

**Response to Comments on May 11, 2015 Tentative Order
Provision C.5. – Illicit Discharge Detection and Elimination**

Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
San Jose	30	C.5.a.	Exemption for Sewage-Related Discharges Misplaced	Exemption is misplaced and should be associated with the tracking and reporting rather than not having the legal authority. We recommend the following text be added to the provision: C.5.d.i Task Description – All incidents or discharges reported to the spill and dumping central contact point that might pose a threat to water quality shall be logged to track follow-up and response through problem resolution. The data collected shall be sufficient to demonstrate escalating responses for repeated problems and inter/intra-agency coordination, where appropriate. If data are tracked and reported to the Water Board under another permit (e.g., SSOs reported according to State Board Order No. 2006-0003-DWQ), it is not necessary to track and report the incident according to this provision.	Water Board staff has considered the comments and has made changes to the Revised Tentative Order to reflect the commenters' concerns.	See changes in C.5.a.ii.(1)(a) and C.5.d.i.
SMCWPPP	20	C.5.a.	Exemption for Sewage-Related Discharges Misplaced	Permittees should maintain the legal authority to address <u>all</u> sewage illicit discharges, but would like to exclude the requirement for tracking sanitary sewer overflows via their water quality spill and dumping complaint tracking and follow-up electronic database/tabular system required by the MRP if the data are already being reported through CIWQS. Add to		

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				C.5.d.i.: <u>If data are tracked and reported to the Water Board under another permit (e.g., SSOs reported according to State Board Order No. 2006-0003-DWQ) it is not necessary to track and report the incident according to this provision.</u>		
CCCWP	33e	C.5.b.	30-days for Return to Compliance	Allow the current 30 days for corrective actions to be implemented for potential discharges.	The Previous Permit did not allow up to 30 days for corrective actions to be implemented.	None.
CCCWP	33c	C.5.b.ii.(2)	Verbal Warnings and Warnings Notices Are Effective Tools	Verbal warnings and warning notices can be effective and efficient tools to identify and address observed problems without triggering the more time intensive follow-up, documentation, and reporting requirements.	Water Board staff agree that verbal warnings can be effective and efficient. As an example, Water Board inspection staff uses verbal warnings for uncovered dumpsters and small amounts of trash on the ground. Staff at the industrial/construction sites can immediately cover the dumpsters and pick up and properly dispose of the trash. The Water Board inspectors then note the issues and corrective actions in their inspection reports. It is of concern that the commenter is suggesting such potential discharges may not be documented. In that situation, it would be unclear if corrective actions for potential discharges had been implemented, and whether a site may have an ongoing problem that is corrected only periodically, when an inspector is present.	None.

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					There is little incentive for sites, some inspected only once every 5 years, to consistently implement appropriate BMPs during the period they are not being inspected if they are always given the opportunity to correct potential discharges and there are no written records of this.	
CCCWP	33a	C.5.b.ii.(3)	10-Day Period to Correct Potential Discharges Expensive	All potential discharges should not be considered high priority. This increases inspection costs and reduces the total number of sites that can be inspected in a year.	The Permit does not state that all potential discharges are considered high priority and neither does it state that a reinspection is the only tool to verify that corrective actions have been implemented. This has been left to each Permittee's discretion. Further, we note that to help fund the business inspection program during times of diminishing public funds, a few Permittees charge for inspections. This has inadvertently become an enforcement tool for these Permittees, and also serves as a means of maintaining and increasing Permittee capacity to complete inspections.	None.
CCCWP	33b	C.5.b.ii.(3)	No Incentive to ID Potential Problems	Requiring that every observed problem have a 10 business day follow-up creates disincentive for inspectors to proactively identify and communicate potential problems to site operators because it will require the inspector to complete prescriptive follow-up and documentation.	As stated above, the Permit does not state that a reinspection is the only tool to verify that corrective actions have been implemented. This has been left to the Permittee's discretion. In our experience, long periods of time without follow-up deemphasizes to a discharger the	None.

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					importance of the water quality issue and makes it less likely that such issues will be timely addressed. If inspectors are unwilling to identify potential discharges because that will trigger a 10-day window to ensure they are corrected, the Permittee has not trained its inspectors adequately. In addition, it is troubling that the commenter may be suggesting that inspectors do not record potential discharges or ensure that corrective actions are implemented. It is also troubling in that this may result in an inaccurate inspection history for a Permittee's sites.	
CCCWP	33d	C.5.b.ii.(3)	Allow up to 30 days to Correct Potential Discharges	Inspectors need to be able to use their expertise and best professional judgment to determine how to best allocate their time.	Inspectors have the flexibility to plan their schedules as they see best.	None.
Clayton Concord Danville El Cerrito Hercules Martinez Moraga Oakley Orinda Pinole Pleasant Hill San Pablo	43 26 26 32 23 29 21 11 23 19 22 22	C.5.b.ii.(3)	Actual and Potential Discharges	Delete references that specify types of corrective actions and timeframes for implementation, as these create a disincentive for identifying minor problems and create unproductive administrative work.	The Permit does not specify the types of corrective actions that need to be implemented. Throughout the MRP term, Water Board staff asked for a list of "minor" issues from the Permittees. The only "minor" issue Water Board staff received was open garbage cans/dumpster lids. Water Board MRP staff has concurred that open garbage cans/dumpster lids are minor issues. The sites can correct	None.

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San Ramon	29				the open garbage cans/dumpster lids on the spot and corrective actions would have been implemented. Therefore, it is unclear what additional "minor" problems the commenters are referencing that cannot be corrected immediately. Permittees must have an accurate record of their inspection observations, so it is unclear why their inspectors wouldn't document the "minor" problems in their inspection reports. Lack of documentation also increases the challenge in identifying ongoing minor problems, which may only be corrected periodically, when an inspector is present.	
SMCWPPP	21	C.5.b.ii.(3)	Requiring Correction of all Potential Discharges Within 10 Business Days is Burdensome	Sites with minor issues would need to have a follow-up inspection within 10 business days to confirm corrective actions, even in the dry season. This potentially greatly increases the work load with no water quality benefit. Include text in the Fact Sheet to clarify the flexibility that confirmation of corrective actions is not limited to a follow-up inspection but may occur during the initial inspection, or be a photo submittal or documentation from the facility.	As stated above, Water Board staff asked for a list of "minor" issues from the Permittees throughout the previous permit term. The only "minor" issue Water Board staff received was open garbage cans/dumpster lids. Water Board MRP staff has concurred that open garbage cans/dumpster lids are minor issues. The sites can correct the open garbage cans/dumpster lids on the spot and corrective actions would have been implemented. Therefore, it is unclear what	None.

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					additional "minor" problems the commenter is referencing. The Permit does not state that a reinspection is the only tool to verify that corrective actions have been implemented. This has been left to the Permittee's discretion to provide guidance to its inspectors.	
CC County	5	C.5.e.	Hard to Monitor Mobile Cleaners	Very few are permitted. Proposed program would drive these businesses further underground. Start an initial outreach campaign implemented through BASMAA.	The implementation level for C.5.e. is carried over from the Previous Permit. This is not a new implementation level. Permittees were required to implement the Previous Permit. It is unclear how these requirements would "drive these businesses further underground" when Permittees are supposed to be educating the public as well mobile businesses about good BMPs and illicit discharges. The public has reported illicit discharges to the Water Board. In Spring 2014, Water Board staff evaluated Provision C.5. for five permittees, one from each county in the region. The three Permittees evaluated in Alameda, San Mateo, and Santa Clara counties, who fully implemented Provision C.5.d. – Mobile Sources, did not note that implementation of this provision drove mobile businesses	None.

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					<p>underground. The permittees evaluated in Solano and Contra Costa counties did not fully implement Provision C.5.d. – Control of Mobile Sources, but neither did they state that implementation of this provision will drive the mobile businesses underground. The Previous Permit allowed the Permittees to cooperate regionally in developing and implementing their programs for mobile businesses. As of the 2013-2014 Annual Report, the regional program has yet to fully implement the scope of work detailed in its 2010-2011 Annual Report. We note that BASMAA began mobile cleaners outreach in the late 1990s, and this Permit continues to encourage Permittees to cooperate regionally.</p>	
CCCWP	35a	C.5.e.	Mobile Business Language Vague	<p>Unclear how Permittees can identify all mobile businesses operating within their jurisdiction. Not all municipalities require business licenses and some mobile businesses may not obtain licenses for all of the municipalities they operate in. Clarify the language regarding the identification of mobile businesses operating in a Permittee's jurisdiction. Clarify that these businesses are being addressed</p>	<p>The Permit does not require Permittees to identify all mobile cleaners. None of the 20+ Business Inspection Plans evaluated by Water Board staff identified mobile sources as part of their inspection programs. In the Tentative Order for the Previous Permit, Water Board staff identified mobile sources as sources of pollution that were not sufficiently addressed to focus attention on this group of pollution sources, which can</p>	None.

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				through the inspection program as issues are identified. Require Permittees to address mobile businesses through business inspections.	discharge pollutants including surfactants, chlorine, sediment and turbidity, high temperature, and related pollutants into the MS4. Based on comments on the Previous Permit's Tentative Order, the mobile sources provision requirements were reduced to the requirements in the Previous Permit. However, the Previous Permit did not provide the reporting information needed for Water Board staff to understand what the Permittees were doing to implement inspections of mobile sources. The reporting requirements in this Permit are intended to help the Water Board understand what the Permittees are doing to address mobile sources specifically and determine how to address mobile sources in the next permit.	
CCCWP	35b	C.5.e.	ERP Adequate	Current ERP is adequate to address mobile businesses and does not require revision. Remove requirement to develop a separate ERP.	The Permit does not require development of a separate ERP.	None.
Dublin	8	C.5.e.	Let BASMAA Come Up With a Solution to Mobile Cleaners	Very specific and may not be the most effective. Allow greater flexibility while ensuring that the problem will be addressed through a submittal from BASMAA.	The implementation level for C.5.e. is carried over from the Previous Permit. This is not a new implementation level. Permittees were required to implement the Previous Permit. The Previous Permit and this Permit allow Permittees to cooperate	None.

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					county-wide and/or region-wide in the implementation of their programs. The regional program has a scope of work for this provision that it had yet to fully implement as of the 2013-2014 Annual Report.	
SMCWPPP	22a	C.5.e.	Language Needs to be Consistent	<p>We request that the mobile business lists referred to in C.5.e.ii.(1)(c) and C.5.e.iii.(2)(f) refer specifically to “mobile cleaners” for consistency. We also request that the reporting requirements C.5.e.iii.(1)(f) and C.5.e.iii.(2)(f) refer to “inventories” to be consistent with the implementation level requirements. The following changes are also requested.</p> <p>C.5.e.ii.(1)(c) Regularly updating mobile <u>cleaner</u> business inventories</p> <p>C.5.e.iii.(1)(f) a list of mobile cleaners operating within the Permittee’s jurisdiction; <u>Permittee’s inventory of mobile cleaner businesses</u></p> <p>C.5.e.iii.(2)(f) a list of mobile businesses operating within the Permittee’s jurisdiction; <u>Permittee’s inventory of mobile cleaner businesses</u></p>	Water Board staff has considered the comments and has made changes to the Revised Tentative Order to reflect the commenter’s concerns.	See changes in C.5.e.
Clayton Concord	44 27	C.5.e.iii.	List of Mobile Cleaners	Delete requirement to report a list of mobile cleaners operating in their	Permittees were required to have mobile business inventories in the	None.

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Danville El Cerrito Hercules Martinez Moraga Oakley Orinda Pinole Pleasant Hill San Pablo San Ramon	27 33 24 30 22 12a 24 20 23 23 30			jurisdiction, as this information is unavailable.	Previous Permit. The reporting requirements in this Permit will help the Water Board understand what the Permittees are doing to address mobile businesses currently and make additional refinements specific to mobile businesses in the next permit.	
Clayton Concord Danville El Cerrito Hercules Martinez Moraga Oakley Orinda Pinole Pleasant Hill San Pablo San Ramon	45 28 28 34 25 31 23 12b 25 21 24 24 31	C.5.e.iii.	Mobile Business Inspections Covered Elsewhere	Delete and clarify that requirements to inspect mobile businesses and abate discharges is covered by existing requirements elsewhere in Provisions C.4. and C.5.	Again, none of the 20+ Business Inspection Plans reviewed by Water Board staff identify mobile businesses as part of their inspection programs for Provision C.4. Provision C.5. covers illicit discharges and most certainly would cover illicit discharges from all mobile business operations. That is reactive. This specific Provision continues to require the Permittees to proactively identify and educate mobile businesses.	None.
San Jose	31	C.5.e.iii.	Level of Reporting is New	Need transition time to change database to track required data. Postpone FY 15-16 data to FY 16-17, if permit is approved December 2015.	Water Board staff concurs.	See changes in C.5.e.iii.
CCCWP	35c	C.5.e.iii.(1)	Insufficient Time to Address 2016 Annual Report Requirements	The 2016 Annual Report requirements should be coordinated regionally. Extend the 2016 Annual Report requirements to 2018 Annual	Permittees have had since December 1, 2009, to collaborate in developing and implementing their mobile business programs, and	Permit changes the dates for reporting. See changes in C.5.e.iii.

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				Report to provide sufficient time for MRP Permittee collaboration and development and implementation of a regional program.	some Permittees have been collaborating on this issue as early as the late 1990s, when BASMAA began its mobile cleaner outreach program. This Permit does not have new implementation level requirements for this Provision. Programs should have already been developed to comply with the Previous Permit. The regional program scoped out tasks for the provision in the 2010-2011 Annual Report. As of the 2013-2014 Annual Report, the tasks had yet to be fully implemented.	
SMCWPPP	22a	C.5.e.iii.(1)	New Reporting Requirements Onerous and Duplicative	The Control of Mobile Sources reporting requirements are duplicative of reporting required in other provisions, including reporting on local, county-wide and regional outreach efforts reported in C.7, and the number of inspections conducted and the number and type of enforcement actions taken reported in C.4. and/or C.5. Additionally, delete the reporting requirements in Provision C.5.e.iii related to inspections, enforcement, and outreach that are reported in other Annual Report sections.	Water Board staff identified mobile sources as sources of pollution that were ignored in the Tentative Order for the Previous Permit and focused attention on this pollution source, which can discharge pollutants including surfactants, chlorine, sediment and turbidity, high temperature, and related pollutants into the MS4. The Previous Permit's reporting requirements did not provide information sufficient for the Water Board staff to understand what the Permittees were doing to implement this provision and to reach mobile sources. While such reporting may be in other provisions, it is combined and does	None.

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					<p>not allow Water Board staff to understand what Permittees have done to specifically address mobile sources.</p> <p>As noted above, none of the 20+ Permittee Business Inspection Plans reviewed by Water Board staff identified mobile businesses as part of their inspection programs for Provision C.4.</p> <p>Provision C.5. covers illicit discharges and would cover illicit discharges from all mobile business operations. However, that coverage is reactive and is unlikely to result in proactive, effective efforts to prevent such discharges.</p>	