

1 GREGORY P. PRIAMOS, County Counsel
2 KARIN WATTS-BAZAN, Principal Deputy County Counsel
3 AARON C. GETTIS, Deputy County Counsel
4 COUNTY OF RIVERSIDE
5 3535 10th Street, Suite 300
6 Riverside, California 92501
7 Tel: (951) 955-6300
8 Fax: (951) 955-6363
9 E-mail: agettis@co.riverside.ca.us

10 Attorneys for Petitioners RIVERSIDE
11 COUNTY FLOOD CONTROL AND WATER
12 CONSERVATION DISTRICT and
13 COUNTY OF RIVERSIDE

14 HOWARD GEST
15 DAVID W. BURHENN
16 BURHENN & GEST LLP
17 624 S. Grand Ave., Suite 2200
18 Los Angeles, CA 90017
19 Tel: (213) 629-8788
20 Fax: (213) 624-1376
21 E-mail: dburhenn@burhennigest.com

22 Attorneys for Petitioners RIVERSIDE
23 COUNTY FLOOD CONTROL AND
24 WATER CONSERVATION DISTRICT
25 and CITIES OF MURRIETA, TEMECULA
26 and WILDOMAR

27 **BEFORE THE STATE WATER RESOURCES CONTROL BOARD**

28 In the Matter of the Petition of:)	SWRCB/OCC File No. A-2456
)	
29 RIVERSIDE COUNTY FLOOD CONTROL)	REQUEST FOR OFFICIAL
30 AND WATER CONSERVATION DISTRICT,)	NOTICE (SECOND)
31 et al., FOR REVIEW OF ACTION BY THE)	
32 CALIFORNIA REGIONAL WATER QUALITY)	
33 CONTROL BOARD, SAN DIEGO REGION, IN)	
34 ADOPTING ORDER NO. R9-2015-0100, AND)	
35 ORDER NO. R9-2013-0001, AS AMENDED)	
)	

36 Petitioners Riverside County Flood Control and Water Conservation District, County of
37 Riverside and the Cities of Murrieta, Temecula and Wildomar ("Riverside Petitioners") hereby submit
38 this Request for Official Notice (Second) in support of the Petitioners' Response to Comments on

1 Petitions for Review (“Response”) regarding Order No. R9-2015-0100, adopted by the California
2 Regional Water Quality Control Board, San Diego Region (“San Diego Water Board”) on November
3 18, 2015.

4 Petitioners request the State Water Resources Control Board (“State Board”) to take official
5 notice of the following documents, pursuant to 23 Cal. Code Reg. § 648.2 and Evidence Code §
6 452(c). Evidence Code § 452(c) allows the State Board to take notice of “[o]fficial acts of the
7 legislative, executive, and judicial departments of the United States and of any state of the United
8 States.” “Official acts” under Evidence Code § 452(c) include “records, reports and orders of
9 administrative agencies.” *Rodin v. Spiegel* (2001) 87 Cal.App.4th 513, 518.

10 The Riverside Petitioners respectfully request that the State Board take notice of the following
11 documents:

12 1. Relevant portions of Responses to Comments by the San Diego Water Board dated
13 October 13, 2010 concerning proposed Order No. R9-2010-0016, the municipal separate storm sewer
14 system (MS4) permit for the Riverside Copermittees which immediately preceded the Order. These
15 documents demonstrate that the San Diego Water Board interpreted that permit as not requiring strict
16 compliance with water quality standards or numeric effluent limits.

17 A true and correct copy of these documents, which were obtained from the San Diego Water
18 Board’s website, is attached hereto as Exhibit A.

19 2. Relevant portions of a tentative MS4 permit proposed to be adopted by the California
20 Regional Water Quality Control Board, Central Valley Region (“Central Valley Water Board”) as
21 Order No. R5-2016-XXXX. This document demonstrates that the Central Valley Water Board
22 proposes to adopt an alternative compliance path providing permittees with protection from violation
23 of various discharge prohibitions and receiving water limitations from the time that permittees are
24 covered by the permit until the approval of their Storm Water Management Plan, which contains the
25 alternative compliance requirements. By contrast, as set forth in the Riverside Copermittees’ Petition,
26 the San Diego Water Board has refused to provide permittees with interim compliance status while
27 they are preparing their watershed planning documents, thus exposing permittees to potential liability
28

1 for discharges that violate prohibitory provisions in the Permit until their WQIP is approved, some
2 years into the Permit's term.

3 A true and correct copy of this document, which was obtained from the Central Valley Water
4 Board's website, is attached as Exhibit B.

5
6 DATED: May 16, 2016

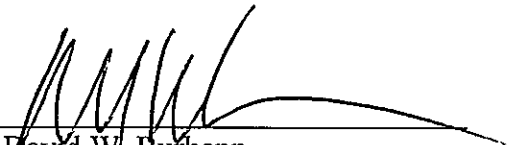
Respectfully submitted,

7 GREGORY P. PRIAMOS, County Counsel
8 KARIN-WATTS BAZAN, Principal Deputy
9 County Counsel
AARON C. GETTIS, Deputy County Counsel
COUNTY OF RIVERSIDE

10 Attorneys for Petitioners RIVERSIDE COUNTY
11 FLOOD CONTROL AND WATER
12 CONSERVATION DISTRICT and COUNTY
OF RIVERSIDE

13
14 By: 
Aaron C. Gettis

15 HOWARD GEST
16 DAVID W. BURHENN
17 BURHENN & GEST LLP

18
19 By: 
David W. Burhenn

20
21 Attorneys for Petitioners RIVERSIDE COUNTY
22 FLOOD CONTROL AND WATER
23 CONSERVATION DISTRICT and CITIES OF
24 MURRIETTA, TEMECULA AND WILDOMAR
25
26
27
28

EXHIBIT A

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD,
SAN DIEGO REGION**

Draft Response to Comments

On Tentative Order No. R9-2010-0016
October 13, 2010

A. Background

This document provides responses to the written comments received on the draft permit for reissuance of NPDES Waste Discharge Requirements for Discharges from the Municipal Separate Storm Sewer Systems (MS4s) draining the County of Riverside, the Incorporated Cities of Riverside County, and the Riverside County Flood Control and Water Conservation District within the San Diego Region (Tentative Order No. R9-2010-0016, NPDES Permit No. CAS0108766).

The Tentative Order was distributed on July 23, 2010. This document summarizes and responds to written comments received between July 23, 2010 and September 7, 2010 on the Tentative Order. Interested parties had a full 45-days to review the Tentative Order prior to the deadline for submission of written comments that would be responded to in writing prior to the October Hearing on the Tentative Order.

B. Contents of This Document

Thirteen interested parties submitted comments on the Tentative Order. This resulted in the submission of over 350 comments. Comments came from the public, MS4 Copermittees, governmental and non-governmental organizations, United States Marine Corps Camp Pendleton and one business coalition. The San Diego Water Board reviewed and considered every written comment received. Responses to specific comments are provided within this document. Each specific comment has been assigned a comment number, and comments are generally grouped by commenter. A legend for commenters can be found in Table 1 (below). For the reader's information, Table 2 provides an accounting of the comments by subject.

Comments received were concerned with a variety of topics in the Tentative Order. Consideration of written comments has resulted in proposed revisions to the requirements in the Tentative Order and can be found in the Draft Updates and Errata Sheet. In this response to comments, the comments have not been summarized or paraphrased. When comments received from one commenter were similar to other comments received, the California Regional Water Quality Control Board, San Diego Region's (San Diego Water Board) response usually references back to a previous comment number in order to minimize redundancy. Please note that due to limitations of the comment database system employed to handle these numerous comments, some formatting from the original comment has been lost and typographical errors may be present due to optical character recognition transfer. Readers are recommended to review the comments as submitted in their original format to fully appreciate the commenter's sentiments. The original comment letters can be found as Supporting Document 8.

Specific Comment

B. The Fact that Industrial Dischargers are More Strictly Regulated than Municipal Dischargers is Irrelevant to the Unfunded Mandate Issue

The Tentative Order asserts that the Order does not constitute an unfunded mandate because the Order regulates discharges of waste from municipal sources more leniently than they could regulate discharges from non-governmental dischargers. See paragraph 6 on page 14 of Tentative Order. The City fails to see how this statutory distinction between the regulation of municipal dischargers and industrial dischargers affects whether the Order imposes requirements on co-permittees that go beyond federal law. Municipalities are not industrial sites. Municipal discharges are not industrial discharges.

Comment Response

The San Diego Water Board disagrees that the fact that industrial dischargers are more strictly regulated than municipal dischargers is irrelevant to the unfunded mandate issue. The fact that the obligations of non-governmental and new dischargers who are issued NPDES permits for storm water and non-storm water discharges are more stringent is very pertinent. The NPDES requirements for non-governmental dischargers typically include numeric effluent limitations for a discharge so it will not cause or contribute to a condition of pollution in the receiving waters. Any excursion above these numeric effluent limitations in the discharge is a violation of the permit. Compliance is achieved when the numeric effluent limitations are met.

The NPDES requirements in the MS4 Permit do not include such effluent limitations, but allows compliance through iterative implementation of BMPs and improving storm water management programs, which is less stringent. Compliance means improving BMPs and storm water and non-storm water management programs when water quality is not adequately protected.

To date, the Copermittees have been unable to adequately protect water quality in the receiving waters, as demonstrated by the increasing number of Clean Water Action section 303(d) listed impaired water bodies. The Copermittees often state that they have "met the minimum requirements of the permit" and do not attempt to go any further to try and improve their programs to protect water quality. In the absence of numeric effluent limitation, the provisions of the MS4 Permit must include the level of specificity to direct the Copermittees to improve their storm water and non-storm water management programs to be more protective of water quality. The additional specificity does not go beyond federal law.

In addition, one of the statutory bases for establishing that a permit provision amounts to an unfunded state mandate requiring reimbursement is for the municipality to show that the requirements are unique to local government and do not apply generally to all residents and entities in the state. The federal mandate in the Clean Water Act applies to many dischargers, both public and private, and is not unique to local government. In addition, CalTrans, for example, is a state, not local, governmental entity and is subject to MS4 permits throughout the state. Industrial dischargers are also subject to storm water regulation, albeit more stringent than is typically applied to municipal dischargers. Thus, it appears that the commenter misunderstands at least one of the bases for establishing the existence of an unfunded state mandate when it states that it fails to see how this statutory distinction affects whether the Order imposes requirements that exceed federal law.

Specific Comment

[From Attachment 7 to the RCFC&WCD comment letter]

Throughout Part F. of the Tentative Order relating to the Jurisdictional Runoff Management Program, the language requires not only that the Copermittees adopt programs intended to achieve control of pollutants but also requires such programs to achieve certain ends. See, for example, Part F.1., where each Copermittee must implement a development planning program which meets the requirements of Section F of the Tentative Order and which requires such a program to (1) reduce development project discharges from the MS4 to the MEP, (2) prevent such discharges "from causing or contributing to a violation of water quality standards", (3) prevents illicit discharges to the MS4, and (4) manages increases in runoff discharge rates. A similar requirement is set forth in other provisions, including Part F.3, relating to existing development, Part F.3.b., relating to commercial/industrial programs, Part F.3.c., relating to residential programs and Part F.6, relating to the education component where, in each case, the Copermittees are required to develop programs and ensure their performance.

This dual requirement, to develop a program and then to ensure that it achieves the intended ends, is unlawful, as it goes beyond the requirements of the MS4 regulations and requires the Copermittees to guarantee the results of activities that will often be in the control of third parties. The MS4 regulations require that the MS4 permittees develop the required programs. See, for example, 40 CFR § 122.26(d)(2)(iv(A))(2), which requires the Copermittees to, among other things, develop and implement a management program including a "description of planning procedures including a comprehensive master plan to develop, implement and enforce controls to reduce the discharge of pollutants from municipal separate storm sewers which receive discharges from areas of new development and significant redevelopment". The Copermittees certainly could be liable under the permit if they failed to adequately "develop, implement and enforce controls". However, the MS4 regulations do not require that the Copermittees guarantee, under threat of being found in violation of the permit, that such controls achieve the desired ends of the management programs. It should be also noted that in many other parts of the Order, the Copermittees are directed to develop programs "designed" to achieve water quality goals.

Further, the iterative BMP approach required by the State Water Resources Control Board ("State Board") in precedential State Board Order WQ 99-05 and subsequent rulings would be made meaningless if the Copermittees were strictly liable for ensuring in their programs that discharges did not cause or contribute to a violation of a water quality standard. It is appropriate for the Board to set forth in these sections the "elements needed in the Copermittees' program to fulfill the goals of [the] directive", as set forth in staff's Response to Comment 297 on the Orange County MS4 permit, Order No. R9-2009-0002. However, the Board has no authority to require the Copermittees to guarantee that such goals will be fulfilled, as the current language appears to require.

In addition to the portions of the Order cited, the Copermittees also request changes to similar provisions found at Sections F.1.d, F.1.d.5, F.2, F.3.a, F.4, and G. The attached redline identifies those and any additional parts.

Comment Response

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." 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." Please also see the response to comment 76.

The Tentative Order's requirements are wholly lawful in accordance with the Clean Water Act, the Code of Federal Regulations and the California Water Code. The dual requirements are not in conflict, but work in harmony. The requirements set forth minimum programmatic actions that are expected to result in MS4 discharges meeting water quality standards. Where the Copermittees have implemented the minimum programmatic actions yet their discharges continue to violate water quality standards, the Copermittees must modify their programs and implement additional actions that are not specified within the Tentative Order to achieve water quality standards. The Tentative Order does not require strict compliance with water quality standards. See *Defenders of Wildlife v Browner* (9th Cir. 1999) 191 F.3d 1159, 1167-1168.

Specific Comment

[From Attachment 7 to the RCFC&WCD comment letter]

A number of requirements in the Tentative Order exceed the requirements of federal law. The Board may have discretion to impose such requirements under state law (*Defenders of Wildlife v. Browner*, 191 F.3d 1159 (9th Cir. 1999)), however, the California Supreme Court has determined that to the extent such state law requirements are included in an NPDES permit, the Board must consider the factors set forth in Water Code § 13263(a) and § 13241, including the water quality that could reasonably be achieved by the requirements and economic considerations. *City of Burbank v. State Water Resources Control Board* (2005) 35 Cal. 4th 613. See also Water Code §13000, setting forth that the activities and factors which may affect the quality of the waters of the state "shall be regulated to attain the highest water quality which is reasonable, considering all demands being made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible".

The Fact Sheet and findings for the Tentative Order do not establish that staff has considered such factors or, to the limited extent the factors were considered, staff used out-of-date and incomplete information. In particular, the economic analysis contained in Section VI of the Fact Sheet uses out-of-date information on the economic viability of the cities in the Santa Margarita Region, ignoring the impact of the national recession, which has hit the Region with particular force and which has caused a major reduction in property tax and sale tax revenues available to fund water quality activities under the Order. For a more complete economic analysis, please see Attachment 2 to the comment letter.

Comment Response

The federal statute provides that, in adopting MS4 permits, the permit "shall require . . . such other provisions as the Administrator or the State determines appropriate for the control of such pollutants." (See *Defenders of Wildlife v Browner* (9th Cir. 1999) 191 F.3d 1159) U.S. EPA and states have authority under federal law to go beyond the MEP standard and require strict compliance with water quality standards. (*Building Industry Association of San Diego County v. State Water Resources Control Board, et al.* (2004) 124 Cal.App 4th 866. The BIA court was persuaded that USEPA or the states have authority to require strict compliance with water quality standards under the "such other provisions as the Administrator . . . Determines appropriate for the control of such pollutants" language in CWA section 402(p)(3)(B)(iii). (*Building Industry, 124 Cal.App 4th at 882-884.*) In other words, even if the Permit somehow exceeded the federal minimum requirements of MEP, any discretion to exceed MEP originate in federal law, which requires the San Diego Water Board to include such other permit provisions as it deems appropriate.

However, in the Tentative Order, the San Diego Water Board has chosen not to exercise its discretion to go beyond MEP and require strict compliance with water quality standards. Thus, the Tentative Order's provisions clearly fall within the federal mandated requirements. The San Diego Water Board disagrees with the commenter's assertion that requirements in the Tentative Order exceed the requirements of federal law thus needing to consider the cited factors. However, where provided and available, staff has considered economic information in crafting the Tentative Order. Please see the responses to comments 8, 9, 77-79, and 86.

The economic analysis contained in section VI of the Fact Sheet is from up to date information, as reported by the Copermittees' Annual Reports, with information as of January 1, 2009. While we recognize that Riverside County is experiencing a period of economic hardship, the Copermittees do not provide an completely accurate characterization of the economic conditions. Please see the responses to comments 115, 116, 122, and 126-130.

EXHIBIT B

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ORDER NO. R5-2016-XXXX
NPDES NO. CAXXXXXXXX

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT
AND WASTE DISCHARGE REQUIREMENTS
GENERAL PERMIT
FOR
DISCHARGES FROM MUNICIPAL SEPARATE STORM SEWER SYSTEMS

Table of Contents

I. FINDINGS.....	1
II. DISCHARGE PROHIBITIONS.....	13
III. EFFLUENT LIMITATIONS.....	15
IV. RECEIVING WATER LIMITATIONS.....	15
V. PROVISIONS.....	16
A. Standard Permit Provisions and General Provisions.....	16
B. Application Requirements.....	16
C. Alternative Compliance Pathway.....	18
D. Performance-Based and Prescriptive-Based Approaches.....	21
E. Implementation of the Water Quality Focused Framework in Storm Water Management Programs.....	22
1. Assessment.....	22
2. Prioritization.....	24
3. Development.....	24
4. Implementation.....	28
5. Effectiveness Assessment.....	28
6. Adaptive Management and Modification.....	30
F. Required Deliverables.....	31

IT IS HEREBY ORDERED that the Permittee, its agents, successors and assigns, in order to meet the provisions contained in division 7 of the Water Code (commencing with section 13000) and regulations, plans, and policies adopted there under and the provisions of the Clean Water Act and regulations and guidelines adopted there under, the Permittee shall comply with the following requirements of this Order.

II. DISCHARGE PROHIBITIONS

A. Storm Water Discharge Prohibitions¹³

1. Discharges from MS4s in a manner causing or contributing to a condition of pollution, contamination, or nuisance (as defined in Section 13050 of the California Water Code) are prohibited.
2. Discharges from MS4s shall not violate any applicable prohibition in the Basin Plans.¹⁴

B. Non-Storm Water Discharge Prohibitions

1. Non-storm water discharges into MS4s shall be effectively prohibited, in accordance with 40 CFR section 122.26(d)(2)(iv)(B), unless a) such discharges are authorized by a separate NPDES permit¹⁵; b) subject to **Part II.B.3**, the discharge is a non-storm water discharge or flow addressed by **Part II.B.2**; or c) the discharge is a non-storm water discharge addressed by **Part II.B.4**.
2. Pursuant to 40 CFR section 122.26(d)(2)(iv)(B)(1), the following categories of non-storm water discharges or flows shall be effectively prohibited from entering a MS4 in accordance with **Part II.B.3** only if such discharges are identified by the Permittee or the Executive Officer as a source of pollutants¹⁶ to waters of the United States:
 - a. Water line flushing;
 - b. Landscape irrigation;
 - c. Diverted stream flows;

¹³ A Permittee may satisfy the prohibitions in this **Part II.A** by achieving full compliance with applicable provisions of **Part V.C**.

¹⁴ Basin Plans include (1) *Water Quality Control Plan for the Sacramento and San Joaquin River Basins*, Chapter IV, Implementation, page IV 23.00 and (2) *Water Quality Control Plan for the Tulare Lake Basin*, Chapter IV, Implementation Plan, page IV-25.

¹⁵ Other NPDES permits include, but may not be limited to: Individual permits, Permit for uncontaminated pumped ground water or foundation drains, footing drains, and crawl space pumps (NPDES Permit No. CAG990002, State Water Board Order WQ 2014-0174-DWQ, *Discharges from Utility Vaults and Underground Structures to Surface Waters*); Permit for discharge of groundwater or other water source to MS4 conveyance system (NPDES Permit No. CAG995001, Central Valley Water Board Order No. R5-2013-0074, *Dewatering and Other Low Threat Discharges to Surface Waters* or NPDES Permit No. CAG995002, Central Valley Water Board Order No. R5-2013-0073, *Limited Threat Discharges of Treated/Untreated Groundwater for Cleanup Sites, Wastewater from Superchlorination Projects, and Other Limited Threat Wastewaters to Surface Waters*).

¹⁶ For purposes of this **Part II.B** "source of pollutants" means any discharge of pollutants in concentration or mass beyond a *de minimus* amount that that would contribute to an exceedance or excursion of any applicable water quality standard.

- d. Rising ground waters;
- e. Uncontaminated ground water infiltration as defined by 40 CFR section 35.2005(20)) to separate storm sewers¹⁷;
- f. Uncontaminated pumped ground water;
- g. Discharges from potable water sources¹⁸;
- h. Foundation drains;
- i. Air conditioning condensation;
- j. Irrigation water;
- k. Springs;
- l. Water from crawl space pumps;
- m. Footing drains;
- n. Lawn watering;
- o. Individual residential car washing;
- p. Flows from riparian habitats and wetlands;
- q. Dechlorinated/debrominated swimming pool/spa discharges;¹⁹
- r. Street wash water; and
- s. Essential Non-Emergency²⁰ and Emergency Firefighting Activities.²¹

¹⁷ Uncontaminated ground water infiltration is water other than waste water that enters the MS4 (including foundation drains) from the ground through such means as defective water pipes, pipe joints, connections, or manholes. Infiltration does not include, and is distinguished from, inflow.

¹⁸ Discharges from drinking water supplier distribution systems, provided appropriate BMPs are implemented based on the American Water Works Association (California-Nevada Section) *Guidelines for the Development of Your Best Management Practices (BMP) Manual for Drinking Water System Releases* (2005) or equivalent industry standard BMP manual.

¹⁹ Dechlorinated/debrominated swimming pool/spa discharges do not include swimming pool/spa filter backwash or swimming pool/spa water containing bacteria, detergents, wastes, or algaecides, or any other chemicals including salts from pools commonly referred to as "salt water pools" in excess of applicable water quality objectives.

²⁰ This includes firefighting training activities, which simulate emergency responses, and routine maintenance and testing activities necessary for the protection of life and property, including building fire suppression system maintenance and testing (e.g., sprinkler line flushing) and fire hydrant testing and maintenance. Structural and non-structural BMPs shall be implemented to reduce pollutants from essential non-emergency firefighting activities based on the CALFIRE, Office of the State Fire Marshal's *Water-Based Fire Protection Systems Discharge Best Management Practices Manual* (September 2011, prepared in cooperation with State Water Board) for water-based fire protection system discharges, and based on a local BMP manual for fire training activities and post-emergency firefighting activities.

²¹ Emergency firefighting flows (e.g., discharges necessary for the protection of life or property such as building fire suppression system maintenance discharges or sprinkler line flushing) do not require immediate implementation of BMPs and are not classified as prohibited non-storm water. Discharges from vehicle washing, building fire suppression system maintenance and testing (e.g., sprinkler line flushing), fire hydrant maintenance and testing, and other routine maintenance activities are not considered emergency firefighting activities.

3. For each non-storm water discharge in **Part II.B.2** that the Permittee or the Executive Officer identifies as a source of pollutants to waters of the United States, the Permittee shall satisfy the requirements to “effectively prohibit” such non-storm water by taking one of the following actions:
 - a. Prohibit the discharge from entering its MS4 indefinitely through implementation of an Illegal Connection and Illicit Discharge Program (IC/ID) program that meets all requirements in 40 CFR section 122.26(d)(2)(iv)(B), including adequate legal authority, source identification and enforcement; or
 - b. Not prohibit the non-storm water discharge but require the responsible parties to implement BMPs such that the discharges are no longer a source of pollutants to waters of the United States; or
 - c. Coordinate with Central Valley Water Board staff to ensure that the source of non-storm water discharge is identified and obtains appropriate permit coverage – a separate NPDES permit for point sources, or coverage under the Irrigated Lands Regulatory Program for agricultural discharges. The Permittee shall effectively prohibit the discharge as described in **Part II.B.3.a**, above, until such permit coverage becomes effective.
4. Non-storm water discharges associated with emergency containment and/or cleanup of a pollutant spill or release may lawfully enter a MS4 provided that a) the non-storm water does not discharge from the MS4 to waters of the United States, b) the discharge is temporarily but fully contained in the MS4 to allow for characterization and disposal, c) the pollutants are subsequently removed from the MS4 system, and d) use of the MS4 system is necessary to address a threat to human health, the environment, and/or to avoid significant property damage.

III. EFFLUENT LIMITATIONS

A. Technology Based Effluent Limitations

Pollutants in storm water discharges from MS4s shall be reduced to the MEP.

B. Water Quality Based Effluent Limitations

1. The Permittee shall comply with applicable water quality based effluent limits (WQBELs) established for the wasteload allocations in TMDLs listed in **Attachment G** to this Order, pursuant to the applicable TMDL implementation plans and compliance schedules.
2. Where the final compliance deadline for an applicable TMDL has passed, the Permittee shall comply immediately with applicable WLAs and/or receiving water limitations to implement for that TMDL. If the Permittee believes it requires additional time to meet such WLAs and/or receiving water limitations, the Permittee may request a time schedule order pursuant to California Water Code section 13300 for the Central Valley Water Board’s consideration.
3. A request for a time schedule order as described in **Part III.B.2** shall include sufficient information to demonstrate to the satisfaction of the Central Valley Water Board that the Permittee needs time to implement actions, such as designing and constructing facilities or implementing new or significantly expanded programs and

securing financing, if necessary, to meet the applicable WQBELs. Such information may include the following:

- a. Data demonstrating the current quality of the MS4 discharge(s) in terms of concentration and/or load of the target pollutant(s) to the receiving waters subject to the TMDL;
- b. A detailed description and chronology of structural controls and source control efforts, since the effective date of the TMDL, to reduce the pollutant load in the MS4 discharges to the receiving waters subject to the TMDL;
- c. Justification of the need for additional time to achieve the water quality-based effluent limitations and/or receiving water limitations;
- d. A detailed time schedule of specific actions the Permittee will take in order to achieve the water quality-based effluent limitations and/or receiving water limitations;
- e. A demonstration that the time schedule requested is as short as possible, taking into account the technological, operation, and economic factors that affect the design, development, and implementation of the control measures that are necessary to comply with the effluent limitation(s); and
- f. If the requested time schedule exceeds one year, the proposed schedule shall include interim requirements and the date(s) for their achievement.

IV. RECEIVING WATER LIMITATIONS²²

Discharges from MS4s shall not cause or contribute to exceedances of water quality standards in any receiving waters (hereinafter "receiving water limitations"), including but not limited to all applicable provisions contained in:

- A. The Central Valley Water Board's Basin Plans, including beneficial uses, surface water quality objectives, compliance schedules and implementation plans;²³
- B. State Water Board policies and plans for water quality control;²⁴ and
- C. Priority pollutant criteria promulgated by the USEPA through the following:
 1. National Toxics Rule (NTR),²⁵ and

²² A Permittee may comply with this **Part IV** by achieving full compliance with applicable provisions in **Part V.C.**

²³For specific beneficial uses water quality objectives, implementation plans and applicable water bodies, see *Water Quality Control Plan for the Sacramento and San Joaquin River Basins* (Revised June 2015) and the *Water Quality Control Plan for the Tulare Lake Basin* (Revised January 2015) (collectively referred to as "Basin Plans" herein) at

http://www.waterboards.ca.gov/centralvalley/water_issues/basin_plans/index.shtml

²⁴*Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary*

²⁵40 CFR § 131.36.

2. California Toxics Rule (CTR).²⁶

V. PROVISIONS

A. Standard Permit Provisions and General Provisions

The Permittee shall comply with all applicable Standard Permit Provisions and General Provisions contained in **Attachment H** to this Order, in accordance with 40 CFR sections 122.41 and 122.42.

B. Application Requirements

The Order becomes effective on **XX XXXX 2016**. To obtain coverage under this Order on or after that date, each Permittee must submit a complete application for coverage as set forth below.

1. Notice of Intent (NOI)

- a. To obtain initial coverage under this Order, each Permittee shall submit to the Central Valley Water Board a complete Notice of Intent (NOI) in accordance with the procedures below. An NOI must be completed and signed in accordance with the signatory requirements of the *Standard Permit Provisions and General Provisions (Attachment H)*. The NOI shall also contain a brief preliminary explanation of how the Permittee intends to prioritize pollutants in its SWMP in accordance with **Part V.E**. Failure to submit a complete NOI package may delay approval to discharge under this Order.
 - i. A Permittee desiring coverage under this Order that, as of the Effective Date of this Order, was authorized to discharge under another Central Valley Water Board or State Water Board MS4 permit that has not yet expired shall submit a NOI to the Executive Officer no later than thirty (30) days prior to the expiration date of its current MS4 permit. A Permittee authorized to discharge pursuant to an administratively extended MS4 permit shall submit a NOI within thirty (30) days of the Effective Date of this Order. [40 CFR § 122.28(b)(2)(iii)].
 - ii. A Permittee desiring coverage under this Order that was not previously authorized to discharge under another Central Valley Water Board or State Water Board MS4 permit shall submit a NOI at least ninety (90) days in advance of the anticipated discharge date to provide time for review of the application package (40 CFR § 122.28(b)(2)(iii)). This time period may be waived by the Executive Officer;
 - iii. An application fee is required only for Permittees described in **Part V.B.1.a.ii**, above. A Permittee applying for coverage under this Order which has

²⁶*Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California*, (65 Federal Register 31682-31719 (May 18, 2000), adding 40 CFR section 131.38. If a water quality objective and a CTR criterion are in effect for the same priority pollutant, the more stringent of the two applies.

already been enrolled under a previous Central Valley Water Board or State Water Board MS4 permit will be billed during the regular annual billing cycle.

- iv. Some Permittees are required under their existing Central Valley Water Board or State Water Board MS4 permits to submit a Report of Waste Discharge (ROWD) 180 days prior to the expiration of their permit. If, before the expiration of the 180-day deadline, such Permittees instead submit a letter to the Executive Officer committing to submit a NOI no later than thirty (30) days prior to the expiration of their permit, the Central Valley Water Board will not pursue enforcement for failure to timely file a ROWD unless the Permittee fails to submit a NOI by such 30-day deadline.
- b. Within ninety (90) days of receipt of a NOI, the Central Valley Water Board will either issue a Notice of Applicability (NOA) or deny the NOI if incomplete. If a NOA is issued the Permittee is authorized to discharge pursuant to this Order starting on the date indicated on the NOA (40 CFR section 122.28(b)(2)(iii)).
- c. Upon issuance of a NOA to a Permittee described in **Part V.B.1.a.i** (i.e., existing MS4 Permittees), this Order rescinds the Permittee's preexisting permit except for enforcement of permit violations that occurred prior to the issuance of the NOA. . Permittees listed in the preexisting permit who have not received a NOA under this Order shall continue to be subject to regulation pursuant to the preexisting permit. If all Permittees have been removed from the preexisting permit then this Order rescinds the preexisting permit, except for enforcement purposes as stated above.

2. Fees

The fee for enrollment under this Order is payable to the "State Water Resources Control Board" and shall be based on Title 23, CCR, section 2200, which is available at: http://www.waterboards.ca.gov/resources/fees/water_quality/.

3. Terminating Coverage

- a. To terminate coverage under this Order, the Permittee must submit a complete and accurate Notice of Termination (NOT) provided in **Attachment M** following permanent termination of a discharge, upon transfer of ownership to another entity, or where discharges will be authorized under another Order. The Permittee's authorization to discharge and obligations under this Order shall terminate immediately upon approval of the NOT. Until a NOT is approved, the Permittee shall remain subject to the terms and conditions of this Order and is responsible for submitting the annual fee and all reports associated with this Order.
- b. The Permittee shall submit a NOT when one of the following conditions occurs:
 - i. The Permittee has ceased all discharges to waters of the United States for which the MS4 obtained coverage under this Order and does not expect to discharge during the remainder of this permit term; or
 - ii. The Permittee has obtained coverage under an individual permit or an alternative general permit for all discharges required to be covered by an NPDES permit.

C. Alternative Compliance Pathway

1. For pollutant-water body combinations addressed in a Permittee's SWMP that are not addressed in a TMDL, the Permittee shall be deemed in compliance with **Parts II.A (Storm Water Prohibitions) and IV (Receiving Water Limitations)** as long as:
 - a. The Permittee is fully implementing a duly approved SWMP that meets the requirements of **Parts V.C.4 and V.E.3**; and
 - b. The Permittee either:
 - i. Is meeting all applicable milestones and final dates for attainment of water quality standards in the SWMP, or
 - ii. Complies with the procedure described in **Part V.C.5 or V.C.7**.
2. For the purposes of determining compliance with **Part IV**, a Permittee's "final attainment" of a water quality standard shall mean either that the Permittee's MS4 discharges are no longer causing or contributing to exceedances of that water quality standard in any receiving water or that the receiving water is meeting water quality standards. A Permittee shall only be deemed in such final attainment when it is verified through monitoring and reporting results.
3. For pollutant-water body combinations addressed in a TMDL, compliance with applicable TMDL requirements in **Attachment G** shall constitute compliance with **Part IV**.
4. To be deemed in compliance with **Parts II.A and IV** as described in **Part V.C.1**, the Permittee's SWMP must ensure continual progress toward final attainment of applicable water quality standards by including the following:
 - a. Specific and enforceable requirements.
 - b. Milestones toward final attainment for each PWQC²⁷ that are either numeric water quality outcomes (hereinafter "water quality milestones") or readily verifiable, specific actions that are prerequisites to achieving such water quality outcomes—including but not limited to preparing a planning document or obtaining financing or approval for a capital improvement project (hereinafter "non-water quality milestones") For each PWQC, the SWMP must include at least one milestone²⁸ per year, including a date for its achievement, as well as a final date of attainment. For each PWQC the SWMP must include at least one water quality milestone per five (5) years.
 - c. An analysis or study complying with **Part V.E.3.b** demonstrating that implementation of the water quality improvement strategies in the SWMP will

²⁷ See **Part V.E**, *infra*.

²⁸ Annual milestones for each PWQC must build upon previous milestones and lead to final attainment of applicable water quality standards for that PWQC. The annual milestones may consist of water quality improvement strategy implementation phases, interim numeric goals, and other acceptable metrics.

achieve milestones and final attainment with water quality standards by the scheduled dates for their achievement.

5. If, after complying with **Parts V.D, V.E, and V.F**, the Permittee detects²⁹ or receives notification from the Central Valley Water Board that a water quality milestone or a final date for attainment of a water quality standard in the Permittee's SWMP was not met, the Permittee shall complete the following:
- a. Re-assess its MS4 discharges' contribution of the relevant pollutant(s) to receiving waters and the sources of the pollutant(s) within the drainage area of the MS4.
 - b. If discharges from the Permittee's MS4 are identified as a source of pollutant(s) that have caused or contributed to not achieving the milestone or final date for attainment of a water quality standard, address such non-compliance through timely modifications to its SWMP pursuant to **Parts V.E.5 and V.E.6** (*Effectiveness Assessment; Adaptive Management and Modification*). The modified SWMP shall identify the revised water quality control measures, milestones, and final date of attainment that will ensure an improved rate of progress toward attainment of water quality standards.
 - c. Modify the Reasonable Assurance Analysis (RAA) pursuant to **Parts V.E.5 and V.E.6** (*Effectiveness Assessment; Adaptive Management and Modification*) to reflect the Permittee's updated knowledge about the pollutant(s) and revised water quality control measures, milestones, and final date of attainment. The Permittee shall submit with its modified RAA a summary explanation of why implementation of its SWMP did not result in meeting the water quality milestone or final date of attainment.
 - d. To be deemed in compliance with this **Part V.C.5**, the Permittee must submit its revised SWMP and RAA to the Executive Officer within six (6) months of detecting or receiving notice from the Central Valley Water Board (whichever is earlier) that the water quality milestone or final date of attainment was not met.³⁰ Notwithstanding the Permittee's compliance with the procedures in this **Part V.C.5**, the Permittee will be deemed in violation of this Order if the Executive Officer determines that the Permittee's failure to achieve the water quality milestone or final date of attainment resulted from failure to fully implement its SWMP. Such determination will be delivered in writing.
6. If the Permittee fails to meet any water quality milestone or final date for attainment of a water quality standard in an approved SWMP, and thereafter fails to timely seek appropriate modifications to its SWMP and RAA as described in **Part V.C.3**, this

²⁹ "Detection" by a Permittee may include a Permittee's determination prior to a deadline, based on monitoring or other relevant data, that it will not be able to meet a water quality milestone/final date of attainment. . If the Permittee thereafter obtains a timely extension of the applicable deadline pursuant to **Part V.C.7**, the Permittee's failure to meet the preexisting deadline shall not trigger **Part V.C.5**.

³⁰ If the Permittee determines that it will not be able to meet a water quality milestone or final date of attainment prior to the relevant deadline, six months shall be measured from the date for achieving that water quality milestone or final attainment of water quality standards.

Order shall hold the Permittee to strict compliance with **Parts II.A and IV** for the pollutant-water body combination(s) that were to be addressed by the SWMP provisions that were not met.

7. For pollutant-water body combinations that are not addressed by a TMDL, the Permittee may request an extension of a deadline for achieving a water quality milestone or final attainment of a water quality standard at least ninety (90) days prior to the deadline. Such requests must be in writing, shall include a justification for the extension, and shall state (i) when the Permittee expects to achieve the water quality milestone, and (ii) whether the delayed date for achievement of the water quality milestone will result in corresponding delays for other milestones or for the final date of attainment for any PWQC. The Executive Officer shall publish notice and accept comments on such extension requests for a period of thirty (30) days. Extensions may be approved at the discretion of the Executive Officer, but they must be affirmatively approved to be effective. The Permittee shall become subject to **Part V.C.5** upon denial of an extension request.
8. When a Permittee becomes aware that it has missed or will miss the date for achieving a non-water quality milestone (e.g., delays in obtaining City Council approval or financing for a capital improvement project, delays in adoption of an ordinance), the Permittee shall notify the Central Valley Water Board in writing as soon as possible, but no later than thirty (30) days after the delay becomes evident. In such written notice, the Permittee shall indicate (i) when it expects to achieve the non-water quality milestone, and (ii) whether the delayed date for achievement of the non-water quality milestone will result in corresponding delays for other milestones or for the final date of attainment for any PWQC. If failure to timely achieve the non-water quality milestone will prevent the Permittee from meeting any water quality milestone or final attainment by the date scheduled in its SWMP, the Permittee shall request appropriate extensions in accordance with Part V.C.7.
9. Between a Permittee's receipt of a NOA and approval of its SWMP, a Permittee's full compliance with all of the following requirements shall constitute the Permittee's compliance with **Parts II.A and IV**:
 - a. The Permittee's NOI was timely submitted in accordance with **Part V.B.1**;
 - b. The Permittee meets all deadlines for development of a SWMP; and
 - c. The Permittee continues full implementation of its existing Storm Water Management Program.
10. A comprehensive audit of the RAA is required at least once every 10 years. If the audit finds that the RAA is no longer current or accurate, then the Permittee shall revise the RAA and submit it to the Central Valley Water Board for approval. The audit requirement may be waived by the Executive Officer if all water quality milestones are being met.

D. Performance-Based and Prescriptive-Based Approaches

This Order specifies two distinct and mutually exclusive approaches for the Permittee to comply with this permit authorized under the Clean Water Act, including compliance with discharge prohibitions and receiving water limitations. The primary compliance