

## MONTEREY REGIONAL STORM WATER PERMIT PARTICIPANTS GROUP

July 23, 2012

**Chairperson**

*Sarah Hardgrave*

**Vice-Chairperson**

*Tricia Wotan*

**Member Entities**

*City of Pacific Grove*

*City of Monterey*

*City of Sand City*

*City of Seaside*

*City of Del Rey Oaks*

*City of Marina*

*County of Monterey*

*City of Carmel-by-the-Sea*

**Other Participating  
Entities**

*Pebble Beach Company*

*Monterey Peninsula  
Unified School District*

*Carmel Unified School  
District*

*Pacific Grove Unified  
School District*

**Program Manager**

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Jeanine Townsend, Clerk to the Board  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812-2000

**Subject: Comment Letter – Phase II Small MS4 General Permit**

Dear Members of the State Water Resources Control Board:

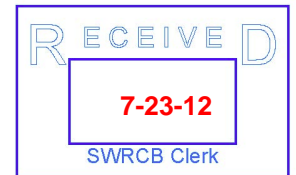
On behalf of the Monterey Regional Stormwater Permittee Participants Group (Monterey Regional), please accept this comment letter to the State Water Resources Control Board (State Water Board) on the Draft General National Pollutant Discharge Elimination System Permit for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems (Draft Permit). Monterey Regional is comprised of the cities of Carmel-by-the-Sea, Del Rey Oaks, Marina, Monterey, Pacific Grove, Sand City, Seaside, and the unincorporated, urbanized areas of Monterey County. Our program goals are to minimize stormwater pollution, protect water quality, preserve beneficial uses of local water bodies, and comply with state and federal regulations.

Monterey Regional is concerned about (1) the costs to implement the Draft Permit, (2) transferring the enforcement responsibilities of State programs to local municipalities, (3) inconsistencies in the Permit, and (4) monitoring requirements throughout the permit.

The State Water Board has an obligation to the residents of California to assess the costs and benefits of the Draft Permit. The State Water Board has attempted to provide an estimate of the costs associated with the Draft Permit. However, we believe the corresponding value of the benefit to be achieved from the new higher levels of service required in the Draft Permit has not been sufficiently evaluated. We believe it is necessary and important for the State Water Board to have a scientific basis to conclude the requirements of the permit will improve water quality to justify the costs to local agencies to implement this State mandate.

Monterey Regional requests that the final Permit adopted by the State Water Board be realistic and reflective of the capacity of local governments. Our experience in permit implementation indicates there is lack of understanding within the State Water Board regarding “on the ground” implementation activities. For example, the monitoring and modeling requirements outlined in the Program Effectiveness Assessment section or the Community-Based Social Marketing requirements that regional board staff can require are burdensome and excessive for small agencies.

Local agencies are highly constrained in our ability to impose fees or generate other revenue sources to fund the Draft Permit requirements. Due to Proposition 218, a local agency has no authority to impose a storm water fee without the consent of the voters or property owners. Considering the current economic climate of the State, it will be difficult for local agencies to create a storm water program funding source through voter consent. The County of Los Angeles is currently going through the Proposition 218 process at a cost of four million dollars. Small



MS4 agencies do not have the resources to carry out a Proposition 218 process to fund storm water management programs, especially given the competing needs of other critical services. The recently passed Proposition 26 further limits the ability of local agencies to charge user fees to fund the development of hydromodification and low impact development requirements required by the Draft Permit. The ability of a local agency to charge a fee at the local level for all of the required inspections in the Draft Permit is problematic, especially when Industrial and Construction Permittees already pay a fee to the State.

Therefore, we continue to be concerned that many of the added Draft Permit requirements are unfunded mandates to local governments. According to the California Government Code, Article XIII B, Section 6, which is intended to prevent the State from shifting responsibility to local governments without providing funding, whenever “any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service...”. The Commission on State Mandates has determined that an unfunded mandate exists when: a) the state imposes a new program or higher level of service that is mandated by state law not federal law; and b) when the local government lacks adequate fee authority to pay for the new program or higher level of service. The proposed Draft Permit mandates both new programs and higher levels of service that go beyond the EPA Phase II requirements for MS4 jurisdictions.

Section 13360(a) of the California Water Code states that “no waste discharge requirement or other order of the regional board or state board or decree of court issued under this division shall specify the design, location, type of construction, *or particular manner in which compliance may be had with that requirement, order, or decree, and the person so ordered shall be permitted to comply with the order in any lawful manner.*” [emphasis added] The Draft Permit is very prescriptive, outlining exactly how a local agency must comply, rather than allowing agencies to comply with the Draft Permit as determined to be appropriate for the local agency. According to the California Water Code, a State board may develop guidance on how to comply, but we believe the Draft Permit oversteps what would be guidance by imposing requirements in an enforceable Draft Permit in violation of this section of the California Water Code.

This revised Draft Permit contains several inconsistencies throughout the permit. We request that the permit be carefully reviewed to identify areas in the draft permit where the Task Description, Implementation and Reporting sections contain differing requirements. For example, the implementation requirements for Permittee staff training (E.7.b.2) require QSD and QSP certifications and the reporting requirements indicate “training topics” need to be addressed. The Task Description for Staff training on Pollution Prevention/Good Housekeeping (E.7.b.3) indicates training every two years and the Implementation section requires training annually. And finally, the Action Levels for the IDDE field sampling required (E.9.c) are not consistent with other water quality control plans (i.e. Basin Plans) throughout the State. The draft needs to be more thoroughly reviewed and revised to ensure the such inconsistencies are eliminated.

Additionally, this permit has monitoring requirements dispersed throughout sections E.9 (IDDE), E.13 (Receiving Water Monitoring) and E.14 (Program Effectiveness Assessment). All monitoring requirements should be consolidated into one section to eliminate confusion and provide clarification of the exact monitoring requirements necessary for compliance with the Permit.

Monterey Regional supports the detailed comments and recommendations being sent under separate cover by the California Stormwater Quality Association and the Statewide Stormwater Coalition. We also incorporate our previous comment letter by reference, as we continue to have the concerned expressed over the first draft of the permit.

Monterey Regional requests that the State Water Board consider these overarching issues that still remain in the current Draft Permit and revise the current Draft Permit based upon the feedback from municipal stakeholders. Thank you for your consideration.

Sincerely,



Sarah Hardgrave.  
Chair, Monterey Regional Storm Water Management Program

cc: Charles R. Hoppin, Chair, State Water Resources Control Board  
Frances Spivy-Weber, Vice Chair, State Water Resources Control Board  
Tam M. Doduc, Member, State Water Resources Control Board  
Thomas Howard, Executive Director, State Water Resources Control Board  
Jonathan Bishop, Chief Deputy Director, State Water Resources Control Board  
Vicky Whitney, Deputy Director, State Water Resources Control Board  
Bruce Fujimoto, Chief – Stormwater, State Water Resources Control Board  
Christine Sotelo, Stormwater Division, State Water Resources Control Board  
Eric Berntsen, Stormwater Division, State Water Resources Control Board  
Assemblymember Bill Monning, 27th District  
State Senator Sam Blakeslee, 15<sup>th</sup> Senate District

Attachments: Detailed Comments Regarding Phase II Small MS4 General Permit

**July 2012 Draft Phase 2 MS4 General Permit  
MRSWMP Group Comments**

<b>General/Findings Comments</b>				
<b>Comment #</b>	<b>Permit Element/ Issue/ Concern</b>	<b>Location in Phase 2 Draft</b>	<b>Page No.</b>	<b>Comment</b>
1	---	Findings 2 - 7	5-6	The findings describe pollutants that cause an impact to water quality; however, agricultural runoff has been determined to generate a high percentage of pollution that flows into MS4s and into the states' waterways. While it is not known if receiving water quality near shore in urban areas is being influenced by agriculture runoff, the small Phase 2s are being held to expensive, onerous requirements when it is perceived that agriculture is not required to meet the same level of water quality protection measures. The regulatory burden must be shared proportionately with other contributors of pollutants.
2	---	Finding 30	9	<p>This finding states that the RWQCB has the discretion to require a Permittee to continue to implement BMPs of a Permittee's SWMP regulated under the current general permit if the RWQCB determines they are equally or more effective than the BMPs required under the new permit. This seems clearly to be discriminatory against current permittees, in that it appears to allow the RWQCB to hold current permittees to more stringent requirements than new permittees that enroll for the first time under the new General Permit. Since the new draft permit defines in great detail what actions must be taken to achieve MEP, it should not be necessary for ANY permittees to take actions above and beyond those specified.</p> <p>Additionally, clarification should be given indicating that any Phase II MS4 that currently has an outfall monitoring requirement in their program that differs from the new draft permit monitoring requirements may revise their program to comply with the new draft Phase II permit requirements only as they have been determined by the State to meet MEP.</p>
3	RWQCB Discretion	Finding 30	9	The draft permit gives the RWQCB the discretion to decide whether the BMPs of an existing SWMP of a permittee that is regulated under the <u>current</u> General Permit are equally or more effective than the BMPs required under the new General Permit. If the RWQCB wishes to, it may then require that the permittee continue to implement its current BMPs rather than those contained in the new General Permit, even if some of the BMPs in the existing SWMP are more comprehensive than those required under the new General Permit. This is clearly discriminatory against current permittees, in that it would allow the RWQCB to hold current permittees (under the existing General Permit) to potentially more stringent requirements than new permittees that enroll for the first time under the new General Permit. As the

**July 2012 Draft Phase 2 MS4 General Permit  
MRSWMP Group Comments**

				<p>“Fact Sheet” for the draft General Permit states “This Order specifies the actions necessary to reduce the discharge of pollutants in storm water to the Maximum Extent Practicable (MEP)...” thereby defining MEP. It goes on to say “This set of specific actions is equivalent to the requirements that were included in a separate SWMP for each Permittee in the existing General Permit,” thereby confirming that the BMPs in the new General Permit fulfill the requirements of the current General Permit. Since the new draft General Permit defines in great detail what actions must be taken to achieve MEP, it should not be necessary for ANY permittee to take actions beyond those specified. The language in Finding No. 30 and in Section E.1.b of the Permit should be revised to read as follows: “If a Renewal Traditional MS4 Permittee believes that certain of the BMPs in its existing SWMP meet the MEP standard and are equally or more effective at reducing pollutant discharges than implementation of the requirements of this Section, the Permittee may request approval by its RWQCB to continue implementing its existing BMPs in lieu of implementation of the requirements of this Section.”</p>
4	SWMP requirements	32	10	<p>According to this finding, SWMPs are no longer required to be submitted to the regional water board for approval. How does an entity know if the revisions they make to their SWMPs are in compliance with this permit if it doesn’t get reviewed by regional board staff until their review of Annual Reports?</p>
5	Guidance Document	33	10	<p>It is unclear what information is required in the storm water program guidance document required for submittal during the application process.</p>
6	Program Cost consideration	51	13	<p>This item states that the SWRCB has considered the costs of complying with this Order, and the Fact Sheet elaborates on this. However, the State must also consider the current economic situation of Cities and Counties throughout the State as well as the State itself. Additionally, Proposition 218 and Proposition 26 have made it virtually impossible to create a funding mechanism for stormwater compliance programs. It is recommended that the State Water Board take the lead in changing legislation to allow Permittees to recover costs associated with this Order.</p> <p>It is not clear from the cost analysis if the authors are looking at the difference between what MS4s are currently expending to comply with current permits and what they would expend if <u>no</u> stormwater permit existed. In order for an MS4 to comply with the permit, they must also have an adequately maintained and capitalized storm water utility. Are those costs being considered? In order to give the public a clear and accurate representation of the facts, all of these costs need to be included as one cannot exist without the other.</p>

**July 2012 Draft Phase 2 MS4 General Permit  
MRSWMP Group Comments**

<b>Application Requirements (A)</b>				
<b>Comment #</b>	<b>Permit Element/ Issue/ Concern</b>	<b>Location in Phase 2 Draft</b>	<b>Page No.</b>	<b>Comment</b>
1	Guidance Documents	A.1.b.4	14	Further clarification is needed as to what information is required in the Storm Water Program Guidance Document. What is the purpose of this document if entities have to revise their SWMPs to be in compliance with this permit anyway?
2	Application Requirements	A.3	13	How would a regulated small MS4 certify that its discharges do not contribute or potentially contribute to water quality impairment? Also, none of the waiver options listed would allow a waiver to be given to an MS4 with over 20,000 in population, even if they do not contribute to water quality impairment. How is it justified that such an MS4 would be penalized for being proactive in this effort?
<b>Discharge Prohibitions (B), Effluent Limitations (C) and Receiving Water Limitations (D)</b>				
<b>Comment #</b>	<b>Permit Element/ Issue/ Concern</b>	<b>Location in Phase 2 Draft</b>	<b>Page No.</b>	<b>Comment</b>
1	Discharge Prohibitions	B.3	15	What is meant by the word "Provision? Should it perhaps be replaced with "General Permit"?  What is meant when it says: "... provided any pollutant discharges are identified and appropriate control measures to minimize the impacts of such discharges, are developed and implemented under the Permittee's storm water program"? For example, if car washing is allowed, what are the Permittees' to do in term of implementing control measures?
2	"	B.4	16	It is not stated that this section applies to just the jurisdiction's facilities. For example, if this is truly meant to apply to all "...parties responsible for incidental runoff" how can the MS4 correct leaks in a private property owner's sprinkler system? This permit requirement should only apply to Permittee activities.
3	Effluent Limitations	C.2	17	This provision should not include accidental spills.

**July 2012 Draft Phase 2 MS4 General Permit  
MRSWMP Group Comments**

4	Receiving Water Limitations	D	17	<p>The Receiving Water Limitations language set forth in this draft permit requires dischargers maintain strict compliance at end of pipe with water quality standards originally developed for receiving waters beyond the mixing zone; and, compliance with the “iterative process” procedures will not protect an MS4 Permittee from liability for causing or contributing to an exceedance of a water quality standard. Scientific evidence has not shown that discharges at end of pipe that exceed the water quality standards actually result in exceedances in the receiving waters. This new receiving water limitations language is setting an incorrect precedent by application of receiving water standards to end of pipe discharges, which was not the intent of the standards. Natural and non-human sources of contaminants, for example bacteria, bacteria re-growth, and bacteria in sediment, are significant and uncontrollable sources.</p> <p>Phase II MS4s are now vulnerable to enforcement actions by the state and third party citizen suits alleging violations of the permit terms in question. The current language being used means as a practical matter that stormwater discharges that are considered to exceed water quality standards developed for receiving waters past the point of initial dilution must meet water quality standards at the point of discharge to avoid being in violation of permit terms. To avoid continuing third-party legal action, the Receiving Water Limitations language must be revised. Monterey Regional supports CASQA’s comments on this issue.</p>
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**Provisions E.1 – E.5**

Comment #	Permit Element/ Issue/ Concern	Location in Phase 2 Draft	Page No.	Comment
1	Renewal MS4s	E.1.a	18	Renewal MS4s are required to continue implementing their existing SWMP activities for those Sections of the new General Permit for which the specified compliance date is past the effective date of the new General Permit. The intent of this language is not clear and should be clarified.
2	RWQCB Discretion	E.1.b	18	Same comment as for Finding 30 on page 9.

**July 2012 Draft Phase 2 MS4 General Permit  
MRSWMP Group Comments**

<b>Program Management (E.6)</b>				
<b>Comment #</b>	<b>Permit Element/ Issue/ Concern</b>	<b>Location in Phase 2 Draft</b>	<b>Page No.</b>	<b>Comment</b>
1	Legal Authority	E.6.a(ii)(d)	20	Requiring parties responsible for incidental runoff to control it is a code enforcement nightmare and is not a major threat to water quality. It is recommended that MS4s be responsible for its own irrigation systems and education and outreach be provided to the public regarding minimizing sprinkler overspray. Local municipalities do not have the resources to monitor residential areas for incidental runoff violations.
2	“	E.6.a(ii)(f)	20	This section implies retrofitting of Industrial and Commercial facilities with stormwater BMPs will be required. This requirement should be removed until the State performs an evaluation as to the cost impacts to the business community within the Phase II jurisdictions.
3	“	E.6.a(ii)(h)	20	According to this section, MS4s must modify their ordinances to have the authority to: <ul style="list-style-type: none"> <li>▪ Enter private property for inspections</li> <li>▪ Control the contribution of pollutants and flows from one portion of the MS4 to another through interagency agreements</li> <li>▪ Require documentation on BMP effectiveness of industrial and commercial facilities</li> </ul> <p>These requirements do not seem feasible. They would require both Construction and Industrial Permit oversight by Phase 2 MS4s (which is a State responsibility). Private property owners may not allow public entities onto their land.</p>
4	“	E.6.a(ii)(i)	20	This states that “...dischargers promptly cease and desist discharging and/or/cleanup...” Cease discharging and cleanup what? There are some adjectives missing from this sentence that would make this statement clearer. Please clarify when they need to cease and desist and what to cleanup.



**July 2012 Draft Phase 2 MS4 General Permit  
MRSWMP Group Comments**

5	Enforcement Measures and Tracking	E.6.c.ii (d)(1)	22	<p>Once again, this section requires the MS4 to notify the RWQCB within 30 days of knowledge of an industrial facility not having the appropriate permit. Implicit in this is that the MS4 staff has to have the knowledge as to which facilities need what type of permit. This section also requires the MS4, not the RWQCB, to perform follow-up inspections, pursue enforcement actions and write demand letters if the industrial facility fails to comply. It also requires MS4s to “develop incentives or increase inspection frequency” to prevent chronic violations. This is an onerous requirement and a transfer of State permit oversight responsibilities to local municipalities who do not have the financial or staff resources to complete this task.</p> <p>Language should be revised to state that the MS4 will notify the RWQCB <b><i>when made aware</i></b> an industrial facility does not have the appropriate permit.</p>
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**Education and Outreach (E.7)**

Comment #	Permit Element/ Issue/Concern	Location in Phase 2 Draft	Page No.	Comment
1	Community Based Social Marketing	E.7	24	The RWQCB will determine, on a case-by-case basis, whether a permittee will have to implement “Community-Based Social Marketing” requirements. It is not clear what the basis for making such a determination by the RWQCB will be. The determination process should be described so permittees will be able to anticipate whether or not these requirements will be applied to them.
2	“	E.7.a	24	There are two subsection (ii) and (iii). In the first (ii), if there is an entity that refuses to participate with a regional outreach program, is the intention that the State will hold the individual entities accountable for performing their own individual PE/PO tasks even if they are redundant with the regional efforts? If so, it would be helpful to let all of the MS4’s understand that this will happen.

**July 2012 Draft Phase 2 MS4 General Permit  
MRSWMP Group Comments**

3	PE_PO Task Description	E.7.a(ii) and the second (i) Format off in this section, there are two (i)s	24	<p>The order requires the Permittee implement a “storm water Public Outreach and Education program” that SHALL measurably increase the knowledge and awareness of the target audiences. A Permittee also has to determine how to facilitate behavior changes.</p> <p>Firstly, this assumes the target audiences are not already educated which is not a safe assumption as Monterey Regional has been educating different sectors for over five years. Measuring the efficacy of education and outreach programs has been quite difficult and measuring an increase in improved behavior does not seem feasible. Additionally, how can the Permittee be responsible for changing the behavior of the public/commercial/ industrial/construction? How can the Permittee be in violation if they don’t listen?</p> <p>“Measured” changes in behavior is not realistically possible in that the public cannot be watched 24 hrs/7 days/wk to determine if the public has changed their behavior. Phase 2 MS4s do not have the staff for this type of enforcement. Behavioral changes take years (often 10 – 20) to occur. For example, recycling has taken over 20 years to get to where it is now.</p> <p>Should be rewritten to read: “Permittee will measure the effectiveness of the Public Outreach and Education program with the goal being increased knowledge and ultimately changed behavior.”</p>
4	“	E.7.a(ii)(h)	25	<p>It doesn’t seem reasonable to require both 911 and a non-emergency number. The opposite might not be true, having a non-emergency number should probably also require an emergency number for hours outside of normal working hours.</p>

**July 2012 Draft Phase 2 MS4 General Permit  
MRSWMP Group Comments**

5	PE_PO Implementation  Storm water education for school-age children	E.7.a(ii)(j)	25	<p>The Permittee may use California’s Education Initiative Curriculum or equivalent. By equivalent do you mean the California Science Standards? California’s Education Initiative Curriculum has not been adopted by districts or teachers statewide and may not be implementable. CA Science Standards are currently being used; schools are reluctant to implement a new or additional program.</p> <p>Sentence should read: <b>“Make available</b> storm water education for school-age children.” Does this include private schools? What ages are considered “school-age” children? Additionally, none of the 85 modules of the CEIC program contain any information related to stormwater pollution prevention or urban runoff. The State may want to re-evaluate this option for stormwater education in schools.</p> <p>Local governments may not have any influence or control over their Boards of Education. This permit should not require local governments to take on responsibilities that are outside of their authority or purview. Implementation of stormwater education in schools should be the responsibility of the State Board of Education and the schools themselves.</p>
6	PE_PO Implementation	E.7.a(ii)(k)	26	<p>Charity car washes, mobile cleaning and pressure washing operations and irrigation activities, are not always known to the Permittee. How would an MS4 measure this reduction? Sentence should read: <b>“Develop and convey outreach messages specific to</b> reducing discharges from charity car washes...”</p> <p>B.3 says that only private/personal car washing is allowed. This provision seems to contradict that by allowing organized car wash events. Please clarify.</p>
7	Reporting	E.7.a(iii)	26	<p>This section states to “annually report number of trainings....”. Who gets training and what training? What studies and results are being reported on? Suggest the word “study” be replaced with the word “survey”. This section indicates education of “elementary” children; is this the same as “school-age”?</p>
8	IDDE Training	E.7.b.1(ii)(d)	26	<p>Having an annual assessment of every employee’s knowledge of IDD is excessive. For a city with a staff of under 300, this will cost at least \$10,000 per year (assuming 200 people are initially trained, one hour each year at \$50 per hour). All police, fire, parking enforcement, public works and parks staff are important to an effective IDDE program. But with costs this high, there will be a great incentive to cut back on the number trained.</p>

**July 2012 Draft Phase 2 MS4 General Permit  
MRSWMP Group Comments**

9	Construction Outreach and Education	E.7.b.2(a)(ii)	27	<p>The Permit requires Permittee staff to have training including Qualified SWPPP Developer (QSD) or Qualified SWPPP Practitioner (QSP) for staff members involved in reviewing development Plans and/or inspecting sites. This was not previously required unless the development projects were &gt; one acre in size. The cost and effort associated with having Permittee staff members obtain and maintain these certifications is not warranted, if those staff members are only reviewing and/or inspecting small projects such as single family residential construction or remodeling,, or small additions or remodels of commercial establishments. These certification requirements should only be applicable to staff members involved in reviewing and/or inspecting projects that are &gt; one acre in size. This section is unclear and needs further clarification of what exactly is required for the three categories.</p> <p>Add to the end of the last sentence the following: <i>and only the staff responsible for the E.7 elements, not all review staff.</i></p>
10	Reporting	E.7.b.2(iii)	27, 28	<p>This section is unclear. Are Permittee's required to submit a list of staff who are QSD/QSP trained and the dates of training? Item (d) does not fit into this section. What surveys does this item refer to?</p>
11	Construction Site Operator Education	E.7.b.2.b (ii) and (iii)	28	<p>According to this section a Permittee can "provide information" on training opportunities. However, the reporting section seems to indicate the Permittee has to conduct the training. It should not be the responsibility of Permittees to educate the construction contractor community. Providing contractors with information regarding training that is being held in the area and providing information on a website should suffice. Getting training should be the responsibility of the contractor, not the Permittee.</p>
12	Staff Training on Good Housekeeping	E.7.b.3	28	<p>This section is unclear as to the training frequencies required. The Task Description indicates training every two years (biennial) with evaluations in the alternate years, and the Implementation section indicates annual training with annual assessments of staff. Recommend training frequencies be as indicated in the Task Description as annual training is too frequent.</p>
13	Reporting	E.7.b.3	29	<p>This section states that the annual report is to include "oversight procedures." Please clarify the intent of this language.</p>

**July 2012 Draft Phase 2 MS4 General Permit  
MRSWMP Group Comments**

<b>Public involvement and Participation (E.8)</b>				
1	Task Description	E.8(i)	29	How does IRWMP relate to the topic of Public Involvement and Participation? This item seems to be misplaced.
<b>IDDE (E.9)</b>				
<b>Comment #</b>	<b>Permit Element/ Issue/ Concern</b>	<b>Location in Phase 2 Draft</b>	<b>Page No.</b>	<b>Comment</b>
1	Outfall Mapping	E.9.a	30	Development of an outfall map was required with first permit term. Allow a database OR photographs of outfalls to reduce redundant work. Database is searchable and parameters used are measurable. Databases provide a better 'base line' than photos. The State Board staff indicated that an annual outfall walk was required. If an annual or permit term walk of all outfalls is intended, this is not stated in permit. If the State's intent is for the Permittee to walk down all of their outfalls in year 1 and sample those that are flowing >72 hours after the last storm event then that needs to be clearly stated.
2	"	E.9.a(ii)(a)	30	Does the outfall map also include culverts?
3	"	E.9.a(ii)(b)	30	Staff should consult with a licensed Land Surveyor on the use of terms. Requiring the use of "GPS" makes no sense. The state should only be interested in the coordinate system being used, however those coordinates are determined. Suggest that this be revised to state that CCS 83 coordinates must be given for all outfall pipes.
4	"	E.9.a.(ii)(d)	31	Recommend a minimum outfall size limit be utilized for field sampling stations. Recommend using only outfalls 18" or greater. Further clarification needed to define what a field sampling station is.....is it a permanent structure? Or simply a grab sampling location?
5	Illicit Discharge Source/Facility inventory	E.9.b(ii)(a)	31	The requirement for the inclusion of the physical location of a storm drain receiving discharge from an industrial or commercial facility is very onerous as there may be multiple locations where discharge from these facilities occurs. This information should be required of industrial permittees in their industrial permits. Why are decimal latitude-longitude now being used (see comment regarding E.9.a(ii)(b) above)?

**July 2012 Draft Phase 2 MS4 General Permit  
MRSWMP Group Comments**

6	“	E.9.b(ii)(b)	31	<p>More detail is needed regarding the types of facilities required to be included in the inventory. Is the intent for every aluminum can and recycling shed to be included under “Metal and other recycled materials collection facilities” or “Waste transfer facilities”?</p> <p>Recommend adding restaurants to the inventory list as they are often a priority polluter.</p>
7	“	E.9.b(ii)(c)	32	<p>Once again, this section requires the MS4 determine if an industrial or commercial facility requires a NPDES storm water permit. Implicit in this is that the MS4 staff has to have the knowledge as to which facilities need what type of permit. This section also requires the MS4, not the RWQCB, to inform the facilities they require a permit as well as the regional board. This is an onerous requirement and a transfer of State permit oversight responsibilities to local municipalities who do not have the financial or staff resources to complete this task.</p>
8	“	E.9.b(ii)(d)	32	<p>This item requires a Permittee update the facility inventory annually through “collection of new information obtained during inspections”. During stakeholder meetings with the State, the State agreed to remove inspections of industrial and commercial facilities and yet this item implies those are still required. Please provide clarification on this.</p>
9	Field Sampling	E.9.c.(i)	32	<p>The Task Description indicates that priority area outfalls shall be sampled annually. When? During dry weather only? All outfalls or just outfalls 18” or greater? Please clarify.</p>
10	“	E.9.c Table 1	32	<p>The footnotes to this table state that a solidly filled circle indicates an 80% confidence that the corresponding source is the cause for this type of pollution. In the Monterey region, we do not agree. We find high ammonia and it is seldom associated with sewage; we find detergents and they are most likely associated with the washing of automobiles which is permissible.</p>
11	“	E.9.c(ii)(a)	32	<p>This sections states that the Permittee is required to conduct monitoring for source tracking. Are these the parameters that are required to be sampled for during the once/permit term outfall walk down? The Permittee should have flexibility around what parameters to sample for as it has knowledge of local pollutants of concern that may vary from those indicated in Table 1.</p>

**July 2012 Draft Phase 2 MS4 General Permit  
MRSWMP Group Comments**

12	“	E.9.c(ii)(b)& (c)	33	What happens if the exceedances of action levels on outfall monitoring are due to discharges coming into a Permittee’s jurisdiction (i.e. Ag)? The Permittee has no jurisdictional authority to resolve the exceedances.  Where did the Table 2 Action Levels come from?
13	IDDE Souce Investigation	E.9.d(i)	33	When are the written procedures required to be in place?

**Construction Site Runoff Control (E.10)**

<b>Comment #</b>	<b>Permit Element/ Issue/ Concern</b>	<b>Location in Phase 2 Draft</b>	<b>Page No.</b>	<b>Comment</b>
1	Construction Site Stormwater Runoff Control	E.10 and E.6.a(1)	35	The requirements to be implemented in the Construction Site Stormwater Control Ordinance are confusing and not coherently presented. Requirements in this section are not included in the discussion of the local ordinances in section E.6.a(1).
2	Construction Site Inventory	E.10.a(i) and E.10.a(ii)	35	<i>Continuously update an inventory of all construction sites subject to the local construction site stormwater ordinance. Update as projects are permitted and completed. What does “continuously” mean? Is monthly or quarterly sufficient? Recommend the inventory only include “permitted” construction projects.</i>
3	Site Plan Review and Approval Process	E.10.b(ii)(b)	36	<i>Require that the Erosion Control plan include the rationale used for selecting or rejecting BMPs, including soil loss calculations, if necessary. Is this intended to be a note on the plans, or is a separate report required? Does “if necessary” apply to this entire requirement or only to the soil loss calculations? There is no project size threshold indicated that would trigger the requirement for a project to develop an erosion and sediment control plan. What is the minimum size project this would be applicable to? The applicability of this requirement should be left to the discretion of the local MS4.</i>
4	Plans Examiner Certification Requirement	E.7.b.2.a(ii)(a)	27	The requirement that a plans examiner be certified as a QSD should be reiterated or at least referenced in this section.

**July 2012 Draft Phase 2 MS4 General Permit  
MRSWMP Group Comments**

5	Construction Site Inspector Certification Requirement	E.7.b.2.a(ii)(b)	27	The requirement that a construction inspector be certified as a QSP should be reiterated or at least referenced in this section.
6	Erosion and Sediment Control Ordinance	E.10.c(ii)	36	Is the legal authority referenced required to be included in the local Grading and/or Erosion and Sediment Control Ordinance or can this be appended to the Construction Site Stormwater Ordinance?
<b>Pollution Prevention/Good Housekeeping (E.11)</b>				
<b>Comment #</b>	<b>Permit Element/ Issue/ Concern</b>	<b>Location in Phase 2 Draft</b>	<b>Page No.</b>	<b>Comment</b>
1	Inventory of Public Buildings	E.11.a	38	In the list of public facilities, schools and transportation hubs are mentioned. Since MST and MPUSD are the agencies who maintain these sites, are they required to submit the requirements of this section or does it rely on the City to coordinate this effort?
2	Facilities Assessment	E.11.c	39	To conduct an assessment of each public facility, update each manager with the requirements of the permit and the CWP guide with the specific requirements for each site is a huge undertaking that Cities do not have the staff to coordinate let alone manage. The term “comprehensive” is loosely used throughout this section for unspecified requirements. The correct title of the CWP Manual is the “Unified Subwatershed and Site Reconnaissance” manual. The manual is not geared towards inspections of municipal facilities and seems more appropriate for use as a watershed assessment tool.
3	“	E.11.c(ii)(a)	39	At the end of this paragraph, it states what are the typically “hotspots”. If these are what will handle most situations, then why go through the assessment using the CWP manual?
4	SWPPP for each Pubic Facility	E.11.d	40	A SWPPP for every public facilities building and site will require extensive research and resources that are not available for such a vast undertaking. The definition of the SWPPP is not like the state required SWPPP; will preparation of this require a QSD to complete?



**July 2012 Draft Phase 2 MS4 General Permit  
MRSWMP Group Comments**

5	Inspections of Facilities	E.11.e	41	<p>Are there certifications for the “visual inspectors” of hotspots and discharges? Can the management of these facilities provide these inspections? Will there be classes to do so? Will the “developed standard operating procedures” be the SWPPP BMP’s, the assessment checklist, or a separate document to be provided? The ambiguity of the inspection requirements leave room for various interpretations of locations to inspect and the level of the inspection. Management of all facility inspections will require a superintendent-like position for the amount of inspection reports required.</p> <p>Quarterly inspections of all “hotspots” (as defined in E.11.c(ii)(a)) is excessive. We suggest that a more risk-based criteria be used if this intense of an inspection schedule is going to be considered. Perhaps that risk analysis should include the types of hazardous materials being stored, proximity to water bodies, quantities of hazardous materials etc.</p>
6	Storm Drain Assessment & Prioritization	E.11.f	42	<p>An assessment of each catch basin’s important/high-maintenance-priority is a major undertaking requiring a massive amount of resources from the City over a much longer storm period than the 2 years allowed. Will prioritizing per citizen request require public outreach for a monitoring program, or is this by regular complaint-form requests? Is this a living-list, one that can change in prioritization per improvements or site changes?</p> <p>How are the terms “high”, “medium” and “low” volumes of trash defined?</p>
7	Storm Drain System Assessment & Prioritization	E.11.f (i) & (iii)	42	<p>What is “flood conveyance maintenance”? Is the City required to maintain the facilities of other entities “flood conveyance maintenance”? If prioritization of maintenance for these entities are required by year 3 in section (i), what sort of “coordination” is required by year 1 in section (iii)?</p>
8	Storm Drain System Maintenance	E.11.g(ii)	43	<p>Why inspect catch basin and pipes annually, especially if they’ve already been inspected and no illicit/illegal connections were found and there isn’t any construction occurring in the area? Phase II communities by definition are small in size and generally have a very good idea of what is going on in their communities. How is “high foot traffic” defined in (c)?</p>
9	O&M program	E.11.h	44	<p>Will there be samples of assessment programs or are City’s required to develop their own? In section (iii)b,</p>
10	O&M activity evaluation	E.11.h (iii)b	44	<p>Does each daily O&amp;M activity require its own BMP evaluation log?</p>

**July 2012 Draft Phase 2 MS4 General Permit  
MRSWMP Group Comments**

11	O&M "hot spot" maintenance list	E.11.h (iii)d	44	This list seems repetitive from E.11.c.
12	Habitat Enhancement Features	E.11.i	45	The title of this section limits the subject to new flood management facilities. Yet in (i), it seems to be expanded to include "rehabilitated" facilities. If the intention is to include the rehabilitation of existing systems, we would strongly object. This program should not hinder the ability of an agency to carry out its basic function of protecting public health, safety and private properties by burdening those agencies with conditions such as this.
13	Landscape Design & Maintenance Program	E.11.j	45	Will the landscape design & maintenance program be detailed for the amount of reduction required for water, pesticides, herbicides and fertilizers, or is this by an overall evaluation?
14	Maintenance Program implementation	E.11.j (ii) d, h, i,	46	What is "grasscycling"? Prohibiting pesticide/herbicide/fertilizer application within 5 feet of pavement would include planter medians. Would the requirements of irrigation sensors based on the information set in this section require replacing the existing controllers?
15	Program Reporting	E.11.j (iii)	46	How do we quantify/demonstrate a reduction in application measures?

**Water Quality Monitoring (E.13)**

<b>Comment #</b>	<b>Permit Element/ Issue/ Concern</b>	<b>Location in Phase 2 Draft</b>	<b>Page No.</b>	<b>Comment</b>
1	Water Quality Monitoring	E.13	65	It appears that if a Permittee discharges to an ASBS, and is therefore subject to complying with the ASBS Special Protections requirements, that doing so will comply with all of the requirements set forth in this Section. If this is correct then paragraph E.13(i) should clearly state this. If this is not correct, please explain what the additional requirements in this Section are that apply to ASBS dischargers.
2	"	E.13(i)	65	This should be expanded to all SWQPA that have water quality monitoring associated with the discharges.
3	"	E.13.a	66	Add the word "Inland" before the words "Regional Monitoring".

**July 2012 Draft Phase 2 MS4 General Permit  
MRSWMP Group Comments**

4	“	E.13.b	67	The word “Inland” should be added before the words “Receiving Water Monitoring” to make it clear that these requirements do not apply to ocean receiving waters.
5	“	E.13.b.1	67	How does one identify an urban/rural interface? What if the MS4 does not have an urban/rural interface? (ii) a) What if there is no development planned in the “near future”? What is meant by “near future”? (ii) c) Are we being asked to gather flow data? What is meant by correlations to flow data? Are we being required to generate mass loading data? What is an “index period”? (ii) d) We question the legality of requiring an MS4 to develop a fund as directed. Even so, what is “all new development” (what would this include or not include)?
6	“	E.13.b.1(ii)	67	With very few new projects being built, the amount of monitoring required should be cut back to just what is needed to develop a baseline if this is the intention of this provision.

**Program Effectiveness Assessment and Improvement (E.14)**

<b>Comment #</b>	<b>Permit Element/ Issue/ Concern</b>	<b>Location in Phase 2 Draft</b>	<b>Page No.</b>	<b>Comment</b>
1	Program Effectiveness Assessment	E.14.a	71	It appears that subsection E.14.a (ii).f , which pertains to Water Quality Monitoring Data, should not apply to ASBS dischargers who are subject to the ASBS Special Protections. If this is correct then paragraph E.14.a (ii).f should clearly state this. If this is not correct, please explain what the additional requirements in this Section are that apply to ASBS dischargers.
2	Effectiveness Monitoring			E-14 needs to be consistent with E-13
3	MEP	E-14.a.(i)	71	Monterey Regional is concerned with how the definition of "MEP" is getting morphed and no longer adequately considers implementation costs
4	“Privately-owned” BMPs	E-14.ii.a (ii)(c)	72	How are these defined?

**July 2012 Draft Phase 2 MS4 General Permit  
MRSWMP Group Comments**

5	PEA Implementation	E.14.a(ii)(e)(2)	72	We have already provided extensive staff and public training during the first six years of our current permit. We would expect little improvement in our staff's knowledge since they already should be very aware and perhaps just a slight increase in the general public's knowledge.
6	Monitoring	E-14.b	73	Requirements for quantifying pollutant load reduction should be based on monitoring requirement. This section appears to be in addition to the E-13 requirements. If the requirements of E-13 will not result in the required data and information required in E-14, the E-14 requirements should be eliminated.
7	Monitoring	E-14.b	73	Not all receiving water bodies will be monitored under E-13, but this adds the requirement.
8	General	E-14		Many BMPs are qualitative, not quantitative. The PEA requirements may not yield the type of information desired, but will result in considerable work and effort for each permittee.
9	Monitoring	E-14.b	73	Verify consistency with Section E-13 whether monitoring requirements will result in pollutant load data required by this section.
10	Implementation	E-14.b (ii)	74	Modeling assumptions or simplified spreadsheet methods may not result in accurate data for implementation. Expertise on these types of implementation activities and calculations not likely to be present among staff in Phase II jurisdictions and will result in significant program costs.

**TMDL Requirements (E.15) – MoCo Only**

<b>Comment #</b>	<b>Permit Element/ Issue/ Concern</b>	<b>Location in Phase 2 Draft</b>	<b>Page No.</b>	<b>Comment</b>
1	Pajaro River – fecal coliform TMDL	Attachment G, E15.1	14, 15	The 12 provisions for implementing the TMDL are more detailed than the 7 provisions that were approved with the TMDL (on page 5). What is the legal precedence for imposing different provisions without the public approval process?
2	Lower Salinas River – fecal coliform TMDL	Attachment G, E15.2	25, 26	The 13 provisions for implementing the TMDL are more detailed than the 7 provisions that were approved with the TMDL (on page 173). What is the legal precedence for imposing different provisions without the public approval process?

**July 2012 Draft Phase 2 MS4 General Permit  
MRSWMP Group Comments**

<b>Annual Reporting (E.16)</b>				
<b>Comment #</b>	<b>Permit Element/ Issue/ Concern</b>	<b>Location in Phase 2 Draft</b>	<b>Page No.</b>	<b>Comment</b>
1	Permit Year	E.16.b	77	It states that the new Permit years will be aligned with the fiscal year, July 1 to June 30. When are annual reports required to be submitted to the regional board staff? Who will determine this?
2	Reporting requirements	E.16.c	77	It is unclear throughout the permit what is actually required to be submitted with the Annual Reports and what information simply needs to be kept on file for CCWB review. Additionally, this item is not supportive of regional programs as the reporting requirements for individual programs are much less than those of a regional program (i.e. annual certification statements vs. "full reporting").
<b>Fact Sheet</b>				
<b>Comment #</b>	<b>Permit Element/ Issue/ Concern</b>	<b>Location in Phase 2 Draft</b>	<b>Page No.</b>	<b>Comment</b>
1	Fact Sheet (C)	IV. Unfunded Mandates	---	<p>There are several references in this Section of the Fact Sheet that deny that any of the requirements imposed by the MS4 Permit will be unfunded mandates. Specifically:</p> <ol style="list-style-type: none"> <li>1. The statement is made that the requirements of the Order do not constitute a new program, and that new and advanced measures do not constitute a new program or higher level of service. These are erroneous statements. Clearly in order to comply with the new requirements the Permittees will have to expend considerably more time and effort than is currently required to comply with the existing General MS4 permit. This is clearly a "mandate" and it is not being funded by the State.</li> <li>2. The statement is made that the Order implements federally mandated requirements and is therefore exempt from the unfunded mandates policy. Many of the specific requirements contained in the new Permit are not required by the Federal Clean Water Act, and thus are not exempt from the unfunded mandates policy.</li> </ol>
2	Fact Sheet (C)	VII. Application Requirements	---	This section states that an NOI must be filed within six months (100 days) from the effective date of the Permit. Six months does not equal 100 days.