

Response to Comments on the first draft of the General Permit for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems (Small MS4s) (General Permit)

Atascadero Unified School District

Comment: 1.1

Response: A specific section has been developed for Non-Traditional Small MS4s to address their unique management structure.

Comment: 1.2

Response: A Permittee may utilize an equivalent or existing document such as a Standard Operations and Procedures manual, Operation and Maintenance Plan, or Spill Response Plan if that document includes the necessary information required to comply with the provisions of this attachment.

Comment: 1.3

Response: Comment noted.

Comment: 1.4

Response: A specific section has been developed for Non-Traditional Small MS4s to address their unique management structure.

Comment: 1.5

Response: K-12 Schools are not automatically designated in this draft order.

Comment: 1.6

Response: Contribute to a county wide program may include contributing in-kind service. Financial contribution is not required.

Comment: 1.7

Response: Comment noted

Comment: 1.8

Response: Equivalent program would include the same elements to comply with the provisions of the Public Outreach and Education program.

Comment: 1.9 – 1.20

Response: This provision has been substantially changed to address comment. A specific section has been developed for Non-Traditional Small MS4s to address their unique management structure.

Comment: 1-21

Response: Comment noted.

Comment: 1.22, 1.23-25

Response: This provision has been substantially changed to address comment.

Comment: 1.24

Response: Comment noted.

BASMAA

Comment: 2.1

Response: The provisions have been significantly revised to achieve a more incremental approach in ramping up the requirements. Please see Section III, Economic Consideration of the Fact Sheet, specifically for discussion of significant changes to draft order.

Comment: 2.2

Response: A specific section has been developed for Non-Traditional Small MS4s to address their unique management structure. In addition, there's flexibility within the provisions on how to implement.

Bay-Friendly Landscaping & Gardening Coalition

Comment: 3.1- 3.3

Response: This provision has been substantially changed to address comment.

Belli Architectural Group

Comment: 4.1 - 4.3

Response: This provision has been deleted.

BNSF Railway Company

Comment: 5.1, 5.3-4, 5.6, 5.8-11

Response: This provision has been substantially changed to address comment.

Comment: 5.2

Response: Heavy rail (Transit Agencies) are not automatically designated in this draft order.

Comment: 5.5, 5.7, and 5.12

Response: This provision has been deleted.

Butte County Board of Supervisors

Comment: 6.1

Response: Please see Section III, Economic Consideration of the Fact Sheet.

Comment: 6.2 and 6.3

Response: The draft order has been substantially revised to address comments received regarding costs of implementation as outlined in Section III, Economic Considerations, of the Fact Sheet. To the extent that these comments assert that the requirements of the permit constitute unfunded state mandates, see Section IV, Unfunded Mandates, of the Fact Sheet.

Calaveras County Public Works

Comment: 7.1

Response: This provision has been substantially changed to address comment.

Comment: 7.2 -7.3

Response: Please see Section III, Economic Consideration of the Fact Sheet.

California Association of School Business Officials (CASBO)

Comment: 8.1

Response: County Offices of Education are not designated in this draft order.

Comment: 8.2

Response: The Regional Water Boards have the authority to issue individual NPDES permits for storm water discharges. (Wat. Code §13377.). This draft order allows Regional Water Boards to enroll any Regulated Small MS4s under the general permit to efficiently regulate numerous storm water discharges under a single permit. The Regional Water Board must base this designation on the potential of a Small MS4's discharges to result in exceedances of water quality standards, including impairment of designated uses, or other significant water quality impacts, including habitat and biological impacts. (See Finding 24 of Revised Draft Tentative Order.)

California Chamber of Commerce

Comment: 9.1-4

Response: This provision has been substantially changed to address comment.

California's for Adequate School Housing:

Comment: 10.1

Response: Please see Section III, Economic Consideration of the Fact Sheet.

Comment: 10.2

Response: County Offices of Education are not designated in this draft order.

Comment: 10.3 and 10.5

Response: Comment noted

Comment: 10.4

Response: State Water Board staff will make presentations to your members as part of the Phase II outreach efforts.

Comment: 10.6 and 10.7

Response: A specific section has been developed for Non-Traditional Small MS4s to address their unique management structure.

California Council for Environmental and Economic Balance

Comment: 11.1, 11.2, and 11.5-16

Response: This provision has been substantially changed to address comment.

Comment: 11.3 – 11.4

Response: Comment noted

California County Superintendents Education Services Association (CCSESA)

Comment: 12.1 and 12.2

Response: K-12 School Districts, County Offices of Education, and Charter Schools are not designated in this draft order.

California Retailers Association

Comment: 13.1-13.5

Response: This provision has been substantially changed to address comment.

Comment: 13.6

Response: The State Water Board has notified all parties required to be notified under 40 CFR 124.10(c)(1)(ii),(iii),(iv), (x).

League of California Cities

Comment: 14.1 and 14.4

Response: Please see Section III, Economic Consideration of the Fact Sheet.

Comment: 14.2

Response: This provision has been substantially changed to address comment.

Comment: 14.3

Response: Please see Section IV, Unfunded Mandates of the Fact Sheet.

Comment: 14.5

Response: The revisions to the draft order address this comment in several ways. The draft order has been substantially revised as laid out in Section III, Economic Considerations of the Fact Sheet. A specific section has been developed for Non-Traditional Small MS4s to address their unique management structure. Further, the draft order lays out standards and goals to be achieved in each program area but still leaves significant flexibility to the discharger to determine which BMPs it will implement. See also response to CASQA overarching comment 17.4 .

Comment: 14.6

Response: Comment noted

State of California Department of Corrections and Rehabilitation – Facility Planning, and Construction Management

Comment: 15.1

Response: Please see Response to Comment 8.2.

Comment: 15.2 – 15.10

Response: This provision has been substantially changed to address comment.

Comment: 15.11

Response: Training will be provided to all Phase II Permittees as part of the Phase II outreach efforts.

Comment: 15.12

Response: Please see Section III, Economic Consideration of the Fact Sheet. We understand State agencies face unique fiscal impacts implementing provisions in this draft order. However, the draft order has undergone substantial revisions to address cost implications, while still protecting storm water quality. If you feel the Fact Sheet discussion does not address your concerns, please submit a more specific comment.

California Department of Parks and Recreation

Comment: 16.1-9 and 16.11-13

Response: This provision has been substantially changed to address comment.

Comment: 16.10

Response: State Water Board will include State Parks and Recreation as a Stakeholder in future Stakeholder meetings.

California Stormwater Quality Association (CASQA)

Comment Letter 17

[Note: Numbering on the Responses to Comment letter 17 reflect the numbering provided in the comment letter. The CASQA comment letter has been heavily referenced among the comment letters. Therefore, this section contains detailed information.]

Overarching Comment 1: Cumulative Impact

Establishing Phase II program requirements that are within the capacity of the current and anticipated resources of Phase II Permittees will create a more effective tool to protect water quality. Stretching Phase II resources beyond an obtainable capacity and setting the bar too high will not result in improved water quality – it is likely to result in Phase IIs that are unable to comply with the permit, who then may be faced with costly administrative or court imposed penalties.

Response: The draft order has been substantially changed to address the comment.

Specific Comment/Recommendations Table - Areas for Permit Renewal Prioritization over the (2012-2017) Permit Term - Requirements to be Phased-In Over Several Future Permit Terms Comments:

Pollution Prevention/Good Housekeeping: Delete requirement to incorporate water quality and/or habitat enhancement features to new flood management facilities, if practicable.

Response: This provision to incorporate water quality and/or habitat enhancement feature has been deleted. However, incorporating water quality and/or habitat enhancement features to new flood management facilities has not been deleted.

Storm water management in the past had been to control flooding and mitigate property damage, with less emphasis on water quality protection. These structures may handle a significant amount of storm water and therefore offer during the design phase of new flood management facilities there is opportunity to include water quality feature.

Comment

Industrial/Commercial Inspection Program: Delete Inventory of commercial and industrial facilities. Phase-in requirement to establish inspection priorities and implement a program to inspect commercial and industrial facilities.

Response: This provision has been deleted. The inventory is has been moved to the IDDE program, but the permit provision has been substantially changed.

Comment:

Post-Construction provision: Conduct a desktop watershed characterization

Response: This provision has been deleted.

Comment:

Delete Receiving Water Monitoring, however If receiving water monitoring requirements are not removed, as an alternative to those requirements, provide an option of contributing to the statewide or regional SWAMP Bioassessment and Stream Pollution Trends (SPoT) monitoring programs or joining a regional monitoring program. Permittee-specific receiving water monitoring based on water quality priorities.

Response: This provision has been substantially revised to address the comment. The option of contributing to the statewide or regional SWAMP Bioassessment and Stream Pollution Trends (SPoT) monitoring programs or joining a regional monitoring program Permittee-specific receiving water monitoring based on water quality priorities has been added.

Comment:

Program Effectiveness Program: Establish mechanisms for assessing program effectiveness per the CASQA Program Effectiveness guidance manual and use the information to identify retrofit opportunities.

Response: Comment noted.

Overarching Comment 2: Redundancy

The State Water Board staff need to streamline regulatory requirements to improve program efficiency. As an example, the State Water Board staff or CalEPA can work with other state agencies (such as the Department of Toxic Substances Control, Department of Pesticide Regulation, Office of Environmental Health Hazard Assessment, Department of Water Resources and Office of State Architect) to identify regulatory options for storm water compliance in the areas of industrial oversight, pesticide control, water conservation, and new development requirements for non-traditional Phase II MS4s (e.g., school districts). This will help reduce redundancy and clarify and support storm water program implementation at all levels of government. An example of the redundancy is the overlap between the draft Phase II permit's Construction and Industrial/Commercial provisions and the State's Construction General Permit (CGP) and Industrial General Permit (IGP) requirements. Much of the data collected via the CGP and IGP will be tracked in the SMARTS database. Asking Phase IIs to collect the same data adds unnecessary time and expense with no benefit to water quality. This redundancy not only imposes a burden on the Phase II Permittees, it will impose a burden on the businesses and construction operations as the Phase II Permittees will pass along new and potentially redundant fees to commercial and industrial businesses and construction sites. Recommendation: Please direct State Water Board staff to eliminate redundancy with other state and federal requirements, with particular attention to CGP and IGP requirements. See Attachment A comments on the Industrial/Commercial and Construction Provisions for more specific recommendations.

Response: This provision has been substantially revised to address the comment. Specifically, the Permittee shall obtain the permit provision inventory from the SMARTS database and supplement as needed.

Overarching Comment 3: Six Minimum Control Measures (MCM)/Unfunded Mandates:

The draft Phase II permit that goes beyond the national approach for smaller entities that established six minimum control measures.

Recommendation: Please direct State Water Board staff to remove requirements beyond the MCMs (i.e., industrial/commercial, monitoring, and trash reduction provisions). Also see Attachment A for additional requirements regarding the requirements that are considered a higher level of service.

Response: In response to this comment, a discussion of state mandates has been incorporated into the Fact Sheet at Section IV, Unfunded Mandates. More broadly, staff disagrees that the requirements of the permit are inconsistent with the provisions of the federal regulations or in conflict with non-binding guidance provided in those regulations. In addition to laying out the six minimum measures, the regulations generally require implementation of a storm water program "designed to reduce the discharge of pollutants from your MS4 to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act," (40 CFR 122.34(a)) and further specify that the MS4s must comply with all other NPDES requirements developed consistent with 40 Code of Federal Regulations sections 122.41 through 122.49 (40 CFR 122.34(f)) and incorporate evaluation and assessment, recordkeeping, and reporting (40 CRF 122.34(g)). Staff additionally points out that permit provisions

have been substantially revised and several of the specific permit requirements referenced in this comment, including the industrial/commercial inspection program and the trash reduction provisions, have been removed.

Overarching Comment 4: Timeline

Several elements of the timeline remain unrealistic. Individually, the requirements and associated timeline may be feasible, but collectively, the comprehensive and ramped-up nature of the requirements makes compliance infeasible for Phase II Permittees. Recommendation: Please direct State Water Board staff to incorporate the revised timeline recommendations made in Attachment A.

Response: The draft order has been substantially changed to address the comment.

Overarching Comment 5: Maximum Extent Practicable (MEP)

One of the more challenging aspects of the draft Phase II permit is the attempt to provide clarification of the “maximum extent practicable” standard. On the one hand, EPA storm water audits have noted the need to have more specific permit provisions, while on the other hand flexibility is necessary in order to address the varying conditions and needs of Phase II Permittees across the state. Water Code section 13360(a) provides that “[n]o waste discharge requirement or other order of a Regional board or the State Water Board or decree of a court issued under this division shall specify the design, location, type of construction, or particular manner in which compliance may be had with that requirement, order, or decree, and the person so ordered shall be permitted to comply with the order in any lawful manner.” The Draft Permit’s 93 pages of prescriptive requirements are not consistent with the provisions of Section 13360.

Recommendation: Please direct State Water Board staff to remove prescriptive requirements that have no apparent nexus with water quality improvement and instead allow Phase II Permittees to identify high, medium, and low priority areas based on a pre-defined set of criteria.

Response:

The specific provisions referenced in the comment have been substantially revised or have been removed from the Draft Order and the comment is no longer applicable to these permit provisions.

More generally, a municipal storm water permit must ensure compliance with the Clean Water Act. Water Code section 13372 states in part that “the provisions of this chapter [chapter 5.5, establishing compliance with the provisions of the Clean Water Act] shall prevail over other provisions of this division to the extent of any inconsistency.” To the extent that this comment suggests that Water Code section 13360 would prohibit programs necessary to comply with federal requirements, the federal requirements must take precedence over section 13360.

Even where section 13360 is applicable, goals and standards to be achieved and attained that are laid out in the Draft Order do not constitute a mandate of the method of compliance. Further, where the Draft Order allows dischargers to propose and substitute a best management practice or other manner of compliance in lieu of any practice specifically enumerated in the Order, the Order complies with section 13360. "Section 13360 is a shield against unwarranted interference with the ingenuity of the parties subject to a waste discharge requirement; it is not a sword precluding regulation of discharges of pollutants. It preserves the freedom of persons who are subject to a discharge standard to elect between available strategies to comply with that standard." (*Sierra Preservation Council v. SWRCB* (1989) 210 Cal. App. 3d 1421, 1438.)

Overarching Comment 6: Retrofit Requirements

Retrofitting is mentioned or implied in several places throughout the draft Phase II permit including:

Specific Comment: Program Management: This summary shall include...the costs for retrofitting existing BMPs to include green infrastructure...

Response: This provision has been deleted.

Specific Comment: Pollution Prevention/Good Housekeeping: The Permittee shall identify and implement a process for incorporating water quality and habitat enhancement features into new and existing flood management facilities.

Response: This provision to incorporate water quality and habitat enhancement features into existing flood management facilities has been deleted.

The focus of storm water management in the past has been to control flooding and mitigate property damage, with less emphasis on water quality protection. These structures may handle a significant amount of storm water and therefore opportunity during the design phase of new flood management facilities to include water quality features. This provision applies to new and upgraded flood control projects only, not existing structures.

Specific Comment: Pollution Prevention/Good Housekeeping. The Permittee shall assess at least two existing flood management projects per year to determine whether changes or additions can be made to enhance water quality and habitat functions. The Permittee shall implement changes or additions to two flood management projects per year to enhance water quality and habitat functions, unless a feasibility analysis demonstrates the infeasibility of such changes or additions.

Response: This provision to incorporate water quality and habitat enhancement features into existing flood management facilities has been deleted.

Specific Comment: Industrial/Commercial: The Permittee shall require industrial and commercial facilities included in the inventory to select, design, install and implement storm water BMPs.

Response: This provision has been deleted.

Specific Comment: Program Effectiveness Assessment and Improvement: The report shall also identify storm water retrofit opportunities.

Response: This provision has been deleted.

Comment 7: Draft or Incomplete Areas

CASQA is concerned about the number of draft Phase II permit references that are incomplete or in a draft format. Stakeholders should have the ability to review, comment, and be aware of the full extent of permit requirements. This is not possible when several key components of the draft Phase II permit require compliance with in-progress guidance. Draft incomplete references include:

Specific Comment: Draft California Ocean Plan

This provision has been substantially revised to address the comment. In addition, the State Water Board adopted Resolution No. 2012-0012 on March 20, 2012 Approving Exceptions to the California Ocean Plan for Selected Discharges into Areas of Special Biological Significance, Including Special Protections for Beneficial Uses, and Certifying a Program Environmental Impact Report.

Specific Comment: State Water Board's Draft Effectiveness Assessment Guidance

Response: This provision has been deleted.

Specific Comment: Lake Tahoe BMP Rapid Assessment Methodology

Response: This provision has been deleted.

Specific Comment: Attachment G: TMDL Requirements (table incomplete) Recommendation: Please direct State Water Board staff to remove any references that are incomplete or draft from the draft Phase II permit and revise the draft Phase II permit accordingly.

Response: The draft order has deleted any references that are incomplete or draft.

Specific Comment: Attachment G: TMDL Requirements (conflicts with current approved WLA programs)

If the State or EPA has established a TMDL for an impaired water that includes WLAs for storm water discharges, permits for either industrial storm water discharges or MS4 discharges must contain effluent limits and conditions consistent with the requirements and assumptions of the WLAs in the TMDL. See 40 CFR § 122.44(d)(1)(vii)(8). Because of the high variability in the level of detail and specificity in the TMDLs developed by the Regional Water Boards and USEPA, in many cases, it is appropriate to develop more specific permit requirements, including deliverables and required actions, derived from each TMDL's WLA and implementation requirements. Attachment G reflects the effort on the part of the State Water Board to provide such specificity.

However, this Order does provide for a reopener at 6 months to allow the Small MS4s to meet with the Regional Water Boards and State Water Board to review and revise as needed the permitting requirements contained in Attachment G.

Attachment A: CASQA Specific Comments on Draft Phase II Small MS4 General Permit

[Note: Numbering on the Responses to Comment letter 17 reflect the numbering provided in the comment letter.]

Comment 17.1: Compliance Tiers

Response: This provision has been deleted.

Comment 17.2: Program Compliance Dates

Response: This draft order now reads, "complete within XX days/months/years after the effective date of the permit."

Comment: 17.3 – Program Reporting

Response: The following definitions were not included in the glossary, but will be included in the next draft order: 1) Legally Responsible Person, and 2) Approved Signatory.

Comment 17.4: Headers

Response: This provision has been deleted.

Comment 17.5: Permittee Populations

Response: This provision has been substantially changed to address comment.

Comment 17.6: Annual Reporting

Response: Comment 220: This provision has been substantially changed to address comment.

Comment 17.7: Phase II Designations: Urbanized Areas

Response: This provision has been substantially changed to address comment. This draft order reflects the use of the 2010 U.S. Decennial Census data.

Comment 17.8: Opt in to a Phase I MS4 Program

Response: In accordance with Code of Federal Regulations section 122.34(b)(3), a Regulated Small MS4 in the same urbanized area as a medium or large MS4 may jointly with the medium or large MS4 seek a modification of the other MS4s permit to be added as a limited co-permittee.

Comment 17.9: Compliance Timing

Response: This provision has been substantially changed to address comment.

Comment 17.10: Application Requirements

Response: The waiver process will be built into the application process of SMARTS and this provision has been substantially changed to address comment.

Comment 17.11: Permit Coverage Fees

Response: Dischargers permitted under 2003 – 0005 – DWQ who received an invoice for the current fiscal year will have their invoice revised and pro-rated based on the adoption date of the draft Phase II Small MS4 permit; if the invoice was paid, a refund will be issued based on the revised amount.

Comment 17.12: Traditional Small MS4 Permittee

Response: This provision has been deleted.

Comment 17.13: Listed Non-Traditional MS4s (CSDs)

Response: This provision has been deleted.

Comment 17.14: Legal authority for Non-Traditional Permittees

Response: This draft order contains specific provisions for Non-Traditional Permittees and this provision has been substantially changed to address comment.

Comment 17.15: Citizen Advisory Group

Response: This provision has been deleted.

Comment 17.16: GIS

Response: GIS is optional.

Comment 17.17: HUC 12 Locations, Boundaries and Areas

Response: This provision has been deleted.

Comment 17.18: Planning authorities

Response: This draft order contains specific provisions for Non-Traditional Permittees and this provision has been substantially changed to address comment.

Comment 17.19: Allowable Non-Stormwater Discharges

Response: This provision has been substantially changed to address comment.

Comment 17.20 - 22: Discharges of Incidental Runoff

Response: This provision has been substantially changed to address comment.

Comment 17.23: Discharge Prohibitions – RWQCB Notification Timeline

Response: This provision has been substantially changed to address comment.

Comment 17.24: Legal Authority – Overall

Response: This provision has been substantially changed to address comment.

Comment 17.25: Legal Authority – Overall

Response: State Water Board staff will launch Phase II outreach and education efforts after adoption. At that time, staff will have provide compliance assistance with ordinance templates.

Comment 17.26: Legal Authority – Definition of Illicit Discharges and Illegal Connections

Response: The glossary contains a definition of Illicit Discharges. The next draft order glossary will contain a definition of Illegal Connections. Comment noted.

Comment 17.27: Legal Authority - Missing Subsection

Response: This provision has been substantially changed to address comment.

Comment 17.28-33: Legal Authority – Implementation Level

Response: This provision has been substantially changed to address comment.

Comment 17.34: Certification – Timeline

Response: This provision has been substantially changed to address comment.

Comment 17.35-36: Enforcement Measures and Tracking – NPDES Permit Referrals

Response: This provision has been substantially changed to address comment.

Comment 17.37: Enforcement Measures and Tracking – Reporting

Response: This provision has been substantially changed to address comment.

Comment 17.38-39: Ensure Adequate Resources to Comply with Order

Response: This provision that has been deleted.

Comment 17.40: Public Outreach and Education Program – General

Response: This provision has been substantially changed to address comment.

Comment 17.41-43: Implementation Level - CBSM

Response: This provision has been substantially changed to address comment.

Comment 17.44: Develop and Implement Program – Timeline

Response: This provision has been substantially changed to address comment.

Comment 17.45: Task Description – Timeline

Response: This provision has been substantially changed to address comment.

Comment 17.46: Implementation Level – Budget

Response: This provision has been substantially changed to address comment.

Comment 17.47: Implementation Level – Water Efficient Landscape Ordinance

Response: This provision has been substantially changed to address comment.

Comment 17.48: Implementation Level – Technical and Financial Assistance for Storm Water-Friendly Landscaping

Response: This provision has been substantially changed to address comment.

Comment 17.49: Implementation Level – Education and Environment Initiative Curriculum

Response: Comment noted.

Comment 17.50: Implementation Level – Reporting

Response: This provision has been deleted.

Comment 17.51: Industrial/Commercial Outreach and Education Program – Implementation Level

Response: This provision has been deleted.

Comment 17.52: Industrial/Commercial Outreach and Education Program – Inventory

Response: This provision has been deleted.

Comment 17.53: Industrial/Commercial Outreach and Education Program – Reference Correction Needed

Response: Comment Noted.

Comment 17.54: Industrial/Commercial Outreach and Education Program – Budget

Response: This provision has been deleted.

Comment 17.55: Industrial/Commercial Outreach and Education Program

Response: This provision has been deleted.

Comment 17.56: Construction Outreach and Education Program – Implementation Level

Response: This provision has been substantially changed to address comment.

Comment 17.57: Construction Outreach and Education Program – Implementation Level

Response: This provision has been substantially changed to address comment.

Comment 17.58: Construction Outreach and Education Program – Implementation Level

Response: This provision has been deleted.

Comment 17.59: Public Involvement and Participation - Citizen Advisory Group

Response: This provision has been substantially changed to address comment.

Comment 17.60: IDDE Program Costs

Response: This provision has been substantially changed to address comment.

Comment 17.61: MS4 Mapping

Response: This provision has been substantially changed to address comment.

Comment 17.62: IDDE Program – Renewal Traditionals & Illicit Discharge Education & Training – Task Description

Response: Comment Noted

Comment: 17.62

Response: This provision has been substantially revised to address the comment.

Comment: 17.63

Response: The definition of 'outfall' has been added to the glossary per 40 CFR 122.26.

Comment: 17.64

Response: This provision has been substantially revised to address the comment. The timeline for MS4 mapping implementation has been clarified.

Comment: 17.65

Response: The identification of priority areas has been deleted from this draft order.

Comment: 17.66-69

Response: This provision has been deleted.

Comment: 17.70-74

Response: This provision has been substantially revised to address the comment.

Comment: 17.75

Response: The State Water Board does not transfer responsibility to Phase II Permittees for CGP compliance.

Comment: 17.76-78

Response: This provision has been substantially revised to address the comment.

Comment: 17.79

Response: This provision has been substantially revised to address the comment. It is the intent of the State Water Board to include projects less than one acre that are subject to the local construction site storm water runoff control ordinance as well as projects greater than one acre that are subject to the CGP as part of the construction site inventory.

Comment: 17.80-82, 17.84, 17.86

Response: This provision has been substantially revised to address the comment.

Comment: 17.83

Response: This provision has been deleted.

Comment: 17.85

Response: This provision has been substantially revised to address the comment. Table A has been deleted.

Comment: 17.87

Response: Erosion Sediment Control/Storm Water Inspectors must be qualified individuals, knowledgeable in inspection procedures. The draft order requires one designated staff or an individual supervising inspectors to be certified pursuant to a State Water Board sponsored program as either a Qualified SWPPP Developer (QSD) or a Qualified SWPPP Practitioner (QSP) program. The designated staff or the individual supervising inspector can complete the QSP and QSD training. That is, require the completion of the QSP or QSD course and pass the exam, but do not require completion of the underlying certification (e.g. CPESC, CISEC, PE, PG).

Comment: 17.88

Response: This provision has been substantially revised to address the comment.

Comment: 17.89

Response: “As well as overall program compliance” is not deleted. Construction Site Operator Education is essential. These operators should be trained on BMP selection, installation, implementation, and maintenance. “As well as overall program compliance” is a general statement referencing an overall understanding of section requirements.

Comment: 17.90-91

Response: This provision has been substantially revised to address the comment.

Comment: 17.92

Response: The footnote is also explicitly stated in the body of the Order.

Comment: 17.93 -94

Response: This provision has been substantially revised to address the comment.

Comment: 17.95

Response: The State Water Board has provided a list within this provision enumerating the specific expectations of the SWPPP.

Comment: 17.96 hotspot inspection frequencies

Response: This provision has been substantially revised to address the comment.

Comment: 17.97

Response: This provision has been substantially revised to address the comment.

Comment: 17.98

Response: Comment noted.

Comment: 17.99

Response: The draft order requires Permittees to develop and implement procedures to assess and prioritize MS4 storm drain system maintenance, including but not limited to catch basins, pipe and pump infrastructure, above-ground conveyances, including receiving water bodies within the Permittee's urbanized area and detention basins. Permittees can make case-by-case determinations on how to prioritize simple culvert pipes, such as those installed under a rural driveway allowing cars to cross over roadside ditches.

Comment: 17.100-108

Response: This provision has been substantially revised to address the comment.

Comment: 17.109

Response: This provision has been deleted. However, the Trash Reduction Policy is expected to be adopted summer 2013 and the permit may be re-opened to include the Trash Reduction Policy requirements.

Comment: 17.110-111

Response: This provision has been deleted.

Comment: 17.112

Response: Inventory of industrial/commercial facilities has been moved to Section E. Illicit Discharge Detection and Elimination. Please see permit. This provision has been substantially revised to address the comment.

Comment: 17.113-118

Response: This provision has been substantially revised to address the comment.

Comment: 17.119-124

Response: This provision has been deleted.

Comment: 17.125-126

Response: The Post-construction provisions have been substantially revised to address the comment.

Comment: 17.127-129

Response: This provision has been substantially changed to address this comment.

Comment: 17.130-132

Response: This provision has been deleted.

Comment: 17.133-139, 17.140-143

Response: This provision has been substantially changed to address this comment.

Comment: 17.144 Affordable housing

Response: Comment noted.

Comment: 17.145 off-ramps

Response: This provision has been substantially changed to address comment.

Comment: 17.146-147

Response: This provision has been deleted.

Comment: 17.148-149

Response: This provision has been substantially revised to address the comment.

Comment: 17.150

Response: The definition of 'discretionary' projects is not clearly defined statewide. As such, not all regulated projects can be defined as 'discretionary'.

Comment: 17.151

Response: This provision has been substantially revised to address the comment.

Comment: 17.152-155

Response: This provision has been substantially changed to address this comment.

Comment: 17.156 – 17.158

Response: State Board legal counsel has reviewed the 'deemed complete' language contained within this Order.

Comment: 17.159-164, 17.68

Response: This provision has been deleted.

Comment: 17.165-167, 17.169, 17.170-172, 17.177, 17.179

Response: This provision has been substantially revised to address the comment.

Comment: 17.173-176, 17.178, 17.180

Response: This provision has been deleted.

Comment: 17.181

Response: This provision has been substantially revised. Please see permit for substantive changes.

Comment: 17.182

Response: Water quality monitoring data is necessary to assess program effectiveness at protecting water quality. Additionally, this provision has been substantially revised to address this comment.

Comment: 17.183 – 17.187, 17.192 – 17.195, 17.197 – 17.200, 17.204 -17.207, 17.218 -17.219

Response: This provision has been substantially revised to address the comment. Please see second draft Order.

Comment: 17.188 – 17.191

Response: On March 20, 2012, the State Water Board adopted Resolution 2012-0012 granting an exception from the Ocean Plan prohibition to 13 parties (Attachment D) designated as Regulated Small MS4s under this Order. In order to legally discharge into an ASBS, the parties must comply with the terms of the exception and have an appropriate authorization to discharge. Authorization for point source discharges to ASBS consists of coverage under this NPDES Order.

Comment: 17.196, 17.201-17.203, 17.208 – 17.217

Response: This provision has been deleted.

Comment 17.220:

Response: This provision has been substantially changed to address comment.

Comment 17.221:

Response: The provision has been renamed to Post-Construction Best Management Practice Condition Assessment and moved to Post-Construction Storm Water Management program section.

Comment 17.222:

Response: The term changed to post construction BMPs.

Comment 17.223:

Response: Provision changed to reflect a Self-Certification Annual Report program.

Comment 17.224:

Response: Removed “proposed.”

Comment 17.225:

Response: The Watershed Pollutant Load Reduction has been moved to the Water Quality Monitoring section and is a compliance option.

TMDLS

Comment 17.226:

Response: If the State Water Boards or USEPA has established a TMDL for an impaired water that includes WLAs for storm water discharges, permits for either industrial storm water discharges or MS4 discharges must contain effluent limits and conditions consistent with the requirements and assumptions of the WLAs in the TMDL. See 40 CFR § 122.44(d)(1)(vii)(8). Because of the high variability in the level of detail and specificity in the TMDLs developed by the Regional Water Boards and USEPA, in many cases, it is appropriate to develop more specific permit requirements, including deliverables and required actions, derived from each TMDL's WLA and implementation requirements. Attachment G reflects the effort on the part of the State Water Board to provide such specificity. However, the Order does provide for a reopener at 6 months to allow the Small MS4s to meet with the Water Boards to review and revise as needed the permitting requirements contained in Attachment G.

Comment 17.227:

Recognizing that there are over 1,300 waterbodies in California listed as impaired and needing TMDLs, the State Water Board should consider providing guidance to the RWQCBs identifying menu of cost-effective BMPs that can be utilized for the TMDLs in order to provide some local, inter--regional, and statewide consistency. For example, the guidance could identify the typical source and treatment controls that may be utilized for sediment TMDLs, and those controls that are typically utilized for nutrient TMDLs, etc.

Response: The permit revisions commit to reopening the TMDL provisions of the permit six months following its effective date in order to provide an opportunity for the Permittees to meet with the Regional Water Boards and consider any modifications to the TMDL-specific permit requirements. State Water Board staff will participate in this process.

Comment 17.228:

Response: This provision has been changed to address comment

Comment 17.229:

Response: See Permit Re-opener Provision H.2 in the revised permit which avoids a reference to “responsible party” in response to this comment. However, the term “responsible party” was inadvertently left in E.15.c. Staff invites commenters to resubmit this comment and will make the appropriate change following the comment period.

Comment 17.230:

Response: Compliance due dates that have already passed are enforceable as of the effective date of the approval of the TMDL-specific permit requirements. TMDL-specific compliance due dates that exceed the term of this Order may be included for reference, and will become enforceable in the event that the Order is administratively extended.

Comment 17.231:

Response: The TMDL provisions of the permit have been significantly revised. TMDL-specific permit requirements clarifying Permittees’ obligations for achieving the requirements of the TMDL have been incorporated into Attachment G and are subject to revision through a reopener following an opportunity for consultation with the Regional Water Boards.

Reporting

Comment: 17.232

Response: This provision has been revised to address the comment. The Permittees can collect data in appropriate formats to allow for easy uploads for online Annual Reporting (pdf, word, etc.)

Comment: 17.233

Response: Comment noted.

Comment: 17.234 – 235

Response: This provision has been revised to address the comment.

Attachments

Comment: Attachments A, B, and C.

Response: This provision has been substantially revised to address the comment.

Central Coast Long-Term Environmental Assessment Network (CCLEAN)

Comment: 18.1

Response: The Ocean Plan is a statewide water quality control plan and the receiving water limitations provisions are accordingly applicable to ocean discharges.

Comment: 18.2 -18.11

Response: This provision has been substantially revised to address the comment.

Central Valley Clean Water Association

Comment: 19.1-19.6

Response: This provision has been substantially revised to address the comment.

Citadel Equities Group LLC

Comment: 20.1 and 20.2

Response: This provision has been substantially revised to address the comment.

Comment: 20.3

Response: The State Water Board has notified all parties required to be notified under 40 CFR 124.10(c)(1)(ii), (iii), (iv), (x).

City of Arroyo Grande

Comment: 20.1

Response: Please see Section IV, Unfunded Mandates of the Fact Sheet.

Comment: 20.2

Response: Comment noted.

City of Atascadero

Comment: 22.1 and 22.3

Response: This provision has been substantially revised to address the comment.

Comment: 22.2, 22.6, and 22.9

Response: Please see Section IV, Unfunded Mandates of the Fact Sheet.

Comment: 22.4

Response: Central Coast Water Board Permittees participating in the Joint Effort are not exempt from the draft order's Post-Construction and Hydromodification requirements. Section, E.12.i. identifies specific Post-Construction Storm water Management Requirements for Development Projects in the Central Coast Region.

Comment: 22.5

Response: Please see Section IV, Unfunded Mandates of the Fact Sheet.

Comment: 22.7

Response: This provision has been substantially revised to address the comment.

Comment: 22.8

Response: Comment noted.

City of Banning

Comment: 23.1

Response: The draft order has been revised to address the comment. City of Banning is not designated as a New Traditional Small MS4 Permittee.

City of Buelton

Comment: 24.1

Response: Please see Response to Comment Letter 17.

Comment: 24.2-6

Response: This provision has been substantially revised to address the comment.

City of Carmel-by-the-Sea

Comment: 25.1-9

Response: This provision has been substantially revised to address the comment.

City of Ceres

Comment: 26.1-2

Response: Please see Section III, Economic Consideration of the Fact Sheet and this provision has been substantially revised to address the comment.

City of Cloverdale

Comment: 27.1-3 and 27.5-7

Response: This provision has been substantially changed to address comment.

Comment: 27.4

Response: Please see Section III, Economic Consideration of the Fact Sheet.

City of El Paso De Robles

Comment: 28.1

Response: Comment noted.

Comment: 28.2

Response: Please see Section IV, Unfunded Mandates of the Fact Sheet. This provision has been substantially changed to address comment.

Comment: 28.3-5

Response: This provision has been substantially changed to address comment.

City of Healdsburg

Comment: 29.1

Response: Comment noted.

Comment: 29.2

Response: Please see Section III, Economic Consideration of the Fact Sheet.

Comment: 29.3

Response: Please see Section IV, Unfunded Mandates of the Fact Sheet.

Comment: 29.4

Response: This provision has been substantially changed to address comment.

City of Lompoc

Comment: 30.1, 30.4-87

Response: This provision has been substantially changed to address comment.

Comment: 30.2

Response: Please see Section III, Economic Consideration of the Fact Sheet.

Comment 30.3

Response: Please see Section IV, Unfunded Mandates of the Fact Sheet.

City of Malibu

Comment: 31.1

Response: Only Non-traditional Small MS4s located within an Urbanized Area based on the 2010 Decennial Census and Regional Board specific designations will be designated in this draft order. A specific section has been developed for Non-Traditional Small MS4s to address their unique management structure.

Comment 31.2-5

Response: This provision has been substantially changed to address comment.

City of Monterey

Comment: 32.1

Response: Comment noted.

Comment: 32.2, 32.3 and 32.8

Response: Please see Section III, Economic Consideration of the Fact Sheet.

Comment: 32.4

Response: This provision has been substantially changed to address comment.

Comment: 32.5, 32.6, and 32.7

Response: Under Water Code section 13389, the State Water Board is exempt from complying with the provisions of CEQA when issuing an NPDES permit. To the extent that an MS4 or private entity is required to obtain local discretionary approvals for projects prompted by the requirements of this Order, there may be CEQA obligations. The requirements of the Order have been substantially revised and this comment should be revisited in light of the changed requirements.

Comment: 32.8

Response: State Water Board staff will launch Phase II outreach and education efforts after adoption.

Comment: 32.9-14

Response: This provision has been substantially changed to address comment.

Comment: 32.15 and 32.16

Response: Comment noted

Comment: 32.17

The Public Resources Code requires that the Proposition 84 Storm Water Grant Program funds be used to provide matching grants to local public agencies for the reduction and prevention of Storm Water contamination of rivers, lakes, and streams. Please visit the following website for more information: http://www.waterboards.ca.gov/water_issues/programs/grants_loans/prop84/index.shtml

Additional financial assistance information, including information on the Clean Water State Revolving Fund loans, is available at http://www.waterboards.ca.gov/water_issues/programs/grants_loans/

City of Morro Bay

Comment: 33.1-9

Response: This provision has been substantially changed to address comment.

City of Napa

Comment: 34.1

Response: Please see Section III, Economic Consideration of the Fact Sheet.

Comment: 34.2

Response: Please see Section IV, Unfunded Mandates of the Fact Sheet.

Comment: 34.3–12

Response: This provision has been substantially changed to address comment.

City of Patterson

Comment: 35.1-9

Response: This provision has been substantially changed to address comment.

City of Pismo Beach

Comment: 36.3

Response: This provision has been substantially changed to address comment.

Comment.36.4

Response: See Letter 17 for response.

City of Redding

Comment: 37.1-3

Response: Please see Section III, Economic Consideration and Section IV, Unfunded Mandates of the Fact Sheet.

Comment: 37.4

Response: This provision has been substantially changed to address comment.

City of Riverbank

Comment: 38.1

Response: Please see Section IV, Unfunded Mandates of the Fact Sheet.

Comment: 38.2

Response: See Glossary.

Comment: 38.3-30

Response: This provision has been substantially changed to address comment.

City of Rocklin

Comment: 39.1

Response: Please see response to comment letter 17.

Comment: 39.2

Response: Comment noted.

Comment: 39.3 – 39.4

Response: Please see Section III, Economic Consideration in the Fact Sheet and this provision has been substantially changed to address comment.

Comment: 39.5 SMARTS and Land Use, CEQA, Police Power

Response - SMARTS: Comment noted.

Response - Land Use, CEQA, Police Power: Under Water Code section 13389, the State Water Board is exempt from complying with the provisions of CEQA when issuing an NPDES permit. To the extent that an MS4 or private entity is required to obtain local discretionary approvals for projects prompted by the requirements of this draft order, there may be CEQA obligations. The requirements of the Order have been substantially revised and this comment should be revisited in light of the changed requirements.

Comment: 39.6 numbering error

Comment: 39.7

Response TMDL The permit revisions commit to reopening the TMDL provisions of the permit six months following its effective date in order to provide an opportunity for the Permittees to meet with the Regional Water Boards and consider any modifications to the TMDL-specific permit requirements.

Comment: 39.8-13

Response: This provision has been substantially changed to address comment.

Comment: 39.14

Response: Please see Section IV, Unfunded Mandates of the Fact Sheet.

City of Roseville

Comment: 40.1

Response: Comment noted

Comment: 40.2 – 4 and 40.11

Response: Please see Section III, Economic Consideration in the Fact Sheet.

Comment: 40.5

Response: This provision has been substantially changed to address comment.

Comment: 40.6 - 10

Response: This draft order has been substantially changed to address comment.

City of San Diego

Comment: 41.1 - 3

Response: This provision has been substantially changed to address comment.

Comment: 41.4

Response: This provision has been substantially changed to address comment.

Comment 41.5

Response: Attachment G was developed in coordination with the Regional Water Boards. Please see Section XIII, TMDLs of the Fact Sheet.

City of San Luis Obispo

Comment: 42.1 - 5 and 42.7

Response: This draft order has been substantially changed to address comment.

Comment 42.6

Response: The draft order contains specific Central Coast Small MS4 provisions for Post-Construction Storm Water Management.

City of Santa Barbara

Comment: 43.1

Response: This draft order has been substantially changed to address comment.

Comment: 43.2

Response: Please see Section IV, Unfunded Mandates of the Fact Sheet.

Comment: 43.4

Response: This provision has been deleted.

Comment 43.5 - 86

Response: This draft order has been substantially changed to address comment.

City of Santa Clarita

Comment: 44.1

Response: K-12 School Districts, County Offices of Education, and Charter Schools are not designated in this draft order.

Comment 44.2

Response: This draft order has been substantially changed to address comment.

City of Santa Maria

Comment: 45.1

Response: Comment noted.

Comment: 45.2

Response: Please see Section IV, Unfunded Mandates of the Fact Sheet.

Comment: 45.3 -45.7

Response: This provision has been substantially changed to address comment.

City of Santa Rosa

Comment: 46.1 and 46.2

Response: This draft order has been substantially changed to address comment.

City of Sonoma (Linda Kelly)

Comment: 47.1

Response: Please see response to comment letter 17.

City of Sonoma (Wendy Atkins)

Comment: 48.1 - 2, 48.4 - 7, 48.10 – 54

Response: This draft order has been substantially changed to address comment.

Comment: 48.3

Response: This provision is deleted.

Comment: 48.8

Response: Outreach and education is not limited to classroom time. Permittees can outreach in places where children are located. For example, earth day festivals and other events sponsored by the Permittee.

City of Tracy

Comment: 49.1, 49.3

Response: Please see Section III, Economic Consideration in the Fact Sheet.

Comment: 49.2

Response: Please see Section IV, Unfunded Mandates of the Fact Sheet.

Comment: 49.20

Response: This provision is deleted

Comment: 49.36

Response: Attachment G was developed in coordination with the Regional Water Boards. Please see Section XIII, TMDLs of the Fact Sheet.

City of Turlock

Comment 50.1 and 50.2

Response: Please see Section IV, Unfunded Mandates of the Fact Sheet.

Comment: 50.3-50.7, 50.9-50.23

Response: This draft order has been substantially changed to address comment.

Comment: 50.8

Response: See Response to Overarching Comment 17.4.

City of Ukiah

Comment: 51.1, 51.3, 51.4

Response: This provision has been substantially changed to address comment.

Comment: 51.2

Response: This provision is deleted

City of Vacaville

Comment: 52.1

Response: Please see Section III, Economic Consideration in the Fact Sheet.

Comment: 52.2 - 13

Response: This provision has been substantially changed to address comment.

City of Watsonville

Comment: 53.1

Response: Please see Section IV, Unfunded Mandates of the Fact Sheet.

City of Wheatland

Comment: 54.1

Response: Please see Section III, Economic Consideration in the Fact Sheet.

Comment: 54.2 - 6

Response: This provision has been substantially changed to address comment.

City of Woodland

Comment: 55.1

Response: Please see comment letter 17 response to Overarching Comment 5: Maximum Extent Practicable (MEP).

Comment: 55.2

Response: A municipal storm water permit must ensure compliance with the Clean Water Act. Water Code section 13372 states in part that “the provisions of this chapter [chapter 5.5, establishing compliance with the provisions of the Clean Water Act] shall prevail over other provisions of this division to the extent of any inconsistency.” To the extent that this comment suggests that Water Code section 13360 would prohibit programs necessary to comply with federal requirements, the federal requirements must take precedence over section 13360.

Even where section 13360 is applicable, goals and standards to be achieved and attained that are laid out in the Draft Order do not constitute a mandate of the method of compliance. Further, where the Draft Order allows dischargers to propose and substitute a best management practice or other manner of compliance in lieu of any practice specifically enumerated in the Order, the Order

complies with section 13360. "Section 13360 is a shield against unwarranted interference with the ingenuity of the parties subject to a waste discharge requirement; it is not a sword precluding regulation of discharges of pollutants. It preserves the freedom of persons who are subject to a discharge standard to elect between available strategies to comply with that standard." (Sierra Preservation Council v. SWRCB (1989) 210 Cal. App. 3d 1421, 1438.)

Comment: 55.3, 55.5, 55.6, 55.7

Response: Please see Section III, Economic Consideration in the Fact Sheet.

Comment: 55.8

Response: Comment noted.

Comment: 55.9

Response: Green waste on the street is a potential illicit discharge and maintenance concern. This draft order prohibits green waste on the streets. Permittees must find additional ways to educate residents on the potential problems this practice can cause or to find alternatives to the current practice.

Comment: 55.10

Response: Comment noted

Comment: 55.11

Response: Please see responses to comment letter 17.

Comment: 55.12

Response: If the State or EPA has established a TMDL for an impaired water that includes WLAs for storm water discharges, permits for either industrial storm water discharges or MS4 discharges must contain effluent limits and conditions consistent with the requirements and assumptions of the WLAs in the TMDL. See 40 CFR § 122.44(d)(1)(vii)(8). Because of the high variability in the level of detail and specificity in the TMDLs developed by the Regional Water Boards and USEPA, in many cases, it is appropriate to

develop more specific permit requirements, including deliverables and required actions, derived from each TMDL's WLA and implementation requirements. Attachment G reflects the effort on the part of the State Water Board to provide such specificity.

However, this Order does provide for a reopener at 6 months to allow the Small MS4s to meet with the Regional Water Boards and State Water Board to review and revise as needed the permitting requirements contained in Attachment G.

Comment: 55.13

Response: This provision has been substantially changed to address comment.

Comment: 55.14

Response: This provision is deleted. The State Water Board is developing a statewide policy for trash control in California's waterways. The draft Trash Policy will identify trash as a separate pollutant and establish methods to control trash pollution in waterways, statewide. Upon adoption of the draft Trash Policy, the State Water Board may re-open the Order to incorporate water body trash pollution control methods and introduce Trash Reduction Program requirements.

Comment: 55.15

Response: Comment noted.

City of Yreka

Comment: 56.1 – 56.6

Response: This provision has been substantially changed to address comment.

Coalition for Practical Regulation

Comment: 57.1 and 57.2

Response: Of the categories of Regulated Non-traditional Small MS4s, K-12 schools, County Offices of Education, and Charter schools, in many cases, are likely not to pose a significant threat to water quality. K-12 schools, County Offices of Education, and Charter schools are usually small single buildings in very discrete areas. Given this, and in order to avoid an over inclusive

designation of such discrete facilities, the State Water Board determined that it is more appropriate for the Regional Water Boards to designate K-12 schools, County Offices of Education, and Charter schools on a case-by-case basis. Such designations would be based on the potential of the discharges from these schools to result in exceedances of water quality standards or cause other significant water quality impacts. The Regional Water Boards have greater knowledge and expertise as to the specific storm water issues in their region and may exercise their designation discretion accordingly. See Finding 24.

College of the Canyons

Comment: 58.1

Response: College of the Canyons is not designated in this draft order.

Contra Costa Community College District

Comment: 59.1

Response: Comment noted.

Contractors Association of Truckee Tahoe

Comment: 60.1

Response: Comment noted.

Comment: 60.2

Response: Truckee is a Renewal Permittee and must comply with the draft order.

Comment: 60.3

Response: This provision has been substantially changed to address comment.

Comment: 60.4

Response: The Public Resources Code requires that the Proposition 84 Storm Water Grant Program funds be used to provide matching grants to local public agencies for the reduction and prevention of Storm Water contamination of rivers, lakes, and streams. Please visit the following website for more information:

http://www.waterboards.ca.gov/water_issues/programs/grants_loans/prop84/index.shtml

Additional financial assistance information, including information on the Clean Water State Revolving Fund loans, is available at http://www.waterboards.ca.gov/water_issues/programs/grants_loans/

County of El Dorado

Comment: 61.1

Response: Please see Section III, Economic Consideration in the Fact Sheet.

Comment: 61.2

Response: Please see Section IV, Unfunded Mandates of the Fact Sheet.

Comment: 61.3 and 61.4

Response: This draft order has been substantially changed to address comment.

County of Kern

Comment: 62.1

Response:

Greenfield CDP has been removed.

Greenacres CDP will be removed from the final draft order. To the extent any entity does not discharge to a Waters of the United States it will be taken off the designation list. However, we ask that you submit any necessary technical reports to the appropriate Regional Water Board and obtain concurrence that the Regulated Small MS4 does not discharge to Waters of the United States.

County of Los Angeles

Comment: 63.1

Response: Los Angeles County Permittees may be removed in the next draft order upon confirmation by Regional Water Board staff prior to adoption.

County of Mendocino

Comment: 64.1

Response: Please see comment letter 17 for response.

County of Riverside

Comment 65.1-65.7

Response: Entities have been deleted.

Comment: 65.8

Response: Designated entities located within the Upper Santa Margarita watershed will be removed upon confirmation by Regional Water Board staff prior to permit adoption.

County of San Bernardino, Public Works

Comment: 66.1

Response: Please see response to comment letter 17.

Comment: 66.2

Response: Please see responses to overarching comments 17.3 and 17.5. Please also see Section V, Economic Considerations in the Fact Sheet.

Comment: 66.3

Response: Please see Section III, Economic Consideration in the Fact Sheet.

Comment: 66.4

Response: Comment noted

Comment: 66.6

Response: Please see discussion in Fact Sheet of permitting approach.

Comment: 66.7

Response: Please see Section IV, Unfunded Mandates of the Fact Sheet.

Comment: 66.8

Response: Under Water Code section 13389, the State Water Board is exempt from complying with the provisions of CEQA when issuing an NPDES permit. To the extent that an MS4 or private entity is required to obtain local discretionary approvals for projects prompted by the requirements of this Order, there may be CEQA obligations. The requirements of the Order have been substantially revised and this comment should be revisited in light of the changed requirements.

Comment: 66.5, 66.9 - 66.115

Response: This draft order has been substantially changed to address comments.

San Luis Obispo County Board of Supervisors

Comment: 67.1 - 5, 67.7 - 70

Response: This draft order has been substantially changed to address comment.

Comment: 67.6, 67.71 - 72

Response: Please see Section IV, Unfunded Mandates of the Fact Sheet.

Comment: 67.3

Response: This provision has been deleted.

City of Santa Barbara

Comment: 68.1.- 68.2

Response: Please see responses to overarching comments 17.3 and 17.5. Please also see Section V, Economic Considerations in the Fact Sheet.

Comment: 69.3

Response: This draft order has been substantially changed to address comment.

County of Santa Cruz

Comment: 70.1 and 70.2

Response: This draft order has been substantially changed to address comment.

Comment: 70.3

Response: Comment noted.

Comment: 70.4

Response: Please see responses to overarching comments 17.3 and 17.5. Please also see Section V, Economic Considerations in the Fact Sheet.

Comment: 70.5

Response: Please see, Stakeholder Collaborative Process of the Fact Sheet.

County of Sonoma, Permit and Resource Management Department

Comment: 71.1, 71.4, and 71.10

Response: Please see Section III, Economic Consideration in the Fact Sheet.

Comment: 71.2, 71.3, 71.7, 71.8, 71.11 -71.16, 71.18-71.31-71.44

Response: This draft order has been substantially changed to address comment.

Comment: 71.5

Response: On December 8, 1999, U.S. EPA promulgated Phase II storm water regulations under authority of the Clean Water Act section 402(p)(6). The Phase II Storm Water requires State Water Board to issue NPDES storm water permits to operators of Small MS4s.

Comment: 71.6

Response: Any Small MS4s designated under this draft order can choose to apply for an individual permit or request to join the permit of a Phase I Permittee. The Permittee must notify the Regional Water Board of its intent to do so within six months of the General Permit effective date.

Comment: 71.9 71.17, and 71.32

Response: This provision has been deleted.

Comment: 71.45

Response: If the State or EPA has established a TMDL for an impaired water that includes WLAs for storm water discharges, permits for either industrial storm water discharges or MS4 discharges must contain effluent limits and conditions consistent with the requirements and assumptions of the WLAs in the TMDL. See 40 CFR § 122.44(d)(1)(vii)(8). Because of the high variability in the level of detail and specificity in the TMDLs developed by the Regional Water Boards and USEPA, in many cases, it is appropriate to develop more specific permit requirements, including deliverables and required actions, derived from each TMDL's WLA and implementation requirements. Attachment G reflects the effort on the part of the State Water Board to provide such specificity.

However, this Order does provide for a reopener at 6 months to allow the Small MS4s to meet with the Regional Water Boards and State Water Board to review and revise as needed the permitting requirements contained in Attachment G.

Comment: 71.46

Response: Please see response to comment letter 17.

County School Facilities Consortium

Comment 72.1

Response: County Offices of Education are not designated in this permit. In addition, of the categories of Regulated Non-traditional Small MS4s, K-12 schools, County Offices of Education, and Charter schools, in many cases, are likely not to pose a significant threat to water quality. K-12 schools, County Offices of Education, and Charter schools are usually small single buildings in very discrete areas. Given this, and in order to avoid an over inclusive designation of such discrete facilities, the State Water Board determined that it is more appropriate for the Regional Water Boards to designate K-12 schools, County Offices of Education, and Charter schools on a case-by-case basis. Such designations would be based on the potential of the discharges from these schools to result in exceedances of water quality standards or cause other significant water quality impacts. The Regional Water Boards have greater knowledge and expertise as to the specific storm water issues in their region and may exercise their designation discretion accordingly. See Finding 24.

FAMCO LLC

Comment: 73.1-73.4.

Response: This provision is deleted.

Comment: 73.5

Response: The State Water Board has notified all parties required to be notified under 40 CFR 124.10(c)(1)(ii),(iii),(iv), (x).

Downey Unified School District

Comment: 74.1

Response: Of the categories of Regulated Non-traditional Small MS4s, K-12 schools, County Offices of Education, and Charter schools, in many cases, are likely not to pose a significant threat to water quality. K-12 schools, County Offices of Education, and Charter schools are usually small single buildings in very discrete areas. Given this, and in order to avoid an over inclusive designation of such discrete facilities, the State Water Board determined that it is more appropriate for the Regional Water Boards to designate K-12 schools, County Offices of Education, and Charter schools on a case-by-case basis. Such designations would be based on the potential of the discharges from these schools to result in exceedances of water quality standards or cause other significant water quality impacts. The Regional Water Boards have greater knowledge and expertise as to the specific storm water issues in their region and may exercise their designation discretion accordingly. See Finding 24.

Comment: 74.2

Response: Please see Section III, Economic Consideration in the Fact Sheet.

Department of Defense, Regional Environmental Coordinator, Region 9

Comment: 75.1-75.3, 75.5 -75.12

Response: A specific section has been developed for Non-Traditional Small MS4s to address their unique management structure and this draft order has been substantially changed to address comment. In addition, Section F.2 Security Concerns, allows Department of Defense an exemption from Annual Reporting of any provision that could pose a security risk and/or compromise facility security.

Comment: 75.4

Response: Staff inadvertently removed the provision that the permit requirements apply only to Department of Defense Cantonment areas. These are military installations areas where the activities and population density resemble that of a Traditional Small MS4. This language will be included in the next draft order.

Department of Navy

Comment: 76.1

Response: Naval Weapons Station Concord has been removed from the designation list.

Gallinas Watershed Council

Comment: 77.1

Response: The specific provisions referenced in the comment have been substantially revised or have been removed from the Draft Order and the comment is no longer applicable to these permit provisions.

More generally, a municipal storm water permit must ensure compliance with the Clean Water Act. Water Code section 13372 states in part that “the provisions of this chapter [chapter 5.5, establishing compliance with the provisions of the Clean Water Act] shall prevail over other provisions of this division to the extent of any inconsistency.” To the extent that this comment suggests that Water Code section 13360 would prohibit programs necessary to comply with federal requirements, the federal requirements must take precedence over section 13360.

Even where section 13360 is applicable, goals and standards to be achieved and attained that are laid out in the Draft Order do not constitute a mandate of the method of compliance. Further, where the Draft Order allows dischargers to propose and substitute a best management practice or other manner of compliance in lieu of any practice specifically enumerated in the Order, the Order complies with section 13360. “Section 13360 is a shield against unwarranted interference with the ingenuity of the parties subject to a waste discharge requirement; it is not a sword precluding regulation of discharges of pollutants. It preserves the freedom of persons who are subject to a discharge standard to elect between available strategies to comply with that standard.” (Sierra Preservation Council v. SWRCB (1989) 210 Cal. App. 3d 1421, 1438.)

Comment: 77.2, 77.3

Response: This provision has been substantially revised to address the comment.

Comment: 77.4

Response: This finding has been revised.

Comment: 77.5

Response: The State Water Board is developing a statewide policy for trash control in California's waterways. The draft Trash Policy will identify trash as a separate pollutant and establish methods to control trash pollution in waterways, statewide. Upon adoption of the draft Trash Policy, the State Water Board may re-open the Order to incorporate water body trash pollution control methods and introduce Trash Reduction Program requirements.

Comment: 77.6

Response: This provision has been substantially modified to address the comment. CBSM has been made optional.

Comment: 77.7

Response: See response to comment 77.6.

Comment: 77.8

Response: The draft order has been substantially revised to address the comment. Please see the draft Order.

Comment: 77.9

Response: This section has been substantially revised to address the comment.

Comment: 77.10

Response: Comment noted.

Comment: 77.11

Response: The Public Resources Code requires that the Proposition 84 Storm Water Grant Program funds be used to provide matching grants to local public agencies for the reduction and prevention of Storm Water contamination of rivers, lakes and streams. Please visit the following website for more information:

http://waterboards.ca.gov/water_issues/programs/grants_loans/prop84/index.shtml

Additional financial assistance information, including information on the Clean Water State Revolving Fund loans, is available at:

http://www.waterboards.ca.gov/water_issues/programs/grants_loans/

Comment: 77.12

Response: This section has been substantially revised to address the comment.

Comment: 77.13

Response: The State Water Board granted the referenced exception to the Ocean Plan on March 20, 2012, Resolution 2012-0012. The comment is no longer applicable.

Comment: 77.14

Response: This section has been substantially revised to address the comment.

Bruce H. Lund

Comment: 78.1, 78.2

Response: The State Board held stakeholder meetings from November 2011 through April 2012 to address specific concerns and issues presented with the first draft order.

Comment: 78.3, 78.4

Response: This section has been substantially modified to address the comment.

Comment: 78.5

Response: If the State Water Board or USEPA has established a TMDL for an impaired water body that includes WLAs for storm water discharges, permits for either industrial storm water discharges or MS4 discharges must contain effluent limits and conditions consistent with the requirements and assumptions of the WLAs in the TMDL. See 40 CFR § 122.44(d)(1)(vii)(8). Because of the high variability in the level of detail and specificity in the TMDLs developed by the Regional Water Boards and USEPA, in many cases, it is appropriate to develop more specific permit requirements, including deliverables and required actions, derived from each TMDL's WLA and implementation requirements. Attachment G reflects the effort on the part of the State Water Board to provide such specificity. However, the Order does provide for a reopener at 6 months to allow the Small MS4s to meet with the Water Boards to review and revise as needed the permitting requirements contained in Attachment G.

Comment: 78.6

Response: Comment noted.

Comment: 78.7, 78.8

Response: Non-traditional permit provisions have been specifically tailored to address non-traditionals unique program structure.

Joyce Dillard

Comment: 79.1

Response: Comment noted.

Comment: 79.2

Response: The Phase II Permit consists of several program elements that address storm water regulation including source identification, Best Management Practice (BMP) implementation. Please see permit.

Comment: 79.3

Response: Under federal law, an MS4 permit must include "controls to reduce the discharge of pollutants to the maximum extent

practicable . . . and such other provisions as . . . the State determines appropriate for the control of such pollutants." (Clean Water Act §402(p)(3)(B)(iii).) The State Water Board has previously determined that limitations necessary to meet water quality standards are appropriate for the control of pollutants discharged by MS4s and must be included in MS4 permits. (State Water Board Orders WQ 91-03, 98-01, 99-05, 2001-15; see also *Defenders of Wildlife v. Browner* (9th Cir. 1999) 191 F3d 1159.). The Proposed Order accordingly prohibits discharges that cause or contribute to violations of water quality standards. (Provisions ____.)

The Proposed Order further sets out that, upon determination that a Permittee is causing or contributing to an exceedance of applicable water quality standards, the Permittee must engage in an iterative process of proposing and implementing additional control measures to prevent or reduce the pollutants causing or contributing to the exceedance. (Provisions ____.) This iterative process is modeled on receiving water limitations set out in State Water Board precedential Order WQ 99-05 and required by that Order to be included in all municipal storm water permits.

The Ninth Circuit held in *Natural Resources Defense Council, Inc. v. County of Los Angeles* ((2011) __ F.3d __, 2011 WL 2712963) that engagement in the iterative process does not provide a safe harbor from liability for violations of permit terms prohibiting exceedances of water quality standards. The Ninth Circuit holding is consistent with the position of the State Water Board and Regional Water Boards that exceedances of water quality standards in an MS4 permit constitute violations of permit terms subject to enforcement by the Boards or through a citizen suit. While the Boards have generally directed dischargers to achieve compliance by improving control measures through the iterative process, the Board retains the discretion to take other appropriate enforcement and the iterative process does not shield dischargers from citizen suits. No changes will be made to the relevant provisions of the Order in response to this comment.

Comment: 79.4

Response: Comment noted.

Comment: 79.5

Response: Under Water Code section 13389, the State Water Board is exempt from complying with the provisions of CEQA when issuing an NPDES permit. To the extent that an MS4 or private entity is required to obtain local discretionary approvals for projects prompted by the requirements of this Order, there may be CEQA obligations. The requirements of the Order have been substantially revised and this comment should be revisited in light of the changed requirements.

Comment: 79.6

Response: While SWMPs are no longer required, Permittees are required to develop and implement a storm water program guidance document.

Comment: 79.7, 79.8

Response: Comment noted.

Comment: 79.9 - 10

Response: This provision has been substantially revised to address the comment.

Comment: 79.11, 79.12

Response: Comment noted.

Comment: 79.13

Response: See response to comment 79.5

Comment: 79.14

Response: Inspection requirements are clearly laid out in the Phase II Permit. Please see Permit.

Comment: 79.15, 79.16, 79.17 – 79.19

Comment: 79.20

Response: On December 8, 1999, U.S. Environmental Protection Agency (U.S. EPA) promulgated Phase II storm water regulations under authority of the Clean Water Act (CWA) § 402 (p)(6). The Phase II Storm Water requires State Water Board to issue NPDES storm water permits to operators of Small MS4s.

Teresa

Comment: 80.1

Response: Flood management agencies/control districts are not designated under this Order. Case by case determinations of designation may be made by Regional Water Boards based on the potential of a Small MS4's discharges to result in exceedances of water quality standards.

Comment: 80.2

Response: Attachment C has been substantially revised to address the comment. Non-traditional designations are listed in Attachment B.

Comment: 80.3

Response: Ventura County Watershed Protection District is subject to the Phase I Ventura County MS4 NPDES Permit.

Comment: 80.4

Response: Response to comments are posted to the State Water Board's website and can be found at: www.waterboards.ca.gov/phaseIIpermit.

Comment: 80.5

Response: The second draft Phase II Permit reflects general edits and revisions. Please see permit.

Comment: 80.6

Response: The Principal Executive Officer, Ranking Elected Official, or Duly Authorized Representative as described in 40 CFR 122.22(b) represent the Mayor of the City and County Chairperson of the Board of the Supervisors. As such, the specific titles will not be added to this provision.

Comment: 80.7

Response: Attachment C has been deleted. Please see Attachment B.

Comment: 80.8 - 9

Comment: 80.10

Response: Attachment N has been deleted.

Hemet Unified School District

Comment: 81.1

Response: Entities located within an urbanized area contribute to storm water runoff. Urbanization causes changes in the landscape, including increased loads of chemical pollutants, increased toxicity, changes to flow magnitude, frequency, and seasonality of various discharges, physical changes to stream, lake, or wetland habitats, changes in the energy dynamics of food webs, sunlight, and temperature; and biotic interactions between native and exotic species. In addition to surface water impacts, urbanization can alter the amount and quality of storm water that infiltrates and recharges groundwater aquifers. School districts are located within urbanized areas and therefore contribute to storm water runoff.

Comment: 81.2

Response: Please see Section III, Economic Consideration of the Fact Sheet.

Comment: 81.3, 81.9, 81.11-81.12, 81.14

Response: This provision has been substantially revised to address the comment.

Comment: 81.4 - 5

Response: This provision has been deleted.

Comment: 81.6

Response: The target audience has been defined as ‘students and staff’ for school districts.

Comment: 81.7

Response: The California Education and Environmental Curriculum equivalent is equal to the material that is contained within the Curriculum.

Comment: 81.8

Response: This provision has been deleted for Non-traditional Permittees.

Comment: 81.10

Response: GIS mapping is optional.

Comment: 81.13, 81.15 – 81.18

Response: A Permittee may utilize an equivalent or existing document such as a Standard Operations and Procedures manual, Operation and Maintenance Plan, or Spill Response Plan if that document includes the necessary information required to comply with the provisions of this attachment.

Comment: 81.19

Response: This provision has been substantially revised to address the comment. The state of California is moving towards statewide consistency of site design measures and hydromodification procedures. As such, it is imperative that post-construction requirements are clearly laid out in this Order.

Comment: 81.20 - 22

Response: Comment noted.

Comment: 81.23

Response: Reporting deadlines and requirements have been revised to address the comment.

Comment: 81.24

K-12 schools, County Office of Education, and Charter schools are not designated in this draft order. Of the categories of Regulated Non-traditional Small MS4s, K-12 schools, County Offices of Education, and Charter schools, in many cases, are likely not to pose a significant threat to water quality. K-12 schools, County Offices of Education, and Charter schools are usually small single buildings in very discrete areas. Given this, and in order to avoid an over inclusive designation of such discrete facilities, the State Water Board determined that it is more appropriate for the Regional Water Boards to designate K-12 schools, County Offices of Education, and Charter schools on a case-by-case basis. Such designations would be based on the potential of the discharges from these schools to result in exceedances of water quality standards or cause other significant water quality impacts. The Regional Water Boards have greater knowledge and expertise as to the specific storm water issues in their region and may exercise their designation discretion accordingly. See Finding 24.

Humboldt Baykeeper

Comment: 82.1, 82.3

Response: Comment noted.

Comment: 82.2

Response: This provision has been deleted.

Comment: 82.4

Response: Outfall monitoring is required as a component of Illicit Discharge Detection and Elimination and as a monitoring option in the Water Quality Monitoring.

Comment: 82.5

Response: This provision has been substantially revised to address the comment.

Comment: 82.6

Response: A discharger is only eligible for a waiver if the discharger meets the criteria in A.3.b, in addition to the general criteria provided at A.3. Options 1 and 2 under A.3.b have been taken directly from the criteria for waivers available under the federal regulations at 40 Code of Federal Regulations 122.32.

Comment: 82.7

Response: This Order does not include street sweeping and cleaning streets as a permit requirement because MS4s already conduct these activities for aesthetics and air quality benefit. Permittees should count street sweeping not as a storm water compliance cost, but an aesthetic and air quality cost.

Comment: 82.8

Response: Permittees that discharge to Areas of Special Biological Significance (ASBS) must comply with monitoring requirements in the Ocean Plan Special Protections.

Lawrence Livermore National Laboratory

Comment: 83.1, 83.11

Response: Lawrence Livermore National Laboratory is not automatically designated under this Order.

Comment: 83.2

Response: Non-traditional permit provisions have been specifically tailored to address non-traditionals unique program structure.

Comment: 83.3

Response: Inspection frequencies and requirements have been substantially revised to address the comment.

Comment: 83.4

Response: This provision has been revised to address the comment.

Comment: 83.5

Response: Pesticide application buffers are necessary to minimize chemical inputs to water bodies. The specific setback buffers have been determined by U.S. Environmental Protection Agency's MS4 Permit Improvement Guide.

Comment: 83.6, 83.8

Response: A Permittee may utilize an equivalent or existing document such as a Standard Operations and Procedures manual, Operation and Maintenance Plan, or Spill Response Plan if that document includes the necessary information required to comply with the provisions of this attachment.

Comment: 83.7

Response: This provision has been deleted.

Comment: 83.9

Response: This provision has been substantially revised to address the comment.

Comment: 83.10

Response: Retrofitting requirements have been removed from the permit, with the exception of retrofit requirements in Areas of Special Biological Significance and TMDLs.

LACCD

Comment: 84.1, 84.2

Response: Comment noted. Community colleges are not automatically designated under this Order.

Comment: 84.3

Response: Comment noted.

Comment: 84.4

Response: Incidental runoff of potable or recycled water from landscaped areas has been added to this Order.

Comment: 84.5

Response: Non-traditional permit provisions have been specifically tailored to address non-traditional unique program structure.

Comment: 84.6, 84.10

Response: This provision has been deleted.

Comment: 84.7

Response: CBSM is optional.

Comment: 84.8, 84.11

Response: This provision has been substantially revised to address the comment.

Comment: 84.9, 84.19

Response: GIS mapping is optional.

Comment: 84.12

Response: Source investigations are not required beyond a Permittee's jurisdiction. In the case that an illicit discharge is detected beyond the Permittee's jurisdiction, procedures are included in the Program Management Element.

Comment: 84.13 – 84.14, 84.16 – 84.17

Response: This provision has been revised to address the comment.

Comment: 84.15

Response: Non-traditional Small MS4 Permittees are not required to implement BMP Remediation requirements.

Comment: 84.18

Response: Non-traditional permit provisions have been specifically tailored to address non-traditionals unique program structure.

Los Angeles County Office of Education

Comment: 85.1

Response: County Offices of Education are not automatically designated in this Order.

Comment: 85.2

Response: Please see Section III, Economic Consideration of the Fact Sheet.

Department of Water and Power the City of Angeles

Comment: 86.1 – 86.3

Response: This prohibition has been revised to address the comment.

Comment: 86.4

Response: The email notification is required for discharges that are manually released from a recycled water pond. In this way, the notification prior to release is not predicting a future event.

Comment: 86.5

Response: Comment noted.

Comment: 86.6

Response: The State Water Board encourages all citizens to learn about their water resources and supports volunteer monitoring because of its many benefits. Volunteer water monitors build community awareness of pollution problems, help identify and restore problem sites, become advocates for their watersheds and increase the amount of needed water quality information available on our waters.

Comment: 86.7, 86.11

Response: This provision has been substantially revised to address the comment.

Comment: 86.8

Response: Comment noted.

Comment: 86.9 - 10

Response: This provision has been deleted.

Comment: 86.12 - 13

Response: Comment noted.

Los Angeles Unified School District – Board of Education

Comment: 87.1, 87.5

Response: K – 12 School Districts are not automatically designated by this Order.

Comment: 87.2 - 4

Response: Comment noted.

Los Osos Community Services District

Comment: 88.1

Response: Permittees, both Traditional and Non-traditional Small MS4s, may rely on a SIE to satisfy one or more of the permit obligations, if the SIE can appropriately and adequately address the storm water issues of the Permittee. The SIE must agree to implement the BMPs, or components thereof, to achieve compliance with the Order. If the SIE fails to implement the BMPs, the Permittee remains responsible for compliance with this Order.

Comment: 88.2

Response: Incidental runoff control can be integrated into existing landscape and field crew maintenance duties.

Comment: 88.3, 88.5

Response: This provision has been deleted.

Comment: 88.4

Response: CBSM has been substantially revised and included as an option in this Order.

Comment: 88.6

Response: Please see Section IV, Unfunded Mandates of the Fact Sheet.

Comment: 88.7 - 8

Response: This provision has been substantially revised to address the comment.

Comment: 88.9

Response: Without reporting, there is no way of measuring whether a storm water management program is effective at reducing negative water quality impacts. Reporting is an important regulatory tool to measure storm water program implementation and therefore will remain in this Order as a requirement of program implementation.

Comment: 88.10

Response: This provision has been revised to address the comment.

Comment: 88.11, 88.12, 88.13, 88.15

Response: Please see Section IV, Unfunded Mandates of the Fact Sheet.

Comment: 88.14

Response: This provision has been revised to address the comment.

Comment: 88.16

Response: While it is appropriate and necessary to consider the cost of compliance, it is also important to consider the larger economic impacts of implementation of the storm water management program. For example, economic benefits may result through program implementation, and alternative costs (as well as environmental impacts) may be incurred by not fully implementing the program.

Comment: 88.17

Response: Measurable program evaluations are critical to the development, implementation, and adaptation of effective local storm water management programs. Efforts need to be taken now in order to begin the process of evaluating the storm water program implementation as a whole in order to better understand the relationships between implementation and water quality.

Comment: 88.18

Response: Reporting and implementation dates have been revised to address the comment. Additionally, reporting is an important tool for both Regional Water Board staff and Permittees to document implementation, evaluate effectiveness, and target program resources.

Lucia Mar Unified School District

Comment: 89.1

Response: In California, urban storm water is listed as the primary source of impairment for ten percent of all rivers, ten percent of all lakes and reservoirs, and 17 percent of all estuaries (2010 Integrated Report). Although these numbers may seem low, urban areas cover just six percent of the land mass of California¹, and so their influence is disproportionately large. Urbanization causes a number of changes in the landscape, including increased loads of chemical pollutants; increased toxicity; changes to flow magnitude, frequency, and seasonality of various discharges; physical changes to stream, lake, or wetland habitats; changes in the energy dynamics of food webs, sunlight, and temperature; and biotic interactions between native and exotic species². School districts are within urbanized areas and are therefore subject to storm water regulations.

Comment: 89.2

Response: Please see Section IV, Unfunded Mandates of the Fact Sheet.

Comment: 89.3

Response: Non-traditional permit provisions have been specifically tailored to address non-traditional's unique program structure.

Comment: 89.4

Response: This provision has been deleted.

Comment: 89.5

Response: "Contribute" in the context of this Order means "participation". In other words, "contributing" refers to Permittee participation in Public Outreach and Education through a county-wide, regional or individual approach. "Contribute" does not necessarily point to funding.

Comment: 89.6

Response: The "public" for K-12 schools has been defined as "students, faculty and staff".

¹ U.S. Department of Agriculture, 2009

² Urban Storm Water Management in the United States, National Research Council, 2008.

Comment: 89.7

Response: The equivalent is equal to the material that is contained within The California Education and Environmental Curriculum. Comment noted.

Comment: 89.8

Response: This provision has been deleted from the Non-traditional provisions.

Comment: 89.9 – 89.12

Response: This provision has been substantially revised to address the comment.

Comment: 89.13 – 89.18

Response: A Permittee may utilize an equivalent or existing document such as a Standard Operations and Procedures manual, Operation and Maintenance Plan, or Spill Response Plan if that document includes the necessary information required to comply with the provisions of this attachment.

Comment: 89.19

Response: This provision has been revised to address the comment. Instead of pointing to the Construction General Permit, this Order spells out post-construction requirements for Phase II Permittees.

Comment: 89.20

Response: Comment noted. Specific provisions have been written for Non-traditional MS4s.

Comment: 89.21 - 23

Response: Comment noted.

Comment: 89.24

Response: Reporting requirements have been revised to address the comment.

MacKay & Somps

Comment: 90.1

Response: Please see Section III, Economic Consideration of the Fact Sheet.

Comment: 90.2

Response: These permit provisions have been deleted.

Comment: 90.3 - 4

Response: This provision has been substantially revised to address the comment.

Marin Conservation League

Comment: 91.1

Response: Please see Section IV, Unfunded Mandates of the Fact Sheet.

Comment: 91.2, 91.3

Response: Substantial revisions have been made to this Order to address the comment.

Comment: 91.4, 91.5, 91.7

Response: This provision has been substantially revised to address the comment.

Comment: 91.6

Response: Comment noted.

Marin County Department of Public Works

Comment: 92.1, 92.3

Response: Please see responses to overarching comments 17.3 and 17.5 in comment letter number 17. Please also see Section V, Economic Considerations in the Fact Sheet.

Comment: 92.2

Response: The second draft Phase II Permit has been substantially revised to address this comment. In the case that a Permittee is currently required to comply with existing regulatory requirements, this Order allows Permittees to utilize such programs and documents. It is not the intent of the State Board to create redundant requirements.

Comment: 92.4

Response: Permit timelines and compliance dates have been substantially revised to address the comment.

Comment: 92.5

Response: Under federal law, an MS4 permit must include "controls to reduce the discharge of pollutants to the maximum extent practicable . . . and such other provisions as . . . the State determines appropriate for the control of such pollutants." (Clean Water Act §402(p)(3)(B)(iii).) The State Water Board has previously determined that limitations necessary to meet water quality standards are appropriate for the control of pollutants discharged by MS4s and must be included in MS4 permits. (State Water Board Orders WQ 91-03, 98-01, 99-05, 2001-15; see also *Defenders of Wildlife v. Browner* (9th Cir. 1999) 191 F3d 1159.). The Proposed Order accordingly prohibits discharges that cause or contribute to violations of water quality standards. (Provisions ____.)

The Proposed Order further sets out that, upon determination that a Permittee is causing or contributing to an exceedance of applicable water quality standards, the Permittee must engage in an iterative process of proposing and implementing additional control measures to prevent or reduce the pollutants causing or contributing to the exceedance. (Provisions ____.) This iterative process is modeled on receiving water limitations set out in State Water Board precedential Order WQ 99-05 and required by that Order to be included in all municipal storm water permits.

The Ninth Circuit held in Natural Resources Defense Council, Inc. v. County of Los Angeles ((2011) __ F.3d __, 2011 WL 2712963) that engagement in the iterative process does not provide a safe harbor from liability for violations of permit terms prohibiting exceedances of water quality standards. The Ninth Circuit holding is consistent with the position of the State Water Board and Regional Water Boards that exceedances of water quality standards in an MS4 permit constitute violations of permit terms subject to enforcement by the Boards or through a citizen suit. While the Boards have generally directed dischargers to achieve compliance by improving control measures through the iterative process, the Board retains the discretion to take other appropriate enforcement and the iterative process does not shield dischargers from citizen suits. No changes will be made to the relevant provisions of the Order in response to this comment.

Comment: 92.6

Response: Retrofit requirements have been deleted.

Comment: 92.7 – 92.9, 92.11, 92.14, 92.16, 92.17, 92.24, 92.27 – 29, 92.32, 92.33, 92.35 – 41, 92.47 – 56, 92.70 - 74

Response: These permit provisions have been substantially revised to address the comment.

Comment: 92.10

Response: Designation criteria have been revised to address the comment.

Comment: 92.12, 92.19

Response: A Permittee may utilize an equivalent or existing document such as a Standard Operations and Procedures manual, Operation and Maintenance Plan, or Spill Response Plan if that document includes the necessary information required to comply with the provisions of this attachment.

Comment: 92.13

Response: The intent of this requirement refers to intentional discharges that are manually released from a recycled water pond. In this way, the notification prior to release is not predicting a future event.

Comment: 92.15

Response: Comment noted.

Comment: 92.18, 92.20, 92.23

Response: This provision has been deleted.

Comment: 92.21

Response: Timeline for this provision has been revised to address the comment.

Comment: 92.22

Response: These permit provisions have been substantially revised to address the comment.

Comment: 92.25

Response: Comment noted.

Comment: 92.26

Response: Definitions of “outfall” and “urbanized area” have been added to the glossary.

Comment: 92.30

Response: The requirement to implement corrective actions within 48 hours has been deleted.

Comment: 92.31

Response: This provision has been revised to address the comment. Section E.10 Construction Site Storm Water Runoff Control Program regulates projects less than one acre that are subject to local ordinances and local erosion and sediment control requirements. Projects that disturb one acre or more of soil or that disturb less than one acre but are part of a larger common plan or development or sale are subject to the CGP.

Comment: 92.34

Response: This provision has been deleted.

Comment: 92.42

Response: Reporting the number of follow-up inspections as a total is not redundant. Rather, it is a totaling of data collected in E.10.c.(iii)(g) and (h).

Comment: 92.43

Response: It is the intent of the State Water Board to establish consistent regulatory requirements. As such, it is important to ensure that Permittee staff are either QSP or QSD certified as required by the CGP.

Comment: 92.44

Response: This provision requires that Permittees ensure plan reviewers, permitting staff, inspectors, and third party plan reviewers are trained in the construction site storm water runoff control program. As such, the reporting requirement to report on the number and percentage of the aforementioned individuals attending each training should be known.

Comment: 92.45

Response: Open space areas and undeveloped parks are not to be included in inventory.

Comment: 92.46

Response: The Center for Watershed Protection guide on Urban Subwatershed and Site Reconnaissance provides direction and examples of a site that has high potential to “generate storm water...pollutants”.

Comment: 92.57

Response: This provision has been revised to address the comment. Implementation of educational activities includes educating and informing municipal applicators and distributors of the potential negative impacts of pesticide, herbicide and fertilizer use on

water quality. In the case that the County of Marin currently operates an effective integrated pest management program (IPM) they have the option of continuing implementation of such a program. It is not the intent of the State Board to create redundant and duplicative requirements.

Comment: 92.58

Response: While the Department of Pesticide Regulation regulates pesticide application, the intent of this provision is to minimize, prevent and avoid pesticides, herbicides and fertilizers from entering waterbodies.

Comment: 92.59

Response: The fertilizer application prohibitions are derived from the U.S. EPA MS4 Permit Improvement Guide.

Comment: 92.60

Response: 'Fertilizer' refers to commercial and chemical fertilizers.

Comment: 92.61

Response: IPM addresses pesticide regulation focused on health and safety. This Order addresses the regulation of pesticides, herbicides and fertilizers in relation to waterbodies.

Comment: 92.62

Response: See response to comment 92.61

Comment: 92.63 – 66, 92.68, 92.69

Response: This provision has been deleted.

Comment: 92.67

Response: Compliance tiers have been substantially revised to address the comment.

Comment: 92.75

Response: Compliance tiers have been deleted.

Comment: 92.76

Response: Best Management Practice Condition Assessment has been moved to the Post-Construction section.

Comment: 92.77

Response: This provision has been revised to address the comment.

Comment: 92.78

Response: Municipal Watershed Pollutant Load Quantification requirements are significant in determining program effectiveness. The Center for Watershed Protection provides a spreadsheet-based model that calculates pollutant loads and runoff volumes as well as addressing treatment solutions and planning.

Comment: 92.79

Response: If the State Water Board or USEPA has established a TMDL for an impaired water body that includes WLAs for storm water discharges, permits for either industrial storm water discharges or MS4 discharges must contain effluent limits and conditions consistent with the requirements and assumptions of the WLAs in the TMDL. See 40 CFR § 122.44(d)(1)(vii)(8). Because of the high variability in the level of detail and specificity in the TMDLs developed by the Regional Water Boards and USEPA, in many cases, it is appropriate to develop more specific permit requirements, including deliverables and required actions, derived from each TMDL's WLA and implementation requirements. Attachment G reflects the effort on the part of the State Water Board to provide such specificity. However, the Order does provide for a reopener at 6 months to allow the Small MS4s to meet with the Water Boards to review and revise as needed the permitting requirements contained in Attachment G.

Comment: 92.80

Response: This provision has been revised to address the comment. The Permittees can collect data in appropriate formats to allow for easy uploads for online Annual Reporting (pdf, Word, etc.).

Comment: 92.81

Response: Compliance due dates that have already passed are enforceable as of the effective date of the approval of the TMDL-specific permit requirements. TMDL-specific compliance due dates that exceed the term of this Order may be included for references, and will become enforceable in the event that the Order is administratively extended.

Comment: 92.82

Response: If the State Water Board or USEPA has established a TMDL for an impaired water body that includes WLAs for storm water discharges, permits for either industrial storm water discharges or MS4 discharges must contain effluent limits and conditions consistent with the requirements and assumptions of the WLAs in the TMDL. See 40 CFR § 122.44(d)(1)(vii)(8). Because of the high variability in the level of detail and specificity in the TMDLs developed by the Regional Water Boards and USEPA, in many cases, it is appropriate to develop more specific permit requirements, including deliverables and required actions, derived from each TMDL's WLA and implementation requirements. Attachment G reflects the effort on the part of the State Water Board to provide such specificity. However, the Order does provide for a reopener at 6 months to allow the Small MS4s to meet with the Water Boards to review and revise as needed the permitting requirements contained in Attachment G.

Comment: 92.83

Response: Comment noted.

Comment: 92.84

Response: Attachment G implementation requirements have been established by the appropriate Regional Water Board. The Order includes a reopener at 6 months to allow Small MS4s to meet with the Water Boards to review and revise as needed the permitting requirements contained in Attachment G.

Comment: 92.85, 92.86

Response: See response to comment 92.84

Mendocino County Office of Education

Comment: 93.1, 93.2

Response: Please see Section IV, Unfunded Mandates of the Fact Sheet.

Mendocino County Office of Education

Comment: 94.1

Response: County offices of education including school districts and charter schools are not automatically designated in this Order.

Mojave River Watershed Group

Comment: 95.1

Response: Comment noted.

Comment: 95.2

Response: Please see responses to overarching comments 17.3 and 17.5 in comment letter number 17. Please also see Section V, Economic Considerations in the Fact Sheet.

Comment: 95.3

Response: This Order has been revised to address the comment.

Comment: 95.4

Response: The State Water Board carefully considered economic feasibility while revising the June 2011 draft Order. This second draft Order continues to address critical water quality priorities, namely discharges to ASBS, TMDLs and waterbodies listed as impaired on the 303(d) list, but aims to do so in a focused and cost-effective manner.

Comment: 95.5, 95.9

Response: Please see Section IV, Unfunded Mandates of the Fact Sheet.

Comment: 95.6

Response: It is not the intent of the State Board to create redundant and duplicative requirements. As such, redundant and duplicative requirements in this Order have been revised to address this comment.

Comment: 95.7

Response: Comment noted.

Comment: 95.8

Response: This Order has been revised to allow for more flexibility in storm water program implementation while upholding the State Board's commitment to protecting water quality.

Comment: 95.10

Response: Under Water Code section 13389, the State Water Board is exempt from complying with the provisions of CEQA when issuing an NPDES permit. To the extent that an MS4 or private entity is required to obtain local discretionary approvals for projects prompted by the requirements in this Order, there may be CEQA obligations. The requirements of the Order have been substantially revised and this comment should be revisited in light of the changed requirements.

Comment: 95.11 – 95.14, 95.15, 95.16, 95.18, 95.19, 95.22

Response: This provision has been revised to address the comment.

Comment: 95.17, 95.20, 95.21

Response: Comment noted.

Comment: 95.23

Response: Reference to providing financial assistance has been deleted from this Order.

Comment: 95.24

Response: The reference to 'or equivalent' allows for Permittee flexibility to develop their own storm water education program for school-age children.

Comment: 95.25

Response: This provision has been deleted.

Comment: 95.26

Response: The State Board recognizes the audience of education and training targeted at construction sites that disturb less than one acre. Therefore, in order to protect water quality, it is important to include all construction site staff, operators, inspectors, plan reviewers and contractors in education and outreach. The aforementioned individuals should also be aware of storm water runoff impacts to water quality.

Comment: 95.27

Response: This provision has been revised to address the comment. Development of a citizen advisory group is optional.

Comment: 95.28 - 29

Response: This provision has been revised to address the comment.

Comment: 95.30

Response: Urbanized areas have been defined according to the U.S. Census and a definition is included in the glossary.

Comment: 95.31, 95.60

Response: This percent prioritization has been deleted.

Comment: 95.32 – 33, 95.52

Response: Comment noted.

Comment: 95.34 – 37, 95.47

Response: This provision has been deleted.

Comment: 95.38 – 46, 95.48 – 51, 95.53 – 59, 95.61 - 68

Response: This provision has been revised to address the comment.

Comment: 95.69, 95.70

Response: This provision has been deleted.

Comment: 95.71

Response: This provision has been revised to address the comment. Inventory of industrial/commercial facilities has been moved to Illicit Discharge Detection and Elimination section.

Comment: 95.72 – 95.75

Response: This provision has been revised to address the comment.

Comment: 95.76 – 95.80, 95.84

Response: This provision has been deleted.

Comment: 95.81 – 95.83

Response: Watershed baseline characterization will be undergone by State Board staff and made available to Regional Boards and Permittees if they are interested in utilizing watershed delineation information.

Comment: 95.85 – 95.105

Response: See response to comments letter number 17.

Monterey County Resource Management Agency – Department of Public Works

Comment: 96.1

Response: See response to comments letter number 17.

Comment: 96.2

Response: The State Water Board carefully considered economic feasibility while revising the June 2011 draft Order. This second draft Order continues to address critical water quality priorities, namely discharges to ASBS, TMDLs and waterbodies listed as impaired on the 303(d) list, but aims to do so in a focused and cost-effective manner.

Comment: 96.3

Response: Please see Section IV, Unfunded Mandates of the Fact Sheet.

Comment: 96.4

Response: Comment noted.

Comment: 96.5

Response: This Order has been substantially revised to address stakeholder concerns and issues.

Comment: 96.6

Response: This footnote has been deleted.

Comment: 96.7

Response: This compliance tiers based on population size has been deleted.

Comment: 96.8

Response: If the State Water Board or USEPA has established a TMDL for an impaired water body that includes WLAs for storm water discharges, permits for either industrial storm water discharges or MS4 discharges must contain effluent limits and conditions consistent with the requirements and assumptions of the WLAs in the TMDL. See 40 CFR § 122.44(d)(1)(vii)(8). Because of the high variability in the level of detail and specificity in the TMDLs developed by the Regional Water Boards and USEPA, in many cases, it is appropriate to develop more specific permit requirements, including deliverables and required actions, derived from each TMDL's WLA and implementation requirements. Attachment G reflects the effort on the part of the State Water Board to provide such specificity. However, the Order does provide for a reopener at 6 months to allow the Small MS4s to meet with the Water Boards to review and revise as needed the permitting requirements contained in Attachment G.

Comment: 96.9

Response: Please see responses to overarching comments 17.3 and 17.5 in comment letter number 17. Please also see Section V, Economic Considerations in the Fact Sheet.

Comment: 96.10

Response: Comment noted.

Comment: 96.11

Response: Schedules for compliance have been substantially revised to address the comment.

Monterey County Hospitality Association

Comment: 97.1, 97.2

Response: Please see Section IV, Unfunded Mandates of the Fact Sheet.

Comment: 97.3, 97.4

Response: Please see Section III, Economic Consideration of the Fact Sheet.

Comment: 97.5

Response: Comment noted.

Comment: 97.6

Response: Retrofits have been deleted from this Order.

Monterey County Mayors' Association

Comment: 98.1, 98.5, 98.9, 98.10

Response: Please see Section IV, Unfunded Mandates of the Fact Sheet.

Comment: 98.2, 98.6

Response: Please see responses to overarching comments 17.3 and 17.5 in comment letter number 17. Please also see Section V, Economic Considerations in the Fact Sheet.

Comment: 98.3

Response: This Order has been revised to address the comment.

Comment: 98.4, 98.7

Response: Comment noted

Comment: 98.8

Response: This provision has been substantially revised to address the comment.

Comment: 98.11

Response: The footnote has been deleted.

Comment: 98.12

Response: Please see Section III, Economic Consideration of the Fact Sheet.

Comment: 98.13

Response: The State Board staff worked collaboratively with stakeholders to address concerns and issues with the first draft Order released in June 2011. The second draft Order reflects substantial revisions and modifications that address this comment.

Monterey Regional Storm Water Permit Participants Group

Comment: 99.1 – 99.5

Response: Comment noted

Comment: 99.6

Response: Please see Section III, Economic Consideration of the Fact Sheet.

Comment: 99.7, 99.16

Response: The State Water Board worked collaboratively with stakeholders beginning in November 2011 to April 2012. The meetings were held with CASQA, National Resources Defense Council, Water Keepers, Heal the Bay and each category of Non-traditional Small MS4 proposed for designation in the first draft order. This second draft order reflects substantive revisions and modifications that address this comment.

Comment: 99.8

Response: Comment noted.

Comment: 99.9

Response: The footnote mentioned has been deleted. This second draft Order states a Regional Board Executive Officer may require a Permittee to continue implementation of their current program if it is equally or more effective at achieving water quality protection and MEP.

Comment: 99.10

Response: The Public Resources Code requires that the Proposition 84 Storm Water Grant Program funds be used to provide matching grants to local public agencies for the reduction and prevention of Storm Water contamination of rivers, lakes and streams. Please visit the following website for more information:

http://waterboards.ca.gov/water_issues/programs/grants_loans/prop84/index.shtml

Additional financial assistance information, including information on the Clean Water State Revolving Fund loans, is available at:

http://www.waterboards.ca.gov/water_issues/programs/grants_loans/

Comment: 99.11 – 99.14

Response: Comment noted.

Comment: 99.15

Response: Under Water Code section 13389, the State Water Board is exempt from complying with the provisions of CEQA when issuing an NPDES permit. To the extent that an MS4 or private entity is required to obtain local discretionary approvals for projects prompted by the requirements in this Order, there may be CEQA obligations. The requirements of the Order have been substantially revised and this comment should be revisited in light of the changed requirements.

Comment: 99.17 – 99.115

Response: See response to comment letter number 17.

Napa Chamber of Commerce

Comment: 100.1 - 100.6

Response: This provision has been deleted.

Napa County Flood Control and Water Conservation District

Comment: 101.1

Response: The State Water Board worked collaboratively with stakeholders beginning in November 2011 to April 2012. The meetings were held with CASQA, National Resources Defense Council, Water Keepers, Heal the Bay and each category of Non-

traditional Small MS4 proposed for designation in the first draft order. This second draft order reflects substantive revisions and modifications that address this comment.

Comment: 101.2

Response: Please see Section IV, Unfunded Mandates of the Fact Sheet.

Comment: 101.3

Response: The State Water Board recognizes and appreciatively acknowledges the collective effort by NCSWPPP regarding water quality protection. It should be noted that a Regional Board Executive Officer may require continued implementation of a Permittee's current program.

Comment: 101.4

Response: The State Water Board disagrees with the assertion that mentioned sections provide zero additional water quality enhancement benefits beyond the commendable projects already completed by NCSWPPP. In addition, this second draft Order reflects substantive modifications and revisions.

Comment: 101.5

Response: CBSM requirements have been made optional.

Comment: 101.6

Response: The Post-Construction section has been substantially revised to address the comment. Further, the State Water Board recognizes that General Plans in part convey a community's vision into land conservation options. However, the vision for land conservation and sustainability is challenging to implement.

Comment: 101.7

Response: Comment noted.

Natural Resources Defense Council (NRDC), Heal the Bay, and the California Coastkeeper Alliance

Comment: 102.1

Response: This second draft Order has been substantially revised to address the comment.

Comment: 102.2 – 102.5

Response: Post-construction requirements have been substantially revised to address the comment. The State Water Board staff worked collaboratively with stakeholders to draft post-construction requirements that are designed to retain a specific volume of rainfall onsite through low impact development practices such as infiltration, harvesting and re-use or evapotranspiration.

Comment: 102.6, 102.12

Response: Special Protections requirements have been included in this Order for those Permittees that discharge to Areas of Special Biological Significance and are covered by an exception.

Comment: 102.7

Response: Comment noted.

Comment: 102.8, 102.11

Response: If the State Water Board or USEPA has established a TMDL for an impaired water body that includes WLAs for storm water discharges, permits for either industrial storm water discharges or MS4 discharges must contain effluent limits and conditions consistent with the requirements and assumptions of the WLAs in the TMDL. See 40 CFR § 122.44(d)(1)(vii)(8). Because of the high variability in the level of detail and specificity in the TMDLs developed by the Regional Water Boards and USEPA, in many cases, it is appropriate to develop more specific permit requirements, including deliverables and required actions, derived from each TMDL's WLA and implementation requirements. Attachment G reflects the effort on the part of the State Water Board to provide such specificity. However, the Order does provide for a reopener at 6 months to allow the Small MS4s to meet with the Water Boards to review and revise as needed the permitting requirements contained in Attachment G.

Comment: 102.9, 102.10

Response: This provision has been substantially revised to address the comment.

Comment: 102.13

Response: This provision has been modified to address the comment. Due to the highly diverse conditions of California's waterbodies and regional water quality impairments, monitoring options have been included in this second draft Order. In this way, monitoring requirements are adaptable to specific regional water quality needs.

Comment: 102.14

Response: Comment noted.

Comment: 102.15

Response: The Trash Reduction Program has been removed. The draft order will be re-opened upon adoption of the Statewide Trash Policy.

Comment: 102.16

Response: Industrial facility inspections have been modified due to redundancy in requirements with the Industrial General Permit (IGP). Please see permit for revisions.

Comment: 102.17

Response: The State Water Board worked collaboratively with stakeholders beginning in November 2011 to April 2012. The meetings were held with CASQA, National Resources Defense Council, Water Keepers, Heal the Bay and each category of Non-traditional Small MS4 proposed for designation in the first draft order. This second draft order reflects substantive revisions and modifications that address this comment.

NG Alexander R/E Development LLC

Comment: 103.1, 103.2, 103.4

Response: Please see Section III, Economic Consideration of the Fact Sheet.

Comment: 103.3

Response: These permit provisions have been deleted.

Comment: 103.5

Response: This provision has been revised to address the comment.

Comment: 103.6

Response: Numeric criteria development requirements have been modified to address the comment.

Nine Mile Hill Investment Company, Inc.

Comment: 104.1, 104.2, 104.4

Response: Please see Section III, Economic Consideration of the Fact Sheet.

Comment: 104.3

Response: These provisions have been deleted.

Comment: 104.5

Response: This provision has been revised to address the comment.

Comment: 104.6

Response: Numeric criteria development requirements have been modified to address the comment.

North Bay Watershed Association

Comment: 105.1, 105.2

Response: Comment noted.

Comment: 105.3, 105.4

Response: Please see Section III, Economic Consideration of the Fact Sheet.

Comment: 105.5

Response: Please see Section IV, Unfunded Mandates of the Fact Sheet.

Comment: 105.6

Response: This second draft Order has been revised to address the comment. Compliance schedules have generally been pushed out one year further from the first draft Order dates.

Office of Environmental Health Hazard Assessment

Comment: 106.1 – 106.11

Response: This provision has been modified to address the comment.

Orange County Department of Education

Comment: 107.1

Response: Offices of education including school districts and charter schools are not automatically designated under this Order.

Comment: 107.2

Response: Please see Section III, Economic Consideration of the Fact Sheet.

Comment: 107.3

Response: Comment noted.

Paso Robles School District

Comment: 108.1

Response: Entities located within an urbanized area contribute to storm water runoff. Urbanization causes changes in the landscape, including increased loads of chemical pollutants, increased toxicity, changes to flow magnitude, frequency, and seasonality of various discharges, physical changes to stream, lake, or wetland habitats, changes in the energy dynamics of food webs, sunlight, and temperature; and biotic interactions between native and exotic species. In addition to surface water impacts, urbanization can alter the amount and quality of storm water that infiltrates and recharges groundwater aquifers. School districts are located within urbanized areas and therefore contribute to storm water runoff.

Comment: 108.2

Response: Please see Section IV, Unfunded Mandates of the Fact Sheet.

Comment: 108.3

Response: This provision has been substantially revised to address the comment.

Comment: 108.4

Response: Non-traditional permit provisions have been specifically tailored to address non-traditionals unique program structure.

Comment: 108.5

Response: This provision has been deleted.

Comment: 108.6

Response: “Contribute” in the context of this Order means “participation”. In other words, “contributing” refers to Permittee participation in Public Outreach and Education through a county-wide, regional or individual approach. “Contribute” does not necessarily point to funding.

Comment: 108.7

Response: Target audience for schools has been defined as 'students, staff and faculty'.

Comment: 108.8

Response: The California Education and Environmental Curriculum equivalent is equal to the material that is contained within the Curriculum.

Comment: 108.9

Response: This provision has been deleted from Non-traditional provisions.

Comment: 108.10

Response: This provision has been substantially revised to address the comment.

Comment: 108.11

Response: GIS is optional.

Comment: 108.12, 108.13

Response: This provision has been deleted from Non-traditional provisions.

Comment: 108.14

Response: A Permittee may utilize an equivalent or existing document such as a Standard Operations and Procedures manual, Operation and Maintenance Plan, or Spill Response Plan if that document includes the necessary information required to comply with the provisions of this attachment.

Comment: 108.15

Response: This provision has been substantially revised to address the comment.

Comment: 108.16, 108.17, 108.19

Response: A Permittee may utilize an equivalent or existing document such as a Standard Operations and Procedures manual, Operation and Maintenance Plan, or Spill Response Plan if that document includes the necessary information required to comply with the provisions of this attachment.

Comment: 108.18

Response: Non-traditional permit provisions have been specifically tailored to address non-traditionals unique program structure.

Comment: 108.20

Response: This provision has been substantially revised to address the comment.

Comment: 108.21 – 108.24, 108.26

Response: Comment noted.

Comment: 108.25

Response: Compliance schedules have modified to address the comment.

Comment: 108.27

Response: Non-traditional permit provisions have been specifically tailored to address non-traditionals unique program structure.

SamTrans

Comment: 109.1

Response: Comment noted.

Placer County Department of Public Works

Comment: 110.1, 110.2

Response: Please see Section III, Economic Consideration of the Fact Sheet.

Comment: 110.3

Response: The Public Resources Code requires that the Proposition 84 Storm Water Grant Program funds be used to provide matching grants to local public agencies for the reduction and prevention of Storm Water contamination of rivers, lakes and streams. Please visit the following website for more information:

http://waterboards.ca.gov/water_issues/programs/grants_loans/prop84/index.shtml

Additional financial assistance information, including information on the Clean Water State Revolving Fund loans, is available at:

http://www.waterboards.ca.gov/water_issues/programs/grants_loans/

Comment: 110.4

Response: Water quality issues must be addressed within the current permit term. This second draft Order has been substantially revised to address stakeholder concerns and issues with the first draft Order.

Comment: 110.5

Response: This second draft Order has been substantially revised and modified to address the comment.

Comment: 110.6, 110.12, 110.14, 110.29, 110.31, 110.42, 110.54 -110.60

Response: This provision has been deleted.

Comment: 110.7, 110.11, 110.13, 110.17, 110.18, 110.23, 110.34

Response: Comment noted.

Comment: 110.8

Response: This second draft Order has been substantially revised.

Comment: 110.9

Response: Please see Section III, Economic Consideration of the Fact Sheet.

Comment: 110.10

Response: This second draft Order does not require Permittees to implement oversight and enforcement action on behalf of the State.

Comment: 110.15

Response: Sub watershed verification will be conducted by State Water Board staff.

Comment: 110.16

Response: Monitoring requirements have been substantially revised. Please see second draft Order.

Comment: 110.19

Response: Permit language needs to be enforceable. The use of the word 'shall' ensures enforceability.

Comment: 110.20

Response: For Traditional Small MS4 Permittees, the permit boundary is based on 2010 Census data. For cities, the permit area boundary is the city boundary. For Counties, permit boundaries must include urbanized areas and places identified in Attachment A located within their jurisdictions. The boundaries must be proposed in the permit boundary map and may be developed in conjunction with the applicable Regional Water Board.

Comment: 110.21

Response: Compliance schedules and dates have been revised to address this comment.

Comment: 110.22

Response: Designated Permittees are listed in Attachments A and B. Please refer to designation flowchart.

Comment: 110.24

Response: The State Board and Regional Boards require documentation of storm water program implementation in order to evaluate compliance. Without program details and data program evaluation and assessment is ineffective.

Comment: 110.25

Response: Definition added.

Comment: 110.26

Response: This requirement has been revised to address the comment.

Comment: 110.27

Response: The discharge types mentioned in this comment have been added back into the second draft Order.

Comment: 110.28

Response: This provision has been revised to address the comment.

Comment: 110.30

Response: An Enforcement Response Plan provides guidance to inspectors on the different enforcement responses available, actions to address general permit non-filers, when and how to refer violators to the State and how to track enforcement actions.

Comment: 110.32

Response: CBSM has been made optional.

Comment: 110.33

Response: This provision is directed at non-traditional schools.

Comment: 110.35

Response: Prioritization percentages have been deleted.

Comment: 110.36 – 110.41, 110.43, 110.46, 110.47, 110.50, 110.51

Response: This provision has been substantially revised to address the comment.

Comment: 110.44, 110.49, 110.52

Response: Comment noted.

Comment: 110.45

Response: This provision has been deleted.

Comment: 110.48

Response: If a Permittee has an existing document such as a Hazardous Materials Business Plan or Spill Prevention Plan, the Permittee is not required to develop a SWPPP if that document includes the necessary information required within a SWPPP.

Comment: 110.53

Response: This provision applies to projects within the MS4's jurisdiction.

Comment: 110.61

Response: This provision has been substantially revised to address the comment.

Comment: 110.62 – 110.66, 110.79, 110.80

Response: This provision has been substantially revised to address the comment. State Water Board staff will conduct watershed characterization and delineation.

Comment: 110.67 – 110.71

Response: This provision has been substantially revised to address the comment.

Comment: 110.72

Response: Comment noted.

Comment: 110.73

Response: The requirement in this Order that new development or redevelopment projects creating and/or replacing 5,000 square feet or more of impervious surface shall comply with treatment requirements is consistent with the Standard Urban Stormwater Mitigation Plan provisions upheld by the State Water Board.

Comment: 110.74

Response: This provision has been substantially revised to address the comment.

Comment: 110.75

Response: This provision has been deleted.

Comment: 110.76

Response: Comment noted.

Comment: 110.77

Response: Please see Section XII, Post-Construction Storm Water Management for New Development and Re-development in the Fact Sheet.

Comment: 110.78, 110.81, 110.83 - 110.86

Response: This provision has been revised to address the comment.

Comment: 110.82

Response: Urbanized area definition has been added to the Glossary.

Comment: 110.87

Response: Clear guidance is provided through the Center for Watershed Protection's guide on Watershed Treatment Model (WTM). It can be found at: http://www.cwp.org/documents/cat_view/83-watershed-treatment-model.html

Comment: 110.88

Response: Attachment G has been revised and updated.

Comment: 110.89

Response: Attachment J has been deleted. Please see Attachments A and B for designations.

Placer Regional Stormwater Coordination Group

Comment: 111.1

Response: This second draft Order includes substantial revisions and modifications that address this comment.

Comment: 111.2

Response: Please see Section III, Economic Consideration of the Fact Sheet.

Comment: 111.3

Response: Comment noted.

Comment: 111.4 – 111.12, 111.16, 111.24

Response: Please see Section IV, Unfunded Mandates of the Fact Sheet.

Comment: 111.13

Response: Under Water Code section 13389, the State Water Board is exempt from complying with the provisions of CEQA when issuing an NPDES permit. To the extent that an MS4 or private entity is required to obtain local discretionary approvals for projects prompted by the requirements in this Order, there may be CEQA obligations. The requirements of the Order have been substantially revised and this comment should be revisited in light of the changed requirements.

Comment: 111.14

Response: Compliance schedules and dates have been revised to address this comment.

Comment: 111.15

Response: This provision has been deleted.

Comment: 111.17

Response: This second draft Order includes substantial revisions and modifications that address this comment.

Comment: 111.18, 111.20

Response: Please see Section VIII TMDL of the Fact Sheet.

Comment: 111.19

Response: If the State Water Board or USEPA has established a TMDL for an impaired water body that includes WLAs for storm water discharges, permits for either industrial storm water discharges or MS4 discharges must contain effluent limits and conditions consistent with the requirements and assumptions of the WLAs in the TMDL. See 40 CFR § 122.44(d)(1)(vii)(8). Because of the high variability in the level of detail and specificity in the TMDLs developed by the Regional Water Boards and USEPA, in many cases, it

is appropriate to develop more specific permit requirements, including deliverables and required actions, derived from each TMDL's WLA and implementation requirements. Attachment G reflects the effort on the part of the State Water Board to provide such specificity. However, the Order does provide for a reopener at 6 months to allow the Small MS4s to meet with the Water Boards to review and revise as needed the permitting requirements contained in Attachment G.

Comment: 111.21

Response: Comment noted.

Comment: 111.22, 111.23, 111.26, 111.27

Response: The State Board staff worked collaboratively with stakeholders to address concerns and issues with the first draft Order released in June 2011. The second draft Order reflects substantial revisions and modifications that address this comment.

Comment: 111.25

Response: Comment noted.

San Francisco Water Power Saver

Comment: 112.1

Response: Compliance schedules and dates have been revised to address this comment.

Comment: 112.2, 112.3

Response: The Receiving Water Limitations in this second draft Order are identical to those included in the 2003 Order, excepting the fact that in the 2003 Order they applied only to higher population areas (50,000 or more) in Attachment IV.

Comment: 112.4

Response: This second draft Order states a Regional Board Executive Officer may require a Permittee to continue implementation of their current program if it is equally or more effective at achieving water quality protection and MEP.

Comment: 112.5, 112.6

Response: Attachment J has been deleted. Please see Attachments A and B for updated and revised designations.

Comment: 112.7, 112.23, 112.24

Response: Compliance schedules and dates have been revised to address this comment.

Comment: 112.8

Response: Comment noted.

Comment: 112.9, 112.15

Response: This provision has been deleted.

Comment: 112.10, 112.11, 112.12, 112.14, 112.17-112.22

Response: CBSM has been made optional.

Comment: 112.13, 112.16, 112.25 – 112.45

Response: This provision has been substantially revised to address the comment.

Comment: 112.46 – 112.49

Response: This provision has been deleted.

Comment: 112.50 – 112.55

Response: This provision has been substantially revised.

Richland Communities

Comment: 113.1, 113.2, 113.4

Response: Please see Section III, Economic Consideration of the Fact Sheet.

Comment: 113.3

Response: These permit provisions have been deleted.

Comment: 113.5, 113.6

Response: This provision has been substantially revised to address the comment.

Riverside County Flood Control District

Comment: 114.1, 114.4

Response: Designations have been revised and updated. Please see Attachments A and B.

Comment: 114.2

Response: Please see Section III, Economic Consideration of the Fact Sheet.

Comment: 114.3

Response: The State Board staff worked collaboratively with stakeholders to address concerns and issues with the first draft Order released in June 2011. The second draft Order reflects substantial revisions and modifications that address this comment.

Comment: 114.5 – 114.10

Response: See response to comment letter number 17.

Comment: 114.11- 114.13

Response: These permit provisions have been substantially revised to address the comment.

Comment: 114.14

Response: Please see Section III, Economic Consideration of the Fact Sheet.

County of Riverside Transportation and Land Management Agency

Comment: 115.1 – 115.10

Response: Designations have been revised and updated. Please see Attachments A and B. Please see response to comment letter number 65.

Russian River Watershed Association

Comment: 116.1

Response: Compliance schedules and dates have been revised to address this comment.

Comment: 116.2

Response: The State Board staff worked collaboratively with stakeholders to address concerns and issues with the first draft Order released in June 2011. The second draft Order reflects substantial revisions and modifications that address this comment.

Comment: 116.3

Response: This second draft Order states a Regional Board Executive Officer may require a Permittee to continue implementation of their current program if it is equally or more effective at achieving water quality protection and MEP.

Comment: 116.4

Response: Please see response to comment letter 17.

Comment: 116.5

Response: Please see Section IV, Unfunded Mandates of the Fact Sheet.

Comment: 116.6, 116.7

Response: Please see Section III, Economic Consideration of the Fact Sheet.

Sacramento Stormwater Quality Partnership

Comment: 117.1

Response: The State Board staff worked collaboratively with stakeholders to address concerns and issues with the first draft Order released in June 2011. The second draft Order reflects substantial revisions and modifications that address this comment. Please see permit.

Comment: 117.2

Response: Comment noted.

Comment: 117.3

Response: The specific provisions referenced in the comment have been substantially revised or have been removed from the Draft Order and the comment is no longer applicable to these permit provisions.

More generally, a municipal storm water permit must ensure compliance with the Clean Water Act. Water Code section 13372 states in part that “the provisions of this chapter [chapter 5.5, establishing compliance with the provisions of the Clean Water Act] shall prevail over other provisions of this division to the extent of any inconsistency.” To the extent that this comment suggests that Water Code section 13360 would prohibit programs necessary to comply with federal requirements, the federal requirements must take precedence over section 13360.

Even where section 13360 is applicable, goals and standards to be achieved and attained that are laid out in the Draft Order do not constitute a mandate of the method of compliance. Further, where the Draft Order allows dischargers to propose and substitute a best management practice or other manner of compliance in lieu of any practice specifically enumerated in the Order, the Order complies with section 13360. “Section 13360 is a shield against unwarranted interference with the ingenuity of the parties subject to a waste discharge requirement; it is not a sword precluding regulation of discharges of pollutants. It preserves the freedom of

persons who are subject to a discharge standard to elect between available strategies to comply with that standard.” (Sierra Preservation Council v. SWRCB (1989) 210 Cal. App. 3d 1421, 1438.)

Comment: 117.4

Response: This provision has been substantially revised to address the comment.

Comment: 117.5

Response: Retrofits have been deleted from the permit.

Comment: 117.6

Response: Comment noted.

Comment: 117.7

Response: Please see response to comment letter 17.

Comment: 117.8

Response: Please see Section III, Economic Consideration of the Fact Sheet.

The San Diego County Office of Education Municipal Stormwater Group

Comment: 118.1

Response: Please see Section III, Economic Consideration of the Fact Sheet.

Comment: 118.2

Response: Non-traditional permit provisions have been specifically tailored to address non-traditionals unique program structure.

California Regional Water Quality Control Board – San Diego Region

Comment: 119.1 – 119.11

Response: The permit provisions have been significantly revised and revisions to the findings have been made accordingly. The commenter is asked to re-submit any proposed finding revisions the commenter believes would still be relevant for the revised draft

Comment: 119.12 – 119.14

Response: This provision has been revised to address the comment.

Comment: 119.15 – 119.16

Response: The Blue Ribbon report concluded that “It is not feasible at this time to set enforceable numeric effluent criteria for municipal BMPs and in particular urban discharges. However, it is possible to select and design them much more rigorously with respect to the physical, chemical and/or biological processes that take place within them, providing more confidence that the estimated mean concentrations of constituents in the effluents will be close to the design target.” Therefore, this Order requires Permittees to implement BMPs in order to reduce pollutant in storm water to MEP.

Comment: 119.17

Response: This provision has been revised to address the comment.

Comment: 119.18, 119.19, 119.31

Response: Please see Section III, Economic Consideration of the Fact Sheet.

Comment: 119.20

Response: Comment noted.

Comment: 119.21- 119.27

Response: This provision has been substantially revised. Please see permit.

Comment: 119.28 – 119.29

Response: This provision has been deleted.

Comment: 119.30

Response: Comment noted.

Comment: 119.32 – 119.36

Response: Designations have been substantially revised to address the comment. In the case that errors still exist, the State Board will make the appropriate revisions before this second draft Order is finalized. A Regional Board Executive Officer may submit a brief justification explaining the reason for designation to add an entity. Conversely, a request to remove an entity from the designation may be submitted to State Board.

Comment: 119.37 -119.39

Response: Attachment G has been substantially revised and updated to address the comment. Please see Attachment G.

San Diego Unified School District

Comment: 120.1

Response: Please see Section III, Economic Consideration of the Fact Sheet.

Comment: 120.2, 120.3

Response: Non-traditional permit provisions have been specifically tailored to address non-traditionals unique program structure.

Comment: 120.4

Response: Entities located within an urbanized area contribute to storm water runoff. Urbanization causes changes in the landscape, including increased loads of chemical pollutants, increased toxicity, changes to flow magnitude, frequency, and seasonality of various discharges, physical changes to stream, lake, or wetland habitats, changes in the energy dynamics of food webs, sunlight, and temperature; and biotic interactions between native and exotic species. In addition to surface water impacts,

urbanization can alter the amount and quality of storm water that infiltrates and recharges groundwater aquifers. School districts are located within urbanized areas and therefore contribute to storm water runoff.

Comment: 120.5

Response: A Permittee may utilize an equivalent or existing document such as a Standard Operations and Procedures manual, Operation and Maintenance Plan, or Spill Response Plan if that document includes the necessary information required to comply with the provisions of this attachment.

Comment: 120.6

Response: This provision has been substantially revised to address the comment.

Comment: 120.7

Response: Comment noted.

San Francisco Bay Area Rapid Transit District

Comment: 122.1 – 122.4

Response: Transit agencies (Heavy Rail) are not automatically designated under this Order. However, a Regional Board Executive Officer may designate on a case-by-case basis. Such designations would be based on the potential of the discharges from an entity to result in exceedances of water quality standards or cause other significant water quality impacts. The Regional Water Boards have greater knowledge and expertise as to the specific storm water issues in their region and may exercise their designation discretion accordingly. See Finding 24.

The San Francisco Water Board has designated San Francisco Bay Area Rapid Transit District as a Permittee in this draft Order. See Fact Sheet, Section, XVII, Regional Board Designations.

Comment: 122.5 and 122.6

Response: Please see response to comment letter number 17.

Comment: 122.7

Response: Compliance schedules and dates have been revised to address this comment.

Comment: 122.8

Response: The specific provisions referenced in the comment have been substantially revised or have been removed from the Draft Order and the comment is no longer applicable to these permit provisions.

More generally, a municipal storm water permit must ensure compliance with the Clean Water Act. Water Code section 13372 states in part that “the provisions of this chapter [chapter 5.5, establishing compliance with the provisions of the Clean Water Act] shall prevail over other provisions of this division to the extent of any inconsistency.” To the extent that this comment suggests that Water Code section 13360 would prohibit programs necessary to comply with federal requirements, the federal requirements must take precedence over section 13360.

Even where section 13360 is applicable, goals and standards to be achieved and attained that are laid out in the Draft Order do not constitute a mandate of the method of compliance. Further, where the Draft Order allows dischargers to propose and substitute a best management practice or other manner of compliance in lieu of any practice specifically enumerated in the Order, the Order complies with section 13360. “Section 13360 is a shield against unwarranted interference with the ingenuity of the parties subject to a waste discharge requirement; it is not a sword precluding regulation of discharges of pollutants. It preserves the freedom of persons who are subject to a discharge standard to elect between available strategies to comply with that standard.” (Sierra Preservation Council v. SWRCB (1989) 210 Cal. App. 3d 1421, 1438.)

Comment: 122.9 – 122.15

Response: These permit provisions have been substantially revised to address these comments.

Comment: 122.16 and 122.17

Response: These permit provisions have been deleted.

Comment: 122.18

Response: Comment noted.

Comment: 122.19

Response: See response to comment 122.1.

San Francisco Baykeeper

Comment: 123.1

Response: Comment noted.

Comment 123.2

Response: The provision referenced in the comment is specific to the receiving water limitations of the permit. Under federal law, an MS4 permit must include "controls to reduce the discharge of pollutants to the maximum extent practicable . . . and such other provisions as . . . the State determines appropriate for the control of such pollutants." (Clean Water Act §402(p)(3)(B)(iii).) The State Water Board has previously determined that limitations necessary to meet water quality standards are appropriate for the control of pollutants discharged by MS4s and must be included in MS4 permits. (State Water Board Orders WQ 91-03, 98-01, 99-05, 2001-15; see also *Defenders of Wildlife v. Browner* (9th Cir. 1999) 191 F3d 1159.). The draft order accordingly prohibits discharges that cause or contribute to violations of water quality standards.

The draft order further sets out that, upon determination that a Permittee is causing or contributing to an exceedance of applicable water quality standards, the Permittee must engage in an iterative process of proposing and implementing additional control measures to prevent or reduce the pollutants causing or contributing to the exceedance. This iterative process is modeled on receiving water limitations set out in State Water Board precedential Order WQ 99-05 and required by that Order to be included in all municipal storm water permits. The precedential receiving water limitations language will not be amended in response to this comment. The specific provision referenced is not intended to be a limitation on Permittees' engagement in the iterative process to achieve compliance with receiving water limitations.

With regard to commenters' concern with repeated violations of water quality standards, staff reiterates that the draft order's receiving water limitations prohibit discharges that cause or contribute to an exceedance of water quality standards. As recently stated by the Ninth Circuit Court of Appeals in *Natural Resources Defense Council, Inc. v. County of Los Angeles* (2011) 673 F.3d 880, exceedances of water quality standards in an MS4 permit constitute violations of permit terms and are not excused by engagement in the iterative process.

Comment 123.3

Response: Staff appreciates commenters' support of the streamlined approach of the draft order of setting out clear and objective standards to be followed by the Permittee, but disagrees that this approach should not extend to the reports to be submitted as part of the iterative process or the consideration of hot spots within SWPPPs. The Ninth Circuit Court of Appeals decision in *Environmental Defense Center v. EPA* (2003) 344 F.3d 832 held that SWMPs must be made available to the public for review and comment because the "substantive information about how the operator of a small MS4 will reduce discharges to the maximum extent practicable" was found in the storm water management plan rather than the permit itself" (344 F3d at 857). The reports referenced in the comment propose specific BMPs to achieve compliance with the clearly laid-out standards of the permit, including the receiving water limitations; the substantive standards as to how MEP will be achieved are still found in the permit itself. Staff additionally notes that permit provisions have been revised significantly and that commenters may wish to resubmit this comment in light of the changes in the revised draft order.

Comment: 123.4

Response: Waiver certification language has been revised. Please see permit for changes.

Comment: 123.5

Response: While we see the importance of quickly implementing the requirements in this Order, we also have to carefully consider the economic impacts of Order implementation. Staggered compliance dates are intended to address both aspects of implementation and cost.

Comment: 123.6

Response: The Trash Reduction Program has been removed from this second draft Order. It will be added in upon adoption of the State Trash Reduction Policy.

Comment: 123.7

Response: We recognize the value of the Industrial/Commercial Inspection program but based on an attempt to address the depressed economic climate in California, this provision was removed from this permit cycle. The Regional Water Boards have the authority to issue individual NPDES permits for storm water discharges and can include an . Industrial/Commercial Inspection program (Wat. Code §13377.)

Comment:

Response:

San Gabriel Unified School District

Comment: 124.1

Response: Comment noted.

Comment: 124.2 and 124.3

Response: Please see Section III, Economic Consideration of the Fact Sheet.

Comment: 124.4

Response: Non-traditional permit provisions have been specifically tailored to address non-traditionals unique program structure.

San Luis Coastal Unified School District

Comment: 125.1

Response: Non-traditional permit provisions have been specifically tailored to address non-traditionals unique program structure. Entities located within an urbanized area contribute to storm water runoff. Urbanization causes changes in the landscape, including

increased loads of chemical pollutants, increased toxicity, changes to flow magnitude, frequency, and seasonality of various discharges, physical changes to stream, lake, or wetland habitats, changes in the energy dynamics of food webs, sunlight, and temperature; and biotic interactions between native and exotic species. In addition to surface water impacts, urbanization can alter the amount and quality of storm water that infiltrates and recharges groundwater aquifers. School districts are located within urbanized areas and therefore contribute to storm water runoff.

Comment: 125.2, 125.13, 125.15 – 125.18

Response: A Permittee may utilize an equivalent or existing document such as a Standard Operations and Procedures manual, Operation and Maintenance Plan, or Spill Response Plan if that document includes the necessary information required to comply with the provisions of this attachment.

Comment: 125.3

Response: Non-traditional permit provisions have been specifically tailored to address non-traditionals unique program structure.

Comment: 125.4, 125.8, 125.12

Response: This provision has been deleted.

Comment: 125.5

Response: “Contribute” in the context of this Order means “participation”. In other words, “contributing” refers to Permittee participation in Public Outreach and Education through a county-wide, regional or individual approach. “Contribute” does not necessarily point to funding.

Comment: 125.6

Response: Comment noted.

Comment: 125.7

Response: The California Education and Environmental Curriculum equivalent is equal to the material that is contained within the Curriculum.

Comment: 125.9, 125.11, 125.14, 125.19

Response: This provision has been substantially revised to address the comment.

Comment: 125.10

Response: GIS is optional.

Comment: 125.20

Response: Monitoring is not required for Non-trationals.

Comment: 125.21 – 125. 23

Response: Comment noted.

Comment: 125.24

Response: Compliance schedules and dates have been revised to address this comment.

Comment: 125.25

Response: The State Water Board has determined that it is appropriate for the Regional Water Boards to designate K-12 schools, County Offices of Education, and Charter schools on a case-by-case basis. Such designations would be based on the potential of the discharges from these schools to result in exceedances of water quality standards or cause other significant water quality impacts. The Regional Water Boards have greater knowledge and expertise as to the specific storm water issues in their region and may exercise their designation discretion accordingly. See Finding 24.

SamTrans

Comment: 126.1

Response: Comment noted.

Santa Monica Malibu Schools

Comment: 127.1

Response: Comment noted.

Comment: 127.2 and 127.3

Response: Please see Section III, Economic Consideration of the Fact Sheet.

Comment: 127.4

Response: Non-traditional permit provisions have been specifically tailored to address non-traditionals unique program structure.

Signature Homes

Comment: 128.1

Response: This provision has been substantially revised. Please see permit.

Solano County Department of Resource Management

Comment: 129.1, 129.2

Response: This provision has been substantially revised. Please see permit.

Comment: 129.3

Response: CBSM has been made optional.

Comment: 129.4

Response: Please see Section IV, Unfunded Mandates of the Fact Sheet.

Sonoma Valley Chamber of Commerce

Comment: 130.1

Response: Please see Section IV, Unfunded Mandates of the Fact Sheet.

Comment: 130.2, 130.3

Response: Please see Section III, Economic Consideration of the Fact Sheet.

Specialty Steel Service

Comment: 131.1 – 131.3

Response: This provision has been deleted.

Comment: 131.4

Response: Retrofits have been deleted.

Comment: 131.5

Response: Comment noted.

Stanislaus County

Comment: 132.1

Response: Comment noted.

Comment: 132.2, 132.3

Response: Please see Section III, Economic Consideration of the Fact Sheet.

Comment: 132.4

Response: The Public Resources Code requires that the Proposition 84 Storm Water Grant Program funds be used to provide matching grants to local public agencies for the reduction and prevention of Storm Water contamination of rivers, lakes and streams. Please visit the following website for more information:

http://waterboards.ca.gov/water_issues/programs/grants_loans/prop84/index.shtml

Additional financial assistance information, including information on the Clean Water State Revolving Fund loans, is available at:

http://www.waterboards.ca.gov/water_issues/programs/grants_loans/

Stanislaus County (2)

Comment: 133.1

Response: Please see Section III, Economic Consideration of the Fact Sheet.

Comment: 133.2, 133.4

Response: Please see responses to overarching comments 17.3 and 17.5 in comment letter number 17. Please also see Section V, Economic Considerations in the Fact Sheet.

Comment: 133.3

Response: This second draft Order has been substantially revised to address the comment.

Comment: 133.5

Response: Compliance schedules and dates have been revised to address this comment.

Comment: 133.6

Response: The specific provisions referenced in the comment have been substantially revised or have been removed from the Draft Order and the comment is no longer applicable to these permit provisions.

More generally, a municipal storm water permit must ensure compliance with the Clean Water Act. Water Code section 13372 states in part that “the provisions of this chapter [chapter 5.5, establishing compliance with the provisions of the Clean Water Act] shall prevail over other provisions of this division to the extent of any inconsistency.” To the extent that this comment suggests that Water Code section 13360 would prohibit programs necessary to comply with federal requirements, the federal requirements must take precedence over section 13360.

Even where section 13360 is applicable, goals and standards to be achieved and attained that are laid out in the Draft Order do not constitute a mandate of the method of compliance. Further, where the Draft Order allows dischargers to propose and substitute a best management practice or other manner of compliance in lieu of any practice specifically enumerated in the Order, the Order complies with section 13360. “Section 13360 is a shield against unwarranted interference with the ingenuity of the parties subject to a waste discharge requirement; it is not a sword precluding regulation of discharges of pollutants. It preserves the freedom of persons who are subject to a discharge standard to elect between available strategies to comply with that standard.” (*Sierra Preservation Council v. SWRCB* (1989) 210 Cal. App. 3d 1421, 1438.)

Comment: 133.7

Response: Retrofits have been deleted.

Comment: 133.8

Response: Comment noted.

Statewide Stormwater Coalition

Comment: 134.1

Response: Comment noted.

Comment: 134.2, 134.4

Response: Please see Section III, Economic Consideration of the Fact Sheet.

Comment: 134.3

Response: Comment noted.

Comment: 134.5

Response: The Public Resources Code requires that the Proposition 84 Storm Water Grant Program funds be used to provide matching grants to local public agencies for the reduction and prevention of Storm Water contamination of rivers, lakes and streams. Please visit the following website for more information:

http://waterboards.ca.gov/water_issues/programs/grants_loans/prop84/index.shtml

Additional financial assistance information, including information on the Clean Water State Revolving Fund loans, is available at:
http://www.waterboards.ca.gov/water_issues/programs/grants_loans/

Comment: 134.6

Response: Please see Section IV, Unfunded Mandates of the Fact Sheet.

Comment: 134.7

Response: Please see Section III, Economic Consideration of the Fact Sheet. Retrofits have been deleted.

Comment: 134.8, 134.9, 134.10, 134.11, 134.12, 134.13

Response: The State Board staff worked collaboratively with stakeholders to address concerns and issues with the first draft Order released in June 2011. The second draft Order reflects substantial revisions and modifications that address this comment.

Comment: 134.14 – 134. 20

Response: The State Water Board recognizes comments 134.14 – 134.20 as strong suggestions and recommendations. However, this second draft Order has been substantially revised to address the majority of these comments. Please see permit.

Comment: 134.21-134.27

Response: Staff does not agree that the permit's requirements impose unfunded state mandates on local governments. In response to this comment, a discussion of state mandates has been included in the Fact Sheet at Section IV, Unfunded Mandates. Staff additionally notes that the provisions of the permit have been significantly revised since this comment was submitted and that many of the referenced requirements have been removed or substantially changed as a result.

The draft order has been significantly revised and an attempt has been made to remove any ambiguous or unclear provisions. If commenters believe that ambiguous or unclear provisions remain, staff asks that they point those out specifically in the next set of comments.

With regard to the iterative process, staff responds as follows:

Under federal law, an MS4 permit must include "controls to reduce the discharge of pollutants to the maximum extent practicable . . . and such other provisions as . . . the State determines appropriate for the control of such pollutants." (Clean Water Act §402(p)(3)(B)(iii).) The State Water Board has previously determined that limitations necessary to meet water quality standards are appropriate for the control of pollutants discharged by MS4s and must be included in MS4 permits. (State Water Board Orders WQ 91-03, 98-01, 99-05, 2001-15; see also *Defenders of Wildlife v. Browner* (9th Cir. 1999) 191 F3d 1159.). The Proposed Order accordingly prohibits discharges that cause or contribute to violations of water quality standards.

The Proposed Order further sets out that, upon determination that a Permittee is causing or contributing to an exceedance of applicable water quality standards, the Permittee must engage in an iterative process of proposing and implementing additional control measures to prevent or reduce the pollutants causing or contributing to the exceedance. This iterative process is modeled on receiving water limitations set out in State Water Board precedential Order WQ 99-05 and required by that Order to be included in all municipal storm water permits.

The Ninth Circuit held in *Natural Resources Defense Council, Inc. v. County of Los Angeles* (2011) 673 F.3d 880 that engagement in the iterative process does not provide a safe harbor from liability for violations of permit terms prohibiting exceedances of water quality standards. The Ninth Circuit holding is consistent with the position of the State Water Board and Regional Water Boards that exceedances of water quality standards in an MS4 permit constitute violations of permit terms subject to enforcement by the Boards or through a citizen suit. While the Boards have generally directed dischargers to achieve compliance by improving control

measures through the iterative process, the Board retains the discretion to take other appropriate enforcement and the iterative process does not shield dischargers from citizen suits.

No changes have been made to the relevant provisions of the Order in response to this comment.

Comment 134.29

Response: The specific provisions referenced in the comment have been substantially revised or have been removed from the Draft Order and the comment is no longer applicable to these permit provisions.

More generally, a municipal storm water permit must ensure compliance with the Clean Water Act. Water Code section 13372 states in part that “the provisions of this chapter [chapter 5.5, establishing compliance with the provisions of the Clean Water Act] shall prevail over other provisions of this division to the extent of any inconsistency.” To the extent that this comment suggests that Water Code section 13360 would prohibit programs necessary to comply with federal requirements, the federal requirements must take precedence over section 13360.

Even where section 13360 is applicable, goals and standards to be achieved and attained that are laid out in the Draft Order do not constitute a mandate of the method of compliance. Further, where the Draft Order allows dischargers to propose and substitute a best management practice or other manner of compliance in lieu of any practice specifically enumerated in the Order, the Order complies with section 13360. “Section 13360 is a shield against unwarranted interference with the ingenuity of the parties subject to a waste discharge requirement; it is not a sword precluding regulation of discharges of pollutants. It preserves the freedom of persons who are subject to a discharge standard to elect between available strategies to comply with that standard.” (*Sierra Preservation Council v. SWRCB* (1989) 210 Cal. App. 3d 1421, 1438.)

Comment: 134.30

Response: The revised permit directs the Regional Water Boards to review, within six months of the effective date of the Order, the TMDL-specific permit requirements contained in Attachment G and to propose to the State Water Board any appropriate revisions after consultations with the Permittees and State Water Board staff. The revised permit directs that any proposed requirements by the Regional Water Boards shall be supported by an explanation of how the TMDL-specific permit requirements are consistent with the assumptions and requirements of applicable WLAs and with the goals of the TMDL.

Comment: 134.31

Response:

Comment: 134.32

Response: The provisions referenced in this comment have been revised significantly and the comment is no longer applicable.

Comment: 134.33

Response: Section E.6.a(ii)j. in the revised permit states that the Permittee have the ability, “when warranted,” to require recovery and remediation costs from responsible agencies.

Comment: 134.34

Response: The provisions referenced in this comment have been revised significantly and the comment is no longer applicable.

Comment: 134.35

Response: Revisions have been made in response to this and other comments to clarify the role of the Regional Water Boards.

Comment: 134.36

Response: The findings and provisions of the permit have been significantly revised in response to comments received. This comment should be revisited in light of the significant changes made.

Comment: 134.37 – 134.53

Response: Please see Section III, Economic Consideration of the Fact Sheet.

Sun City Roseville Community Association, Inc.

Comment: 135.1 – 135.3

Response: This provision has been deleted.

Comment: 135.4

Response: Please see Section III, Economic Consideration of the Fact Sheet.

Comment: 135.5

Response: Comment noted.

Comment: 135.6

Response: Please see Section IV, Unfunded Mandates of the Fact Sheet.

Tallman Communities Real Estate Development and Entitlements

Comment: 136.1

Response: Compliance schedules and dates have been revised to address this comment.

Comment: 136.2

Response: This provision has been substantially revised. Please see permit for substantive changes.

The Otter Project

Comment: 137.1, 137.2

Response: Comment noted.

Comment: 137.3

Response: This provision has been revised to address the comment.

Comment: 137.4

Response: Comment noted.

Todd Engineers

Comment: 138.1

Response: The State Water Board appreciates your input. Comment noted.

Town of Paradise

Comment: 139.1

Response: Comment noted.

Comment: 139.2

Response: Please see Section IV, Unfunded Mandates of the Fact Sheet.

Comment: 139.3

Response: This second draft Order has been substantially revised to address this comment.

Comment: 139.4

Response: Please see Section III, Economic Consideration of the Fact Sheet.

Town of Truckee

Comment: 140.1

Response: Please see Section III, Economic Consideration of the Fact Sheet.

Comment: 140.2

Response: Comment noted.

Comment: 140.3

Response: The town of Truckee is listed in Attachment A as a Renewal Permittee.

Comment: 140.4

Response: Compliance schedules and dates have been revised to address this comment.

Comment: 140.5

Response: These permit provisions have been revised to address this comment. Please see Permit for substantive changes.

Comment: 140.6

Response: This provision has been deleted.

Comment: 140.7

Response: This provision has been substantially revised to address the comment.

Comment: 140.8

Response: This provision has been deleted.

Comment: 140.8

Response: Please see Section XIII TMDLs in the Fact Sheet.

Comment: 140.9

Response: The specific provisions referenced in the comment have been substantially revised or have been removed from the Draft Order and the comment is no longer applicable to these permit provisions.

More generally, a municipal storm water permit must ensure compliance with the Clean Water Act. Water Code section 13372 states in part that “the provisions of this chapter [chapter 5.5, establishing compliance with the provisions of the Clean Water Act] shall prevail over other provisions of this division to the extent of any inconsistency.” To the extent that this comment suggests that Water Code section 13360 would prohibit programs necessary to comply with federal requirements, the federal requirements must take precedence over section 13360.

Even where section 13360 is applicable, goals and standards to be achieved and attained that are laid out in the Draft Order do not constitute a mandate of the method of compliance. Further, where the Draft Order allows dischargers to propose and substitute a best management practice or other manner of compliance in lieu of any practice specifically enumerated in the Order, the Order complies with section 13360. “Section 13360 is a shield against unwarranted interference with the ingenuity of the parties subject to a waste discharge requirement; it is not a sword precluding regulation of discharges of pollutants. It preserves the freedom of persons who are subject to a discharge standard to elect between available strategies to comply with that standard.” (*Sierra Preservation Council v. SWRCB* (1989) 210 Cal. App. 3d 1421, 1438.)

Town of Windsor

Comment: 141.1

Response: Comment noted

Comment: 141.2 - 141.7, and 141.9

Response: This draft order has been substantially changed to address comment.

Comment: 141.8

Response: This provision is deleted.

Comment: 141.10

Response: Please see Section III, Economic Consideration in the Fact Sheet.

United States Environmental Protection Agency, Region IX

Comment: 142.1 – 142.10

Response: This draft order has been substantially changed to address comment.

Comment: 142.11

Response: The permit requires the submittal of a Guidance Document. The document will assist Permittees in managing their storm water program. Such a document serves as guidance to (1) identify different staff involved in storm water compliance over multiple departments within the Permittee agency and, (2) provide those staff with a narrative connecting all the detailed, specific BMPs in relation to multiple Permittee departments. Simply put, the document provides the Permittee with a map to the compliance process. This document is also an essential tool for Regional Water Board audits. During MS4 audits, the Regional Water Board typically requests and reviews a SWMP to understand the Permittee's storm water program and management structure. Although the Order contains specific details on each program requirement, it lacks the narrative nexus that a storm water management document can provide on how the storm water program is implemented by a specific Permittee. Therefore, although the permit eliminates the submittal for review and approval of a SWMP, the requirement to develop a planning/guidance document has been retained for new Permittees. New Permittees are allowed six months to develop and upload the guidance document to SMARTS along with the NOI and appropriate fee. The document is open for public viewing, but will not be reviewed and approved by the relevant Regional Water Board.

Comment 142.12

Response: We recognize the value of the Industrial/Commercial Inspection program but based on an attempt to address the depressed economic climate in California, this provision was removed from this permit cycle. The Regional Water Boards have the authority to issue individual NPDES permits for storm water discharges and can include an . Industrial/Commercial Inspection program (Wat. Code §13377.)

Comment : 142.13

Response: This draft order has been substantially changed to address comment. In addition, at the time of second draft order release, the 2010 Decennial Census data was available and used to develop designation lists.

Comment 142.14

Response: This draft order has been substantially changed to address comment.

University of California

Comment: 143.1

Response: Please see comment letter 17.

Comment: 143.2-143.5

Response: A specific section has been developed for Non-Traditional Small MS4s to address their unique management structure and this this draft order has been substantially changed to address comments.

Valley Contractors Exchange Corporation

Comment: 144.1 and 144.2

Response: Please see Section III, Economic Consideration in the Fact Sheet.

Ventura County Office of Education

Comment: 145.1

Response: K-12 School Districts, County Offices of Education, and Charter Schools are not designated in this draft order.

WateReuse California

Comment: 146.1-146.2

Response: Comment noted

Comment: 146.3

Response: This draft order has been changed to address comments.

Weiss Associates

Comment: 147.1-147.8

Response: This draft order has been substantially changed to address comments.

West Coast Housing Partners, LLC

Comment: 148.1

Response: Comment noted.

Comment: 148.2- 148.3

Response: Please see Section III, Economic Consideration in the Fact Sheet.

Comment: 148.4

Response: This provision has been deleted.

Comment: 148.5 - 148.7

Response: This draft order has been substantially changed to address comments.

West Park Associates

Comment letter: 149

Response: See response to comment letter 148.

Wood Rodgers

Comment: 150.1 - 150.4

Response: Please see Section II, Permitting Approach for the Fact Sheet.

A municipal storm water permit must ensure compliance with the Clean Water Act. Water Code section 13372 states in part that “the provisions of this chapter [chapter 5.5, establishing compliance with the provisions of the Clean Water Act] shall prevail over other provisions of this division to the extent of any inconsistency.” To the extent that this comment suggests that Water Code section 13360 would prohibit programs necessary to comply with federal requirements, the federal requirements must take precedence over section 13360.

Even where section 13360 is applicable, goals and standards to be achieved and attained that are laid out in the Draft Order do not constitute a mandate of the method of compliance. Further, where the Draft Order allows dischargers to propose and substitute a best management practice or other manner of compliance in lieu of any practice specifically enumerated in the Order, the Order complies with section 13360. “Section 13360 is a shield against unwarranted interference with the ingenuity of the parties subject to a waste discharge requirement; it is not a sword precluding regulation of discharges of pollutants. It preserves the freedom of persons who are subject to a discharge standard to elect between available strategies to comply with that standard.” (*Sierra Preservation Council v. SWRCB* (1989) 210 Cal. App. 3d 1421, 1438.)

Comment 150.5, 150.8-150.23

Response: This draft order has been substantially changed to address comments.

Comment 150.6

Response: A specific section has been developed for Non-Traditional Small MS4s to address their unique management structure.

Comment: 150.7

Response: This provision has been deleted.

Woodland Chamber of Commerce

Comment: 151.1-151.4

Response: This draft order has been substantially changed to address comments.

Comment: 151.5

Response: The State Water Board has notified all parties required to be notified under 40 CFR 124.10(c)(1)(ii),(iii),(iv), (x).

CASQA Late Comment Letters

Comment: Existing receiving water limitations provisions found in most municipal permits need to be modified to create a basis for compliance that provides sufficient rigor in the iterative process to ensure diligent progress in complying with water quality standards but also allows the municipality to operate in good faith with the iterative process without fear of unwarranted third party action.

Response: Under federal law, an MS4 permit must include "controls to reduce the discharge of pollutants to the maximum extent practicable . . . and such other provisions as . . . the State determines appropriate for the control of such pollutants." (Clean Water Act §402(p)(3)(B)(iii).) The State Water Board has previously determined that limitations necessary to meet water quality standards are appropriate for the control of pollutants discharged by MS4s and must be included in MS4 permits. (State Water Board Orders WQ 91-03, 98-01, 99-05, 2001-15; see also *Defenders of Wildlife v. Browner* (9th Cir. 1999) 191 F3d 1159.). The Proposed Order accordingly prohibits discharges that cause or contribute to violations of water quality standards.

The Proposed Order further sets out that, upon determination that a Permittee is causing or contributing to an exceedance of applicable water quality standards, the Permittee must engage in an iterative process of proposing and implementing additional control measures to prevent or reduce the pollutants causing or contributing to the exceedance. This iterative process is modeled on receiving water limitations set out in State Water Board precedential Order WQ 99-05 and required by that Order to be included in all municipal storm water permits.

The Ninth Circuit held in *Natural Resources Defense Council, Inc. v. County of Los Angeles* (2011) 673 F.3d 880 that engagement in the iterative process does not provide a safe harbor from liability for violations of permit terms prohibiting exceedances of water quality standards. The Ninth Circuit holding is consistent with the position of the State Water Board and Regional Water Boards that exceedances of water quality standards in an MS4 permit constitute violations of permit terms subject to enforcement by the Boards

or through a citizen suit. While the Boards have generally directed dischargers to achieve compliance by improving control measures through the iterative process, the Board retains the discretion to take other appropriate enforcement and the iterative process does not shield dischargers from citizen suits.

No changes have been made to the relevant provisions of the Order in response to this comment.