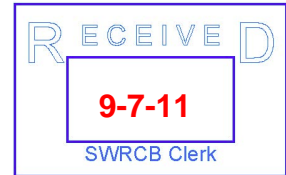




CITY OF
LOMPOC



September 6, 2011

Mr. Charles R. Hoppin, Chair
c / o Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

RE: Comment Letter – Phase II Small MS4 General Permit

Dear Mr. Hoppin:

Thank you for the opportunity to comment on the Draft General National Pollutant Discharge Elimination System (NPDES) Permit For Storm Water Discharges From Small Municipal Separate Storm Sewer Systems (Draft MS4 Permit). As a small municipality that has been under permit since October 2008, the City of Lompoc has a strong interest in ensuring the provisions of the Draft MS4 Permit are feasible, achievable and protective of water quality.

Permit Terms. The City is concerned the Draft MS4 Permit would impose a tremendous burden on local jurisdictions, if adopted as proposed. After permit review, it appears that the City's very limited staff time and funds will necessarily be focused on new permit features that emphasize record keeping and program justification, rather than on measures that have a direct connection to water quality improvement.

The Draft MS4 Permit represents a sea change in approach from more generalized requirements for Best Management Practices and plans that identify and address pollution at its source, to explicit, prescriptive and detailed requirements, extending well beyond those of the existing Phase II MS4 permit. The Draft Revised permit requirements exceed in several places the requirements of the federal Clean Water Act and those requirements placed on Phase I communities with populations of 100,000 or greater. It is important to note that one of the primary reasons for the Phase I and Phase II differentiation is that smaller communities with fewer resources cannot be expected to be able to comply with the same type and scope of requirements much larger Phase I communities can. Now, for some reason, the State Board staff believes it appropriate to impose these new requirements on small municipalities, and other traditional and non-traditional permittees with populations from 99,000 to below 5,000.

Funding. Implementation of Phase II of the Clean Water Act began after the effective date of California State Proposition 218, which requires a 2/3 majority vote of those voting before a new special tax can be levied. In most of California's small communities, an additional tax to support more regulation in the area of storm water has not been supported by the local

population. Thus, virtually none of the Phase II communities in California have, or can obtain, a consistent source of revenue, to address the ever-increasing number and complexity of regulations being imposed by both the State and Regional Boards.

That the State Board is considering applying so many new and expensive requirements in this Draft MS4 Permit to small municipalities during the current economic crisis is unconscionable. Additionally, these significantly expanded regulations are not likely to be effective, as most communities are struggling to meet the current Phase II MS4 Permit requirements, in the absence of an adequate source of funding.

As an example, Lompoc's community of 42,424 has 16.7% unemployment, and is a California Disadvantaged Community, with a median income of less than 80% of the statewide household income. Based on the 2010 CENSUS, a significant portion of the population (44.9 percent) is either under 18, over 65, or in a group home or institution.

As many as 27.1 percent of households are receiving social security, while 5.5 percent of households are receiving disability. Cash public assistance income is distributed to 5.7 percent of households and food stamps are distributed to 8.7 percent of households. These figures are based on the Census Bureau's 5-year estimate from 2005 – 2009 and likely have increased during the past two (2) years of economic hardship.

This has made it impossible for the City of Lompoc to maintain its prior staffing levels, and provide the services that were considered basic only a few years ago. In the past three budget cycles (from 2007 to 2013) there has been a hiring freeze; elimination of vacant positions; consolidation of departments; layoffs; 13 days of furlough per employee per year. Employees now pay out-of-pocket for retirement; pay increased medical and dental insurance costs and percentages not previously paid, while step increases have been frozen, travel and training expenditures restricted and facility hours and service levels reduced. Full-time professional positions in the Legal Department, Community Development Department and Building Division have been eliminated. Some of these functions, as well as Planning and Engineering Division functions are currently being performed by contract staff. It is important to recognize that each of these job functions is critical in the implementation of storm water regulations. In addition, approximately 22 percent of City reserve funds were used to support current operations in the 2009-2011 budget cycle. These extreme measures were required to keep the City solvent.

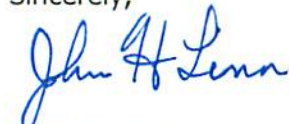
During better times, private development fees have brought in revenue that allowed for higher staffing levels in some areas impacted by Municipal Storm Water Requirements, however since the City of Lompoc was put under the MS4 Permit in October 2008, only thirteen applications for private discretionary development have been submitted and processed. Of these, only three (3) projects have actually been completed and paid related fees, including a small addition and facade improvement at an existing McDonalds, a new parking lot for the Chumash Casino employees/customers, and a new Panda Express. Therefore at this time, development fees cannot be expected to generate adequate revenue to fund any portion of the Draft MS4 Permit program envisioned by State Water Resources Control Board staff.

The Phase II Draft MS4 Permit revision requires the addition of a significant number of staff in multiple departments, significant capital expenditures for consultants, equipment and laboratory fees, and additional funds for incentives and assistance to the public and businesses. As there

is no realistic source of funding for these additional requirements, they are not feasible. While the State Board has traditionally failed to consider economic and social feasibility, as required by the Porter-Cologne Act, in determining the appropriateness of its regulation, this is the time in which it must be considered.

It is the City of Lompoc's opinion that many of the Draft MS4 Permit provisions developed by State Board staff constitute unfunded mandates; are inappropriate and unrealistic given the current economic environment; and needlessly impose time-consuming and expensive reporting requirements and provisions that have not been shown to have a direct link to improved water quality. Therefore, we recommend that the provisions which constitute unfunded mandates (as detailed in Attachment A) be either fully funded by the State or removed from the Permit. Further, that the State and regional boards direct all funding from the Industrial and Construction Permit programs to local government to cover the inspection and enforcement provisions related to the industrial/commercial and construction Draft MS4 Permit requirements, or that these provisions be removed from the Permit. Thank you again for the opportunity to comment on the Draft MS4 Permit. A more detailed itemization of the City of Lompoc's concerns is attached.

Sincerely,



John H. Linn
Mayor, City of Lompoc

Attachment A: Letter of Comment Detailed Itemization

cc: Lompoc City Council
Laurel M. Barcelona, City Administrator
Lucille T. Breese, AICP, Planning Manager

Comment Number 1

Article XIII B, Section 6 of California’s Constitution requires the State to reimburse local governments for any new State-mandated programs or higher level of service. All draft requirements above and beyond 40 CFR 122.34 are State mandates. The following permit sections go above and beyond 40 CFR 122.34, thus are State mandates. These must be funded by the State or removed from the permit. If these draft permit sections are not funded by the State or removed from the permit, the City of Lompoc is prepared to partner with other local governments and file a claim with the State Mandates Commission.

Unfunded Mandate Order Section	Unfunded Mandate
B.4	Discharges of Incidental Runoff shall be controlled. Control of incidental irrigation runoff
E.4.c.	Enforcement Measures and Tracking - Development and implementation of an enforcement response plan.
E.4.d	Ensure Adequate Resources to Comply with Order
E.5.b.	Public Outreach and Education - Implementation of Community Based Social Marketing measures
E.5.b (i)	Technical and Financial assistance related to “storm water-friendly landscaping”
E.5.c.	Industrial /Commercial Outreach and Education Program
E.5.d.	Construction Outreach and Education Program
E.7.a	MS4 Mapping within a GIS system.
E.7.c	Field Screening to detect illicit discharges
E.7.d	Illicit Discharge Detection and Elimination Source Investigations
E.7.e	Spill Response Plan - Preparation of a spill response plan

E.8.c	Construction Site Inspection and Enforcement - Specification of construction site inspection timing and frequency
E.8.d	Permittee Staff Training
E.8.e	Construction Site Operator Training
E.9.a	Inventory of Permittee-Owned and Operated Facilities - Development, maintenance, and annual reporting of inventory of Permittee-owned or operated facilities
E.9.c	Facility Assessment - Development, maintenance, and annual reporting of a map of Permittee-owned or operated facilities
E.9.d	Storm water Pollution Prevention Plans - Development and implementation of Storm water Pollution Prevention Plans
E.9.e	Inspections, Visual Monitoring and Remedial Action - Specification of inspection locations and frequency
E.9.f	Storm Drain Assessment and Prioritization
E.9.g	Maintenance of Storm Drain System - Specification of frequency of monitoring and timing of cleaning of storm drain systems
E.9.h	Permittee Operations and Maintenance Activities (O&M)
E.9.i	Incorporation of Water Quality and Habitat Enhancement Features in Flood Management Facilities - Specification of assessment and implementation frequency of water quality and habitat enhancement measures in existing and proposed flood management projects
E.9.j	Pesticide, Herbicide, and Fertilizer Application and Management
E.9.k	Training and Education
E.10	Trash Reduction Program
E.11	Industrial/Commercial Facility Inspection, Enforcement and BMP Retrofit/Runoff Control Program
E.12	Post Construction Storm Water Management Program
E.13	Receiving Water Monitoring
E.14.b	Best Management Practice Condition Assessment

E.14.c	Municipal Watershed Pollutant Load Quantification
E.15	Total Maximum Daily Loads Compliance Requirements
E.16	Online Annual Reporting Program

In addition to the comments the City is submitting regarding the Unfunded Mandates included in the Draft MS4 Permit, the City submits the following comments on the Draft MS4 Permit.

#	Permit Element/ Issue/ Concern	Location in Draft	Comment
2	CEQA Compliance	General	The Draft permit is not appropriately processed pursuant to the California Environmental Quality Act as a Categorical Exemption 15307 and 15308. This CE only addresses actions taken by a regulatory agency to establish procedures for protection of the environment. Construction activities are specifically excluded from Categorical Exemptions 15307 and 15308. To the extent that Section E.11.b.(ii) of the Industrial/Commercial Facility Run-off Control Program requires installation of storm water BMPs involving construction (including demolition), for which a grading or other building permit is required, these exemptions do not properly apply to this proposed action and a higher level of environmental review is required.
3	Economic and Social Impacts	General	<p>The Porter Cologne Act, Section 13000 requires the State Board to consider the economic effects of the regulation it imposes. ‘§ 13000. Legislative findings. The Legislature finds and declares that the people of the state have a primary interest in the conservation, control, and utilization of the water resources of the state, and that the quality of all the waters of the state shall be protected for use and enjoyment by the people of the state. The Legislature further finds and declares that 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 and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible.”</p> <p>Many of the provisions of this draft permit are not directly related to water quality improvement and instead focus on labor intensive and expensive GIS mapping, community surveys, procedural and recordkeeping tasks that could be simplified, achieved using a different method, or eliminated. In addition, many of the Draft permit’s requirements address tasks, inspections, characterizations</p>

			<p>that are more appropriately conducted by the State Board or Regional Board staff, or are already being addressed under the General Industrial Permit, the General Construction Permit or through the implementation of the Water Efficient Landscape Ordinance provisions required by the State.</p> <p>Combined, this Draft permit will be economically infeasible for many permittees to implement. In smaller communities, and in disadvantaged communities, the funds are not available to cover the additional staff and funds necessary to conduct the inspections, prepare the records, take and process the samples and meet the other significant additional requirements of this Draft permit. Burdens placed on commercial and industrial uses by this Draft permit, over and above those requirements of the Industrial General Permit, will have a significant economic impact on these businesses. When both local government and local businesses are struggling to prioritize and balance competing interests of operations, profits and the storm water requirements of the new MS4 permit, long-term adverse social impacts will be felt in these currently struggling communities.</p>
4	Outline and Ordering	General	The manner in which the Draft Permit is presented is very confusing. The presentation and outline need to be simplified and whenever possible, the applicability sections need to be consolidated so they are not inserted into the requirements sections, which makes the permit extremely difficult to follow and cite.
5	Funding	General	The State Water Resources Control Board should focus its efforts on amending Proposition 218, instead of adding more requirements to the MS4 Permit, so small MS4s may have an opportunity to begin funding their existing storm water programs.
6	Conflict with State Subdivision and Land Use Laws	General	Portions of these regulations may be in conflict with existing land use laws and vested development rights laws. Have State Water Board's legal staff or land use attorney review for legal consistency, especially as it relates to vested development rights and subsequent permit renewals, in relation to automatic map renewals allowed by the Subdivision Map Act, and in relation to the Permit Streamlining Act. All provisions should be in compliance with existing land use law.
7	Disadvantaged and Environmental Justice Communities	General	Lompoc is both a Disadvantaged Community and Environmental Justice Community. The median household income of Lompoc residents is less than 80% of the Median Household Income of California residents. The population of Lompoc is comprised of 58.3% Hispanic, African American and Native American residents, with 10.4% of the population being Caucasian, non-Hispanic (2010 census). The proposed Draft MS4 permit would place too high a burden on this community's limited resources. Though it attempts to benefit all jurisdictions equally by enacting provisions to increase water quality monitoring, recordkeeping, and inspections, as well as requiring individual

			commercial and industrial property owners to retrofit their properties to incorporate structural Best Management Practices, it will have a disproportionate adverse financial impact on Disadvantaged and Environmental Justice communities. This will take money away from more direct beneficial water quality improvement efforts, such as those included in the City's existing Storm Water Management Program. The proposed Draft MS4 Permit is so prescriptive in nature that it removes all latitude for a community to determine where its limited resources would best be used in the effort to improve storm water quality.
8	References	General	The permit should be freestanding, without requiring compliance with referenced documents.
9	EPA NPDES Small MS4 Storm Water Program Review	40 CFR Section 122.34(e)(2)	<p>"EPA will evaluate the small MS4 regulations at §§122.32 through 122.36 and §123.35 of this chapter after December 10, 2012 and make any necessary revisions. (EPA intends to conduct an enhanced research effort and compile a comprehensive evaluation of the NPDES MS4 storm water program. EPA will re-evaluate the regulations based on data from the NPDES MS4 storm water program, from research on receiving water impacts from storm water, and the effectiveness of best management practices (BMPs), as well as other relevant information sources.)"</p> <p>"Guidance: EPA strongly recommends that until the evaluation of the storm water program in § 122.37, no additional requirements beyond the minimum control measures be imposed on regulated small MS4s without the agreement of the operator of the affected small MS4, except where an approved TMDL or equivalent analysis provides adequate information to develop more specific measures to protect water quality." The City of Lompoc asserts that, as the review of the small MS4 regulations by USEPA is scheduled within as little as six months after the proposed implementation of the revised MS4 permit, that no additional requirements beyond the minimum control measures should be imposed in this revision of the MS4 Permit.</p>
10	Disadvantaged Communities	A.3.a.(3)(a)	If consideration for waiver is given to Disadvantaged Communities with populations of under 20,000; consideration should also be given for waivers or partial waivers of requirements for disadvantaged communities with populations of over 20,000, as the impacts of being disadvantaged are only compounded when the number of disadvantaged persons is higher and the community's infrastructure is larger.
11	Addressing MS4 differences	Finding 28	"California Small MS4 Permittees face highly variable conditions, both in terms of threats to water quality from their storm water discharges and resources available to manage those discharges. Therefore, one set of prescriptive requirements is not an appropriate regulatory approach for all

			Regulated Small MS4s.” The City of Lompoc believes that it is not enough to merely have two sets of “prescriptive requirements” for Traditional and Non-traditional MS4’s. Additional latitude and variability must be worked into the permit, allowing agencies to better focus their resources on the problems that impact their communities most and best allocate their available resources.
12	Maximum Extent Practicable (MEP) Achieved	Fact Sheet, Page 7, 2 nd paragraph	This paragraph states that the Order specifies the actions necessary to reduce the discharge of pollutants in storm water to the Maximum Extent Practicable (MEP). If the Order is designed to ensure MEP is achieved, Then Section E.14. Program Effectiveness Assessment and Improvement Plan, is unnecessary, costly and should be removed from the permit.
13	Consistency with Clean Water Act Language	Page 17	Effluent Limitations, Item 1, on page 17, states: “Permittees shall implement BMPs that reduce pollutants in storm water to the technology-based standard of MEP.” The Clean Water Act requires: Permits for discharges from municipal storm sewers – (iii) shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants. Section 402 (p)(3)(B)(iii) In the interest of clarity, revise this section on Page 17 to more accurately reflect the language and intent in the Clean Water Act to read: “Permittees shall implement BMPs that reduce the discharge of pollutants in storm water to the technology-based standard of MEP.”
14	Receiving Water Limitations	Page 17	Insert the word “applicable” into the second paragraph of D on page 17, as follows: “The Permittee shall comply with applicable Receiving Water Limitations...”
15	Flood Management Projects	E.9.i.	If water quality and enhancement features are required to be incorporated into the design of flood management projects, an Umbrella Safe Harbor agreement with regard to endangered species must be granted by the California Department of Fish and Game and U.S. Fish and Wildlife service.
16	Public Outreach and Education Program	Section E.5	Draft Permit Section E.5 prescribes a list of over 20 public education measures that each MS4 must implement, at a minimum. Prescribing such a lengthy prescriptive list of measures is contrary to 40 CFR Section 122.24, which states that the public education program be tailored, using a mix of locally appropriate strategies, to target specific audiences and communities. This section should be revised to allow for the implementation of locally appropriate education and outreach programs and removing strict prescriptive language.

17	Industrial / Commercial Waste Facility Runoff Control	E.11	<p>The draft permit requirement for all small cities to develop and implement an Industrial / Commercial Waste Facility Runoff Control Program is contrary to federal storm water regulations and redundant in light of the State's Industrial General Permit. The draft permit requirement to develop and implement an Industrial / Commercial Waste Facility Runoff Control Program appears to be based solely on a suggestion in the United States Environmental Protection Agency's (USEPA's) <i>MS4 Permit Improvement Guide</i>. This guide was not subject to the federal rulemaking process. The introduction to Chapter 7 of the guide states, "This [industrial storm water control] program component typically applies only to Phase I MS4 permittees as Phase II federal regulations (40 CFR 122.34(b)) do not specifically address storm water discharges from industrial facilities and commercial businesses (other than as part of the education and outreach program). However, EPA <u>recommends</u> that permit writers <u>consider</u> including requirements pertaining to storm water discharges to the MS4 from industrial sources in Phase II permits to further reduce storm water pollutants from the MS4." (emphasis added) There is no discussion in the fact sheet as to whether USEPA's guidance considers that the California Water Board already regulates industries directly through its Industrial General Permit. There is no discussion or evidence presented in the fact sheet to show that the Water Board's direct regulation of industries is ineffective and it must rely on local jurisdictions to do what they cannot. The fact sheet must explain why these new requirements are necessary and must be implemented through burdening small cities with additional requirements rather than by properly implementing and revising the terms of the Industrial General Permit.</p> <p>This requirement should be removed and the Water Boards should continue to regulate industries directly through its Industrial General Permit and not pass along this responsibility to small cities. The Water Board has well established legal authority, proper separation from industry, and good enforcement tools, allowing it to more effectively enforce the requirements of the General Industrial Permit. This draft requirement is also contrary to 40 CFR Section 122.34(e)(2), which states "Guidance: EPA strongly recommends that until the evaluation of the storm water program in § 122.37, no additional requirements beyond the minimum control measures be imposed on regulated small MS4s without the agreement of the operator of the affected small MS4, except where an approved TMDL or equivalent analysis provides adequate information to develop more specific measures to protect water quality." The City of Lompoc does not believe that adequate analysis has been provided, sufficient to justify the proposed MS4 Permit measures.</p> <p>If this requirement remains without direct state funding, Permittees will be forced to establish new fees for inspections. Since the State already collects fees of facilities under the IGP, this will result in facilities being charged twice (once by the State and once by the local agency) for the same work.</p>
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18	<p>Public Outreach and Education Program Surveys and Community-Based Social Marketing</p>	<p>E.5.b.d)(ii); and (ii)(b)</p>	<p>This section requires small municipalities to implement surveys at least twice during the five year permit. Referenced surveys should be clearly described as requiring non-statistical sample methods only. Statistical sampling is too costly and difficult to achieve when seeking volunteer cooperation. Non-statistical methods can also achieve the end of identifying areas where additional public information and outreach is needed.</p> <p>These costly, time consuming surveys generally do not get a statistically valid number of responses. The monies necessary for even one survey, estimated at over \$10,000 would be better spent in educating the public in other ways and responding to complaints of illegal discharges. The City requests removal of the requirement to conduct surveys, particularly those that are intended to gauge the level of behavior change. While in a select few examples, community-based social marketing strategies have been implemented somewhat successfully, we believe they are achievable only in very unique political and social environments and only with the expenditure of significant amounts of funding. This method of outreach in obtaining promises to change individual behavior and then to try to verify that individual's behavior has changed is unenforceable and should not be required. It is important for the State Board to recognize that in establishing these regulations you are proposing to apply them to a wide variety of communities. Municipalities must ensure staff safety, as well as allocate their extremely limited funds to storm water education efforts that will address specific community problems in the least costly and most efficient manner possible. CBSM does not meet those criteria.</p>
19	<p>Enforcement Response Plan</p>	<p>E.4.c.</p>	<p>This section requires the development of an Enforcement Response Plan, eliminating the autonomy of local jurisdictions to govern themselves as they deem appropriate. Moreover, the measure duplicates effort as local storm water ordinances already establish enforcement provisions and procedures. This will result in taking valuable staff time to write a Plan, when other more pressing storm water issues could have been addressed with the same resources. The City of Lompoc recommends that this section be revised to delete the requirement for development and implementation of a separate Enforcement Response Plan. Local jurisdictions will have authority under their Storm Water Ordinances to enforce against violators, while saving money and staff time in not having to prepare an explicit, separate plan to discuss the provisions of their ordinance.</p>

20	Verified Funding Sources and Budget Allocations	E.4.d.	<p>This section requires local jurisdictions to obtain the funding necessary to implement the permit and detail the sources of funding and resources allocated to the effort. In addition to being an unfunded mandate, which exceeds the authority granted under the Clean Water Act (CWA), this requirement would result in monetary comparisons between communities with significant variation in size, topography, rainfall, pollutant sources. This is not what was intended by the CWA.</p>
21	Estimated Expenditures	E.4.d. (ii) (c) and (iii)	<p>Permittees should not be required to spend the time and resources to document their estimated expenditures for the reporting period, the previous reporting period, and the next reporting period. This is a make-work requirement that calls for speculation and does not appear to have any clear benefit, particularly as it relates to water quality. It is impossible to speculate on future budgets. This requirement and asking for past year's budget information is an unnecessary cost in staff time which should be removed from this permit.</p> <p>(iii) Green infrastructure is not a requirement of the permit. Therefore, it should not be included in this reporting requirement.</p>
22	Waivers	A.3	<p>What is required to show that a regulated small MS4's discharges do not contribute or potentially contribute to water quality impairment? Why were Small Disadvantaged Communities of over 20,000 not considered for a waiver or partial waiver of permit requirements?</p> <p>A disadvantaged community with a population larger than 20,000 would likely face an even more difficult economic situation than those below 20,000. A disadvantaged community larger than 20,000 has a greater number of disadvantaged persons, coupled with larger infrastructure and responsibility in addressing community needs.</p>
23	Allowable Non-Storm water Discharges	B.3	<p>The Draft Phase II Small MS4 General Permit lists allowable non-storm water discharges but does not include landscape irrigation, irrigation water, lawn watering, individual residential car washing, and street wash water. According to the Federal Register, these are allowable discharges. The City of Lompoc requests that these discharges be added to the list of allowable non-storm water discharges provided on page 15 of the Order.</p>
24	Discharges of Incidental Runoff	B.4	<p>The City of Lompoc requests this section be removed, as this task is best left to water conservation programs. The State has required a local agencies adopt a water-efficient landscape ordinance.</p> <p>E.5.b. (ii) (i) requires technical and financial assistance and implementation guidance related to storm water-friendly landscaping. Remove the requirement to provide both financial and technical</p>

			assistance, as this is an unfunded mandate. Local jurisdictions do not have the technical and financial resources to provide storm water friendly landscaping assistance. This is not a service that Cities should be asked to provide without first receiving full and direct funding from the state.
25	Construction and Industrial Permits	E.4.a(ii)(g)	Phase II permittees do not have the funds or staff to oversee or enforce the terms and requirements of the Construction or Industrial Permits issued by the State, or permits of other agencies (public health). If these items remain as requirements, the construction and industrial permit fees collected by the state be must directly allocated to local permittees, so agencies will have the resources to implement these regulations.
26	Ensuring Compliance	E.4.a(ii)(i)(1)	While permittees can provide authorization and take action to require that a discharger abate and clean up their discharge, spill or pollutant release within 48 hours, ensuring this occurs in this timeframe is not feasible. Other legal requirements apply, such as proper notification. However, it may take additional enforcement actions to force the property owner to take appropriate action.
27	Legal Authority	E.4.a(ii)(j)	Revise to read: "Permittee shall have the ability to levy citations or administrative fines against responsible parties." The timing of citations and fines should not be stipulated, as it is too specific and may not be appropriate or able to be implemented as quickly as the Draft Permit proposes. Generally, the only persons who have authority to issue citations are the police, who are often too busy and understaffed to address water leaks or other minor infractions. Issuance of a Stop Work order, or Verbal Warning could occur on-site where appropriate, but otherwise, the legal basis for an action must be evaluated and proper procedures followed, if a citation or fine is to be issued.
28	Interagency Agreements	E.4.a(ii)(l)	This section requires permittees to control contribution of pollutants and flows from one portion of the MS4 to another portion through interagency agreements. Permitted MS4s should be required to control only the pollutants within their jurisdiction. If a discharger contributes pollutants, the adopted Storm Water Ordinance should be sufficient to enforce against them. An interagency agreement seems redundant, time consuming and not particularly effective in enforcing prohibitions on discharge.
29	Certification Statement	E.4.b(ii)	The items required in this section extend far beyond what is called for in a certification statement. There appears to be no reason why the standard certification used in the past, and used for construction and industrial storm water permits is not sufficient. These specific record keeping items could easily be reallocated to other permit areas more appropriate for this type of documentation.

30	Certification – Reporting Timeline	E.4.b(iii)	The reporting timeline should be eliminated, as the presence of a Storm Water Ordinance should be sufficient to show the ability to enforce the terms of the permit. It is not clear what additional benefit would be gained by such a certification.
31	Reporting of Non-filers	E.4.c(ii)(d)	This section requires the permittees to refer non-filers for construction projects or industrial facilities subject to the State’s Industrial General Permit and ongoing violations to the Regional Water Quality Control Board (RWQCB). While identifying construction permit non-filers is possible, as the agencies would likely be reviewing building permits, and it is clear when construction is occurring, requiring referral of industrial non-filers does not appear to be an appropriate requirement. Given the convoluted nature of the General Industrial permit requirements and SIC Classifications, permittees would expend much energy in trying to determine what activities and processes take place at any time in association with a business, but may not even then be able to clearly determine which industrial operations would be required to be under permit. This is a function better left to the State and Regional Board staffs to determine, through inspections which industries and businesses are required to apply for coverage under the General Industrial Permit and which are complying with the provisions of the General Industrial Permit. Small MS4’s are not equipped to implement and enforce the State Industrial Permit.
32	Recidivism Reduction	E.4.c(ii)(f)	The City of Lompoc recommends removal of this section, as it duplicates the requirement for permittees to have effective enforcement provisions in their Storm Water Ordinances. It is possible to identify chronic storm water violators and encourage them, through escalating enforcement provisions, to cease violations. However, it is not possible to ensure that every property owner, their agents or tenants will cease violating the regulations, even in the face of significant sanctions.
33	Multiple Language Materials	E.5.b(ii)(e)	There is no definition, standard, threshold for when “appropriate educational materials” are required to be developed /disseminated “in multiple languages”. Would this be a Census demographic standard or does the State have their own population demographic studies? This can be difficult to provide given limited budgets, as funding for translators is not available. Will the state be developing and making available more multi-language educational materials?

34	School Outreach	E.5.b.ii.(I)	Remove the current wording and replace with "The MS4 shall provide for storm water educational opportunities to school-age children." It is not feasible or reasonable for a MS4 to implement California's Education and Environment Initiative Curriculum or equivalent. This curriculum is very broad and does not directly identify storm water quality in its topic areas.
35	Construction Outreach and Education	E.5.d	This Section constitutes an unfunded mandate and funding must be provided before this activity can be accomplished. In addition, this section is focused on construction sites <1 acre, with the assumption that there is a "construction community" to be studied, put through a pilot project, etc. Projects < 1 acre that are not part of a larger plan of development are often conducted by homeowners, volunteer groups, small business people, etc. This is not a "community" that can be easily identified. Additionally, this "community" is part of the general public, and there no need for a separate effort aimed at this sector. The requirement is also redundant as storm water ordinances prohibit discharges and will provide the means to enforce storm water requirements on all construction projects, without needing to impose all of the other inspection and review requirements identified in the construction program on homeowners and small businesses.
36	Citizen Advisory Group	E.6.(ii)(b)	This section requires the permittee to establish a citizen advisory group that must include residents, business owners, and environmental organizations. The formation of citizen advisory groups is very time consuming. Staff time would be better spent implementing other aspects of this permit. The prescriptive nature of this permit would not allow the advisory group to provide meaningful input into the implementation of the storm water program. Communities vary as to whether there are enough people who are available and wish to participate in a citizen advisory group, so specifying what types of people must be included is too restrictive. The City of Lompoc recommends that permittees be allowed the option to use methods appropriate to each community to engage the public in the development and implementation of the storm water program.
37	Analytical Monitoring	E.7	The analytical monitoring costs associated with the proposed provisions of the Illicit Discharge Detection and Elimination Program (IDDE) Monitoring Program would be prohibitive for a small municipality. This program is not required for small MS4's under the Clean Water Act and constitutes an unfunded mandate.
38	Identifying Priority Areas	E.7.b.ii	The City of Lompoc recommends rewriting this section to read as follows: The Permittee shall, at a minimum, identify the following as priority areas and 20 percent of the Permittee's urbanized boundary shall be identified as priority. The Permittee shall inventory the

			<p><u>following priority areas:</u></p> <p>(a) Areas with “older” infrastructure that is more likely to have illicit connections and a history of sewer overflows or cross-connections;</p> <p>(b) Industrial, commercial, or mixed use areas;</p> <p>(c) Areas with a history of past illicit discharges’</p> <p>(d) Areas with a history of illegal dumping;</p> <p>(e) Areas with onsite sewage disposal systems;</p> <p>(f) Areas upstream of sensitive water bodies; and</p> <p>(g) Areas that drain to outfalls greater than 36” that directly discharge to the ocean.</p> <p><u>In jurisdictions where these areas comprise less than 20% of their urbanized area, dry weather field observation is satisfactory. For those MS4s whose urbanized areas contain more than 20% of these priority areas, dry weather field screening shall be required.</u></p> <p>Additionally, this section should include definitions for older infrastructure (what constitutes old, plus storm water and/or sewer?), upstream, directly discharge, field observation and field screening.</p>
39	Construction General Permit	E.8.	<p>The language in this permit assigns the work of ensuring compliance with the State’s separate Construction General Permit (CGP) to the MS4 permittee, without providing them the financial resources to comply. If the State Board wants to pass along this responsibility, they need to provide the necessary financial resources to the Phase II permittees. The City of Lompoc supports proportional allocation of the full WDID Fee currently paid by the developer and submitted to the State, to local MS4’s for implementation of the proposed provisions. In addition, any other necessary financial support to local jurisdictions must be paid to address this unfunded mandate.</p>
40	Reporting Requirements	E.8.	<p>Eliminate increases in reporting requirements and reduce the current reporting burden on Phase II communities, to increase program cost effectiveness. Increased reporting simply spends more money and has not been shown to improve water quality or the effluent from construction sites.</p>

41	Construction Site Inventory	E.8.a.	This is a redundant database to the SMARTS database already in place for projects with a WDID issued. The proposed regulations focus on reporting, at the expense of controlling runoff. With limited staff, permittees are forced to choose between preparing and submitting reports and taking actions to control polluted runoff. Permittees can readily understand and address construction runoff issues without the need for formal inventory preparation and maintenance of this redundant database, because they can reference SMARTS. This redundancy adds unnecessary time and expends precious resources for no improvement to water quality.
42	Construction Site Inventory	E.8.a.i	The City of Lompoc recommends only projects that meet the CGP criteria be included in the inventory, allowing permittees to use SMARTS for this database, rather than creating a redundant database. Including all projects would needlessly increase burden on local jurisdictions by applying the requirements to minor alterations to structures, re-roofing, landscaping, and similar small, very short-term projects that do not have a significant impact on storm water. In a case where there was an egregious violation of discharge prohibitions, the jurisdiction's storm water ordinance should be available to address the violation.
43	Eliminate Construction Site inventory	E.8.a. (ii)	Inventory to include (a – i). This inventory is needlessly repetitive, would take hours of staff time and is not directly related to whether any of the identified projects pose a risk to water quality. The term "Water bodies" needs clarification. This data should already be included in SMARTS or should be unnecessary in enforcing storm water discharge prohibitions. Continuous updating of this database would take much of a jurisdiction's limited time and funds, resulting in no clear benefit.
44	Other Agency Permit Compliance	E.8.b.ii.(c)	It is not within the role or ability of the local jurisdiction to determine whether or not a particular contractor / developer has obtained all required agency permits (federal, state, local). It is up to a property owner to determine what is required and comply with the law. Local agency staff does not have the time or ability to try to verify applications, compliance, conditions etc. of federal or state permits. That is why permit fees are paid to these agencies and not to the local government. This section should be removed from the permit.
45	Erosion and Sediment Control	E.8.b. (ii) (e)	Documentation again appears to be the priority over reducing soil loss and erosion and improving water quality in this section. The City of Lompoc recommends the State Board simplify and require submittal and review of an Erosion and Sediment Control Plan only.
46	Construction Inspection	E.8.c.	Recent revisions to the Construction General Permit have made these requirements all but moot. Requiring a QSP on-site to implement storm water BMPs and a QSP to write the SWPPP should be adequate measure to ensure there is not a storm water problem. The above mentioned storm

			water professionals are qualified to properly ensure storm water controls are implemented on construction sites under their authority and are responsible for ensuring that proper BMPs are implemented. Local jurisdictions should be required only to inspect each project with a SWPPP once during the dry season (June – September) and monthly through the rainy season (October through May).
47	QSD/QSP requirement for local agency Planners and Inspectors	E.8 d	Local jurisdictions should not be required to ensure that all employees conducting plan review, permitting, inspecting qualify as Qualified Storm Water Pollution Prevention Plan Developers (QSD's) or Qualified Storm Water Pollution Prevention Plan Practitioners (QSPs). These are not positions regularly held by engineers. Many in these positions have many years of experience and are quite able to identify storm water concerns on plans or in the field, but do not have the educational background to qualify for the QSD or QSP, as it is currently defined. The cost of double training and testing of all construction related staff, the potential cost of hiring new staff to fill positions in order to have the proper certification and the fact that most engineers do not conduct project permitting or inspection activities on a regular basis will make this requirement infeasible, as well as excessive. All Storm Water Pollution Prevention Plans (SWPPPs) are required to be prepared and implemented by persons with a QSP/QSD qualification. The need for all staff in the construction process to have these qualifications is not clear. In addition, this is an unfunded mandate and the state will need to provide the necessary funds if these requirements are to be met.
48	Contractor Education	E.8.e.	Any educational information distribution should be directed by the local jurisdiction and should be cost effective. Holding trainings on Best Management Practices (BMPs) for contractors is redundant as QSD's and QSP's will be operating construction sites. In addition, contractors are generally not available for training as they are taking advantage of what work they can get and actively working on projects, rather than not getting paid and attending classes at the local City or County. This is also an unfunded mandate.
49	SWPPPs – Redundant Requirement	E.9.d	Environmental Health agencies require Hazardous Material Business plans. Fuel Stations require Spill Prevention Control and Countermeasure Plan (SPCC plans). Industrial facilities require Industrial NPDES permits with SWPPPs. The City of Lompoc suggests a waiver of the site specific SWPPP requirement, if facilities are already operating under the Industrial General Permit or have a current Hazardous Material Business Plan filed.
50	Weekly visual	E.9.e.ii.	Weekly Inspections of hotspot businesses are just not practicable. Section E.9.e.ii should be revised to the following: "Inspections of Hotspots shall be completed biannually to ensure Standard

	inspections		Operating Procedures for Storm Water Pollution Prevention are being followed. Trained staff will ensure facilities are being maintained in accordance with permit requirements and take corrective actions when necessary. Non- hot spots shall be inspected every 2 years."
51	Annual Inlet Cleaning	E.9.g.ii.b, d	Revise this section to read: "Clean all catch basins, inlets and storm conveyances once per year prior to the rainy season. Clean any problem areas again in the Spring. If blockages occur and/or complaints are received regarding inlets, response to these locations shall be made as soon as practicable to determine what action may be required, so maintenance needs can be addressed."
52	O&M Activities: BMP evaluation	E.9.h.i	Change BMP evaluation from quarterly to annually. In practice this has been found to be adequate to achieve maintenance and compliance, as procedures are reviewed annually, and Item 50 recommends biannual inspections.
53	Flood Management Facilities Retrofit Requirement	E.9.i	The City of Lompoc requests the removal of this requirement from the Permit. The requirement to assess and implement changes to two flood management projects per year is inappropriate for most local jurisdictions, as unless they are flood control entities, they may never design and implement a flood management project. For an agency which does deal exclusively with flood control, this may be too onerous, as other requirements and life safety priorities may already claim the limited staff and funds they have to allocate.
54	Flood Management Projects	E.9.i.ii	This section should be eliminated, as the permittee municipalities do not have jurisdiction over Flood Control Districts to require that flood management projects be either assessed or enhanced.
55	Grass Clippings	E.9.j.ii.b.2	Please show how reduction or elimination of grass mowing improves pollutants removal significantly. As most municipalities only mow as necessary to keep grass healthy and appropriate for the intended purpose (i.e. sports fields) this provision appears to be unnecessary.
56	Trash Abatement Plan	E.10(ii)	This section is above and beyond the requirements of the Clean Water Act and is an unfunded mandate. The City of Lompoc requests that this Section be removed. Requiring structural control is inappropriate in that there are other means of reducing trash and structural controls can contribute to flooding and property damage. Each permittee should be permitted to address trash deposition as required in their jurisdiction and to focus on the generators and trash constituents found in their community.

57	Commercial and Industrial retrofits	E.11.b, c, d and e	<p>The permit requires the Permittee to “require industrial and commercial facilities included in the inventory to select, install, implement and maintain storm water BMPs.” <u>This is stating that commercial and industrial facilities should be retrofitted.</u> The expectation that businesses are going to make significant structural changes (site grading changes, berming, new roofing areas, etc.) to meet the standards in this Permit is unreasonable and punitive. The State Board needs to show what public health and safety need directly requires this action. Many businesses are tenant owned where the operators do not own the property. Property owners may be reticent to make significant changes, especially those that are tenant specific. This measure could likely result in loss of revenue for property owners and businesses alike. Section 11.b should be entirely removed.</p>
58	Watershed Analysis	E.12.	<p>All of the requirements in this section constitute unfunded mandates. The cost of the required watershed analysis, receiving water evaluations and related hydromodification / low impact development requirements greatly exceed the ability of local jurisdictions and property owners to fund. Watershed baseline characterization, watershed sediment budgets, water quality runoff standards, and long-term watershed process management are the tasks appropriate for the State / Regional Boards to undertake. Local jurisdictions do not have the resources, expertise or funding to complete this work or contract for it to be done.</p>
59	Methodology	E.12.b.1	<p>Overall, the detailed requirement for a watershed baseline characterization/sediment budget for Phase II communities exceeds EPA’s 6 minimum control measures and is an unfunded mandate requiring state compensation or withdrawal of requirements. Based upon similar watershed characterizations, this effort is expensive and requires sophisticated technical expertise, beyond the scope of Phase II MS4s. Even with the best professionals working together, there is no agreed-upon or commonly used method to identify “dominant watershed processes potentially affected by changes in storm water runoff caused by new and redevelopment projects” that a permittee can then use to establish development criteria. The few Phase I MS4s who have completed such studies have all utilized different approaches resulting in different criteria and applicability. The only common factor is cost: such studies have all been in the range of \$500 - \$1M with the bulk paid by grants.</p> <p>At a minimum, the City of Lompoc recommends this section be integrated into the hydromodification portion of the permit, and limited to characteristics which are readily available or easily determined using desktop techniques, and characteristics addressed in other parts of this Order (e.g. IDDE and monitoring). The characterization factors should be focused and limited to development of hydromodification controls (which should be addressed in next permit term).</p>

			<p>Define the method or approach to “complete a watershed characterization.” There is no direction or guidance <i>how to compile, process, and interpret</i> the data and how to identify key sub-watershed processes as they relate to development. Under item (e), it is particularly unclear how an MS4 is to “rank the health” of watershed processes, as listed.</p> <p>Given the lack of guidance, this requirement should not be in place until the State can provide detailed guidance on a desktop watershed characterization methodology. Additionally the permit should clearly state that the watershed characterization be based on readily available data and kept to desktop analysis only. Provisions should be made to address the significantly different types and places of watersheds from small to large, from built out to little populated and from free-flowing to dammed. Consideration should also be given to whether a jurisdiction is upstream, affecting all downstream users or downstream, being affected by all upstream users.</p>
60	GIS capability	E.12.b.1.c	<p>Many small permittees do not have a GIS system. Some of the GIS documentation requirements are particularly difficult to meet and would require an army of specialized GIS operators, such as the requirement to maintain and update on GIS information on all businesses within the jurisdiction. Businesses cease operation, move and open daily, and maintaining a current GIS file representing this would be impossible. Each jurisdiction maintains a list of business license holders, which should be adequate to identify priority areas of concern. Communities should be allowed to meet documentation requirements in any reasonable manner, including non-electronic formats.</p>
61	Rapid Assessment	E.12.b.1.d	<p>The rapid stream assessment requirement should be removed from this permit. The Watershed Characterization should be limited to desktop analyses only. Center for Watershed Protection’s Unified Stream Assessment is a continuous stream walk that is very time intensive. This would be very difficult for those communities with few staff. The information gleaned would likely be relatively unusable by many jurisdictions, as it would have limited value. Across California many communities have channelized, dammed or otherwise altered watercourses and many in central and southern California have streams and riverbeds that flow intermittently during only a few months a year and do not support significant biota within their jurisdictions.</p>
62	Sediment budget	E.12.b.2.	<p>Watershed sediment budgets are not necessary to determine whether pollutants are being discharged from property within a jurisdiction. Sedimentation is a natural and necessary process and if the State Water Board believes that it is important to evaluate sedimentation in each watershed, they should take this task on themselves. This does not however, have a clear connection to what jurisdictions must do to ensure that excessive sediment (pollution) is not</p>

			<p>discharged from properties within their jurisdictions.</p> <p>In these challenging economic times, duties that would properly be taken on by the State Board should not be foisted off onto small MS4s that control and impact only small portions of watersheds and water courses that their jurisdictions drain to. Global studies to evaluate natural processes are not consistent with the primary purpose of the Clean Water Act. Reducing pollutants through the use of BMPs on a site-specific basis is much more directly and justifiably connected to storm water pollution prevention. Small municipalities, as well as state government are accountable for using limited funds as expeditiously as possible to achieve the necessary result. This sediment budget requirement, as well as many other requirements of the proposed permit seem to ignore this fact.</p>
63	Water Quality Runoff Standards	E.12.b.3	<p>The word “discretionary” should be added to the first sentence under the title, so as to read, “The Permittee shall require all <u>discretionary</u> projects fitting the category descriptions...”</p>
64	Pre-project Conditions	E.12.b.3	<p>The Water Quality Runoff Standard should be modified to ensure that it requires projects to match pre-project conditions only.</p>
65	Redevelopment	E.12.b.3	<p>Redevelopment projects can produce less impervious cover per capita than their greenfield counterparts, making it desirable to encourage redevelopment projects. Allowing for existing developed sites to maximize their utility through greater density and lot coverage directly reduces the demand for development of agricultural lands. In addition, it may not be appropriate or feasible for redevelopment projects to either retain the full 85th percentile storm event or mimic pre-development (i.e., undeveloped) conditions. As such, The City of Lompoc strongly recommends that flexibility be inserted into the hydromodification requirements to ensure this type of development is encouraged.</p>
66	Infeasibility	E.12.b.3	<p>Site conditions will exist where full retention is neither feasible and/or desirable. Infeasibility criteria should be acknowledged (and is acknowledged in multiple Phase I permits, including Ventura) and include:</p> <p><u>High groundwater table:</u> The bottom of the infiltration practice should be a certain minimum distance above the seasonal high groundwater table.</p> <p><u>Protection of source water:</u> Infiltration practices should be set back a certain minimum distance from a groundwater well or aquifer recharge area used for drinking water.</p>

			<p><u>Potential for pollutant mobilization:</u> Infiltration practices should not be utilized in brownfield sites or other locations where pollutant mobilization is a documented or anticipated concern (sites where past use was as a gasoline station or other auto-related uses or over historic oil fields).</p> <p><u>Clay soils:</u> Infiltration practices are infeasible where soils have low infiltration rates. It is important to specify what is considered a low infiltration rate.</p> <p><u>Potential geotechnical hazard:</u> Water infiltration can cause geotechnical issues, including: settlement through collapsible soil, expansive soil movement, slope instability, and increased liquefaction hazard. Infiltration practices should not be used where geotechnical issues are a documented concern.</p> <p><u>Structural Hazard:</u> Potential hazards associated with ground saturation due to infiltration adjacent to structures, walls, and basements, for example.</p> <p><u>Land use of concern:</u> To prevent groundwater contamination, infiltration practices should not be used in high-risk areas such as service/gas stations, truck stops, and heavy industrial sites. This should be acknowledged in the Special Project Category Requirements (E.12.b.3).</p> <p><u>Impairment of beneficial uses:</u> Locations where reduction of surface runoff or increase in infiltration may potentially impair beneficial uses of the receiving water.</p> <p><u>Conflict with water conservation goals:</u> Use of evapo-transpiration and other vegetated practices may conflict with water conservation goals in arid climates (e.g., a green roof or rain garden that requires irrigation during the dry season. Note- many plants that will survive with minimal watering in an arid climate will die when inundated, even for a short time.).</p> <p><u>Lack of demand for harvested storm water:</u> Projects must be able to demonstrate sufficient demand for harvested storm water to be able to draw down the cistern prior to the next storm event to prevent bypass.</p> <p>Additional implementation constraints as identified by the permittee.</p>
67	High Density / Mixed Use	E.12.b.3	<p>In addition to the criteria identified for new development projects, the City of Lompoc recommends the permit exempt from LID / Hydromodification standards high density housing projects with densities over 20 dwelling units per acre, as well as mixed use retail / office and housing projects in city centers or nodes. The environmental benefits of retaining surrounding rural and agricultural</p>

			areas in open space and concentrating development in a smaller area, as well as encouraging alternative transportation and live/work arrangements consistent with mixed use development outweigh the reduction in runoff on what are in fact relatively small areas within a watershed.
68	Volume & Flow-based BMPs and Off-site Mitigation	E.12.b.3	All regulated projects (including special project categories) should have the option of considering volume-based (bio-retention areas) AND flow-based BMPs if the full retention requirement cannot be met. Special regulated projects allow for offsite mitigation, but do not indicate that volume-based or flow-based BMPs are allowable. Note: In flat areas where infiltration is difficult, holding tanks and basins must utilize pumps to ensure that water is discharged, as necessary to prevent flooding. This can be problematic, as the property owner must regularly maintain and operate the pump when it rains. It should also be noted that in small built-out jurisdictions without adequate infiltration rates, few, if any, areas are available to implement off-site mitigation, potentially resulting in deterioration of existing building stock as redevelopment becomes infeasible.
69	Offsite Mitigation	E.12.b.3	Currently, excess runoff volume from special projects must be retained elsewhere within the same sub-watershed. Permittees should not be required to create and administer an offsite mitigation program. Establishing an offsite mitigation program should be optional due to the administrative burden that it places on small local governments. Nationally, offsite mitigation programs have presented numerous challenges for local governments and as such have been abandoned by several communities including Clark County, WA and Howard County, MD.
70	Regulated Special Projects	E.12.b.3	Special Projects should not be required to have full on-site infiltration - many types of Regulated Special Projects (i.e. auto repair, gasoline outlets, etc) need pre-treatment prior to infiltration, and redevelopment projects are often located in areas with existing soil contamination. This paragraph needs to incorporate the infeasibility criteria found in number 66 above.
71	Regulated Projects	E.12.b.3 (i) Title E.12.b.3 (i)(b) and (c)	Add the word "discretionary" to the title, so as to read, "Regulated <u>Discretionary</u> Projects". Similar comment for E.12.b.3 (i)(a) Title [p. 67] so as to read, "Regulated <u>Discretionary</u> Project Categories" Add the word "discretionary" to the title: "Other <u>Discretionary</u> Development Projects" Revise to read, "This category includes <u>discretionary</u> development projects on public or private land that fall under the <u>review authority of the Permittee.</u> "

72	Redevelopment Exclusions	E.12.b.3.i.(a)(1)	<p>Add the following exemptions in a separate subsection related to exemptions to include: "Redevelopment" does not include routine maintenance activities that are conducted to maintain original line and grade, hydraulic capacity, original purpose of facility or emergency redevelopment activity required to protect public health and safety. Reconstruction of existing roadways, including excavation to base or below, as needed to meet current geotechnical standards, should be exempt when the roadway is to be the same size, location, number of lanes and capacity and the reason for the reconstruction is related directly to the road grades or condition only and not to any proposed development. Maintenance of existing roads does at times require reconstruction, in cases where a road is many years old and has been overlain so many times that anything less than reconstruction is infeasible. The following road maintenance practices should be exempt: pothole and square cut patching, overlaying existing asphalt or concrete pavement with asphalt or concrete without expanding the area of coverage, shoulder grading, reshaping/re-grading drainage systems, crack sealing, resurfacing with in-kind material without expanding the road prism, and vegetation maintenance. Redevelopment of existing single-family structures should be exempt. Underground utility projects that replace the ground surface with in-kind material or materials with similar runoff characteristics should be exempt, as well as installation of small above-ground utility structures of less than 500 square feet in size.</p>
73	Road Projects	E.12.b.3.i.(d)	<p>Revise permit language to require road projects to incorporate USEPA guidance regarding Managing Wet Weather with Green Infrastructure: Green Streets to the maximum extent practicable. This language/requirement should be provided in lieu of the water quality standards.</p>
74	Interim Standards	E.12.b.4	<p>It is not clear what benefit Interim hydromodification standards provides. Implementing one set of criteria and changing those criteria within one or two years places undue burden on MS4s and particularly on development community, whose permit approval process for projects > 1 acre of development often span several years. Remove the requirement for interim standards.</p>
75	Exemptions for site constraints	E.12.b.4	<p>It is unrealistic to assume that matching the pre-project hydrograph will be achieved for every project. In some instances it may be difficult or cost prohibitive to mimic the pre-project hydrograph. Site constraints, soil conditions, and topography all play a part in determining the hydrology of any particular site. See site constraints discussion above, under Water Quality Standards. Allow exemptions for tidal areas and those discharging into concrete-lined stream channels. Allow a 10 to 15% tolerance for hydrograph matching.</p>

76	Flexibility in LID / Hydro-modification Standards	E.12.b.4	Allow permittees with existing or in-progress hydromodification development standards to fulfill this requirement with existing or in-process standards. Specifically, Region 3 is in process of developing criteria for hydromodification based upon a similar approach. The outcome may include different criteria than an 85 th percentile for volume, or a 2-yr/5-yr recurrence interval for volume and rate. This permit should address Regional Board-approved approaches to hydromodification.
77	Hydro-modification Control	E.12.b.5	Hydromodification control is a new and evolving area of storm water management. There are no current models to follow or approaches with known adaptations to small MS4s. For example, in California the approach is research-oriented and highly technical, with approximately four existing models (Contra Costa, Alameda, Sacramento, San Diego), and several currently under research (Ventura, Orange County, Region 3). In each, the outcome and approach have been totally different. It is therefore unreasonable to delegate this responsibility to Small MS4s. The entire section E.12.b.5 should be removed.
78	Applicability Threshold Determinations	E.12.b.5.ii (a)	Applicability thresholds are unclear and ambiguous: "to maintain watershed processes necessary to achieve long-term watershed health". If this is intended to refer to a "Healthy Watershed" as defined in the glossary (page 2) this should be clarified. If so, an MS4's development criteria cannot be expected to be the vehicle for achieving "Healthy Watersheds". This goal is not reasonable in watersheds and watercourses that are already highly developed and altered, or for MS4's that comprise less than 1-percent of a large undeveloped watershed. Language and approach should be consistent with the State's Strategic Plan for watershed protection of beneficial uses.
79	Design Principles	E.12.b.7	The section requiring design principles to be incorporated into the regulations is completely unclear. These items are not worded properly to identify any guidance and many are so vague or undefined that they could not be addressed. These "design principles" are not universally defined.
80	Operation and Maintenance	E.12.b.8	Specify that this requirement applies to new development only (i.e., it does not retroactively apply to existing development) and stipulate the date of applicability. Also, this section is much too specific and should be revised to require enforceable maintenance. Note: There may not be a vector control district or agency. The property owner may be responsible for vector control.
81	Mosquito and vector control	E.12.b.8 (b) and (c)	MS4s do not have the authority to establish a protocol ensuring notification of other agencies by another agency, in this case mosquito and vector control agency. Similarly it is outside authority of MS4 to establish legally enforceable mechanisms requiring private property owners to provide access to other agency's staff, including State Board staff. These requirements should be removed.

82	Receiving Water Monitoring	E.13 All	A receiving water monitoring program is not required under the Federal Phase II Rule. This section should be removed. Receiving water monitoring should continue to be conducted by the State and Regional Boards. In arid areas and/or those where hydrology has been significantly altered by dams, channels or other structures, adequate samples are often not possible to obtain, as water flow is a trickle or non-existent, stagnant and therefore not representative of any contribution.
83	Compliance Tiers	E.13. a	If the state chooses retain the receiving water monitoring program in the permit, the requirement should be changed as follows: "New and Renewal Traditional Small MS4 Permittees with a population greater than 25,000 50,000 ..." The cost and the scope of the requirements in section E.13 are similar to requirements for Phase I Permittees and should not be placed on smaller MS4s.
84	Receiving Waters	Page 17, Order Section D.	<p>The City proposes the following modification of the language related to Receiving Water Limitations, in order to maintain consistency with the Maximum Extent Practicable (MEP) Standard and the intended iterative process.</p> <p>D. RECEIVING WATER LIMITATIONS</p> <p>Discharges shall not cause or contribute to an exceedance of water quality standards contained in a Statewide Water Quality Control Plan, the California Toxics Rule (CTR), or in the applicable Regional Water Board Basin Plan.</p> <p>1. <u>The effect of the Permittee's storm water discharges on receiving water quality is highly variable. For this reason, this Order requires that the Permittee shall design its stormwater program to achieve compliance with Receiving Water Limitations to the maximum extent practicable through timely implementation of control measures/BMPs and other actions to reduce pollutants in the discharges and other requirements of this Order including any modifications. The storm water program shall be designed to achieve compliance with Receiving Water Limitations. If exceedance(s) of water quality objectives or water quality standards in the receiving waters persist notwithstanding implementation of control measures/BMPs other storm water program requirements of this Order, the Permittee shall assure achieve compliance with Receiving Water Limitations over time by complying with the following procedure, which reflects an iterative approach:</u></p>

			<p>1. a. Upon a determination by either the Regulated Small MS4 or the Regional Water Board that MS4 discharges are causing or contributing to an exceedance of an applicable water quality standard, the Regulated Small MS4 shall promptly notify and thereafter submit a report to the Regional Water Board that describes best management practices (BMPs) that are currently being implemented and additional BMPs that will be implemented to prevent or reduce any pollutants that are causing or contributing to the exceedance of water quality standards. The report shall include an implementation schedule. The Regional Board may require modifications to the report;</p> <p>2. b. Submit any modifications to the report required by the Regional Water Board within 30 days of notification;</p> <p>3. c. Implement the actions specified in the report in accordance with the approved schedule.</p> <p>4. d. So long as the Regulated Small MS4 has complied with the procedure set forth above and is implementing the actions, the Regulated Small MS4 does not have to repeat the same procedure for continuing or recurring exceedances of the same receiving water limitations unless directed by the State Water Board or the Regional Water Board to develop additional BMPs.</p> <p><u>2. If the Permittee is found to have discharges causing or contributing to an exceedance of an applicable water quality standard, the Permittee will not be determined to be in violation of this Order unless it fails to comply with the requirement to report such discharge (Provision D.1.a.), and revise its BMPs to include additional and more effective BMPs, and to implement the same (Provisions D.1.b-c.).</u></p>
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