



California Stormwater Quality Association®

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

December 17, 2012

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



Subject: Comment Letter – Revised Draft Phase II Small MS4 Permit (November 16, 2012)

Dear Ms. Townsend and Members of the Board:

The California Stormwater Quality Association (CASQA) appreciates the opportunity to provide comments on the subject of the 3rd Draft Phase II Small MS4 General Permit (draft Phase II permit). As you are aware, CASQA is a statewide association with active membership from representatives of the Phase I and Phase II stormwater community. As a result, we have extensive experience in the development and implementation of stormwater management programs to protect water quality and have been actively engaged with the State Water Board staff during the development of the draft Phase II permit. CASQA's Phase II Subcommittee has thoroughly reviewed the draft Phase II permit and developed comments and recommendations contained herein. The Phase II Subcommittee includes a broad representation of Phase II traditional, non-traditional, new and existing designees.

We appreciate the time and energy that the State Water Board staff has dedicated to hearing and addressing small MS4 concerns. Our discussions continue to result in beneficial revisions that are evident in the 3rd draft Phase II permit. Although we have significant comments on the language, the 3rd draft is a much-improved document.

CASQA's significant concerns are noted within this letter. Specific language suggestions and requested clarifications are provided in Attachments. Every attempt was made to link our comments to revisions to the draft Phase II permit made since May 21, 2012. Many of our comments, particularly in **Attachment 1** address unmodified text, but are an attempt to improve consistency and clarity throughout the permit as a result of recent revisions.

Comment #1: Receiving Water Limitation Language

The Receiving Water Limitations Provision (Provision D, pages 19-20) is an important and relevant issue for all Permittees within the State. While the revised order does not modify Provision D per se, it addresses the issue (see Finding #38, page 38; Provision I, page 140; and the Fact Sheet, pages 25-26) by creating a reopener clause. The State Water Board should not defer this issue until a later date (by the use of a reopener clause) and we recommend that the State Water Board address this issue in this permit. Based on the November 20, 2012, workshop, we believe the State Water Board

has sufficient input and cause to develop a resolution. CASQA remains ready to support and assist the State Water Board in addressing this issue.

Our second comment relates to the statement in the Fact Sheet (see XI. RECEIVING WATER LIMITATIONS, pages 25-26) that the State Water Board's position on this issue is consistent with the 9th Circuit decision.

The Ninth Circuit held in Natural Resources Defense Council, Inc. v. County of Los Angeles (2011) 673 F.3d 880 that engagement in the iterative process does not provide a safe harbor from liability for violations of permit terms prohibiting exceedances of water quality standards. The Ninth Circuit holding is consistent with the position of the State Water Board and Regional Water Boards that exceedances of water quality standards in an MS4 permit constitute violations of permit terms subject to enforcement by the Boards or through a citizen suit.

This statement implies that if the State Water Board modifies the Receiving Water Limitation Provision to provide compliance options, the new position would be in conflict with the 9th Circuit decision. We do not believe that is the intent of the Fact Sheet narrative. It is valid to state that a State Water Board position on violations of the permit is subject to enforcement by the State Water Board or through a citizen suit. However, the State Water Board has the discretion to establish the permit conditions and provide compliance mechanisms that if violated, would be subject to enforcement or lawsuit. We recommend that the sentence that begins with "The Ninth Circuit holding is consistent....or through a citizen suit." be deleted from the fact sheet.

Recommendation: Direct staff to work with CASQA to revise the Receiving Water Limitation Language in Provision D. Delete "The Ninth Circuit holding is consistent....or through a citizen suit." from page 25 of the Fact Sheet.

Comment #2: Central Coast Post-Construction Requirements

Our concerns with Attachment J are two-fold, policy/procedural and technical. First we are concerned with the apparent escalation in permit requirements being conducted by the various Water Board permit writers in drafting provisions for land development. Over the last few years we have seen the ratcheting up of land development requirements leap frog fashion around the State in each MS4 permit reissuance with regard for neither the impact/effectiveness of the prior development requirements nor the key hydrologic principles of low impact development. This lack of a cogent and cohesive approach to standards has created an uneven playing field for communities and developers across the State. Furthermore, the clear absence of any consensus within the State on what the requirements are for land development (particularly with respect to hydromodification management) is damaging to the credibility of the entire stormwater program.

Another policy/procedural related issue is the timing of the inclusion of Region 3 requirements into the draft Phase II Permit. By appending the Central Coast requirements, and stating, "the Water Board expects to amend this Order to incorporate similar requirements for Permittees in the remainder of the State"; the Water Board has introduced an entirely new set of rules with insufficient time for Permittees to fully evaluate the potential impacts of these standards. At a

minimum, we believe it prudent to allow a full 5-year permit term to incorporate the requirements of Section E.12 to assess their effectiveness before changing to a new and completely different set of requirements. As discussed below, there are significant technical issues in the Region 3 requirements and any revisions would require opening the Phase II permit to amend a regional requirement at the State level.

Adoption would result in nullifying existing Region 3 Permittee petitions filed with the State. Once adopted, the State requirements supersede the Regional Water Board, and Permittees cannot petition the State. This result leaves Permittees no other option but an appeal. There is no value added to the Draft Order by adopting the Central Coast requirements; it only circumvents petitioners from their due process.

The draft Phase II permit's disposal of petitions for review pending before the State Water Board is inappropriate under applicable legal procedure and raises serious due process concerns. In October 2012, the Cities of Goleta, Lompoc, and Watsonville each filed a petition for review challenging the Central Coast Water Board's adoption of Resolution No. R3-2012-0025 (i.e., post-construction requirements). Finding that the "Post-Construction Requirements are appropriate for adoption," the draft Phase II permit would require Central Coast small MS4s to comply with such requirements. Contrary to State procedural law, the draft Phase II permit does not contain findings explaining why the adoption of these requirements by the State Water Board is appropriate.¹ Further, adoption of these requirements is not supported by evidence in the record.²

Moreover, disposing of petitions for review in a general permit proceeding runs the risk of petitioners being denied their due process rights and similar regulatory and statutory protections. Due process requires that the petitioners be provided reasonable and adequate notice of an action dismissing their petition.³ Further, State regulations require that formal disposition of a pending petition be taken at a State Water Board meeting where interested persons may comment on the matter.⁴ Water Code section 13330 provides a petitioner only "30 days from the date on which the state board denies review" to seek judicial review or the challenged action "shall not be subject to review by any court." Proposing to dismiss petitions for review in a permit proceeding cannot satisfy the due process requirement for reasonable and adequate notice. In general, there is a significant likelihood that by disposing of petitions for review in the matter as proposed here, petitioners may not become aware of the proposed action and could inadvertently lose their rights to be heard in an administrative hearing or judicial proceeding.

To the extent that the State Water Board decides to not hear or dismiss certain petitions for review, it should do so in accordance with its regulations governing petitions. It is inappropriate to dismiss pending petitions via a footnote in a General NPDES permit.

¹ *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 514-516.

² *Id.* at 514-515.

³ See *Diamond Roofing Co. v. Occupational Safety and Health Review Commission, et al.* (5th Cir. 1976) 528 F.2d 645, 649; *General Electric Co. v. U.S. Environmental Protection Agency* (D.D.C. 1995) 53 F.3d 1324, 1328; *Kempland v. Regents of University of California, et al.* (1984) 155 Cal.App.3d 644, 648; *In the Matter of the Revocation of the Grade V Wastewater Treatment Plant Operator Certificate Held by Kabine Mara*, Order No. WQC 84-5 (July 19, 1984), p. 18.

⁴ Cal. Code Regs., tit. 23, § 2067.

The State Water Board does not need to include the Central Coast Regional Water Board's Post-Construction Requirements as an attachment to the Phase II Small MS4 General Permit to ensure their implementation. A Regional Water Board can impose such requirements and it does not have to be through a general permit. For completeness and clarity, it would be prudent for the State Water Board to acknowledge in the Phase II Small MS4 General Permit the existence of the Central Coast Regional Water Board's Post-Construction Requirements and note their applicability only in Region 3 – period. As currently incorporated in the draft Phase II permit, the State is incorporating one Regional Water Board's requirements as if the State Water Board had developed them in the first place, and then goes even further by speculating “the Water Board expects to amend this Order to incorporate similar requirements for Permittees in the remainder of the State”. Such a statement is not only unnecessary but it is unsubstantiated by the public process..

With respect to technical issues, it is worth noting that the post-construction requirements contained in Section E.12 have been through a thorough two-year review process including CASQA professionals, environmental NGOs, Permittees, and Water Board staff. The result is a set of straightforward and implementable LID and baseline hydromodification controls accomplishing most or all of the Region 3 requirements. CASQA supports the requirements of Section E.12.

On the other hand, the magnitude and scope of the Region 3 requirements are not appropriate for the following reasons:

- The Region 3 requirements are not only the most stringent and complex in the State; they are also unique and entirely untested. For example, there is no demonstrated environmental benefit from retaining a 95th percentile storm event on small projects (15,000 square feet and greater) in urban areas (as opposed to the standard 85th percentile event). It is well established that water quality control measures are most economical and efficient when they target small, frequent storm events that over time produce more total runoff than the larger, infrequent storms targeted for design of flood control facilities. Typically, design criteria for water quality control BMPs and baseline hydromodification controls are set to coincide with the “knee of the curve”, i.e., the point of inflection where the magnitude of the event (and corresponding cost of facilities) increases more rapidly than the number of events captured. In other words, targeting design storms larger than this point will produce volume retention gains but at considerable incremental cost. This ‘knee of the curve’ approach is the very basis of the criteria in most Phase I MS4 permits and the draft Phase II permit for sizing stormwater control measures to capture the 85th percentile, 24-hour storm.
- The Central Coast sizing criteria were placed in the Region 3 requirements after the public review process was completed in that region. The sizing criteria uses an outdated and incorrectly applied Water Environmental Federation MOP 23 approach that multiplies the retention/water quality volume by 1.963 in order to capture “all events up to and including” the 85th or 95th, as appropriate.

- The retention and hydromodification requirements, and some of the LID requirements, are inconsistent and go beyond those of existing or proposed statewide, regional, or local Phase I or Phase II MS4 permits in California. For example, thresholds for hydromodification requirements are much lower than existing or proposed permits (15,000 square feet and 22,500 square feet of created/replaced impervious surface for runoff retention and peak matching, respectively). Post-project vs. pre-project peak matching is an approach that has been proven ineffective in protection of receiving streams, based on the research of existing hydromodification control programs. The technical basis for these requirements is unclear and in the absence of demonstrated environmental benefit, there is no justification for the significant increased cost for their implementation.

Additional comments on the Central Coast Post-Construction Requirements are provided in **Attachments 1 and 2**.

Recommendation: Direct State Water Board staff to delete all references to the Central Coast Post-Construction Requirements and Attachment J.

Comment #3: IDDE – Industrial / Commercial Inspections

The draft Phase II permit requires the assessment of inventoried facilities and other priority areas for the presence of illicit discharges. As currently written, this requirement reads as an industrial/commercial-light inspection program. As noted in CASQA's previous comments, any industrial/commercial inspection program is above and beyond requirements of the Federal Phase II Final Rule. Requirements of this nature are particularly burdensome for small communities that are unable to hire new staff and/or unable to leverage inspectors from other programs such as Certified Unified Program Agencies (CUPA). Many stormwater staff do not have jurisdiction or the ability to require inspectors in other jurisdictions to complete additional inspections or modify existing inspection procedures.

The requirement should be modified so that site visits are limited to assessment of outfalls in priority areas and allow Permittees an alternative to site visits in the form of self-certification – similar to the self-certifications as mentioned under post-construction BMP maintenance. At a minimum, this requirement should be limited to priority areas and should not cover “all inventoried facilities.” There is little benefit in establishing priority areas if Permittees cannot utilize that to assist in the prioritization of limited resources.

Recommendation: Direct staff to revise language to clarify that site visits are limited to assessment of outfalls and to indicate that Permittees have the option of creating a self-certification program in lieu of site visits. See Attachment 1 for specifics on recommended modifications.

Comment #4: Maximum Extent Practicable Language

CASQA requests that the draft Phase II permit be revised to include findings regarding the maximum extent practicable (MEP) standard similar or identical to those in the existing Phase II permit. The MEP standard is the cornerstone of the stormwater regulation, as federal law requires MS4 Permittees to reduce discharges of pollutants in stormwater to the MEP.

(40 C.F.R. § 122.34(a).) These findings emphasize the flexible, site-specific, and iterative nature of MEP standard as described in the Federal law and guidance. The findings from the existing Phase II permit that we request you add to the draft Phase II permit include the following:

- [B]ecause storm water programs are locally driven and local conditions vary, some BMPs may be more effective in one community than in another. A community that has a high growth rate would derive more benefit on focusing on construction and post-construction programs than on an illicit connection program because illicit connects are more prevalent in older communities.⁵
- MEP is an ever-evolving, flexible, and advancing concept, which considers technical and economic feasibility.⁶
- As knowledge about controlling urban runoff continues to evolve, so does that which constitutes MEP. Reducing the discharge of storm water pollutants to MEP in order to protect beneficial uses requires review and improvement, which includes seeking new opportunities. To do this the Permittee must conduct and document evaluation and assessment of each relevant element of its program and revise activities, control measures, BMPs and measurable goals, as necessary to meet MEP.⁷
- In choosing BMPs, the major focus is on technical feasibility, but cost, effectiveness, and public acceptance are also relevant. If a Permittee chooses only the most inexpensive BMPs, it is likely that MEP has not been met. If a Permittee employs all applicable BMPs except those that are not technically feasible in the locality, or whose cost exceeds any benefit to be derived, it would meet the MEP standard. MEP requires Permittees to choose effective BMPs, and to reject applicable BMPs only where other effective BMPs will serve the same purpose, the BMPs are not technically feasible, or the cost is prohibitive.⁸

Recommendation: Direct staff to add findings regarding MEP back into the permit.

Comment #5: Regional Water Board Discretion

It is our understanding the Board Members are interested in hearing from Permittees about the level of Regional Water Board discretion included within the draft Phase II permit, and whether this will pose problems for the Permittees. We recognize that a Dispute Resolution provision was added to this version of the draft Phase II permit (Provision H, pages 139-140). However, such a process is a reaction-based approach, which is inherently wasteful when there is an absence of a dispute avoidance process, thereby engendering disputes to occur when they could be avoided.

Recommendation: A more efficient, management-based approach would be to design into permit administration, a discretion exercise request process. Such a process would require that when a

⁵ Phase II General Permit, p. 9.

⁶ Phase II General Permit, p. 4.

⁷ Phase II General Permit, p. 4.

⁸ Phase II General Permit Fact Sheet at p. 9.

Regional Water Board wants to exercise its discretion, it would create a request to the State Water Board to be reviewed and approved or denied administratively by the State Water Board Executive Director. The request would make the case as to why the Regional Water Board must exercise its discretion and demonstrate that in doing so it would be consistent with the adopted Phase II Small MS4 Permit and applicable policies, plans, and Water Code section 13140, Policy adoption: "The state board shall formulate and adopt state policy for water quality control."

CASQA appreciates the opportunity to provide our comments and asks that the Board consider them and our suggested revisions. If you have any questions, please contact CASQA Phase II Subcommittee lead Rebecca Winer-Skonovd at (530) 753-6400 or CASQA Executive Director Geoff Brosseau at (650) 365-8620.

Sincerely,



Richard Boon, Chair
California Stormwater Quality Association

cc: Eric Berntsen, State Water Board
Ali Dunn, State Water Board
CASQA Phase II Subcommittee
CASQA Executive Program Committee and Board of Directors

Attachments

- 1 Detailed comment table
- 2 Additional Central Coast Post-Construction Requirements
- 3 Monitoring Flow Chart Edits

General			
Comment #	Permit Element/ Issue/ Concern	Location in Draft Permit	Comment/Recommendation
1	Applicability of Provision E Comments to Provision F	Throughout	Provision E comments also apply to the non-traditional provision (Provision F), where applicable.
2	NOI Filing Date – Consistency	Fact Sheet [page 21]	<p>Currently there are conflicting deadlines for NOI filing dates for renewal permittees. We recommend the NOI filing date be consistent with all designated permittees and be required six months from effective date of the permit. Based on our current understanding of the effective date (no less than 50 days from the adoption date per the glossary– also see Comment #36 on this definition) this would place the NOI filing after July 1, 2013. This allows permittees sufficient time to budget for fees, especially those permittees on a fiscal year budget of July 1 through June 30.</p> <p><i>CASQA Recommendation</i> Please modify all NOI filing deadlines to read six months from effective date.</p>
3	All Reporting	Throughout	<p>Except for Planning & Development Review Process, E.12.i, all reporting now references the SMARTS online reporting system. CASQA had significant comment on prior draft’s reporting requirements, but is unable to provide comment on this draft without knowing the content of the SMARTS report.</p> <p><i>CASQA Recommendation</i> Water Board staff should work closely with Permittees to develop appropriate reporting requirements that do not extend or expand upon the Order itself.</p>

Fact Sheet			
Comment #	Permit Element/ Issue/ Concern	Location in Draft Permit	Comment/Recommendation
4	Fact Sheet, Post-Construction Storm Water Management for New Development and Re-development – Modification	page 39	<p>This portion of the fact sheet states: “The requirements developed in the Joint Effort have been adopted in this Order as Attachment J (Central Coast-Specific Post-Construction Requirements) and are applicable to specified Permittees in the Central Coast Water Board region.³¹” As indicated in our post-construction comments (see cover letter, post-construction comment below, and Attachment 2), including the Central Coast Post-Construction Requirements (either as an attachment or direct reference) nulls petitions from Permittees in Region 3 to the State; limits or prevents revisions that Region 3 might adopt; creates confusion due to technical errors and complexity within the Region 3 requirements; places uncertainty on implementation of E.12 provisions; and does not support the statewide NPDES Permit consistency effort. Additionally, changing any portion of E.12 midway through the permit term would be a burden on MS4s and present numerous technical issues with these requirements.</p> <p><i>CASQA Recommendation</i></p> <p><i>Delete references to Central Coast Post-Construction Requirements and text that implies that these Requirements are likely to be adopted statewide:</i></p> <p><i>A watershed process-based approach is already being used for Phase II MS4s that participated in the Central coast Joint Effort for developing hydromodification control criteria. The requirements developed in the Joint Effort have been adopted in this Order as Attachment J (Central Coast-Specific Post-Construction Requirements) and are applicable to specified Permittees in the Central Coast Water Board region.²⁴</i></p> <p><i>²⁴ By Resolution No. R3-2012-0025 dated September 6, 2012, the Central Coast Water Board approved modifications to the SWMPs of MS4s participating in the Joint Effort that incorporate the Central Coast-Specific Post-Construction Requirements into their SWMPs. Several petitions are currently pending before the State Water Board challenging the Resolution. Notwithstanding the petitions, for the reasons stated, the State Water Board has determined that the Central Coast Specific Post-Construction Requirements are appropriate for adoption in this Order for all Central Coast Small MS4s. Therefore, the Central Coast-Specific Post-Construction Requirements are being adopted as State Water Board imposed requirements specific to the Central Coast Small MS4 Permittees. As a result, the State Water Board will not take further action related to the pending petitions. As the State Water Board proceeds with the development of runoff retention and hydromodification control criteria that are keyed to watershed processes, the State Water Board expects to amend this Order to incorporate similar requirements for Permittees in the remainder of the State.</i></p>

Findings			
Comment #	Permit Element/ Issue/ Concern	Location in Draft Permit	Comment/Recommendation
5	Monitoring Requirements – Consistency	Finding #28 [page 9-10]	<p>This finding states that all MS4s with a population of 50,000 or more must conduct monitoring specified in the Order or approved by the Executive Officer of the applicable Regional Board. The statement is not entirely consistent with Section E.13 of the Order.</p> <p><i>CASQA Recommendation</i> Change the text as follows: “However, all Regulated Small MS4s that discharge to ASBS or impaired water bodies and all MS4s with a population of 50,000 or more must conduct monitoring specified in the Order or approved by the Executive Officer of the applicable Regional Board.”</p>

Discharge Prohibitions			
Comment #	Permit Element/ Issue/ Concern	Location in Draft Permit	Comment/Recommendation
6	Discharges in Excess of an Amount Deemed to be Incidental – Clarification Edits	B.4 [page 18] and E.6.a(ii)(d) [page24]	<p>New language (redline strikeout) clarified discharge prohibition with respect to incidental runoff. The following edits are needed to ensure the remainder of the paragraph and E.6.a align with new edits.</p> <p><i>CASQA Recommendation</i></p> <p><i>Modify B.4 language as follows:</i></p> <p><i>Discharges in excess of an amount deemed to be incidental runoff shall be controlled. Regulated Small MS4s shall require parties responsible for such to implement Sections B.4.a-ed below to control the incidental runoff. Incidental runoff is defined as unintended amounts (volume) of runoff from potable and recycled water use areas, such as unintended, minimal over-spray from sprinklers that escapes the area of intended use. Water leaving an intended use area is not considered incidental if it is part of the facility design, if it is due to excessive application, if it is due to intentional overflow or application, or if it is due to negligence.</i></p> <p><i>Modify E.6.a(ii)(d) language as follows:</i></p> <p><i>Require parties responsible for <u>runoff in excess of</u> incidental runoff to implement Discharge Prohibition B.4 a-d a-e to control incidental runoff.</i></p>

Renewal Traditional Small MS4 Permittees			
Comment #	Permit Element/ Issue/ Concern	Location in Draft Permit	Comment/Recommendation
7	Updated SWMP Requirements	E.1.b. [pages 20 – 21]	<p>The third draft includes new, redline specificity regarding SWMP submittal requirements. This section contradicts previous statements that SWMPs are no longer required. The new language explicitly states that Permittees “shall submit”...an updated SWMP. Additionally if a Renewal Permittees is notified by the Regional Board EO that they can continue implementation of BMPs it does not make sense to require them to update their SWMP with additional BMPs. If they are continuing their program, its unlikely that there will be new or additional BMPs. This language should be simplified to reduce conflict with previous statements.</p> <p>Additionally, deadlines should be placed on Regional Boards for notification so that a Permittee is able to appropriately plan for and implement their stormwater program on the effective date of the Phase II Permit renewal.</p> <p><i>CASQA Recommendation</i> <i>Modify language as follows:</i> <i>To enact this section, the Regional Water Board Executive Officer will notify the Renewal Traditional Small MS4 Permittee that this section has been invoked <u>by the effective date of this permit.</u> Within six months of notification by the Regional Water Board Executive Officer the Permittee shall submit to the Regional Water Board for Executive Officer approval an updated SWMP. Permittees may update their SWMP as needed to reflect potential changes needed <u>The updated SWMP shall include all additional BMPs (including measurable goals, targets, and implementation schedules) necessary to bring the Permittee’s program into compliance with this Order, reduce the discharge of pollutants to the maximum extent practicable, and protect water quality. At the time of the SWMP update, the Permittee may modify the SWMP for purposes other than attaining compliance with this Order, provided such changes maintain reduction of pollutants to the maximum extent practicable and do not reduce overall program effectiveness.</u></i></p>

Renewal Traditional Small MS4 Permittees			
Comment #	Permit Element/ Issue/ Concern	Location in Draft Permit	Comment/Recommendation
7, cont.	Updated SWMP Requirements, cont.	E.1.b. [pages 20 – 21]	<p><i>It is recommended that aAll updates to SWMPs shall be shown in underline-strikeout format. With the updated SWMP submittal, the Permittee shall include a separate supplemental document explaining each change to the SWMP. For each change made for the purpose of bringing the SWMP into compliance with this Order, the supplemental document shall identify the section of this Order the change is designed to address. For all other SWMP changes, the supplemental document shall explain the purpose of each change. For any SWMP change that would result in a reduction in program implementation levels, the supplemental document shall explain how the implementation reduction is offset by increased program effectiveness elsewhere. To the extent the updated SWMP substantially deviates from measures identified in Sections E.6 through E.14 of the Order, the approval of the SWMP may be subject to public review. The updated SWMP shall include a signed certified statement by the Permittee, in accordance with Attachment F sections 11 and 12 of this Order, certifying implementation of the SWMP will achieve compliance with this Order. Upon approval of the updated SWMP by the Regional Water Board Executive Officer, the Permittee shall implement the updated SWMP. The Permittee may assume approval of the updated SWMP by the Regional Water Board Executive Officer if the Permittee does not receive a response by the Regional Water Board within six months of submittal. Permittees submitting updated SWMPs are exempt from section A.1.b.4.</i></p> <p><i>Subsequent SWMP updates mayshall be submitted forto the Regional Water Board Executive Officer approval along with Annual Reports. Subsequent SWMP updates shall not reduce the program effectiveness at reducing the discharge of pollutants. The Permittee may assume approval by the Regional Water Board Executive Officer of the updated SWMP submitted with the Annual Report if the Permittee does not receive a response by the Regional Water Board within six months of submittal. Approval is not required by Regional Water Board.</i></p>

Non-Traditional Small MS4 Permittees			
Comment #	Permit Element/ Issue/ Concern	Location in Draft Permit	Comment/Recommendation
8	Updated SWMP Requirements	E.3.b. [pages 21 – 22]	<p>The third draft includes new, redline specificity regarding SWMP submittal requirements. This section contradicts previous statements that SWMPs are no longer required. The new language explicitly states that Permittees “shall submit”...an updated SWMP. Additionally if a Renewal Permittees is notified by the Regional Board EO that they can continue implementation of BMPs it does not make sense to require them to update their SWMP with additional BMPs. If they are continuing their program, its unlikely that there will be new or additional BMPs. This language should be simplified to reduce conflict with previous statements.</p> <p>Additionally, deadlines should be placed on Regional Boards for notification so that a Permittee is able to</p> <p><i>CASQA Recommendation</i> <i>Modify language as follows:</i> <i>To enact this section, the Regional Water Board Executive Officer will notify the Renewal Non-Traditional Small MS4 Permittee that this section has been invoked by the effective date of this permit. Within six months of notification by the Regional Water Board Executive Officer the Permittee shall submit to the Regional Water Board for Executive Officer approval an updated SWMP. Permittees may update their SWMP as needed to reflect potential changes needed The updated SWMP shall include all additional BMPs (including measurable goals, targets, and implementation schedules) necessary to bring the Permittee’s program into compliance with this Order, reduce the discharge of pollutants to the maximum extent practicable, and protect water quality. At the time of the SWMP update, the Permittee may modify the SWMP for purposes other than attaining compliance with this Order, provided such changes maintain reduction of pollutants to the maximum extent practicable and do not reduce overall program effectiveness.</i></p>

Renewal Traditional Small MS4 Permittees			
Comment #	Permit Element/ Issue/ Concern	Location in Draft Permit	Comment/Recommendation
8, cont.	Updated SWMP Requirements, cont.	E.3.b. [pages 21 – 22]	<p><i>It is recommended that aAll updates to SWMPs shall be shown in underline-strikeout format. With the updated SWMP submittal, the Permittee shall include a separate supplemental document explaining each change to the SWMP. For each change made for the purpose of bringing the SWMP into compliance with this Order, the supplemental document shall identify the section of this Order the change is designed to address. For all other SWMP changes, the supplemental document shall explain the purpose of each change. For any SWMP change that would result in a reduction in program implementation levels, the supplemental document shall explain how the implementation reduction is offset by increased program effectiveness elsewhere. To the extent the updated SWMP substantially deviates from measures identified in Sections E.6 through E.14 of the Order, the approval of the SWMP may be subject to public review.</i></p> <p><i>The updated SWMP shall include a signed certified statement by the Permittee, in accordance with Attachment F sections 11 and 12 of this Order, certifying implementation of the SWMP will achieve compliance with this Order. Upon approval of the updated SWMP by the Regional Water Board Executive Officer, the Permittee shall implement the updated SWMP. The Permittee may assume approval of the updated SWMP by the Regional Water Board Executive Officer if the Permittee does not receive a response by the Regional Water Board within six months of submittal. Permittees submitting updated SWMPs are exempt from section A.1.b.4.</i></p> <p><i>Subsequent SWMP updates mayshall be submitted for to the Regional Water Board Executive Officer approval along with Annual Reports. Subsequent SWMP updates shall not reduce the program effectiveness at reducing the discharge of pollutants. The Permittee may assume approval by the Regional Water Board Executive Officer of the updated SWMP submitted with the Annual Report if the Permittee does not receive a response by the Regional Water Board within six months of submittal. Approval is not required by Regional Water Board.</i></p>

Program Management			
Comment #	Permit Element/ Issue/ Concern	Location in Draft Permit	Comment/Recommendation
9	Legal Authority – Timeline Edits for Consistency	E.6.a.i & E.6.b.i [pages 23 & 25] & F.5.a.1(iii) [page 101]	<p>The redline text indicates that the permittee shall certify that the Permittee has and will maintain full legal authority (E.6.b.i), however E.6.a.i states that Permittees must obtain adequate legal authority within the second year. Permittees cannot certify that they have legal authority before they obtain that authority.</p> <p><i>CASQA Recommendation</i> Revise the timeline in E.6.b(i) as follows: Within the first <u>second</u> year of the effective date of the permit...</p> <p><i>Likewise, revise the timeline under E.6.B(ii) and F.5.a.1(iii) as follows:</i> All Permittees shall submit in the <u>second</u> first year online Annual Report...</p>

Education and Outreach			
Comment #	Permit Element/ Issue/ Concern	Location in Draft Permit	Comment/Recommendation
10	Public Education and Outreach – School Age Children Requirement Modification	E.7.a(ii)(j) [page 30]	<p><i>As previously indicated (CASQA Comments on the February 2011 Confidential Draft), unless the Permittee is a school district, it has no authority to educate students in elementary schools. In many cases, school curriculum and schedule requirements make it difficult for extra presentations to be made within the classroom. The revised redline language reduces Permittee’s flexibility and ability to provide outreach to school-aged children.</i></p> <p><i>CASQA Recommendation</i></p> <p><i>Replace current language with language similar to the K-12 outreach requirement included in the recently adopted Los Angeles NPDES MS4 Permit:</i></p> <p><i>Within the Permittee’s jurisdiction, effectively educate school –age children about storm water runoff and how they can help protect water quality habitat in their local watershed (s). The Permittee may use environmental and place-based, experiential learning which is integrated into school curricula and school facility management.¹² In the case that an environmental and place-based, experiential learning local program does not exist, the Permittee may use California’s Education and Environment Initiative Curriculum13 or equivalent.</i></p> <p><u>Provide independent, parochial, and public schools within in each Permittee’s jurisdiction with materials to educate school children (K-12) on storm water pollution. Material may include videos, live presentations, and other information. Permittees are encouraged to work with, or leverage, materials produced by other statewide agencies and associations such as the State Water Board’s “Erase the Waste” educational program and the California Environmental Education Interagency Network (CEEIN) to implement this requirement.</u></p>

Illicit Discharge Detection and Elimination			
Comment #	Permit Element/ Issue/ Concern	Location in Draft Permit	Comment/Recommendation
11	Outfall Mapping– Renewal Permittees	E.9.a. [pages 36]	<p>New (redline) permit language indicates that “development of the outfall map shall include a visual outfall inventory involving a site visit to each outfall”. Many Renewal Permittees have up-to-date outfall maps. Please allow such Permittees to submit their up-to-date outfall map without visiting all Permittee-owned outfalls in the field.</p> <p><i>CASQA Recommendation</i> Modify language as follows: The map may be in hard copy and/or electronic form or within a geographic information system (GIS). <u>The development of the outfall map shall include a visual outfall inventory involving a site visit to each outfall unless the Permittee already has an up-to-date outfall map that can be submitted.</u></p>
12	Illicit Discharge Source/ Facility Inventory – IGP Determination	E.9.b(ii)(c) [page 38]	<p>The permit requires Permittees to determine if facilities are required to be covered under the Statewide Industrial General Permit. Regional Boards are the proper authority for determination of IGP coverage, not Permittees. Instead of the current language, it should be modified such that the Permittee is required to 1) notify a facility if they have good reason to believe that the facility should have coverage under the IGP and 2) strongly urge the facility to contact the Regional Board to verify the requirement for coverage under the IGP.</p> <p><i>CASQA Recommendation</i> Modify language as follows: If tThe Permittee shall determine if the has reason to believe that facilities that are required to be covered under the Statewide Industrial General Permit have done so. Upon discovering any facilities requiring permit coverage but are not yet permitted, the Permittee shall notify the appropriate Regional Water Board facility, and strongly urge the facility to contact the Regional Board to verify the requirement for coverage under the IGP include copies of the notification in the online Annual Report.</p>

Illicit Discharge Detection and Elimination			
Comment #	Permit Element/ Issue/ Concern	Location in Draft Permit	Comment/Recommendation
13	Illicit Discharge Source/Facility Inventory – Facility Assessment	E.9.b(ii)(e) [page 39]	<p>The Permit requires the assessment of inventoried facilities and other priority areas for the presence of illicit discharges. As currently written, the section requires business inspections. As previous comments indicated, this is above and beyond requirements of the Federal Clean Water Act. Page 11 of the current Fact Sheet states that the industrial/commercial inspection program requirements were deleted from the permit.</p> <p>The requirement should be modified such that it is clearly not an assessment or inspection of commercial or industrial site. Modify language so that site visits are limited to assessment of outfalls in priority areas and allow an alternative to site visits in the form of self-certification – similar to the self-certifications as mentioned under post-construction BMP maintenance. At a minimum this requirement should be limited to priority areas and should not cover “all inventoried facilities.” There is little benefit in establishing priority areas if Permittees cannot utilize that to assist in the prioritization of limited resources.</p> <p><i>CASQA Recommendation</i> <i>Modify language as follows:</i> <i>The Permittee shall develop and implement procedures to proactively identify illicit discharges originating from inventoried facilities and the other priority areas identified in section E.9.a.(ii).(c). The Permittee shall implement the procedures to assess <u>outfalls in all inventoried facilities and other</u> priority areas for the presence of illicit discharges at least once over the length of the permit term. The procedures shall include field observations, field screening, inspections, and any other appropriate and effective survey methods. <u>Alternatively, Permittees may establish a self-certification program where Permittees require reports from authorized parties demonstrating the prevention and elimination of illicit discharges at their facilities in priority areas at least once over the length of the permit term.</u></i></p>

Illicit Discharge Detection and Elimination			
Comment #	Permit Element/ Issue/ Concern	Location in Draft Permit	Comment/Recommendation
14	Field Sampling – Modifications	E.9.c [page 39]	<p>A definition for outfall is now provided in Attachment I. This definition specifically calls out ASBS. Please also reference this newly added definition within the IDDE, Field Sampling provision to clarify what it meant by “outfalls.”</p> <p>Permittees should only be required to sample for unknown flows. Having to sample known flows from stream tributaries and perennial springs would add unnecessary costs.</p> <p>In addition, the language does not address municipalities that have already completed their outfall inventories.</p> <p><i>CASQA Recommendation</i> <i>Modify language by providing clarify for renewal permittees, adding “with unknown flows” and adding a footnote that references the outfall definition in Attachment I:</i> <i>... (e.g., while conducting the outfall inventory under Section E.9.a) the <u>New Permittees</u> shall sample any outfalls¹⁹ <u>with unknown flows</u> that are flowing or ponding...shall also conduct dry weather sampling (more than 72 hours since the last rain event) of outfalls annually identified as priority areas. <u>Within the third year of the effective date of the permit, Renewal Permittees that have already established an up-to-date outfall map and are not required to conduct a site visit to each outfall, shall only be required to conduct annual dry weather sampling (more than 72 hours since the last rain event) of outfalls identified as priority areas within the third year of the effective date of the permit.</u></i></p> <p><i><u>19: See Attachment I for definition of outfall.</u></i></p>

Illicit Discharge Detection and Elimination			
Comment #	Permit Element/ Issue/ Concern	Location in Draft Permit	Comment/Recommendation
15	Action Levels – Modifications	E.9.c.(ii)(b) [page 41] F.5.d.1.(ii)(b) [page 111]	<p>Some of the constituents are not relevant for discharges to marine waters (e.g., conductivity and hardness). Permittees should be allowed to tailor their response activities to local conditions. For example, a dewatering sump in a building may continue pumping for more than 72 hours after the last rain event (and may in fact be continuous in winter months) and permittees should not have to conduct follow-up investigations, enforcement, etc., if the conductivity exceeds 2,000 $\mu\text{S}/\text{cm}$ which may just be representative of local saline conditions and of no environmental consequence. The permittee must have discretion to tailor the program to meet local needs.</p> <p><i>CASQA Recommendation</i> <i>Modify text as follows:</i> <u>Verify that indicator parameter as specified in Table 2...are not exceeded. Alternatively, permittees may tailor Table 2 to align with local conditions. Modifications and associated justifications shall be identified within SMARTS within the third year of the effective date.</u></p>

Construction			
Comment #	Identify Permit Element/ Issue/ Concern	Location in Draft Permit	Comment/Recommendation
16	Construction Site Inspection and Enforcement – Edit	E.10.c.(ii) [page 46]	<p>Recent redline strikeout/revisions to this section created some errors in the language. Recommendations below are intended to correct these errors. For example, with the recent edits, the language reads as though <u>projects</u> have erosion and sediment control ordinances which is not the case as municipalities are the ones with the ordinances.</p> <p><i>CASQA Recommendation</i></p> <p><i>Modify as follows:</i></p> <p><i>The inspection procedures shall be implemented per the Permittee’s construction site storm water control ordinance and verify compliance with the project’s erosion and sediment control ordinance.</i></p> <p>.....Construction site storm water runoff control ordinance, and other applicable....</p> <p>.....Prior to allowing an operator to commence land disturbance during the rainy season, the Permittee must perform an inspection to ensure all necessary erosion and sediment controls are in place.....</p>

Construction			
Comment #	Identify Permit Element/ Issue/ Concern	Location in Draft Permit	Comment/Recommendation
17	Construction Site Inspection and Enforcement – Modification	E.10.c. [page 46]	<p>Allow the Permittees to require the project proponent to conduct inspections.</p> <p><i>CASQA Recommendation</i> <i>Modify as follows:</i> <i>Prior to allowing an operator to commence land disturbance during the rainy season, the Permittee must perform an inspection, <u>or must require the project proponent to perform an inspection</u>, to ensure all necessary sediment controls are in place. During active construction, the Permittee shall conduct inspections based on prioritization of construction sites. Prioritization criteria shall be based on project threat to water quality. Project threat to water quality includes soil erosion potential, site slope, projects size and type, sensitivity of receiving water bodies, proximity to receiving water bodies, non-stormwater, storm water discharges and past record of non-compliance by the operator of the construction site. Frequencies may be conducted in accordance with the frequencies described below. At the conclusion of the project, and prior to final occupancy approval, the Permittee must inspect, <u>or must require the project proponent to inspect</u>, to ensure that all disturbed areas have reached final stabilization and that all temporary control measures are no longer needed and have been removed.</i></p>

Construction							
Comment #	Identify Permit Element/ Issue/ Concern	Location in Draft Permit	Comment/Recommendation				
18	Construction Site Inspection and Enforcement – Recommended Inspection Frequency Table Clarification	E.10.c.(ii) [page 47]	<p>This section includes a table with recommended inspection frequencies. The table includes the use of the term “bimonthly” which can be interpreted in several ways including every other month and twice a month. The use of “bimonthly” should be replaced with a more descriptive term.</p> <p>The use of the phrase, “not considered a Construction Site” does not make sense in the context of the construction provision. This language should be struck as it does not add clarity to recommended inspection frequencies.</p> <p>Projects with an erosivity waiver are not covered by the CGP and therefore inspection should not be required for these sites.</p> <p><i>CASQA Recommendation</i> <i>Modify the recommended inspection frequency table as follows:</i></p> <table border="1"> <tr> <td><i>Priority Construction Sites including the following: sites with 5 acres or more of soil disturbance; sites with one acre or more of soil disturbance that discharge to a tributary listed as impaired water for sediment or turbidity under the CWA Section 303(d); and other sites with one acre or more of soil disturbance determined by the Permittee or State or Regional Water Quality Control Board to be a significant threat to water quality*.</i></td> <td><i>Bimonthly during the rainy season (October 1st to April 30). Monthly during the remainder of the year. Prior to land disturbance (during the rainy season), during active construction and following active construction. Consider the need for inspections every 14 days during the rainy season.</i></td> </tr> <tr> <td><i>Other sites with one acre or more of soil disturbance (or part of larger common plan of development) not considered a Construction Site**</i></td> <td><i>Monthly during the rainy season. Bimonthly during the remainder of the year. Prior to land disturbance (during the rainy season), during active construction and following active construction. Consider monthly inspections during the rainy season and inspections every 60 calendar days during the remainder of the year.</i></td> </tr> </table> <p><i>* In evaluating the threat to water quality, the Permittee must assess the following factors: soil erosion potential; site slope; project size and type; sensitivity of receiving waterbodies; proximity to receiving waterbodies; non-stormwater discharges; and past record of non-compliance by the operators of the construction site. **Sites that have obtained an Erosivity Waiver under the Construction General Permit from the State Water Resources Control Board do not need to be inspected during the dry season (May 1 to September 30).</i></p>	<i>Priority Construction Sites including the following: sites with 5 acres or more of soil disturbance; sites with one acre or more of soil disturbance that discharge to a tributary listed as impaired water for sediment or turbidity under the CWA Section 303(d); and other sites with one acre or more of soil disturbance determined by the Permittee or State or Regional Water Quality Control Board to be a significant threat to water quality*.</i>	<i>Bimonthly during the rainy season (October 1st to April 30). Monthly during the remainder of the year. Prior to land disturbance (during the rainy season), during active construction and following active construction. Consider the need for inspections every 14 days during the rainy season.</i>	<i>Other sites with one acre or more of soil disturbance (or part of larger common plan of development) not considered a Construction Site**</i>	<i>Monthly during the rainy season. Bimonthly during the remainder of the year. Prior to land disturbance (during the rainy season), during active construction and following active construction. Consider monthly inspections during the rainy season and inspections every 60 calendar days during the remainder of the year.</i>
<i>Priority Construction Sites including the following: sites with 5 acres or more of soil disturbance; sites with one acre or more of soil disturbance that discharge to a tributary listed as impaired water for sediment or turbidity under the CWA Section 303(d); and other sites with one acre or more of soil disturbance determined by the Permittee or State or Regional Water Quality Control Board to be a significant threat to water quality*.</i>	<i>Bimonthly during the rainy season (October 1st to April 30). Monthly during the remainder of the year. Prior to land disturbance (during the rainy season), during active construction and following active construction. Consider the need for inspections every 14 days during the rainy season.</i>						
<i>Other sites with one acre or more of soil disturbance (or part of larger common plan of development) not considered a Construction Site**</i>	<i>Monthly during the rainy season. Bimonthly during the remainder of the year. Prior to land disturbance (during the rainy season), during active construction and following active construction. Consider monthly inspections during the rainy season and inspections every 60 calendar days during the remainder of the year.</i>						

Pollution Prevention/ Good Housekeeping			
Comment #	Identify Permit Element/Issue/Concern	Location in Draft Permit	Comment/Recommendation
19	Permittee O&M Activities – Modification	E.12.b.ii [page 60]	<p>This provision was changed and now requires quarterly evaluation of BMPs instead of annual evaluation. This increases the tracking and reporting requirements without a demonstrated water quality benefit. Annual evaluation is sufficient.</p> <p><i>CASQA Recommendation</i> <i>Change this requirement to state:</i> <i>Evaluate BMPs – All BMPs implemented during O&M activities shall be evaluated <u>annually</u> <u>quarterly</u>.</i></p> <p><i>Also modify E.11.h(i) to annual match frequency.</i></p>

Post-Construction			
Comment #	Identify Permit Element/Issue/Concern	Location in Draft Permit	Comment/Recommendation
20	Site Design Measures – Modification	E.12.b.ii [page 60]	<p>Site Design measures are limited to eight specific measures. A project will have no site design options other than one of the listed eight items. A ninth bullet should be added in order to encompass other options that might be available to projects.</p> <p><i>CASQA Recommendation</i> Add a ninth bullet as follows: (i) <u>Other design measures that are an effective means of reducing site runoff</u></p>
21	Site Design Measures, Post-Construction Calculator – Modification	E.12.b.ii [pages 60-61]	<p>Determining volume reductions for projects between 2,500 sf and 5,000 sf is an exercise with no purpose. The post-construction calculator is a detailed and complex spreadsheet used for CGP regulated projects, where the requirement is to reduce post-development volumes to pre-project volumes. It is not applicable or appropriate for projects of this small scope as it was developed for sites > 1ac in areas that are not part of an MS4, without provisions for projects located in existing developed areas.</p> <p><i>CASQA Recommendation</i> Modify language as follows: Project proponents shall use the State Water Board SMARTS Post-Construction Calculator1, or equivalent to quantify the runoff reduction resulting from implementation of site design measures.</p>
22	Permittee’s Development Projects - Clarification	E.12.c.ii(c) [page 63]	<p>It is unclear what is meant by a Permittee’s “most current version of the low impact development runoff standards”</p> <p><i>CASQA Recommendation</i> Modify text as follows: The Permittee shall develop and implement for public development projects an <u>equivalent</u> approach, <u>equivalent</u> to the approach used for private development projects, to apply the most current version of the low impact development runoff standards to applicable public development projects.</p>

Post-Construction			
Comment #	Identify Permit Element/Issue/Concern	Location in Draft Permit	Comment/Recommendation
23	Low Impact Development Design Standards – Correction	E.12.e(i) [page 66]	<p>Provision E.12.e.(i), the last line should refer to Section E.12.e.(ii)(c). Provision E.12.e.(ii)(f), the end of the first sentence should refer to Section E.12.e.(ii)(c).</p> <p><i>CASQA Recommendation</i> Revise.</p>
24	Attachment J and inclusion of the Central Coast Post-Construction Requirements	E.12.J and Attachment J	<p>Including the Central Coast Post-Construction requirements as a separate matter in this Order nulls petitions from Permittees in Region 3 to the state; limits or prevents revisions that Region 3 might adopt; creates confusion due to technical errors and complexity within the Region 3 requirements; places uncertainty on implementation of E.12 provisions; and does not support the statewide NPDES Permit consistency effort. Additional comments on the Central Coast Post-Construction Requirements are included as Attachment 2.</p> <p><i>CASQA Recommendation</i> Delete E.12.j and Attachment J.</p>

Monitoring			
Comment #	Identify Permit Element/ Issue/ Concern	Location in Draft Permit	Comment/Recommendation
25	Water Quality Monitoring – Modification	E.13(3) & Monitoring Flow Chart	<p>As currently written 303d listing monitoring requirement is too broadly defined and could eventually apply to virtually all waterways in the state. The requirement should be modified to clarify that monitoring for listed waters only pertains to Permittees that are potentially significant contributors and where urban runoff is a source. Note that in one location on the flow chart it indicated “where urban runoff is a source” – this should be carried (where appropriate) throughout the permit and flow chart for consistency and clarity.</p> <p><i>CASQA Recommendation</i> <i>Modify text as follows:</i> <u>Permittees shall implement monitoring of 303(d) impaired water bodies where urban runoff is a source and where the permittee is potentially a significant contributor, as specified by the Regional Water Board Executive Officer.</u></p> <p><i>Modify monitoring flow chart as indicated in Attachment 3.</i></p>

Monitoring			
Comment #	Identify Permit Element/ Issue/ Concern	Location in Draft Permit	Comment/Recommendation
26	Water Quality Monitoring - Consistency	E.13.(4) [page 83] & Attachment A & Monitoring Flow Chart	<p>E.13.(4) clearly states that permittees with a population greater than 50,000 that are not conducting monitoring related to ASBS, TMDLs or 303d impaired waterbodies are required to conduct monitoring as specified in E.13.a and E.13.b. This has not been clearly reflected in Attachment A and the monitoring flow chart. As currently formatted, Attachment A indicates that municipalities with “Ω” and “λ” must do both. Additionally the flow chart should eliminate pathways that indicate that TMDL and 303d listed municipalities should check Attachment A - Water Quality Monitoring Option requirements. These references should be eliminated as it is confusing and is counter to the new redline statement in E.13.(4).</p> <p>Currently the flow chart indicates that municipalities that discharge to a 303d listed waterbody should implement E.13 water quality monitoring and then consult Regional Board within 1 year. A municipality may invest in the planning necessary to comply with E.13 even though the Regional Board may impose 303d listed monitoring requirements later. This could lead to unnecessary expenditure of limited resources since E.13.(4) requirements are only for designated municipalities (≥ 50,000 population <u>without</u> 303d listed monitoring requirements). Correct by simplifying the flow chart to align with E.13.(3) and E.13.(4) and removing references to Attachment A for TMDL and 303d listed municipalities.</p> <p><i>CASQA Recommendation</i> Remove “Ω” where “λ” is indicated to clarify that municipalities conducting TMDL monitoring do not also have to conduct E.13a and b monitoring in Attachment A of the third draft permit. Edit the monitoring flow chart to align with E.13.(4) and to eliminate confusion. See Attachment 3 for flow chart edits. Limit the flow chart to 6 primary pathways:</p> <ol style="list-style-type: none"> 1 ASBS: adhere to ASBS requirement 2 ASBS and TMDLs: adhere to ASBS and Attachment G 3 TMDLs: adhere to Attachment G 4 TMDLs and 303d listing: adhere to Attachment G plus Regional Board consultation to determine potential 303d related monitoring 5 303d listing: Regional Board consultation to determine potential 303d related monitoring 6 Listed in Attachment A for WQ Monitoring Options: see E.13

Monitoring			
Comment #	Identify Permit Element/ Issue/ Concern	Location in Draft Permit	Comment/Recommendation
27	Water Quality Monitoring – Consistency	E.13 after E.13 (4) [page 83]	<p>E.13 (4) states: “Traditional Small MS4 Permittees with a population greater than 50,000 listed in Attachment A that are <u>not already conducting ASBS, TMDL or 303(d)</u> monitoring efforts shall participate in one of the following monitoring programs, subject to Regional Water Board Executive Officer approval:</p> <p>E.13.a. Receiving Water Monitoring E.13.b. Special Studies</p> <p>CASQA agrees with the language above. However, the redline language in E.13 language under E.13(4) conflicts with E.13(4) by replacing the word “or” with “and”. It states: “Traditional Small MS4 Permittees that are already conducting monitoring of discharges to ASBS, TMDL, and 303(d) impaired water bodies are not required to perform additional monitoring as specified in E.13.a and E.13.b.” At a minimum, the “and” after “TMDL” should be replaced with “or”.</p> <p><i>CASQA Recommendation</i> Make the following edits to the section of E.13 right under E.13(4): Traditional Small MS4 Permittees that are already required to conducting monitoring described in sections E.13.(1), (2) or (3) above of discharges to ASBS, TMDL, and 303(d) impaired water bodies are not required to perform additional monitoring as specified in E.13.a and E.13.b.</p>
28	Outline Structure – Modification	Throughout E.13 and page 83	<p>Everything after E.13.(4) should start with “E.13.(4)” until a new section begins. The redline statement under E.13.(4) and the revised language that pertains to regional monitoring should move to the beginning of the section and should refer to sections E.13.(1)-(4) instead of sections E.13.i-iv.</p> <p><i>CASQA Recommendation</i> Adhere to conventional outline structure rules. Please consider hiring an editor to edit the final permit so that the outline structure is not confusing.</p>

Monitoring			
Comment #	Identify Permit Element/ Issue/ Concern	Location in Draft Permit	Comment/Recommendation
29	Regional Monitoring – Clarification	E.13 [page 83]	<p>Phase II Permittees may participate with nearby Phase I Permittees as well as other of organizations in establishing or implementing an existing regional monitoring program. It is not feasible to require all or a majority of the Permittees to collaborate to conduct water quality monitoring in order for the program to be considered “regional” because this is a statewide permit. Finally, the discussion of regional monitoring should be placed at the very beginning of the section under E.13 so that it does not appear to be part of E.13.(4).</p> <p><i>CASQA Recommendation</i> <i>At a minimum, the following text should be deleted or significantly modified “Where all or a majority of the Permittees collaborate to conduct water quality monitoring, this shall be considered a regional monitoring program.” The use of the terms “all” and “majority” do not make sense in the context of a statewide permit. Redefine “regional monitoring program” so that it makes sense and provides the flexibility necessary for the broad variety of Phase II Permittees covered by this statewide permit and move the regional monitoring discussion to the beginning of the section under E.13.</i></p>
30	Regional Monitoring – Modification	E.13 [pages 83-84]	<p>We agree with most of the changes that were made to the regional monitoring discussion with one exception. Revised language in the November 16, 2012 Tentative Order states: “The following management questions shall be used to assist in guiding the development of a regional monitoring program, as applicable”.</p> <p><i>CASQA Recommendation</i> <i>Replace the revised text with:</i> <u><i>Regional monitoring programs shall address data needs, information requirements, and monitoring questions pertaining to items (1) through (4) above under E.13.</i></u> <i>Alternatively, revise the redline text to say: <u>The following management questions shall</u> may be used to assist in guiding the development of a regional monitoring program, as applicable.</i></p>

Monitoring			
Comment #	Identify Permit Element/ Issue/ Concern	Location in Draft Permit	Comment/Recommendation
31	303d List-Related Monitoring – Clarification	E.13.(3) & Monitoring Flow Chart [page 83]	<p>The permit should clearly state that consultations with Regional Board for 303(d) list – related monitoring only need occur when “urban runoff” is listed as a source.</p> <p><i>CASQA Recommendation</i> Modify E.13.(3) as follows: (iii) <u>All Permittees that discharge to waterbodies listed as impaired on the 303(d)²⁹ list, where urban runoff is listed as a source, shall consult with the Regional Water Board within one year of the effective date of the permit to assess whether monitoring is necessary and if so, determine the monitoring study design and a monitoring implementation schedule. Permittees shall implement monitoring of 303(d) impaired water bodies as specified by the Regional Water Board Executive Officer.</u></p>
32	Additional Clarification	E.13.a. [pages 84-89]	<p>Thank you for your revisions to E.13.a. The section would benefit from additional clarification.</p> <p><i>CASQA Recommendation</i> Clearly state that upstream and downstream monitoring stations shall be located in the same watershed.</p>

Non-Traditional Provisions			
Comment #	Identify Permit Element/ Issue/ Concern	Location in Draft	Comment/Recommendation
33	Non-Traditional Post-Construction Requirements – Option for Offsite Mitigation	F.5.g.3 [page 130]	<p>Many Non-traditional Permittees will have difficulty implementing onsite retention requirements due to the unique nature of their sites. For example in a port setting it is common to encounter site conditions that have a high groundwater table (less than 5 ft to surface), tidal influence, soil contamination, and heavy industrial land uses. Unlike Traditional Permittees, many Nontraditional Permittees own much of the land that drains to their MS4. Given the combination of challenging site constraints combined with land ownership, Nontraditional Permittees have the opportunity to identify the most effective and feasible locations for stormwater treatment and retention within their MS4.</p> <p>Language should make the establishment of an offsite mitigation program optional (vs. required) as not all Nontraditional Permittees own the land that drains to their MS4. Additionally language should be flexible so that Nontraditional Permittees have the ability to implement the offsite mitigation framework that works best in the context of their stormwater program (i.e., language should not constrain their ability to select a banking program, fee in-lieu, etc.).</p> <p><i>CASQA Recommendation</i> <i>Include the following language:</i> <u>F.5.g.3 Alternative Compliance</u> <u>a) Alternative Compliance Measures</u> <u>When a Permittee determines a project has demonstrated that it is technically infeasible to retain 100 percent of the numeric sizing criteria onsite as specified in F.5.g.2.b, the Permittee may allow the use of infiltration or bioretention BMPs to intercept the volume of stormwater runoff not retained onsite at an approved offsite project; or</u></p> <p><u>b) Regional Storm Water Mitigation Program</u> <u>A Permittee may implement a regional stormwater mitigation program to substitute in part or wholly for New and Redevelopment requirements for the area covered by the regional stormwater mitigation program. Implementation of the program must retain the runoff as specified in F.5.g.2.b and result in improved stormwater quality.</u></p> <p><u>F.5.g.34 Operation and Maintenance (O&M) of Post-Construction Storm Water Management Measures</u></p>

Dispute Resolution			
Comment #	Identify Permit Element/ Issue/ Concern	Location in Draft	Comment/Recommendation
34	Dispute Resolution – Modification	H. [pages 139 – 140]	<p>CASQA appreciates the addition of Provision H which was added in part to address Permittees request for clarification regarding the Dispute Resolution process. However, the language could be interpreted as an attempt to mollify a Permittee’s rights to use the formal petition process as it is outlined in Water Code 13320.</p> <p><i>CASQA Recommendation</i> <i>Modify language as follows:</i> <u><i>This language does not circumvent, nullify or prevent a Permittee from pursuing the formal petition process as stated in Water Code section 13320.</i></u></p>

Attachment 1: Glossary			
Comment #	Identify Permit Element/ Issue/ Concern	Location in Draft	Comment/Recommendation
35	Glossary – Outfall Definition	Attachment I [page 6]	<p>Modify outfall definition so that it also applies to the IDDE section. This will provide the clarity needed to permittees during field screening.</p> <p><i>CASQA Recommendation</i> Modify as follows: Outfall - A point source as defined by 40 CFR 122.2 at the point where a municipal separate storm sewer discharges to waters of the United States and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other waters of the United States and are used to convey waters of the United States. Specific to <u>IDDE provision requirements (E.9)</u> and Ocean Plan monitoring, outfalls include those measuring 18 inches or more in diameter.</p>
36	Glossary – Permit Effective Date	Attachment I [page 6]	<p>Although this definition is not shown in redline strikeout, we do wish to point out that the reference to “50 days” after adoption is incorrect.</p> <p>The memorandum of understanding between the US EPA and SWRCB (NPDES Memorandum of Agreement Between the U.S. Environmental Protection Agency and the California State Water Resources Control Board, 1989) indicates that “General permits adopted by the State Board or Regional Boards shall become effective on the 100th day after the date of adoption, if EPA has made no objection to the permit...” [page 22].</p> <p><i>CASQA Recommendation</i> Modify as follows: Permit Effective Date - The date at least 50 <u>100</u> days after General Permit adoption, provided the Regional Administrator of U.S. EPA Region 9 has no objection.</p>

Attachment J: Central Coast Post-Construction Requirements			
Comment #	Identify Permit Element/ Issue/ Concern	Location in Draft	Comment/Recommendation
37	Central Coast Post-Construction Requirements - Delete	Attachment J - entirety	See comments in cover letter, post-construction section above, and Attachment 2. <i>CASQA Recommendation</i> <i>Delete</i>

CASQA submitted comments on the Draft Resolution for the Central Coast Post-Construction Requirements on July 6, 2012. Among other things, these comments address the lack of technical justification behind the use of the 95th percentile, 24-hour rainfall event and inconsistencies that these requirements create statewide. These comments are relevant to the third draft of the Phase II permit due to the direct references and inclusion of the Central Coast Post-Construction Requirements in Attachment J. These comments are included below and are provided as part of CASQA's comments on the third draft of the Phase II permit.

Significant, last minutes changes were made to the Central Coast Post-Construction Requirements and therefore CASQA's July 6 comment letter does not address the hydrologic analysis to be used for determining design volume of runoff to be retained and treated onsite (included as Attachment D of the Central Coast Requirements). These requirements are of great concern as they technically unjustified and were integrated without stakeholder input. Background regarding these requirements is provided below.

The hydrologic analysis to be used for determining design volume of runoff to be retained and treated onsite (included as Attachment D) provides an event-based sizing methodology as an option to a locally calibrated continuous simulation-based model. This event-based methodology originates from a WEF Manual of Practice sizing method that was applied incorrectly. The WEF Manual of Practice (No. 23) is used for determining the water quality capture volume based upon long-term mean precipitation depths throughout the U.S. (generally, the 82-88th percentile). Simple regression equations were then determined to relate the mean rainfall depth to the maximized water quality runoff capture volume. Regression constants based upon those data are provided, depending upon the drain time of a water quality detention facility. The regression constant for a 48-hr drain time is 1.963. (Note: the 2012 WEF Manual of Practice is updated and no longer includes the regression constant at all.)

From WEF Manual of Practice (No. 23):

$$P_o = (a * C) * P_6$$

Where

P_o = maximized detention volume determined using either the event capture ratio or the volume capture ratio as its basis (watershed in.)

a = regression constant from least-squares analysis

C = watershed runoff coefficient

P_6 = mean storm precipitation (watershed in.)

		Drain time of capture volume		
		12 hours	24 hours	48 hours
Event capture ratio	a =	1.109	1.299	1.545
	r ² =	0.97	0.91	0.85
Volume capture ratio	a =	1.312	1.582	1.963
	r ² =	0.80	0.93	0.85

Where r² = correlation of determination coefficient, which ranges from 0.80 to 0.97, implies a strong level of reliability

This value was incorrectly used in the Central Coast Requirements for determining both the Retention Volume and the Water Quality Volume using the 85th and 95th percentile runoff events, respectively. The end result is doubling the volume of runoff that must be retained and treated onsite.

It is unclear how this sizing factor relates to the provision for water quality treatment, because Attachment D is not referenced under PR#2 (Water Quality) where the 85th percentile is cited, but rather under PR#3 (Retention). Also unclear how the sizing factor relates to the Attachment E of the Central Coast Requirements, which address a ten percent adjustment to the Retention Requirement, resulting in a minimum area of (10% of the Equivalent Impervious Surface Area) that must be dedicated to structural Storm Water Control Measures. Considering this is a surface area for a volume retention requirement, it is unclear if Storm Water Control Measures should therefore be sized very deep to accommodate the design retention and water quality treatment volumes within 10% of the site’s equivalent impervious surface area.

In addition to Attachment D of the Central Coast Requirements, other areas of concern and complexity that were not addressed in the CASQA’s July 6 letter include:

- Net Impervious Area, which is used for calculating the area for Water Quality Treatment (PR2 Provision (a))
- Adjustments to the Runoff Retention requirements for redevelopment based on whether project is located in an Urban Sustainability Area or not
- Attachment E, Equivalent Impervious Surface Area, which is used to calculate the area dedicated to structural stormwater control measures, includes a table of correction factors for mostly-pervious surfaces such as pervious concrete (0.60), pervious asphalt (0.55), stone (0.25), grass (0.1), and “managed turf” (varies from 0.15-0.25 depending on Hydrologic Soil Group). If measures such as pervious concrete and asphalt are counted towards a site’s imperviousness, there may be disincentive to use these measures.
- “10% Rule” (PR3 Retention provision (e)), which is the minimum Equivalent Impervious Surface Area of the project that must be dedicated to “retention-based Storm Water

Control Measures” (not defined). It is unclear how this relates to the Retention Volume and Water Quality Volume calculated in Attachment D.

- Attachment F, Off-Site Retention Requirements, which includes an “On-site Retention Feasibility Factor” which is the ratio of the Design Retention Volume (of Attachment D) managed on-site to the actual area allocated to structural SCMs,. Then this value is compared to Actual Off-site Mitigation Retention Volume. CASQA is unclear how these calculations result in determining effective performance requirements.

Additionally, Attachment J introduces further inconsistency regarding post-construction requirements across the state and within the Phase II permit (E.12). To illustrate, in some aspects Attachment J is more stringent and in other, less stringent depending on the circumstances, some of which seem arbitrary and create confusion amongst requirements. A few examples:

- Attachment J uses the E.12 bioretention design configuration, but arbitrarily increases the depth of the soil layer from 18 inches to 24 inches.
- The sizing criteria for treatment (Water Quality Volume, in Central Coast Attachment D to Attachment J) are different from the E.12 sizing criteria.
- Attachment J allows treatment requirements to be met off-site; this is different from Provision E.12 (where onsite options are somewhat more flexible).
- The project-size thresholds for applicability of the treatment requirements are different.
- The content and format of submittals for treatment-only projects is substantially different in Attachment J than in Provision E.12.
- The requirements for verifying operation and maintenance of treatment-only facilities are different.

Many of these elements are completely new and unfamiliar, or borrow elements taken from various programs, but taken altogether are unclear and certainly unproven as to their effectiveness or ease of implementation. Given the level of complexity in these new provisions, and the challenges of providing meaningful comment CASQA strongly recommends deletion of any reference to and inclusion of the Central Coast Post-Construction Requirements.

Instead, CASQA recommends to allow at least one permit cycle to implement the current administrative draft of the Phase II permit, which incorporates straightforward and implementable LID and “baseline hydromodification management” requirements, which has already been carefully reviewed and crafted resulting in a relatively noncontroversial requirement that will likely accomplish most or all of the hydrologic controls sought by the Central Coast Post-Construction Requirements.

State Water Board staff indicated that the reopener would occur upon delineation of watershed management zones, similar to that produced for the Central Coast. The Central Coast’s

watershed management zones are based solely on underlying geology and slope and as such, delineating these zones is not the challenge. The challenge is in selecting hydromodification standards. If the Region 3 standards are adopted statewide, that would include retention of all events up to and including the 95th percentile storm event for projects > 15,000 sq ft in delineated watershed management zones that overly a groundwater basin. Although this applies to projects located in delineated WMZs that overly a groundwater basin, these WMZs are typical of urban areas with gentle slopes, good soil, and available water, such as coastal alluvial fans. Applying retention of runoff from all events up to and including the 95th percentile storm event would be a significant shift in LID/hydromod standards statewide.

**Phase II Permit Traditional Small MS4
Monitoring Flow Chart
November 16, 2012**

