

Attachment A

Santa Clara Program's Detailed Major Comments on the MRP Revised Tentative Order

The Santa Clara Program requests that Water Board staff provide specific responses to each of the major comments provided below. Attachment B contains suggested redlined additions and strike-out edits suggested by the Santa Clara Program to address these concerns, the acceptance of which would be sufficient to address these major comments without any further explanation or response to them being required. Attachment B also contains the Santa Clara Program's suggestions for addressing some additional minor issues.

C.2. Municipal Operations

- C.2.d.ii.(4) Stormwater Pump Stations – We appreciate Water Board staff's changes to C.2.d. to focus on the water quality problem of low dissolved oxygen in discharges from pump stations. However, item (4) requiring inspection of all pump stations in the first business day following a large storm is problematic for cities with a large number of pump stations. For example, the City of Santa Clara has 21 pump stations, and the City of San Jose has 25 pump stations, many of which do not discharge to a creek or the Bay. We request that this provision be modified to prioritize monitoring and inspections on pump stations that are a significant problem and that discharge directly to water bodies, and to allow more time following a major storm event to conduct the inspections. In addition, we request that you clarify that the DO value included in the provision is a trigger or action level and not a numeric effluent limitation per se and will be used only for purposes of identifying problematic stations and for identifying needed additional actions.
- C.2.f.ii.(3) Corporation Yard BMP Implementation -- The Revised TO requires Co-permittees to retrofit all vehicle and equipment wash areas to be plumbed to the sanitary sewer. Some relatively rural corporation yard facilities are not accessible to sanitary sewers, and the MRP should allow wash waters to flow to vegetated areas or other areas that do not impact water quality. As stated in our February 25, 2008 letter, SCVURPPP recommends that the language be revised to allow for this alternative.

C.3. New Development and Redevelopment

- C.3.a.i.(2) – The term “pre-development” appears twice and should be changed to “pre-project” to be consistent with the rest of C.3.
- C.3.a.ii., and C.3.b.ii.(4) Due Dates for Full Implementation – The requirements in these sections are sufficiently different from the current permit that all Permittees will need time to revise ordinances, policies and procedures, update handbooks and guidance materials, and educate staff and project applicants about the changes. Examples include: updated source control requirements and required revisions to General Plans (C.3.a.i.); and new road requirements, such as loss of the bike lane exemption and loss of the “50% rule” for redeveloped roads (C.3.b.ii.(4)) . We request that the implementation date be changed to “as soon as possible but no later than July 1, 2010.”
- C.3.b.ii.(1) Effective Date for Threshold Change (“Grandfather” Clause) -- The definition in the revised TO is unworkable and too late in the development review process. The term “final, major, staff-level discretionary review and approval” needs to be revised to be consistent with California land use and planning law.
- C.3.b.ii.(4) New Road Projects/Bike Lanes – Bike lanes are exempt from C.3. in a road widening project, but are covered by C.3. in a new road project, which is inconsistent. The rationale on page

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23 of the MRP Fact Sheet for why bike lanes are exempt from road widening projects is applicable to with respect to bike lanes associated with new roads as well – they have environmental benefit for encouraging alternative modes of transportation. We therefore request that bike lanes be added to the list of specific exclusions from this category.

- C.3.b.ii.(4) Road Redevelopment – The revised TO includes road widening under the “New Road Projects” category instead of under “Other Redevelopment Projects” for the purpose of excluding road widening projects from the “50% rule” for redevelopment projects. (This is only apparent from reading text in the MRP Fact Sheet on page 24.) Treating the runoff from the entire road instead of just from the added impervious surface creates a significant financial burden on local agencies responsible for increasing road capacity under locally adopted transportation plans. We therefore request that road widening projects be treated in the same manner as other redevelopment projects, as in the current permit.
- C.3.b.iii. Green Streets Pilot Project – We appreciate the removal of the permit requirements for road rehabilitation, and, assuming funding for them can be obtained, we support the idea of pilot projects to demonstrate the feasibility of “green” street design. However, we therefore request some changes to this section to facilitate implementation by the Permittees:
 - Make the pilot projects contingent on securing funding;
 - Allow parking lots to qualify as a type of green streets project;
 - Allow green streets projects completed since February 2003, with appropriate documentation of project elements, to count toward the total of ten projects;
 - Allow new road projects and redevelopment projects to count toward the total of ten projects;
 - Delete the requirement to meet the numeric sizing criteria in C.3.d to make the redevelopment or retrofit projects feasible; and
 - Make the completion deadline for the ten projects July 1, 2014 to allow the full permit term for achieving compliance with this provision.
- C.3.c.i.(2)(e) Low Impact Development (LID) -- in the Task Description: Site Design and Stormwater Treatment Requirements, add the missing words “as practicable” to first sentence to be grammatical and consistent with (f) and (g).
- C.3.c.i.(4), C.3.c.i.(5), C.3.c.i.(6) Low Impact Development (LID) -- As stated in the body of the Santa Clara Program’s comment letter, the requirement for Water Board staff notification/approval of projects with vault-based treatment systems is unworkable for the Permittees. It will create unnecessary project delays, increase the work load for municipal planning staffs, and encroach on the Permittees’ land use authority. We request that this section be changed to state the goal of limiting the use of vault-based systems, specify when they can be used, and request notification of the use of these systems in the Permittees’ annual reports only. Specifically, we request that provisions (5) and (6) be deleted and the threshold in (4) modified to require notification if vault-based systems are used to treat more than 20% of the total runoff from the site.
- C.3.e.i. Alternative Compliance Project Description – As stated in the body of this letter, the alternative compliance options should be made available to all development projects, including new roads and road widening projects. The language in the Revised Tentative Order limits the use of alternative compliance options to redevelopment projects and infill site development projects (where “infill” is strictly defined). There may be situations in which non-infill new development projects have site constraints or qualify for reduced requirements as a transit-oriented development, etc., and it would be more feasible to implement via off-site alternative compliance. Road projects are one of the most likely types of projects to use the alternative compliance option, due to limited

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right of way for treatment controls and the piecemeal nature of road improvements (for which it is cost-effective to provide treatment at one site).

- C.3.e.i.(2)(b) Alternative Compliance: Contributing Equivalent Funds to a Regional Project The allowance of more time to complete an Equivalent Offsite Treatment project should be contingent upon Executive Officer approval, consistent with the requirement later in this same paragraph for Regional Projects. The requirement that the Equivalent Offsite Treatment Project provide additional capacity is unreasonable and unworkable as conditions of approval and designs can not be changed after the fact, especially if the project is already under construction.
- C.3.h.ii.(6) BMP O&M Inspection Plan. – We remain concerned about the requirement that Co-permittees must annually inspect a minimum of 20% of the total number (or all BMPs within 5 years) and 20% of the vault-based systems. As the number of installed BMPs increases over time, this will be an increasingly untenable burden to municipalities. Also, the process for prioritizing BMPs for inspection involves a consideration of many factors, including type of maintenance agreement, whether the owner is using a contractor to maintain the BMP, maintenance history, etc. The permit should continue to allow municipalities the flexibility to prioritize the types of BMPs inspected and the exact number of treatment controls inspected in a given year provided that the municipality has an effective program (i.e., continue with the current O&M inspection requirements).
- C.3.h.iii. Operation and Maintenance of Stormwater Treatment Systems: Maintenance Approvals – for clarity, revise the first sentence to say that “Permittees shall require” that treatment systems are properly operated and maintained for the life of the projects.
- C.3.h.ii.(5), iii.(1) and iii.(3) BMP O&M Verification Program Reporting – The reporting requirements for BMP O&M inspections are still excessive. We believe that submittal of a summary of the total number and types of BMPs inspected and categories of problems found should be sufficient to evaluate a permittee’s inspection program, and that detailed records can be kept locally for review upon request. Specifically, information on facility name, address, and responsible operator name should be kept in local files and not be part of a public (possibly web-posted) annual report.

C.4. Industrial and Commercial Site Controls

- C.4. General Comment – The Permittees’ responsibility for regulating industrial and commercial businesses needs to be limited to only those businesses within their jurisdictions and only for stormwater runoff conveyed in municipal separate storm sewer systems. Furthermore, to avoid overlapping jurisdictions, the language in C.4. should limit the creation and implementation of an inspection plan to municipalities that have commercial and industrial sites. The changes in the attached redline/strikeout version of the revised TO more explicitly clarify these limited responsibilities.
- C.4.a.ii.(2) and C.4.c.ii.(2) Violation Correction Response Time – The requirement that violations shall be corrected during certain specified time periods is unrealistic. The changes in the attached redline/strikeout provide a more flexible requirement that is consistent with the goal of correcting violations “as soon as possible, preferably before the next rain event but no longer than 10 business days after the violations are discovered.”
- C.4.c.ii. Enforcement Response Plan – make Recordkeeping (C.4.c.ii.(4)) and Reporting (C.4.c.iii.) fully consistent with same provisions for Enforcement Response Plans in C.5 Illicit Discharge Detection and Elimination and C.6 Construction.

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C.6. Construction Inspections

- C.6.b.ii.(3) Enforcement Response Plan (ERP) Implementation Date – We appreciate that this section of the revised Tentative Order was revised to remove the more prescriptive requirements for the content of an ERP. Although all Co-Permittees have been effectively using escalating enforcement actions as needed at construction sites, some do not have an written enforcement plan. This will take time to develop, be legally reviewed, and then incorporated into codes, ordinances, and staff training. We request an extended deadline to develop and implement the ERP.
- C.6.d.i. Plan Approval Task Description – We request that the second sentence of this section be made consistent with C.6.d.ii.(2) by revising it to state that “Permittees shall also verify that sites disturbing one acre or more of land have filed a Notice of Intent for coverage under the Construction General Permit.”
- C.6.e.ii.(2)(b) Frequency of Inspections: High Priority Sites – We request that “High Priority Sites” be defined as “other sites determined by the Permittee or which the Water Board has designated as significant threats to water quality”.
- C.6.e.ii.(4) Tracking – The tracking requirements for construction inspections are overly prescriptive and detailed. In particular, the requirement to report the inches of rain since the last inspection is not feasible. This information will vary by construction site, and is not readily available to inspectors, and not relevant to the site’s effective use of BMPs.
- C.6.e.iii.(1) Reporting – While we support the reporting of summary statistics to indicate the effectiveness of an inspection program, we request that the summaries of numbers of discharges (f) and sites with discharges (g) be deleted as these are burdensome to track and compile and the information is already covered by the summaries of violations (d).
- C.6.e.iii.(3) Reporting – There is a typographic error in this section; the reference to tracked information should be C.6.e.ii.(4).

C.8. Water Quality Monitoring

General Comments

- Unwarranted Significant Increase in Effort - The Revised TO proposes monitoring requirements that will require a significant increase in resource expenditure by the Santa Clara Program. Much of the proposed monitoring goes beyond what is appropriate to yield data that are representative of the monitored activity (i.e., local agency stormwater pollution prevention and control under a MS4 NPDES permit). Recommendations on how the Water Board can make the proposed monitoring requirements more cost-effective, realistic and scientifically-based are included in our more specific comments below.
- Lack of Consideration of Existing Monitoring Data - The Revised TO needs to be clarified to allow the Santa Clara Program to obtain credit for its previous and current monitoring work. We specifically request that the Water Board include a provision in the TO that allows a stormwater program to reduce monitoring requirements contained in the Revised TO to the extent that it can certify that it has already completed a substantially similar body of monitoring work under previous stormwater permits.
- Triggers for Stressor Identification Monitoring Projects are Not Consistent with Established Water Quality Objectives - The Santa Clara Program believes that monitoring and stressor identification should follow a stepwise progression from screening through source identification, and that existing data should be used to prioritize and guide monitoring and data collection region-wide. We appreciate Water Board staff revisions to the stressor/source identification process in Provision

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C.8.e(i), which generally allows the Program to follow this stepwise process and utilize existing data to evaluate the stressor or source of concern. However, as described below, the applicability and accuracy of specific references (i.e., footnotes) and language used in the “trigger” column in Table 8.1 remain a concern.

- Grant Funds Used to Fund POC Monitoring –In the Water Board staff Summary of Responses to Comments it is implied that some of the proposed TO Pollutants of Concern (POC) monitoring is currently being conducted with grant funds, and that some SWAMP monitoring will fulfill monitoring requirements. For clarification, grants are **NOT** currently funding POC monitoring and the SWAMP monitoring budget **cannot** be relied upon as a stable funding source to alleviate stormwater program costs.

Detailed Comments

Detailed comments from Santa Clara Program regarding Provision C.8’s monitoring requirements are presented below and include recommended revisions to the Revised TO. These detailed comments are consistent with the red-lined/strikeout version contained in Attachment B.

- Monitoring Costs – Water quality monitoring proposed in Provision C.8 poses a significant increase in requirements to all Bay Area stormwater programs. Anticipated SCVURPPP costs to comply with the C.8 provision are estimated at over \$1.2 million dollars per year (not including the permit monitoring surcharge fees collected by the SWRCB for the SWAMP program that is approximately \$35,000 dollars per year and the roughly \$170,000 paid annually by SCVURPPP to support the Regional Monitoring Program). SCVURPPP’s costs are significantly greater than the roughly \$400,000 annual estimate prepared by the Water Board staff in the permit Fact Sheet for SCVURPPP.
- C.8.b. – San Francisco Estuary Receiving Water Monitoring - We appreciate the inclusion of core management questions under this subprovision. However, it is unclear who derived these management questions and if they are consistent with questions developed via the San Francisco Estuary Regional Monitoring Program for Trace Substances (RMP) which Bay Area stormwater programs currently fund and participate in with Water Board staff. Different questions can lead to confusion and therefore we recommend that the management questions currently included in this provision be replaced by the following questions recently adopted by the RMP:
 1. *Are chemical concentrations in the Estuary potentially at levels of concern and are associated impacts likely?*
 2. *What are the concentrations and masses of contaminants in the Estuary and its segments?*
 3. *What are the sources, pathways, loadings, and processes leading to contaminant-related impacts in the Estuary?*
 4. *Have the concentrations, masses, and associated impacts of contaminants in the Estuary increased or decreased?*
 5. *What are the projected concentrations, masses, and associated impacts of contaminants in the Estuary?*
- C.8.c – Status Monitoring/Rotating Watersheds (comments provided below are made notwithstanding comments previously made on Provision C.8.a. For example, it is possible that some of the below comments would not be relevant or appropriate to a new monitoring program designed by the RMC).

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- Table 8.1

1. Biological Assessment – Footnote 28 on page 60, indicates that macroinvertebrates shall be identified...using a fixed-count of 600 organisms per sample. For the past 3 years, Bay Area stormwater programs have used a fixed count of 500 as suggested by the California Department of Fish and Game’s Aquatic Bioassessment Laboratory. We are unclear if the deviation of current standard protocols used in the Bay Area is justified or why it would otherwise be legitimately required in the Revised TO. The increase in the number of organisms identified will increase costs to stormwater programs with no demonstrated benefit. We therefore request that the fixed count of 600 in the TO be revised to 500.
2. Biological Assessment – The Algae bioassessment protocol for the State of California is currently in draft form and to-date has not been fully tested and therefore should not be incorporated into the status monitoring provision until such protocols are finalized.
3. Nutrients – The Santa Clara Program has collected and analyzed samples for nutrients in Santa Clara Valley Creeks since 2002 during dry weather periods. Although concentrations are generally greater than EPA recommended criteria for total nitrogen and total phosphorous, excess algae is rarely seen and there is little to no evidence of eutrophication of local creeks. Therefore, based on the Santa Clara Program’s monitoring data, the extremely large sampling effort for nutrients that is currently required by the TO is not supportable. We request that nutrients be removed from the status table and a “Nutrient Characterization Study Work Plan” be added to Provision C.8.e (Monitoring Projects) to allow for a scientifically robust nutrient characterization study to be conducted in Bay Area creeks, as opposed to the very prescriptive ambient monitoring requirement that does not appear to be based on clear objectives, management questions or a conceptual understanding of potential nutrient impacts (See comments on Provision C.8.e).
4. Temperature – The example of an applicable temperature threshold for creeks cited in footnote 32, page 61 (i.e., Sullivan K., Martin, D.J., Cardwell, R.D., Toll, J.E., Duke, S. 2000. *An Analysis of the Effects of Temperature on Salmonids of the Pacific Northwest with Implications for Selecting Temperature Criteria, Sustainable Ecosystem Institute*) is not applicable to Bay Area creeks that only have warm water fish communities (e.g., no salmonids). Additionally, the applicability of the citation to Bay Area creeks that have existing coldwater fish communities is also questionable as salmonid populations in the Bay Area have been shown to have different habitat requirements compared to Pacific Northwest Streams. Therefore, we recommend that the example “threshold” be deleted until it can be shown to be applicable to Bay Area creeks.
5. Toxicity, Diazinon and Chlorpyrifos – The Program requests that toxicity and organophosphate pesticide monitoring during “storm events” be moved to provision C.8.f (Pollutants of Concern Monitoring) and conducted at a frequency commensurate with the current level of understanding of impacts associated with these pollutants. Water column toxicity and diazinon concentrations in Santa Clara creeks have dramatically decreased since the phase-out of diazinon. Therefore, the frequency of sampling should be minimal, and we specifically recommend that diazinon and water column toxicity be sampled at the same frequency that “Category 2” pollutants are sampled at most.
6. Toxicity – Bedded Sediment – The minimum number of sites requiring bedded sediment sampling in previous version of the TO was 6/4/1. It is unclear why the minimum number of sites increased to 10/5/1. The Santa Clara Program believes that the 6/4/1 was commensurate with the current level of understanding of the impacts

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associated with these pollutants and therefore recommends that the 6/4/1 minimum number of sites be restored.

7. Pollutants – Bedded Sediment – Similar to Toxicity – Bedded Sediment, the minimum number of sites requiring bedded sediment sampling in previous version of the TO was 6/4/1. It is unclear why the minimum number of sites increased to 10/5/1 in the Revised TO. The Santa Clara Program believes that the 6/4/1 was commensurate with the current level of understanding of the impacts associated with these pollutants and therefore recommends that the 6/4/1 minimum number of sites be restored. Additionally, Footnote 35, page 62 of the Revised TO states that “Analytes shall include all of those reported in MacDonald (including copper, nickel, mercury, PCBs, DDT, chlordane, dieldrin) as well as other contaminants of interest, including pyrethroids.” The “as well as other contaminants of interest” text is vague and in the future could lead to misunderstandings of the analytes required. Therefore, we request removal of this text.
 8. Pathogen Indicators – During meetings between BASMAA representatives and Water Board staff in the summer of 2008, Water Board staff indicated that the pathogen indicator sampling requirement would be removed from Table 8.1. Based on these previous statements and for numerous other previously-stated reasons, we request that the Water Board remove this requirement from the Revised TO.
- C.8.d - Long Term Trends Monitoring: As currently written, this subprovision is confusing and appears to be an amalgamation of disparate monitoring requirements that have significant overlap with Provisions C.8.c and C.8.f. The objective of this subprovision could be made clearer by the development of management questions and comparison to the aforementioned subprovisions to evaluate and eliminate the potential duplication of effort. Based on the language currently in Provision C.8.d, the Santa Clara Program requests that this provision be significantly revised. Suggested new language could include: 1) an incorporation of “long-term trends” into C.8.c by requiring that a portion of the sites sampled under status monitoring be considered long-term trend sites where routine sampling occurs; and, 2) an incorporation of storm event sampling into C.8.f.
 - C.8.e – Monitoring Projects – As described above, in lieu of the nutrient and algae bioassessment requirements in Table 8.1, a more robust study design could be developed to answer specific management questions, such as:
 1. *What are the ranges, variations and average concentrations of nutrients in Bay Area creeks /rivers during storm events and dry weather periods?*
 2. *Are nutrient impacts to aquatic biological communities (algae and invertebrates) evident?*

Instead of requiring the algae bioassessment and nutrient requirements in Provisions C.8.c and C.8.f, we recommended that a “Nutrient Characterization Study Work Plan” be required as a monitoring project in Provision C.8.e. The Work Plan would include: a) a literature review of nutrient concentrations and associated impacts to biological communities; b) a summary of readily available data collected to-date in Bay Area creeks/rivers; and, c) a plan and timeframe for collection and analysis of additional water quality and biological community samples needed to answer the management questions presented above.

- C.8.f.(i-iv) - Pollutants of Concern Monitoring: There are two main concerns with the pollutant of concern monitoring design as it is currently written. First, monitoring requirements in this subprovision represent a significant undertaking by the Santa Clara Program and other Bay

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Area stormwater programs. The logistics of conducting science-based “storm event” monitoring makes this type of activity highly resource intensive. Therefore, we request that additional time be granted to “phase-in” POC monitoring stations. For example, one for each applicable countywide program could go “on-line” in year 2 and the other in year 4. This would allow programs to learn from monitoring conducted at a single site before adding an additional site. Additionally, considering that POC monitoring is likely to continue beyond the 5-year permit term to assess TMDL progress, a one to two year phasing process would not significantly impact the intent of this monitoring requirement.

Our second concern is related to the lack of flexibility in subprovision C.8.f to implement more scientifically robust monitoring designs, methodologies, and protocols being developed by collaborative programs with identical objectives. Specifically, the RMP is currently developing a Small Tributaries Loading Strategy (with participation from Water Board staff) and the participants have collectively agreed that the following management questions should direct POC loads monitoring:

1. *Which are the “high-leverage” small tributaries that contribute most to Bay impairment by pollutants of concern?*
2. *What are the annual loads or concentrations of pollutants of concern from small tributaries to the Bay?*
3. *How are loads or concentrations of pollutants of concern from small tributaries changing on a decadal scale?*
4. *What are the projected impacts of management actions on loads or concentrations of pollutants of concern from the high-leverage small tributaries and where should management actions be implemented in the region to have the greatest impact?*

To avoid duplication of effort and make clearer the objectives of conducting POC monitoring, we recommend that the questions listed above be incorporated into subprovision C.8.f.

Additionally, as a more general matter, we recommend that language be added to subprovision C.8.a(i), third paragraph of the Revised TO to indicate that “Permittees may comply with monitoring described in Provision C.8. using alternative quantities or methods to those described, as long as they are conducted at a similar level of effort and yield equivalent data that answer management questions described herein to the same degree.”

- C.8.h – Status and Trends Electronic Reporting and Urban Creeks Monitoring Report- The reporting timelines in the Revised TO are unrealistic and inappropriate. Specifically, it is highly likely that the Status and Trends Electronic Reporting due date (September 30) will not allow for all data collected during the previous fiscal year to be included in the electronic data submittal. It would effectively require completion of sample processing, lab analysis and QA/QC to occur in 3 months, which is far less time than other regional collaborative monitoring programs (e.g., RMP) can currently achieve. The September 30 due date would also increase the likelihood of resource scheduling problems and added rush costs for analysis and QA/QC of data collected in spring and summer. With regard to the Urban Creeks Monitoring Report, the December 15 due date would also limit the analyses that could be conducted, interpretation of data, and public comment on the report. Specifically, this due date will greatly reduce opportunities for creek groups, local managers or other stakeholders to review the data or have input to the Monitoring Reports. Based on these factors, we request that the due date for the Electronic Reporting in C.8.h(ii) be revised to December 15 and the Annual Urban Creeks Monitoring Report be moved back to March 15 to allow for the most accurate, complete and analyzed data to be submitted to the Water Board and assist in planning future monitoring efforts.

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All POC Provisions (C.9 – C.14)

General Comment:

- During recent years, Bay Area stormwater programs have conducted or participated in many studies of pollutants of concern (POCs). These studies have drastically improved our collective knowledge of the distribution of POCs, types and potential locations of sources, and control measures that may reduce POC-associated impacts. Additionally, the Santa Clara Program has continued to implement control programs for copper/nickel, pesticides, mercury, PCBs, trash and dioxins. These studies and programs have culminated in many submittals to the Water Board, some of which meet the intent of requirements proposed in the Revised TO. Therefore, as agreed by Water Board staff in meetings with BASMAA in the summer of 2007, the opening paragraph for each Provision pertaining to Pollutants of Concern Control Programs, needs to include a statement such as: “The Permittees may address the requirements in this Provision by building upon their prior submissions to the Water Board.”

C.10 Trash Reduction

- C.10.a(i) – Goal Statement - We appreciate the Water Board staff including a Goal Statement in Provision C.10.a(i), however, much of the text is superfluous and should either be reduced or removed and included in the findings (see Attachment B).
- C.10.a(ii) – Trash Hot Spot Selection - The minimum number of trash hot spots for large permittees (e.g., San Jose) is extremely high compared to permittees with medium and small-sized populations. Similar to the full capture treatment exemption (C.10.a(vi)) for small permittees, the Santa Clara Program recommends that language be added to Provision C.10.a(ii) that creates a maximum number of hot spots (i.e., 20) that are required to be addressed during the permit term. This number of hot spots will still require large permittees to implement significant resources and attempt to significantly reduce trash at these hot spots, but the lower number of hot spots will allow an increased effort per hot spot, thus allowing large permittees to more effectively use resources on the highest priority problem areas.
- C.10.a(iv) – Trash Hot Spot Cleanup to Trash Action Level – If properly determined in the manner they recommended, a numeric trash action level (TAL) could be consistent with the concept of municipal action levels developed by a panel of experts assembled by the State Board. As defined by the experts, a TAL would be an *upper end* numerical goal that helps identify situations all would readily agree on and triggers the need for further management actions to address them. In the experts’ view, unlike what is proposed in the TO, a TAL would not serve as a broadly applicable initial cleanup goal based on an underlying water quality objective; nor, like the Fact Sheet may be read by some to suggest, would it ever be used like a numeric effluent limit. Accordingly, we request that language of the TO be revised to avoid confusion and recommend that the operative term be changed from TAL to Trash Hot Spot Goal (“THSG”). Additionally, we recommend that the THSG be set at 100 pieces of trash or less per 100 foot of creek/shoreline, instead of the Santa Clara Program’s previously proposed “urban optimal” category. Having a specific number of trash items established as the THSG is more consistent with the goal statement presented in C.10.a(i) and allows less subjectivity than the Urban Rapid Trash Assessment Protocol.
- Trash Capture Requirements for Non-Population Based Permittees – The full capture requirement for non-population based permittees effectively leaves them with options for either trash booms, which are not and do not receive credit for full capture, or outfall-based devices. The non-population based Permittee in Santa Clara County (i.e., Santa Clara Valley Water District) does not own stormwater outfalls and therefore cannot utilize the aforementioned devices to meet the full capture requirement. To allow non-population based permittees to address hot spots, we recommend that the following language be added instead of the

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prescriptive language in the Revised TO: “Non-population based permittees shall address the hot spots they assess which do not meet the THSG with equivalently effective measures.”

- C.10.a(vii) – Booms or Sea Curtains – The previous version of the TO allowed non-tidal booms or sea curtains to receive credit for 25% of the area draining to the booms/curtain. It is unclear why the percent credit was reduced to 10%. In light of this, we request that the following language be included in the Revised TO: “Booms or sea curtains receive credit for up to 25% of the area required to be addressed by Full Trash Capture Devices”
- C.10.b(i) - Trash Assessment and Reporting– It is unclear what scientific basis was used to establish the frequency of 2 times per year, every year, for trash assessments. Based on the numerous trash assessments conducted by Santa Clara Program’s Co-permittees, we believe that this frequency could be reduced and still achieve the objectives stated above. Additionally, if the THSG is based on the number of trash items per 100 feet of creek/shoreline, then the need for Rapid Trash Assessments (RTA) is unclear. Alternatively, we request that the assessment method require the quantification of trash items at hot spots and not RTAs, the latter of which require additional time, resources and yield subjective data that are not specifically needed to address the THSG.
- C.10.c. Long-Term Plan for Trash Impact Abatement – Trash in water bodies is a complex issue that requires multiple efforts and understanding of trash sources, pathways, and effective control measures. Trash is arguably more complex than PCBs or mercury, which have been allowed 20-year time frames to achieve TMDL load allocations. Therefore, we request that the timeframe allowed to reach the goal of “no trash impacts” be extended to at least 2029, as opposed to 2024. This timeframe is consistent with approved TMDLs for Bay Area water bodies.

Mercury (C.11) and PCBs (C.12) Controls

General Comments

- Many Provisions in C.11 and C.12 are similar, although through our review many differences are apparent between Provisions that have the same headings. Additionally, it is unclear as to the number of pilot studies that are required between similar provisions in C.11 and C.12. In an effort to reduce what we believe are unintended ambiguities in these two Provisions, the Santa Clara Program recommends that Provisions C.11 and C.12 be merged into one single combined Provision C.11 entitled “Mercury and PCB Controls.”
- Estimated POC Costs – We estimate that the costs to implement the Water Board staff permit requirements for PCBs and mercury for SCVURPPP are over \$3.5 million over the five-year permit term (not including abatement as required by C.11/12.c). Also, these costs do not include any co-permittee direct costs. Based on these cost estimates, it is clear that prioritizing and phasing these requirements over several permit terms is absolutely necessary. Thus, we have geared our suggested comments below and the redline/strike-out (see Attachment B) to address our concerns.
- Revision of Anticipated Requirement Dates – The Water Board staff has not updated the dates in many of the provisions from the December 2007 TO. In Attachment B (redline/strike-out) we have included reasonable updates to the dates contained in the February 2009 Revised TO that are consistent with the time frames anticipated.

Detailed Comments

- C.12.b. Pilot Projects to Manage PCB Materials during Building Demolition and Renovation – As written, the requirements for these pilot projects are overly prescriptive and do not allow for consistency with the scope and stakeholder process of an ongoing Proposition 50 grant-funded

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project that addresses the objectives of this provision. We request that these requirements are replaced with a requirement that BASMAA continues to participate in the Proposition 50 project as a stakeholder and project partner. In addition, it is extremely important to note that the sampling required by this subprovision could possibly lead to immediate abatement orders to protect human health at some sampling sites. This possibility will make it difficult or impossible to obtain permission to sample due to the potential liability to property owners. The Proposition 50 project is currently working with EPA and other parties to explore ways to resolve this issue, but an easy resolution is not anticipated. It is possible that any program to identify and abate PCBs in buildings will initially be driven by on-site human health risks rather than water quality concerns.

- C.11/12.c. Pilot Studies to Investigate and Abate On-land PCBs Sites – This subprovision requires identification and implementation of five pilot studies in drainage areas. To remain consistent with pilot nature of these studies, we recommend that the number of required studies be reduced to four, one conducted within the jurisdiction of each of the county-wide programs.
- C.11/12.d. Pilot Studies to Evaluate and Enhance Municipal Sediment Management Practices – The scope of this requirement is too extensive. Pilot testing in an excessive number of locations is not cost-effective. We request revision to specify an initial feasibility study and cost analysis of enhanced sediment management practices, including street sweeping, using existing information. This requirement should further be revised to require pilot testing of appropriate enhanced sediment management practices (selected based on the results of the feasibility study) in no more than four drainages.
- C.11/12.e. Conduct Pilot Projects to Evaluate On-site Stormwater Treatment via Retrofit – The scope of this requirement is also too extensive. Pilot testing in an excessive number of locations is not cost-effective, nor is it consistent with the definition of pilot study provided in the fact sheet. We request revision to require pilot testing of appropriate on-site stormwater treatment retrofits at up to four sites. Depending on site conditions and other factors, one or more of the pilot drainages specified in C.11/12.c may or may not be appropriate locations for the pilot testing.
- C.12.f. Diversion of Dry Weather and First Flush Flows to POTWs – These requirements are premature, overly prescriptive and require actions outside of the jurisdiction and control of municipal stormwater agencies. Additionally, the requirements are somewhat presumptuous in that they assume that the findings of the feasibility study will determine that diversions are feasible. In order to allow an iterative approach to be followed in this subprovision, we request that the language be revised to indicate that ability of stormwater programs to implement a minimum number of diversions (one per county-wide program) will be based upon the required feasibility study (see Attachment B).

C.13. Copper – Given that there is no longer a situation of copper impairment in receiving waters, we request that this Provision be made less burdensome. See Attachment B for requested language changes.

C.14. PBDE, Legacy Pesticides and Selenium – Given that these are at most emerging issues and that other priorities will require resources, we request that this Provision be eliminated or made less burdensome. See Attachment B for requested language changes.

C.15. Conditionally Exempted Discharges -- The Santa Clara Program previously commented that the draft MRP contained numerous new and highly prescriptive and unworkable requirements associated with conditionally exempted discharges and asked that the implementation of BMPs for certain types of discharges be left flexible, scaled to the nature of the water quality threat posed (if any), and subject to a municipality's discretion to require as appropriate and necessary to avoid threats to water quality (with due consideration to more pressing public health and safety needs where applicable). Unfortunately, the TO does not contain sufficient changes to address these very important concerns and provides even more prescription on how the monitoring, tracking and reporting of the various discharges are to be done. It also does not allow for the grandfathering of previously approved and successfully implemented

Attachment A, continued

conditionally exempt discharge programs, such as the Santa Clara Program's, or cite evidence of why they have suddenly become insufficient.

Examples of our concerns include the following:

- The provision can be literally interpreted to apply to discharges from residential foundation drains;
- The level of tracking, monitoring and reporting of relatively minor discharges such as pumped groundwater and swimming pool discharges will be a huge burden on municipalities with little water quality benefit.
- The revised permit continues to include very prescriptive monitoring and reporting requirements for planned, unplanned, and emergency discharges of potable water, which will have significant impacts on the operations of municipal and private water purveyors.

This Provision needs substantial revision emphasizing the implementation of best management practices. Further, we request that our current effective BMP-based program, based on the Santa Clara Program's Conditionally Exempted Discharges Report submitted and approved by the Water Board in 2000, be grandfathered and remain in full effect. Attachment B contains specific edits which address the above major concerns.

Attachment F: Santa Clara Permittees' Hydromodification Requirements

- HMP Applicability Map -- Attachment C to the Santa Clara Program's comment letter contains our request to make changes to the Santa Clara HMP Applicability Map, as well as a revised map, in order to reflect a more accurate percentage of impervious surface in two catchments in Palo Alto and Stanford University, based on new, local impervious surface data. These catchments are part of the "Areas Under Review" noted as pink areas on the applicability map, and the submittal is consistent with the description of these areas in Attachment F.4.c. We request that this revised map be included in the final MRP.
- Due Date for Implementation – The HMP applicability requirements (map and project size thresholds) for the Santa Clara Program Co-permittees are sufficiently different from the current permit such that the co-permittees will need time to revise ordinances, policies and procedures, update handbooks and guidance materials, and educate staff and project applicants about the changes to the applicability map and project size thresholds before they can successfully be implemented. We therefore request that an implementation date of July 1, 2010 be added to the Santa Clara Program HMP applicability requirements in Attachment F.