



July 23, 2012

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street 24th floor
Sacramento, CA 95814



Re: Comment Letter- 2nd Draft Phase II Small MS4 General Permit

Dear Ms. Townsend:

ERNESTO OLIVARES
Mayor

JOHN SAWYER
Vice Mayor

SCOTT BARTLEY
SUSAN GORIN
JAKE OURS
MARSHA VAS DUPRE
GARY WYSOCKY

Thank you for the opportunity to comment on the 2nd Draft Phase II Small MS4 General Permit. Please accept this letter and attachments as the formal comment from the City of Santa Rosa on the May 18, 2012 version of the 2nd Draft Phase II Small MS4 General Permit (Draft Permit).

As a Phase I community, the City of Santa Rosa's primary concern is the **lack of consistency** between the Phase I Permit requirements in the Santa Rosa Area and the requirements in the Draft Permit. The Draft Permit creates a program that is completely distinct from the existing Phase I program. The great level of inconsistency prevents Phase II Permittees who choose to apply for coverage under the statewide permit from participating in regional programs with larger Phase I communities. For this reason, it is imperative that the language allowing Phase II communities to join a Phase I permit or be issued a separate permit by the Regional Board be strengthened, clarified and included in the final version of the Permit.

From a Phase I community prospective, the Draft Permit as written is largely **unimplementable**. The City of Santa Rosa reviewed this Draft Permit as though it would apply to the City and, even as a Phase I Permittee with an established funding source, Santa Rosa would not be able to implement this Draft Permit as written. There are three major reasons why this Draft Permit is not implementable:

1. **Many of the provisions require a specific result as opposed to a specific action and as such expose Permittees to third party lawsuits.** For example, the outreach provision of the Draft Phase II Permit requires a measured *increase* in knowledge as opposed to requiring outreach tasks. If a Phase II Permittee carries out this task by creating outreach materials, participating in events, and hosting trainings, but subsequent surveys do not show increased knowledge by the public, the Permittee could be sued by a third party for failing to meet the requirements of the permit.

2. **Many of the provisions are not technically feasible or do not provide enough specific information to be implemented.** For example, it would not be physically possible to sample every outfall that has discharge 72 hours after a rain event because of the potential large number of outfalls, access issues, manpower needed, and required sample hold times. In addition, the cost of this type of sampling effort would be enormous.
3. **The level of reporting is excessive and provides no water quality benefit.** The level of reporting and the number of items that require reporting are excessive. Despite our established program, Santa Rosa would not be able to meet the reporting requirements of the Draft Permit. Additionally, much of the data requested do not seem necessary as they do not affect the implementation of the program. For example, providing complete enforcement records on every incident has no direct water quality benefit and creates a massive work load. The language of the Draft Phase II Permit should be revised to minimize reporting of requirements that have no direct water quality benefit so that Permittees can direct their staff time and resources to efforts that have a direct water quality benefit.

As a Phase I Permittee, the City of Santa Rosa is most interested in regional consistency, building partnerships, and sharing knowledge and experiences with local Phase II Permittees.

Numerous stakeholders throughout our region and the state will be affected by the adopted Phase II Permit. The program resulting program needs to provide a water quality benefit, be clear and technically sound, allow for regional consistency, and be implementable. Currently most of the requirements set forth in the Draft Phase II Permit do not meet these criteria. Considering the ongoing financial constraints that most, if not all, Phase II Permittees face, the only way to succeed at this is to consider the most effective and efficient measures and prioritized them in the Phase II Permit.

The City of Santa Rosa supports continued collaboration between local Phase II communities and state regulatory staff to revise the current draft permit. We appreciate the sincere and earnest efforts of the State Water Quality Control Board to develop a workable Phase II for all parties concerned and one that will ultimately enhance and protect the water quality of local creeks throughout the state.

The City of Santa Rosa also supports the comments submitted by the Russian River Watershed Association.

Specific comments on permit language are provided in Attachment 1 to this letter. If you wish to discuss any of the City's comments or suggestions, please contact Heaven Moore at (707) 543-4530 or hmoore@srcity.org.

Thank you again for the opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read 'ERNESTO OLIVARES', with a long horizontal flourish extending to the right.

ERNESTO OLIVARES
Mayor

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Encl: Attachment 1 - City of Santa Rosa's detailed comments.
 Attachment 2- CASQA's receiving water limitation provision letter.

Page Number	Section	Comment
13	A.	Provide additional information about how the Phase II permittees should notify their Regional Board. Is there a formal process? How shall notification be documented to demonstrate compliance to a third party? Language should state that the Regional Board has authority to add any Phase II permittee in their region to the Phase I permit. This will allow for regional consistency and cost savings for the Phase II communities.
14	A.1.b.4	It is unclear what is meant by "Guidance Document." Is this a "Storm Water Management Plan" or another document? Recommend allowing an alternative document if it meets the minimums listed.
16	B.3.	List of non storm water discharges does not match those listed in the Region 1 Phase I Permit. These non storm water discharges are categorically allowed but the minimum BMPs are not specified. This is an issue because this type of generic language exposes Phase II Permittees to third party lawsuits. Recommend that Permittees be allowed to propose allowable non storm water discharges and the minimum BMPs for each. The non-storm water discharge BMP plan would then be reviewed and approved by the Regional Board. This would be consistent with the Phase I Permit and allow both flexibility and protection from potential third party lawsuits.
16	B.4.	It is unclear if this section is meant to apply to incidental runoff from irrigation (both potable and recycled) only or both irrigation and municipal water supply systems. Please clarify. Suggest applying to irrigation systems only as some municipal water supply leaks continue for more than 72 hours if they are very low flow. Consider changing the first sentence to: "Discharges of Incidental Runoff from landscape areas shall be controlled." Recommend that this item be combined into the non-storm water discharge BMP plan so that each Permittee can propose a leak response plan that is feasible and

		best protects their community.
17	B.4.e.	The over arching language in this section particularly exposes Permittees to third party lawsuits. It would be very difficult to prove that the Permittee had taken “any other actions necessary” even with their best efforts. Please remove this language.
17	D.	Please consider changing current receiving water limitations language to be consistent with CASQA’s proposed language for receiving water limitation provision (attached). Use of CASQA’s language will clearly indicate that compliance with the iterative process provides effective compliance with discharge prohibitions and the “shall not cause or contribute” receiving water limitation. The proposed language will allow Phase II communities to focus and prioritize their limited resources on critical water quality issues that will lead to water quality improvements.
18	E.1.b	This section states that all renewing Permittees must implement monitoring programs as specified in this Order. However, none of the Phase II Permittees in our region call within the criteria established in Section E.13’s monitoring programs. Please evaluate and reword these sections to be consistent.
19	E.6.a.	The requirement seems to require that the Permittees to write new storm water ordinances or take other measures to expand their legal authority. This is a very involved and time intensive process. If the intent is to allow Permittees to use their existing authority to implement the permit, please revise the language to state that.
20	E.6.a.(ii)(h)	The requirement to enter private property is not consistent with the Phase I permit and may not be legally obtainable by the Permittees. Please revise language to state that the Permittee must inspect all legally accessible BMPs and allow another method to insure that maintenance of BMPs that are not accessible.
20	E.6.a.(ii)(i)(1)-(2)	The timeframe specified for abatement of spills is inconsistent with the Phase I permit. Please remove this language in favor of requiring the submittal of a spill response plan, including cleanup timeframes for Regional Board for review and approval.
20	E.6.a.(ii)(j)(1)-(2)	The requirement to be able to administer fines and

		collect costs. Will require significant work to establish and may not be feasible for small communities, nor is it required in the Phase I permit.
21	E.6.b.(ii)(a)-(e)	These requirements are time intensive without providing a direct water quality benefit nor are they required by the Phase I permit. Please consider eliminating.
22	E.6.c.(ii)(d)(1)(a)-(d) and (2)(a)-(e)	This language inappropriately places the responsibility of verifying and tracking applicants for other State permits (State CGP or IGP) on the Phase II Permittee. These permits are appropriately the State's responsibility to track and enforce especially since the State receives permit fees. Phase II communities do not have the authority or sufficient resources to carry out this task. Please remove this language.
23	E.6.c.(ii)(d)(2)(f)	This recidivism reduction language exposes the Permittees to third party lawsuits. Please remove or revise to specify a level at which the Permittee is compliant.
23	E.6.c.(iii)	This level of reporting is not required by the Phase I permit. Providing complete enforcement records on every incident has no direct water quality benefit and is a massive work load (Santa Rosa responds to over 120 spills in a typical year). Recommend that this reporting requirement be replaced with a program where the Permittee keeps the Regional Board apprised of recent spills on a regular basis (such as at monthly CoPermittees meetings) and provide statistical summary information in the annual report.
24	E.7.a.(i)	It is unclear what is meant by "targeted communities" and how they would be selected. It is also unclear how the Permittee would demonstrate a "measurably increase" knowledge of these communities.
25	E.7.a.(ii)(a)	It is unclear what "water quality problems" would need to be addressed and how they would be selected. It is unclear what is meant by "target communities" and how they would be selected.
25	E.7.a.(ii)(b)	The requirement to complete two surveys during the permit term is above and beyond what is required by the Phase I permit, which requires one survey during the permit term.
25	E.7.a.(ii)(h)	It is unclear what is meant by "daily" frequency for checking the non-emergency number is intended to

		mean normal working day. Please clarify language. Suggest defining “daily” to mean normal working day and to have emergency personal respond to after hour emergencies.
26	E.7.a(ii)(I)	The requirement to target organized car washes is above and beyond what is required in the Phase I permit. Recommend that this be addressed in the non-storm water BMP plan so that the Permittee has the flexibility to propose how to address car washes or to ban them entirely.
27	E.7.b.2.(ii)(a)-(b)	The requirement to have all city staff who review sediment and erosion control plans and inspect project sites be QSD/QSP certified is above and beyond what is required in the Phase I permit. This requirement may not be feasible for Permittees as many of the existing people who perform this work do not have the prerequisite training to obtain QSD/QSP certification, but do have adequate field experience and expertise. There is also an associated cost to this process. Recommend that this requirement be removed in favor of some other form of verification of proficiency such as a focused audit/field inspection by Regional or State board.
30	E.9.a.(i)	Clarify mapping requirement-Recommended that this language require the mapping of the entire public storm drain system, including outfalls, and include the direction of pipe flow. This requirement is considered fundamentally important for any storm water program.
30	E.9.a.(ii)(a)	Requiring the mapping of drainage areas and land uses is above and beyond what is required by the Phase I permit. This information would not change the level or method of response. Suggest eliminating this provision for now.
30	E.9.a.(ii)(b)	The requirement to include baseline photographs is above and beyond what is required by the Phase I permit. This is a huge work load and would not change the level or method of response and will not provide a direct water quality benefit. It is very difficult to even see many storm drain outfalls due to vegetation and limited access. Recommend removing this language.
30-31	E.9.a.(ii)(c)1-5	This entire section (Priority Areas) is above and beyond what is required in the Phase I permit. Establishing priority area would not change the level or method of

		response and will not provide a direct water quality benefit. Additionally, since every Permittee in our region drains to a sensitive water body (303d listed), the entire region would be a priority area. Recommend that this section be removed.
31, 32	E.9.b. and E.9.b. (ii)(d)	Illicit Discharge Source/Facility Inventory would be a huge work load even for Santa Rosa which is a Phase I and with extensive GIS database. As this mapping would not provide vital information or a direct water quality benefit, this requirement should be removed in favor of prioritizing efforts toward establishing storm drain mapping.
32	E.9.b.(ii)(c)	This language inappropriately places the State's responsibility of verifying and tracking applicants for other State permits (State CGP or IGP) on the Phase II Permittee. Phase II communities do not have the authority or personnel to carry out this task. Please remove this language.
32-33	E.9.c.	<p>This entire section is above and beyond what is required by the Phase I permit and would be extremely costly to implement. In the Santa Rosa area, almost all outfalls flow more than 72 hour after a rain event due to high ground water. And, since all Phase II Permittees drain to sensitive water bodies (303d listed), they would be required to sample all outfalls annually. The City of Santa Rosa has approximately 17,000 outfalls and while the Phase II Permittees will have fewer, it will still be an infeasible number to sample.</p> <p>Many storm drain outfalls are not accessible due to overgrown vegetation and limited access. There would be no way to physically sample them all while they were producing flow. This is an impossible requirement to meet, even for Santa Rosa.</p> <p>The parameters listed are not all applicable to the Santa Rosa area (we do not fluorinate our drinking water, but we do chlorinate). The action level for Potassium is lower than for drinking water. The action level for turbidity is inconsistent with the Construction General Permit (1000 NTU vs 250 NTU).</p> <p>This section should be removed as it is infeasible to implement.</p>

33-34	E.9.d.(ii) and (a)-(e) and (iii)	It is infeasible to “identify and locate the source of any prohibited non-storm water discharge within 72 hours of becoming aware.” Often the source is unable to identify at all. Instead, suggest including language requiring a maximum timeframe to start investigation of the prohibited discharge.
34	E.9.d.(iii)(a)-(f)	This level of reporting is excessive. Providing complete enforcement records on every incident is a massive work load (Santa Rosa responds to over 120 spills in a typical year) and has no direct water quality benefit. Recommend that this reporting requirement be replaced with a program where the Phase II Permittees keep the Regional Board apprised of recent spills on a regular basis (such as at monthly CoPermittees meetings) and provide statistical summary information in the annual report.
35	E.9.e.(iii)	Above and beyond what is required in the Phase I permit. Please remove.
35	E.10.	Need a lower limit on project size threshold “that disturb less than one acre of soil.” Some projects are so small that they do not even require permitting. Without a lower limit this requirement will always expose Phase II Permittees to third party lawsuits. Alternatively language needs to be added to state that the Permittee may select its own threshold.
35-36	E.10.a	Above and beyond what is required in the Phase I permit.
36	E.10.b.(ii)(c)	The language requiring that the applicant submit proof of obtaining other applicable permits to the Permittee prior to issuance of a grading permit will be administratively cumbersome and may present legal difficulties. Additionally this is specifically prohibited in the City of Santa Rosa and may be legally infeasible in other communities as well.
37	E.10.c.(iii)	The level of reporting represents a large workload without a direct water quality benefit. Recommend replacing language with a progressive enforcement policy.
38-39 40 41-42	E.11.a. E.11.d E.11.e	This entire section (Inventory of Permittee-Owned and Operated Facilities) is above and beyond what is required in the Phase I permit. This information would not change the level or method of response, represents a large. Please remove this section.

42-43	E.11.f. and E.11.g.	Inconsistent with the Phase I permit. Are “catch basins” defined as structures with a sump? Please define.
43	E.11.g.(ii)(a)	Inspecting a storm drain line is just as much work as cleaning it. The language requiring inspection should be removed in favor of putting resources toward cleaning activities.
43-44	E.11.h.	Inconsistent and above and beyond what is required in the Phase I permit. Remove this section in favor of allowing Permittees submit a non-storm water BMP plan that allows them to select which activities to allow and their associated BMPs.
45	E.11.i.	Above and beyond what is required in the Phase I permit. Unclear if this is meant to apply to projects undertaken by Permittees only or all projects. Need to define “flood management facilities.” Does this apply to ponds only? Or pipes also?
45-46	E.11.j.	Although this section only applies to Phase II Permittees’ facilities, many sites irrigated with recycled water are agency properties. This requirement is inconsistent with the Water Efficient Landscape Ordinance (WELo) for irrigation design and maintenance, which all cities (including charter cities) were required to either adopt the State version or an individualized version that was at least as effective as the State’s version by January 2010. This section should be revised to be consistent with the WELo.
47-48	E.12.c	Inconsistent with what is required in the Phase I permit. Specifically the project size threshold is smaller and the list of design measures is inconsistent. This section should be removed in favor of having Permittees adopt the site design measures being implemented by the Phase I in their region. This would allow for regional consistency, simplicity, and cost savings and prevent confusion and frustration. Regional consistency is a high priority for Santa Rosa as it supports a united local approach to address storm water concerns.
48-56	E.12.d.	Inconsistent with what is required in the Phase I permit in almost every regard. Missing information, such as recurrence interval of design storm, make this section unimplementable. The State is urged to remove this section in favor of having Permittees adopt requirements being implemented by the Phase I in their

		region. This would allow for regional consistency, simplicity, and cost savings and prevent confusion and frustration. Regional consistency is a high priority for Santa Rosa as it supports a united local approach to address storm water concerns.
57-58	E.12.d.	Please clarify this section. Could not provide further comment at this time due to confusion.
59	E.12.g.(ii)(c)	The requirement to enter private property is not consistent with the Phase I permit and may not be legally obtainable by the Permittees. Please revise language to state that the Permittee must inspect all legally accessible BMPs and allow another method to insure that maintenance of BMPs that are not accessible.
60	E.12.g.(ii)(e)(8)	The language as written exposes Permittees to third party lawsuits because it places the maintenance responsibility on the Permittee. Language needs to be revised.
62	E.12.h.	This section references “structural post-construction BMPs.” Is the intent all post construction treatment BMPs as required by the Phase II Order? If so, language needs to be revised. Requiring inventory and assessment of BMPs for flood control and other not required by this permit is not appropriate and may constitute an unfunded mandate. Please eliminate these requirements.
63	E.12.j.	If the intent is that the Phase II Permittees use their existing authority to implement the permit, the language needs to be revised to state that. The timeframe is very short and may be problematic if the intent is to have the Permittees revise or create new documents.
64-65	E.12.j.(ii)a.ii. and E.12.j.(ii)b	The required items listed in these sections are land use planning issues are not under the authority of the State Board and should be removed in favor of water quality objectives. The Permittees shall maintain their authority to select land use policy that is appropriate for their communities that meet water quality requirements. The tasks are inappropriate and constitute a very large and infeasible work load.
65	E.13. (iii)	The entire Santa Rosa region drains to a 303(d) listed water body, so it our understanding that the Phase II monitoring program will be determined by the Regional

		Board and that the programs listed in this permit will not apply.
67-68	E.13.b.1.	See previous comment. However, determining the effectiveness of LID BMPs as specified in this section would be infeasible even for a Phase I with a funding source like the City of Santa Rosa to complete. Santa Rosa is currently pursuing EPA grant funding to conduct this kind of research, but even if a grant is received this will be a multiple year effort. Above and beyond what is required in the Phase I permit. This type of evaluation could have broad benefit across the stat. As such, this undertaking would be best preformed by the State or US EPA.
69-70	E.13.b.2.(ii)	The entire Santa Rosa region drains to a 303(d) listed water body, so it is our understanding that the Phase II monitoring program will be determined by the Regional Board and that the programs listed in this permit will not apply. However, annual bioassessments will be cost prohibitive for Phase II Permittees. It would not even be feasible for Santa Rosa, which is a Phase I with a funding source. The current Phase I permit requires annual chemical and bacteria sampling, but only requires bioassessment once per permit term due to the level of cost and effort required. Recommend that this requirement be rewritten to direct Permittees to implement a program that is consistent with the Phase I in their region.
70	E.13.c.	The timeline for the completion of this special study (by the second annual report) is unrealistic as the project will only be scoped in the first year and it will take additional time for Regional Board to approve it. Additionally the Permittees will need to budget for it in advance. Recommend that this timeline be extended.
71-73	E.14.a.	As written, this section provides a high level of exposure to third party lawsuits. The requirement to measure program effectiveness is infeasible to implement. It is above and beyond what is required in the Phase I permit. Gauging the effectiveness of each BMP would be a huge work load. The specifics listed under "implementation level" are very specific and yet not clear enough to implement. Recommend this section be removed in favor of developing a plan for assessment (both self assessment and regulatory

		assessment) with the local Regional Board. This would allow for flexibility, would meet the intended water quality objective, and protect the Permittees from lawsuits. Additionally the reporting requirement should be similarly revised.
73-74	E.14.b.	This section seems to overlap with the monitoring requirements. Recommend that this section be removed in favor of the previous monitoring sections.
73-74	E.14.b.(i)	See previous comment. Additionally, this list of constituents may be inconsistent with what is determined by the Regional Board or what is listed in a TMDL. The testing methods for the various constituents are not listed and should be included.
74-75	E.14.c	This language seems to place the responsibility of BMP monitoring and even replacement (if found to not remove enough pollutants) on the Permittee. The associated cost with taking out a previously installed BMP, such as a Raingarden, and replacing it with another BMP would be infeasible.
76-77	E.15.d and E.16	Submittal through the SMARTS system has proven to be very difficult as the system is still undependable and difficult to navigate and sections seem to be missing. Recommend that an alternative method of submittal be allowed until such time that the SMARTS system is fully operational.
77	E.16	Clarify how submittal of the first annual report happens. Depending on the date of adoption, the year may span two permits. This matters most for items that must be reported in the Year-1 Annual Report.



California Stormwater Quality Association®

Dedicated to the Advancement of Stormwater Quality Management, Science and Regulation

February 21, 2012

Mr. Charles Hoppin, Chair
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Subject: Receiving Water Limitation Provision to Stormwater NPDES Permits

Dear Mr. Hoppin:

As a follow up to our December 16, 2011 letter to you and a subsequent January 25, 2012 conference call with Vice-Chair Ms. Spivy-Weber and Chief Deputy Director Jonathan Bishop, the California Stormwater Quality Association (CASQA) has developed draft language for the receiving water limitation provision found in stormwater municipal NPDES permits issued in California. This provision, poses significant challenges to our members given the recent 9th Circuit Court of Appeals decision that calls into question the relevance of the iterative process as the basis for addressing the water quality issues presented by wet weather urban runoff. As we have expressed to you and other Board Members on various occasions, CASQA believes that the existing receiving water limitations provisions found in most municipal permits needs to be modified to create a basis for compliance that provides sufficient rigor in the iterative process to ensure diligent progress in complying with water quality standards but also allows the municipality to operate in good faith with the iterative process without fear of unwarranted third party action. To that end, we have drafted the attached language in an effort to capture that intent. We ask that the Board give careful consideration to this language, and adopt it as 'model' language for use statewide.

Thank you for your consideration and we look forward to working with you and your staff on this important matter.

Yours Truly,

Richard Boon, Chair
California Stormwater Quality Association

cc: Frances Spivy-Weber, Vice-Chair – State Water Board
Tam Doduc, Board Member – State Water Board
Tom Howard, Executive Director – State Water Board
Jonathan Bishop, Chief Deputy Director – State Water Board
Alexis Strauss, Director – Water Division, EPA Region IX

CASQA Proposal for Receiving Water Limitation Provision

D. RECEIVING WATER LIMITATIONS

1. Except as provided in Parts D.3, D.4, and D.5 below, discharges from the MS4 for which a Permittee is responsible shall not cause or contribute to an exceedance of any applicable water quality standard.
2. Except as provided in Parts D.3, D.4 and D.5, discharges from the MS4 of storm water, or non-storm water, for which a Permittee is responsible, shall not cause a condition of nuisance.
3. In instances where discharges from the MS4 for which the permittee is responsible (1) causes or contributes to an exceedance of any applicable water quality standard or causes a condition of nuisance in the receiving water; (2) the receiving water is not subject to an approved TMDL that is in effect for the constituent(s) involved; and (3) the constituent(s) associated with the discharge is otherwise not specifically addressed by a provision of this Order, the Permittee shall comply with the following iterative procedure:
 - a. Submit a report to the State or Regional Water Board (as applicable) that:
 - i. Summarizes and evaluates water quality data associated with the pollutant of concern in the context of applicable water quality objectives including the magnitude and frequency of the exceedances.
 - ii. Includes a work plan to identify the sources of the constituents of concern (including those not associated with the MS4 to help inform Regional or State Water Board efforts to address such sources).
 - iii. Describes the strategy and schedule for implementing best management practices (BMPs) and other controls (including those that are currently being implemented) that will address the Permittee's sources of constituents that are causing or contributing to the exceedances of an applicable water quality standard or causing a condition of nuisance, and are reflective of the severity of the exceedances. The strategy shall demonstrate that the selection of BMPs will address the Permittee's sources of constituents and include a mechanism for tracking BMP implementation. The strategy shall provide for future refinement pending the results of the source identification work plan noted in D.3. ii above.
 - iv. Outlines, if necessary, additional monitoring to evaluate improvement in water quality and, if appropriate, special studies that will be undertaken to support future management decisions.
 - v. Includes a methodology (ies) that will assess the effectiveness of the BMPs to address the exceedances.
 - vi. This report may be submitted in conjunction with the Annual Report unless the State or Regional Water Board directs an earlier submittal.

- b. Submit any modifications to the report required by the State or Regional Water Board within 60 days of notification. The report is deemed approved within 60 days of its submission if no response is received from the State or Regional Water Board.
 - c. Implement the actions specified in the report in accordance with the acceptance or approval, including the implementation schedule and any modifications to this Order.
 - d. As long as the Permittee has complied with the procedure set forth above and is implementing the actions, the Permittee does not have to repeat the same procedure for continuing or recurring exceedances of the same receiving water limitations unless directed by the State Water Board or the Regional Water Board to develop additional BMPs.
4. For Receiving Water Limitations associated with waterbody-pollutant combinations addressed in an adopted TMDL that is in effect and that has been incorporated in this Order, the Permittees shall achieve compliance as outlined in Part XX (Total Maximum Daily Load Provisions) of this Order. For Receiving Water Limitations associated with waterbody-pollutant combinations on the CWA 303(d) list, which are not otherwise addressed by Part XX or other applicable pollutant-specific provision of this Order, the Permittees shall achieve compliance as outlined in Part D.3 of this Order.
5. If a Permittee is found to have discharges from its MS4 causing or contributing to an exceedance of an applicable water quality standard or causing a condition of nuisance in the receiving water, the Permittee shall be deemed in compliance with Parts D.1 and D.2 above, unless it fails to implement the requirements provided in Parts D.3 and D.4 or as otherwise covered by a provision of this order specifically addressing the constituent in question, as applicable.