

MONTEREY REGIONAL STORM WATER PERMIT PARTICIPANTS GROUP

September 8, 2011

Chairperson
Sydney Moe

Vice-Chairperson
Sarah Hargrave

Member Entities

City of Pacific Grove

City of Monterey

City of Sand City

City of Seaside

City of Del Rey Oaks

City of Marina

County of Monterey

City of Carmel-by-the-Sea

**Other Participating
Entities**

Pebble Beach Company

Monterey Peninsula
Unified School District

Carmel Unified School
District

Pacific Grove Unified
School District

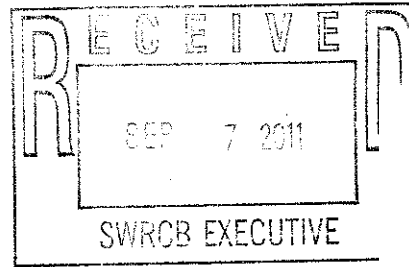
Program Manager

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



Subject: Comment Letter – Phase II Small MS4 General Permit

Dear Members of the State Water Resources Control Board:

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

Monterey Regional is extremely concerned about (1) the costs to implement the mandates in the Draft Permit; (2) transferring the enforcement responsibilities of State programs to local municipalities and other dischargers, (3) the prescriptive language in the Draft Permit, (4) Draft Permit requirements that are redundant with other State programs, and (5) Finding 49, the proposed California Environmental Quality Act (CEQA) exemption. These concerns are discussed in greater detail below.

The State Water Board has an obligation to the residents of California to assess both the costs and the benefits of the Draft Permit requirements it imposes on them. The State Water Board has attempted to provide an estimate of the costs associated with the Draft Permit; however, we believe the corresponding value of the benefit to be achieved from the new higher levels of service required in the Draft Permit have not been evaluated. It is not possible to determine whether *any* benefit will be achieved in terms of appreciable water quality improvement. It is not reasonable for the State Water Board to impose many of the Draft Permit requirements without first having a scientific basis to conclude that doing so will improve water quality to such a high degree as to justify those expenditures.

Monterey Regional would like legislation and regulations adopted by the State Water Board to be more realistic and reflective of the capacity of local governments. Our experience in permit implementation indicates there is a disconnect with the State Water Board regarding "on the ground" implementation activities. The Draft Permit should be streamlined to focus on the most cost-effective means to improve and protect water quality and should be based on best management practices as established by expert scientific panels. We do not believe the current technologies available have effectively demonstrated that their application is cost-effective or would achieve the State Water Board's water quality improvement goals, and the costs of the Draft Permit requirements may far outweigh actual benefits to the environment. For example, the receiving monitoring program outlined in the Draft Permit is burdensome and excessive for

agencies. We contend that receiving water monitoring should be the responsibility of the State; the State Water Board should determine if State water bodies are being degraded and then create policies to address identified problem areas, instead of creating diffuse monitoring programs that are not well designed to address specific water quality issues. It is recommended that receiving monitoring goals be incorporated into the State's Surface Water Ambient Monitoring Program (SWAMP).

Excessive expenses associated with the Draft Permit will have to be borne by the dischargers, many of which are small communities that are already facing extreme economic challenges. Because of the budgetary impacts of the Draft Permit requirements, imposing the Draft Permit as presently drafted could lead to cutbacks in other vital public services. We believe compliance will be prohibitively expensive and not within the means of most dischargers. We are further concerned that the Draft Permit contains a footnote that allows Regional Water Board staff to require implementation of even more storm water management activities above and beyond the Draft Permit. We consider this to be discriminatory as it allows for greater regulatory requirements for certain agencies and not others. This results in inconsistent storm water program requirements throughout California.

Local agencies are highly constrained in our ability to impose fees or generate other revenue sources to fund the Draft Permit requirements. Due to Proposition 218, a local agency has no authority to impose a storm water fee without the consent of the voters or property owners. Considering the current economic climate of the State, creating a storm water program funding source through voter consent is highly unlikely to be successful, and quite an expensive effort to undertake. The County of Los Angeles is currently going through the Proposition 218 process at a cost of four million dollars. Small MS4 agencies do not have the resources to carry out a Proposition 218 process to fund storm water management programs, especially given the competing needs of other critical services. The recently passed Proposition 26 further limits the ability of local agencies to charge user fees to fund the development of hydromodification and low impact development requirements required by the Draft Permit. The ability of a local agency to charge a fee at the local level for all of the required inspections in the Draft Permit is problematic, especially when Industrial and Construction Permittees already pay a fee to the State.

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

The unfunded state mandates law is a constitutional requirement imposed on the state to fund programs that it requires local agencies to implement. Therefore, if the State does not provide the funding to implement the mandates, these mandates should not be included in the Draft Permit. The Draft Permit requires considerable increases in regulations pertaining to storm water management. The Draft Permit requires local agencies to implement new programs and activities as well as assume responsibility for oversight and enforcement of programs for storm water management that are not currently the responsibility of local agencies (e. g., Industrial and Construction General Permit oversight). The Draft Permit requires local agencies to implement activities and programs that go above and beyond the federally-mandated six minimum control

measures in the Environmental Protection Act (EPA) Phase II regulations or provide a higher level of service than required under the existing General Permit. Examples of higher levels of service include watershed analyses, stream/riparian assessments, and sediment transport research, geographical information system (GIS) mapping, analytical monitoring of illicit discharges, developing an inventory of all construction sites, increased site inspection frequencies, prioritization of all catch basins and more.

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

Several Draft Permit requirements are redundant with programs that already exist throughout the State or could be more efficiently implemented by other State agencies. Case in point, the Draft Permit requires local municipalities to inspect industrial facilities and various businesses. These facilities are currently inspected by the Certified Unified Program Agencies (CUPA), the California Department of Public Health, and the State Fire Marshal. Public outreach and education requirements for classroom instruction on storm water pollution prevention could be accomplished through inclusion of storm water awareness in the school curricula. Construction Best Management Practices and Low Impact Development education could be included throughout the State’s professional licensures, such as the Contractors State Licensing Board and the Board for Professional Engineers, Land Surveyors and Geologists. Monterey Regional requests that the State Water Board communicate with other State agencies to fulfill these requirements instead of creating redundant requirements for local municipalities.

And finally, prior to and at the August 17, 2011 State Water Board workshop, the City of Monterey expressed to staff and the State Water Board a concern about the proposed California Environmental Quality Act (CEQA) status of this Permit. Monterey Regional continues to have concern with Finding 49, the proposed CEQA exemption, and requests the State Water Board more closely examine CEQA to determine if a more extensive environmental and public review process is necessary for this draft permit as currently written. Also, we request the State Water Board substantiate the determination in writing for stakeholder understanding and transparency. Although we understand that the exemption proposed is applicable for use in some instances, it does not apply in all cases and it does not exempt the State Water Board from all portions of CEQA. Specifically, CEQA Section 21080.5(c) states that a regulatory program certified pursuant to this section [CEQA Section 21080.5] is exempt from Chapter 3 (commencing with Section 21100), Chapter 4 (commencing with Section 21150) and Section 21167, **except as provided in Article 2 (commencing with Section 21157) of Chapter 4.5**” [emphasis added]. Chapter 4.5, Article 2, Section 21157(a)(3) generally states that a master environmental impact report may be prepared for a rule or regulation that will be implemented by subsequent projects.

Case law supports that an exemption would not be proper where there exists a reasonable possibility that a project or activity may have a significant effect on the environment. In fact, the Secretary of the Resources Agency is empowered to exempt only those activities that do not have a significant effect on the environment. Accordingly, we believe that provisions in this Draft Permit, and the subsequent statewide construction effort they would generate, necessitate an examination of potentially significant environmental impacts of the Draft Permit at a master, programmatic level. Such an impact analysis would focus on reasonable foreseeable compliance

measures anticipated to be constructed in order to comply with permit requirements. For more information on this comment, see Attachment.

Monterey Regional has provided additional detailed comments regarding the Draft Permit as an attachment to this letter for State Water Board consideration. We also support the detailed comments and recommendations being sent under separate cover by the California Stormwater Quality Association and the Statewide Stormwater Coalition.

Monterey Regional requests that the State Water Board revise the current Draft Permit based upon the feedback from a working group comprised of municipal stakeholder representation, subsequently release a new Draft Permit with adequate public comment period, keeping the above concerns in mind. Thank you for your consideration.

Sincerely,



Sydney Moe, P.E.
Chair, Monterey Regional Storm Water Management Program

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

Attachments: Detailed Comments Regarding Phase II Small MS4 General Permit

Detailed Comments Regarding Draft Phase II Small MS4 General Permit

General/Findings Comments				
Comment #	Permit Element/ Issue/ Concern	Location in Phase 2 Draft	Page No.	Comment
1	General comment	Throughout Permit	N/A	The entire permit should be scrubbed and anything that duplicates existing procedures already in place should be removed or clarified so they don't become redundant duplicative requirements. Examples: Spill Response Plans, Inspections of Municipal Operations, FEMA outfall mapping, CUPA Inspections, Health Department Inspections, etc.
2	---	Findings 2 - 8	5-6	The findings describe pollutants that cause an impact to water quality; however, agricultural runoff has been determined to generate a high percentage of pollution that flows into MS4s and into the states' waterways. While it is not known if receiving water quality near shore in urban areas is being influenced by agriculture runoff, the small Phase 2s are being held to expensive, onerous requirements when it is perceived that agriculture is not required to meet the same level of water quality protection measures. The regulatory burden must be shared proportionately with other contributors of pollutants.
3	Defn. Sensitive water bodies	Finding 21.d	8	The definition Sensitive water bodies should not be expanded to include AB 411 beaches; it should remain as ASBS and habitat for chinook and coho salmon and steelhead.
4	---	Finding 31 & footnotes throughout document	10	This finding and multiple footnotes throughout the Order state that the RWQCB has the discretion to require a Permittee to continue to implement BMPs of a Permittee's SWMP regulated under the current general permit if the RWQCB determines they are equally or more effective than the BMPs required under the new permit. This seems clearly to be discriminatory against current permittees, in that it appears to allow the RWQCB to hold current permittees to more stringent requirements than new permittees that enroll for the first time under the new General Permit. Since the new draft permit defines in great detail what actions must be taken to achieve MEP, it should not be necessary for ANY permittees to take actions above and beyond those specified.
5	---	Finding 22	9	There is concern that this item greatly expands the existing permit coverage area. The chosen value of 10% is too low to claim 'significant contributor'. It is proposed to use 50%, half of the runoff, since that correlation is easier to claim 'significant.'

Detailed Comments Regarding Draft Phase II Small MS4 General Permit

Comment #	Permit Element/ Issue/ Concern	Location in Phase 2 Draft	Page No.	Comment
6	---	Finding 44	12	Who would be eligible to be a separate implementing entity and who determines that eligibility? Public or private? Would a public agency or special district be eligible?
7	---	Finding 49	12	<p>Prior to and at the August 17, 2011 State Water Board workshop, the City of Monterey expressed to staff and the Board a concern about the proposed CEQA status of this Permit. Monterey Regional remains to have concern with Finding 49, the proposed CEQA exemption. As such, we request the State Water Board more closely examine CEQA to determine if a more extensive environmental and public review process is necessary for this draft permit as currently written. Also, we request the State Water Board substantiate the determination in writing for stakeholder understanding and transparency.</p> <p>Although the CEQA exemption noted is applicable for use in some instances, it does not apply in all cases and it does not exempt the SWRCB from all portions of CEQA. Specifically, CEQA Section 21080.5(c) states that a regulatory program certified pursuant to this section [CEQA Section 21080.5] is exempt from Chapter 3 (commencing with Section 21100), Chapter 4 (commencing with Section 21150) and Section 21167, except as provided in Article 2 (commencing with Section 21157) of Chapter 4.5" [bold emphasis added]. Chapter 4.5, Article 2, Section 21157(a)(3) generally states that a master environmental impact report may be prepared for a rule or regulation that will be implemented by subsequent projects.</p> <p>Residing within E.9.i (ii) of this draft permit are components of a statewide construction effort requiring permittees to design and construct retrofit capital improvement projects for existing flood control facilities on a statewide programmatic level. This statewide directive appears to meet the intent of CEQA Section 21157(a)(3) in that the proposed regulation will be implemented by subsequent projects. In this case, this would be the on-the-ground construction projects and facilities (retrofits throughout permit), similar to those analyzed in the recent Draft ASBS General Exception DEIR. We believe an environmental review should be prepared, and depending on the outcome, potentially a Master Environmental Impact analyses performed to examine potential significant environmental impacts of the proposed program's reasonably foreseeable projects, or retrofit compliance measures, to meet permit requirements.</p>

Detailed Comments Regarding Draft Phase II Small MS4 General Permit

Comment #	Permit Element/ Issue/ Concern	Location in Phase 2 Draft	Page No.	Comment
7 (cont'd)	---	Finding 49	12	Case law supports that "The Secretary of the Resources Agency is empowered to exempt only those activities which do not have a significant effect on the environment, and where there is any reasonable possibility that a project or activity may have a significant effect on the environment, an exemption would be improper". In the case of this permit, the various retrofit requirements and the subsequent statewide new projects and facilities to be constructed have not received such a review for potentially significant environmental impacts. We have environmental impact concerns related to potentially significant cultural/historic/archaeological, biological, coastal, and utility/service system expansion impacts, to name a few.
8	---	Finding 51	13	This item states that the SWRCB has considered the costs of complying with this Order, and the Fact Sheet elaborates on this. However, the State must also consider the current economic situation of Cities and Counties throughout the State as well as the State itself. Additionally, Proposition 218 and Proposition 26 have made it virtually impossible to create a funding mechanism for stormwater compliance programs. It is recommended that the State Water Board take the lead in changing legislation to allow Permittees to recover costs associated with this Order.
9	Application Requirements	A.3	13	How would a regulated small MS4 certify that its discharges do not contribute or potentially contribute to water quality impairment? Also, none of the waiver options listed would allow a waiver to be given to an MS4 with over 20,000 in population, even if they do not contribute to water quality impairment. How is it justified that such an MS4 would be penalized for being proactive in this effort?
10	Discharge Prohibitions	B.3.f	15	What about fire hydrant flushing? What about potable water line flushing? The language regarding "discharges from potable water sources" should be clearer.
11	Traditional Small MS4 Permittees	E.1.	18	The last sentence states that "Traditional Small MS4s with a population of 5,000 or less shall comply with specific provisions identified in Table 1". The current language is unclear/contradictory whether this applies to ALL (New and Renewal) Traditional Small MS4s or just New Traditional Small MS4s?

Detailed Comments Regarding Draft Phase II Small MS4 General Permit

Comment #	Permit Element/ Issue/ Concern	Location in Phase 2 Draft	Page No.	Comment
12	Permit Cycle vs MS4 Budget Cycles	----	21	Permit years should correspond with Fiscal Years, July 1 through June 30 th for simplicity in budgeting and program implementation.
13	Permit Outline Format	Throughout	28	Example Pg. 28. The outline layout implies that each primary letter, for example a), has associated other requirements if you fall under a prescribed (i), (ii), (iii), etc. On Pg. 28, (i) Task Description falls under c) and therefore implies that this is only a requirement of c) Non-traditional Small MS4 Permittees and not a requirement of a) New Traditional Small MS4 Permittees or b) Renewal Traditional Small MS4 Permittees. The formatting makes the permit confusing as to applicability.

Program Management (E.4.)

Comment #	Permit Element/ Issue/ Concern	Location in Phase 2 Draft	Page No.	Comment
1	Compliance Tiers	E.4.a	18	<p>Throughout the order there are references to the permittee’s population. If the permittee is a member of a grouping of local entities and their individual population is under the designated number, but as a collective group, the group population is over the designated number: which number counts; the individual populations or the collective? It is recommended that it be the individual populations because if it’s the collective, this would be a deterrent to local entities coming together under one common permit.</p> <p>Then there’s also the discriminator of whether the entity is a new or an existing permittee. This too will cause problems and isn’t equitable. Why would a small (< 5,000) newly-designated community want to join a larger group if it would have to carry out more onerous and expensive measures? Examples of this are E.4, E.5, E.6, E.7, E.8, E.9, E.10, E.11, E.12 and E.13. And why would Renewal Traditional Small MS4s w/population less than 5,000 be required to comply with more rigorous requirements than a New or Non-traditional MS4 of the same size?</p> <p>It is recommended the State utilize this permit to place permittees of equivalent size on an even playing field, new or renewal, so requirements are equitable everywhere.</p>

Detailed Comments Regarding Draft Phase II Small MS4 General Permit

Comment #	Permit Element/ Issue/ Concern	Location in Phase 2 Draft	Page No.	Comment
2	Incidental Runoff	B.4 E.4.a.ii.d	16, 19	Requiring parties responsible for incidental runoff to control it is a code enforcement nightmare and is not a major threat to water quality. It is recommended that MS4s be responsible for its own irrigation systems and education and outreach be provided to the public regarding minimizing sprinkler overspray. Local municipalities do not have the resources to monitor residential areas for incidental runoff violations.
3	Legal Authority	E.4.a.ii.(f)	19	This section requires retrofitting of Industrial and Commercial facilities with stormwater BMPs. This requirement should be removed until the State performs an evaluation as to the cost impacts to the business community within the Phase II jurisdictions.
4	Legal Authority	E.4.a.ii (g, h, l)	19-20	<p>According to this section, MS4s must modify their ordinances to have the authority to:</p> <ul style="list-style-type: none"> ▪ Obtain Construction Site or Industrial Facility inspection reports and monitoring data ▪ Enter private property for inspections ▪ Control the contribution of pollutants and flows from one portion of the MS4 to another through interagency agreements ▪ Require documentation on BMP effectiveness <p>These requirements do not seem feasible. They would require both Construction and Industrial Permit oversight by Phase 2 MS4s (which is a State responsibility). Private property owners may not allow public entities onto their land.</p>
5	Enforcement Measures and Tracking	E.4.c.ii (d)	22	Once again, this section requires the MS4 to notify the RWQCB within 30 days of knowledge of an industrial facility not having the appropriate permit. Implicit in this is that the MS4 staff has to have the knowledge as to which facilities need what type of permit. This section also requires the MS4, not the RWQCB, to perform follow-up inspections, pursue enforcement actions and write demand letters if the industrial facility fails to comply. This is an onerous requirement and a transfer of State permit oversight responsibilities to local municipalities who do not have the financial or staff resources to complete this task. E.4.c (ii)(d) requires (i.e. unfunded mandate).

Detailed Comments Regarding Draft Phase II Small MS4 General Permit

Comment #	Permit Element/ Issue/ Concern	Location in Phase 2 Draft	Page No.	Comment
6	Ensuring Adequate Resources	E.4.d	24	E.4.d requires the MS4 to provide an analysis of the resources required to carry out all requirements of the order. One fallacy of the order is that it assumes that MS4s have the resources to comply with this order. The order demands the MS4s perform the analysis and report by September 15, 2013, which is only a year-and-one-half from the date of adoption if the order is finalized by the end of 2011. It's obvious that we do not have the resources to meet this order. There is no simple way to raise revenues to build the resources required. This analysis is another unfunded state mandate and will certainly show that MS4s throughout the state cannot fund this aggressive order.

Public Outreach and Education (E.5.)

Comment #	Permit Element/ Issue/ Concern	Location in Phase 2 Draft	Page No.	Comment
1	Public Outreach and Education Program	E.5.b.i E.5.c.i E.5.d.i	26, 28, 30	<p>The order requires the Permittee to implement a “comprehensive storm water Public Outreach and Education program” that SHALL measurably increase the knowledge and behavior of the target audiences.</p> <p>Firstly, this assumes the target audiences are not already educated which is not a safe assumption as Monterey Regional has been educating different sectors for over five years. Measuring the efficacy of education and outreach programs has been quite difficult and measuring an increase in improved behavior does not seem feasible.</p> <p>Additionally, how can the Permittee be responsible for changing the behavior of the public/commercial/industrial/construction? How can the Permittee be in violation if they don't listen?</p> <p>Should be rewritten to read: “Permittee will measure the effectiveness of the Public Outreach and Education program with the goal being increased knowledge and ultimately changed behavior.”</p>

Detailed Comments Regarding Draft Phase II Small MS4 General Permit

Comment #	Permit Element/ Issue/ Concern	Location in Phase 2 Draft	Page No.	Comment
2	Public Outreach and Education Program	E.5.b.i E.5.c.i E.5.d.i	26 28 31	Given that there is now a completely new outreach program required, why is the State board not heading a storm water outreach campaign on a state-level? Most of the information/target audiences are the same throughout the state. If the outreach programs are done on a state-level, (i.e. required programs in schools), there will be a strong, united message without spending local funds that could be used for other aspects of the program.
3	Public Outreach and Education Program	E.5.b.ii E.5.c.ii E.5.d.ii	26 29 31	One strategy (CBSM) should not be required of Small MS4s for the public education program. Renewal MS4s should be able to determine their own approach from historical successes. Mature programs have historical information regarding what is effective in their jurisdictions. CSBM should not be made mandatory. "Measured" changes in behavior is not realistically possible in that the public cannot be watched 24 hrs/7 days/wk to determine if the public has changed their behavior. Phase 2 MS4s do not have the staff for this type of enforcement. Behavioral changes take years (often 10 – 20) to occur. For example, recycling has taken over 20 years to get to where it is now. Implement surveys at least twice during the 5 year permit to gauge level of awareness etc. Please define what types of surveys are acceptable?
4	Public Outreach and Education Program	E.5.b.ii (c)(2) E.5.c.ii (c)(2) E.5.d.ii (c)(2)	27 29 31	"Seek to implement desired behavior from target audience." What if they say no because they disagree with the policy? The Permittees cannot force a commitment. Please clarify how to implement this item. What does this entail? A signed statement?
5	Public Outreach and Education	E.5.b.ii (c)(6)	27	Rewrite to state: "MS4s MAY create or look for ways to create incentives for the desired behavior". Incentives can be very costly and there may be other appropriate less costly ways to achieve the same result.
6	Public Outreach and Education	E.5.b.ii (i)	27	Sentence should read: " <i>Offer or coordinate</i> technical and implementation guidance related to storm water-friendly landscaping <i>where appropriate.</i> "

Detailed Comments Regarding Draft Phase II Small MS4 General Permit

Comment #	Permit Element/ Issue/ Concern	Location in Phase 2 Draft	Page No.	Comment
7	Public Outreach and Education	E.5.b.ii (l)	27	Storm water education for school-age children. The Permittee may use California’s Education Initiative Curriculum or equivalent. By equivalent do you mean the California Science Standards? California’s Education Initiative Curriculum has not been approved or adopted by districts or teachers statewide and may not be implementable. Sentence should read: “Make available storm water education for school-age children.” Does this include private schools? What ages are considered “school-age” children?
8	Public Education & Outreach	E.5.b.ii (m)	28	Charity car washes, mobile cleaning and pressure washing operations and irrigation, are not always known to the Permittee. How would an MS4 measure this reduction? Sentence should read: “Develop and convey outreach messages specific to reducing discharges from charity car washes...”
9	Public Education & Outreach	E.5.b.iii	28	This section states to “annually report number of trainings....”. Who gets training and what training? What studies and results are being reported on? This section indicates education of “elementary” children; is this same as “school-age”? The word “financial” should be removed from the storm water friendly landscaping assistance; Small MS4s should not be giving financial incentives to get the public to garden correctly. They don’t have funds for that.
10	Industrial/ Commercial & Construction Outreach and Education	E.5.c.ii E.5.d.ii (a)	29, 31	There is concern with the definition of the term “high priority”. E.5.c.ii requires the MS4 to create an inventory of industrial and commercial facilities that are “high priority” using the criteria set forth in E.7.b. In E.7.b, the criteria is vague, see E.7.b comments. What constitutes a “high priority” residential or commercial construction site?
11	Industrial/ Commercial Outreach and Education	E.5.c.ii	29	E.7.b states that at least 20% of an urbanized area must be deemed to be “high priority” no matter how benign the nature of the businesses. Where did this number come from and why is it being used as the qualifier?

Detailed Comments Regarding Draft Phase II Small MS4 General Permit

Comment #	Permit Element/ Issue/ Concern	Location in Phase 2 Draft	Page No.	Comment
12	Construction Outreach and Education	E.5.d (ii, iii)	31-32	<p>E.5.d (ii) requires the MS4 to implement a construction outreach strategy for sites smaller than one acre that will address the communities’ pollutants of concerns. With very little construction occurring even in the best of times in many MS4s, the communities’ pollutants of concern are not always linked to construction activities and are not common among each entity and therefore it will not be possible in many cases to link the sectors responsible for the pollutants of concern to any particular construction activities. Sediment runoff downstream cannot always be linked to a construction site.</p> <p>Furthermore, projects < 1 acre are often conducted by homeowners, volunteer groups, small business people, etc. This is not a “community” that can easily be identified. This community is part of the general public, and there’s no need for a separate effort aimed at this sector.</p> <p>Implementation of social norms/modeling could become very expensive.</p> <p>Watershed size should be defined for this item. HUC 12? Manpower requirements to map construction projects <1 acre on a watershed basis are onerous. What is the purpose of this? What does this do for the protection of water quality? What is the added value?</p>

Public Involvement and Participation (E.6.)

Comment #	Permit Element/ Issue/ Concern	Location in Phase 2 Draft	Page No.	Comment
1	Implementation Level	E.6.ii (b)	33	<p>How can a regional group develop a Citizen Advisory Group that has a “balanced representation” of all affected parties? Second sentence should read: “The advisory group <i>invites</i> shall consist of a balanced representation of all...” Permittees cannot force attendance and should not be in violation if a certain group does not attend. Does the CAG have to have residents, business owners, and environmental organizations from each City/County or can it be comprised of a mix from the entire region? Renewal Permittees may have already established mechanisms in place for stakeholder outreach and input that is more appropriate to their jurisdictions. The order should allow the use of these existing mechanisms.</p>

Detailed Comments Regarding Draft Phase II Small MS4 General Permit

Comment #	Permit Element/ Issue/ Concern	Location in Phase 2 Draft	Page No.	Comment
2	Implementation Level	E.6.ii (c)	33	Should read: "Create opportunities for citizens to participate in the implementation of BMPs through <i>either</i> sponsoring, supporting <i>or hosting</i> activities (e.g., stream/beach/lake clean-ups..." Allow permittees to support collaborative efforts with regional stakeholders and engage more, not just send money.
Illicit Discharge Detection & Elimination - IDDE (E.7.)				
Comment #	Permit Element/ Issue/ Concern	Location in Phase 2 Draft	Page No.	Comment
1	Redundant	---	---	The inclusion of Flood Management Agencies in the new Permit as Non-Traditionals may greatly expand the permit boundary of Monterey County. Who then is responsible for Mapping, Field Screening, Source Investigations, etc. for municipal outfalls that discharge to a creek/channel section owned (or in some cases just under an easement) by a Flood Control District? FEMA already spends a lot of money of mapping of outfalls. And with the Flood Control Districts now being required to map and field screen outfalls in their jurisdictions, this requirement for Small MS4s is redundant. The draft permit should delineate who is responsible for what with no overlap or redundant efforts.
2	IDDE Program	E.7	33	<p>Costs are prohibitive. The cities of Monterey and Pacific Grove have Urban Watch programs that cost ~ \$15,000 each, with volunteers monitoring 5 outfalls in each city four times a month, every other month. This does not represent 20% of the priority areas. To have these programs in each of the other Monterey Regional entities would cost another \$90,000 to our program costs. Additionally, there may not be enough volunteer staff available to cover all eight entities. Volunteer staff is a limiting factor as well as financial resources.</p> <p>Monterey Regional also has dry weather monitoring as part of the outfall monitoring program requirement. 23 ocean outfalls are monitored via volunteers three times during dry weather. Any outfalls showing flow are sampled and tested either via field kits or lab analysis.</p>

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Comment #	Permit Element/ Issue/ Concern	Location in Phase 2 Draft	Page No.	Comment
2 (cont'd)	IDDE Program	E.7	33	The regional outfall monitoring program costs ~\$45,000, separate from the Monterey and Pacific Grove Urban Watch programs. Many small Phase 2 entities do not have Sanctuary staff, volunteer staff or the financial resources for these types of monitoring programs. Thus the recommendation of dry weather visual field screening with field kits, analytical sampling being optional only when the situation warrants. Additionally, dry weather flow monitoring should not be based on some numeric 20% figure but should be more sub-watershed based. The Pollutant of concern should be identified and a sub-watershed based approach should be developed to determine the source of the illicit discharge.
3	Identifying Priority Areas	E.7.b.ii	34	How is "Permittee" defined? If a regional group obtains ONE permit for the entire region, then would this apply to 20% of the region as a Permittee?
4	Field Screening to Detect Illicit Discharges – Implementation Level	E.7.c.ii	35-36	<p>The proposed monitoring program is not robust because it is too rigidly defined. Creating a ¼-mile grid on 20 percent of the permit area and developing a program to monitor cells within the watershed would divert resources away from addressing high priority areas. The program would be more effective by monitoring hot spots.</p> <p>This entire section should be replaced with an Urban Watch-type dry weather flow monitoring program. Monitoring stations may be selected non-randomly according land use and pollutants of concern. Number of monitoring stations should ensure adequate coverage of priority areas. Dry weather flows will be monitored through field test kits for odor, pH, temperature, orthophosphates, NH3, color, grease/oil film, and trash. <u>No monitoring should occur within 72 hours of the last rain</u> as these will not produce representative samples of dry weather flow. Follow-up investigations are required if warranted.</p> <p>Monterey Regional's experience over the last five years has shown that intensive scattered monitoring of water quality, which is what is being called for in the draft order, is not an effective way to track or discover illicit discharges. And it is very expensive. If any monitoring needs to be done to track the source of an illicit discharge, a subwatershed-based approach should be used and it should be done where it is logical such as in heavy commercial or industrial areas and then only at certain key confluent manholes.</p>

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Comment #	Permit Element/ Issue/ Concern	Location in Phase 2 Draft	Page No.	Comment
4 (cont'd)	Field Screening to Detect Illicit Discharges – Implementation Level	E.7.c.ii	35-36	<p>If pollutants are detected, then more intensive upstream source tracking should be performed. Otherwise, monitoring should be on an ad hoc and as-needed basis to allow for the numerous variables. Some pollutants are visually detectable while others require field test or laboratory analysis. Always requiring analytical (interpreted to mean laboratory) analysis is unnecessarily expensive.</p> <p>Performing monitoring yearly is too restrictive and wasteful. If pollutants are not detected and there is little change to land uses or physical conditions, monitoring on perhaps a five year basis would be more reasonable. Or depending upon the nature of the pollutant, inexpensive field tests as opposed to analytical analysis should be allowed. And if illicit discharges are detected, more monitoring may be called for within a short period of time so as to narrow down and determine the source. Requiring at least 20% of an MS4's urbanized area to be designated as "priority" is arbitrary and wasteful. Instead of using a grid approach, a sub-watershed based approach addressing particular pollutants of concern according to land use may be more useful.</p> <p>Developing a monitoring program that focuses on important sub-drainage areas would be more fruitful. Limited resources could be better applied in this way to develop positive conclusions for priority areas.</p>
5	Field Screening - Implementation	E.7.c.ii.d	35	What "benchmarks" is this section referring to? Basin Plan Water Quality Objectives? Ocean Plan Standards? Please clarify.
6	Source Investigations – Implementation Level	E.7.d.ii.e	37	This section should include a statement that says "Once the source of a chronic illicit discharge has been identified as not being of anthropogenic source, such as bacteria, the Permittee will document the follow-up investigation and results and delete the outfall from the ongoing field screening efforts. Can we validate analytical data with the use PCR or FIB to demonstrate reasons for not returning to the same area that may be non-human origin?"

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Construction Site Stormwater Runoff Control (E.8.)				
Comment #	Permit Element/ Issue/ Concern	Location in Phase 2 Draft	Page No.	Comment
1	Construction Site Inventory – Task Description	E.8.a.i	39	<p>“Each Permittee shall maintain an inventory of all grading and construction activity within its jurisdiction”. Define <u>grading</u> and <u>construction activity</u>. The words “construction activity” refer to fences, electrical work, mechanical work, etc. The second sentence “at a minimum” implies that this would apply to projects less than and one acre or greater projects. Please confirm what size projects this section applies to.</p> <p>What does it mean “or sale”?? Clarification should be given regarding how to address sites less than one acre. This entire section is unclear.</p>
2	Construction Site Inventory – Implementation Level	E.8.a.ii	39	<p>According to the Task Description and the Fact Sheet discussion, this section was intended to <u>only apply</u> to sites with one acre or more land disturbance or that result in a total land disturbance of less than one acre if part of a larger common plan or development or sale. Please <u>clarify</u> this is intention is correct. Subsection (a) requires a sediment and erosion control plan even for projects requiring only a building permit. Is this correct?</p> <p>How long does this construction inventory need to be kept? How is it to be maintained (electronically?) as most local MS4s do not have resources to maintain this inventory. Oversight for Construction Projects greater than one acre of land disturbance is a responsibility of the State; this section is redundant to the CGP.</p> <p>This should read: “...complete an inventory and continuously update as new projects, which at a minimum includes those with a total land disturbance of either one acre or more, are permitted and projects are completed.”</p>
3	“ “	E.8.a.ii (d)	39	<p>This item refers to factors listed in Table 2. Shouldn’t this be Table A? Table A, item c refers to amt of land disturbance, the others refer to project size.</p>

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Comment #	Permit Element/ Issue/ Concern	Location in Phase 2 Draft	Page No.	Comment
4	Construction Site Plan Review & Approval– Implementation Level	E.8.b.ii.a	40	Recommend changing the word “Operator” to Construction Contractor. Does an erosion and sediment control plan have to be prepared when earth moving is not involved? Many projects in which building permits are issued do not involve earth moving, but do involve paint, plaster, concrete, etc. This would indicate that ONLY projects that involve erosion and sediment control would need review. This may not be the intent of this section.
5	Construction Site Plan Review and Approval Procedures	E.8.b.ii (a)	40	Should read: “Prior to issuing a grading or building permit, the Permittee shall require each operator of a construction activity with land disturbance totaling one acre or greater to prepare and submit an erosion and sediment control plan.” The way the permit is currently written implies basically every construction site must have an erosion and sediment control plan. This is not feasible, practical and is FAR TOO COSTLY for many projects such as a 100 square foot backyard home addition. This will cripple the construction industry.
6	Construction Plan Review and Approval Process	E.8.b.ii (c)	40	Should read: “Prior to issuing a grading or building permit, verify that the construction operators have existing coverage under the following applicable permits, including, but not limited to the State Water Board’s CGP, State Water Board 401 Water Quality Certification, U.S. Army Corp 404 permit, and California Department of Fish and Game 1600 Agreement.” To include ‘but not limited to’ is open-ended and should not be the Permittees responsibility to know all applicable permits beyond what is explicitly stated and required by the SWRCB. The areas requiring the most frequent inspections (> 1 acre) most likely fall under the CGP which is required to have QSP inspector and more stringent requirements than smaller projects, The inspection frequency of the permit is redundant due to this. Recommend municipalities focus inspection and workload on areas not already covered by a State permit and required QSPs.
7	Construction Plan Review and Approval Process	E.8.b.ii (d)	40	“and written approval” should be removed completely. This is not reasonable for real-world activities.

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Comment #	Permit Element/ Issue/ Concern	Location in Phase 2 Draft	Page No.	Comment
8	Construction Site Inspection and Enforcement	E.8.c.ii (b) (1)	42	Should read: <i>“For projects with land disturbance totaling one acre or greater,</i> prior to allowing an operator to commence land disturbance, the Permittee shall perform an inspection to ensure all necessary erosion and sediment structural and non-structural BMP materials and procedures are available per the erosion and sediment control plan.”
9	“	E.8.c.ii (c)	43	Should read: <i>“For projects with land disturbance totaling one acre or greater,</i> the Permittee shall develop, implement, and revise as necessary, standard operating...”
10	Permittee Staff Training	E.8.d (ii) (a)	44	E.8.d requires all employees to have a QSP certification to review all plans and requires all erosion control inspectors to be either QSP or QSD certified. This is an onerous requirements for small MS4s; it should be a requirements for plan review and inspection of sites one acre or greater. Additionally, it requires “permitting staff” to be certified. Counter staff normally issues permits; these staff does not require certification. Should read: <i>“Ensure staff and consultants reviewing projects with total land disturbance equal to or greater than one acre</i> are qualified individuals, knowledgeable in the technical...”
11	“	E.8.d (ii) (b)	44	Should read: “The Permittee shall ensure inspectors are qualified individuals, knowledgeable in the inspection procedures, and <i>for projects with total land disturbance equal to or greater than one acre</i> are certified pursuant to a State Water Board sponsored program as either...”
12	Reporting	E.8.d (iii) (d)	44	Conducting surveys is only additional administration cost/time and does not improve water quality. Recommend removing and allowing resources to focus elsewhere.
13	“	E.8.e(i)	44	This section refers to “construction site operators” but there is no definition as to what this means. It should be restricted to certain classifications of contractor licenses such as General Engineers, Building or Grading contractors.
14	Construction Site Operator Education	E.8.e (iii)	44	This seems out of place... we’re not holding training per the implementation level, we are merely “providing information on training opportunities, so there are no topics or dates to report.

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Pollution Prevention/Good Housekeeping (E.9.)				
Comment #	Permit Element/ Issue/ Concern	Location in Phase 2 Draft	Page No.	Comment
1	General Comment	---	---	It is not clear how or if these provisions apply to New Non-traditional Permittees. Table 1 is extremely unclear regarding what is required for compliance since the entire section is checked in the table.
2	SWPPPs Redundancy	E.9.d.ii (a)	48	E.9.d.ii (a) requires site-specific SWPPPs for every “hotspot”. For small municipalities, this is burdensome and redundant. Environmental Health agencies require Hazardous Material Business plans. Fuel Stations require Spill Prevention Control and Countermeasure Plan (SPCC plans). Industrial facilities require Industrial NPDES permits with SWPPPs. Fire Marshalls inspect for hazardous materials storage. Air Districts perform inspections. CUPA also has inspections. These other permits cover many of the items requested and are very specific. Monterey Regional suggests a waiver if these other items already exist for a facility. Another suggestion is create/modify/add specific information requirements to existing SOP, rather than creating a redundant and separate SWPPP for every “hotspot”.
3	Inspections, Visual Monitoring and Remedial Action	E.9.e.ii (a-d)	48-49	Inspection frequencies are onerous, manpower intensive, and provide little added protection of water quality. Propose quarterly or semi-annual comprehensive inspections of hotspot areas to ensure SOPs being followed. Recommend using the same inspection frequencies as required in Industrial programs. What is the benefit of inspecting non-hotspot areas? Recommend removing inspection of non-hotspot areas.
4	Storm Drain System Assessment & Prioritization	E.9.f.	50	E.9.f is too subjective, not well defined as to what is meant by “high”, “medium” and “low” priority with respect to trash. This should be replaced with a more definite/determinant system such as monthly accumulation of trash and debris by weight or numbers of pedestrians passing by per week, etc. Prioritization of catch basins is a very onerous activity. Monterey Regional recommends catch basins in high traffic areas be considered high priority, as in our current permit (defined by land use).

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Comment #	Permit Element/ Issue/ Concern	Location in Phase 2 Draft	Page No.	Comment
5	Storm Drain System Maintenance	E.9.g.ii (b)	50	<p>E.10 (ii) requires the installation of trash capture structural controls. If controls are installed it is not reasonable to also require individual catch basin inspections. During ASBS proceedings, the Coastal Commission stated they didn't believe the new structural infrastructure trash BMPs had been evaluated for actual impacts to the environment.</p> <p>Permittees should be required to address the source OR conduct the inspections, not both. In targeting the source of trash, other factors may also impede effectiveness in trash abatement programs. Plastic bag bans are proving to be very political and providing trash cans to private businesses is very costly.</p>
6	Permittee Operations and Maintenance Activities	E.9.h.ii (d)	51	<p>It isn't clear why quarterly inspections would be required per E.9.h.ii (d) since all of the activities listed under E.9.h.ii (a) are transitory in nature. It would seem more reasonable to require SOPs for these operations and dispense with inspections since the activities are usually complete in less than three months.</p>
7	Water Quality and Habitat Enhancement Features	E.9.i	52.	<p>E.9.i is a fundamentally flawed concept. Flood control facilities require regular cleaning and clearing in order to maintain capacity. Inviting those facilities to become wetlands would hinder if not prohibit the maintenance of those facilities. Additionally, creating wetlands from flood control facilities conflicts with the goal of the facility to address stormwater.</p> <p>If the facility becomes a wetland, the capacity of the basin to contain stormwater is greatly decreased. If manmade structures are allowed to become wetlands, would these require 401/404 permitting when established? Small MS4s would not want to address further permit requirements.</p>

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Trash Reduction Program (E.10.)				
Comment #	Permit Element/ Issue/ Concern	Location in Phase 2 Draft	Page No.	Comment
1	Trash Reduction Implementation	E.10.ii (b)	54	Without State funding, this is fiscally not possible to achieve, especially in the relatively short period of time given. This is considered an unfunded mandate. Additionally, conflicts with the Coastal Commission in obtaining permits for implementation of their structural controls will prove quite lengthy time-wise, if allowed at all.
Industrial/Commercial Facility Runoff Control (E.11.)				
Comment #	Permit Element/ Issue/ Concern	Location in Phase 2 Draft	Page No.	Comment
1	Industrial/ Commercial Inventory	E.11.a.i	55	Throughout this element and in E.11.a.i there are ill-defined terms and concepts. What is meant by the phrase "...that could discharge pollutants in storm water to the MS4."? Is it meant to mean those types of activities listed later on in (ii)(b) of this same section? If so, this should be more specific. If it is meant to mean any chance of discharging regardless of the type of business, that too should be stated, but it may not be possible to carry out this task because of the volume of businesses.
2	Industrial/ Commercial Inventory	E.11.a.ii(a)	55	This section requires nine fields of information for every business. Why is this necessary? For example, isn't a pet hospital in Sacramento the same as one in Monterey? Couldn't the State staff find out what risks these broad categories of businesses pose? Street addresses should suffice instead of lat/long listings. The State should list what SICs this measure applies to rather than having Permittees try to guess what is required.
3	“ Scope of Inspection	E.11.a.ii(c) E.11.e.ii (c)	57 62	This item requires a permittee to determine if an inspected business is also required to have a NPDES storm water permit. MS4s are not will to take on a task that the State should be enforcing. MS4s can provide a SIC for the business and then the State can determine if the business requires an NPDES permit.

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Comment #	Permit Element/ Issue/ Concern	Location in Phase 2 Draft	Page No.	Comment
4	Industrial/ Commercial Inventory	E.11.a.ii (e – g)	57-58	These sections require a permittees to prioritize commercial and industrial facilities as high, medium, and low; however, there are no factors to consider as indicators of how to rank them. This needs to be further defined. It makes no sense to require permittees to prioritize their commercial and industrial facilities annually. It should just be limited to new businesses and changes of use. Monterey Regional has inspected 100% of businesses and found very few violations.
5	Industrial Commercial Stormwater BMPs	E.11.b.ii (a-k)	59-60	This section requires the permittees to require inspected facilities to implement a litany of measures and practices enumerated “a” through “k”. How are the permittees expected to carry out these requirements? Are permittees required to verify BMP measures are being taken? Subtask (i) is extreme; why can’t allowable non-stormwater discharges allowed by other uses be allowed for these uses (such as foundation drains, etc) since such discharges would “... Not (be) authorized by other applicable NPDES permit.”?
6	Industrial and Commercial Facility Inspections	E.11.c.ii (b)	61	<p>This item requires that “at a minimum, at least 20% of inventoried commercial and industrial facilities <u>shall be</u> prioritized as high priority.” What is the basis for this? Once again, CUPA inspections already being conducted can cover this. In addition, keeping track of which businesses need annual, once to every three year or every five year inspections will be onerous.</p> <p>It would be better to base the inspection frequency on some multiple or fraction of the NPDES term (i.e. once a year or once in five years). Oversight of IGP is extensive and requires a higher level of knowledge.</p>
7	“	E.11.f.iii	63	E.11.f.iii requires permittees provide a report which, among other aspects, “...demonstrate the attendees changes in awareness and potential behavioral changes.” What behavioral changes is the State expecting? What if the employee behavior was satisfactory to start with? Agency staff or contractor behavior is a confidential matter. If an agency is going to hire a contractor, they are going to hire workers already trained to perform the tasks required.

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Post-Construction Stormwater Management (E.12.)				
Comment #	Permit Element/ Issue/ Concern	Location in Phase 2 Draft	Page No.	Comment
1	Organization	E.12, entirety	---	More logical organization is needed for clarity and understanding of these post-construction E.12 requirements. The current outline is confusing, has random bullets in some places, lacks number designations for some requirements/paragraphs, and doesn't contain complete sentences in places. Every section should have an outline label for easy referencing. For example, the "Compliance Tiers" are E.12 (a) through (f), but then it's followed by E.12.a <i>Permittee located within a Phase I Ms4 permit area</i> . This duplication is only one example of the confusion throughout E.12.
2	E.12 and Region 3 Joint Effort	---	---	<p>The Region 3 LID Joint Effort should supersede and satisfy the requirements of this permit section. Please clarify those components of E.12 that are satisfied by the Joint Effort and those requirements that are not. All of Region 3 Joint Effort entities need to clearly and fully understand the expectations of the SWRCB staff with regard to E.12 so we may fully understand the implementation and reporting requirements necessary in this post-construction section.</p> <p>Suggest that MS4s outside of Region 3 should implement items required by Region 3 Joint Effort, and not be required to implement more than required of Region 3 entities.</p>
3	Compliance Tiers	E.12 (a)	64	New Traditional Small MS4 Permittee threshold: Please explain the nexus of these post-construction requirements with Endangered Species Habitats.
4	Compliance Tiers	E.12 (b)	65	New traditionals 25,000 people or less are required to enforce the Construction General Permit (CGP) for post-construction, but this directive lacks any information regarding the timing of implementation. The post-construction requirements of the CGP become effective July 2013. The CGP is written for implementation by a discharger, not an MS4. Therefore, clarifications must be provided, such as in some instances when the CGP says, "discharger shall inform Water Board 30 days prior...", etc.

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Comment #	Permit Element/ Issue/ Concern	Location in Phase 2 Draft	Page No.	Comment
5	Water Quality Runoff Standards: Redevelopment	E.12.b.3	66	<p>Post-construction requirements should acknowledge water quality benefits and the challenges and constraints associated with redevelopment and infill. We strongly recommend that incentives or credits be allowed for redevelopment in this permit. This would allow MS4s the flexibility to require a lower level of capture, or treatment instead of retention, for these projects. Reductions in storm depth could be credited to redevelopment projects meeting redevelopment goals such as: brownfield development, removal of blight, affordable housing projects, mixed use and transit oriented projects, etc. Municipalities have assigned minimum low income housing project densities which can be as high as 20 to 30 dwelling units per acre. The full retention standard could present extreme hardship for affordable housing projects given the density, site and cost constraints associated with affordable housing projects in redevelopment areas. We recommend that this permit allow the flexibility for communities to craft similar credit systems.</p>
6	Water Quality Runoff Standards: Infeasibility	E.12.b.3	66-70	<p>Site conditions will exist where full retention is neither feasible and/or desirable. Infeasibility criteria should be acknowledged (and is acknowledged in multiple Phase I permits, such as the Ventura permit) and include:</p> <ul style="list-style-type: none"> • <u>High groundwater table</u>: The bottom of the infiltration practice should be a certain minimum distance above the seasonal high groundwater table. • <u>Protection of source water</u>: Infiltration practices should be set back a certain minimum distance from a groundwater well. • <u>Potential for pollutant mobilization</u>: Infiltration practices should not be utilized in brownfield sites or other locations where pollutant mobilization is a documented concern. • <u>Clay soils</u>: Infiltration practices are infeasible where soils have low infiltration rates. • <u>Potential geotechnical hazard</u>: Water infiltration can cause geotechnical issues, including: settlement through collapsible soil, expansive soil movement, slope instability, and increased liquefaction hazard. Infiltration practices should not be used where geotechnical issues are a documented concern.

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6 (cont'd)	Water Quality Runoff Standards: Infeasibility	E.12.b.3	66-70	<ul style="list-style-type: none"> • <u>Land use of concern</u>: To prevent groundwater contamination, infiltration practices should not be used in high-risk areas such as service/gas stations, truck stops, and heavy industrial sites. This should be acknowledged in the Special Project Category Requirements (E.12.b.3). • <u>Impairment of beneficial uses</u>: Locations where reduction of surface runoff or increase in infiltration may potentially impair beneficial uses of the receiving water as documented in a site-specific study (e.g., CEQA analysis) or watershed plan. • <u>Conflict with water conservation goals</u>: Use of evapotranspiration and other vegetated practices may conflict with water conservation goals in arid climates (e.g., a green roof that requires irrigation during the dry season). • <u>Lack of demand for harvested stormwater</u>: Projects must be able to demonstrate sufficient demand for harvested stormwater to be able to draw down the cistern prior to the next storm event to prevent bypass. • Additional implementation constraints as identified by the MS4.
7	Water Quality Runoff standards: Define “replace”	E.12.b.3.i.(a)(1)	67	Define “replace” 5,000 sf or more impervious. Does replace mean there is no new impervious footprint, but that impervious footprint remains same? What constitutes a tear-down/rebuild?
8	Water Quality Runoff standards: Special Projects	E.12.b.3.i.(a)(1) (iv)	67	Is only the parking lot to be designed to these standards? What if the parking lot is associated with a larger development plan that is non-commercial, such as church, daycare, or institutional center?
9	Water Quality Runoff standards: Specific exclusions	E.12.b.3.i.(a)(1)	67	Do the “Specific exclusions” apply to (b) Other Development Projects? Please clarify. Reformat bulleted items for clarity and to fit with outline alpha numeration

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Comment #	Permit Element/ Issue/ Concern	Location in Phase 2 Draft	Page No.	Comment
10	Water Quality Runoff Standards – Other Development Projects	E.12.b.3 (i)(b) Title and text	68	Add the word “ discretionary ” to the title, so as to read, “Other Discretionary Development Projects”. Revise sentence to read, “This category includes discretionary development projects on public or private land that fall under the permitting authority of the Permittee. ”
11	Water Quality Runoff standards: Other Development Projects	E.12.b.3.i.(b)	68	Commercial is a project type listed under Other Development Projects and as a Regulated Special Project Category E.12.b.3.i.(a)(1). Either delete commercial from one or the other or clearly indicate the difference between commercial “other” and commercial “special.” Under “Regulated Special Project Categories”, commercial is regulated at the 5,000 sf threshold while under “Other Development Projects” industrial is regulated at the 10,000 sf threshold. Why is the threshold for commercial more stringent than the threshold for industrial?
12	Water Quality Runoff standards	E.12.b.3.iii	70	Define “Alternative compliance measures for Regulated Project”.
13	Interim Hydromod. and Long-Term Watershed Process Management	E.12.b.4 E.12.b.5	70-72	Allow a measure of (%) tolerance for hydrograph matching. Off-ramps should be provided where it may be infeasible and cost prohibitive to mimic the hydrograph.
14	Operation and Maintenance: Clarification	E.12.b.8	73	Recommend/specify that this requirement applies only to new development and that it not retroactively apply to existing development.

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Receiving Water Monitoring (E.13.)				
Comment #	Permit Element/ Issue/ Concern	Location in Phase 2 Draft	Page No.	Comment
1	General Comment – Remove Requirement	E.13 All	---	<ul style="list-style-type: none"> • A monitoring program was never anticipated under the Federal Phase II Rule. This section should be removed from this permit. Receiving water monitoring should be considered in a future permit term and after EPA’s federal rulemaking is completed. • We recommend an expansion of the statewide or regional SWAMP Bioassessment and Stream Pollution Trends (SPoT) monitoring programs. This approach would be cost-effective for permittees and the State. Also, this approach may result in a more consistent and scientifically defensible monitoring design and improved data quality.
2	Phase II Stormwater Management Questions	E.13 All	---	Monitoring indicators should be driven by specific management/monitoring questions that are built from overall program objectives and goals, developed through a collaborative process with stakeholder input, and included at the beginning of Provision E.13. These management questions are not stated, and therefore the purpose of the monitoring is unclear.
3	General	E.13 All	---	Lack of Consideration of Existing Monitoring Data - The Permit needs to be clarified to allow Phase II programs to obtain credit for its previous and current monitoring work. We specifically request that the State Water Board include a provision in the Permit that allows a stormwater program to reduce monitoring requirements contained in the Permit to the extent that it can certify that it has already completed a substantially similar body of monitoring work during the last 10 years. Such a reduction in requirements would need to be authorized by the Regional Board Executive Officer.
4	General	E.13 All	---	<p>Fundamentally, how is the watershed monitoring going to work when many watersheds extend well beyond permit limits? Is the state going to compel by extension of the permit boundaries those entities and land uses such as agriculture to participate?</p> <p>The state needs to recognize and conform to the reality that unlike discrete source discharges such as sewage treatment plants, storm drain outfalls are so numerous and distributed that trying to identify particular outfalls as contributing inordinate amounts of pollutants is extremely problematic.</p>

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Comment #	Permit Element/ Issue/ Concern	Location in Phase 2 Draft	Page No.	Comment
4 (cont'd)	General	E.13 All	---	This lesson was recently brought home by the efforts of the Southern California Water Research Project's recent efforts to define "natural" water quality with respect to ASBS.
5	Compliance Tiers	E.13.a	76	Based on the language in section 13 (a), it is unclear which municipalities are subject to these receiving water monitoring requirements. Please clarify.
6	Compliance Tiers	E.13.b	76	<p>Under E.13.b it states that permittees with discharges into an ASBS must comply with the monitoring provisions in the latest Ocean Plan. There are no monitoring requirements in the Ocean Plan for ASBS. The state is currently working on a General Exception and Special Protections and the Special Protections contain extensive monitoring requirements.</p> <p>This section should be rewritten to state that Permittees who are following an approved monitoring plan per the Special Protections or per a specific exception to the Ocean Plan are exempt from the following monitoring requirements.</p>
7	Ocean Monitoring	E.13.b	76	<ul style="list-style-type: none"> • Remove ocean receiving water requirements and rely on an expanded SWAMP program to measure water quality in the ocean receiving waters. • Clarify that within any watershed where receiving water monitoring is required by this draft permit that only one type of receiving water monitoring is required, either the Ocean Plan monitoring as described in Appendix III of the California Ocean Plan, ASBS Special Protections monitoring, Bay monitoring through a program such as the Bay Area's Regional Monitoring Program, or receiving water monitoring as described in E.13. • Until Appendix III – Standard Monitoring Procedures – to the California Ocean Plan is finalized it would be difficult for a stormwater program to implement the current monitoring procedures of Appendix III in the 2009 California Ocean Plan as the requirements are tailored to wastewater treatment plants. • If this provision is not removed from the permit, move E.13.b to E.13.a and move E.13.a to E.13.b. This will improve the organization of the outline structure. • Clarify what is meant by Table B as the Ocean Plan also has a Table B.

Detailed Comments Regarding Draft Phase II Small MS4 General Permit

Comment #	Permit Element/ Issue/ Concern	Location in Phase 2 Draft	Page No.	Comment
8	Receiving Water Monitoring	E.13.b.ii. a	77	This is difficult to understand because it does not mention HUCs. How does it apply? The directions of (2) and (4) need more clarification regarding their applicability. They seem to direct a Permittee that occupies multiple HUC to conduct monitoring using two separate criteria (or both of them).
9	Receiving Water Monitoring	E.13.b.ii. a	77	Sentence should read: "Where multiple Permittees, <u>each with population greater than 50,000</u> , have urban land uses in an urbanized area, all Permittees must conduct, contribute to, or otherwise participate in Receiving Water Monitoring."
10	Receiving Water Monitoring	E. 13.b.ii.a.(4)	77	<p>The codec for designating different tasks and sub-tasks seems not to have been followed as there isn't the more usual E.13.a with lower-case roman numerals under it.</p> <p>More importantly, this task requires receiving water samples "...should be selected to represent the contribution of urban storm water discharges to the receiving waters." What does this mean? How is this to be determined?</p> <p>It goes on to say in the next sentence "Generally, the Permittee should locate sampling stations at the farthest downstream extent of the urbanized portion of the watershed." This implies samples are to be taken from the MS4 and not the receiving waters. "Bottom of the watershed" sediment quality studies will integrate the effects of land uses that are not part of the urban MS4 (i.e. agriculture) – modify this requirement such that sediment samples are taken from drainage areas that primarily comprise of MS4 land uses.</p> <p>This section is confusing and needs re-writing.</p>
11	Reporting/Water Quality Exceedances	E.13. iii. (a)	78	What does "...Are or may be causing or contributing to exceedance(s) of applicable water quality standards..." mean? If there is an exceedance, and an MS4's discharges contain the suspected constituent even if it's in lower concentration than the receiving waters, would that be considered as contributing? Where does mass loading come into the calculations?

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11 (cont'd)	Reporting/Water Quality Exceedances	E.13. iii. (a)	78	This section should be revised to add the following onto the end of the paragraph: "The preceding reporting requirements shall not apply to continuing or recurring exceedances of water quality standards previously reported to the Water Board or to exceedances of pollutants that are to be addressed pursuant to Provision E.15 of this Permit and in accordance with Provision D."
12	Relates to E.13	Attachment K	---	<ul style="list-style-type: none"> • The cost and the scope of the requirements in E.10, E.12, and E.13 are excessive for a traditional MS4 of 25,000 people. Cities of this size do not have the staff or the fiscal resources to implement such costly and prescriptive requirements. Increase the threshold to 50,000. • Attachment K lists traditional MS4s that are greater than 25,000 population. It does not include unincorporated county governments that do exceed 25,000. We're assuming this is because unincorporated populations are usually smaller than 25,000 and tend to be scattered around the unincorporated county. Please confirm that counties with more than 25,000 population are <u>not subject</u> to the non-ocean receiving water monitoring requirement in E.13 or to the E.12 and the E.10 provisions.

Program Effectiveness Assessment & Improvement (E.14.)

Comment #	Permit Element/ Issue/ Concern	Location in Phase 2 Draft	Page No.	Comment
1	Effectiveness Monitoring	E.14.a.(ii)(a)(6)	86	The proposed monitoring program should be part of the SWAMP program. These issues are of concern for all coastal communities. Shouldn't E.13.c read E.14.c?
2	Effectiveness Monitoring	E.14.c	89	Should this be moved to Section E.13, "Receiving Water Monitoring"?

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3	Effectiveness Monitoring	E.14.c(i)	89	What is the scope of the discharge effluent monitoring? What constitutes a discharge? What is the sampling frequency? Can analytes be reduced to no more than three pollutants of concern? MS4s should be allowed to choose their own pollutants of concern according to their own unique water quality issues. Again, this should be part of the SWAMP program. Entities should coordinate regional efforts w/ASBS and Ocean Plan monitoring requirements.

TMDL Compliance Requirements (E.15.) MoCo only

Comment #	Permit Element/ Issue/ Concern	Location in Phase 2 Draft	Page No.	Comment
1	TMDL for Fecal Coliform – Monterey County	Attachment G	10 - 12	The Provisions for Implementing the TMDL that are listed are above and beyond those that were required by the Central Coast Water Board. Item #7 is extremely resource intensive in that it requires modeling efforts. According to current studies, these models are not even available to accomplish this task. Recommend the removal of the modeling requirements and Permittees be able to implement the TMDL programs that have already been approved by their regional water board.

Online Annual Reporting (E.16.)

Comment #	Permit Element/ Issue/ Concern	Location in Phase 2 Draft	Page No.	Comment
1	Reporting	E.16	92	The State needs to ensure that the SMARTS system will be able to manage the large amount of data traffic being input during the September timeframe. Additionally, some Permittees choose to complete sections of their Annual Reports throughout the year. Recommend this option be made available.