosion and the release of sediment. Poorly designed roads can act as preferential drainage pathways that carry runoff and sediment into natural streams, impacting water quality. In addition, other rural public works activities, including those the BMP approach would address, have the potential to significantly affect sediment discharge and transport within streams and other waterways, which can degrade the beneficial uses of those waterways. This Provision would help ensure that these impacts are appropriately controlled.

Specific Provision C.2 Requirements

Provision C.2.a (Street and Road Sweeping and Cleaning) requires Permittees to identify and designate streets, roads, and public parking lot sweeping in three categories as high, medium, and low priorities on the basis of trash levels generated. Currently, street sweeping frequencies and implementation levels are not consistent across the region, although multiple studies have revealed that street sweeping can remove a significant amount of pollutants if the right equipment and the right techniques are used.

In 1994, the Alameda County Urban Runoff Clean Water Program conducted a literature study concluding that the highest pollutant concentrations are associated with fine to medium size particles, although 95 percent of street dirt particles are in the medium to large range.¹² On the basis of the literature review and findings, the study recommended specific guidelines to increase the effectiveness of street sweeping as a water pollution control measures. Some of the recommended measures include control parking during street sweeping times, sweep up the smallest particles feasible before rain events, operate and maintain sweepers according to manufacturers' directions, and increase sweeping frequency to dirtiest streets. The permit requirements are consistent with the Alameda County findings and recommendations.

Provision C.2.b (Sweeping Equipment Selection and Operation) requires Permittees to employ, and where necessary replace with, high-efficiency sweepers and improve their street sweeping efforts to address water quality objectives. Arguably the most essential factor in using street sweeping as a pollutant removal practice is to use the most efficient and capable sweepers available.¹³

In the early 1980s, National Urban Runoff Program's (NURP) studies indicated that standard sweeping practices do little to remove contaminants from runoff sediment. Mechanical broom sweepers have been used for many years to pick up road debris, litter/trash, and large dirt particles from streets and pavements for aesthetic reasons or as flood protection control measures during rain events. Alas, harmful pollutants are mainly attached to fine particulates less than 63 microns. Broom sweepers are not only inefficient in picking up the fine particulates, but once the larger debris are removed, the fine particulates will be exposed to be washed into the storm drains during the next rain.¹⁴

To reduce pollutants entering into storm drain inlets during rain events, Permittees are required to employ efficient street sweepers and to replace at least 75 percent of the less efficient sweepers prone to replacement with more efficient street sweepers equivalent to or better than regenerative air type sweepers. Street sweeping effectiveness is a function of sweeping frequency, type of sweeper, equipment speed, and pavement condition. Therefore, the Permit requires Permittees or contractors to sweep streets to remove road grit, sand, dirt, and other particulate materials that accumulate on paved surfaces and curbs before being washed to storm drains during the rainy season. One study shows that parked cars on roads being swept can reduce the pollutant removal capability by as much as 75 percent of the base rate.¹⁵ To improve street sweeping effectiveness and maximize sediment removal, Permittees should also develop and enforce ordinances to clear parked cars from streets during street sweeping events.

¹² Alameda County Urban Runoff Clean Water Program, 1994, Street Sweeping/Storm Inlet Modification. Literature Review.

¹³ Pollution Prevention Fact Sheet: Parking Lot and Street Cleaning
http://www.stormwatercenter.net/Pollution_Prevention_Factsheets/ParkingLotandStreetCleaning.htm. New Development in Street Sweeper Technology, Article 121 in *The Practice of Watershed Protection*.

¹⁴ Sutherland, Roger C., and Jelen, Seth L. 1994. *Characterization of Portland's Storm Water Quality Using Simplified Particulate Transport Model (SIMPTM)*, the American Water Resources Association's National Symposium on Water Quality, Chicago, IL, November 6-10, 1994,
<http://www.worldsweeper.com/Street/BestPractices>).

¹⁵ Curtis, Moesotis C. 2002. *Street Sweeping for Pollutant Removal*. Department of Environmental Protection, Montgomery County, Maryland. February 2002.

Provision C.2.c-j (Operation and Maintenance of Municipal Separate Storm Sewer Systems (MS4) facilities) requires the Permittees implement appropriate pollution control measures during maintenance activities and to inspect and, if necessary, clean municipal facilities such as storm drain inlets, catch basin, conveyance systems, pump stations, and corporation yards, before the rainy season. The Permit includes specific requirements for the major municipal facilities. For example, the Permittees will be required to inspect all storm drain inlets and catch basins at least once a year before rainy season and clean them as necessary. The specific requirements will assist the Permittees to prioritize tasks, implement appropriate BMPs, evaluate the effectiveness of the implemented BMPs, and compile and submit annual reports.

Provision C.2.g. (Stormwater Pump Stations) In late 2005, Board staff investigated the occurrence of low salinity and dissolved oxygen conditions in Old Alameda Creek (Alameda County) and Alviso Slough (Santa Clara County) in September and October of 2005. Board staff became aware of this problem in their review of receiving water and discharge sampling conducted by the U.S. Geological Survey as part of its routine monitoring on discharges associated with the former salt ponds managed by the U.S. Fish and Wildlife Service in Santa Clara County and the California Department of Fish and Game in Alameda County.

In the case of Old Alameda Creek, discharge of black-colored water from the Alvarado pump station to the slough was observed at the time of the data collection on September 7, 2005, confirming dry weather urban runoff as the source of the documented violations of the 5 mg/L dissolved oxygen water quality objective. Such conditions were measured again on September 21, 2005.

On October 17, 2005, waters in Alviso Slough were much less saline than the salt ponds and had the lowest documented dissolved oxygen of the summer, suggesting a dry weather urban runoff source. The dissolved oxygen sag was detected surface to bottom at 2.3 mg/L at a salinity of less than 1 part per thousand (ppt), mid-day, when oxygen levels should be high at the surface. The sloughs have a typical depth of 6 feet.

Board staff's investigations of these incidents, documented in a memorandum,¹⁶ found that "storm water pump stations, universally operated by automatic float triggers, have been confirmed as the cause in at least one instance, and may represent an overlooked source of controllable pollution to the San Francisco Bay Estuary and its tidal sloughs. . . the discharges of dry weather urban runoff from these pump stations are not being managed to protect water quality, and [that] surveillance monitoring has detected measurable negative water quality consequences of this current state of pump station management."

Pump station discharges of dry weather urban runoff can cause violations of water quality objectives. These discharges are controllable point sources of pollution that are virtually unregulated. The Water Board needs a complete inventory of dry weather urban runoff pump stations and to require BMP development and implementation for these discharges now. In the

¹⁶ Internal Water Board Memo from Steve Moore to Bruce Wolfe dated December 2, 2005: "Dry Weather Urban Weather Urban Runoff Causing or Contributing to Water Quality Violations: Low Dissolved Oxygen (DO) in Old Alameda Creek and Alviso Slough"

long term, Water Board staff should prioritize the sites from the regional inventory for dry weather diversion to sanitary sewers and encourage engineering feasibility studies to accomplish the diversions in a cost-effective manner. Structural treatment alternatives should be explored for specific pump stations.

To address the short term goals identified in the previous paragraph, Provision C.2.g. requires the Permittees to implement the following measures to reduce pollutant discharges to stormwater runoff from Permittee-owned or operated pump stations:

1. Establish an inventory of pump stations within each Permittee's jurisdiction, including pump station locations and key characteristics, and inspection frequencies.
2. Inspect these pump stations regularly, but at least four times a year, to address water quality problems, including trash control and sediment and debris removal.
3. Inspect trash racks and oil absorbent booms at pump stations during or within 24 hours of significant storm events. Remove debris in trash racks and replace oil absorbent booms, as needed.

To address the long term goals, Provision C.2.g. requires monitoring of dry weather and first flush flows at the pump stations that are designated in Provision C.8.e.iii. Based on this monitoring Permittees are required to propose diversion of dry weather and/or first flush flow to the sanitary sewer.

C.3. New Development and Redevelopment

Legal Authority

Broad Legal Authority: CWA Sections 402(p)(3)(B)(ii-iii), CWA Section 402(a), CWC Section 13377, and Federal NPDES regulations 40 CFR 122.26(d)(2)(i)(B, C, E, and F), 40 CFR 131.12, and 40 CFR 122.26(d)(2)(iv).

Fact Sheet Findings in Support of Provision C.3

- C.3-1** Urban development begins at the land use planning phase; therefore, this phase provides the greatest and most cost-effective opportunities to protect water quality in new and redevelopment. When a Permittee incorporates policies and principles designed to safeguard water resources into its General Plan and development project approval processes, it has taken a critical step toward the preservation of local water resources for current and future generations.
- C.3-2** Provision C.3. is based on the assumption that Permittees are responsible for considering potential stormwater impacts when making planning and land use decisions. The goal of these requirements is to address pollutant discharges and changes in runoff flows from new development and significant redevelopment projects by implementing site design, source control, and treatment measures to the maximum extent practicable (MEP). Neither Provision C.3. nor any of its requirements are intended to restrict or control local land use decision-making authority.
- C.3-3** Certain control measures implemented or required by Permittees for urban runoff management might create a habitat for vectors (e.g., mosquitoes and rodents) if not properly designed or maintained. Close collaboration and cooperative efforts among Permittees, local vector control agencies, Water Board staff, and the State Department of Public Health are necessary to minimize potential nuisances and public health impacts resulting from vector breeding.
- C.3-4** The Water Board recognized in its Policy on the Use of Constructed Wetlands for Urban Runoff *Pollution Control* (Resolution No. 94-102) that urban runoff treatment wetlands that are constructed and operated pursuant to that Resolution and are constructed outside a creek or other receiving water are stormwater treatment systems and, as such, are not waters of the United States subject to regulation pursuant to Sections 401 or 404 of the federal Clean Water Act. Water Board staff is working with the California Department of Fish and Game (CDFG) and U.S. Fish and Wildlife Service (USFWS) to identify how maintenance for stormwater treatment controls required under permits such as this Permit can be appropriately streamlined, given CDFG and USFWS requirements, and particularly those that address special status species. The Permittees are expected to work diligently and in good faith with the appropriate agencies to obtain any approvals necessary to complete maintenance activities for treatment controls. If the Permittees have done so, when necessary and where maintenance approvals are not granted by other regulatory agencies, the

Permittees shall be considered by the Water Board to be in compliance with Provision C.3.h. of this Permit.

Specific Provision C.3 Requirements

Provision C.3.a. (New Development and Redevelopment Performance Standard Implementation) sets forth the same legal authority, development review and permitting, environmental review, training, and outreach requirements that are contained in the existing permits. This provision also requires the Permittees to update and revise their respective General Plans during the regular update cycle to reflect the requirements contained in Provision C.3.

Provision C.3.b (Regulated Projects) establishes the different categories of new development and redevelopment projects that Permittees must regulate under Provision C.3. These categories are defined on the basis of the land use and the amount of impervious surface created, added and/or replaced by the project. This is the basis of definition of Regulated Projects because impervious surfaces contribute pollutants to stormwater runoff. That is, impervious surfaces can neither absorb water nor remove pollutants as the natural, vegetated soil they replaced can. Also, urban development creates new pollution by bringing higher levels of car emissions that are aerially deposited, car maintenance wastes, pesticides, household hazardous wastes, pet wastes, and trash, which can all be washed into the storm sewer.

Provision C.3.b.(1) lists *Special Land Use Categories* that are already regulated under the current stormwater permits. Therefore, extra time is not necessary for the Permittees to comply with this Provision, so the Permit Effective Date of July 1, 2008, is set as the required implementation date. For these categories, the impervious surface threshold (for classification as a Regulated Project subject to Provision C.3.) will be decreased from the current 10,000 square feet to 5,000 square feet beginning July 1, 2010. These special land use categories represent land use sources that have potential to contribute more polluted stormwater runoff. Regulation of these special land use categories at the lower impervious threshold of 5,000 square feet is considered the *maximum extent practicable* because it has been implemented by the Los Angeles Regional Water Board's Stormwater Permit for the County of Los Angeles (Order No. 01-182, adopted December 13, 2001, amended September 14, 2006, and August 9, 2007), State Water Board's Phase II Stormwater General Permit, adopted in April 30, 2003 and San Diego Regional Water Board's Stormwater Permit for San Diego County (Order No. R9-2007-0001, adopted January 24, 2007). This Provision will bring the Permit into conformance with these other stormwater permits and achieve MEP.

Under the Phase II General Permit, municipalities with populations of 50,000 and greater must regulate new development and redevelopment projects that are characterized by these special land use categories. The implementation date for the Phase II General Permit is April 2008. Although under Provision C.3.b.(1), the Permittees will have an implementation date essentially 2 years after the Phase II municipalities, the additional time is necessary for the Permittees to revise ordinances and permitting procedures and conduct training and outreach.

For development projects in these categories that have received final discretionary approvals before July 1, 2010, the lower 5,000 square feet impervious surface threshold (for classification as a Regulated Project) shall not apply. Final discretionary approvals are decisions by a public agency or governmental body that require the exercise of judgment or deliberation to approve or disapprove a particular development project, as distinguished from

simple determinations of conformity with applicable statutes, ordinances or regulations. For public projects for which funding has been committed and construction is scheduled to begin by July 1, 2010, the lower 5,000 square feet of impervious surface threshold (for classification as a Regulated Project) shall not apply.

Provisions C.3.b.(2)-(4) describe land use categories that are already regulated under the current stormwater permits; therefore, extra time is not necessary for the Permittees to comply with this Provision and the implementation date is set as the Permit Effective Date.

Provision C.3.b.(5) adds a category of redevelopment road projects that will be classified as Regulated Projects and regulated under Provision C.3. Arterial streets and roads are main thoroughfares that connect principal urbanized areas and industrial centers. As such, they experience high vehicular traffic that contributes greater amounts of pollutants to the stormwater runoff than other roads. Therefore, under Provision C.3.b.(5), any arterial roads under the Permittees' jurisdiction that are rehabilitated down to the gravel base, widened, or replaced will be regulated under Provision C.3. This provision is consistent with the requirements for this Region under the State Water Board's statewide stormwater permit for Caltrans. The impervious surface threshold for regulation is 10,000 square feet, the same as other land use categories described in Provisions C.3.b.(2)-(4), which include all new road projects. The implementation date for this provision is July 1, 2010, to allow time for the Permittees to revise ordinances and permitting procedures and conduct training and outreach. For public projects under this category for which funding has been committed and construction is scheduled to begin by July 1, 2010, the classification as a Regulated Project shall not apply.

Provision C.3.c (Low Impact Development (LID)) recognizes LID as a beneficial, holistic, integrated stormwater management strategy. The goal of LID is to maintain or replicate the pre-development hydrologic regime by using design techniques to create a functionally equivalent hydrologic site design. Therefore, LID is a stormwater management strategy that emphasizes conservation and the use of on-site natural features integrated with engineered, small-scale treatment and hydrologic controls to more closely reflect predevelopment conditions, and minimizes the need for large sub-regional and regional treatment control measures. The LID approach should include five basic tools:

- Encourage conservation measures;
- Promote impact minimization techniques such as impervious surface reduction;
- Provide for strategic runoff timing by slowing flow using the landscape;
- Use an array of integrated management practices to reduce and treat runoff; and
- Include pollution and prevention measures to reduce introduction of pollutants to the environment

This provision sets forth a three-pronged approach to LID with source control, site design, and stormwater treatment requirements. The concepts and techniques for incorporating LID into development projects, particularly for site design, have been extensively discussed in BASMAA's *Start at the Source* manual (1999) and its companion document, *Using Site Design Techniques to Meet Development Standards for Stormwater Quality* (May 2003), as well as in various other LID reference documents.

Provision C.3.c.ii lists source control measures that must be included in all Regulated Projects, where applicable. These measures are recognized nationwide as basic, effective

techniques to minimize the introduction of pollutants into stormwater runoff. The current stormwater permits also list these methods; however, they are encouraged rather than required. By requiring these source control measures, this Provision sets a consistent, achievable standard for all Regulated Projects and allows the Board to more systematically and fairly measure permit compliance. This Provision retains enough flexibility such that Regulated Projects are not forced to include measures inappropriate, or impracticable, to their projects. This Provision does not preclude Permittees from requiring additional measures that may be applicable and appropriate.

Provision C.3.c.iii lists site design measures that must be included in all Regulated Projects. These measures are basic, effective techniques to minimize pollutant concentrations in stormwater runoff as well as the volume and frequency of discharge of the runoff. On the basis of the Board staff's review of the Permittees' Annual Reports and CWA section 401 certification projects, these measures are already being done at many projects. However, as with the source control measures, the current stormwater permits only encourage these site design measures. By requiring these site design measures, this Provision sets a consistent, achievable standard for all Regulated Projects and allows the Board to more systematically and fairly measure permit compliance. This Provision retains enough flexibility such that Regulated Projects are not forced to include measures inappropriate or impracticable to their projects. Finally, this Provision does not preclude Permittees from requiring additional measures that may be applicable and appropriate.

Provision C.3.c.iv introduces new requirements for selecting stormwater treatment systems. Under this provision, treatment systems based on the LID strategies of storing stormwater for beneficial reuse and infiltrating all or most of the stormwater runoff must be considered first. The second stated preference is for natural feature-based stormwater treatment systems such as bioretention units, vegetated swales, planter boxes, tree wells, and green roofs, all of which can be integrated into landscaping for reduced overall costs, and which provide other benefits such as stormwater detention, accessibility for ease of maintenance, less frequent maintenance that may translate to lower maintenance costs, and aesthetics. Under this provision, the least preferable option is prefabricated/proprietary treatment systems, such as vault-based systems, which do not adequately address soluble pollutants. Board staff recognizes that there are situations where LID or natural feature treatment systems are not appropriate because of site constraints. This provision preserves Regulated Projects' current flexibility in selecting stormwater treatment systems but also sets forth a requirement for all Regulated Projects to consider the Board's preferred stormwater treatment methods.

Provision C.3.d (Numeric Sizing Criteria for Stormwater Treatment Systems) lists the hydraulic sizing design criteria that the stormwater treatment systems installed for Regulated Projects must meet. The volume and flow hydraulic design criteria are the same as those required in the current stormwater permits. These criteria ensure that stormwater treatment systems will be designed to treat the optimum amount of relatively smaller-sized runoff-generating storms each year. That is, the treatment systems will be sized to treat the majority of rainfall events generating polluted runoff but will not have to be sized to treat the few very large annual storms as well. For many projects, such large treatment systems become infeasible to incorporate into the projects. Provision C.3.d. also adds a new combined flow and volume hydraulic design criteria to accommodate those situations where a combination approach is deemed most efficient.

Provision C.3.d.iv. establishes limits on the use of stormwater controls that function primarily as infiltration devices, to appropriately protect ground water quality. The intent is to ensure that the use of infiltration, where feasible and safe from the standpoint of structural integrity, must also pose no significant threat to beneficial uses of ground water. This Provision includes measures to ensure that any potential threat to the beneficial uses of ground water is appropriately scrutinized.

Provision C.3.e (Alternative Compliance with Provisions C.3.b and d) recognizes that for certain Regulated Projects (i.e., new infill development and redevelopment projects), it might not be feasible to install stormwater treatment systems on-site. This Provision provides Permittees in specified cases, the option to allow Regulated Projects to install stormwater treatment systems off-site or contribute funds to a Regional Project¹⁷ in the same watershed. In addition, this provision also allows a smaller subset of Regulated Projects (i.e., subsidized brownfield developments; low-income and senior housing; and high-density, transit-oriented development projects), to maximize site design measures in lieu of installing hydraulically-sized stormwater treatment systems in accordance with Provision C.3.d. This allowance was included as an incentive in recognition of other water quality as well as societal benefits from these special projects. For example, high-density infill, transit oriented development projects in a highly developed urban core can reduce overall runoff pollutants by reducing overall vehicular traffic and associated pollutants and by concentrating growth in urban areas to reduce sprawl in outlying areas. Traffic commutes can be shortened and pedestrian activity increased when more people live in close proximity to mass transit systems, thus reducing automotive exhaust pollutants, and brake pad and tire wear, which would reduce certain pollutants in stormwater runoff.

To reflect the Board's preference for having on-site stormwater treatment systems that incorporate the methods and strategies of LID, Provision C.3.e defines the following specific criteria that Regulated Projects must meet before alternative compliance may be granted by the Permittees:

Each Permittee may allow Regulated Projects that are:

1. New infill development¹⁸ projects with a total project area < 1 acre (hereinafter called Regulated New Infill Projects); or
2. Redevelopment projects (hereinafter called Regulated Redevelopment Projects),

to provide alternative compliance with Provisions C.3.b. and C.3.d., which require that stormwater runoff from a Regulated Project be treated on-site or at a regional stormwater treatment facility, with stormwater treatment system(s) hydraulically sized in accordance with Provision C.3.d. The different types of Regulated New Infill or Redevelopment Projects and the corresponding alternative compliance methods are described below.

3. Exemption from Installing Hydraulically Sized Stormwater Treatment Systems: The following Regulated New Infill or Redevelopment Projects may provide alternative

¹⁷ Regional Project—A regional or municipal stormwater treatment facility that discharges into the same watershed that the Regulated Project does.

¹⁸ New infill development projects are projects that will be built on previously undeveloped vacant land in existing urban areas that are already largely developed.

compliance with Provision C.3.d. by Maximizing Site Design Treatment Controls¹⁹ to provide as much on-site stormwater treatment as possible:

- (a) Projects that meet USEPA's Brownfield Sites definition found in Public Law 107-118 (H.R. 2869) – "Small Business Liability Relief and Brownfields Revitalization Act" signed into law January 11, 2002, and that receive subsidy or similar benefits under a program designed to redevelop such sites;
 - (b) Low-income housing as defined under Government Code Section 65589.5(h)(3), but limited to, the actual low-income, or impervious area percentage, of the project;
 - (c) Senior housing, as defined under California Civil Code section 51.11(b)(4); or
 - (d) Transit-Oriented Development²⁰ projects;
4. All other Regulated New Infill or Redevelopment Projects may provide alternative compliance by satisfying one or more of the following requirements, after minimizing the new and/or replaced impervious surface on-site:
- (a) Installing, operating and maintaining Equivalent Offsite Treatment²¹ at an off-site project in the same watershed;
 - (b) Contributing Equivalent Funds²² to a Regional Project¹⁷²²

¹⁹ Maximizing Site Design Treatment Controls is defined as including a minimum of one of the following specific site design and/or treatment measures:

- Diverting roof runoff to vegetated areas before discharge to storm drain;
- Directing surface runoff to vegetated areas before discharge to storm drain;
- Installing landscaped-based stormwater treatment measures (non-hydraulically sized) such as tree wells or bioretention gardens; or
- Installing prefabricated/proprietary stormwater treatment controls (non-hydraulically sized).

²⁰ Transit-Oriented Development - Any development project that will be located within ½ mile of a transit station and will meet one of the criteria listed below. A transit station is defined as a rail or light-rail station, ferry terminal, bus hub, or bus transfer station. A bus hub or bus transfer station is required to have an intersection of three or more bus routes that are in service 16 hours a day, with a minimum route frequency of 15 minutes during the peak hours of 7am to 10 am (inclusive) and 3pm to 7pm (inclusive).

- (a) A housing or mixed-use development project with a minimum density of 30 residential units per acre and that provides no more than one parking space per residential unit; or
- (b) A commercial development project with a minimum floor area ratio (FAR) of three and that provides:
 - i. For restaurants, no more than 3 parking spaces per 1000 square feet;
 - ii. For offices, no more than 1.25 parking spaces per 1000 square feet;
 - iii. For retail, no more than 2.0 parking spaces for 1000 square feet.

Sharing of parking between uses within these maximums is allowed. Carshare and bicycle parking spaces are not subject to these maximums.

²¹ Equivalent Offsite Treatment—Hydraulically sized treatment (in accordance with Provision C.3.e.) and associated operation and maintenance of:

- (a) An equal area of new and/or replaced impervious surface as that created by the Regulated Project;
- (b) An equivalent amount of pollutant loading as that created by the Regulated Project; or
- (c) An equivalent quantity of runoff as that created by the Regulated Project.

²² Equivalent Funds—Monetary amount necessary to provide both

- (a) Hydraulically-sized treatment (in accordance with Provision C.3.e.) of:
 - (1) An equal area of new and/or replaced impervious surface as that created by the Regulated Project;
 - (2) An equivalent amount of pollutant loading as that created by the Regulated Project; or
 - (3) An equivalent quantity of runoff as that created by the Regulated Project; and
- (b) A proportional share of the operation and maintenance costs of the Regional Project.

For the alternatives described above, off-site projects must be completed by the end of construction of the Regulated New Infill or Redevelopment Project. Regional Projects must be completed within 3 years after the end of construction of the Regulated New Infill or Redevelopment Project.

Provision C.3.f (Alternative Certification of Adherence to Numeric Sizing Criteria for Stormwater Treatment Systems) allows Permittees to have a third-party review and certify a Regulated Project's compliance with the hydraulic design criteria in Provision C.3.d. Some municipalities do not have the staffing resources to perform these technical reviews. The third-party review option addresses this staffing issue. This Provision requires Permittees to 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.

Provision C.3.g. (Hydromodification Management, HM) requires that certain new development projects manage increases in stormwater runoff flow and volume so that post-project runoff shall not exceed estimated pre-project runoff rates and durations, where such increased flow and/or volume is likely to cause increased potential for erosion of creek beds and banks, silt pollutant generation, or other adverse impacts on beneficial uses due to increased erosive force.

Background for Provision C.3.g.: Based on Hydrograph Modification Management Plans prepared by the Permittees, the Water Board adopted hydromodification management (HM) requirements for Alameda Permittees (March 2007), Contra Costa Permittees (July 2006), Fairfield-Suisun Permittees (March 2007), Santa Clara Permittees (July 2005), and San Mateo Permittees (March 2007). Within Provision C.3.g, the major common elements of these HM requirements are restated. Attachments B–F contain the HM requirements as adopted by the Water Board, with some changes to correct minor errors and to provide consistency across the Region. Attachment F contains updated HM requirements for the Santa Clara Permittees. Permittees will continue to implement their adopted HM requirements; where Provision C.3.g. contradicts the Attachments, Provision C.3.g. shall be implemented. *Additional* requirements and/or options contained in the Attachments, above and beyond what is specified in Provision C.3.g., remain unaltered by Provision C.3.g. In all cases, the HM Standard must be achieved.

The Alameda, Santa Clara and San Mateo Permittees have adapted the Western Washington Hydrology Model²³ for modeling runoff from development project sites, sizing flow duration control structures, and determining overall compliance of such structures and other HM control structures (HM controls) in controlling runoff from the project sites to manage hydromodification impacts as described in the Permit. The adapted model is called the Bay Area Hydrology Model (BAHM).²⁴ All Permittees may use the BAHM if its inputs reflect actual conditions at the project site and surrounding area, including receiving water conditions. As Permittees gain experience in designing and operating HM controls, the Programs may make adjustments in the BAHM to improve its function in controlling excess runoff and managing hydromodification impacts. Notification of all

²³ http://www.ecy.wa.gov/programs/wq/stormwater/wwhm_training/wwhm/wwhm_v2/instructions_v2.html

²⁴ See www.bayareahydrologymodel.org, Resources.

such changes shall be given to the Water Board and the public through such mechanism as an electronic email list.

The Contra Costa Permittees have developed sizing charts to aid in the design of flow duration control devices. The control devices that do not meet the HM Standard must be redesigned to meet the HM Standard before they can be implemented. Attachment C requires the Contra Costa Permittees to conduct a monitoring program to verify the performance of these devices. Following the satisfactory conclusion of this monitoring program, or conclusion of other study(s) that demonstrate devices built according to Attachment C specifications satisfactorily protect streams from excess erosive flows, the Water Board intends to allow the use of the Contra Costa sizing charts, when tailored to local conditions, by other stormwater programs and Permittees. Similarly, any other control strategies or criteria approved by the Board would be made available across the Region. This would be accomplished through Permit amendment or in another appropriate manner following appropriate public notification and process.

The Fairfield-Suisun Permittees have developed design procedures, criteria, and sizing factors for infiltration basins and bioretention units. These procedures, criteria, and sizing factors have been through the public review process already, and are not subject to public review at this time. Water Board staff's technical review found that the procedures, criteria, and sizing factors are acceptable in all ways except one: they are based on an allowable low flow rate that exceeds the criteria established in this Permit. Fairfield-Suisun Permittees may choose to change the design criteria and sizing factors to the allowable criterion of 20 percent of the 2-year peak flow, and seek Executive Officer approval of the modified sizing factors. This criterion, which is greater than the criterion allowed for other Bay Area Stormwater Countywide Programs, is based on data collected from Laurel and Ledgewood Creeks and technical analyses of these site-specific data. Following approval by the Executive Officer and notification of the public through such mechanism as an email list-serve, project proponents in the Fairfield-Suisun area may meet the HM Standard by using the Fairfield-Suisun Permittees' design procedures, criteria, and sizing factors for infiltration basins and/or bioretention units.

Attachments B and E allow the Alameda and Santa Clara Permittees to prepare a user guide to be used for evaluating individual receiving waterbodies using detailed methods to assess channel stability and watercourse critical flow. This user guide would reiterate and collate established stream stability assessment methods that have been presented in these Programs' HMPs, which have undergone Water Board staff review and been made available for public review. After the Programs have collated their methods into user guide format, received approval of the user guide from the Executive Officer, and informed the public through such process as an email list-serve, the user guide may be used to guide preparation of technical reports for: implementing the HM standard using in-stream or regional measures; determining whether certain projects are discharging to a watercourse that is less susceptible (from point of discharge to the Bay) to hydromodification (e.g., would have a lower potential for erosion than set forth in this Permit); and/or determining if a watercourse has a higher critical flow and project(s) discharging to it are eligible for an alternative Qcp²⁵ for the purpose of designing on-site or regional measures to control flows draining to these

²⁵ Qcp is the allowable low flow discharge from a flow control structure on a project site. It is a means of apportioning the critical flow in a stream to individual projects that discharge to that stream, such that cumulative discharges do not exceed the critical flow in the stream.

channels (i.e., the actual threshold of erosion-causing critical flow is higher than 10 percent of the 2-year pre-project flow).

The Water Board recognizes that the collective knowledge of management of erosive flows and durations from new and redevelopment is evolving, and that the topics listed below are appropriate topics for further study. Such a study may be initiated by Water Board staff, or the Executive Officer may request that all Bay Region municipal stormwater permittees jointly conduct investigations as appropriate. Any future proposed changes to the Permittees' HM provisions may reflect improved understanding of these issues:

- Potential incremental costs, and benefits to waterways, from controlling a range of flows up to the 35- or 50-year peak flow, versus controlling up to the 10-year peak flow, as required by this Permit;
- The allowable low-flow (also called Q_{cp} and currently specified as 10–20 percent of the pre-project, 2-year runoff from the site) from HM controls;
- The effectiveness of *self-retaining areas* for management of post-project flows and durations; and/or
- The appropriate basis for determining cost-based impracticability of treating stormwater runoff and controlling excess runoff flows and durations.

Within Attachments B-F, this Permit allows for alternative HM compliance when on-site and regional HM controls and in-stream measures are not practicable. Alternative HM compliance includes contributing to or providing mitigation at other new or existing development projects that are not otherwise required by this Permit or other regulatory requirements to have HM controls. The Permit provides flexibility in the type, location, and timing of the mitigation measure. The Board recognizes that handling mitigation funds may be difficult for some municipalities because of administrative and legal constraints. The Board intends to allow flexibility for project proponents and/or Permittees to develop new or retrofit stormwater treatment or HM control projects within a broad area and reasonable time frame. Toward the end of the Permit term, the Board will review alternative projects and determine whether the impracticability criteria and options should be broadened or made narrower.

Provision C.3.g.i. defines the subset of Regulated Projects that must install hydromodification controls (HM controls). This subset, called HM Projects, are Regulated Projects that create and/or replace one acre or more of impervious surface and are not specifically excluded within Attachments B–F of the Permit. Within these Attachments, the Permittees have identified areas where the potential for single-project and/or cumulative development impacts to creeks is minimal, and thus HM controls are not required. Such areas include creeks that are concrete-lined or significantly hardened (e.g., with rip-rap, secrete) from point of discharge and continuously downstream to their outfall into San Francisco Bay;

underground storm drains discharging to the Bay; and construction of infill projects in highly developed watersheds.²⁶

Provision C.3.g.ii. establishes the standard Hydromodification controls must meet. The HM Standard is based largely on the standards proposed by Permittees in their Hydrograph Modification Management Plans. The method for calculating post-project runoff in regards to HM controls is standard practice in Washington State and is equally applicable in California. The HM Standard is applicable for all HM Projects, regardless of contradicting options with the Attachments.

Provision C.3.g.iii. identifies and defines three methods of hydromodification management.

Provision C.3.g.iv. sets forth the information on hydromodification management to be submitted in the Permittees' Annual Reports.

Provision C.3.g.v. requires the Vallejo Permittees to develop a Hydromodification Management Plan (HMP), because the Vallejo Permittees have not been required to address HM impacts to date. Vallejo's current permit was issued by USEPA and does not require the Vallejo Permittees' to develop an HMP. The Vallejo Permittees may choose to adopt and implement one or a combination of the approaches in Attachments B–F.

Provision C.3.h (Operation and Maintenance of Stormwater Treatment Systems) establishes permitting requirements to ensure that proper maintenance is provided for all stormwater treatment systems installed at Regulated Projects. The provision also sets specific requirements on Permittees to inspect these systems on a regular basis and to develop a database to track these inspections and any necessary enforcement actions against Regulated Projects. Stormwater treatment system maintenance has been identified as a critical aspect of addressing urban runoff from Regulated Projects by many prominent urban runoff authorities, including CASQA, which states that "long-term performance of BMPs [stormwater treatment systems] hinges on ongoing and proper maintenance."²⁷ USEPA also stresses the importance of BMP [stormwater treatment system] maintenance, stating that "Lack of maintenance often limits the effectiveness of stormwater structure controls such as detention/retention basins and infiltration devices."²⁸

Provision C.3.i. (Detached Single-Family Homes) introduces new requirements on large single-family home projects that create and/or replace 5,000 square feet or more of impervious surface (collectively over the entire project). A detached single-family home project is defined as the building of one single new house, which is not part of a larger plan of development.

This Provision requires single-family home projects to select and implement one or more stormwater lot-scale BMPs from a list of three. These BMPs are basic methods to reduce the amount and flowrate of stormwater runoff from projects and provide some pollutant removal

²⁶ Within the context of Provision C.3.g., "highly developed watersheds; refer to catchments or sub-catchments that are 65 percent impervious or more.

²⁷ California Stormwater Quality Association, 2003. Stormwater Best Management Practice Handbook – New Development and Redevelopment, p. 6-1.

²⁸ USEPA. 1992. *Guidance Manual for the Preparation of Part II of the NPDES Permit Application for Discharges from Municipal Separate Storm Sewer Systems*. EPA 833-B-92-002.

treatment of the runoff that does leave the projects. Under this Provision, only projects that already require approvals and/or permits under the Permittees' current planning, building, or other comparable authority are regulated. Hence this Provision does not require Permittees to regulate single-family home projects that would not otherwise be regulated under the Permittees' current ordinances or authorities. Water Board staff recognizes that the stormwater runoff pollutant and volume contribution of a single-family home project might be small; however, the cumulative impacts could be significant. This Provision serves to address some of these cumulative impacts from large, single-family home projects in a simple way that will not be too administratively burdensome on the Permittees.

Provision C.3.j (Collection of Impervious Surface Data for Small Projects) requires Permittees to jointly propose a regional pilot study to have representative Permittees in the Region collect impervious surface data on small projects that are not regulated under Provision C.3. as Regulated Projects. Although small projects, individually, contribute little to total impervious surface increases and the accompanying stormwater runoff effects, their cumulative impacts may not be negligible. With the continued implementation of Provision C.3., which started under the current stormwater permits, we will have data on the amount of new and replaced impervious surface created by Regulated Projects. This Provision serves to fill in the impervious surface data gap with the collection of data for the smaller projects. This data collection effort will provide the basis to determine whether the current size thresholds for Regulated Projects are appropriate. The data collection is limited to projects that would otherwise trigger permitting/regulation review by the Permittees. This Provision requires data collection only for projects adding and/or replacing 1,000 square feet or more of impervious surface . Representative Permittees shall include small, medium, and large municipalities with different growth and development patterns. Collectively, the data collection from these Permittees should be robust enough to extrapolate to the rest of the region.

C.4. Industrial and Commercial Site Controls

Legal Authority

Broad Legal Authority: CWA sections 402(p)(3)(B)(ii-iii), CWC section 13377, and Federal NPDES regulations 40 CFR 122.26(d)(2)(i)(B, C, D, E, and F) and 40 CFR 122.26(d)(2)(iv).

Specific Legal Authority: Federal NPDES regulation 40 CFR 122.26(d)(2)(iv)(C) requires, “A description of a program to monitor and control pollutants in storm water discharges to municipal systems from municipal landfills, hazardous waste treatment, disposal and recovery facilities, industrial facilities that are subject to section 313 of title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA), and industrial facilities that the municipal permit applicant determines are contributing a substantial pollutant loading to the municipal storm sewer system.”

Provision C.4.a (Legal Authority for Effective Site Management)

Federal NPDES regulation 40 CFR 122.26(d)(2)(i)(A) provides that each Permittee must demonstrate that it can control “through ordinance, permit, contract, order or similar means, the contribution of pollutants to the municipal storm sewer by storm water discharges associated with industrial activity and the quality of storm water discharged from site of industrial activity.” This section also describes requirements for effective followup and resolution of actual or threatened discharges of either polluted non-stormwater or polluted stormwater runoff from industrial/commercial sites.

Provision C.4.b (Inspection Plan)

Federal NPDES regulation 40 CFR 122.26(d)(2)(iv)(C)(1) provides that Permittees must “identify priorities and procedures for inspections and establishing and implementing control measures for such discharges.” The Permit requires Permittees to implement an industrial and commercial site controls program to reduce pollutants in runoff from all industrial and commercial sites/sources.

Provision C.4.b.ii.(1) (Commercial and Industrial Source Identification)

Federal NPDES regulation 40 CFR 122.26(d)(2)(ii) provides that Permittees “Provide an inventory, organized by watershed of the name and address, and a description (such as SIC codes) which best reflects the principal products or services provided by each facility which may discharge, to the municipal separate storm sewer, storm water associated with industrial activity.”

USEPA requires “measures to reduce pollutants in storm water discharges to municipal separate storm sewers from municipal landfills, hazardous waste treatment, disposal and recovery facilities, industrial facilities that are subject to section 313 of title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA).”²⁹ USEPA “also requires the municipal storm sewer permittees to describe a program to address industrial

²⁹ *Federal Register*. Vol. 55, No. 222, Friday, November 16, 1990. Rules and Regulations. P. 48056.

dischargers that are covered under the municipal storm sewer permit.”³⁰ To more closely follow USEPA’s guidance, this Permit also includes operating and closed landfills, and hazardous waste treatment, disposal, storage and recovery facilities.

The Permit requires Permittees to identify various industrial sites and sources subject to the General Industrial Permit or other individual NPDES permit. USEPA supports the municipalities regulating industrial sites and sources that are already covered by an NPDES permit:

Municipal operators of large and medium municipal separate storm sewer systems are responsible for obtaining system-wide or area permits for their system’s discharges. These permits are expected to require that controls be placed on storm water discharges associated with industrial activity which discharge through the municipal system. It is anticipated that general or individual permits covering industrial storm water discharges to these municipal separate storm sewer systems will require industries to comply with the terms of the permit issued to the municipality, as well as other terms specific to the permittee.³¹

And:

Although today’s rule will require industrial discharges through municipal storm sewers to be covered by separate permit, USEPA still believes that municipal operators of large and medium municipal systems have an important role in source identification and the development of pollutant controls for industries that discharge storm water through municipal separate storm sewer systems is appropriate. Under the CWA, large and medium municipalities are responsible for reducing pollutants in discharges from municipal separate storm sewers to the maximum extent practicable. Because storm water from industrial facilities may be a major contributor of pollutants to municipal separate storm sewer systems, municipalities are obligated to develop controls for storm water discharges associated with industrial activity through their system in their storm water management program.³²

Provision C.4.b.ii.(5) (Inspection Frequency)

USEPA guidance³³ says, “management programs should address minimum frequency for routine inspections.” The USEPA Fact Sheet—Visual Inspection³⁴ says, “To be effective, inspections must be carried out routinely.”

Provision C.4.c (Enforcement Response Plan) requires the Permittees to establish an Enforcement Response Plan (ERP) that ensures timely response to actual or potential stormwater

³⁰ Ibid.

³¹ *Federal Register*. Vol. 55, No. 222, Friday, November 16, 1990, Rules and Regulations. P. 48006.

³² Ibid. P. 48000

³³ USEPA. 1992. Guidance 833-8-92-002, section 6.3.3.4 “Inspection and Monitoring”.

³⁴ USEPA. 1999. 832-F-99-046, “Storm Water Management Fact Sheet – Visual Inspection”.

pollution problems discovered in the course of industrial/commercial stormwater inspections. The ERP also provides for progressive enforcement of violations of ordinances and/or other legal authorities. This section establishes Two Tiers of enforcement authorities for industrial/commercial discharge violations. Substantial violations where there is evidence that a discharge has reached the municipal storm sewer system are considered Tier One, and less significant discharges where there is evidence of non-compliance but the discharge has not reached the municipal conveyance are considered Tier Two.

Provision C.4.d (Staff Training) section of the Permit requires the Permittees to conduct annual staff trainings for inspectors. Trainings are necessary to keep inspectors current on enforcement policies and current MEP BMPs for industrial and commercial stormwater runoff discharges.

C.5. Illicit Discharge Detection and Elimination

Legal Authority

The following legal authority applies to section C.5:

Broad Legal Authority: CWA sections 402(p)(3)(B)(ii-iii), CWC section 13377, and Federal NPDES regulations 40 CFR 122.26(d)(2)(i)(B, C, D, E, and F) and 40 CFR 122.26(d)(2)(iv).

Specific Legal Authority: Federal NPDES regulations 40 CFR 122.26(d)(1)(iii)(B)(1) provides that the Permittee shall include in their application, “the location of known municipal storm sewer system outfalls discharging to waters of the United States.”

Federal NPDES regulations 40 CFR 122.26(d)(1)(iii)(B)(5) provides that the Permittee shall include in their application, “The location of major structural controls for storm water discharge (retention basins, detention basins, major infiltration devices, etc.”

Federal NPDES regulations 40 CFR 122.26(d)(2)(i)(B) provides that the Permittee shall have, “adequate legal authority to prohibit through ordinance, order or similar means, illicit discharges to the municipal separate storm sewer.”

Federal NPDES regulations 40 CFR 122.26(d)(2)(i)(B) provides that the Permittee shall, “Carry out all inspection, surveillance and monitoring procedures necessary to determine compliance and noncompliance with permit conditions including the prohibition on illicit discharges to the municipal separate storm sewer.”

Federal NPDES regulations 40 CFR 122.26(d)(2)(iv)(B) requires, “shall be based on a description of a program, including a schedule, to detect and remove (or require the discharger to the municipal storm sewer to obtain a separate NPDES permit for) illicit discharges and improper disposal into the storm sewer.”

Federal NPDES regulation 40 CFR 122.26(d)(2)(iv)(B)(1) requires, “a program, including inspections, to implement and enforce an ordinance, orders or similar means to prevent illicit discharges to the municipal storm sewer system.”

Federal NPDES regulation 40 CFR 122.26(d)(2)(iv)(B)(2) requires, “a description of procedures to conduct on-going field screening activities during the life of the permit, including areas or locations that will be evaluated by such field screens.”

Federal NPDES regulation 40 CFR 122.26(d)(2)(iv)(B)(3) requires, “procedures to be followed to investigate portions of the separate storm sewer system that, based on the results of the field screen, or other appropriate information, indicate a reasonable potential of containing illicit discharges or other sources of non-storm water.”

Federal NPDES regulations 40 CFR 122.26(d)(2)(iv)(B)(4) requires, “a description of procedures to prevent, contain, and respond to spills that may discharge into the municipal separate storm sewer.”

Federal NPDES regulations 40 CFR 122.26(d)(2)(iv)(B)(5) requires, “a description of a program to promote, publicize, and facilitate public reporting of the presence of illicit discharges or water quality impacts associated with discharges from municipal separate storm sewers.”

Federal NPDES regulations 40 CFR 122.26(d)(2)(iv)(B)(7) requires, “a description of controls to limit infiltration of seepage from municipal sanitary sewers to municipal separate storm sewer systems where necessary.”

Fact Sheet Findings in Support of Provision C.5

- C.5-1** Illicit and inadvertent connections to MS4 systems result in the discharge of waste and chemical pollutants to receiving waters. Every Permittee must have the ability to discover, track, and clean up stormwater pollution discharges by illicit connections and other illegal discharges to the MS4 system.
- C.5-2** Illicit discharges to the storm drain system can be detected in several ways. Permittee staff can detect discharges during their course of other tasks, and business owners and other aware citizens can observe and report suspect discharges. The Permittee must have a direct means for these reports of suspected polluted discharges to receive adequate documentation, tracking, and response through problem resolution.

Specific Provision C.5 Requirements

Provision C.5.a (Legal Authority) requires each Permittee have adequate legal authority to effectuate cessation, abatement, and/or clean up of non-exempt non-stormwater discharges per Federal NPDES regulations 40 CFR 122.26(d)(2)(i)(B). Illicit and inadvertent connections to MS4 systems result in the discharge of waste and chemical pollutants to receiving waters. Every Permittee must have the ability to discover, track, and clean up stormwater pollution discharges by illicit connections and other illegal discharges to the MS4 system.

Provision C.5.b (ERP) requires Permittees to establish an ERP that ensures timely response to illicit discharges and connections to the MS4 and provides progressive enforcement of violations of ordinances and/or other legal authorities. This section establishes Two Tiers of enforcement authorities for illicit discharge violations. Substantial violations where there is evidence that an illicit discharge has reached the municipal system are considered Tier One, and less significant discharges where there is evidence of non-compliance but the illicit discharge has not reached the municipal conveyance are considered Tier Two.

This section also requires Permittees to establish criteria for triggering followup investigations. Additional language has been added to this section to clarify the minimum level of effort and time frames for follow-up investigations when violations are discovered. Timely investigation and follow up when action levels are exceeded is necessary to identify sources of illicit discharges, especially since many of the discharges are transitory. The requirements for a 48-

hour minimum response time when there is evidence of illegal non-stormwater discharge, dumping, or illicit connections having reached municipal storm drains is necessary to ensure timely response by Permittees.

Provision C.5.c (Spill and Dumping Response, Complaint Response, and Frequency of Inspections) Federal NPDES regulations 40 CFR 122.26(d)(2)(iv)(B)(4) requires, “a description of procedures to prevent, contain, and respond to spills that may discharge into the municipal separate storm sewer.” This Provision of the Permit requires the Permittees to establish and maintain a central point of contact including phone numbers for spill and complaint reporting. Reports from the public are an essential tool in discovering and investigating illicit discharge activities. Maintaining contact points will help ensure that there is effective reporting to assist with the discovery of prohibited discharges. Each Permittee must have a direct means for these reports of suspected polluted discharges to receive adequate documentation, tracking, and response through problem resolution.

Provision C.5.d (Collection System Screening and MS4 Map Availability) Federal NPDES regulation 40 CFR 122.26(d)(2)(iv)(B)(3) requires, “procedures to be followed to investigate portions of the separate storm sewer system that, based on the results of the field screen, or other appropriate information, indicate a reasonable potential of containing illicit discharges or other sources of non-storm water.” This Provision of the Permit requires the Permittees to conduct follow up investigations and inspect portions of the MS4 for illicit discharges and connections. Permittees shall implement a program to actively seek and eliminate illicit connections and discharges during their routine collection system screening and during screening surveys at strategic check points. Additional wording has been added to this section to clarify and ensure that all appropriate municipal personnel are used in the program to observe and report these illicit discharges and connections when they are working the system.

This section also requires the Permittees to develop or obtain a map of their entire MS4 system and drainages within their jurisdictions and provide the map to the public for review. As part of the permit application process federal NPDES regulations 40 CFR 122.26(d)(1)(iii)(B)(1) and 40 CFR 122.26(d)(1)(iii)(B)(5) specify that dischargers must identify the location of any major outfall that discharges to waters of the United States, as well as the location of major structural controls for stormwater discharges. A major outfall is any outfall that discharges from a single pipe with an inside diameter of 36 inches or more or its equivalent (discharge from a single conveyance other than a circular pipe which is associated with a drainage area of more than 50 acres) or; for areas zoned for industrial activities, any pipe with a diameter of 12 inches or more or its equivalent (discharge from other than a circular pipe associated with a drainage area of 2 acres or more). The permitting agency may not process a permit until the applicant has fully complied with the application requirements.³⁵ If, at the time of application, the information is unavailable, the Permit must require implementation of a program to meet the application requirements.³⁶ The requirement in this Provision of the Permit for Permittees to prepare maps of the MS4 system is necessary to comply with federal NPDES requirements that are more than 10 years old.

³⁵ 40 CFR 124.3 (applicable to state programs, see section 123.25).

³⁶ 40 CFR. 122.26(d)(1)(iv)(E).

Provision C.5.e (Tracking and Case Followup) section of the Permit requires Permittees to track and monitor followup for all incidents and discharges reported to the complaint/spill response system that could pose a threat to water quality. This requirement is included so Permittees can demonstrate compliance with the ERP requirements of Section C.5.b and to ensure that illicit discharge reports receive adequate follow up through to resolution.

Provision C.5.f (Illicit Discharge Control Plan) section of the Permit requires Permittees to conduct an assessment of the previous year's Annual Report data and illicit discharge response practices and develop a plan for the next year on the basis of the findings. Conducting an annual evaluation is an important means of modifying and improving illicit discharge control activities.

Provision C.5.g (Staff Training) section of the Permit requires the Permittees to conduct annual staff trainings for inspectors. Trainings are necessary to keep inspectors current on enforcement policies and practices for abating illegal discharges.

C.6. Construction Site Control

Legal Authority

The following legal authority applies to section C.6:

Broad Legal Authority: CWA sections 402(p)(3)(B)(ii-iii), CWC section 13377, and Federal NPDES regulations 40 CFR 122.26(d)(2)(i)(B, C, D, E, and F) and 40 CFR 122.26(d)(2)(iv).

Specific Legal Authority: Federal NPDES regulation 40 CFR 122.26(d)(2)(iv)(D) requires, “A description of a program to implement and maintain structural and non-structural best management practices to reduce pollutants in storm water runoff from construction sites to the municipal storm sewer system.”

Federal NPDES regulation 40 CFR 122.26(d)(2)(iv)(D)(1) requires, “A description of procedures for site planning which incorporate consideration of potential water quality impacts.”

Federal NPDES regulation 40 CFR 122.26(d)(2)(iv)(D)(2) requires, “A description of requirements for nonstructural and structural best management practices.”

Federal NPDES regulation 40 CFR 122.26(d)(2)(iv)(D)(3) requires, “A description of procedures for identifying priorities for inspecting sites and enforcing control measures which consider the nature of the construction activity, topography, and the characteristics of soils and receiving water quality.”

Federal NPDES regulation 40 CFR 122.26(d)(2)(iv)(D)(4) requires, “A description of appropriate educational and training measures for construction site operators.”

Federal NPDES regulation 40 CFR 122.26(d)(2)(i)(A) provides that each Permittee must demonstrate that it can control, “through ordinance, permit, contract, order or similar means, the contribution of pollutants to the municipal storm sewer by storm water discharges associated with industrial activity and the quality of storm water discharged from site of industrial activity.”

Federal NPDES regulation 40 CFR 122.26(b)(14) provides that, “The following categories of facilities are considered to be engaging in ‘industrial activity’ for the purposes of this subsection: [...] (x) Construction activity including cleaning, grading and excavation activities [...].”

Federal NPDES regulation 40 CFR 122.44(d)(1)(i) requires NPDES permits to include limitations to, “control all pollutants or pollutant parameters (either conventional, non-conventional, or toxic pollutants) which the Director determines are or may be discharged at a level which will cause, have reasonable potential to cause, or contribute to an excursion above any State water quality standard, including State narrative criteria for water quality.”

Fact Sheet Findings in Support of Provision C.6

- C.6-1** Vegetation clearing, mass grading, lot leveling, and excavation expose soil to erosion processes and increase the potential for sediment mobilization, runoff and deposition in receiving waters. Construction sites without adequate BMP implementation result in sediment runoff rates that greatly exceed natural erosion rates of undisturbed lands, causing siltation and impairment of receiving waters.
- C.6-2** Excess sediment can cloud the water, reducing the amount of sunlight reaching aquatic plants, clog fish gills, smother aquatic habitat and spawning areas, and impede navigation in our waterways. Sediment also transports other pollutants such as nutrients, metals, and oils and grease. Permittees are on-site at local construction sites for grading and building permit inspections, and also have in many cases dedicated construction stormwater inspectors with training in verifying that BMPs are in place and maintained. Permittees also have effective tools available to achieve compliance with adequate erosion control, such as *stop work* orders and citations.

Specific Provision C.6 Requirements

Provision C.6.a (Legal Authority for Effective Site Management) Federal NPDES regulation 40 CFR 122.26(d)(2)(i)(A) requires that each Permittee demonstrate that it can control “through ordinance, permit, contract, order or similar means, the contribution of pollutants to the municipal storm sewer by storm water discharges associated with industrial activity and the quality of storm water discharged from site of industrial activity.” This section of the Permit requires each Permittee to review and update its grading and stormwater ordinances as necessary to comply with the conditions of this Permit. By updating the grading and stormwater ordinances, the Permittees shall have the necessary legal authority to require construction sites to implement effective BMPs that will reduce pollutant discharges to the MEP. The Permit allows the Permittees 365 days to review and update their ordinances. The 365 days should be more than adequate to allow for the relatively minor changes that might be needed since their ordinances were last updated.

Provision C.6.b (Enforcement Response Plan) requires each Permittee to develop and implement an escalating enforcement process that achieves prompt and effective corrective actions at all construction sites for violations of the Permittee’s requirements and ordinances. Under these provisions, each Permittee develops its own unique enforcement procedure tailored for the specific jurisdiction.

Inspections conducted by the Water Board have noted deficiencies in the Permittees’ enforcement procedures and implementation. The most common issues found were that enforcement was not firm and appropriate to correct the violation, and that repeat violations did not result in escalated enforcement procedures. USEPA supports enforcement of ordinances and permits at construction sites stating, “Effective inspection and enforcement requires [...] penalties to deter infractions and intervention by the municipal authority to correct violations.”³⁷ In addition, USEPA expects permits issued to municipalities to address “weak inspection and enforcement.”³⁸ For these reasons, the enforcement requirements in this section have been

³⁷ USEPA. 1992. Guidance 833-8-92-002. Section 6.3.2.3.

³⁸ *Federal Register*. Vol. 55, No. 222, Friday, November 16, 1990. Rules and Regulations. p. 48058.

established, while providing sufficient flexibility for each Permittee's unique stormwater program.

The Permit requires that inspectors have the authority to conduct immediate enforcement actions when appropriate. Inspectors conducting immediate enforcement will quickly implement corrections to violations, thereby minimizing and preventing threats to water quality. When inspectors are unable to conduct immediate enforcement actions, the threat to water quality continues until an enforcement incentive is issued to correct the violation. In its Phase II Compliance Assistance Guidance, USEPA says that, "Inspections give the MS4 operator an opportunity to provide additional guidance and education, issue warnings, or assess penalties."³⁹ To issue warnings and assess penalties during inspections, inspectors must have the legal authority to conduct enforcement.

Provision C.6.c (Minimum Required Management Practices) includes the requirement for each Permittee to designate and ensure implementation of a set of minimum management practices at all construction sites. These modifications are based on Water Board findings and experience during implementation of previous stormwater permits. This section describes the types of minimum management practices that are required to be implemented at construction sites and requires the application of one consistent set of minimum management practices throughout Permittee jurisdictions.

Vegetation clearing, mass grading, lot leveling, and excavation expose soil to erosion processes and increase the potential for sediment mobilization, runoff and deposition in receiving waters. Construction sites without adequate BMP implementation result in sediment runoff rates that greatly exceed natural erosion rates of undisturbed lands, causing siltation and impairment of receiving waters. This can even occur in conjunction with unexpected rain events during the so-called *dry-season*.

Ideally stormwater restrictions on grading would be during the wet season from October 1 through April 30. Section C.6.c.ii.(1).d of the Permit requires, "project proponents to minimize grading during the wet season and scheduling of grading with seasonal dry weather periods to the extent feasible." If grading does occur during the wet season, Permittees shall require project proponents to implement additional BMPs as necessary and minimize wet-season, exposed, graded areas to the absolute minimum necessary.

Provision C.6.c.(ii)(2)(c-d) of the Permit requires slope stabilization on all active and inactive slopes during rain events regardless of the season, except in areas implementing advanced treatment. Slope stabilization is also required on inactive slopes throughout the rainy season. These requirements are needed because unstabilized slopes at construction sites are significant sources of erosion and sediment discharges during rainstorms. "Steep slopes are the most highly erodible surface of a construction site, and require special attention."⁴⁰ USEPA emphasizes the importance of slope stabilization when it states, "slope length and steepness are key influences on both the volume and velocity of surface runoff. Long slopes deliver more runoff to the base of slopes and steep slopes increase runoff velocity; both conditions enhance the potential for

³⁹ USEPA. 2000. 833-R-00-002, Storm Water Phase II Compliance Assistance Guide, P.4-31

⁴⁰ Schueler, T., and H. Holland. 2000. *Muddy Water In—Muddy Water Out?* The Practice of Watershed Protection. p. 6.

erosion to occur.”⁴¹ In lieu of vegetation preservation or replanting, soil stabilization is the most effective measure in preventing erosion on slopes. Research has shown that effective soil stabilization can reduce sediment discharge concentrations up to six times, as compared to soils without stabilization.⁴² Slope stabilization at construction sites for erosion control is already the consensus among the regulatory community and is found throughout construction BMP manuals and permits. For these reasons, slope stabilization requirements have been added to the Permit, while providing sufficient flexibility for Permittee’s implementation.

Provision C.6.c.(ii)(2)(e) of the Permit requires the revegetation of a construction site as early as feasible. Implementation of revegetation reduces the threat of polluted stormwater discharges from construction sites. Construction sites should permanently stabilize disturbed soils with vegetation at the conclusion of each phase of construction.⁴³ A survey of grading and clearing programs found one-third of the programs without a time limit for permanent revegetation, “thereby increasing the chances for soil erosion to occur.”⁴⁴ USEPA states “the establishment and maintenance of vegetation are the most important factors to minimizing erosion during development.”⁴⁵ With the construction site being responsible for revegetation, the Permittee will be more likely to enforce revegetation requirements during oversight of construction site requirements.

Provision C.6.c.(ii)(3) of the Permit requires the implementation of advanced treatment for sediment at construction sites that the Permittees determine to be a significant threat to water quality. In evaluating the threat to water quality, the following factors shall be considered: (1) soil erosion potential; (2) the site’s slopes; (3) project size and type; (4) sensitivity of receiving waterbodies; (5) proximity to receiving waterbodies; (6) non-stormwater discharges; and (7) any other relevant factors. Advanced treatment is defined in the Permit as, “using mechanical or chemical means to flocculate, settle, and remove suspended sediment from runoff from construction sites before discharge.” Advanced treatment consists of a three part treatment train of coagulation, sedimentation, and polishing filtration. Advanced treatment has been effectively implemented extensively in the other states and in the Central Valley Region of California.⁴⁶ In addition, the Water Board’s inspectors have observed advanced treatment being effectively implemented at both large sites greater than 100 acres, and at small, 5-acre sites. Advanced treatment is often necessary for Permittees to ensure that discharges from construction sites are not causing or contributing to a violation of water quality standards. To ensure the MEP standard and water quality standards are met, the requirement for implementation of advanced treatment at high threat construction sites has been added to the Permit, while still providing sufficient flexibility for each Permittee’s implementation.

Provision C.6.c (ii)(4) of the Permit requires that dry season BMP implementation must include planning and preparation of BMPs for rain events that may occur during the dry season. This

⁴¹ USEPA. 1990. *Sediment and Erosion Control: An Inventory of Current Practices*. p. II-1.

⁴² Schueler, T., and H. Holland. 2000. “Muddy Water In—Muddy Water Out?” *The Practice of Watershed Protection*. p. 5.

⁴³ Ibid.

⁴⁴ Ibid. p. 11.

⁴⁵ USEPA. 1990. *Sediment and Erosion Control: An Inventory of Current Practices*. p. II-1.

⁴⁶ SWRCB. 2004. Conference on Advanced Treatment at Construction Sites.

requirement is to emphasize that, although rare, significant rains occur in the San Francisco Bay Region during the dry season.

Provision C.6.d (Plan Approval Process) section of the Permit requires the Permittees to review project proponents' stormwater management plans for compliance with local regulations, policies, and procedures. USEPA recommends that it is often easier and more effective to incorporate stormwater quality controls during the site plan review process or earlier.⁴⁷ In the Phase I stormwater regulations, USEPA states that a primary control technique is good site planning.⁴⁸ USEPA goes on to say that the most efficient controls result when a comprehensive stormwater management system is in place.⁴⁹ To determine if a construction site is in compliance with construction and grading ordinances and permits, USEPA states that the "MS4 operator should review the site plans submitted by the construction site operator before ground is broken."⁵⁰ Site plan review aids in compliance and enforcement efforts since it alerts the "MS4 operator early in the process to the planned use or non-use of proper BMPs and provides a way to track new construction activities."⁵¹

Provision C.6.e (Types/Contents of Inspections) section of the Permit specifies the types and contents of inspections that can be used to evaluate the implementation of minimum management practices at construction sites. This section defines three types of inspections that can be used to evaluate compliance with required stormwater management practices: Screening Level, Initial Wet Season, and Stormwater-specific.

Screening Level Inspections are completed during routine inspections for other purposes such as grading, building, and public works inspections. Screening Level inspections are not typically comprehensive with respect to stormwater, but they should detect obvious problems such as failure to meet the Minimum Management Practices. Initial Wet Season Inspections shall determine whether adequate preparations for wet-season erosion control have been implemented by looking for presence of Minimum Management Practices. Stormwater-Specific Inspections are a full inspection of the construction site, looking for presence of Minimum Management Practices and for effective implementation of overall management measures. These three types of inspections provide Permittees with multiple options for the evaluation of stormwater management practices at construction sites, to spot and correct problems in a timely manner.

Provision C.6.f (Frequency of Inspections) prescribes a minimum inspection frequency for construction sites. This Permit prescribes biweekly inspections during the wet season of high priority sites, monthly inspections for normal priority sites, and as needed inspections for small construction sites under 1 acre of disturbed area. High priority sites are identified as all sites greater than 50 acres, or greater than 1 acre and tributary to a CWA Section 303(d) waterbody impaired for sediment or other sites designated by the Permittee or Water Board as high priority. Normal priority sites are all sites causing soil disturbance of one acre or more that are not a high

⁴⁷ USEPA. 2000. *Storm Water Phase II Compliance Assistance Guide*. EPA 833-R-00-002. Section 6.3.2.1.

⁴⁸ *Federal Register*. Vol. 55, No. 222, Friday, November 16, 1990. Rules and Regulations. p. 48034.

⁴⁹ *Ibid*.

⁵⁰ USEPA. 2000. *Storm Water Phase II Compliance Assistance Guide*. EPA 833-R-00-002. Section 4.6.2.4, pp. 4-30.

⁵¹ *Ibid*. pp. 4-31.

priority. The inspection frequency requirements allow the Permittees to concentrate more effort on high priority sites that are less than 50 acres, but still have significant disturbed areas and potential impacts.

Provision C.6.g (Staff Training) section of the Permit requires Permittees to conduct annual staff trainings for municipal staff. These trainings have been found to be extremely effective means to educate inspectors and to inform them of any changes to local ordinances and state laws. Trainings provide valuable opportunity for Permittees to network and share strategies used for effective enforcement and management of erosion control practices.

Provision C.6.h (Tracking and Reporting) section of the Permit requires the Permittees to track the number of inspections for each inspected construction site. This requirement has been included so that Permittees can demonstrate that construction sites are inspected at the minimum frequencies and to ensure that enforcement actions are effective at correcting site management problems discovered. The data collected will be used to track trends in enforcement actions and to evaluate Permittees effectiveness in achieving compliance by construction site operators/developers.

C.7. Public Information and Outreach

Legal Authority

The following legal authority applies to section C.7:

Broad Legal Authority: CWA sections 402(p)(3)(B)(ii-iii), CWC section 13377, and Federal NPDES regulations 40 CFR 122.26(d)(2)(i)(B, C, E, and F) and 40 CFR 122.26(d)(2)(iv).

Specific Legal Authority: Federal NPDES regulation 40 CFR 122.26(d)(2)(iv)(A)(6) requires, “A description of a program to reduce to the maximum extent practicable, pollutants in discharges from municipal separate storm sewers associated with the application of pesticides, herbicides, and fertilizer which will include, as appropriate, controls such as educational activities, permits, certifications, and other measures for commercial applicators and distributors, and controls for application in public right-of-ways and at municipal facilities.”

Federal NPDES regulation 40 CFR 122.26(d)(2)(iv)(B)(6) requires, “A description of educational activities, public information activities, and other appropriate activities to facilitate the proper management and disposal of used oil and toxic materials.”

Federal NPDES regulation 40 CFR 122.26(d)(2)(iv)(D)(4) requires, “A description of appropriate educational and training measures for construction site operators.”

Specific Requirement—Description of Basis: USEPA supports education of the general community when it states: “An informed and knowledgeable community is critical to the success of a stormwater management program since it helps ensure the following:

- Greater support for the program as the public gains a greater understanding of the reasons why it is necessary and important. [...]
- Greater compliance with the program as the public becomes aware of the personal responsibilities expected of them and others in the community, including the individual actions they can take to protect or improve the quality of area waters.”⁵²

Regarding target audiences, USEPA also finds that, “The public education program should use a mix of appropriate local strategies to address the viewpoints and concerns of a variety of audiences and communities, including minority and disadvantaged communities, as well as children.”⁵³ The State Water Board Urban Runoff Technical Advisory Committee, in its 1994 report, also supports education of schoolchildren, stating:

⁵² USEPA. 2000. Storm Water Phase II Compliance Assistance guide. EPA 833-R-00-002.

⁵³ IBID.

Target Audiences should include:

1. Government: Educate government agencies and officials to achieve better communication, consistency, collaboration, and coordination at the federal, state and local levels.
2. K-12/Youth Groups: Establish statewide education programs, including curricula, on watershed awareness and nonpoint source pollution problems and solutions, based on a state lead role building upon and coordinating with existing local programs.
3. Development Community: Educate the development community, including developers, contractors, architects, and local government planners, engineers, and inspectors, on nonpoint source pollution problems associated with development and redevelopment and construction activities and involve them in problem definitions and solutions.
4. Business and Industrial Groups.⁵⁴

Fact Sheet Finding in Support of Provision C.7

C.7-1 Public Outreach: An informed and knowledgeable community is critical to the success of a stormwater program because it helps ensure greater support for the program as the public gains a greater understanding of stormwater pollution issues. An informed community also ensures greater compliance with the program as the public becomes aware of the personal responsibilities expected of them and others in the community, including the individual actions they can take to protect or improve the quality of area waters.

Specific Provision C.7 Requirements

Provision C.7.a. Storm Drain Marking. Storm drain inlet marking is a long-established program of outreach to the public on the nature of the storm drain system, providing the information that the storm drain system connects directly to creeks and the Bay and does not receive treatment. Past public awareness surveys have demonstrated that this BMP has achieved significant impact in raising awareness in the general public and meets the MEP standard as a required action. If storm drain marking can be conducted as a volunteer activity, it has additional public involvement value.

Provision C.7.b. Advertising Campaign. Use of various electronic and print media on an annual basis, usually with a focused stormwater pollution prevention message tailored to current permit priorities, is also a long-established outreach management practice that therefore meets the MEP standard.

⁵⁴ State Water Board. 1994. Urban Runoff Technical Advisory Committee Report and Recommendations. Nonpoint Source Management Program.

Provision C.7.c. Media Relations—Use of Free Media. Public service media time is available and allows the Permittees to leverage expensive media purchases to achieve broader outreach goals.

Provision C.7.d. Create and Maintain a Point of Contact. Federal NPDES regulations 40 CFR 122.26(d)(2)(iv)(B)(5) requires , “a description of a program to promote, publicize, and facilitate public reporting of the presence of illicit discharges or water quality impacts associated with discharges from municipal separate storm sewers.”

As the public has become more aware, citizens are more frequently calling their local jurisdictions to report spills and other polluting behavior impacting stormwater runoff and causing non-stormwater prohibited discharges. Permittees are required to have a centralized, easily accessible point of contact both for citizen reports and to coordinate reports of problems identified by Permittee staff, permitting follow-up and pollution cleanup or prevention. Often the pollution problem solution provides an opportunity to educate the immediate neighborhood through such established public outreach mechanisms as distributing door hangers in the neighborhood describing the remedy for the problem discovered.

Provision C.7.e. Events—Fairs, Shows, Workshops (public, commercial, etc.), Community Events. Staffing tables or booths at fairs, street fairs or other community events also is a long-established outreach mechanism employed by Permittees to reach large numbers of citizens with stormwater pollution prevention information in an efficient and convenient manner.

Provision C.7.f. Actively support watershed stewardship collaborative efforts. Watershed and Creek groups are composed of active citizens, but they often need support from the local jurisdiction and certainly need to coordinate actions with Permittees such as flood districts and cities.

Provision C.7.g. Citizen Involvement Events. Citizen involvement and volunteer efforts both accomplish needed creek cleanups, and restorations, and serve as awareness raising and outreach opportunities. These have been ongoing in the Region for several municipal stormwater permit cycles and are MEP outreach actions.

Provision C.7.h. School-Age Children Outreach. Outreach to school children has proven to be a particularly successful program with an enthusiastic audience who are efficient to reach. School children also take the message home to their parents and neighbors.

Provision C.7.i. General Outreach Materials. Outreach materials for distribution by the Permittees must be updated and new materials created as the need arises.

Provision C.7.j. Commercial/Industrial/Illicit Discharge-Related Outreach. Commercial/Industrial inspections require tailored outreach materials for specific BMP issues frequently encountered with certain pollutant generating activities. These outreach tools support that inspection activity (C.4).

Provision C.7.k. Outreach to Municipal Officials. It is important for Permittee staffs to periodically inform Municipal Officials of not only permit requirements, but also future planning and resource needs driven by the permit and stormwater regulations.

Provision C.7.l. Research Surveys, Studies, Focus Groups. These actions are intended to focus the outreach efforts to achieve greater efficiency.

C.8. Water Quality Monitoring

Legal Authority

Broad Legal Authority: CWA sections 402(p)(3)(B)(ii-iii); CWC section 13377; Federal NPDES regulations 40 CFR 122.26(d)(2)(iv)

Specific Legal Authority: Permittees must conduct a comprehensive monitoring program as required under Federal NPDES regulations 40 CFR 122.48, 40 CFR 122.44(i), 40 CFR 122.26.(d)(1)(iv)(D), and 40 CFR 122.26(d)(2)(ii)-(iv).

Fact Sheet Findings in Support of Provision C.8

C.8-1 In response to questions regarding the type of water quality-based effluent limitations that are most appropriate for NPDES stormwater permits, and because of the nature of stormwater discharges, USEPA established the following approach to stormwater monitoring:

Each storm water 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. Such a monitoring program may include ambient monitoring, receiving water assessment, discharge monitoring (as needed), or a combination of monitoring procedures designed to gather necessary information.⁵⁵

According to USEPA, the benefits of stormwater runoff monitoring include, but are not limited to, the following:

- Providing a means for evaluating the environmental risk of stormwater discharges by identifying types and amounts of pollutants present;
 - Determining the relative potential for stormwater discharges to contribute to water quality impacts or water quality standard violations;
 - Identifying potential sources of pollutants; and
- Eliminating or controlling identified sources more specifically through permit conditions.⁵⁶

⁵⁵ USEPA. 1996. Interim Permitting Approach for Water Quality-Based Effluent Limitations in Stormwater Permits. Sept. 1, 1996. <http://www.epa.gov/npdes/pubs/swpol.pdf>

⁵⁶ USEPA. 1992. NPDES Storm Water Sampling Guidance Document. EPA/833-B-92-001.

- C.8-2** Provision C.8 requires Permittees to conduct water quality monitoring, including monitoring of receiving waters, in accordance with 40 CFR Parts 122.44(I) and 122.48. One purpose of water quality monitoring is to demonstrate the effectiveness of the Permittees' stormwater management actions pursuant to this Permit and, accordingly, demonstrate compliance with the conditions of the Permit. Other water quality monitoring objectives under this Permit include:
- Assess the chemical, physical, and biological impacts of urban runoff on receiving waters;
 - Characterize stormwater discharges;
 - Assess compliance with Total Maximum Daily Loads (TMDLs) and Wasteload Allocations (WLAs) in impaired waterbodies;
 - Assess progress toward reducing receiving water concentrations of impairing pollutants;
 - Assess compliance with numeric and narrative water quality objectives and standards;
 - Identify sources of pollutants;
 - Assess stream channel function and condition;
 - Assess the overall health and evaluate long-term trends in receiving water quality; and
 - Measure and improve the effectiveness of Stormwater Countywide Programs and implemented BMPs.
- C.8-3** Monitoring programs are an essential link in the improvement of urban runoff management efforts. Data collected from monitoring programs can be assessed to determine the effectiveness of management programs and practices, which is vital for the success of the iterative approach used to meet the MEP standard. When water quality data indicate that water quality standards or objectives are being exceeded, particular pollutants, sources, and drainage areas can be identified and targeted for specific urban runoff management efforts. The iterative process in Provision C.1, Water Quality Standards Exceedances, could potentially be triggered by monitoring results. Ultimately, the results of the monitoring program must be used to focus actions to reduce pollutant loadings to comply with applicable WLAs, and protect and enhance the beneficial uses of the receiving waters in the Permittees' jurisdictions and the San Francisco Bay.
- C.8-4** Water quality monitoring requirements in previous permits were less detailed than the requirements in this Permit. Under previous permits, each program could design its own monitoring program, with few permit guidelines. A decision by the California Superior Court⁵⁷ regarding two of the programs' permits stated:
- Federal law requires that all NPDES permits specify "[r]equired monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity." 40 C.F.R. § 122.48(b). Here, there is no monitoring program set forth in the Permit. Instead, an annual Monitoring Program Plan is to be prepared by the

⁵⁷ San Francisco Baykeeper vs. Regional Water Quality Control Board, San Francisco Bay Region, Consolidated Case No. 500527, filed Nov. 14, 2003.

dischargers to set forth the monitoring program that will be used to demonstrate the effectiveness of the Stormwater Management Plan. This does not meet the regulatory requirements that a monitoring program be set forth including the types, intervals, and frequencies of the monitoring.

The water quality monitoring requirements in Provision C.8 comply with 40 CFR 122.44(i) and 122.48(b), and the Superior Court decision.

C.8-5 The Water Quality Monitoring Provision is intended to provide answers to five fundamental management questions, outlined below. Monitoring is intended to progress as iterative steps toward ensuring that the Permittees' can fully answer, through progressive monitoring actions, each of the five management questions:

- Are conditions in receiving waters protective, or likely to be protective, of beneficial uses?
- What is the extent and magnitude of the current or potential receiving water problems?
- What is the relative urban runoff contribution to the receiving water problem(s)?
- What are the sources of urban runoff that contribute to receiving water problem(s)?
- Are conditions in receiving waters getting better or worse?

C.8-6 On April 15, 1992, the Water Board adopted Resolution No. 92-043 directing the Executive Officer to implement the Regional Monitoring Program for San Francisco Bay. Subsequent to a public hearing and various meetings, Board staff requested major permit holders in the Region, under authority of CWC section 13267, to report on the water quality of the Estuary. These permit holders, including the Permittees, responded to this request by participating in a collaborative effort through the San Francisco Estuary Institute. This effort has come to be known as the San Francisco Estuary Regional Monitoring Program for Trace Substances (RMP). The RMP involves collection and analysis of data on pollutants and toxicity in water, sediment and biota of the Estuary. The Permittees are required to continue to report on the water quality of the estuary, as presently required. Compliance with the requirement through participation in the RMP is considered to be adequate compliance.

C.8-7 The Surface Water Ambient Monitoring Program (SWAMP) is a statewide monitoring effort, administered by the State Water Board, designed to assess the conditions of surface waters throughout California. One purpose of SWAMP is to integrate existing water quality monitoring activities of the State Water Board and the Regional Water Quality Control Boards, and to coordinate with other monitoring programs. Provision C.8 contains a framework, referred to as a regional monitoring group, within which Permittees can elect to work cooperatively with SWAMP to maximize the value and utility of both the Permittees' and SWAMP's monitoring resources.

C.8-8 In 1998 BASMAA published *Support Document for Development of the Regional Stormwater Monitoring Strategy*,⁵⁸ a document describing a possible strategy for coordinating the monitoring activities of BASMAA member agencies. The document states:

BASMAA's member agencies are connected not only by geography but also by an overlapping set of environmental issues and processes and a common regulatory structure. It is only natural that the evolution of their individual stormwater management programs has led toward increasing amounts of information sharing, cooperation, and coordination.

This same concept is found in the optional provision for Permittees to form a Regional Monitoring Group. Such a group is meant to provide efficiencies and economies of scale by performing certain tasks (e.g., planning, contracting, data quality assurance, data management and analysis, and reporting) at the regional level. Further benefits are expected from closer cooperation between this group, the Regional Monitoring Program, and SWAMP.

This Permit includes monitoring requirements to verify compliance with adopted TMDL WLAs and to provide data needed for TMDL development and/or implementation. This Permit incorporates the TMDLs' WLAs adopted by the Water Board as required under CWA section 303(d).

C.8-9 SB1070 (California Legislative year 2005/2006) found that there is no single place where the public can go to get a look at the health of local waterbodies. SB1070 also states that all information available to agencies shall be made readily available to the public via the Internet. This Permit requires water quality data to be submitted in a specified format and uploaded to a centralized Internet site so that the public has ready access to the data.

Specific Provision C.8 Requirements

Each of the components of the monitoring provision is necessary to meet the objectives and answer the questions listed in the findings above. Justifications for each monitoring component are discussed below.

Provision C.8.a. Compliance Options. Provision C.8.a. provides Permittees options for obtaining monitoring data through various organizational structures, including use of data obtained by other parties. This is intended to

- Promote cost savings through economies of scale and elimination of redundant monitoring by various entities;
- Promote consistency in monitoring methods and data quality;
- Simplify reporting; and
- Make data and reports readily publicly available.

⁵⁸ EcoAnalysis, Inc. & Michael Drennan Assoc., Inc., *Support Document for Development of the Regional Stormwater Monitoring Strategy*, prepared for Bay Area Stormwater Management Agencies Association, March 2, 1998.

In the past, each Stormwater Countywide Program has conducted water quality monitoring on behalf of its member Permittees, and some data was collected by wider collaboratives, such as the Regional Monitoring Program. In this Permit, all the Stormwater Countywide Programs are encouraged to work collaboratively by conducting all or most of the required monitoring and reporting on a region-wide basis. For each monitoring component that is conducted collaboratively, one report would be prepared on behalf of all contributing Permittees; separate reports would not be required from each Program. Cost savings could result also from reduced contract and oversight hours, fewer quality assurance/quality control samples, shared sampling labor costs, and laboratory efficiencies.

Provision C.8.b. San Francisco Estuary Receiving Water Monitoring. The San Francisco Estuary is the ultimate receiving water for most of the urban runoff in this region. For this reason and because of the high value of its beneficial uses, Provision C.8.b requires focused monitoring on the Estuary to continue. Since the mid-1990s, Permittees have caused this monitoring to be conducted by contributing financially, and often contributing technical expertise, to the San Francisco Estuary Regional Monitoring Program for Trace Substances. Provision C.8.b requires such monitoring to continue.

Provision C.8.c & d. Status Monitoring and Trends Monitoring. Status Monitoring and Trends Monitoring serve as surrogates to monitoring the discharge from all major outfalls, of which the Permittees have many. By sampling the sediment and water column in urban creeks, the Permittees can determine where water quality problems are occurring in the creeks, then work to identify which outfalls and land uses are causing or contributing to the problem. In short, Status Monitoring is needed to identify water quality problems and assess the health of streams; it is the first step in identifying sources of pollutants.

Provision C.8.c.ii and C.8.d.i Locations

Status monitoring locations are specified so that basic water quality data will be collected from the Permittees' major urban waterbodies once during the Permit term. Uses of resulting data include assessment of the chemical, physical, and biological impacts of urban runoff on receiving waters. Status Monitoring is to be conducted on a rotating-watershed basis, in similar fashion to the Statewide SWAMP. Provision C.8.c.i identifies the major waterbodies to be sampled during the Permit term. The exact sample locations within each waterbody are critical in terms of determining the monitoring program's effectiveness. If correctly sited, the stations are expected to be very useful in answering the monitoring program's management questions and meeting its goals. For this reason, Provision C.8.c.i requires sample locations to be based on surrounding land use, likelihood of urban runoff impacts, access, existing data gaps, and similar considerations. This will help maximize the utility of the sample locations, while also providing the Permittees with adequate flexibility to ultimately choose practical status monitoring locations.

Long-Term Trends Monitoring is to be conducted at fixed stations, which are intended to be lower reaches of urban creeks. This monitoring is intended to help assess progress toward reducing receiving water concentrations of impairing pollutants, among other purposes.

Provision C.8.c.i and C.8.d.ii Parameters, Methods, Frequencies, Durations, and Minimum Numbers of Samples

Status & Trends parameters, methods, durations and frequencies reflect current accepted practices, based on the knowledge and experience of personnel responsible for water quality monitoring including state and Regional SWAMP managers, Permittee representatives and citizen monitors. Many Status and Trends Monitoring parameters are consistent with parameters the Permittees have been monitoring to date. The following parameters are new for some of the Permittees:

- Biological Assessment—to provide site-specific information about the health and diversity of freshwater benthic communities within a specific reach of a creek, using standard procedures developed by the State Water Resources Control Board Surface Water Ambient Monitoring Program⁵⁹. It consists of collecting samples of benthic communities and conducting a taxonomic identification to measure community abundance and diversity, which is then compared to a reference creek to assess benthic community health. This monitoring can also provide information on cumulative pollutant exposure/impacts because pollutant impacts to the benthic community accumulate and occur over time.
- Chlorine—to detect a release of potable water or other chlorinated water sources, which are toxic to aquatic life.
- Nutrients—recent monitoring data indicate nutrients, which can increase algal growth and decrease dissolved oxygen concentrations, are present in significant concentrations in Bay area creeks.
- Toxicity Bedded Sediment—to determine the presence of, and identify, chemicals and compounds that can be toxic to aquatic life can bind to the sediment in a creek bed.
- Pathogen Indicators—to detect pathogens in waterbodies that could be sources of impairment to recreational uses at or downstream of the sampling location.
- Stream Survey (stream walk and mapping)—to assess the overall physical health of the stream.

In consideration of economic impacts to Permittees, the minimum number of Status & Trends samples reflects the Programs' populations, not waterbody size. Permittees must select exact sample locations that will yield adequate information on the status of their waterbodies; in some cases, additional sampling above the minimum might be necessary.

⁵⁹ Ode, P.R. 2007. Standard Operating Procedures for Collecting Macroinvertebrate Samples and Associated Physical and Chemical Data for Ambient Bioassessments in California, California State Water Resources Control Board Surface Water Ambient Monitoring Program (SWAMP), as subsequently revised.

Provision C.8.e. Monitoring Projects. Monitoring Projects are necessary to meet several water quality monitoring objectives under this Permit, including characterize stormwater discharges; identify sources of pollutants; identify new or emerging pollutants; assess stream channel function and condition; and measure and improve the effectiveness of Stormwater Countywide Programs and implemented BMPs. In consideration of economic impacts to Permittees, the number of Monitoring Projects required reflects the Permittees' populations.

Provision C.8.e.i. Stressor Identification

Minimizing sources of pollutants that could impair water quality is a central purpose of urban runoff management programs. Monitoring which enables the Permittees to identify sources of water quality problems aids the Permittees in focusing their management efforts and improving their programs. In turn, the Permittees' programs can abate identified sources, which will improve the quality of urban runoff discharges and receiving waters. This monitoring is needed to address the management questions, "What are the sources to urban runoff that contribute to receiving water problems?"

When Status or Long Term Monitoring results indicate an exceedance of a water quality objective, toxicity threshold, or other "trigger", Permittees must identify the source of the problem and take steps to reduce any pollutants discharged from or through their municipal storm sewer systems. This requirement conforms to the process, outlined in Provision C.1, of complying with the Discharge Prohibition and Receiving Water Limitations. If multiple "triggers" are identified through monitoring, Permittees must focus on the highest priority problems; a cap on the total number of source identification projects conducted within the permit term is provided to cap Permittees' potential annual costs.

Provision C.8.e.i. BMP Effectiveness Investigation

USEPA's stated approach to NPDES stormwater permitting uses BMPs in first-round permits, and expanded or better-tailored BMPs in subsequent permits, where necessary, to provide for the attainment of water quality standards.⁶⁰ The purpose of this monitoring project is to investigate the effectiveness of one currently in-use BMP to determine if it should be expanded or better-tailored. Permittees may choose the particular stormwater treatment or hydromodification control BMP to investigate. As with other monitoring requirements, Permittees may work collaboratively to conduct one investigation on a region-wide basis, or each stormwater countywide program may conduct an investigation.

Provision C.8.e.i. Dry Weather Discharges and First Flush Investigations

In recent years, dry weather discharges from MS4 pump stations have been associated with water quality problems, including low dissolved oxygen in the receiving water. These discharges and first flush discharges are to be better characterized to determine the efficiency of diverting them to a sewage treatment plant. Also see discussion under Provision C.2.g.

Provision C.8.e.i. Geomorphic Project

The physical integrity of a stream's bed, bank and riparian area is integral to the stream's capacity to withstand the impacts of discharged pollutants, including chemical pollutants,

⁶⁰ USEPA. 1996. *Interim Permitting Approach for Water Quality-Based Effluent Limitations in Stormwater Permits*. Sept. 1, 1996. <http://www.epa.gov/npdes/pubs/swpol.pdf>

sediment, excess discharge volumes, increased discharge velocities, and increased temperatures. At present, various efforts are underway to improve geomorphic conditions in creeks, primarily through local watershed partnerships. In addition, local groups are undertaking *green stormwater projects* with the goal of minimizing the physical and chemical impacts of stormwater runoff on the receiving stream. Such efforts ultimately seek to improve the integrity of the waterbodies that receive urban stormwater runoff.

The purpose of the Geomorphic Project is to contribute to these ongoing efforts in each Stormwater Countywide Program area. Permittees may select the geomorphic project from three categories specified in the Permit.

C.8.f. Pollutants of Concern⁶¹ Monitoring. Federal CWA section 303(d) TMDL requirements, as implemented under the CWC, require a monitoring plan designed to measure the effectiveness of the TMDL point and nonpoint source control measures and the progress the waterbody is making toward attaining water quality objectives. Such a plan necessarily includes collection of water quality data. Provision C.8.f establishes a method to measure of the effectiveness of TMDL control measures in progressing toward WLAs. Locations, parameters, methods, protocols, and sampling frequencies for this monitoring are specified. A sediment delivery estimate/budget is also required to improve the Permittees' estimates of their loading estimates. In addition, a workplan is required for estimating loads and analyzing sources of emerging pollutants, which are likely to be present in urban runoff, in the next Permit term.

C.8.g. Citizen Monitoring and Participation. CWA section 101(e) and 40 CFR Part 25 broadly require public participation in all programs established pursuant to the CWA, to foster public awareness of environmental issues and decision-making processes. Provision C.8.g is intended to do the following:

- Support current and future creek stewardship efforts by providing a framework for citizens and Permittees to share their collective knowledge of creek conditions; and
- Encourage Permittees to use and report data collected by creek groups and other third-parties when the data are of acceptable quality.

C.8.h. Reporting. CWC section 13267 provides authority for the Water Board to require technical water quality reports. Provision C.8.h requires Permittees to submit electronic and comprehensive reports on their water quality monitoring activities to (1) determine compliance with monitoring requirements; (2) enhance public awareness of the water quality in local streams and the Bay; and (3) standardize reporting to better facilitate analyses of the data, including for the CWA section 303(d) listing process.

⁶¹ See section C.9, C.11, C.12, and C.13 of this Fact Sheet for more information on Pollutants of Concern.

C.9. – C.14. Pollutants of Concern including Total Maximum Daily Loads

Provisions C.9 through C.14 pertain to pollutants of concern, including those for which TMDLs are being developed or implemented.

Legal Authority

The following legal authority applies to provisions C.9 through C.14:

Broad Legal Authority: CWA sections 402(p)(3)(B)(ii-iii), CWC section 13377, and Federal NPDES regulations 40 CFR 122.26(d)(2)(i)(B, C, E, and F) and 40 CFR 122.26(d)(2)(iv).

Specific Legal Authority: Federal NPDES regulation 40 CFR 122.44(d)(1) requires municipal stormwater permits to include any requirements necessary to, “[a]chieve water quality standards established under section 303 of the CWA, including State narrative criteria for water quality.”

Federal NPDES regulation 40 CFR 122.44(d)(1)(i) requires NPDES permits to include limitations to, “control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which are or may be discharged at a level which will cause, have reasonable potential to cause, or contribute to an excursion above any State water quality standard, including State narrative criteria for water quality.”

Basin Plan Requirements: Section 4.8 of the Region’s Water Quality Control Plan (Basin Plan) requires that stormwater permits include requirements to prevent or reduce discharges of pollutants that cause or contribute to violations of water quality objectives. In the first phase, the Water Board requires implementation of technically and economically feasible control measures to reduce pollutants in stormwater to the MEP. If this first phase does not result in attainment of water quality objectives, the Water Board will consider permit conditions that might require implementation of additional control measures. For example, the control measures required as a result of TMDLs may go beyond the measures required in the first phase of the program.

General Strategy for Sediment-Bound Pollutants (Mercury, PCBs, legacy pesticides, PBDEs)

The control measures for mercury are intended to implement the urban runoff requirements stemming from TMDLs for this pollutant. The control measures required for PCBs are intended to implement those that are consistent with proposed control measures in the draft PCBs TMDL. The proposed urban runoff management requirements in draft PCBs TMDL call for permit-term requirements based on an assessment of controls to reduce PCBs to the MEP, and that is the intended approach of the required provisions for all pollutants of concern. Many of the control actions addressing PCBs and mercury will result in reductions of a host of sediment-bound pollutants, including legacy pesticides, mercury, PBDEs, and PCBs. The strategy for these pollutants is to base decisions concerning where to focus effort on PCBs, but that implementation of the efforts would be carried out with consideration of the benefits for controlling these other pollutants. Further, because many of the control strategies addressing

these pollutants of concern are relatively untested, the Water Board will implement control measures in the following modes:

1. Full-scale implementation throughout the region.
2. Focused implementation in areas where benefits are most likely to accrue.
3. Pilot-testing in a few specific locations.
4. Other: This may refer to experimental control measures, Research and Development, desktop analysis, laboratory studies, and/or literature review.

The logic of such categorization is that, as actions are tested and confidence is gained regarding level of experience and confidence in the control measure's effectiveness, the control measure may be implemented with a greater scope. For example, an untested control measure for which the effectiveness is uncertain may be implemented as a pilot project in a few locations during this permit term. If benefits result, and the action is deemed effective, it will be implemented in subsequent permit terms in a focused fashion in more locations or perhaps fully implemented throughout the Region, depending upon the nature of the measure. On the other hand there may be some control measures in which there is sufficient confidence on the basis of prior experience, so that the control action should be implemented in all applicable locations and/or situations. By conducting actions in this way and gathering information about effectiveness and cost, we will advance our understanding and be able to perform an updated assessment of the suite of actions that will constitute MEP for the following permit term. In that next permit term, control measures will be implemented on the basis of what we learn in this term, and we will see iterative improvement through time.

Background on Specific Provisions: Provisions C.9 through C.14 contain both technology-based requirements to control pollutants to the MEP and water quality based requirements to prevent or reduce discharges of pollutants that may cause or contribute to violations of water quality standards. Provisions C.9 and C.11 of the Permit incorporates provisions for the two TMDLs that have been fully approved and are effective for the Permittees. These TMDLs are for pesticide-related toxicity in urban creeks and mercury in San Francisco Bay. Additionally, Provision C.12 contains measures that address PCB. The Board will be considering adoption of a PCB TMDL, which as proposed would include requirements that would be consistent with this provision. Finally, Provision C.13 contains measures to implement the copper site-specific objective in San Francisco Bay.

Where a TMDL has been approved, NPDES permits must contain effluent limitations and conditions consistent with the requirements and assumptions in the TMDL.⁶² Effluent limitations are generally expressed in numerical form. However, USEPA recommends that for NPDES-regulated municipal and small construction stormwater discharges, effluent limitations should be expressed as BMPs or other similar requirements rather than as numeric effluent limitations.⁶³ Consistent with USEPA's recommendation, this section implements WQBELs expressed as an iterative BMP approach capable of meeting the WLAs in accordance with the associated compliance schedule. The Permit's WQBELs include the numeric WLA as a performance

⁶² 40 CFR 122.44(d)(1)(vii)(B)

⁶³ USEPA, 2002. Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs. P. 4.

standard and not as an effluent limitation. The WLA can be used to assess if additional BMPs are needed to achieve the TMDL Numeric Target in the waterbody.

C.9. Pesticides Toxicity Control Fact Sheet Findings in Support of Provision C.9

C.9-1 This Permit fulfills the Basin Plan amendments the Water Board adopted that establish a Water Quality Containment Strategy and TMDL for diazinon and pesticide-related toxicity for Bay Area urban creeks on November 16, 2005, and approved by the State Water Board on November 15, 2006. The Water Quality Containment Strategy requires urban runoff management agencies to minimize their own pesticide use, conduct outreach to others, and lead monitoring efforts. Control measures implemented by urban runoff management agencies and other entities (except construction and industrial sites) shall reduce pesticides in urban runoff to the MEP.

C.9-2 (Allocations): The TMDL is allocated to all urban runoff, including urban runoff associated with MS4s, Caltrans facilities, and industrial, construction, and institutional sites. The allocations are expressed in terms of toxic units and diazinon concentrations.

Specific Provision C.9 Requirements

C.9 provisions fully implement the TMDL for Urban Creeks Pesticide Toxicity. All C.9 provisions are stated explicitly in the implementation plan for this TMDL. Permittees are encouraged to coordinate activities with the Urban Pesticide Pollution Prevention Project, the Urban Pesticide Committee, and other agencies and organizations. The Urban Pesticide Pollution Prevention (UP3) Project is funded by a grant from the State Water Board and its goal is to prevent water pollution from urban pesticide use. The Urban Pesticides Committee serves as an information clearinghouse and as a forum for coordinating pesticide TMDL implementation.

The UP3 Project provides resources and information on integrated pest management (IPM) and tools to municipalities to support their efforts to reduce municipal pesticide use and to conduct outreach to their communities on less-toxic methods of pest control. In addition, it provides technical assistance to municipalities to encourage the U.S. Environmental Protection Agency and the California Department of Pesticide Regulation to prevent water quality problems from pesticides. It also maintains and manages the Urban Pesticides Committee, a statewide network of agencies, nonprofits, industry, and other stakeholders that are working to solve water quality problems from pesticides.

Specific tools provided by the UP3 Project that relate to permit requirements include:

- Guidance and resources to help agencies create contracts and bid documents for structural pest management services that help them meet their integrated pest management goals
- IPM policies and ordinances
- IPM training workshops and materials
- Outreach program design resources
- Resources for evaluating effectiveness

Provisions C.9.a through C.9.d are designed to insure that integrated pest management (IPM) is adopted and implemented as policy by all municipalities. IPM is a pest control strategy that uses an array of complementary methods: natural predators and parasites, pest-resistant varieties, cultural practices, biological controls, various physical techniques, and pesticides as a last resort. If implemented properly, it is an approach that can significantly reduce or eliminate the use of

pesticides. The implementation of IPM will be assured through training of municipal employees and the requirement that municipalities only hire IPM-certified contractors.

Provision C.9.e requires that municipalities (through cooperation or participation with BASMAA) track and participate in pesticide regulatory processes like the USEPA pesticide evaluation and registration activities related to surface water quality, and the California Department of Pesticide Regulation (DPR) pesticide evaluation activities. The goal of these efforts is to encourage both the state and federal pesticide regulatory agencies to accommodate water quality concerns within the pesticide regulation or registration process. Through these efforts, it could be possible to prevent pesticide-related water quality problems from happening by affecting which products are brought to market.

Provision C.9.g is critical to the success of municipal efforts to control pesticide-related toxicity. Future permits must be based on an updated assessment of what is working and what is not. With every provision comes the responsibility to assess its effectiveness and report on these findings through the permit. The particulars of assessment will depend on the nature of the control measure.

Provision C.9.h directs the municipalities to conduct outreach to consumers at point of purchase and provide targeted information on proper pesticide use and disposal, potential adverse impacts on water quality, and less toxic methods of pest prevention and control. One way in which this can be accomplished is for the Permittees to participate in and provide resources for the “Our Water, Our World” program (www.ourwaterourworld.org) or a functionally equivalent pesticide use reduction outreach program. The “Our Water, Our World” program has developed a Web site with many resources, “to assist consumers in managing home and garden pests in a way that helps protect” the environment.

C.10. Trash Reduction

Legal Authority

The following legal authority applies to section C.5:

Broad Legal Authority: CWA sections 402(p)(3)(B)(ii-iii), CWC section 13377, and Federal NPDES regulations 40 CFR 122.26(d)(2)(i)(B, C, D, E, and F) and 40 CFR 122.26(d)(2)(iv).

Specific Legal Authority: Federal NPDES regulations 40 CFR 122.26(d)(2)(iv)(B) requires, “shall be based on a description of a program, including a schedule, to detect and remove (or require the discharger to the municipal storm sewer to obtain a separate NPDES permit for) illicit discharges and improper disposal into the storm sewer.”

Federal NPDES regulation 40 CFR 122.26(d)(2)(iv)(B)(2) requires, “a description of procedures to conduct on-going field screening activities during the life of the permit, including areas or locations that will be evaluated by such field screens.”

Federal NPDES regulation 40 CFR 122.26(d)(2)(iv)(B)(3) requires, “a description of procedures to be followed to investigate portions of the separate storm sewer system that, based on the results of the field screen, or other appropriate information, indicate a reasonable potential of containing illicit discharges or other sources of non-storm water.”

Federal NPDES regulations 40 CFR 122.26(d)(2)(iv)(B)(4) requires, “a description of procedures to prevent, contain, and respond to spills that may discharge into the municipal separate storm sewer.”

San Francisco Bay Basin Plan, Chapter 4 – Implementation, Table 4-1 Prohibitions, Prohibition 7, which is consistent with the State Water Board’s Enclosed Bays and Estuaries Policy, Resolution 95-84, prohibits the discharge of rubbish, refuse, bark, sawdust, or other solid wastes into surface waters or at any place where they would contact or where they would be eventually transported to surface waters, including flood plain areas. This prohibition was adopted by the Water Board in the 1975 Basin Plan, primarily to protect recreational uses such as boating.

Fact Sheet Findings in Support of Provision C.10

C.10-1 Trash and litter are a pervasive problem near and in creeks and in San Francisco Bay. Controlling trash is one of the priorities for this Permit reissuance not only because of the trash discharge prohibition, but also because trash and litter cause particularly major impacts on our enjoyment of creeks and the Bay. There are also significant impacts on aquatic life and habitat in those waters and eventually to the global ocean ecosystem, where plastic often floats, persists in the environment for hundreds of years, if not forever, concentrates organic toxins, and is ingested by aquatic life. There are also physical impacts, as aquatic species can become entangled and ensnared and can ingest plastic that looks like prey, losing the ability to feed properly.

For the purposes of this provision, trash is defined to consist of litter and particles of litter. Man made litter is defined in California Government Code section 68055.1 (g): *Litter* means all improperly discarded waste material, including, but not limited to, convenience food, beverage, and other product packages or containers constructed of steel, aluminum, glass, paper, plastic, and other natural and synthetic materials, thrown or deposited on the lands and waters of the state, but not including the properly discarded waste of the primary processing of agriculture, mining, logging, sawmilling, or manufacturing.

C.10-2 Data collected by Water Board staff using the SWAMP Rapid Trash Assessment (RTA) Protocol,⁶⁴ over the 2003–2005 period,⁶⁵ suggest that the current approach to managing trash in waterbodies is not reducing the adverse impact on beneficial uses. The levels of trash in the waters of the San Francisco Bay Region are alarmingly high, considering the Basin Plan prohibits discharge of trash and that littering is illegal with potentially large fines. Even during dry weather conditions, a significant quantity of trash, particularly plastic, is making its way into waters and being transported downstream to San Francisco Bay and the Pacific Ocean. On the basis of 85 surveys conducted at 26 sites throughout the Bay Area, staff have found an average of 2.93 pieces of trash for every foot of stream, and all the trash was removed when it was surveyed, indicating high return rates of trash over the 2003–2005 study period. There did not appear to be one county within the Region with higher trash in waters—the highest wet weather deposition rates were found in western Contra Costa County, and the highest dry weather deposition was found in Sonoma County. Results of the trash in waterbodies assessment work by staff show that rather than adjacent neighborhoods polluting the sites at the bottom of the watershed, these areas, which tend to have lower property values, are subject to trash washing off with urban stormwater runoff cumulatively from the entire watershed.

C.10-3 A number of key conclusions can be made on the basis of the trash measurement in streams:

- Lower watershed sites have higher densities of trash.
- All watersheds studied in the San Francisco Bay Region have high levels of trash.
- There are trash source hotspots, usually associated with parks, schools, or poorly kept commercial facilities, near creek channels, that appear to contribute a significant portion of the trash deposition at lower watershed sites.
- Dry season deposition of trash, associated with wind and dry season runoff, contributes measurable levels of trash to downstream locations.
- The majority of trash is plastic at lower watershed sites where trash accumulates in the wet season. This suggests that urban runoff is a major source of floatable plastic found in the ocean and on beaches as marine debris.
- Parks that have more evident management of trash by city staff and local volunteers, including cleanup within the creek channel, have measurably less trash pieces and higher RTA scores.

⁶⁴ SWAMP Rapid Trash Assessment Protocol, Version 8

⁶⁵ SWAMP S.F. Bay Region Trash Report, January 23, 2007

- C.10-4** The ubiquitous, unacceptable levels of trash in waters of the San Francisco Bay Region warrant a comprehensive and progressive program of education, warning, and enforcement, and certain areas warrant consideration of structural controls and treatment.
- C.10-5** Trash in urban waterways of coastal areas can become *marine debris*, known to harm fish and wildlife and cause adverse economic impacts.⁶⁶ Trash is a regulated water pollutant that has many characteristics of concern to water quality. It accumulates in streams, rivers, bays, and ocean beaches throughout the San Francisco Bay Region, particularly in urban areas.
- C.10-6** Trash adversely affects numerous beneficial uses of waters, particularly recreation and aquatic habitat. Not all litter and debris delivered to streams are of equal concern with regards to water quality. Besides the obvious negative aesthetic effects, most of the harm of trash in surface waters is imparted to wildlife in the form of entanglement or ingestion.^{67,68} Some elements of trash exhibit significant threats to human health, such as discarded medical waste, human or pet waste, and broken glass.⁶⁹ Also, some household and industrial wastes can contain toxic batteries, pesticide containers, and fluorescent light bulbs that contain mercury. Large trash items such as discarded appliances can present physical barriers to natural stream flow, causing physical impacts such as bank erosion. From a management perspective, the persistent accumulation of trash in a waterbody is of particular concern, and signifies a priority for prevention of trash discharges. Also of concern are trash *hotspots* where illegal dumping, littering, and/or accumulation of trash occur.
- C.10-7** The narrative water quality objectives applicable to trash are Floating Material (Waters shall not contain floating material, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial uses), Settleable Material (Waters shall not contain substances in concentrations that result in the deposition of material that cause nuisance or adversely affect beneficial uses), and Suspended Material (Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses).

Specific Provision C.10 Requirements

Provision C.10.a. Implement Pilot Enhanced Trash Control at High Trash Impact Storm Drain Catchments using either Enhanced Trash Management Controls or Full Trash Capture Device Installations⁷⁰

⁶⁶ Moore, S.L., and M.J. Allen. 2000. Distribution of anthropogenic and natural debris on the mainland shelf of the Southern California Bight. *Mar. Poll. Bull.* 40:83-88.

⁶⁷ Laist, D. W. and M. Liffmann. 2000. *Impacts of marine debris: research and management needs*. Issue papers of the International Marine Debris Conference, Aug. 6-11, 2000. Honolulu, HI, pp. 16-29.

⁶⁸ McCauley, S.J. and K.A. Bjorndahl. 1998. Conservation implications of dietary dilution from debris ingestion: sublethal effects in post-hatchling loggerhead sea turtles. *Conserv. Biol.* 13(4):925-929.

⁶⁹ Sheavly, S.B. 2004. *Marine Debris: an Overview of a Critical Issue for our Oceans*. 2004 International Coastal Cleanup Conference, San Juan, Puerto Rico. The Ocean Conservancy.

⁷⁰ Definition of Full Trash Capture Device: The Los Angeles Water Board defines "full trash capture systems" as "any device or series of devices that traps all particles retained by a 5mm mesh screen and has a design treatment capacity of not less than the peak flow rate resulting from a one-year, one-hour, storm in the sub drainage area."

The goal of this provision is to require Permittees to accomplish pilot-scale, enhanced trash control as a first phase action toward eventual implementation of complete trash control measures, to attain water quality standards by removing trash impacts to beneficial uses of receiving waters. Two approaches toward preventing trash impacts are called for in the provision. Enhanced Trash Management Measures are increased municipal maintenance activities to remove trash from the urban landscape intensively, to prevent transport to streams and the Bay. Trash Capture Devices are the other mechanism to prevent trash impacts through capture of trash before entering the MS4 or in the MS4. The definition of full trash capture has been adopted from the Los Angeles Water Board, where it is being implemented through Trash TMDLs, represents a current status of MEP for trash capture. Major capital and maintenance resources will be necessary to implement these trash management actions, both as enhanced maintenance efforts and trash capture device installation and maintenance. Therefore, pilot scale efforts are required during this permit cycle to phase in efforts at the most significant trash generating catchments, and also increase local Permittee experience with the most efficient and practical means to accomplish these trash reduction tasks.

Provision C.10.b. Implementation and Assessment. 10 percent of the urban and suburban land within Permittee jurisdictions will be addressed during this permit cycle, and up to half of that catchment area can be addressed with enhanced management measures. Assessment of trash downstream enhanced management measures will monitor effectiveness of those efforts. Assessment will employ the locally developed SWAMP Rapid Trash Assessment, or the Permittee developed variation, the Urban Rapid Trash Assessment. Enhanced trash management measures will also be implemented in the interim at the catchments slated for trash capture device installation, to reduce impacts in the interim. For situations where there is no practical site for trash assessment downstream of the target catchments, annual volume of trash collected will be a substitute crude assessment.

Provision C.10.c. Long-Term Plan for Trash Impact Abatement. Since the actions required in this 5-year permit term are pilot in scope, a plan for complete trash abatement from receiving waters, and full compliance with the Basin Plan prohibition must be developed for long-term implementation. This requirement sets a 15-year time frame for achieving no impacts to beneficial uses of receiving waters from trash.

Provision C.10.d. In addition to enhanced trash management controls and full trash capture device installation, it is equally important to cut back on trash generation to prevent pollution. For example, Bay Area cities such as San Francisco, Oakland and Berkeley adopted ordinances to ban plastic bags from grocery stores. Oakland and Emeryville adopted ordinances to ban non-biodegradable Styrofoam take-out food containers used by restaurants. These ordinances address the two major types of trash - plastic and Styrofoam. Oakland also passed Litter Tax on high trash generating businesses to create disincentive and to generate revenues to pay for trash control. Solid waste can be litter too. Waste reduction, reuse, and recycling ordinances can be important source control measures. Homeless encampments especially along creek side are major sources of trash in the creeks. Enforcement of local ordinances to displace homeless encampments from creek side is critical. This Provision requires Permittees to report annually adoption and enforcement of relevant ordinances as part of the long-term trash control strategy.

Other model ordinances and enforcement mechanisms can be found at Keep America Beautiful website at www.kabtoolbox.org.

Costs of Trash Control

Costs for either enhanced trash management measure implementation or installation and maintenance of trash capture devices are significant, but when spread over several years, and when viewed on a per-capita basis, are reasonable. Also, Trash capture devices have been installed by cities in California and in the Bay Region.

Trash and litter are costly to remove from our aquatic resource environments. Staff from the California Coastal Commission report that the Coastal Cleanup Day budget statewide: \$200,000-250,000 for staff Coastal Commission staff, and much more from participating local agencies. The main component of this event is the 18,000 volunteer-hours which translates to \$3,247,200 in labor, and so is equivalent to \$3,250,000-3,500,000 per year to clean up 903,566 pounds of trash and recyclables at \$3.60 to \$3.90 per pound. This is one of the most cost-effective events because of volunteer labor and donations. The County of Los Angeles spends \$20 million per year to sweep beaches for trash, according to Coastal Commission staff.

In Oakland, the Lake Merritt Institute is currently budgeted at \$160,000 per year, with trash and litter removal from the Lake as a major task. The budget has increased from about \$45,000 in 1996 to current levels. In the period of 1996-2005 the Lake Merritt Institute staff, utilizing significant volunteer resources, and accomplishing other education tasks, removed 410,859 pounds of trash from the Lake at cost of \$951,725 at \$2.3 per pound.

The City of Oakland reports that installation of two vortex and screen separators, titled by their brand name of CDS units, which cost, according to the table below, \$821,000 for installations that treat tributary catchments of 192 acres before discharge to Lake Merritt at \$4,276 per acre.

City of Oakland—CDS Unit Overview 9-07

Existing CDS unit location	Outfall number	Treatment area (acres)	Cost of implementation	Sizing	Maintenance requirements	Comments
Intersection of 27 th and Valdez Streets	56*	71	\$203,000 to contractor; plus ~\$100,000 City costs	73 cfs peak flow; 36" stormdrain; Unit sizing: 18'6'6" box with 10'11"diam x 9'6" long cylinder	Visually inspect CDS Unit; remove trash and debris with Hydro Flusher bi-monthly	Installed in 2006. Required relocation of electrical conduit. Water main and gas line were also in the way; the box was adjusted to accommodate these conflicts.
Intersection of 22 nd and Valley Streets	56*	121	\$368,000 to contractor; plus ~\$150,000 City costs	115 cfs peak flow; 54" stormdrain; Unit sizing: 18'8.5'6" box with 12'diam x 9'6" long cylinder	Visually inspect CDS Unit; remove trash and debris with Hydro Flusher bi-monthly	Installed in 2006. Installation costs were higher than anticipated. Sewer lines and PGE facilities were exposed that were not known before. Unit had to be modified and poured-in-place.

* The city is treating 192 acres or 72 percent of the 252 acres draining to outfall 56.

Mr. Morad Sedrak, the TMDL Implementation Program Manager, Bureau of Sanitation, Department of Public Works, City of Los Angeles, reports that the City plans to invest \$72 million dollars for storm drain catch basin based capture device installation primarily, for a City of 4 million population, for a per-capita cost of \$18 dollars. This effort is occurring over a span of over five years, for an annual per-capita cost of under \$4.

Mr. Sedrak reports that O&M costs are not anticipated to increase, as the City of L.A. is already budgeted for 3 catch basin cleanings per year. He also states that catch basin inserts installed inside the catch basin in front of the lateral pipe, which have been certified by the Los Angeles Regional Water Board as total capture trash control devices, cost approximately \$800 to \$3,000 depending on the depth of the catch basin. The price quoted includes installation and the insert is made of Stainless Steel 316.

Furthermore, the price for catch basin opening screen covers, which are designed to retain trash at the street level for removal by sweepers, and also to open if there is a potential flooding blockage, ranges roughly from \$800 to \$4,500, depending on the opening size of the catch basin.

The City of Los Angeles has currently spent 27 million dollars on a retrofit program to install catch basin devices in approximately 30% of its area, with either inserts or screens or both. Mr. Sedrak states that Los Angeles plans to spend \$45 million over the next 3 years to retrofit the remaining catch basins within the City. The total number of catch basins within the City is approximately 52,000.

Here are some links to information about the Los Angeles trash control approach:

<http://www.lastormwater.org/Siteorg/program/TMDLs/trashtmdl.htm>

http://www.lastormwater.org/Siteorg/download/pdfs/general_info/Request-Certification-10-06.pdf

http://www.lastormwater.org/Siteorg/download/pdfs/general_info/Request-Certification-10-06.pdf
http://www.lastormwater.org/Siteorg/program/poll_abate/cbscreens.htm

http://www.lastormwater.org/Siteorg/program/poll_abate/cbinserts.htm

http://www.lastormwater.org/Siteorg/program/poll_abate/cbscreens.htm

Additional cost information on various trash capture devices are included in the Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPPP) BMP Trash Toolbox (July 2007). The Toolbox contains cost information for both trash capture devices and enhanced trash management measure implementation, covers a broad range of options and also discusses operation and maintenance costs. Catch basin screens are included with an earlier estimate by the City of Los Angeles of \$44 million over 10 years to install devices in 34,000 inlets.

Litter booms are also discussed with an example from the City of Oakland. The Damon Slough litter boom or sea curtain cost \$36,000 for purchase and installation, including slough side access improvements for maintenance and trash removal. Annual maintenance costs have been \$77,000 for weekly maintenance, which includes use of a crane for floating trash removal.

C.11. Mercury Controls

Fact Sheet Findings in Support of Provision C.11

- C.11-1** On August 9, 2006, the Water Board adopted a Basin Plan amendment including a revised TMDL for mercury in San Francisco Bay, two new water quality objectives, and an implementation plan to achieve the TMDL. The State Water Board has approved this Basin Plan amendment, and USEPA approval is pending.
- C.11-2** The 2003 load of mercury from urban runoff is 160 kg/yr, and the aggregate WLAs for urban runoff is 80 kg/yr and shall be implemented through the NPDES stormwater permits issued to urban runoff management agencies and Caltrans. The urban stormwater runoff allocations implicitly include all current and future permitted discharges, not otherwise addressed by another allocation, and unpermitted discharges within the geographic boundaries of urban runoff management agencies (collectively, *source category*) including, but not limited to, Caltrans roadway and non-roadway facilities and rights-of-way, atmospheric deposition, public facilities, properties proximate to stream banks, industrial facilities, and construction sites.
- C.11-3** The allocations for this source category shall be achieved within 20 years, and, as a way to measure progress, an interim loading milestone of 120 kg/yr, halfway between the current load and the allocation, should be achieved within 10 years. If the interim loading milestone is not achieved, NPDES-permitted entities shall demonstrate reasonable and measurable progress toward achieving the 10-year loading milestone.
- C.11-4** The NPDES permits for urban runoff management agencies shall require the implementation of BMPs and control measures designed to achieve the allocations or accomplish the load reductions derived from the allocations. In addition to controlling mercury loads, BMPs or control measures shall include actions to reduce mercury-related risks to humans and wildlife. Requirements in the permit issued or reissued and applicable for the term of the permit shall be based on an updated assessment of control measures intended to reduce pollutants in stormwater runoff to the MEP and remain consistent with the section of this chapter titled, *Surface Water Protection and Management—Point Source Control—Stormwater Discharges*.
- C.11-5** The following additional requirements are or shall be incorporated into NPDES permits issued or reissued by the Water Board for urban runoff management agencies.
- Evaluate and report on the spatial extent, magnitude, and cause of contamination for locations where elevated mercury concentrations exist;
 - Develop and implement a mercury source control program;
 - Develop and implement a monitoring system to quantify either mercury loads or loads reduced through treatment, source control, and other management efforts;
 - Monitor levels of methylmercury in discharges;
 - Conduct or cause to be conducted studies aimed at better understanding mercury fate, transport, and biological uptake in San Francisco Bay and tidal areas;

- f. Develop an equitable allocation-sharing scheme in consultation with Caltrans (see below) to address Caltrans roadway and non-roadway facilities in the program area, and report the details to the Water Board;
- g. Prepare an Annual Report that documents compliance with the above requirements and documents either mercury loads discharged, or loads reduced through ongoing pollution prevention and control activities; and
- h. Demonstrate progress toward (a) the interim loading milestone, or (b) attainment of the allocations shown in Individual WLAs (see Table 4-w of the Basin Plan amendment), by using one of the following methods:
 - (1) Quantify the annual average mercury load reduced by implementing
 - i. Pollution prevention activities, and
 - ii. Source and treatment controls. The benefit of efforts to reduce mercury-related risk to wildlife and humans should also be quantified. The Water Board will recognize such efforts as progress toward achieving the interim milestone and the mercury-related water quality standards upon which the allocations and corresponding load reductions are based. Loads reduced as a result of actions implemented after 2001 (or earlier if actions taken are not reflected in the 2001 load estimate) may be used to estimate load reductions.
 - (2) Quantify the mercury load as a rolling 5-year annual average using data on flow and water column mercury concentrations.
 - (3) Quantitatively demonstrate that the mercury concentration of suspended sediment that best represents sediment discharged with urban runoff is below the suspended sediment target.

C.11-6 Urban runoff management agencies have a responsibility to oversee various discharges within the agencies' geographic boundaries. However, if it is determined that a source is substantially contributing to mercury loads to the Bay or is outside the jurisdiction or authority of an agency, the Water Board will consider a request from an urban runoff management agency that may include an allocation, load reduction, and/or other regulatory requirements for the source in question.

Specific Provision C.11 Requirements

The C.11 provisions implement the mercury TMDL and follow the general approach for sediment-bound pollutants discussed above where we seek to build our understanding and level of certainty concerning control actions by implementing actions in a phased approach. We then expand implementation of those actions that prove effective, and perhaps scale back or discontinue those that are not effective. Accordingly, there are some provisions that will be implemented throughout the Region, some that will be tested on a limited basis first before making the decision to expand region-wide in the next permit term. Some of the measures are companion measures for efforts targeting PCBs.

Provision C.11.a. Mercury is found in a wide variety of consumer products (e.g., fluorescent bulbs) that are subject to recycling requirements. These recycling efforts are already happening

throughout the Region, and Provision C.11.a requires promotion, facilitation and/or participation in these region-wide recycling efforts to increase effectiveness and public participation.

Provision C.11.b. The remand resolution of the SF Bay Mercury TMDL made it clear that methyl mercury monitoring must be required of all NPDES permittees. Methyl mercury is the most toxic form of mercury, and there is very little information, if any, regarding the concentrations of methyl mercury found in urban runoff. The purpose of the monitoring required through this provision is to obtain seasonal information and to assess the magnitude and spatial/temporal patterns of methylmercury concentrations in urban runoff.

Provisions C.11.c through Provision C.11.f relate to identical C.12 Provisions for PCBs. For each of these, sites for pilot studies will primarily be chosen 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. For more information, see the fact sheet discussions for Provisions C.12.c, d, e, and f and Provision C.2.g.

Provision C.11.g implements the TMDL requirement that Permittees measure mercury loads and loads reduced from program activities. There are three options for accomplishing this requirement: quantifying mercury loads reduced through implemented control measures, quantify mercury loading into the Bay from urban runoff, or demonstrating that the concentration of mercury on suspended sediment particles is below the sediment target of 0.2 ppm. It is likely that the first option will be chosen, and this will require development of an accounting system to establish what load reductions result from program activities. This will not be difficult for those measures that involve capture and measurement of mercury-containing sediment, but it will be more challenging for efforts that do not involve direct measurement.

Provision C.11.h is equivalent to Provision C.12.h for PCBs and is motivated by the same remaining technical uncertainties.

Provision C.11.i requires actions that manage human health risk due to mercury and PCBs. These may include efforts to communicate the health risks of eating Bay fish and other efforts aimed at high risk-communities.

C.12. PCBs Controls

The C.12 provisions are consistent with the regulatory approach proposed in the draft PCBs TMDL. They follow the general approach for sediment-bound pollutants discussed above where we seek to build our understanding and level of certainty concerning control actions by implementing actions in a phased approach. We then expand implementation of those actions that prove effective, and perhaps scale back or discontinue those that are not effective. Accordingly, there are some provisions that will be implemented throughout the region, some that will be tested on a limited basis first before making the decision to expand region-wide in the next permit term.

Fact Sheet Findings in Support of Provision C.12

- C.12-1** Urban runoff is highly likely to be a conveyance mechanism associated with the impairment of San Francisco Bay for PCBs.
- C.12-2** The Permit requires Permittees to control PCBs, which have been found by the Water Board to have the reasonable potential to cause or contribute to exceedances of water quality standards, to the MEP. The Program has submitted a PCBs Pollutant Reduction Plan. This Plan includes surveys of stream sediments to assess concentrations and loadings of PCBs, assesses potential for ongoing discharges of PCBs, and develops a plan to reduce discharges of PCBs in runoff.
- C.12-3** **Some PCB congeners have dioxin-like properties.** Dioxins are persistent, bioaccumulative, toxic compounds that are produced from the combustion of organic materials in the presence of chlorine. Dioxins enter the air through fuel and waste emissions, including diesel and other motor vehicle exhaust fumes and trash incineration, and are carried in rain and contaminate soil. Dioxins bioaccumulate in fat, and most human exposure occurs through the consumption of animal fats, including those from fish. Therefore, the actions targeting PCBs will likely have the simultaneous benefit of addressing a portion of the dioxin impairment resulting from dioxin-like PCBs.

Specific Provision C.12 Requirements

Provision C.12.a. PCBs were used in a variety of electrical devices and equipment, some of which still can be found during industrial inspections. Provision C.12.a requires the stormwater management agencies to ensure that industrial inspectors can identify PCBs or PCB-containing equipment during their inspections and make sure appropriate agencies are notified if they are found. There is enough experience and/or background knowledge about the presence of such PCB-containing equipment that this measure should be implemented region-wide during this permit term.

Provision C.12.b. PCBs are used in a variety of building materials like caulks and adhesives. PCBs contained in such materials can be liberated and transported in runoff during and after demolition and renovation activities. At this point, it is not known how extensive this type of PCB contamination is in the region. Therefore, the expectation for this permit term is that Permittees conduct 10 pilot studies (Provision C.12.b) that includes evaluation of the presence of PCBs in such materials, sampling and analysis, and BMP development to prevent PCBs in these

materials from being released into the environment during demolition and renovation. Conducting these pilot tests and reporting results will help determine if control measures for PCBs from these sources should be implemented in a more widespread fashion in the next permit term.

Provisions C.12.c and C.12.d form the core of PCB-related efforts for this permit term, and these efforts are crucial for the iterative development of effective control measures for PCBs and other sediment-bound pollutants in future permit terms. The overarching purpose of these two provisions is to conduct five comprehensive pilot studies in locations known to contain high levels of PCBs. The pilot studies will involve a combination of efforts including abatement of the on-land PCB contamination (Provision C.12.c) as well as exploration of sediment management practices (C.12.d) that can be implemented by municipalities to control migration of the PCBs away from the source of contamination. We expect that a suite of control measures will be applied in these five pilot regions to determine the optimum suite of measures for controlling PCB contamination and preventing its transport through the storm drain system. The lessons learned through these pilot efforts will inform the direction of future efforts targeting contaminated zones throughout the Region in subsequent permit terms.

Provision C.12.e. One promising management practice for addressing a wide range of sediment-bound contaminants, including PCBs is on-site treatment. Provision C.12.e requires selection of 10 locations for pilot studies spanning treatment types as described in the Provision. This effort can be conducted in conjunction with Provision C.12.d such that on-site treatment efforts conducted as part of C.12.d can be counted toward accomplishing C.12.e requirements.

Provision C.12.f. Another promising management practice is the diversion of certain flows to the sanitary sewers to be treated by the local POTWs. Provision C.12.f requires an evaluation of locations for diversion pilot studies and implementation of pilot studies at five pump stations. This effort can be conducted in conjunction with Provision C.12.d such that POTW diversion efforts conducted as part of C.12.d can be counted toward accomplishing C.12.f requirements. Also see discussion under Provision C.2.g.

Provision C.12.g requires, consistent with the approach taken in the draft PCBs TMDL, development of a monitoring system to quantify PCBs loads and loads reduced through source control, treatment and other management measures. This monitoring system will be used to determine progress toward meeting TMDL load allocations. This system should establish the baseline loading or loads reduced against which to compare future loading and load reductions.

Provision C.12.h. There are still uncertainties surrounding the magnitude and nature of PCBs reaching the Bay in urban runoff and the ultimate fate of such PCBs, including biological uptake. Provision C.12.h requires that Permittees ensure that fate and transport studies of PCBs in urban runoff are completed.

Provision C.12.i. requires actions that manage human health risk due to mercury and PCBs. These may include efforts to communicate the health risks of eating Bay fish and other efforts aimed at high risk-communities.

C.13. Copper Controls

Chronic and acute site-specific objectives (SSOs) for dissolved copper have been established in all segments of San Francisco Bay. The plan to implement the SSOs and ensure the achievement and ongoing maintenance of the SSOs in the entire Bay includes two types of actions for urban runoff management agencies. These actions from the SSO implementation are implemented through this permit as provisions to control urban runoff sources of copper as well as measures to resolve remaining technical uncertainties for copper fate and effects in the Bay.

The control measures for urban runoff target significant sources of copper identified in a report produced in 2004 for the Clean Estuary Partnership.⁷¹ This report updated information on sources of copper in urban runoff, loading estimates and associated level of uncertainty, and summarized feasible control measures and priorities for further investigation. Accordingly, the permit provisions target major sources of copper including vehicle brake pads, architectural copper, copper pesticides, and industrial copper use.

Fact Sheet Findings in Support of Provision C.13

- C.13-1** Urban runoff is a conveyance mechanism by which copper reaches San Francisco Bay.
- C.13-2** Copper has the reasonable potential to cause or contribute to exceedances of copper water quality standards in San Francisco Bay.
- C.13-3** Site specific water quality objectives for dissolved copper have already been adopted for South San Francisco Bay will soon be adopted for the rest of the Bay.
- C.13-4** The Permit requirements to control copper to the MEP are necessary to implement and support ongoing achievement of the site-specific water quality objectives.

Specific Provision C.13 Requirements

Provision C.13.a. Copper is used as an architectural feature in roofs, gutters and downspouts. When these roofs are cleaned with aggressive cleaning solutions, substantial amounts of copper can be liberated. The provision C.13.a for architectural copper involves a variety of strategies ranging from BMPs to prohibition against discharge of these cleaning wastes to the storm drain.

Provision C.13.b. Copper is commonly used as an algaecide in pools, spas, and fountains. The provision C.13.b prohibits discharge to the storm drain of copper-containing wastewater from such amenities.

Provision C.13.c. Vehicle brake pads are a large source of copper to the urban environment. There are cooperative efforts (e.g., the Brake Pad Partnership) evaluating the potential effects of brake wear debris on water quality. This cooperative effort could result in voluntary actions to

⁷¹ TDC (TDC Environmental). 2004. *Copper Sources in Urban Runoff and Shoreline Activities*. Prepared for the Clean Estuary Partnership.

reduce the amount of copper in automobile brake pads. However, this voluntary reduction is uncertain, and some aftermarket brake pads are possibly unaffected by the voluntary action. Moreover, the benefits of copper content reduction might be slowly realized because there is a great deal of wear debris already deposited on watersheds, and this wear debris will continue to be deposited as long as copper-containing brake pads are in use. Therefore, there might need to be additional measures addressing copper-containing wear debris on the part of urban stormwater management agencies. Provision C.13.c requires ongoing participation in the cooperative efforts described above as well as initial efforts to evaluate ways in which the storm drain system can be enhanced for better control of copper in urban runoff.

The most recent Staff Report⁷² for the SSOs north of the Dumbarton Bridge also describes several areas of remaining technical uncertainty. Two of these areas are of particular concern, and urban runoff management agencies are required to conduct or cause to be conducted studies to help resolve these two uncertainties.

The first uncertainty concerns copper's tendency, even at low concentrations, to cause a variety of sublethal (not resulting in death, but in impaired function) effects. The studies documenting such effects have, so far, been conducted in the laboratory in experiments modeling freshwater systems, and many of them have not yet been published. A number of uncertainties need to be resolved before interpretation and extension to marine or estuarine systems can be attempted.⁷³

The second uncertainty is that surface sediment samples have exhibited toxicity to test organisms at a number of sites throughout the Bay. Research has shown that sediment toxicity to bivalve embryos is caused by "elevated concentrations of divalent cations....with copper as the most probable cause of toxicity." Additional studies are needed to further examine whether water and sediment toxicity tests used in the RMP are accurate predictors of impacts on the Bay's aquatic and benthic communities.

⁷² SFBRWQCB (San Francisco Bay Regional Water Quality Control Board). 2007. *Copper Site-Specific Objectives in San Francisco Bay: Proposed Basin Plan Amendment and Draft Staff Report*. June.

⁷³ Ibid.

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

This section is predicated on the fact that legacy pesticides, PBDEs, and selenium are either known to impair or potentially impair Bay and tributary beneficial uses. Further, urban stormwater is a likely or potential cause or contributor to such impairment. The requirements for this permit term are primarily information gathering consistent with Provision C.1. Namely, this provision requires that Permittees gather information on a number of pollutants of concern (e.g., PBDEs, DDT, dieldrin, chlordane, selenium) for which TMDLs are planned or are in the early stages of development.

The goals of the provisions in this section are the following: One goal is to determine the concentrations and distribution of these pollutants and if urban runoff is a conveyance mechanism associated with their possible impairment of San Francisco Bay.

A second goal is to gather and provide information to allow calculation of PBDEs, legacy pesticides, and selenium loads to San Francisco Bay from urban runoff conveyance systems. A third goal is to identify control measures and/or management practices to eliminate or reduce discharges of PBDEs, legacy pesticides, or selenium conveyed by urban runoff conveyance systems. The Permittees are encouraged to work with the other municipal stormwater management agencies in the Bay Region to implement a plan to identify, assess, and manage controllable sources of these pollutants in urban runoff. The control actions initiated for PCBs will form the core of initial actions targeting sediment bound pollutants like these. It is very likely that some of these PCB control measures (see Provision C.12) warrant consideration for the control of sediment bound pollutants like PBDEs, legacy pesticides, and possibly others as well.

C.15. Exempted and Conditionally Exempted Discharges

Legal Authority

Broad Legal Authority: CWA section 402(p)(3)(B)(ii-iii), CWC section 1337, and Federal NPDES regulation 40 CFR 122.26(d)(2)(i)(B, C, D, E, and F) and 40 CFR 122.26(d)(2)(iv).

Specific Legal Authority: Federal NPDES regulations 40 CFR 122.26(d)(2)(iv)(B) requires MS4 operators, “to detect and remove (or require the discharger to the municipal separate storm sewer to obtain a separate NPDES permit for) illicit discharges and improper disposal into the storm sewer.”

Federal NPDES regulation 40 CFR 122.26(d)(2)(iv)(B)(1) provides that the Permittees shall prevent all types of illicit discharges into the MS4 except for certain non-stormwater discharges.

Provision C.15.a identifies the types of non-stormwater discharges that are exempted from Discharge Prohibition A if such discharges do not violate water quality standards. If any of the exempted non-stormwater discharges is identified as source of pollutants to receiving waters, then such categories or sources shall be addressed as conditionally exempted discharges in accordance with Provision C.15.b.

Provision C.15.b identifies the categories of non-stormwater discharges that are conditionally exempted from prohibition if they are identified by Permittees or the Executive Officer as not being sources of pollutants to receiving waters. To eliminate adverse impacts from such discharges, project proponents shall develop and implement appropriate pollutant control measures and BMPs, and where applicable, shall monitor and report in accordance with the tasks and implementation levels of each category of Provision C.15.b.

Fact Sheet Findings in Support of Provision C.15

C.15-1 Provision C.15 requires identification of the non-prohibited types of discharges that the Permittees wish to exempt from Prohibition A. For conditionally exempted discharges, which are pollutant sources, the Provision requires the Permittees to identify measures to minimize the adverse impact of such sources. This Provision also establishes a mechanism to authorize under the Permit non-stormwater discharges owned or operated by the Permittees. The Permittees have developed a list of BMPs to eliminate adverse impacts of conditionally exempt discharges such as uncontaminated pumped ground water, foundation drains, water from crawl spaces pumps, footing drains and planned and unplanned discharges from potable water sources, and water line and hydrant flushing.

Attachment K: Standard NPDES Permit Provisions

The following legal authority applies to Attachment K:

Broad Legal Authority: CWA sections 402(p)(3)(B)(ii-iii), CWC section 13377, and Federal NPDES regulations 40 CFR 122.26(d)(2)(i)(B, C, D, E, and F) and 40 CFR 122.26(d)(2)(iv).

Specific Legal Authority: Standard provisions, reporting requirements, and notifications are consistent to all NPDES permits and are generally found in Federal NPDES regulation 40 CFR 122.41.

Attachment K includes Standard Provisions. These Standard Provisions ensure that NPDES permits are consistent and compatible with USEPA's federal regulations. Some Standard Provisions sections specific to publicly owned sewage treatment works are not included in Attachment K.

Attachment L: Annual Report Form

The following legal authority applies to Attachment E: **Broad Legal Authority:** CWA sections 402(p)(3)(B)(ii-iii), CWC section 13377, and Federal NPDES regulations 40 CFR 122.26(d)(2)(i)(B, C, E, and F) and 40 CFR 122.26(d)(2)(iv).

Specific Legal Authority: Federal NPDES regulation 40 CFR 122.42(c) requires that "The operator of a large or medium municipal separate storm sewer system or a municipal separate storm sewer system that has been designated by the director under § 122.26(a)(1)(v) of this part must submit an annual report by the anniversary of the date of the issuance of the permit for such system. The report shall include: (1) The status of implementing the components of the storm water management program that are established as permit conditions; (2) Proposed changes to the storm water management program that are established as permit condition. Such proposed changes shall be consistent with § 122.26(d)(2)(iii) of this part; (3) Revisions, if necessary, to the assessment of controls and the fiscal analysis reported in the permit application under § 122.26(d)(2)(iv) and (d)(2)(v) of this part; (4) A summary of data, including monitoring data, that is accumulated throughout the reporting year; (5) Annual expenditures and budget for year following each annual report; (6) A summary describing the number and nature of enforcement actions, inspections, and public education programs; (7) Identification of water quality improvements or degradation."

California Water Code section 13267 provides that the water "board may require that any person who has discharged [...] shall furnish, under penalty of perjury, technical or monitoring reports which the regional board requires."