



July 23, 2012

BY U.S. MAIL AND EMAIL

Charles R. Hoppin, Chair and State Water Board Members  
 c/o Jeanine Townsend, Clerk to the Board  
 State Water Resources Control Board  
 P.O. Box 100  
 Sacramento, CA 95812-2000  
[commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)



Re: San Francisco Public Utilities Commission Comments on the Draft  
 Phase II MS4 General Permit

Dear Chair Hoppin and State Water Board Members:

The City and County of San Francisco Public Utilities Commission (San Francisco or SFPUC) respectfully submits the following comments on the draft Waste Discharge Requirements for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems (Draft Phase II MS4 General Permit).

The SFPUC owns and operates a combined sanitary sewer system that collects and treats almost all of San Francisco’s wastewater and stormwater flow. There are small areas within San Francisco (comprising less than ten percent of the system) where the sanitary sewers have been separated from the storm sewers. SFPUC has dedicated considerable resources developing and implementing a stormwater management program for these areas. For example, in 2009, the City of San Francisco adopted an ordinance imposing requirements for stormwater control on new developments that is as rigorous as those required of large (Phase I) MS4 permittees. We are committed to effectively managing stormwater – within and outside of the combined areas – to protect the ocean and San Francisco Bay.

We have provided detailed comments on the specific provisions of the permit in the table below. In addition to those comments, we request clarification on the draft Permit’s current characterization of San Francisco as a non-traditional MS4. Because San Francisco was categorized as a traditional MS4 in the existing permit, this change in distinction would have significant implications for our current program. While State Water Quality Control Board (State Board) staff has indicated that San Francisco will be considered a traditional MS4, we ask that this be confirmed.

- Edwin M. Lee  
Mayor
- Francesca Vietor  
President
- Anson Moran  
Vice President
- Ann Moller Caen  
Commissioner
- Art Torres  
Commissioner
- Vince Courtney  
Commissioner
- Ed Harrington  
General Manager



We recommend that Section D.4 (Receiving Water Limitations) be modified in light of the recent case, *Natural Resources Defense Council v. County of Los Angeles*, 636 F.3d 1235 (9th Cir. 2011), *cert. granted* \_\_ U.S. \_\_ (2012). If a Permittee is making good faith efforts to remedy the cause of an exceedance of water quality standards by following the process outlined in Section D, the Permittee should not be considered in violation of the discharge permit prohibition and thus vulnerable to an enforcement action. San Francisco supports the approach outlined by the California Stormwater Quality Association (CASQA) in the letter it submitted to Chair Hoppin on February 21, 2012 to address this situation (attached as Exhibit A).

We also request that the San Francisco VA Medical Center and San Francisco State University be removed from Attachment B. These facilities discharge to the combined sewer system within the City and County of San Francisco and therefore do not qualify as an MS4.

SECTIONS		COMMENT
<b>A. APPLICATION REQUIREMENTS FOR ALL SMALL MS4 PERMITTEES</b>		
1	A.1.b.4 Guidance Document (p.14)	Creation of a comprehensive Guidance Document requires significant resources and coordination across many departments. We ask that the deadline for submittal be increased to one year rather than six months.
<b>B. DISCHARGE PROHIBITIONS</b>		
2	B.4 Discharges of Incidental Runoff (p.16)	The last sentence of this provision is unclear. We do not understand what water would in fact be considered incidental if intentional application is not incidental, and negligent application is not incidental. Please clarify this sentence and provide examples to better illustrate intent.
<b>D. RECEIVING WATER LIMITATIONS</b>		
3	D.4 Receiving Water Limitations (p. 18)	Please see comment made above in more depth regarding the legal need to make explicit the understanding that if a Permittee is making good faith efforts to correct the cause of an exceedance, the Permittee should not be considered to be in violation of the permit. San Francisco supports the approach outlined by CASQA in the letter it submitted to Chair Hoppin on February 21, 2012 to address this situation (attached as Exhibit A).
<b>E. PROVISIONS FOR ALL FOR TRADITIONAL SMALL MS4 PERMITTEES</b>		
<b>E.6 Program Management Element</b>		
4	E.6.a.ii.a&b Legal Authority Implementation Level (p.19)	It is infeasible for Permittees to completely eliminate illicit discharges because these discharges are usually outside of the agency's direct control. Accordingly, we suggest that the language be modified to "Prohibit and require elimination of illicit discharges"
5	E.6.a.ii.k Legal Authority Implementation level (p. 20-21)	The reference in this section incorrectly refers to E.4.c, but should refer to E.6.c.
6	E.6.c.ii.d Enforcement Measures and Tracking (p.22-23)	San Francisco objects to this measure. It would be inappropriate to conscript small MS4s into acting as an inspection and enforcement arm for the State's CGP and IGP permits, permits which the small MS4 entities neither control nor issue. Moreover, the proposed jurisdictional encroachment is not small –this section envisions an elaborate set of tracking, enforcement, and reporting requirements which includes setting up

		<p>schedules for returning to compliance and requiring the small MS4 entities to develop incentives, disincentives and escalating enforcement responses. These requirements would comprise a significant burden to perform.</p> <p>San Francisco recommends that the State delete this provision from the MS4 permit. At a minimum, this provision should be made optional.</p>
Education and Outreach Program		
7	E.7.a Public Education and Outreach (p.24)	On page 24 there are two sections labeled E.7.a(i). There are also two sections labeled E.7.a(ii), one on page 24 and the other on page 25.
8	E.7.a.ii.k Implementation Level (p.26)	This implementation provision identifies a component that does not appear to be related to either education or outreach. We therefore respectfully request the requirement be incorporated into E.9: Illicit Discharge Detection and Elimination.
9	E.7.b.2 Permittee Staff Training (p. 27)	We request that clarification that inspectors having QSP/QSD (which requires some level of background education such as CISEC) is sufficient training to qualify as adequately trained. In addition, we request that the Water Boards host qualifying trainings.
10	E.7.b.2.b.ii.a Construction Site Operator Education (p. 28)	Construction site operators are outside contractors not MS4 employees. It would be unduly burdensome for MS4 entities to obtain, track and report the training detail of other entities' employees. Like other required trainings, construction operators should bear the burden of construction operator training. We therefore request that the permit be revised to remove the reporting requirements for this section.
11	E.7.b.3.i & iii(a) Pollution Prevention and Good Housekeeping Staff Training (p.28-29)	Section E.7.b.3.(i) requires that the Permittee develop a <b>biennial</b> employee training program. However E.7.b.3(iii)(a) requires an <b>annual</b> training program. We request the SWRCB align the implementation level to match the task description, thus requiring a biennial employee training program in E.7.b.3(iii)(a)
12	E.7.b.3.ii.c Pollution Prevention and Good Housekeeping Staff Training (p. 29)	This implementation provision identifies a component (oversight procedures and tracking) that would be better suited to be addressed in provision E.11: Pollution Prevention/Good Housekeeping, rather than

		as an education or outreach requirement.
<b>Illicit Discharge Detection and Elimination</b>		
13	E.9.a Outfall Mapping (p.30)	Please provide a definition for “outfall.”
14	E.9.a.ii.c Outfall Mapping (p. 30-31)	Under this section the Permittee is required to prioritize areas with 1) older infrastructure, 2) sensitive water bodies. We request clarification on what constitutes “older infrastructure” and “sensitive water bodies.” For instance, is the entire San Francisco bay considered a “sensitive water body?” In addition, please clarify that “a history of sewer overflows” refers to <b>sanitary</b> sewer overflows.
15	E.9.b.ii.c Illicit Discharge Source/Facility Inventory (p.32)	This requirement seeks to make the Permittee accountable for checking for permit coverage for permits that are outside of the Permittee’s control or responsibility. As discussed previously, it is inappropriate to conscript small MS4s into becoming enforcement arms for other jurisdiction’s permits. We request that the requirement be revised to be optional, allowing the Permittee to report on lack of coverage if the Permittee becomes aware of it.
16	E.9.c. Field Sampling to Detect Illicit Discharges (p. 32-33)	San Francisco requests clarification of this section. In E.9.c.i, the permit states that “[t]he Permittee shall also sample outfalls annually identified as priority areas.” Does this anticipate that the sampling will be conducted during a rain event? If not, how else would an annual sample of outfalls in the priority areas be conducted? If yes, then does that mean MS4 Permittees will be required to examine outfalls in the priority areas twice a year –once for sampling and once for the annual inventory? If so, please clarify this in the provision’s language.  We also request clarification that in-pipe sampling is acceptable where sampling the outfall would be unsafe or where the outfall is underwater.
<b>Construction Site Storm Water Runoff Control Program</b>		
17	E.10.a. Construction Site Inventory & E.10b. Construction Plan Review and Approval Procedures	The Permittee is required to provide an inventory at the end of the first year of the permit term. We are finalizing the SF Construction Site Runoff Control Ordinance, and we expect to have the Ordinance adopted in tandem with the Construction Plan Review and Approval Procedures timeline

	(p.35-36)	outlined in the permit. However, it is not feasible to implement the Ordinance and ensure full compliance with the projects in SF within the required reporting timeline. In order for the Permittee to provide a complete inventory, the Construction Plan Review and Approval Procedures must be in place and be done sequentially. Therefore, we respectfully request that the construction site inventory reporting requirement be delayed to the second year Annual Report, in order to enable implementation of the Construction Plan Review and Approval Procedures within the first year.
18	E.10.c.ii Construction Site Inspection and Enforcement (p.37)	This provision requires that the Permittee conduct inspections, at a minimum, at major project milestones. We request that you provide the criteria for determining “major project milestones,” with examples to ensure clarity.
19	E.10.c.iii.a Construction Site Inspection and Enforcement (p. 37)	<p>The permit requires the Permittee to report on the “total number of active sites disturbing less than one acre of soil requiring an inspection” by the second year Annual Report. Since the permit requires implementation of the Plan Review and Approval Process and Legal Authority within the second year, we request that the timeline for this requirement be revised to be “by the third year Annual Report” to allow a full year’s worth of projects to be captured by the required Plan Review and Approval process and Legal Authority. Otherwise, it is infeasible for the Permittee to provide the SWRCB with an accurate depiction of program inspection and enforcement.</p> <p>During the Santa Rosa workshop on this draft permit (June 20, 2012), staff told participants that the de minimus size of project required to be tracked for purposes of this provision could correspond to the de minimus size of projects the MS4 entity regulates under its permits. We respectfully request that this clarification be put in writing in this section.</p>
20	E.10.c.iii.b Construction Site Inspection and Enforcement (p.37)	We request that the reporting requirement identifying the “total number of active sites disturbing one acre of more of soil” be removed. This requirement is duplicative of the State Construction General Permit, and

		as all of this information is available on the States SMARTS website.
<b>Pollution Prevention/Good Housekeeping</b>		
21	E11.c Facility Assessment (p. 39-40)	This is the only requirement in this section that is related to all “municipally owned/operated facilities” - the other requirements relate to Permittee owned/operated facilities. We request that the language for requirements E.11 be modified to “Permittee” owned and operated facilities for consistency and because this distinction is one that matters to San Francisco which has many municipally-owned facilities outside of the MS4 areas (in its extensive combined sewer area).
22	E.11.i. Habitat Enhancements in Flood Control Facilities (p. 45)	The permit currently does not explicitly distinguish “flood management facilities” between typical stormwater conveyance infrastructure and other types of flood management facilities. We recommend that the following sentence be added to the end of the glossary definition: “Facilities or structures designed for the explicit purpose of controlling flood waters safely in or around populated areas (e.g., dams, levees, bypass areas). Flood management facilities do not include traditional stormwater conveyance structures (e.g. stormwater sewerage, pump stations, catch basins, etc.).”
<b>Post Construction Storm Water Management Program</b>		
23	E.12.c. Site Design Measures (p.47-48)	<p>The requirement to review of projects between 2,500 and 5,000 square feet is problematic. It would be very time consuming for Permittees to review this scale since it implicates a significant number of projects. It is also quite uncertain whether this time would be well spent as there is no performance measure or required site design elements MS4 must require of construction projects under this provision. We suggest removing this requirement for parcels between 2,500 and 5,000 square feet.</p> <p>If the requirement is not deleted, we strongly request that the statement “the Permittee shall implement site design measures for all projects that create or replace 2,500 square feet or more of impervious surface...” be revised. According to discussions with State Board staff (Santa Rosa workshop on June 20, 2012), the intention of this requirement is</p>

		for the Permittee to <i>review</i> all projects that create or replace 2,500 square feet or more of impervious surface to ensure that site design measures are being implemented and not to actually <i>implement</i> site design measures for these projects. We request that the language be clarified to reflect this understanding.
24	E.12.d.1.ii Regulated Projects (p. 48)	State Board staff, at the Santa Rosa workshop on June 20, 2012), told participants that the intention of the permit is to require all projects that create or replace 5,000 square feet of impervious surface to meet the Low Impact Development Runoff Standards regardless of the land-use type. As a result, we request that the land-use types described in the regulated project categories be removed from this section.
25	E.12.d.1. b&c Regulated Projects (p. 49)	E.12.d.1 (b) and (c). We request the language of either section (b) or section (c) be changed to include “or equal to” so projects that increase the impervious surface of a previously existing development to capture exactly 50% in one of the two categories.
26	E.12.d.1.e; E.12.d.2.ii.1; E.12.d.2.ii.2) Regulated Projects (p. 50, 51, 52)	<p>Please add text to exclude road projects from the Source Control requirements (E.12.d.2.ii.1) and Site Design requirements (E.12.d.2.ii.2). The Source control and Site Design requirements are not appropriate for road projects.</p> <p>In section E.12.d.1.e (Road Projects) (p.50), we request that the language “except that treatment of runoff of the 85<sup>th</sup> percentile that cannot be infiltrated onsite” be modified to read, “except that treatment of runoff of the hydraulic sizing design criteria that cannot be infiltrated onsite . . . .” We request this change because the Low Impact Development Road projects should be allowed to choose an acceptable flow-based sizing method (referenced in E.12.d.2.ii.3.h.d (p.54)) instead of only the volume based method.</p>
27	E.12.d.2.ii.1 Source Control Requirements (p. 51-52)	The permit states that “the following standard permanent and/or operational source control BMPs shall be adopted and implemented to address the following pollutant sources, as applicable.” The pollutant sources <i>are</i> addressed, but the standard permanent and/or operational source control BMPs <i>are not</i> addressed in

		this permit. We respectfully request guidance for what types of standard source control BMPs are desired.
28	E.12.d.2.ii.3 Storm Water Treatment Measures (p.52)	The design parameters listed in the permit do not necessarily reflect the conditions of individual sites and therefore may not be the best ones for specific geographies and local conditions. We request that language be added to this section that allows the Permittee to develop their own BMP design guidance document that, if approved by the Regional Water Quality Control Board, can be used in lieu of the design parameters listed in this permit.
29	E.12.d.2.ii.3.a & b Alternative Designs and Allowed Variations For Special Site Conditions (p. 53)	“Design Alternative” and “Allowed variations” both reference the criteria outlined in “(2)” which is the site design measures. We suggest the reference be moved to “(3)” which may be more appropriate as it identifies the treatment facility design parameters.
30	E.12.d.2.ii.3.b(c) Allowed Variations (p. 53)	BMPs in areas with high groundwater should be allowed to be lined and under-drained. We request that allowance for these measures be included in the permit language.
31	E.12.d.2.ii.3.c(c) Exceptions to Requirements for LID Facilities (p.53)	We request a definition be provided for “smart growth credits.”
32	E.12.d.2.ii.3.c(c) Exceptions to Requirements for LID Facilities (p.53)	The May 15, 2014 date identified within this section appears to be a vestige from the previous draft, since all the dates in this draft, except this one, were removed in favor of a period of time (e.g., within the third year of the effective date of the permit). Therefore, we request the removal of this date.
33	E.12.d.2.iii.j & m Reporting (p.55)	These two sections identify the opportunity to gain compliance through off-site locations. However, language identifying parameters of allowable off-site compliance is not provided and we request a description.
34	E.12.e.i Hydromodification Management (p. 55)	Please describe how Hydromodification Management requirements also apply to <b>road projects</b> that are greater than or equal to 1 acre.
35	E.12.f.i Implementation Strategy for	The permit says “...are protective of the watershed processes identified below.” However, “below” should be changed to “above.”

	Watershed Process – Based Storm Water Management (p. 57)	
36	E.12.g.iii Reporting (p.60)	It is not clear from this provision what is expected of the Permittee in terms of which or how many facilities need to be inspected and with what frequency. We request clarification.
37	E.12.g.iii.a.4 Reporting (p.60)	This section describes compliance in off-site locations. However, there is no mention of how off-site compliance is allowed under this order. Please describe.
E.14 Program Effectiveness Assessment and Improvement Plan		
38	E.14.a.ii.a.3 Program Effectiveness Assessment and Improvement Plan (p. 71)	It would be highly challenging to assess the expected pollutant removal efficiency for each BMP. This level of individual assessment is costly and resource intensive. Therefore, we respectfully request being allowed to devote our resources to program implementation and enforcement instead of re-allocating our resources to pollutant removal efficiency assessment.
39	E.14.a.ii.a.3 Program Effectiveness Assessment and Improvement Plan (p.71)	We request removal of the reference to the “BMP Condition” – the Condition Assessment was removed in this new draft and this requirement appears to relate to the deleted section from the previous draft.
40	E.14.a.ii.a.4 Program Effectiveness Assessment and Improvement Plan (p. 71)	It would be highly challenging to assess the expected pollutant removal efficiency for each BMP. This level of individual assessment is costly and resource intensive. Therefore, we respectfully request being allowed to devote our resources to program implementation and enforcement instead of re-allocating our resources to pollutant removal efficiency assessment.
41	E.14.a.ii.a.5 Program Effectiveness Assessment and Improvement Plan (p.71)	It would be highly challenging to assess the expected pollutant removal efficiency for each BMP. This level of individual assessment is costly and resource intensive. Therefore, we respectfully request being allowed to devote our resources to program implementation and enforcement instead of re-allocating our resources to pollutant removal efficiency assessment.
42	E.14.a.ii.a.7 Program Effectiveness Assessment and Improvement Plan	Please add “where available” after “Receiving water quality data,” as not all Permittees are required to monitor receiving waters.

	(p.71)	
43	E.14.b Municipal Watershed Pollutant Load Quantification (p. 73)	The efforts required by this section would require significant staff time. In addition, the pollutant concentration data from the National Stormwater Quality Database is likely to be non-representative of local conditions and therefore is unlikely to produce useful information. We believe that this time could be better spent implementing other elements of the stormwater program. Therefore, we request that this provision be deleted.
44	E.14.b.i Municipal Watershed Pollutant Load Quantification (p. 73)	Pollutant loads can be affected by a variety of factors, both natural and anthropogenic. As a result, the pollutant load quantification described in this requirement would be an inaccurate measure of program effectiveness. Further, this level of quantification would also be costly and resource intensive. It is unwarranted for a small MS4 that is likely to be contributed relatively little pollution to the overall load. Therefore, we respectfully request that this requirement be deleted.
45	E.14.c.i Storm Water Program Modifications (p. 74-75)	Please add "where available" after "Receiving water monitoring" as not all Permittees are required to monitor receiving waters.
<b>ATTACHMENTS</b>		
46	Attachment B - Non-Traditional Small MS4 Permittees (p. 2,4)	Remove the San Francisco VA Medical Center and San Francisco State University from the list of non-traditional permittees because these entities discharge to the combined system and therefore do not quality as MS4s.

Thank you for this opportunity to provide input on the NPDES Draft Phase II MS4 General Permit. We hope our comments are useful in achieving an effective regulation which will help further responsible stewardship.

Sincerely,



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415.554.2465  
LP/TTM/vm

# ATTACHMENT A



## California Stormwater Quality Association®

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

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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.