



Marin County Department of Public Works  
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September 8, 2011



Member Agencies:

Belvedere

Corte Madera

County of Marin

Fairfax

Larkspur

Mill Valley

Novato

Ross

San Anselmo

San Rafael

Sausalito

Tiburon

Ms. Jeanine Townsend, Clerk of the Board  
State Water Resources Control Board  
1001 I Street  
Sacramento, CA 95814

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

Dear Ms. Townsend and Members of the Board:

Thank you for the opportunity to submit comments on the Draft Statewide General National Pollutant Discharge Elimination System Permit for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems (Draft Phase II permit) dated June 7, 2011. These comments are submitted by the Marin County Stormwater Pollution Prevention Program (MCSTOPPP) on behalf of its 12 local government member agencies (Co-Permittees).<sup>1</sup> The MCSTOPPP overarching comments are summarized in this letter. Detailed comments on each section of the Draft Phase II permit are provided in Attachment A.

#### **Introduction**

Marin County municipalities began developing and implementing their stormwater programs a decade before the State of California issued its first Phase II General Permit in 2003 (Order No. 2003-005-DWQ). In 1995, the Marin County Stormwater Pollution Prevention Program (MCSTOPPP) was formalized and began work on strategies to integrate Federal and State mandated municipal stormwater programs with local popular efforts to preserve and enhance creek and wetland habitat. Two five-year action plans were successfully created and effectively implemented before the Program received coverage under the 2003 Phase II permit. In that time the MCSTOPPP has established a track record of successfully protecting and enhancing watersheds throughout Marin County. MCSTOPPP's current stormwater program is effective at managing and minimizing stormwater related impacts on water quality through several key programs including:

<sup>1</sup> MCSTOPPP's Co-Permittees are: Belvedere, Corte Madera, County of Marin, Fairfax, Larkspur, Mill Valley, Novato, Ross, San Anselmo, San Rafael, Sausalito, Tiburon.

- Caring for Our Creeks and Waterways – a creek and wetland oriented approach that incorporates municipal maintenance and illicit discharge control activities to prevent stormwater pollution.
- Building and Renewing – addresses construction and post construction site controls, including site planning, erosion and sediment control, review practices, inspections, and training for development projects.
- Educating Ourselves at Home and School – provides outreach activities that support school-based education as well as educating the general public.
- Protecting Our Future – describes how the MCSTOPPP works with the regulatory community to address other regulatory programs, such as total maximum daily load (TMDL) implementation.

The MCSTOPPP has also developed performance standards for each program element of the Existing Phase II permit. These performance standards have been reviewed and approved by Regional Water Board staff as meeting the Clean Water Act's "maximum extent practicable" (MEP) standard governing municipal stormwater discharges and have effectively served as guiding operating principles to implement the Program.

Our overarching comments are summarized below and our specific comments and requests for clarification are included in the attached table (Attachment A).

#### **Comment #1: Cumulative Impact**

MCSTOPPP is concerned about the magnitude of the general program requirements that the Draft Phase II permit presents. All six minimum control measures (MCMs) are significantly ramped-up in comparison with the current version of the permit and in some cases exceeds Phase I program requirements. In addition to ramped-up MCMs, there are additional new provisions which also meet or exceed that of Phase I programs. As an example, the list of industrial and commercial facilities that must be inventoried and inspected by Phase II communities exceeds the requirements of many Phase I programs.

The Draft Phase II permit requires Phase II Permittees to meet these ramped-up requirements in a single permit term. Phase I Permittees were accorded three to four permit terms (15-20 years) to develop the current level of compliance programs. Renewal Permittees (including Marin's municipalities) are being asked to ramp-up their current programs to the level of programs of communities many times their size that have considerably more staff and fiscal resources. The State Board has set the bar unrealistically high and many Phase II Permittees will be unable to comply. Phase II Permittees do not have the funding, staffing, experience, or resources of their Phase I counterparts. Phase II Permittees should be provided with sufficient time (i.e., multiple permit terms as accorded larger communities) to develop and build their programs.

Significant additional funds and highly trained staffing and consultants will be needed to implement the new requirements. We are estimating program costs will have to be increased at least 3-5 times current program costs to implement the Draft permit. These increases are immediate and take place in the first year of implementation. Marin's municipalities will not be able to obtain additional staffing due to

economic constraints that have already resulted in furloughs, layoffs, and/or hiring freezes at the local level.

Additionally, Marin's municipalities must contend with Proposition 218 which severely limits their ability to raise revenues as evidenced by failed attempts in Phase I communities. With such challenges it is imperative that the State Board and the Phase II municipalities develop a permit that is protective of water quality in the most cost effective manner. A permit that goes beyond the economic means of the municipalities does neither.

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.

*Recommendation: Prioritize and phase-in new requirements over several permit terms by selecting two or three areas of focus/improvement that will allow Phase II Permittees to make incremental improvements to their program.*

### **Comment #2: Redundancy**

The State Water Board staff needs to streamline regulatory requirements to improve program efficiency. As an example, the State Water Board or the California Environmental Protection Agency should take a leadership role and work through 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 stormwater compliance in the areas of industrial oversight, pesticide control, water conservation, and non-traditional Phase II post construction requirements. This will help reduce redundancy and clarify and support stormwater 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 Marin's municipalities 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 we will need to pass along new and potentially redundant fees to commercial and industrial businesses and construction sites.

*Recommendation: 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.*

### **Comment #3: Six Minimum Control Measures (MCM)**

The permit goes beyond the national approach for smaller entities that established six minimum control measures. We take considerable exception to this approach; in fact according to 40 CFR Section 122.34(e)(2):

*"Guidance: EPA strongly recommends that until the evaluation of the storm water program in §122.37, no additional requirements beyond the minimum control measures be imposed on*

regulated small MS4s<sup>2</sup> without the agreement of the operator of the affected small MS4, except where an approved Total Maximum Daily Load (TMDL) or equivalent analysis provides adequate information to develop more specific measures to protect water quality.”

Additionally, Article XIII B, Section 6(a) of the California Constitution (“Section 6”) provides that 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 . . . .” Section 6 applies to storm water permits issued by the State Board and the Regional Water Quality Control Boards. (County of Los Angeles v. Commission on State Mandates (2007) 150 Cal.App.4th 898, 920 (holding that Government Code section 17516(c), which purports to bar State and Regional Board orders from the state mandates process, is unconstitutional as applied to stormwater permits).

A comparison between the Draft permit and the current permit reveals that the Draft permit contains many new programs. Program elements contained in the Draft permit are not required by the current permit and, consistent with the Commission’s analysis, would represent new programs under the state mandates law. These include:

- The requirement to regulate landscape irrigation, irrigation water, lawn watering, individual residential car washing and street wash water. (Section B.3).
- The development of an Enforcement Response Plan. (Section E.4.c).
- The requirement to secure adequate resources to comply with the mandates of the Draft Phase II permit. (Draft Permit, Section E.4.d).
- The development of a trash reduction program. (Section E.10).
- The development of an industrial/commercial runoff program. (Section E.11).
- The development of a receiving water monitoring program. (Section E.13).
- The development of an effectiveness assessment program, including pollutant loading quantification. (Section E.14).

A comparison between the Draft Phase II permit and the Existing Phase II permit also reveals that the Draft permit contains many higher levels of service. Enhanced program requirements that represent higher levels of service under the state mandates law include:

- Major components of the Public Outreach and Education Program (Section E.5.) including the requirement to use very involved Community-Based Social Marketing (CBSM) strategies or equivalent.
- Major components of the Illicit Discharge Detection and Elimination (IDDE) Program (Section E.7.) including the development priority areas that are likely to have illicit discharges and the requirement that 20% of the urbanized area be included in that designation.
- Major components of the Construction Site Storm Water Runoff Control Program (Section E.8.) including very specific measures to inventory all construction sites, inspect sites at designated frequencies, and requiring staff to be certified as Qualified SWPPP Developers or Practitioners.
- Major components of the Pollution Prevention/Good Housekeeping Program (Section E.9.) including assessment of “hotspots” facilities at specified intervals, prioritization of 20% of all catch basins as high, removal of trash and debris in high priority areas three times per year, and incorporation of water quality and habitat enhancement features in flood management facilities.

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<sup>2</sup> Municipal Separate Storm Sewer System

- Major components of the Post-Construction Storm Water Management Program (Section E.12.) including a watershed baseline characterization, watershed sediment budgets, interim hydromodification management, and long-term watershed process management.

As indicated above, many of the new and enhanced programs are beyond federal requirements and should not be Phase II Permittee responsibilities, unless the Permittee chooses to implement these controls based on local watershed priorities and subject to local resources. Since these requirements are unfunded, they may interfere with other resource protection programs such as land acquisition, habitat restoration, and sediment reduction.

*Recommendation: Remove requirements beyond the MCMs (i.e., industrial/commercial, monitoring, and trash reduction provisions)*

#### **Comment #4: Timeline**

The permit timeline is not realistic for achieving requirements. Individually, the requirements and associated timeline may be feasible, but collectively, the comprehensive and ramped-up nature of the requirements, make compliance infeasible for Marin's municipalities.

*Recommendation: Prioritize and phase-in new requirements over several permit terms, remove requirements that go beyond the MCMs, and allow at least two years for Permittees to complete permit tasks that can be considered projects (mapping, inventories, etc.).*

#### **Comment #5: Maximum Extent Practicable**

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 stormwater 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 IIs across the state. Additionally, flexibility is imbedded in the definition of "MEP." We believe that one-size does not fit all when it comes to Phase II Permittees. A less prescriptive, more Permittee-developed approach would result better water quality outcomes.

For example, MCSTOPPP has been successful in establishing and implementing an effective and community-supported stormwater program. We are concerned that the prescriptive and inflexible approach to stormwater regulation in the Draft Phase II permit will undermine our continued progress. Specifically, the Existing Phase II permit requires Permittees to develop and implement Stormwater Management Plans (SWMPs) that describe how pollutants in stormwater runoff would be controlled by implementing BMPs under the six program areas (Minimum Control Measures) defined by the permit. This approach allows Permittees to set priorities and progressively implement their stormwater program over a five-year period.

Additionally, the Illicit Discharge Detection and Elimination (IDDE) Provision includes a requirement that "20% of the Permittee's urbanized boundary shall be identified as priority." Phase IIs should be allowed to identify high priority areas using the pre-defined criteria provided in the provision. Specifying a minimum area by percent may create an unnecessary utilization of sparse resources where no problem(s) exists.

Achieving Permittee "buy in" with general support and compliance with the Draft Phase II permit could be accomplished more efficiently by allowing Phase IIs to structure and prioritize their individual stormwater programs within the context of their water quality goals and resources. Therefore, MCSTOPPP supports the provisions in the Draft Phase II permit allowing a Regional Board Executive

Officer to approve continued implementation of a Permittee's current program in lieu of implementing portions of the Draft Phase II permit. However, the specific mechanism and evaluation criteria for determining an equivalent program are currently unclear.

*Recommendation: Provide for more flexibility in the Draft permit by establishing a clear mechanism for obtaining approval to continue implementing existing, effective programs and remove prescriptive requirements that have no apparent nexus with water quality and instead allow Phase IIs to identify high, medium, and low priority areas based on a pre-defined set of criteria. This includes the following requirements:*

- IDDE Element requires Permittees to identify 20% of the urbanized boundary as priority (E.7.b.ii)
- Pollution Prevention/Good Housekeeping Element requires Permittees to prioritize at least 20% of catch basins as high priority (E.9.f.ii). This Element also requires removal of trash and debris from high priority areas at least three times per year (E.9.g.ii.d)
- Trash Reduction Element requires that at least 20% of the Permittee's zoned, commercial, retail/wholesale, comply with a Trash Abatement Plan (E.10)
- Industrial / Commercial Element requires that at least 20% of inventoried commercial and industrial facilities be prioritized as high priority (E.11.c.ii.b)
- Program Effectiveness Assessment Element requires that at least 20% of the total Best Management Practices (BMPs) must be maintained annually (E.14.d.a.ii)

#### **Comment #6: Retrofit Requirements**

Retrofitting is mentioned or implied in several places throughout the Permit including:

- Program Management (E.4.d.iii): "This summary shall include...the costs for...retrofitting existing BMPs to include green infrastructure..."
- Pollution Prevention/Good Housekeeping (E.9.i): "The Permittee shall identify and implement a process for incorporating water quality and habitat enhancement features into new and existing flood management facilities."
- Pollution Prevention/Good Housekeeping (E.9.i.ii): "...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 addition 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."
- Industrial/Commercial (E.11.b): "The Permittee shall require industrial and commercial facilities included in the inventory to select, design, install and implement storm water BMPs."
- Program Effectiveness Assessment and Improvement (E.14.c.i): "The report shall also identify storm water retrofit opportunities."

It is our understanding that the intent is not to require hard and fast retrofitting requirements within this permit term. Retrofitting should only be conducted in the context of and under the requirements of approved TMDLs. It is the responsibility of the Permittee to allocate stormwater resources in ways that result in the greatest receiving water benefit. Retrofitting may ultimately be the most challenging aspect of any stormwater program. The cost of implementing retrofits could cost millions of dollars and take years to complete. Phase I programs are just now doing preliminary assessment of retrofit

opportunities, so to require Phase IIs to complete such assessments is premature at best and irresponsible at worst. This is an area where Phase IIs would benefit greatly from Phase I efforts.

*Recommendation: All language and requirements regarding retrofitting should be removed to reduce confusion and prevent unequal interpretation and implementation of requirements across Regional Water Quality Control Boards (RWQCBs).*

#### **Comment #7: Draft or Incomplete Areas**

MCSTOPPP 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:

- Draft California Ocean Plan (E.13. Compliance Tiers)
- State Water Board's Draft Effectiveness Assessment Guidance (E.14.a.ii)
- Lake Tahoe BMP Rapid Assessment Methodology (not a fully vetted/proven methodology) (E.14.b.ii)
- Attachment G: TMDL Requirements (table incomplete)

*Recommendation: Remove any references that are incomplete or Draft from the Phase II permit.*

#### **Comment #8: Post Construction Stormwater Management Program**

The new requirements for post construction management represent a significant increase in effort compared to the Existing Phase II permit. The new post construction requirements go beyond controlling and treating runoff from newly constructed sites to including detailed watershed characterization, sedimentation studies and hydromodification management. Throughout this section of the Draft Phase II permit there are significant inconsistencies and the expectations or intent of many of the requirements are unclear. As an example, the basis for the treatment thresholds are not specified and there is no precedent in existing MS4 permits for a standard of treatment other than Maximum Extent Practicable (MEP). In addition, the interim hydromodification management requirements are based on a Region 3 Water Quality Control Board program that is still in development.

*Recommendation: Build on the framework of the existing Phase II permit and allow for phasing watershed characterization requirements over more than one permit cycle.*

#### **Comment #9: Tracking and Reporting**

The Draft Phase II permit includes requirements for developing numerous databases, use of specific types of reporting formats, and significant additional reporting that goes beyond the established program. The intended usefulness and practicability of the additional reporting is not clear and does not seem to consider the significant incremental burden to be placed on municipalities with little, if any, resulting benefit to water quality.

*Recommendation: Reduce tracking and reporting requirements.*

#### **Comment #10: Draft Permit Applicability**

It is not clear if the Draft Phase II permit applies to unincorporated areas located outside Census Designated Areas listed in Attachments A and B of the Draft permit or to open space areas managed by

the County of Marin or the Marin County Open Space District (District). The definition of an MS4 includes any system “used to collect or convey storm water.” Under a broad interpretation, this could include fire roads, v-ditches, road culverts, rolling dips, road ditches, or similar structures used to manage water on rural roads, open space trails and fire roads. The permit also states that the MS4 includes “highways and other thoroughfares,” which could include rural roads, open space roads and trails. However, the Draft Phase II Small MS4 General Permit Designation Flow Chart indicates that MS4s outside urbanized areas with population density of less than 1000 per square mile may not be designated and the permit allows a waiver from its requirements for state parks with less than 5,000 visitors per year. It is unclear if a waiver would apply to open space or park areas owned by the County or the District.

*Recommendation: The permit should clarify designation criteria and should consider the nature of unincorporated rural, parks and open space areas when crafting requirements if the permit must be implemented in these areas.*

In closing, we appreciate the opportunity to provide comments on the Draft Phase II permit. We strongly urge the State Water Board to reconsider its approach and work with MCSTOPPP, the California Stormwater Quality Association (CASQA) and other stakeholders to produce a revised Draft Phase II permit that effectively matches water quality protection with Phase II Permittee’s resources by prioritizing program elements that address the relevant water quality concerns in each Permittee’s jurisdiction.

Very truly yours,



Terri Fashing

Marin County Stormwater Pollution Prevention Program Manager

*Attachment A – MCSTOPPP Detailed Comments on the Draft Phase II Small MS4 General Permit*

C (electronic): Farhad Mansourian, Director of Public Works, County of Marin  
Bob Beaumont, Chief Assistant Director of Public Works, County of Marin  
Tracy Clay, Principal Civil Engineer, Marin County Flood Control and Water Conservation District  
Liz Lewis, Principal Planner, Marin County Department of Public Works  
James Raives, Senior Open Space Planner, Marin County Parks and Open Space District  
Elise Holland, Planning and Resource Chief, Marin County Parks and Open Space District  
Marin Public Works Association (through Jason Nutt, Public Works Director, City of Novato)  
Paul Berlant, Executive Director, MGSA  
BASMAA Executive Board  
MCSTOPPP Agency Staff Committee  
MCSTOPPP Citizen Advisory Committee  
Bruce Wolfe, Executive Officer, SF Bay RWQCB



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<b>B. DISCHARGE PROHIBITIONS</b>			
<b>Comment #</b>	<b>Permit Element/ Issue/ Concern</b>	<b>Location in Draft</b>	<b>Comment</b>
1	Discharge Prohibitions	B.3	<p>The Draft Phase II Small MS4 General Permit lists allowable non-stormwater discharges but does not include landscape irrigation, irrigation water, lawn watering, and individual residential car washing. According to the Federal Register<sup>1</sup>, these are allowable discharges and illicit discharge and elimination programs must address these categories of non-storm water discharges if the operator of the small MS4 identifies them as significant contributors of pollutants.</p> <p><i>Recommendation: Add landscape irrigation, irrigation water, lawn watering, individual residential car washing, and street wash water to the list within B.3.</i></p>
2	Incidental Runoff	B.4	<p>Incidental runoff is regulated by the Water Efficient Landscaping Ordinance.</p> <p><i>Recommendation: Remove this requirement to due to redundancy.</i></p>
3	Discharge Prohibitions – RWQCB Notification Timeline	B.4.d	<p>Requiring a Permittee to notify the RWQCB while determining that a discharge <u>may</u> happen four hours in advance of a 25-year, 24 hour storm event or larger is unreasonable. When large storm events occur, municipalities prioritize and public safety first.</p> <p><i>Recommendation: RWQCB notification 48 hours after discharge.</i></p>

**C. EFFLUENT LIMITATIONS – NO MCSTOPPP COMMENTS**

**D. RECEIVING WATER LIMITATIONS – NO MCSTOPPP COMMENTS**

<sup>1</sup> Volume 64, No. 235, December 8, 1999, Page 68756

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<b>E.4 PROGRAM MANAGEMENT ELEMENT</b>			
<b>Comment #</b>	<b>Permit Element/ Issue/ Concern</b>	<b>Location in Draft</b>	<b>Comment</b>
4	Legal Authority – Overall	E.4.a-b	<p>These sections require that all necessary ordinances or other regulatory mechanisms be in place by May 2013 and that reporting related to legal authority be completed by September 2013. However, it would be very difficult for Marin’s municipalities to develop and implement these requirements within year 1 of the effective date of the permit.</p> <p><i>Recommendation: Please change task deadline in E.4.a (i) to 2 years after the effective date of the permit.</i></p>

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E.4 PROGRAM MANAGEMENT ELEMENT			
Comment #	Permit Element/ Issue/ Concern	Location in Draft	Comment
5	Legal Authority – Definition of Illicit Discharges	E.4.a(ii)(b)	<p>This section requires Permittees to have an ordinance or other regulatory mechanism that will prohibit discharges from charity car washes. Regulating charity car washes is unrealistic and unenforceable, given their transitory nature and Permittees’ limited resources, particularly for weekend work. It is impossible to know when and where most charity car washes will appear, given that many are not held by organized clubs or groups and few are widely announced in advance. A reasonable expectation for this permit term is for Permittees to conduct education and outreach to organized groups about car wash activities, and identify best practices for stormwater pollution prevention.</p> <p><i>Recommendation: Modify the Phase II permit as follows:</i></p> <p><i>“(b) Prohibit and eliminate illicit discharges and illegal connections to the MS4. <del>Illicit connections include pipes, drains, open channels, or other conveyances that have the potential to allow an illicit discharge to enter the MS4. Illicit discharges include all non-storm water discharges not otherwise authorized in this Order, including discharges from charity car washes, mobile cleaning and pressure wash operations,</del>”</i></p> <p><i>Include the following definitions:</i></p> <p><i>“Illicit Discharge” – Any discharge to an MS4 that is not composed entirely of stormwater, except allowable discharges pursuant to an NPDES permit and those identified within Provision B.3. [Based on 40 CFR 122.26(b)(2)]</i></p> <p><i>“Illegal Connections” – Any constructed conveyance or drainage system, pipeline, conduit, inlet or outlet, through which the discharge of any pollutant to the stormwater drainage system occurs or may occur.</i></p> <p><i>We recommend allowing these discharges if they are properly managed. Add charity car wash provisions to the Public Outreach Section (E.5)</i></p>

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<b>E.4 PROGRAM MANAGEMENT ELEMENT</b>			
<b>Comment #</b>	<b>Permit Element/ Issue/ Concern</b>	<b>Location in Draft</b>	<b>Comment</b>
6	Legal Authority – Implementation Level	E.4.a.(ii)(i)(1)	<i>Recommendation: Modify the Phase II permit as follows: (1) Effectively require the discharger to abate and clean up their discharge, spill, or pollutant release within <del>48</del> <u>72</u> hours of notification <u>or according to a schedule established by the Permittee that is protective of water quality</u>”.</i>
7	Legal Authority – Implementation Level	E.4.a(ii)(j)	<i>Recommendation: Modify the Phase II permit as follows: (j) <u>When warranted, a</u> Traditional Small MS4 Permittee shall have the ability to: (1) <u>Issue a verbal or written warning, levy citations, or administrative fines against responsible parties either immediately at the site, or within a few days.</u> (2) <u>Require recovery and remediation costs from responsible parties.</u></i>
8	Legal Authority – Control Pollutants Flowing from one MS4 into Another	E.4.a.(ii)(l)	<p>This section requires Permittees to control the contribution of pollutants and flows from one portion of the MS4 to another portion through interagency agreements with other MS4s. Permitted MS4s should be required to control only the pollutants within their jurisdiction.</p> <p><i>Recommendation: Delete provision.</i></p>
9	Enforcement Measures and Tracking – Enforcement Response Plan	E.4.c [page 21]	<i>Recommendation: Revise this section to allow for the Permittees, where applicable, to <u>demonstrate</u> that they already have applicable ordinances or policies and the ability to implement and enforce them to the Maximum Extent Practicable (MEP), rather than developing a new plan that duplicates the processes described in the ordinances/policies.</i>
10	Ensure Adequate Resources to Comply with Order	E.4.d	<i>Recommendation: This section should be removed as it exceeds California Water Code and Clean Water Act requirements. It represents an unnecessary expenditure of funds without water quality benefit. In addition, please define “green infrastructure” in the glossary.</i>

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<b>E. 5. PUBLIC OUTREACH AND EDUCATION</b>			
<b>Comment #</b>	<b>Permit Element/ Issue/ Concern</b>	<b>Location in Draft</b>	<b>Comment</b>
11	Task Description – Extend Timeline	E.5.b.(i)	<i>Recommendation: Allow an additional year to develop and <u>begin implementing</u> a comprehensive stormwater public outreach and education program and change due date to May 15, 2014. More time is needed to develop strategies for measuring behavioral changes. Many Phase I communities are finding it difficult, if not impossible, to demonstrate a reduction in pollutant releases on a five year timeframe, let alone to connect such reductions to public outreach efforts. It may take years to detect behavioral changes, if they can be detected.</i>

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12	Public Education Strategy	E.5.b(ii) (a-m)	<p><i>Recommendations:</i></p> <ul style="list-style-type: none"> <li>• <i>(a) We value the science- and research-based Community Based Social Marketing (CBSM) outreach and education approach. However, due to the cost and difficulty of employing the CBSM approach, we recommend that the permit language refrain from requiring full implementation of CBSM. The City of Roseville (population ~100,000) estimated that this permit requirement would cost \$650,000 for CBSM strategy development and \$450,000/year thereafter. Marin’s municipalities cannot afford this level of implementation, however, we can incorporate principles developed through CBSM research to enhance and improve our public outreach approach. Revise language to encourage Permittees to follow CBSM principles and strategies.</i></li> <li>• <i>(c) Change second sentence language to “The Public Education strategy <u>may consider incorporating the following...</u>”. Remove the words “credible source”. Credible source implies that the Permittee must pay a marketing firm to develop a message;</i></li> <li>• <i>(e) Replace with the following language “<u>Assess the feasibility and need for developing and disseminating appropriate educational materials in multiple languages. Where identified as an effective tool and where included in the Permittee’s public outreach strategy, develop and disseminate appropriate educational materials in multiple languages.</u>”</i></li> <li>• <i>(f) Replace with the following language “<u>Utilize public input in the development of the program (e.g. through a Citizen Advisory Committee or through public meetings/comment).</u>”</i></li> <li>• <i>(h) Remove or change language to “recommend” coordination with outreach programs developed to support the Water Efficient Landscape Ordinance.</i></li> <li>• <i>(i) Remove the requirement to provide both financial and technical assistance for stormwater-friendly landscaping. Instead, require outreach and education to landscape professionals, and property owners/managers on stormwater pollution prevention.</i></li> <li>• <i>(k) Replace with the following language “<u>Develop and convey messages on Integrated Pest Management</u>”.</i></li> <li>• <i>(l) Replace with the following language “<u>Provide stormwater pollution prevention educational opportunities to school-age children. California’s Education and Environment Initiative Curriculum can be used to help develop this element of the Permittee’s outreach program.</u>”</i></li> </ul>
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<p>13</p>	<p>Industrial/Commercial Outreach and Education Program</p>	<p>E.5.c. (i) ALL</p>	<p><i>Recommendation</i></p> <p><i>This requirement is excessive and duplicates at least one requirement in section E.7. Remove this entire section and replace with the following language:</i></p> <p><u><i>(i) Task Description - By May 15, 2014, the Permittee shall develop and implement an industrial/commercial outreach and education program. The goals of the industrial/commercial outreach and education program should be to (1) increase the knowledge of the priority facilities and businesses within the industrial/commercial community regarding the municipal storm drain system, impacts of industrial/commercial facility runoff and non-storm water discharges on receiving waters, and potential BMP solutions for the industrial/commercial community and (2) change the behavior of the priority facilities and businesses within the industrial/commercial community, as determined by local needs and priorities, with the objective of reducing pollutant releases to the MS4 and the environment. The Permittee should consider utilizing Community Based Social Marketing (CBSM) principles to address the Permittee’s highest priority water quality problems.</i></u></p> <p><u><i>(ii) Implementation Level –The program shall include, at a minimum: (a) Development and implementation of an industrial/commercial outreach and education strategy that establishes measurable goals and prioritizes education tasks based on water quality problems, target audiences, and anticipated task effectiveness. (b) Conduct outreach to priority industrial/commercial facilities as developed based on local priorities and needs. Develop and distribute outreach materials (assess need for translating into multiple languages when appropriate and feasible) for the high priority industrial/commercial facilities.</i></u></p> <p><u><i>(iii) Reporting – By September 15, 2014, online Annual Report and annually thereafter, report program progress and mechanisms used for outreach and education. This includes outreach strategy and implementation, outreach materials developed, and distribution of outreach materials.</i></u></p>
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14	Construction Outreach and Education Program – Implementation Level	E.5.d	<p><i>This requirement is excessive and duplicates at least one requirement in section E.8. Remove this entire section and replace with the following language:</i></p> <p><u><i>(i) Task Description – By May 15, 2014, the Permittee shall develop and implement, a construction outreach and education program for construction sites smaller than one acre. The goals of the construction outreach and education program should be to (1) increase the knowledge of the construction community regarding the municipal storm drain system, impacts of urban runoff and non-storm water discharges on receiving waters, and potential BMP solutions for the target audiences and (2) make progress toward changing behavior in the construction community, where necessary, to improve implementation of effective construction site BMPs. The Permittee should consider utilizing Community Based Social Marketing (CBSM) principles to address the Permittee’s highest priority water quality problems.</i></u></p> <p><u><i>(ii) Implementation Level –The program shall include, at a minimum:</i></u></p> <p><u><i>(a) Development and implementation of a construction outreach and education strategy that establishes measurable goals and prioritizes education tasks based on water quality problems, target audiences, and anticipated task effectiveness.</i></u></p> <p><u><i>(iii) Reporting – By September 15, 2014 online Annual Report and annually thereafter, report program progress and mechanisms used for outreach and education including measureable increases in the knowledge of the construction community and changes in the construction community’s behavior, where possible to measure or detect. This includes outreach and education strategy and implementation, any implementation of CBSM pilot projects and principles, and any commitments from target audience to implement desired behavior.</i></u></p>
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**E.6 PUBLIC INVOLVEMENT AND PARTICIPATION PROGRAM – NO MCSTOPPP COMMENTS**



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<b>E.7. ILLICIT DISCHARGE DETECTION AND ELIMINATION PROGRAM</b>			
<b>Comment #</b>	<b>Permit Element/ Issue/ Concern</b>	<b>Location in Draft</b>	<b>Comment</b>
15	IDDE Program	E.7	<i>Recommendation</i> <i>Clarify how Open Space Districts are subject to the permit requirements, if at all.</i>
16	MS4 Mapping – Implementation Level	E.7.a.ii.a & e	Define “outfall” and indicate the size of outfall that shall be mapped. Define “urbanized area”.  The cost of mapping drainage features on fire roads and trails would be excessive and the timeframe to conduct such an assessment would take much longer than the time allocated by the permit. Clarify how Open Space Districts should interpret the permit requirements.
17	Identifying Priority Areas – Reword	E.7.b.ii	If the Permittee identifies all the priority areas, and the acreage of these areas totals less than 20% of urbanized area, the Permittee should not be required to pick another area just to meet an arbitrary 20% minimum mandated threshold without any scientific or historical data to back up the selection.  <i>Recommendation</i> <i><u>The Permittee should base the establishment of priority inventory areas on the following:</u></i> <i>(a) Areas with older infrastructure that are likely to have illicit connections and/or have a history of sewer overflows or cross-connections;</i> <i>(b) Industrial, commercial, or mixed use areas;</i> <i>(c) Areas with a history of past illicit discharges</i> <i>(d) Areas with a history of illegal dumping;</i> <i>(e) Areas with onsite sewage disposal systems; and</i> <i>(f) Areas upstream of sensitive water bodies</i>

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<b>Comment #</b>	<b>Permit Element/ Issue/ Concern</b>	<b>Location in Draft</b>	<b>Comment</b>
18	Field Screening: Modification	E.7.c .(i) and (ii)	<p>Costs associated with the proposed IDDE Monitoring Program are prohibitive for a Phase 2 entity. According to pg. 37 of the Center for Watershed Protection IDDE Program Guidance Manual, the average startup cost for a Phase 2 IDDE program, as required in the draft permit, is \$62,300 and the annual implementation costs average \$84,750/yr. Performing analytical monitoring yearly is too restrictive and wasteful given the intermittent and transient nature of illicit discharges. If pollutants are not detected and there is little change to land uses or physical conditions, monitoring on 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.</p> <p><i>Recommendation</i>  <i>During these fiscally difficult times, and without clear evidence that the program outlined in the draft permit will result in water quality improvements, this section should be revised to be more cost-effective.</i></p>

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E.7. ILLICIT DISCHARGE DETECTION AND ELIMINATION PROGRAM			
Comment #	Permit Element/ Issue/ Concern	Location in Draft	Comment
19	Field Screening to Detect Illicit Discharges	E.7.c.	<p>Revise this section due to cost.</p> <p><i>Recommendation</i>  <i>Consider the following language from MCSTOPPP's existing stormwater management plan:</i></p> <p><u>Identify evidence of illicit discharges to the municipal storm drain conveyance system, using municipal maintenance and other local field staff while they are conducting other routine work. Report any evidence of illicit discharges identified during these field screening activities.</u></p> <p><u>Conduct field investigations:</u></p> <p><u>1. Verify whether an illicit discharge has occurred, using information provided as part of field screening and complaints received from other staff, the public or other agencies. The goal is to initiate follow-up activities within twenty-four hours from receiving the report.</u></p> <p><u>2. When an illicit discharge has occurred, find the source and eliminate it, as possible. Trace the source(s) of the illicit discharge using storm drain maps, inspecting manholes, and making surface observations. Record and maintain findings, as appropriate.</u></p> <p><u>3. Continue to inspect and follow-up illicit discharges until the source of the discharge is found and eliminated or the discharge has stopped and cannot be traced to a source.</u></p> <p><u>4. If an agency identifies three or more illicit discharges in a fiscal year within an area served by any major outfall, additional illicit discharge investigations will be conducted in the area(s) served by the major outfall(s) during the subsequent fiscal year or sooner. These additional investigations will include periodic above ground surveillance of the area for visual evidence of illicit discharges, additional inspections of businesses, additional periodic investigations of outfalls, creeks, and open channels for evidence of illicit discharges, and/o additional targeted educational outreach in the area that is coordinated appropriately with the local Public Information/Participation activities.</u></p>

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<b>E.7. ILLICIT DISCHARGE DETECTION AND ELIMINATION PROGRAM</b>			
<b>Comment #</b>	<b>Permit Element/ Issue/ Concern</b>	<b>Location in Draft</b>	<b>Comment</b>
20	Source Investigations – Implementation Level	E.7.d.ii.e	<p>“...Permittee shall immediately notify the responsible party of the problem and require the responsible party to conduct all necessary corrective actions to eliminate the illicit discharge within 48 hours of notification.”</p> <p>This may not be feasible. If the illicit discharge occurs on a weekend or during a flood or other significant event, it may not be feasible to eliminate the illicit discharge within 48 hours (i.e. contractors and equipment may not be readily available).</p> <p><i>Recommendation</i>                      We suggest following the Ventura Phase I permit example: require an investigation to be completed within 21 days, and in the case of an illicit connection, it must be terminated within 180 days of completion of investigation. In addition, allow Permittee to report the time schedule for compliance as needed.</p>

<b>E.8 CONSTRUCTION SITE STORMWATER RUNOFF CONTROL PROGRAM</b>			
<b>Comment #</b>	<b>Permit Element/ Issue/ Concern</b>	<b>Location in Draft</b>	<b>Comment</b>
21	General: Modification	E.8 last paragraph	Compliance with the CGP is the State’s responsibility. MS4s can only require compliance with local ordinances and local erosion and sediment control requirements.

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<b>E.8 CONSTRUCTION SITE STORMWATER RUNOFF CONTROL PROGRAM</b>			
<b>Comment #</b>	<b>Permit Element/ Issue/ Concern</b>	<b>Location in Draft</b>	<b>Comment</b>
22	General Comment – Scope	E.8	<p>The language of the draft Phase II permit is unclear as to the required scope of the construction program element. In various locations of section E.8 requirements are described for:</p> <ul style="list-style-type: none"> <li>• All projects that disturb soil</li> <li>• All project covered by grading and building permits</li> <li>• 1+ acre projects (presumably those that have CGP coverage)</li> </ul> <p>It is unreasonable to require application of the requirements of this permit or the local erosion and sediment control ordinance to <b><u>all projects that disturb soil</u></b>.</p> <p><i>Recommendation: Clarify the scope of the construction program element. Scale requirements according to size and risk and allow flexibility at the local level.</i></p>
23	Construction Site Inventory – Redundancy	E.8.a. [page 39]	<p>This inventory requirement will create a redundant database to the existing SMARTS database for projects covered by the CGP. Small MS4s can access SMARTS for this information. This redundancy adds unnecessary time and expends precious resources for the small MS4s.</p> <p><i>Recommendation: Eliminate the inventory requirement and direct small MS4s to use SMARTS to obtain inventory information for projects in their jurisdiction.</i></p>

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<b>E.8 CONSTRUCTION SITE STORMWATER RUNOFF CONTROL PROGRAM</b>			
<b>Comment #</b>	<b>Permit Element/ Issue/ Concern</b>	<b>Location in Draft</b>	<b>Comment</b>
24	Site Inventory: Clarification	E.8.a.ii.(c)	<p>“The proximity all water bodies, water bodies listed as impaired by sediment-related pollutants, and water bodies for which a sediment-related TMDL has been adopted and approved by USEPA.”</p> <p><i>Recommendation</i>                      Define proximity: direct distance, distance by stormwater drainage.</p> <p>Clarify if “all water bodies” means distance of site to every water body in the MS4 or only those the site discharges to?</p>
25	General Comment – Reporting Requirements	E.8	<p>The draft Phase II permit significantly increases reporting obligations under the construction element. Increased reporting expends resources that can be better applied to assuring quality plan reviews, educational outreach, and a field presence by municipal staff.</p> <p><i>Recommendation</i>                      Eliminate the increased reporting requirements. The permit should emphasize the more cost effective approach which includes plan review, educational outreach, and focused field inspections that are customized to the local jurisdiction.</p>

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<b>Comment #</b>	<b>Permit Element/ Issue/ Concern</b>	<b>Location in Draft</b>	<b>Comment</b>
26	Plan Review Procedures: Remove Requirement and Modification	E.8.b.ii b	<p>Quantifying soil loss potential from BMPs is not commonly performed nor is it required for projects permitted under the CGP. Requiring these calculations be included in Erosion Control Plans for small MS4s imposes a higher level of performance on projects constructed in small communities than those in Phase I communities or in areas outside the Phase I and Phase II MS4 boundaries. The unequal burden will place Phase II municipalities at a disadvantage for attracting new and redevelopment projects. The requirement to do soil loss calculation is better piloted at the state-level through the CGP.</p> <p><i>Recommendation: Revise the language to read <u>“As deemed appropriate by the Permittee, require that the erosion and sediment control plan include the rationale used for selecting or rejecting BMPs.”</u></i></p>
27	Plan Review and Approval – Permitting	E.8.b.ii.c [page 40]	<p>The US ACOE requires that all other permits be in place prior to issuing the 404 permit. It is not possible to have the 404 permit prior to issuing a grading and building permit.</p> <p><i>Recommendation: Revise this language to read <u>“Require that the Erosion and Sediment Control Plan list applicable permits including, but not limited to the State Water Board’s CGP, State Water Board 401 Water Quality Certification, U.S. Army Corps 404 permit, and California Department of Fish and Game 1600 Agreement. Include as a condition of the grading permit that the Operator submit evidence to the MS4 that all permits required for the project have been obtained prior to commencing ground disturbing activities.”</u></i></p>

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<b>Comment #</b>	<b>Permit Element/ Issue/ Concern</b>	<b>Location in Draft</b>	<b>Comment</b>
28	Inspection Frequencies: Modification	E.8.c.ii.(a)	<p>Frequency for inspection of sites &gt;1 acre that discharge to a sediment/turbidity impaired water body or determined a significant threat to water quality is too frequent and would require a excessive staff time to perform the inspections and track weather reports. The requirement is redundant given that all sites &gt;1 acre are covered by the Construction General Permit. It may also put an undue burden on staff because they would only have 48 hours after a ½ inch rain event to inspect all the sites that meet this category. The purpose of the Permittee’s inspection is not to maintain the site but to verify compliance through random inspections. This frequency would also require staff to inspect sites at least every two weeks even in the dry season.</p> <p><i>Recommendation: Establish a permit condition that requires agencies to develop an inspection program to conduct adequate inspections to control soil erosion and sediment discharge. The frequency and other inspection prioritization criteria should be suggested guidelines – not requirements, and need to be labeled as such.</i></p>
	Inspection Procedures: Modification	E.8.c.ii.(c).(4)	Revise to assess the “effectiveness” of the planned BMP and not the “appropriateness”. The appropriateness would be identified in the plan review process.
29	Inspection Procedures: Clarification	E.8.c.ii.(c).(5)	Clarify if this is review of observations and recordkeeping at sites or if this refers to the Permittee’s recordkeeping
30	Inspection Reporting: Modification	E.8.c.iii	In general the Reporting requirements and data tracking requirements are numerous and will require a great deal of staff time for development of forms and a tracking system, data entry, data management and reporting calculations. These requirements should be kept at a minimum.
31	Inspection Reporting: Removal	E.8.c.iii.(i)	Reporting the number of follow-up inspections that demonstrate compliance or require further enforcement is duplicative of the data requested in (g) and (h) given there is a required 10 day follow-up inspection required to track the data.



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<b>Comment #</b>	<b>Permit Element/ Issue/ Concern</b>	<b>Location in Draft</b>	<b>Comment</b>
32	Staff Training: Modification	E.8.d.ii.(a)	<p>Training existing staff or hiring staff qualified to obtain QSP and QSD certification is beyond the resources of small MS4s and is not practical.</p> <p><i>Recommendation: Permittee staff should not be required to enforce the CGP. The QSD and QSP requirements are specific to the CGP and are not related to individual municipal erosion and sediment control policies and legal authority. The training requirements should be limited to training appropriate for the local construction inspection program.</i></p>
33	Site Operator Education: Clarification	E.8.e.ii.(a)	<p>Indicates the Permittee must provide information on training opportunities for construction operators however it does not specify the training must be conducted by the Permittee. Yet there are reporting requirements in E.8.e.iii that require the Permittee to know how many construction operators have been trained. This number cannot be known for trainings not offered by the Permittee.</p> <p><i>Recommendation: Revise this language to recommend that Permittees inform construction operators of training opportunities and remove any reporting requirement.</i></p>

<b>E. 9 POLLUTION PREVENTION/GOOD HOUSEKEEPING FOR PERMITTEE OPERATION PROGRAM</b>			
<b>Comment #</b>	<b>Permit Element/ Issue/ Concern</b>	<b>Location in Draft</b>	<b>Comment</b>
34	Inventory of Permittee-Owned and Operated Facilities: Clarification	E.9.a.(ii)	Clarify if undeveloped parks and open space areas should be part of the inventory.

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<b>Comment #</b>	<b>Permit Element/ Issue/ Concern</b>	<b>Location in Draft</b>	<b>Comment</b>
35	Facility Assessment: Clarification	E.9.c.(ii)(a)	Provide direction or examples of a site that has a high potential to “generate storm water ... pollutants.”
36	SWPPPs – Redundant Requirement	E.9.d	<p>The state already requires certain local government facilities to have Hazardous Material Business plans (CUPA). Fuel Stations require Spill Prevention Control and Countermeasure Plan (SPCC plans). Municipally owned industrial facilities subject to the NPDES Industrial General Permit must maintain and implement facility SWPPPs. All of these regulations cover many of the items requested in the draft Phase II permit. We suggest a waiver for facilities already subject to these requirements.</p> <p>Another suggestion is to add specific information requirements to existing reports, rather than creating a redundant and separate SWPPP. A Standard Operating Procedure guideline may be all that is required for smaller facilities that do not already have a Hazardous Material Business Plan or other similar report or permit.</p> <p>A final suggestion would be to allow the Permittee to develop general SWPPPs for similar types of facilities so that each site managed consistently. It does not make sense to require individual SWPPPs for each hotspot.</p>
37	Stormwater Pollution Prevention Plans (SWPPP)	E.9.d	Definition of SWPPP is needed. Contents of SWPPP need to be provided or referenced.

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<b>Comment #</b>	<b>Permit Element/ Issue/ Concern</b>	<b>Location in Draft</b>	<b>Comment</b>
38	Inspections, Monitoring and Remedial Action – Weekly visual inspections	E.9.e.ii.a	<p>Weekly Inspections are not practicable. A Standard Operation Procedure (SOP) should be sufficient if all employees are trained and are educated on what to look out for. In Marin, Traditional Renewal Permittees have provided training to municipal staff annually since the permit was issued in 2003 and for 10 years before that.</p> <p><i>Recommendation</i>  <u>Revise section E.9.e.ii as follows: Conduct quarterly hotspot facility visual inspections to ensure SOPs are being followed. Trained staff will ensure facilities are being maintained in accordance with permit requirements and will take corrective actions when necessary. Conduct, track and report comprehensive annual inspections at hotspots. Comprehensive inspections will include visual observations of stormwater discharge locations. Permittee staff will review SOPs annually to ensure that all facility inspections are effective. Permittees will inspect non-hotspot facilities on an as needed basis.</u></p>
39	Inspections, Monitoring and Remedial Action – Remediation of problem sites	E.9.e.ii.c	<p>The requirement to implement BMPs in 3 days is too tight. Facilities consist of permanent buildings and BMPs. A Permittee may identify the need for physical alterations which could require years to fund, design and construct.</p> <p><i>Recommendation: Require that issues requiring new or modified BMPs “shall be remedied as soon as practicable.”</i></p>
40	Storm Drain System Assessment and Prioritization	E.9.f (ii)(a)	<p>It is arbitrary to state that a minimum of all catch basins will be designated as high priorities.</p> <p><i>Recommendation: The permit should be revised to allow Permittees to prioritize catch basins according to local information and guidance included in the permit.</i></p>

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<b>Comment #</b>	<b>Permit Element/ Issue/ Concern</b>	<b>Location in Draft</b>	<b>Comment</b>
41	Maintenance – Cleaning Frequency	E.9.g.ii.b	<p>Cleaning all basins that are 1/3<sup>rd</sup> full is arbitrary and not a good use of limited resources as some of the catch basins that are 1/3<sup>rd</sup> full may not be a problem – likewise, other catch basins that are less than 1/3 full may be a problem. Depending on the number of catch basin to be cleaned, cleaning within a week may not be feasible. Some catch basins may fill to 1/3 multiple times during a winter.</p> <p><i>Recommendation</i>                      Require that Permittees establish an annual cleaning schedule of problem sites according to locally determined priorities and definitions that may fluctuate from year to year depending on circumstances.</p>
42	Maintenance – Trash Removal	E.9.g.ii.d	<p><i>Recommendation</i>                      Use the following language in the permit “remove trash annually from high priority sites or as needed.”</p> <p><i>It is not realistic to require monitoring of all Permittee owned open channels, detention basins, and other drainage structures for debris. The focus should be on high priority sites or sites close to receiving waters.</i></p>
43	O&M Activities: Special Events	E.9.h	<p>Special events would be required to have Operations and Maintenance Plans. This will be a time consuming and costly requirement.</p>

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<b>Comment #</b>	<b>Permit Element/ Issue/ Concern</b>	<b>Location in Draft</b>	<b>Comment</b>
44	O&M Activities: BMP Inspection	E.9.h.i	<p>Keep review annually. In practice, this has been found to be adequate to demonstrate maintenance and compliance.</p> <p><i>Recommendation</i>                      Change the quarterly assessment to an <u>annual</u> assessment. In practice, this has been found to be adequate to demonstrate maintenance and compliance, as personnel are trained annually so that if water quality issues are noticed, then O&amp;M personnel will take care of them. In addition, in areas that receive snow, most of the items listed such as outdoor events and outdoor maintenance activities, cannot be inspected quarterly. Also, consider flexibility of monitoring and maintaining the BMPs, not all BMPs will require regular monitoring and maintenance.</p>
45	Flood Management Facilities Retrofit Requirement	E.9.i	<p>Retrofit requirements are unrealistic and likely not feasible to comply with. Having a minimum annual compliance number may be impossible to meet as retrofitting requires 401 Certification, US ACOE and Department of Fish and Game permits as well as CEQA which could take longer than a year to receive.</p> <p><i>Recommendation</i>                      Remove this requirement. The State's 401 process is a better mechanism to coordinate Flood Control retrofits. Additionally, flood management facilities are not defined.</p>

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<b>Comment #</b>	<b>Permit Element/ Issue/ Concern</b>	<b>Location in Draft</b>	<b>Comment</b>
46	Pesticide, Herbicides and Fertilizer Management – Clarification	E.9.j.	<p>What does it mean to “Implement educational activities and permits”? Currently, Department of Pesticide Regulations regulates pesticide application. Please reword to make intent clear.</p> <p>This permit could adversely affect the County of Marin’s integrated pest management (IPM) program. Requirements in the permit would duplicate and potentially conflict with the program. This program is already subject to the Department of Pesticide Regulation and the EPA requirements and the proposed requirements will be unnecessary and redundant.</p> <p>Implications of the pesticide management aspects of the draft permit could have serious impacts on the County’s ability to protect and restore habitat and property. The proposal to require use of manual methods to control weeds is expensive and may not be as effective as chemical controls.</p> <p>Eliminating fertilizer from 5 feet from any pavement and 25 feet from a catch basin is for all practical purposes impossible and would dramatically reduce the safe playing surface for sport fields.</p>
47	Pesticide, Herbicides and Fertilizer Management – Clarification	E.9.j.ii.b.1	Currently, Department of Pesticide Regulation regulates pesticide application. Please reword to make intent clear.

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<b>Comment #</b>	<b>Permit Element/ Issue/ Concern</b>	<b>Location in Draft</b>	<b>Comment</b>
48	Pesticide, Herbicides and Fertilizer Management – Replace “prohibit” with “where practicable, avoid applying within ...”	E.9.j.ii.b.2	<p><i>“Limiting or eliminating the use of fertilizers, including prohibiting application within 5 feet of pavement, 25 feet of a storm drain inlet, or 50 feet of a waterbody.”</i></p> <ol style="list-style-type: none"> <li>1. Some turf areas have storm drain inlets in them or go right up to a sidewalk or pathway, and not using fertilizer would decrease the health of the turf causing uneven footing that could cause a tripping hazard, or cause exposed soil areas that would be susceptible to erosion.</li> <li>2. Proper fertilization (that incorporates water quality considerations) reduces the need for herbicides and is part of some IPM programs.</li> </ol>
49	Pesticide, Herbicides and Fertilizer Management –	E.9.j.ii.b.2	Define fertilizer – just commercial fertilizers or all (manure, worm castings, etc.)
50	Pesticide, Herbicides and Fertilizer Management – Reporting	E.9.j.iii	Already report pesticide usage to the Department of Pesticide Regulation (DPR). Remove redundant requirement.
51	Pesticide, Herbicides and Fertilizer Management – Training	E.9.k.	County of Marin reports training under IPM program to DPR. Please remove redundant reporting requirements.

<b>E.10 TRASH REDUCTION PROGRAM</b>			
<b>Comment #</b>	<b>Permit Element/ Issue/ Concern</b>	<b>Location in Draft</b>	<b>Comment</b>
52	Trash Reduction – Structural Controls	E.10(ii)	Define “trash capture structural controls” and provide examples.

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<b>E.10 TRASH REDUCTION PROGRAM</b>			
<b>Comment #</b>	<b>Permit Element/ Issue/ Concern</b>	<b>Location in Draft</b>	<b>Comment</b>
53	Implementation Level - Full Capture Device Requirement	E.10.ii.b	<p><i>Recommendation</i>  <i>The State should remove this requirement as it is overly burdensome for municipalities at this time.</i></p> <p><i>A more reasonable requirement for this Permit term would be to develop and begin implementing a trash reduction plan with reasonable and achievable reduction goals specified. This would allow flexibility for Permittees to implement actions specific to trash sources and the local community.</i></p>

<b>E.11 INDUSTRIAL COMMERCIAL FACILITY RUNOFF CONTROL</b>			
<b>Comment #</b>	<b>Permit Element/ Issue/ Concern</b>	<b>Location in Draft</b>	<b>Comment</b>
54	General – Remove Requirement	E.11 All	<p><i>Recommendation: An Industrial/Commercial Inspection program was never anticipated under the Federal Phase II Rule. This entire section should be removed. The State’s Industrial General Permit (IGP) provides the State with sufficient means to ensure industrial facilities covered by the permit are protecting water quality.</i></p> <p><i>Other regulations through Certified Unified Program Agencies (CUPA) and through Publically Owned Treatment Works’ (POTWs) pre-treatment programs result in routine inspections that help protect stormwater quality discharging from high priority businesses/facilities. Some of these facilities are also covered by the IGP. Consider that CUPA requires Hazardous Material Business plans. Fuel Stations must have Spill Prevention Control and Countermeasure Plans (SPCC plans). The draft Phase II permit business inspection requirements will therefore be redundant in some cases.</i></p> <p><i>If this requirement remains as drafted, Permittees will be forced to establish new fees for inspections. Since the State already collects fees from IGP facilities, some facilities will be charged twice (once by the State and once by the local agency).</i></p>



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<b>E.11 INDUSTRIAL COMMERCIAL FACILITY RUNOFF CONTROL</b>			
<b>Comment #</b>	<b>Permit Element/ Issue/ Concern</b>	<b>Location in Draft</b>	<b>Comment</b>
55	General – Significant Modification		<p><i>Recommendation: If a Commercial/Industrial program element is maintained, we strongly recommend that this provision be limited to provision E.5.c Industrial /Commercial Outreach and Education Program which requires inventorying business locations (per E.7.b criteria; which is different than inventory requirements in section E.11.a.) and providing outreach on best management practices.</i></p> <p><i>At a minimum, the requirements of this section should be phased in over multiple permit cycles. A similar approach was taken for Phase Is in earlier iterations of their permits and the same process should be afforded to Phase IIs.</i></p> <p><i>Stormwater related inspections of industrial facilities not covered under the IGP and specified commercial facilities should be coordinated with other agencies that are already responsible for site inspections (inspections (e.g. Environmental Health Departments for restaurants and food establishments or the Certified Unified Program Agencies that inspect facilities for hazardous materials). The State Water Board should coordinate with other state agencies to identify these areas of overlap and eliminate redundancy.</i></p>

<b>E.12 POST CONSTRUCTION STORMWATER MANAGEMENT PROGRAM</b>			
<b>Comment #</b>	<b>Permit Element/ Issue/ Concern</b>	<b>Location in Draft</b>	<b>Comment</b>

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<b>E.12 POST CONSTRUCTION STORMWATER MANAGEMENT PROGRAM</b>			
<b>Comment #</b>	<b>Permit Element/ Issue/ Concern</b>	<b>Location in Draft</b>	<b>Comment</b>
56	Compliance Tiers	E.12(a)	<i>Recommendation: Provide a clear definition of “Endangered Species Habitat” in the permit.</i>
57	Watershed Baseline Characterization – Stream Assessment: Modification	E.12.b.1.	<p>The State Board and the Department of Fish and Game currently collect habitat assessment data or are in the process of developing these programs to support the DRAFT Stream and Wetland Protection policy. The requirement to collect data should be vetted through these State agencies before asking local agencies to set up their own efforts that may not be consistent with State programs and policies. For example, DFG conducts routine habitat assessments throughout the Bay Area and the State that could serve as a surrogate for this data. Furthermore, based on the extensive experience of Bay Area Phase I MS4s, conducting Unified Stream Assessments (USAs) is an extremely time and data intensive process. The USA is a continuous stream walk that identifies impacts (such as channel erosion) and assesses physical habitat value of streams. This process typically requires more than 40 hours of in-office preparation and 40+ hours of in-office post-processing.</p> <p><i>Recommendation: Remove this requirement. The Watershed Characterization should be limited to desktop analyses, where warranted, only with the possibility of adding in a field component in future years.</i></p>
58	Sediment Budget: Modification	E.12.b.2.i & ii	<i>Recommendation: Permittees in Marin will be unable to conduct a sediment budget without hiring outside assistance. Due to the unclear nature of this requirement and its use, we recommend that this be provided as “optional”.</i>
59	Entire Section	E.12	<i>Recommendation: The California Stormwater Quality Association (CASQA) is providing the State Water Board with almost 60 detailed comments on section E.12 of the Draft Phase II permit. The CASQA comments included in Attachment A to the CASQA comment letter on the Draft Phase II permit address MCSTOPPP’s concerns. Please refer to CASQA’s comments.</i>

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<b>E.13 RECEIVING WATER MONITORING</b>			
<b>Comment #</b>	<b>Permit Element/ Issue/ Concern</b>	<b>Location in Draft</b>	<b>Comment</b>
60	General: <u>Remove Requirement</u>	E.13 All	<p>A monitoring program was never anticipated under the Federal Phase II Rule. This section should be deleted.</p> <p><i>Recommendation: Remove requirement.</i></p> <p><i>If the monitoring requirement is not removed, we recommend that the State Water Board assess the existing statewide Bioassessment and Stream Pollution Trends (SPoT) monitoring programs (part of the Surface Water Ambient Monitoring Program (SWAMP)) to determine whether the state can obtain receiving water condition information in Phase II areas. This approach should be considered only if it offers a cost-effective, less expensive alternative for Permittees. This approach could produce better data quality and could result in a more consistent, statistically valid, and scientifically defensible monitoring design. However, if the statewide SWAMP program is expanded, Permittees must be able to provide technical and scientific input into the study design. Furthermore, the cost to implement SWAMP should not be tied to NPDES permit fees and should not be increased unless approved by the Permittees. The goal must be to contain monitoring costs while obtaining water quality information within Phase II areas.</i></p>
61	Phase II Stormwater Management Questions	E.13 All	<p>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.</p>
62	General - Applicability	E.13 All	<p>The receiving water monitoring section appears to apply only to freshwater bodies.</p> <p><i>CASQA Recommendation</i></p> <p><i>Clearly state that the receiving monitoring provisions apply only to freshwater bodies at the beginning of E.13.</i></p>

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63	Ocean Monitoring	E.13. b.	<p><i>Recommendations:</i>                      Remove ocean receiving water requirements and rely on an expanded SWAMP program to measure water quality in the ocean receiving waters.</p> <p><i>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.</i></p> <p><i>Until Appendix III – Standard Monitoring Procedures – to the California Ocean Plan is finalized it would be infeasible 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.</i></p>

<b>E.14. PROGRAM EFFECTIVENESS</b>			
<b>Comment #</b>	<b>Permit Element/ Issue/ Concern</b>	<b>Location in Draft</b>	<b>Comment</b>

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<b>E.14. PROGRAM EFFECTIVENESS</b>			
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64	Compliance Tiers	E.14.b.a [page 88]	<i>Recommendation: Referring to requirements of an earlier permit may lead to confusion. Remove the reference to Attachment 4, Section B, Design Standards of WQO 203-0005-DWQ and instead explain which Permittees this requirement applies to.</i>
65	Best Management Practice Condition Assessment – Organization	E.14.a	<i>Recommendation: The requirements of this section should be included and the results reported under the Post-Construction Section (E.12.b.8). This requirement addresses operation and maintenance related issues for these BMPs, not effectiveness assessments.</i>
66	BMP Condition Assessment – Implementation Level	E.14.b(ii) & E14.b(ii)(a)	<p>The permittee is required to develop and implement a methodology similar to the Lake Tahoe BMP Rapid Assessment Methodology to inventory, map and determine the relative maintenance condition of the urban stormwater BMPs. Thus far, no community has been able to fully implement the methodology in this manual and it has not been proven. The manual requires that 3 visual inspections be done each year. Permittees do not have the staffing for this.</p> <p>In 2008-2009 the Tahoe RCD received 3.9 million dollars to fund the Best Management Practices Program. These monies were received as grants from 8 different agencies including 3 million from Prop 50. The BMP RAM Technical Document will require funding opportunities and grants to implement across the state.</p> <p><i>Recommendation: Instead of requiring the Lake Tahoe BMP Rapid Assessment methodology, MCSTOPPP recommends the following replacement language (note that our recommendation differs from CASQA here):</i></p> <p><i><u>“Develop and implement a methodology to inventory, map and determine the maintenance condition of the Post Construction BMPs. Maintenance condition may be determined through a self-certification program where Permittees request information or provide existing agreements from other parties demonstrating proper maintenance and operations”.</u></i></p>

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67	Municipal Watershed Pollutant Load Quantification	E.14.c	<p>This section requires analyses that will be highly burdensome and resource intensive for MS4s to conduct, will be of limited accuracy and limited value because it is based on many assumptions and generalized models, and will likely be applied inconsistently from MS4 to MS4. In addition, it assumes that the constituents identified are priority constituents for all communities and/or that there is a general methodology that can be followed in order to consistently determine what the annual loads are (e.g., trash). Furthermore, it is not clear how this exercise will result in water quality improvements.</p> <p>The section also states, “The report shall also identify storm water retrofit opportunities” and includes a footnote that reads “The Permittee shall use the Center for Watershed Protection’s guide on Urban Stormwater Retrofit Practices.” This requirement exceeds federal guidelines.</p> <p><i>Recommendation: Remove this section.</i></p>

<b>E.15. TMDLs</b>			
<b>Comment #</b>	<b>Permit Element/ Issue/ Concern</b>	<b>Location in Draft</b>	<b>Comment</b>

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E.15. TMDLs			
Comment #	Permit Element/ Issue/ Concern	Location in Draft	Comment
68	TMDL Compliance Requirements – Clarification	E.15.c [page 92]	<p><i>Recommendation: Modify the permit language as follows:</i></p> <p><i>Notwithstanding requirements described in E.15.a. and E.15.e., the State Water Board may revise this General Permit to incorporate <del>any modifications or revisions to the TMDLs in Attachment G, or to incorporate any Basin Plan Amendments that (1) modify an existing TMDL identified in Attachment G or (2) that established a new TMDL</del> <u>new TMDLs adopted</u> during the term of this General Permit that assign a WLA to the Permittee <del>or that identifies the Permittee as a responsible party</del>. In revising Attachment G, the State Water Board will allow adequate public review.</i></p> <p><i>The term “responsible party” has a significant (and different) meaning in environmental law. In this case, the deleted statement is redundant with the WLA (the Permittee would be responsible because they have a WLA).</i></p>
69	TMDL Compliance Requirements	E.15	<p><i>Recommendation: The point of compliance with TMDL allocations needs to be clarified as follows (please note, the suggested language below differs slightly from CASQA’s suggested language):</i></p> <p><i><b>E.15.a.</b> The Permittee shall comply with all applicable TMDLs approved pursuant to 40 CFR § 130.7 for which the Permittee has been assigned a Waste Load Allocation <u>and/or a Load Allocation</u> <del>or</del> <b>and</b> has been identified in Attachment G (see Attachment G).</i></p>

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E.15. TMDLs			
Comment #	Permit Element/ Issue/ Concern	Location in Draft	Comment
70	TMDL Compliance Requirements – Retroactive Compliance	E.15.b	<p>This section states “In some cases, dates are given that fall outside the term of this General Permit. Compliance dates that have already passed are enforceable on the effective date of this General Permit.....” However, how can a jurisdiction retroactively comply or be enforced against? This requirement is of significant concern. MS4s must comply with their NPDES permits. The federal Clean Water Act does not require implementation plans and due dates, so requiring immediate compliance with a RWQCB implementation plan is not necessary under the federal NPDES program.</p> <p><i>Recommendation: Modify the permit language as follows</i></p> <p><i>Compliance dates that have already passed <del>are</del> <u>may be</u> enforceable on the effective date of this General Permit; <u>however, this will have to be determined on a TMDL by TMDL basis.</u></i></p> <p>In many cases, the effective date of the TMDL is interpreted as the effective date of this General Permit. For example, requirements due two years after the effective date of the TMDL will be enforceable two years after the effective date of this General Permit.”</p>
71	Attachment G - Wasteload Allocations	Attachment G	<p><i>Recommendation: Revise language in Attachment G to exclude numeric wasteload allocations. Include language that states the implementation requirements consistent with the TMDLs.</i></p>
72	Attachment G	Attachment G	<p>The third column heading of Attachment G should be changed to “Permittee”. It now reads “Municipality”. Not all Permittees named in the draft Phase II permit are municipalities and not all implementing parties named in TMDLs are municipalities. Regional Boards should revise contents of Attachment G to include all intended implementing parties.</p>



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<b>E.15. TMDLs</b>			
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73	Attachment G – Tomales Bay Pathogens	Attachment G	Under “Requirements for Implementing the Tomales Bay Pathogens TMDL Wasteload Allocations” we recommend these changes “ <del>Municipalities</del> <u>Permittees</u> shall, by within <del>18</del> <u>24</u> months of permit adoption”.  Change v. to say “If listed as a “ <u>Sampling Entity</u> ” in Table 4-25 in Chapter 4 of the BPA, conduct baseline water quality monitoring to evaluate fecal coliform concentration...”
74	Attachment G – Richardson Bay Pathogens	Attachment G	Under “Requirements for Implementing the Richardson Bay Pathogens TMDL Wasteload Allocations” we recommend these changes “ <del>Municipalities</del> <u>Permittees</u> shall, by within <del>18</del> <u>24</u> months of permit adoption”.
75	Attachment G – Urban Creek Diazinon & Pesticide Toxicity	Attachment G	Under “A. Adopt a Pesticide-Related Toxicity Control Program”. We recommend this change “The IPM Policy or Ordinance, <u>or equivalent mechanism</u> shall be adopted by the Permittee’s governing body within <del>18 months</del> <u>2 years</u> of permit adoption.