



Standardized Cost Reporting in Municipal Stormwater Permits Municipal Stormwater Cost Policy

Response to Public Comments
December 2024



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Introduction

The revised Draft Policy for Standardizing Cost Reporting in Municipal Stormwater Permits (Municipal Stormwater Cost Policy or Policy) was released on May 9, 2024, for a 45-day public comment period, which was subsequently extended to a 60-day comment period that closed on Tuesday, July 9, 2024. In response, 17 comment letters were submitted by interested parties that contained 83 individual comments on various aspects of the proposed Policy, the associated Staff Report, cost accounting guidance, and adopting resolution.

This document presents individual responses to all comments received during the public comment period. In addition, the common concerns raised in the comments have been categorized as Summary Comments (SC), which are addressed in the subsequent section of this document. The following section provides detailed responses to each comment received. Table 1 identifies all letters received during the second public comment period and the number of comments in each letter.

Table 1: Comment Letters Received During the Second Public Comment Period

Comment Letter Number	Organization Name	Number of Comments
1	Town of Windsor	4
2	Shasta County	1
3	County of San Diego	13
4	Ventura County	6
5	Sacramento Stormwater Quality Partnership	3
6	Russian River Watershed Association	2
7	Riverside County	4
8	San Mateo County	4
9	City of Banning	3
10	Santa Clara Valley Urban Pollution Prevention Program	4
11	City of Los Angeles	7
12	City of Cloverdale	3
13	Orange County Public Works	3
14	California Coastkeeper Alliance	4
15	California Stormwater Quality Association	12

16	Sonoma County	3
17	Contra Costa Clean Water Program	7

Summary Comments (SC)

SC 1: Clarify Cost Reporting Policy purpose and regulatory process for implementing new cost reporting requirements.

Response SC1: The cost reporting requirements in Phase I Municipal Separate Storm Sewer System (MS4) permits, issued by the Regional Water Quality Control Boards (regional boards), vary from region to region. In some cases, the lack of a detailed cost reporting framework in some Phase I MS4 permits results in inconsistent reporting of the cost of permit implementation even within the same region. One of the primary goals of the proposed standardized cost reporting in municipal stormwater policy (Final Draft Proposed Policy or proposed Policy) is to determine the costs incurred by permittees to implement specific permit elements. This will be done through establishing a standardized cost reporting framework for Phase I MS4 permittees statewide. The proposed Policy also intends to introduce a cost reporting framework for traditional Phase II MS4 permittees. The proposed framework ensures cost data is reported with enough detail to inform cost effective permit development. This is stated in Section 1.1 of the proposed Policy and no changes are necessary.

Section 8 of the proposed Policy outlines the regulatory process for implementing the new cost reporting framework. The data shall be submitted through a statewide cost data portal which will be publicly available.

SC 2: Exclude Phase II MS4 permittees from the proposed cost reporting requirements.

Response SC2: As outlined in the draft Staff Report (Section 2.3.2), the decision to require traditional Phase II permittees to report permit implementation costs was made after considerable deliberation. Removing all Phase II permittees from the proposed cost reporting requirements would result in a significant data gap and would prohibit evaluation of the costs associated with the Phase II MS4 permit. Acknowledging the resource limitations of many small MS4 permittees, the Final Draft Proposed Policy mandates reporting for traditional Phase II permittees while offering a streamlined approach with a less detailed cost breakdown. This addresses the data gap associated with cost of permit implementation for traditional Phase II permittees without overburdening the permittees. No changes were made based on this comment.

SC 3: Remove separate reporting framework proposed for Phase I and Phase II MS4 permittees. Make the streamlined Phase II MS4 reporting framework the standard for both Phase I and Phase II MS4 permittees.

Response SC3: In alignment with federal regulations, Phase I MS4 permits issued by various regional boards require stormwater permittees to annually report the costs associated with municipal stormwater permit implementation. Currently, the permit-specified cost reporting frameworks differ across regions, creating inconsistencies and limiting use of the collected cost data. The Final Draft Proposed Policy would establish a uniform cost reporting framework, designed to facilitate the collection of comprehensive and detailed data that meets the Policy objectives. These objectives include fulfilling the

data collection objectives currently set by the various regional boards. Adopting the Phase II cost reporting framework as the standard for both Phase I and Phase II permittees would fail to adequately meet these Policy objectives. No changes were made based on this comment.

SC 4: Allow small Phase I permittees, with population less than 100,000 people, to report cost using the simplified reporting format proposed for Phase II MS4 permittees.

Response SC4: Population is not the sole factor in determining whether a permittee falls under a Phase I or Phase II permit. The regional boards have discretion to identify which permit is appropriate for a given permittee. Once designated under a Phase I MS4 permit, all permittees are subject to federal cost reporting requirements regardless of their population and are also subject to their respective Phase I permit reporting requirements. Similarly, the Proposed Policy will require the same set of standardized cost categories for all Phase I permittees, even if the population of a Phase I permittee is fewer than 100,000.

Further, while the Phase II permittees are regulated under a statewide permit issued by the State Water Board, small Phase I permittees are subjected to Phase I permits issued by their respective individual regional boards. Requiring small Phase I permittees to use the same cost reporting framework as Phase II permits is impractical and will result in collecting cost data of limited utility. No changes were made based on this comment.

SC 5: Require only category-specific reporting. Remove subcategories or make them optional.

Response SC5: Based on the public comments received during the first review period and the six-month beta test, the revised Draft Policy had removed several subcategories deemed non-essential (integrated pest management), impractical to track (tracking receiving water and outfall monitoring separately) or insignificant (emergency programs). The few remaining subcategories were determined to be essential to achieving the Policy objectives and have not been removed (please refer to Table 2 below). The inclusion of the remaining subcategories will allow for collection of data with an adequate level of detail to inform future permit development.

Based on the comments received, Table 1 of the Final Draft Proposed Policy (List of standardized categories and subcategories for reporting cost of Phase I Permit implementation) was revised as follows to provide additional clarification for the subcategories:

Table 2: Revisions to Table 1 of the Final Draft Proposed Policy

Category Name	Subcategories
1. Overall Program Management and Administration	a. Annual Reporting
2. Public Education, Outreach, Involvement and Participation	-
3. Illicit Discharge Detection and Elimination (IDDE) and Spill Response	a. IDDE a. Spill Response- Response to water pollution reports or spill events
4. Planning and Land Development	a. post-construction BMPs for public projects that must comply with new or redevelopment project standard b. other permittee-owned structural BMP projects (with total stormwater related budget higher than \$200,000)
5. Industrial and Commercial Facilities	-
6. Construction Site Management	-
7. Municipal Operations and Maintenance	-
8. Trash Management	a. Full capture device design, installation and maintenance for public projects b. Street sweeping as required by the Permit or part of an approved stormwater management plan
9. Water Quality Monitoring	a. Receiving water and outfall monitoring b. BMP monitoring
10. Permit-specific Special Programs	-
11. Miscellaneous Costs	-

SC 6: Remove requirements for reporting costs of implementing individual structural stormwater BMPs and BMP design details. If not removed, clarify that such cost reporting requirements only apply to publicly funded projects.

Response SC6: Based on the comments received, the Final Draft Proposed Policy clarifies that the requirements for reporting costs of implementing individual BMPs (where stormwater related project budget is higher than \$200,000) is intended only for permittee-owned structural stormwater BMPs. BMPs implemented by private developers in private properties are excluded from such reporting requirements.

Requirements for reporting costs for structural stormwater BMPs is not a new requirement for Phase I permittees. Most, if not all, permittees report the cost for structural stormwater BMP implementation as a part of their cost of municipal permit implementation. In the current format, the reported data provides an estimate of the municipal expenditures for all the “in progress” publicly owned structural BMPs for a given fiscal year. The type of BMPs implemented and associated design parameters are not reported which limits understanding of construction and project costs associated with different BMP types.

The Final Draft Proposed Policy includes requirements to report additional project information once construction of new public improvement structural BMPs is complete, including project location (address and GPS coordinates), BMP type, surface area, loading rate, and drainage area. This additional detail is necessary in order to normalize the data and ensure that the collected data is usable by permittees or other stormwater practitioners for improving BMP selection in the future if desired. These parameters are not required for BMPs that are already installed, BMPs with a total construction cost of less than \$200,000, or BMPs that are privately owned.

Based on the comments received, the requirements to report BMP surface area and loading rate were replaced by design treatment volume or flow rate. Section 5.1.3 was revised as follows:

5.1.3 Phase I MS4 Permittees shall track and report construction costs for structural stormwater BMPs for Permittee-owned projects where construction of structural stormwater BMPs is the project’s primary purpose and that have a cost exceeding the dollar value threshold listed for Subcategory 4.b in Table 1. This information will be included in the reporting for the fiscal year in which the project was completed upon project completion. Permittees shall also include relevant project details, including location (address and Global Positioning System coordinates), BMP type, design treatment volume or flow rate, BMP surface area, volumetric loading rate, and drainage area with the total project cost of the completed project.”

SC 7: Remove requirements for reporting details of street sweeping program.

Response SC7: Many Phase I permittees maintain a street sweeping program as a part of permit requirements or stormwater management programs. The nature of the programs varies depending on the size of the permittee, available resources, need for sweeping, and other local conditions and challenges. The proposed cost reporting framework allows the cost of street sweeping to be reported as a permit implementation

cost based on initial feedback from the permittees.

Since the nature of street sweeping programs and permit requirements related to street sweeping may vary significantly between MS4 permits (and even between permittees covered by the same permit), it is necessary to obtain additional information to be able to better understand what is being reported and to allow meaningful evaluation of the data across permittees. Requested details associated with street sweeping include the frequency of sweeping, area swept, volume of debris collected, and type of sweepers. Based on the comments received, the requirement to report area swept was replaced with curb-miles swept and the requirement to report types of sweepers was removed. Also, permittees can report the amount of debris collected as volume (cubic yard) or weight (lbs). These details provide context and can normalize the data in order to further understand the cost per mile swept and/or the cost per amount debris removed.

Additionally, if sweeping is performed at a greater frequency than is required by an MS4 permit, only costs for permit-required sweeping shall be reported as permit implementation costs. Permittees may report additional street sweeping costs under the "Optional Cost Reporting" section.

5.3.4. Permittees may attribute expenditures incurred while performing routine activities that are part of municipal operations required by an MS4 Permit (e.g., street sweeping, storm drain cleaning) entirely to the MS4 program. Permittees shall only report costs for the Permit-required frequency (costs incurred past the Permit-required frequency shall not be included). Routine activities shall be considered Permit-required if performed in a manner or frequency necessary to meet a specific requirement in the MS4 Permit or to meet a commitment the Permittee has made in a Permit-required stormwater program plan. Permittees shall include relevant details of street sweeping, including area curb-miles swept, ~~types of sweepers~~ and volume or weight of debris collected.

SC 8: The Revised Draft Policy should be revised to appropriately outline what actions are required of a Duly Authorized Representative.

Response SC8: Based on the comments received, the relevant Policy section was revised as follows:

7.3 A Duly Authorized Representative shall ~~compile and~~ submit required reporting on behalf of the Permittee.

SC 9: The State Water Board Should Include Language in the Policy or Adopting Resolution that Commits to a Future Review of the Policy and Guidance.

Response SC9: California Water Code section 13143 requires the State Water Board to periodically review all state policy for water quality control and revise if necessary. Therefore, it is not required to include specific language in this Policy to make a commitment for future review of the proposed Policy or the guidance document. In order to ensure the review takes place in a reasonable time frame, the adopting resolution will include language that will require, after five years of data collection, State Water Board staff to conduct a review of the policy and an assessment on the lessons learned from policy implementation. The results will be presented to the State Water Board with potential recommendations for amendments to the policy based on the findings from the

assessment.

SC 10: The policy should clarify how municipalities with existing cost reporting requirements in their permits will transition to the new statewide policy

Response SC10: Section 8.1 of the Policy mandates that regional boards incorporate cost reporting requirements consistent with the Policy into all Phase I MS4 permits, either through an amendment or during the next permit reissuance following the Policy's effective date. However, given the varying timelines for permit reissuance, with some taking longer than others, the State Water Board intends to issue California Water Code Section 13383 orders. These orders will require all Phase I MS4 permittees to begin reporting the costs of implementation as early as the 2026-27 state fiscal year. As such, permittees should initiate cost tracking using the proposed framework starting July 1, 2026, and report those costs in 2027.

Permittees from six of the nine regional boards are expected to comply with the 13383 orders without additional burden. Regions such as Lahontan, Colorado River Basin, and Santa Ana currently do not prescribe specific cost reporting formats, making the proposed Policy the sole framework for compliance. Similarly, permittees from North Coast, Central Valley, and San Diego regions already report cost categories that are subset of the categories proposed in the Policy, enabling them to adopt the new framework to satisfy both existing and future obligations. Additionally, some of these regions are in the process of reissuing their Phase I permits, and the proposed drafts reference the proposed Policy for cost reporting requirements.

Conversely, permittees from San Francisco Bay Area, Central Coast, and Los Angeles regions would face challenges due to discrepancies between cost reporting requirements in their current permits and those outlined in the Policy. While similarities exist, the proposed framework does not fully align with these permits. To address this issue, the State Water Board will issue region-specific 13383 orders, accompanied by crosswalk tables mapping existing permit requirements to the new framework. This approach will reduce the administrative burden of dual reporting and streamline compliance for permittees.

Based on this comment, following language was added to the Final Draft Proposed Policy:

8.4. The State Water Board shall issue an order under California Water Code section 13383, as necessary, to require Permittees to begin reporting the costs associated with implementing the MS4 permit in accordance with this Policy. Tracking of such costs shall commence no later than July 1, 2026, with the first cost report to include expenditures incurred during the State Fiscal Year 2026-27.

SC 11: Concerns regarding this policy being an unfunded mandate

Response SC11: As an initial matter, the Final Draft Proposed Policy is not self-implementing and depends on implementation of the proposed Policy's cost reporting requirements through a permit or other order issued by the State Water Board or regional water boards.

Additionally, the Commission on State Mandates (Commission), not the State Water

Board or a regional water board, determines whether a requirement imposed by a state agency through a statute or executive order such as a permit is a reimbursable state mandate. (See Gov. Code §§ 17551, 17552.) A local agency is not entitled to reimbursement for carrying out a state mandated new program or increased level of service if the Commission finds that a local agency “has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.” (Gov. Code § 17556(d).) An additional exception, where a state statute or executive order imposes of a federal mandate, likewise does not entitle a local agency to reimbursement. (See Gov. Code § 17556(c).)

Local governments have authority pursuant to constitutional police powers to levy regulatory or development fees. (Cal. Const. art. XI, § 7.) The courts have found that this police power may be exercised for the purpose of preventing water pollution. (See *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535, 561, quoting *Freeman v. Contra Costa County Water Dist.* (1971) 18 Cal.App.3d 404, 408.) The court of appeal in *Paradise Irrigation District v. Commission on State Mandates*, held that fee authority within the meaning of Government Code section 17556(d) “applies to deny a claim when the fee authority is subject to voter protest under article XIII D, section 6(a).” (*Paradise Irrigation District v. Commission on State Mandates* (2019) 33 Cal.App.5th 174, 194).

Following the Legislature’s amendment of Government Code sections 53750 and 53751 through Senate Bill (S.B.) 231, beginning January 1, 2018), local agencies’ authority to impose stormwater property-related fees for mandated activities in MS4 permits is subject only to majority protest procedures in article XIII D, section 6, of the California Constitution, rather than the voter approval procedures that previously applied. Based on the change to the law and the holding in *Paradise Irrigation District*, the Commission has determined in successive MS4 test claim matters that local governments (cities and counties) constitutional fee authority to implement stormwater programs is sufficient as a legal matter under Government Code section 17556(d) for costs incurred on or after January 1, 2018. (See, e.g., Decision 10-TC-07 (*California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2010-0033* (March 22, 2022) (pp. 285-288); Decision 11-TC-03, *California Regional Water Quality Control Board, San Diego Region, Order No. R9-2010-0016* (September 22, 2023) (pp. 379-382); and Decision 09-TC-03, *California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2009-0030* (March 24, 2003) (pp. 206-210).)

As a result, even if the Commission were to determine that implementation of the proposed Policy’s cost reporting through a permit or other order imposes a state mandate, such reporting costs would not be eligible for reimbursement beginning January 1, 2018.

SC 12: Remove requirements for reporting sources of funds

Response SC12: Despite several well-known challenges of funding municipal stormwater programs, many municipalities in California have developed innovative ways to secure funding for these initiatives. Gathering data on the proportionate funding from each source can spotlight these success stories and guide other municipalities in exploring new funding avenues. The Cost Accounting Guidance document provides

further details on the uniform reporting of municipal funding sources, including a standardized list of funding types that permittees can select when reporting their funding sources. These sources include the following four fund types: 1) General Fund; 2) Special Revenue Fund; 3) Enterprise Fund; 4) Capital Project Fund.

Based on the comments, section 5.3.5 of the Policy was revised as follows:

5.3.5. Permittees shall track portions of Permit-implementation costs recuperated by a cost recovery program (e.g., one time or recurring fees). Permittees shall track the sources of funds and ~~amounts~~ **relative contribution (in percentage)** associated with each source to implement their MS4 permits.

SC 13: Comments on the Cost Accounting Guidance Document

Response SC13: All comments specific to the cost accounting guidance are noted. These comments will be considered when making revisions to the cost accounting guidance document based on the adopted version of the proposed Policy.

Comments from The Town of Windsor (Comment Letter 1)

Comment 1.1: “Many separate reporting requirements were reduced down, and this was appreciated but it is still too much of an impact to Town Staff to track all this data. Although we do agree with the intent of the Cost Reporting metrics, to date little has been done with cost reporting data we have put together and submitted. The proposed policy requires a much greater level of detailed subcategory tracking which municipalities are not structured to capture.”

Response 1.1: Depending on the City of Windsor’s (City) existing tracking capabilities and municipal accounting systems, the City may initially invest some time and resources in reporting permit implementation costs using the proposed cost reporting framework. However, as demonstrated by the six-month beta test, the time required to prepare the cost report is expected to decrease significantly in subsequent years. This initial effort will streamline future reporting, ultimately making the process more efficient.

Due to the lack of consistency in the methods used for tracking and reporting cost data, the Water Boards have not been able to analyze the expenses associated with the implementation of different components of MS4 permits as reported in current annual reports. The proposed Policy would resolve this barrier to developing a clear understanding of permit implementation costs.

Comment 1.2: “We are supportive of the revised approach for the Phase II permittees and request that the SWRCB consider the same approach for Phase I permittees, until such time that it seems necessary that more specific information is really needed. This approach will allow municipalities the necessary time to collect similar data and the SWRCB to evaluate initial data and develop internal guidance for State and Regional Water Board staff on the use and interpretation of the data, define gaps needed for future cost reporting, and support the intent of the iterative process of the NPDES MS4 permits. Both Phase I and Phase II permittees are required to implement the same minimum control measures which includes six permit elements, as defined in 40 CFR § 122.34, that, when implemented in concert, are expected to result in significant reductions of pollutants discharged into receiving waterbodies: Public Education & Outreach; Public Involvement & Participation; Illicit Discharge Detection & Elimination; Construction Site Stormwater Runoff Control; Post Construction Stormwater Management (BMPs); and Stormwater Pollution Prevention & Good Housekeeping. Having statewide consistent data tracked from both Phase I and Phase II permittees provides greater value for future permit iterations... Remove section 5.1 and revise section 5.2 to include both Phase I and Phase II Permittees.”

Response 1.2: Please see the response to SC 3.

Comment 1.3: “The Town currently manages 35 active LID projects that account for 413 individual features. This number is only increasing with every development. It is very time consuming to ensure maintenance, as well as design review, which features are sold or changed. As project thresholds continue to decrease (10,000 sq ft to 5,000sq ft) and a greater number of smaller features are installed to comply with

treating each on-site tributary area, tracking and reporting this data will require significant staff time and database development. BMP surface area, volumetric loading rate, and drainage area data are engineered calculations that are not always readily available or extractable from construction and design documents... Section 5.1.3: Provide further definition that this section is related to public improvement projects only.”

Response 1.3: Please see the response to SC 6.

Comment 1.4: “The Town is supportive of section 5.3.6 and appreciates the acknowledgment from the State Water Board regarding the difficulty of reporting actual cost and for the allowance of Best Professional Judgement.”

Response 1.4: The comment is noted.

Comments from The Shasta County Department of Public Works (Comment Letter 2)

Comment 2.1: “Shasta County is an economically disadvantaged County, according to the US Census Bureau 2022 MHI for the County was \$68,276. We process approximately 2-3 MS4 permits per year, the proposed reporting represents a significant cost increase for our program. It is estimated that the proposed reporting will require 80-120 hours of staff time to prepare and submit. If the costs are applied to MS4 permits the increase to the fees would be significant and further reduce growth opportunities for our already disadvantaged county.

Only a relatively small portion area-wise of the unincorporated County is in an MS4 permit regulated area. Item 5.3.3 reads, “For activities that serve purposed [sic] in addition to stormwater management, Permittees shall estimate a percentage of expenditures that can be directly attributed to Permit implementation. The cost estimation of these activities shall be informed by feedback from staff performing those activities. Best Professional Judgement shall be used when estimating personnel costs for staff who are also assigned job responsibilities beyond stormwater Permit implementation.” The majority of staff time is spent maintaining roads that are not in the MS4 permitted area, and for every 10 minutes of staff time spent providing feedback on the MS4 area activities, a mile of road doesn’t get swept.

Shasta County would like to request that you reduce or eliminate the requirements for the Traditional Phase II MS4 Permittees. Many Counties do not have full time staff dedicated to stormwater and can’t afford to hire consultants for the work. Raising rates on MS4 permits will hinder development in these areas.”

Response 2.1: Please see the response to SC 2.

Comments from The San Diego County Department of Public Works (Comment Letter 3)

Comment 3.1: “Reduce the number of cost line items included under Section 5.1.2 to reduce overlap and improve clarity, or make reporting costs for these line items optional.”

There is significant overlap among the line items in Section 5.1.2 of the Draft Policy that will likely make the data reported in these categories difficult to compare in a meaningful way. While the guidelines prepared as a companion to the Draft Policy attempt to explain how different costs should be placed into different line items, such whether the salary and benefits of a given staff person should be considered staff costs or operation and maintenance costs, the inherent overlaps among these categories are highly likely to result in confusion and inconsistent cost classification when implemented across the large number of MS4 permittees in California. This is contrary to the stated goal of the Draft Policy, which aims to produce standardized, comparable data. Further, these cost line items do not align with the County’s current financial tracking and reporting systems. The limited benefits of reporting using these line items do not appear to justify the high cost of revising the County’s financial systems and retraining a large number of involved staff across all the different departments involved in the County’s stormwater program.

The County recommends either limiting the line items in Section 5.1.2 to the two items listed in 40 CFR Section 122.26(d)(2)(vi), capital and operation and maintenance, or revising the Draft Policy to make the reporting of the line items in Section 5.1.2 optional.”

Response 3.1: The number of line items for each cost category was reduced in the first revised Draft Policy based on the beta test and the first round of public comments. The remaining cost line items in the Final Draft Proposed Policy are essential to accomplish Policy objectives. Comment 3.1 acknowledges that it is feasible to break down costs into Capital Cost and Operation and Maintenance Cost line items, and the beta test results suggested that tracking Consultant Cost separately did not present major challenges to the permittees. Considering these, the Final Draft Proposed Policy requires the following cost line items:

1. Personnel Cost
2. Capital Cost (Land or Easement Cost and Non-land related Capital Cost)
3. Operation and Maintenance Cost
4. Consultant Cost
5. Other Cost

It should be noted that the permittees are not required to track personnel costs separately under “Operation and Maintenance.” All personnel costs shall be reported under “Personnel” line item. Additional clarifications to reduce confusion and inconsistent cost classifications between permittees will be added to the guidance document once the proposed Policy is finalized.

Comment 3.2: “Remove Section 5.1.3, which would require tracking and reporting technical details and cost data for each individual structural stormwater BMP.

Section 5.1.3 would require reporting both cost and a variety of technical data for structural BMPs: location (address and Global Positioning System coordinates), BMP type, BMP surface area, volumetric loading rate, and drainage area. We understand the State Water Board’s intent is to use this information to prepare a structural BMP cost database. While we understand the intent, this requirement goes above and beyond the federal requirements for stormwater fiscal reporting and would require significant revisions to County data tracking and reporting processes. We recommend removing Section 5.1.3 from the Draft Policy or making reporting on it optional.”

Response 3.2: Please see responses to SC 6 and Comment 3.3 below.

Comment 3.3: “If Section 5.1.3. is not removed as proposed in Comment 2 above, limit its application only to Permittee-owned larger water quality projects.

It can be challenging and subjective to separate costs when construction projects involve both structural BMPs and other improvements. Design, environmental permitting, mobilization, and construction management costs are calculated for the entire project and are not typically divided into BMP and non-BMP costs. For example, reporting BMP costs for a project to build a new park that also includes building some structural BMPs would require the County to estimate what parts of costs for planning, design, permitting, construction, etc. are attributable only to the structural BMPs. It appears Section 5.1.3 would further require these costs to be broken out by individual BMP on the project. This would require significant new effort for the County. Different agencies are likely to estimate the portion of these costs attributable to structural BMPs in different ways that are not fully consistent with each other, which would result in costs provided not being directly comparable between different jurisdictions. This is counter to the stated purpose of reporting structural BMP attributes and costs at the level described in Section 5.1.3.

Limiting the type of detailed reporting described in Section 5.1.3 only to larger Permittee-owned projects that have water quality treatment (BMP construction) as their primary purpose would avoid or significantly reduce the amount of subjective interpretation and cost separation, resulting in a higher quality and more useful data set. The \$200,000 threshold proposed in the Draft Policy could be used as the definition of “larger.” It is also important to limit cost reporting to Permittee-owned projects, as Permittees do not know how much it costs for private parties to build structural BMPs that are required for certain development projects per MS4 Permit requirements.

If Section 5.1.3 is not removed as proposed, we recommend reporting BMP design treatment volume or flow rate, as applicable per BMP type, rather than BMP surface area and volumetric loading rate. Treatment volume or flow rate are more standard design parameters and are less subject to differences in interpretation than values like BMP surface area. For example, for biofiltration planters with a trapezoidal cross section (i.e., side slopes are not vertical), designers may calculate the surface area at the

surface of the flat portion of the BMP, at the design ponding depth, at hydromodification flow control depth, or some other depth. These would all lead to different plan view surface area values for the same BMP.

Proposed Revision:

5.1.3. Phase I MS4 Permittees shall track and report construction costs for structural stormwater BMPs for Permittee-owned projects where construction of structural stormwater BMPs is the project's primary purpose and that have a cost exceeding the dollar value threshold listed for Sub-category 4.b in Table 1. This information will be included in the reporting for the fiscal year in which the project was completed upon project completion. Permittees shall also include relevant project details, including location (address and Global Positioning System coordinates), BMP type, design treatment volume or flow rate, BMP surface area, volumetric loading rate, and drainage area with the total project cost of the completed project."

Response 3.3: Please see response to SC 6.

Comment 3.4: "Revise discussion of Permit-required frequencies for activities like catch basin cleaning and street sweeping in Section 5.3.4 to clarify what costs should be reported when MS4 Permits require these activities but do not mandate specific frequencies.

The San Diego Regional MS4 Permit (San Diego MS4 Permit) does not include a minimum numeric frequency for catch basin cleaning or street sweeping. Each Permittee is required to determine what level of these activities it believes is necessary to meet the jurisdictional and watershed requirements of the San Diego MS4 Permit, document those in the stormwater management program documents that the MS4 Permit requires each Permittee to prepare, and then implement programs that meet those frequencies. We recommend adding language to Section 5.3.4 to clarify that activities, such as street sweeping or catch basin cleaning, performed to meet commitments in a Permit-required stormwater management plan are also considered Permit-required. This will provide clarity to agencies that have MS4 Permits without explicit numeric frequencies for activities like catch basin cleaning and street sweeping.

Proposed Revision:

5.3.4 Permittees may attribute expenditures incurred while performing routine activities that are part of municipal operations required by an MS4 Permit (e.g., street sweeping, storm drain cleaning) entirely to the MS4 program. Permittees shall only report costs for the Permit-required frequency (costs incurred past the Permit-required frequency shall not be included). Routine activities shall be considered Permit-required if performed in a manner or frequency necessary to meet a specific requirement in the MS4 Permit or to meet a commitment the Permittee has made in a Permit-required stormwater program plan, such as a jurisdictional or watershed stormwater management plan. Activities performed only to meet TMDL or other permit-specific special program requirements are not considered routine Permit-required activities. Permittees..."

Response 3.4: The draft Policy has been revised to include the suggested changes.

Comment 3.5: “Revise required street sweeping reporting parameters to align better with typical street sweeping metrics.

The County recommends that length of curb-miles is added as an alternative to reporting sweeping area and that weight is added as alternative to reporting volume. Not all MS4 Permittees across the state use area and volume. Allowing use of curb-miles and weight will reduce reporting error by allowing agencies to report directly in the numbers they already track rather than using conversion factors that are likely to vary by jurisdiction, region of the State, etc. Similarly, not all jurisdictions are able to report sweeping metrics by sweeper type, so we recommend making reporting by sweeper type optional.

Proposed Revision

*5.3.4 ...Permittees shall include relevant details of street sweeping, including **curb miles or area swept**, type of sweepers (**optional**), and **weight or volume of debris collected**.”*

Response 3.5: Please see the response to SC 7. The draft Policy has been revised to include the suggested changes.

Comment 3.6: Clarify if costs included for Category 8 in Table 1, Trash Management, are expected to be different for Track 1 and Track 2 jurisdictions. Also clarify how this will affect comparability across Permittees for reported costs for other categories, such as Category 7, Municipal Operations and Maintenance.

Section 5.1.1 of the Draft Policy states that costs in Category 8 (Trash Management) include “[a]ctivities designed and performed to comply with trash provisions...” The trash provisions, also known as the Trash Amendments, allow for two different compliance options. Track 1 involves only structural trash control installation and maintenance. Track 2 involves both structural controls and operational or source controls, such as street sweeping, catch basin cleaning, outreach, etc.

If Category 8 is intended to represent only the costs of Trash Amendments compliance, then it would seem to follow that Track 1 agencies should not report street sweeping costs under Category 8, even though street sweeping is a sub-category for Category 8. Should Track 1 agencies still report street sweeping costs under Category 8 instead of under Category 7 (Municipal Operations and Maintenance), even though Track 1 agencies do not perform street sweeping to comply with Trash Amendments requirements? Similarly, would catch basin cleaning be reported in Category 7 for Track 1 agencies, which do not use it for Trash Amendments compliance, but Category 8 for Track 2 agencies? Would trash-focused education be reported in Category 8 for Track 2 agencies but in Category 2 (Public Education) for Track 1 agencies?

Clearer guidance on cost categorization depending on which Trash Amendments compliance track is chosen is needed. Clearer guidance will help lead to more comparable and consistent data reporting.

Response 3.6: The Trash Management Category was not intended to only track costs related to the Trash Amendments, but rather to reflect all activities related to trash management in general. Both Track 1 and Track 2 agencies can report trash control activities under Trash Management Category using the proposed subcategories. Based

on this comment, the description for Trash Management Category under Policy Section 5.1.1 was revised as follows:

Trash Management: ~~Trash control a~~Activities designed and performed to comply with trash provisions, including trash control activities that are required by the Permit and routinely performed as a part of municipal maintenance.

Comment 3.7: Clarify how and when MS4 Permittees with existing cost reporting requirements will transition to reporting under the Policy.

The County of San Diego currently has cost reporting requirements in our MS4 Permit. The County requests that the State Water Board work with the San Diego Water Board, and other Regional Water Boards throughout the State, to ensure that Permittees have clear direction about when to start following the State Water Board's Policy for stormwater cost reporting and that Permittees do not have to report in both the State Water Board's format and their local MS4 Permit's requirements at the same time if the two are different. Direction to the Regional Water Boards is also needed to ensure we have adequate time to transition from our existing permit requirements to the statewide policy requirements. This issue could also be addressed in the adopting resolution.

The revised Draft Policy also does not currently include an effective date for either the initial data collection or annual reporting. The Response to Comments identifies "2025" as the "First reporting year to require Standardized Cost Reporting." The Draft Policy itself should be clear and explicit.

Proposed Revision

7.1 ...and ending June 30. Data collection for the Standardized Cost Reporting Policy will commence the first fiscal year after an applicable regulatory action requiring implementation of the Policy and no sooner than fiscal year 2025-2026. The first data submission shall occur concurrent with the applicable MS4 annual report for that fiscal year (i.e., no earlier than the report submittal deadline for FY 2025-2026).

Response 3.7: Please see response to SC 10.

Comment 3.8: Allow for a sufficient phase in period whenever there are changes to cost reporting based on changes to guidance documents.

During the hearing in June 2024, State Water Board staff expressed that the guidance document for the Draft Policy may be administratively adjusted over time. We welcome efforts by the State Board to make minor edits like fixing inconsistencies and providing clarifying language. However, even minor changes may require significant changes to Permittee financial reporting systems, which are difficult to change, often require specialized IT support, are subject to various legal requirements, and affect multiple departments. While Permittees would have the option to follow the new guidance immediately, we request that Permittees are not required to change their cost reporting to align with administrative changes to guidance documents until the year after the change is made. For example, if a change is made in fiscal year 2024-2025, the Permittee would not be required to report under the new guidance until they report on their stormwater costs for 2025-2026. Additionally, if major changes to the guidance

document are proposed, we request that an opportunity for public input is provided before the changes are finalized and become effective for Permittees.

Response 3.8: Please see response to SC 13. The comment is noted. The revised cost accounting guidance document will reflect the changes.

Comment 3.9: Remove the requirement for a duly authorized representative to compile the data.

It is unusual to specify that the Duly Authorized Representative (DAR) must compile the data that is submitted. This requirement is also inconsistent with the definition of a DAR on page 3 of the Draft Policy. Compiling the data will also likely involve many County staff members, which may or may not include the DAR. We recommend deleting the requirement that the DAR compile the data.

Proposed Revision

7.3 A Duly Authorized Representative shall ~~compile and~~ submit required reporting on behalf of the Permittee

Response 3.9: Please see the response to SC 8. The draft Policy has been revised to include the suggested change.

Comment 3.10: Please clarify that the actions to gather and evaluate stormwater program costs across Permittees noted in Section 1.1 of the Draft Policy will be completed by the State Water Board, not by Permittees.

The County believes the State Water Board's intended meaning in Section 1.1 is that the State Water Board would carry out actions "a)" and "b)" listed in that section. We propose a small text edit to clarify that the State Water Board, not Permittees, would perform these actions.

Proposed Revision

The purpose of the Draft Policy for Water Quality Control for Standardized Cost Reporting in Municipal Stormwater Permits (Municipal Stormwater Cost Policy, hereafter Draft Policy) is to ensure that municipal separate storm sewer system (MS4) permittees (Permittees) in California estimate, track, and report annual expenditures in a consistent manner. The State Water Board intends to use this information to a) determine what it costs to implement each Permittee's municipal stormwater program as required by the applicable permit; and b) gather adequate levels of data with appropriate details to inform cost effective permit development and equitable investment in municipal stormwater programs around the State.

Response 3.10: Proposed change was accepted. The purpose of the policy was revised to clarify that the State Water Board not (permittees) would carry out actions listed under Section 1.1:

1.1 The purpose of the Draft Policy for Water Quality Control for Standardized Cost Reporting in Municipal Stormwater Permits (Municipal Stormwater Cost Policy, hereafter Draft Policy) is to ensure that municipal separate storm sewer system (MS4)

permittees (Permittees) in California estimate, track, and report annual expenditures in a consistent manner. The State Water Resources Control Board (State Water Board) and the regional water quality control boards (regional water boards) intend to use this information to a) determine what it costs to implement each Permittee's municipal stormwater program as required by the applicable permit; and b) gather adequate levels of data with appropriate details to inform cost effective permit development and equitable investment in municipal stormwater programs around the State.

Comment 3.11: Please add language to the Policy or provide direction to Regional Water Boards to ensure that it is clear which requirements will take precedence when the Draft Policy conflicts with stormwater cost reporting requirements in existing MS4 Permits.

The County requests that the State Water Board develop language or guidance about what Permittees should do when their local MS4 Permits have different direction on what should be reported in stormwater cost reporting. For example, the current San Diego Regional MS4 Permit's fact sheet (page F-22) states that "street sweeping and trash collection costs cannot be solely or even principally attributable to MS4 permit Compliance." This could be read to be in conflict with Section 5.3.4 of the Draft Policy, which says, in part, "Permittees may attribute expenditures incurred while performing routine activities that are part of municipal operations required by an MS4 Permit (e.g., street sweeping, storm drain cleaning) entirely to the MS4 program."

Response 3.11: Please see response to SC 10. If there is a regulatory action that implements the proposed Policy prior to permit revisions, the State Water Board will work with regional boards to ensure that conflicts between the proposed Policy and existing permits are resolved.

Comment 3.12: Limit the requirements of the Draft Policy such that they do not go beyond the Code of Federal Regulations (Title 40) requirements for fiscal reporting.

Certain elements of the Draft Policy, including but not limited to structural BMP technical data reporting proposed in Section 5.1.3 and street sweeping technical data proposed in Section 5.3.4, may exceed the federal requirements for stormwater cost reporting. The County reserves the right to pursue unfunded mandate claims to the extent that the final Policy includes elements that require the County to perform work that is beyond what the federal standards require, and nothing in our comments should be construed as the County agreeing that the Draft Policy does not include any unfunded mandates.

Response 3.12: Comment noted. See also Response to SC 11. The cost reporting categories in the proposed Policy are not intended to reflect only what the federal regulations for Phase I MS4 fiscal reporting specify.

Comment 3.13: Please retain the language added to the revised Draft Policy that states that reported cost data will not be used as a surrogate for evaluating the level of compliance activities. The County thanks the State Water Board for making this change and supports retaining it in the final version of the Policy.

The Draft Policy currently out for comment now includes Section 4.4, which states the following: “The reported cost of Permit implementation data shall not be used as a surrogate for the level of compliance activities performed by a Permittee.” This language in the Draft Policy rightly recognizes that stormwater program costs may vary across Permittees for a variety of reasons, and cost is not a suitable proxy for program effectiveness or compliance. The County appreciates that the State Water Board has included this language in the revised Draft Policy and supports the State Water Board retaining this text in the final Policy.

Response 3.13: The comment was noted.

Comments from The Ventura Countywide Stormwater Quality Management Program (Comment Letter 4)

Comment 4.1: The Program strongly supports the detailed comments submitted on this subject by the California Stormwater Quality Association.

Response 4.1: Comment noted. Please see response to comments 15.1 through 15.13.

Comment 4.2: CLARIFY THE PURPOSE OF THE COST REPORTING POLICY: The Revised Draft Policy has been modified to include a more concrete description of the purpose of the policy. We appreciate that the purpose and goal of the policy has been clarified to be specific to gathering standardized cost data to determine what it costs to implement programs and inform cost effective permit development. However, the uses of the data in Section 4 include justifying proposed stormwater funding measures and addressing environmental justice issues. These uses would have data needs that differ from the revised purpose of the policy, significantly expanding the scope beyond determining the cost of permit implementation. The Revised Draft Policy would be clarified by noting that Section 4 contains potential uses of the standardized data in the future and that additional data would likely be needed, beyond the data collected under the policy, for these uses.

Request: Revise Section 4 Title to be “Potential Uses of Standardized Cost Data”. Note that the cost data will be used as part of a broader analysis for these uses in the future.

Response 4.2: The use of standardized cost data to identify and address environmental justice issues is consistent with the stated purpose of the policy in section 1.1. The proposed Policy does not require the permittees to use standardized cost data to seek and justify proposed funding measures; it merely presents this as a potential use option for the permittees.

Comment 4.3: THE DATA REQUIRED TO BE COLLECTED SHOULD ALIGN WITH THE OBJECTIVE OF IMPROVING RECEIVING WATER QUALITY: The Program appreciates the changes to the Revised Draft Policy to reduce the number of subcategories that are required to be reported. Although Table 1 was modified based on the comments received, some additional edits to the sub-categories would provide more clarity regarding what is to be reported and to ensure consistency with the Draft Guidance.

Request: Given the diversity of MS4 permit requirements across the state, revise Table 1 of the Revised Draft Policy per the recommendations below.

Category Name	Recommended Modifications
1. Overall Program Management and Administration	Clarify that the type of reporting that is to have its own accounting for cost reporting is only Annual Reporting. a. <u>Annual</u> Reporting

3. Illicit Discharge Detection and Elimination (IDDE) and Spill Response	<p>Clarify that the only “sub-category” for IDDE is “Spill Response” and that all other costs are accounted for within the broader IDDE category.</p> <ul style="list-style-type: none"> a. IDDE b. Spill Response
4. Planning and Land Development	<p>Provide a clear distinction between the two sub-categories and clarify the types of projects that are included within each.</p> <ul style="list-style-type: none"> a. Post-construction BMPs for public projects that must comply with the new or redevelopment projects development standards b. New structural <u>Other regional</u> BMP <u>public</u> projects (with total stormwater related budget higher than \$200,000)
8. Trash Management	<p>Clarify the types of costs that should be included.</p> <ul style="list-style-type: none"> a. Full capture device <u>design, construction, device purchase</u>, installation and maintenance b. Street sweeping
9. Water Quality Monitoring	<p>Clarify the types of costs that should be included.</p> <ul style="list-style-type: none"> a. Receiving water and outfall monitoring program(s) inclusive of all associated costs b. BMP monitoring project(s)/program(s) inclusive of all associated costs

Response 4.3: Please see response to SC 5. The proposed changes to subcategories in Categories 1, 3, 4, and 8 were accepted and reflected in the Final Draft Proposed Policy. The recommended additions to the subcategories under Category 9 are redundant and were not added to the Final Draft Proposed Policy.

Comment 4.4: ADD A PROCESS TO EVALUATE FUNDING CONSTRAINTS: In our October 2023 comment letter, the Program requested that the Draft Policy gather data regarding existing funding because we believe this data is important for effective permit development as it provides information that can be used for economic considerations in the development of new Permits and Permit reissuances. As labor and capital costs increase over time, increased pressure is placed upon existing funding sources, which typically are highly competitive both internally and externally. Gathering information about anticipated funding limitations can allow for future assessments and potential refinements. In addition, this type of data collection and assessment can identify trends

regionally and/or statewide relating to funding needs as Permit requirements change over time. In the response to comments, the State Water Board noted that a funding limitations assessment is outside the scope of the Draft Policy. The Program would like to note that our previous request was not to have an assessment be conducted as part of the Draft Policy adoption, but rather to have the Draft Policy acknowledge the need for an adaptive management process that considers funding constraints faced by municipal agencies. Funding pressures can hinder municipal agencies' abilities to adequately fulfill existing public services needed not related to stormwater management (streets, sidewalks, parks, ADA, police, fire) because stormwater requirements mandated by state and regional boards require additional monies from shared funding sources. Continuous evaluation is essential to ensure the data collected serves its intended purpose and if not, policy changes should be considered.

Request: Add a new section to the Revised Draft Policy outlining an assessment process for the policy that considers municipal funding pressures and adjusts the policy requirements if necessary.

Response 4.4: Please see the response to SC 9. The policy review will take into consideration the resources necessary to implement the policy. The beta test suggests that resources necessary to comply with the cost reporting requirements in the Policy is a relatively small part of the total resources required to implement the MS4 permit.

While the policy review will assess implementation of the cost reporting requirements and may result in recommendations for policy amendments, MS4 permits (Phase I or Phase II) impose the permit provisions for which costs are reported. The MS4 permits are the result a public process that incorporates feedback from permittees regarding burdensome requirements, funding limitations, and other concerns. The water boards take these funding challenges into account when developing MS4 permits. Permittees are encouraged to voice their concerns regarding municipal funding pressures during the issuance or reissuance of their MS4 permits in the future.

Comment 4.5: The draft guidance should be consistent with the revised draft policy in acknowledging that estimates of expenditures may be necessary:

The Revised Draft Policy acknowledges that municipalities may need to estimate expenditures as a part of the cost reporting process. This is stated in several places throughout the Policy (e.g., in the purpose and cost accounting sections). However, there are several statements in the Draft Guidance that indicate actual costs or funds, rather than estimated values, must be used.

Request: Allow estimated costs to be used, rather than only actual costs, and remove guidance that suggests budget estimates may not be used.

Response 4.5: Please see the response to SC 13. A budget estimate is a forecast of resources needed for a program and shall not be used for reporting expenditures under the proposed Policy. Actual expenditures are likely to vary from budget estimates due to operational need, emergency events, or financial challenges. Therefore, the Policy asks for expenditure data, tracked or estimated using best professional judgement.

Comment 4.6: The draft guidance should provide examples of activities for each of the subcategories identified in the revised draft policy

The Revised Draft Policy requires specific cost reporting for several subcategories of cost as identified in Table 1. As noted in our comments on the Draft Policy in October 2023, standardizing costs is challenging due to different permit requirements and implementation of stormwater programs. If subcategory reporting is to be required by the Revised Draft Policy, then the Draft Guidance should include example activities that correspond to the subcategories to provide guidance on the cost reporting at the subcategory level.

Request: Add example activities to the Draft Guidance for each of the subcategories identified in Table 1 of the Revised Draft Policy.

Response 4.6: Please see the response to SC 13.

Comments from The Sacramento Stormwater Quality Partnership (Comment Letter 5)

Comment 5.1 The Partnership supports the comments submitted by the California Stormwater Quality Association (CASQA) in July 2024.

Response 5.1: Comment noted. Please see response to comments 15.1 through 15.13.

Comment 5.2: Allow Regional Boards to Work with Permittees to Determine Cost Reporting Deadlines

The Draft Cost Reporting Policy includes section 7.1 which states that: “Each Permittee shall document and submit total MS4 Permit related expenditures annually, within the same timeframe as the annual reporting required by the Permittee’s MS4 permit.” To ensure that all MS4 Permit related expenditures are reported to the best level of accuracy, the deadline for submitting should be separated from the timeframe of the annual reporting required by the Permittee’s MS4 permit. Based on feedback from various agencies in the Partnership, final invoicing and payment information for a fiscal year can take six months to clear through the finance department.

The Partnership recommends that the Draft Cost Reporting Policy be modified to allow for the Regional Boards to provide flexibility on the due date for MS4 Permit [sic]-related Expenditures that is not tied to the timeframe of the annual report to allow agencies adequate time to process financial information each fiscal year.

Response 5.2: The proposed Policy does not mandate a statewide deadline for submitting permit implementation costs. Given that these costs are a part of the annual reports, the Policy requires the cost report to adhere to the annual report deadline specified in each permit. Permittees and regional boards retain the flexibility to negotiate a suitable deadline for submitting the full annual report or “cost of permit implementation” portion of the annual report.

Comment 5.3: Allow Flexibility for Reporting if Issues Arise

The Partnership has historically reported budget numbers and expenses each fiscal year in the Annual Report as part of the fiscal analysis. With the categories, subcategories, and line items required in the Draft Cost Reporting Policy and guidance in the Draft Guidance, there is a possibility that some of the costs reported may be problematic to the Partnership or other agencies.

The Partnership has appreciated the collaborative approach that the State Board has taken with the Draft Cost Reporting Policy and the Draft Guidance and wishes to continue the relationship to find alternative solutions if this becomes an issue.

The Partnership recommends that the State Board work with agencies to find alternative solutions by updating if aspects of the reported items are found to be problematic.

Response 5.3: The proposed Policy allows the use of best professional judgment for cost estimation when actual implementation costs cannot be tracked. Additionally, the

Policy includes a "Permit-specific Special Program" cost category to address any unique elements of permit implementation. Water Board staff will be available to assist with any questions related to the cost reporting framework or compliance with the proposed Policy. In addition, during the proposed Policy review (see response to SC 9), the State Board intends to work closely with permittees to clarify any potentially problematic reporting requirements.

Comments from The Russian River Watershed Association (Comment Letter 6)

Comment 6.1: Draft Policy significantly increases staff and resource burdens on the MS4 permittees

Despite the appreciated recent revisions to the list of standardized categories and sub-categories for reporting cost of Phase I permit implementation (reduced to 11 categories from the previous 26), tracking and reporting costs as proposed in the Draft Policy places an unnecessary and costly bureaucratic burden of effort on permittees. The new reporting requirements will divert already limited agency resources from implementing meaningful water quality MS4 programs. While the mention of ‘variability and complexity of municipal accounting for stormwater programs’ correctly acknowledges the challenges in distinguishing between MS4 compliance and agency operations, creating detailed cost documentation and reporting systems to reflect each unique and constantly evolving agency operation is a significant and added undertaking.

Member agencies, including the City of Santa Rosa and Town of Windsor, participated in the State Pilot Project to complete State cost spreadsheets and provide comment. The City of Santa Rosa indicated that cost reporting required over 60 hours of staff time to complete. Though a reduction in the number of cost reporting categories and sub-categories would decrease the amount of added time required for reporting, documenting and reporting cost methodologies in multiple ways is redundant and immaterial to achieving water quality objectives. Even after the Town of Windsor modified the SWRCB cost tracking spreadsheet to streamline their efforts, the Town invested over 30 hours to complete the exercise.

RRWA Co-Permittees ardently request that the cost reporting approach for Phase I permittees be reduced to only include cost categories proposed for Phase II permittees until a need for more specific data arises. Modifying the reporting approach will allow Phase I permittees to collect required cost information with a significantly reduced impact on staff resources. The Phase II cost reporting approach will provide sufficient data for the SWRCB to evaluate and develop internal guidance for State and Regional Water Board staff on the use and interpretation of the data while clearly defining data gaps needed for future cost reporting and supporting the intent of the NPDES MS4 permits. RRWA Co-Permittees are supportive of the revised approach for Phase II permittees and believe that providing consistent statewide data between Phase I and Phase II permittees will provide greater value for future permit iterations.

Response 6.1: Please see the response to SC 4. Depending on their existing tracking capabilities and municipal accounting systems, permittees may initially invest some time and resources in reporting permit implementation costs using the proposed cost reporting framework. However, as demonstrated by the six-month beta test, the time required to prepare the cost report is expected to decrease significantly in subsequent years. This initial effort will streamline future reporting, ultimately making the process more efficient.

Comment 6.2: Draft Policy data collection and stated purpose should be clarified and focused on determining the cost of MS4 permit implementation

Multiple data sources and types irrelevant to permit compliance are required to properly inform decisions and establish metrics of success for the intended uses of the datasets listed in the Draft Policy, including informing permitting decisions, justifying proposed stormwater funding measures, and addressing environmental justice issues. The collection of extraneous datasets effectively magnifies the bureaucratic burdens beyond determining the cost of MS4 permit implementation.

The Draft Policy includes a purpose statement that permittees report annual expenditures of MS4 permit implementation to inform permit development and enable equitable investment in municipal stormwater programs. However, the methods for achieving this purpose through the provision of MS4-specific cost estimates are not clear. For example, a listed use of standardized cost data describes the goal of addressing environmental justice issues. The lack of clarity for how a permittee is to use the cost data to address environmental justice issues is perplexing and has the potential to expose permittees to third-party litigation.

Response 6.2: Please see the response to SC 1 and comment 3.10. The Policy's primary purpose is to be achieved by the Water Boards (not by the permittees) through the cost data submitted by permittees. The Policy is not intended as a regulatory tool to ensure permittees make equitable investment in municipal stormwater and address environmental justice issues in their stormwater programs. The Policy establishes a comprehensive cost reporting framework to gather data that may be used in conjunction with other datasets necessary to identify and address environmental justice concerns in stormwater BMP implementation.

Comments from The Riverside County Flood Control and Water Conservation District (RCFCWCD) (Comment Letter 7)

Comment 7.1: Sub-categories for reporting the cost of Phase I MS4 Permit implementation are not reflective of actual MS4 Permit requirements and cannot be calculated without significant modifications to agency-wide accounting processes and systems.

The RCFCWCD acknowledges the efforts made by State Water Board staff to reduce the number of reporting sub-categories in the Revised Draft Policy. Under Section 5.1.2 of the Policy, however, Phase I MS4 Permittees will still be required to break down the eleven cost categories as identified in Table 1 into five separate line items. (It is not entirely clear whether a separate line item breakdown would be required for the nine sub-categories listed in Table 1.) Inclusion of the nine sub-categories requires an additional level of municipal activity assessment and documentation which would present a further burden to stormwater program managers, who would be required to instruct stormwater, accounting, and administrative personnel to separate costs between the cost categories, line items and sub-categories.

The RCFCWCD believes that the sub-categories should be removed from Table 1, at least until implementation of the final policy is assessed by the Permittees and the water boards. This comment is based on both the extra burden that the sub-category accounting imposes on Permittee staff, as discussed above, but also the confusing nature of the particular sub-categories.

For example, it is unclear what the differences are between the sub-categories for Illicit Discharge Detection and Elimination (IDDE) and Spill Response. These two subcategories can be intertwined where an IDDE is conducted as part of a Spill Response if an investigation is needed to determine the source of the spill. As part of the RCFCWCD's compliance efforts, inspectors perform activities relevant to both categories as part of a single program to address requirements in our three separate MS4 Permit areas. To separate IDDE costs and Spill Response costs would likely require a new and significant time commitment from stormwater program managers, accounting and administration staff, and inspectors.

Another example of confusing subcategories is within the Water Quality Monitoring cost category, which requires separate accounting of costs for receiving water and outfall monitoring and BMP monitoring. Such sub-categorization is very difficult to account for when permittees engage in projects that are part of multi- regional monitoring efforts. For example, the RCFCWCD funds several regional monitoring programs through the Santa Ana Watershed Project Authority and the Southern California Stormwater Monitoring Coalition, all of which satisfy various MS4 permit requirements. The cost of participation in those regional monitoring programs and special studies are not tracked individually among our three MS4 permits but are addressed holistically because they benefit all three of RCFCWCD's watersheds and MS4 programs.

At this juncture, the RCFCWCD does not believe that the cost to track and report data to support the proposed sub-categorization of cost reporting is worth the additional effort and cost. As discussed, the categories themselves are confusing and would provide

little additional information for the State and regional water boards.

Recommendation: Remove the requirement to report costs for the Table 1 sub-categories in Section 5.1 of the Revised Draft Policy.

Response 7.1: Please see response to SC 5. The definitions of subcategories in Table 1 were revised for better clarity.

Comment 7.2: The final adopted policy should provide clear direction to the Regional Water Quality Control Boards to incorporate cost reporting requirements uniformly into Phase I MS4 Permits to prevent regional reinterpretations or inconsistencies.

The Revised Draft Policy does not adequately address concerns that regional water boards may, when implementing the Policy in individual MS4 permits, augment, bypass or otherwise alter cost reporting requirements. If this occurs, the entire purpose of adopting standardized cost reporting as represented by the Policy will be undermined.

The Revised Draft Policy requirements will either be incorporated through amendment or at the time of the next permit reissuance after the effective date of the Policy. Section 8.1 of the Policy currently provides that such incorporation must be "consistent" with the policy. This language is not sufficient to address permittee concerns. When regional water boards amend or reissue MS4 Permits, they should be expressly required to incorporate the operative cost reporting provisions (Sections 4-7, plus Table 1) exactly as set forth in the final policy, to avoid potentially unstandardized cost reporting and confounding the stated purpose of the State Water Board in adopting the policy in the first place.

Section 1.1 of the Policy states that "[t]he purpose of the [Policy] is to ensure that municipal separate storm sewer system (MS4) permittees . . . in California estimate, track, and report annual expenditures *in a consistent manner*." (emphasis added). To effectuate that purpose, it must be clearly stated in the Policy language and in any resolution adopting it, that regional water boards are required to adopt the Policy in a fashion which incorporates all of its operative requirements.

If such language is absent, regional water boards could modify cost reporting requirements in ways that would no longer be standardized nor allow the State Water Board to properly understand MS4 costs. In the case of our agency, the RCFCWCD is concerned that this scenario would result in three different cost accounting systems if the policy is left open to reinterpretation by three Regional Water Boards.

In March 2018, the California State Auditor released a report titled "State And Regional Water Boards: They Must Do More to Ensure that Local Jurisdictions' Costs to Reduce Stormwater Pollution are Necessary and Appropriate". The California State Auditor provided a list of key recommendations to the State Water Board to implement standardized cost reporting on page 5 of the report, including "If the State Water Board believes regulations are necessary to ensure that the regional boards and local jurisdictions follow its guidance regarding adequate and consistent information pertaining to their cost of storm water management, the State Water Board should adopt such regulations." In other words, the California State Auditor recognized that the regional water boards could choose not to follow the guidance by the State Water Board

regarding adequate and consistent cost information, and thus, to maintain consistency, the California State Auditor recommended the State Water Board to adopt regulations to ensure that the policy's final, adopted language is not modified, revised, or supplemented.

The State Water Board should therefore include language in the final Policy and the adopting resolution to ensure that the cost reporting requirements set forth therein are not modified, revised, or supplemented.

Recommendation: The State Water Board should add language to the final Policy and the adopting resolution that requires water boards to incorporate language from Sections 4-7 and Table 1 (or as otherwise re-numbered) of the final adopted Policy without change.

Response 7.2: Sections 8.1 and 8.3 of the Policy have been amended to further explicitly state that upon adoption of the Policy, cost reporting requirements in any new or reissued MS4 permits shall be consistent with the cost reporting framework proposed in the Policy:

8.1 The regional water boards shall incorporate cost reporting **framework, cost report submittal method, and reporting timeline** requirements consistent with this Draft Policy into a Phase I MS4 Permit through an amendment or at the time of the next permit reissuance after the effective date of this Policy. Once incorporated into a Phase I MS4 Permit, regional water boards shall ensure Permittees follow the Policy through review of cost data submitted by Permittees.

8.3 The State Water Board shall incorporate cost reporting **framework, cost report submittal method, and reporting timeline** requirements consistent with this Policy into the statewide Phase II MS4 Permit through an amendment or at the time of the next permit reissuance.

Comment 7.3: The Revised Draft Policy should be modified to remove requirements to report non- cost related information, such as BMP and street sweeping data, that does not align with the Policy's purpose.

Section 1.1 of the Revised Draft Policy states that the Policy's purpose is to "ensure that MS4 Permittees in California estimate, track, and report annual expenditures in a consistent manner to a) determine what it costs to implement each Permittee's MS4 program as required by the applicable permit; and b) gather adequate levels of data with appropriate details to inform cost effective permit development and equitable investment in municipal stormwater programs around the State." As we stated in the RCFCWCD's October 2, 2023 comment letter, requiring the reporting of BMP and street sweeping information is not consistent with the Policy's purpose, which relates to cost reporting.

Comment D1 in the State Water Board's Response to Comments notes that BMP and street sweeping data will be used to evaluate BMP effectiveness, BMP databases, and BMP selection. With respect, these purposes are not in alignment with the Policy's purpose and contradicts Section 8 of the Staff Report, which states:

"It should be noted that the permit implementation cost data will not be used as a surrogate for the level of compliance of activities a permittee performs. Cost data shall not be used to compare permittees' performance and assess the efficacy of their MS4 programs. Any comparisons between permittees would need to take local socio-economic conditions and challenges the different permittees face into account. Moreover, the level of financial resources necessary to comply with the permit or the funding limitations must not be used to justify lack of compliance by a permittee or as a rationale to request less stringent permit requirements."

Requiring additional BMP and street sweeping reporting requirements creates complexity and duplicability of reporting requirements required by existing MS4 and non-MS4 programs. There are as well existing reporting requirements in MS4 permit implementation plans, such as those requiring reporting on trash collection efforts. Imposing the Policy's duplicative reporting requirements reduces annual reporting efficiency and increases the financial burden on Permittees. For example, it is unclear how the information required in the street sweeping and BMP implementation sections will inform cost effective permit development and equitable investment.

The RCFCWCD again requests that these reporting requirements be removed from the Policy.

Recommendation: The State Water Board should modify Sections 5.1.3 and 5.3.4 of the Revised Draft Policy to remove the requirement to report BMP implementation details (such as address/GPS, BMP type, BMP surface area, volumetric loading rate and drainage area), and street sweeping details (such as area swept, type of sweepers, and volume of debris collected).

Response 7.3: Please see responses to SC 6 and SC 7.

Comment 7.4: The State Water Board has the authority to issue separate reporting guidelines for individual Phase I MS4 Permittees and should therefore impose the same cost reporting requirements on smaller Phase I MS4 Permittees as Traditional Phase II MS4 Permittees.

In the RCFCWCD's October 2, 2023 letter, we recommended that cost reporting requirements for smaller Phase I MS4 permittees (those with populations less than 100,000) should be the same as those for Traditional Phase II MS4 Permittees because the rationale for allowing the latter permittees more flexibility in reporting, with fewer financial resources, applies equally to the former. The State Water Board's response to this comment, in Comment F1 of the Response to Comments document, however, only discussed the differences between Phase I and Phase II MS4 permittees but did not address our comment regarding the State Water Board's ability to issue separate reporting guidelines for smaller Phase I MS4 Permittees.

The Code of Federal Regulations provides the minimum requirements applicable to State NPDES programs and stormwater discharges, including requirements for fiscal resource reporting. A review of Section 5.2.1 of the Policy indicates that it is intended to meet the basic federal financial reporting requirements, that is to provide a fiscal analysis of the capital and operation and maintenance expenditures necessary to

accomplish the programmatic requirements set forth in 40 CFR section 122.26(d)(2)(iii-iv). The reporting requirements set forth in Section 5.2.1 for Traditional Phase II MS4 Permittees still requires reporting of expenditures on these same areas, e.g. overall program management and administration, including reporting on capital costs, O&M requirements for minimum control measures, water quality monitoring activities and "miscellaneous costs," which is a catch-all category including "[a]nything not identified or directly related to the other cost categories." Policy, Section 5.2.1(1-5).² These categories are broad enough to encompass the requirements of 40 CFR section 122.26(d)(2)(vi).

Thus, the State Water Board has discretion to impose less comprehensive cost reporting requirements on small Phase I MS4 permittees because the federal minimum requirements have been achieved in Section 5.2 of the Policy.

Recommendation: Allow Phase I Permittees with populations less than 100,000 to report their stormwater program costs in alignment with Section 5.2 of the Draft Policy, which currently provides cost categories for Traditional Phase II MS4 Permittees only.

Response 7.4: Please see the response to SC 4. While the State Board may have the *authority* to impose less comprehensive cost reporting requirements for individual permittees, the State Board will not do so at this time. Having two separate cost reporting frameworks for the same permit will make the data less consistent and will not allow for thorough evaluations of permit costs for different sized permittees.

Comments from The San Mateo Countywide Water Pollution Prevention Program (SMCWPPP) (Comment Letter 8)

Comment 8.1: As during the initial review of the Draft Policy, SMCWPPP generally supports the California Stormwater Quality Association (CASQA)'s comment letter on the Revised Draft Policy submitted to the SWRCB on July 9, 2024 (with the exception of CASQA's Comment #6 regarding subcategories – see SMCWPPP's Comment #2 below), and respectfully requests the SWRCB consider the comments made and the revisions requested by CASQA in developing the Final Policy for consideration by the SWRCB for adoption.

Response 8.1: Please see responses to comments 15.1 through 15.13.

Comment 8.2: Clarify Cost Reporting Policy purpose, scope and regulatory process

Related to Comment #1 in CASQA's comment Letter, it generally remains unclear from the Revised Draft Policy what the full scope and intent of the Cost Reporting Policy is, with what justification, and through what regulatory process the Policy shall be implemented once adopted. Specifically, the various purposes listed on page 6 of the Revised Draft Policy cause some confusion about the proposed intent and the regulatory process being required of MS4 permittees and/or the Regional Water Boards as a result of the Policy. Based on the Program's review of the Revised Draft Policy, the primary purpose and benefit of the Policy are captured in the last bullet of the list of purposes on page 6 of the Revised Draft Policy:

"The Draft Policy provides direction to regional water quality control boards (regional water boards) and the State Water Resources Control Board (State Water Board) regarding the incorporation of standardized cost reporting requirements into any future issuance or reissuance of respective MS4 permits. The Draft Policy eventually may be incorporated into a future water quality control plan that applies to inland surface waters."

Aside from providing guidance and direction to Regional Water Boards and permittees for implementing current and future cost reporting requirements in a standardized way, another primary purpose proposed in the Revised Draft Policy suggests an entirely new and separate reporting process for MS4 permit cost accounting through the SWRCB:

"The Draft Policy specifies a cost reporting portal that Permittees shall use to annually report all expenditures related to the implementation of MS4 Permits."

There is no discussion in the Revised Draft Policy regarding the intent of the Policy to direct Regional Water Boards to incorporate standardized cost reporting requirements into future new/reissued MS4 permits and to have permittees go through an entirely separate annual cost reporting process directly through the SWRCB. This is a significant administrative process and it is not clearly described why the Cost Reporting Policy would require permittees to submit cost data annually via the proposed cost reporting tool in addition to reporting cost data annually through their respective MS4 permits. Furthermore, it is unclear how exactly the Policy will apply to MS4 permits with existing cost reporting requirements. If the reporting is expected at the statewide and

MS4 permit scale, it should be made clear what the expectations are for reporting where MS4 permits with existing cost reporting requirements may not be entirely consistent with the proposed Policy format. Rather than having permittees who have current cost reporting requirements provide “best professional judgement” in translating their MS4 permit cost reporting data into the statewide Policy format, direction should be provided to Regional Water Boards to ensure future MS4 permit cost reporting requirements are made consistent with the statewide Policy. We strongly oppose the presumed purpose in the Revised Draft Policy of creating a duplicative cost reporting process, as this would require significant additional administrative effort and likely lead to less accurate and inconsistent cost reporting data submitted to the State.

Recommended Changes:

Include clarifying language in the Revised Draft Policy regarding the primary intent of the Policy to direct Regional Water Boards to incorporate cost reporting requirements consistent with the Policy in all newly issued/reissued MS4 permits.

Include clarifying language in the Revised Draft Policy specifying the Policy is not intended to result in a duplicative reporting process for MS4 permittees who already have cost reporting requirements that are consistent with the Policy, as established in existing MS4 permits.

Include clarifying language in the Revised Draft Policy regarding the proposed regulatory process for cost reporting in instances where existing MS4 permits do not have cost reporting requirements or where existing MS4 permit cost reporting requirements are deemed inconsistent with the proposed Policy. In such instances, require reporting at the proposed primary category/line-item level only. See Comment #2 below regarding removal of subcategories altogether.

Response 8.2: Please see responses to SC 1 and SC 10.

Comment 8.3: Remove “subcategories” from Revised Draft Policy requirements

Though the Revised Draft Policy provides justification for the addition of subcategories, the Program strongly feels including subcategories in the Revised Draft Policy is unnecessary, unlikely to result in useful cost reporting data at the statewide scale and reduces flexibility in the development of MS4 cost reporting requirements among diverse MS4 permits throughout the state. As noted in the Revised Draft Staff Report, the proposed approach for standardized cost reporting across the State presents a significant obstacle in compiling and comparing cost data among permittees and across MS4 permits administered by the Regional Water Boards in a consistent and useful way. The proposed primary cost reporting categories and line items (which are consistent with the SWRCB Office of Research, Planning and Performance Guidance following the State Auditor’s 2018 Report on MS4 Cost Reporting) are sufficient for reporting and tracking MS4 permit expenditures and will likely result in a better interpretation of and ability to compare reported costs across permittees and within and across regions.

Additionally, the inclusion of subcategories for some but not all cost reporting categories creates inconsistency in the overall proposed cost reporting format presented in the

Policy. When considering the overall intent of tracking and evaluating the cost of compliance with MS4 permits and being able to draw comparisons of BMP vs. programmatic costs for different minimum mandatory MS4 permit components, including subcategories for some components but not others, and without proper justification for including subcategories in some instances but not others, results in a framework that lacks completeness and clarity and may be prone to greater misinterpretation of collected data in addition to creating substantially more administrative burden.

Recommended Changes:

We respectfully recommend removing all subcategories from Table 1 of the Revised Draft Policy and all reference to subcategories as a required cost reporting requirement in the Policy and Revised Draft Guidance. Instead, we recommend the SWRCB include reporting requirements for just the primary categories with a breakdown by line item (as proposed). We further recommend the Policy clearly specify that the Regional Water Boards shall include these primary categories consistent with the Cost Reporting Policy in future new/reissued MS4 permits.

Response 8.3: Please see the response to SC 5.

Comment 8.4: General comment regarding documentation of requirements in Revised Draft Policy materials

In SMCWPPP's review of the publicly noticed materials for the Revised Draft Policy, it was noted that the details pertaining to reporting requirements were in some instances documented inconsistently, incompletely or inappropriately across the materials. Reporting requirements and guidance must be documented consistently and completely to ensure clear expectations for permittees and Regional Water Board staff implementing the Policy. At a high level, we agree with CASQA's Comment #4 that there should be clearer definition of the role and use of the Draft Guidance. We also suggest reviewing the materials to ensure consistency and proper placement of requirements and guidance across the Policy materials. For example, the Revised Draft Policy does not mention the example activities suggested in the Revised Draft Staff Report. The Draft Guidance also does not clearly define the process of documenting example activities. Nor does it provide sufficient detail on the proposed subcategories or justification for them under the relevant Cost Categories section (Section 5). Additionally, some reporting requirements are included in the Revised Draft Staff Report but not the Policy itself. We suggest the language in the Revised Draft Staff Report regarding required documentation for cost reporting as proposed be removed from the Revised Draft Staff Report and if deemed important enough, be included in the Revised Draft Policy and/or Draft Guidance instead. These changes will help improve the interpretation and implementation of the Policy through a clearer understanding of the role of the Draft Guidance and the application of the proposed reporting requirements via the Revised Draft Policy.

Recommended Changes:

Include additional language in the Revised Draft Policy (and adopting resolution)

regarding the purpose of the Draft Guidance in relation to implementing the Policy and the plans to review and potentially update the Revised Draft Guidance on a periodic basis based on evaluation of the data collected during prior reporting periods.

Remove any specific details regarding the requirements for cost reporting and documentation from the Revised Draft Policy Staff Report, and if deemed necessary, include them in the Revised Draft Policy and/or Draft Guidance.

Response 8.4: The Draft Staff Report was reviewed to ensure that it was consistent with the Policy and did not include any requirements additional to the Policy. Further, based on the comments received, the intended use of the Cost Accounting Guidance document was added to the Policy (Section 5.3.7) as follows:

The State Water Board shall develop and maintain a cost accounting guidance document. The document will provide general guidelines for cost tracking and reporting, examples of activities for each cost category, and description of funding sources. This guidance document is not intended to establish policy or regulation, nor does it represent a new application or interpretation of the Policy. The document may be updated annually (as needed) based on Permittees' needs and frequently asked questions.

Comments from The City of Banning Public Works (Comment Letter 9)

Comment 9.1: We concur with the detailed comments in the RCFCD comment letter to you and for the sake of brevity will not repeat the comments here. In particular, City staff are very concerned about the cost the City will incur to implement the new cost reporting requirements.

Response 9.1: Please see responses to comments 7.1 through 7.4

Comment 9.2: The State Water Board has the authority to issue separate reporting guidelines for individual Phase I MS4 Permittees and can therefore implement separate cost reporting guidelines for smaller Phase I MS4 Permittees.

The Code of Federal Regulations (40 CFR 122.26) provides the minimum requirements applicable to State NPDES programs and stormwater discharges and includes the requirements for fiscal resource reporting. In particular, 40 CFR 122.26(d)(2)(iv) discusses that stormwater management programs may be separate between each Permittee and can have different requirements. The State Water Board has the discretion to implement separate cost reporting requirements for each Phase I MS4 Permittee, based on their individual population and the resources they have available to them.

Recommendation: Allow Phase I Permittees with populations less than 100,000 to report their stormwater program costs in alignment with Section 5.2 of the Draft Policy, which currently provides cost categories for Traditional Phase II MS4 Permittees only. This will allow smaller cities with limited staff to report on five cost categories instead of eleven and will still accomplish the cost reporting goal

Response 9.2: Please see the responses to SC 4. Please also refer to Response 7.4.

Comment 9.3: The City of Banning is an underserved, disadvantaged community. Funding the new NPDES Permit requirements without a dedicated revenue source is already a significant burden to the City. The General fund will likely be impacted, and staff will have to reduce General Fund programs like Parks, Recreation, and Public Safety to help offset new NPDES Permit requirements. Thus, if the less onerous cost reporting requirements of Phase II Permits could be used for small cities in Phase 1 MS4 Permits, it will save the City many tens of thousands of dollars per year in staff time and in costs to hire consultants to provide required technical compliance.

Response 9.3: Municipalities may need to initially invest resources to develop or adjust accounting systems to be able to report permit implementation costs using the proposed cost reporting framework. However, as demonstrated by the six-month beta test, the time and resources required to prepare the cost report is expected to decrease significantly in subsequent years. This initial effort will streamline future reporting, ultimately making the process more efficient.

Comments from The Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPPP) (Comment Letter 10)

Comment 10.1: SCVURPPP Supports the CASQA Comment Letter

The Santa Clara Program supports CASQA's comment letter on the Revised Draft Policy and Draft Guidance Document and respectfully requests that the SWRCB makes the revisions requested by CASQA (with the exception of CASQA's comment #6 regarding subcategories) when developing the Final Municipal Stormwater Cost Policy and Guidance Document. SCVURPPP comments #2 through #4 below outline some differences in SCVURPPP's position from CASQA's comments.

Response 10.1: Please see responses to comments 15.1 through 15.13.

Comment 10.2: The Draft Policy should only require reporting of municipal stormwater program costs by main cost categories. Reporting of costs at the subcategory level is unnecessary and should be removed.

We appreciate the modifications that were made to the Draft Policy from the August 2023 version to the May 2024 version, as these modifications will assist in streamlining Permittee efforts to collect and report cost data. However, some subcategories remain, including some fine distinctions that are difficult to quantify (e.g., the distinction between Illicit Discharge Detection and Elimination (IDDE) programs and Spill Response programs). The SWRCB's response to comments on the August 2023 Draft Policy (Comment Theme B1) states that the remaining subcategories "are essential to achieving the Policy objective to understand the cost of certain permit elements and are a necessary part of the cost reporting framework." We are resubmitting this comment because we continue to believe that the breakdown of cost categories by subcategory creates additional burden and is unnecessary to the goal of obtaining consistent cost data across California. The SWRCB should provide further justification as to why cost information is needed at the subcategory level and eliminate reporting at the subcategory level if substantial justification cannot be established.

Requested Change: Remove the requirement to report at the subcategory level.

Response 10.2: Please see the response to SC 5.

Comment 10.3: Any data collection that is extraneous to the purpose of determining the costs of MS4 permit implementation should be removed from the Policy.

The Revised Draft Policy requires significant additional data that is not related to permit implementation cost, e.g., Section 5.1.3 requires details for every "structural stormwater BMP," including location, BMP type, surface area, loading rate, and drainage area, and Section 5.3.4 requires descriptions of street sweeping activities, including the area covered, the type of sweepers used, and the volume of debris gathered. The SWRCB's Response to Comments on the August 2023 Draft (Comment Theme D1) states that "these project details put the reported cost data in context and make the data usable for Permittees to make management decisions". It is unclear how these data will be used

by Permittees to “make management decisions” and, to our knowledge, no Permittee has requested that data be reported for every structural stormwater BMP to help them make management decisions. This level of reporting is extraneous and beyond what is needed to assess the cost of permit implementation. Additionally, it will create additional burden for Permittees to report at this level. As such, we again request that the SWRCB remove the requirements from the Policy to report on the costs of structure stormwater BMPs.

Requested Change: Remove the requirements in Sections 5.1.3 and 5.3.4 of the Revised Draft Policy to provide data unrelated to the cost of MS4 permit implementation.

Response 10.3: Please see the response to SC 6.

Comment 10.4: The Revised Draft Policy should only require a narrative summary of the types of funding sources that support the implementation of the stormwater program.

We recognize that Federal regulations require that Phase I MS4 permittees report the sources of funds as part of their fiscal analysis for MS4 permit implementation. However, the Federal regulations do not specifically require reporting the amount of funds coming from each source. For many Permittees, funding for stormwater comes from a variety of sources and therefore it is extremely difficult for Permittees to track the amount of funds associated with each funding source. Additionally, these data are not necessary to achieve the goal of determining the costs of MS4 permit implementation.

Requested Change: Modify Section 5.3.5 of the Revised Draft Policy as follows:

- Permittees shall track the sources of funds ~~and amounts associated with each source~~ to implement their MS4 permits

Response 10.4: Please see the response to SC 12.

Comments from The City of Los Angeles (City) Sanitation and Environment (LASAN) (Comment Letter 11)

Comment 11.1: The Revised Draft Policy should clearly define how Permittees' expenditure data will be utilized to achieve its purpose.

LASAN appreciates the response to comments on the August 2023 Draft Policy (specifically L1) wherein State Water Board Staff clarified the purpose of the Revised Draft Policy and further outlined how data collected resulting from this policy would be used. LASAN supports the intended use of Permittee data as outlined in the following response to comment: "When permit implementation cost data is systematically recorded and reported using a standardized method, it can inform Water Board regulatory actions and Permittee management decisions. The Water Boards will use data to gain a comprehensive understanding of the cost of permit implementation and the economic implications for new permit requirements."

LASAN agrees with this overall purpose and the data uses outlined in the response to comments from the August 2023 Draft Policy but believes that the Revised Draft Policy should explicitly outline data use goals as described in the State Water Board Staff's response to comments as quoted above.

Requested Action:

- Revise Section 4.1 as follows:
4.1 The State Water Board and regional water boards (collectively Water Boards) shall use standardized cost data, collected in compliance with this Draft Policy, to inform ~~the regulatory steps necessary to implement state and federal water quality laws for the protection of public health and the environment, including consideration of economic information in the development of new Permits and Permit reissuances~~ through a clear understanding of permit implementation costs.

Response 11.1: Informing economic analysis for the development of new permits and permit reissuances is one of the primary uses of the cost of permit implementation data. Regional water boards have the flexibility to utilize cost of implementation data for other purposes.

Comment 11.2: Revise the reporting deadlines and implementation timeline to allow municipalities sufficient time to prepare internal processes.

Section 7.1 requires Permittees to annually report costs accrued during the fiscal year (July 1st to June 30th) within the same timeframe as the annual reporting required by the Permittee's MS4 permit. This deadline only provides LASAN just over five months to close the fiscal year and complete the cost reporting requirements in the Revised Draft Policy. Presently, the Guidance Document requires Permittees to report actual expenditures as opposed to budgeted estimates (further discussed in Comment #4 below). LASAN is a large municipality with a centralized division (Watershed Protection Division) responsible for obtaining information from a number of City bureaus and agencies (e.g., Bureau of Engineering, Fire Department, etc.). Based on actual

expenditures, completing the annual report after each of these entities has completed their own end of fiscal year accounting process would require significant time and effort which is not presently allowed for in the Revised Draft Policy. Additionally, the City and the majority of MS4 Permittees in the Los Angeles region work collaboratively to implement permit requirements to address watershed issues. These collaborative efforts are typically guided by memorandum of understanding and cost sharing agreements that are not reconciled every fiscal year. As such, the present deadline to report actual costs is not feasible, as some City and partner agencies can require six months to complete their annual accounting processes or reconcile shared expenditures. Furthermore, these expenditures are required to be reported to LASAN to then be presented to the State Water Board in the required format. If the purpose of the Revised Draft Policy is to standardize cost reporting and to collect cost information to inform the regulatory process, it is unclear why such a short reporting deadline is needed to achieve this purpose. LASAN requests that the annual cost reporting deadline be revised to June 30th of the following fiscal year. This will ensure that submitted data are of high quality and will reduce the potential need to revise data to ensure costs are accurate.

Section 8.1 of the Revised Draft Policy provides the option for regional water boards to incorporate the Revised Draft Policy into the Phase I MS4 Permits either through an amendment or in the reissuance of the Phase I MS4 Permit. LASAN supports the approach to incorporate this new Policy at the time of reissuance of each Permittee's Phase I MS4 Permit. In 2021, the Los Angeles Regional Water Quality Control Board adopted a new Regional Phase I MS4 Permit which included additional expenditure reporting requirements. Because municipal budgets utilize categories different than the categories required in the Revised Draft Policy, reporting these expenditures is a complex task requiring reconciling the differences in expenditure categories.

Because it is anticipated that this Revised Draft Policy will further revise the expenditure reporting requirements of the Los Angeles Regional Phase I MS4 Permit and the Revised Draft Policy allows regional water boards some discretion on reporting requirements, LASAN requests that the Revised Draft Policy direct regional water boards to provide two years between the first submittal of the new cost reporting requirements and the effective date of the incorporation of new cost reporting requirements into reissued MS4 Permits. This allows Permittees time to develop internal processes to meet cost reporting requirements consistent with the new cost reporting requirements as they are incorporated into the reissued permit Regional Phase I MS4 Permit.

Requested Actions:

- Revise Section 7.1 as follows:
Each Permittee shall document and submit total municipal MS4 Permit-related expenditures annually, ~~within the same timeframe as the annual reporting required by the Permittee's MS4 permit~~ by June 30 of the following fiscal year. The submission shall contain expenditure information from the previously concluded fiscal year, beginning July 1 and ending June 30.
- Revise Section 8.1 as follows:

The regional water boards shall incorporate cost reporting requirements consistent with this Policy into a Phase I MS4 Permit through an amendment or at the time of the next permit reissuance after the effective date of this Policy. Cost reporting shall remain consistent with the Permittee's current permit until two years after the effective date of the Phase I MS4 Permit into which the cost reporting requirements of the Policy are incorporated. Once incorporated into a Phase I MS4 Permit, regional water boards shall ensure Permittees follow the Policy through review of cost data submitted by Permittees.

Response 11.2: Please see responses to SC 1 and SC 10. The permit implementation costs are a part of the annual report that permittees submit to regional boards. Consequently, the policy proposes aligning the cost report submission deadline with the annual report submission deadline. Thus, the proposed Policy recognizes that the annual report submission deadline may vary based on discussions between individual regional boards and the permittees within their jurisdiction. Planned issuance of 13383 orders will take into account region-specific deadlines for annual report submittal and specify cost reporting deadline accordingly.

Comment 11.3: Requirements in the Revised Draft Policy that are not cost-related should be removed.

LASAN appreciates the response to comment D2 which further emphasized the necessity of collecting costs associated with street sweeping data. LASAN agrees with the State Water Board that costs associated with street sweeping are an important cost category associated with many Phase I Permits and is well in line with the stated purpose of this Revised Draft Policy. However, LASAN disagrees that requirements in Section 5.3.4 related to including "relevant details of street sweeping, including area swept, type of sweepers, and volume of debris collected" are within the scope of this Revised Draft Policy. As this information is not cost-related, this information should not be required in the Revised Draft Policy, but instead, incorporated by each regional water board into the reporting requirements of their Phase I MS4 Permit if deemed applicable to their region or by the State Water Board into the Phase II MS4 Permit. LASAN requests that the requirements of the Revised Draft Policy focus on the purpose of standardizing MS4 cost reporting and not introduce new requirements unrelated to cost.

Requested Action:

- Revise Section 5.3.4 as follows:
Permittees may attribute expenditures incurred while performing routine activities that are part of municipal operations required by an MS4 Permit (e.g., street sweeping, storm drain cleaning) entirely to the MS4 program. Permittees shall only report costs for the Permit-required frequency (costs incurred past the Permit-required frequency shall not be included). ~~Permittees shall include relevant details of street sweeping, including area swept, type of sweepers, and volume of debris collected.~~

Response 11.3: Please see the responses to SC 7. The required data described in Section 5.3.4 is essential to putting the reported costs of street-sweeping programs into

context. Putting this information into one place (the cost reporting portal) saves the Water Boards from having to spend resources to pull information from the annual report and match it up with the format of the cost reporting portal.

Comment 11.4: The Guidance Document should explicitly allow for budget estimates to be used while reporting for any of the cost categories.

The Revised Draft Policy clearly defines Best Professional Judgement as “[a] determination based on the best available scientific or engineering knowledge and best management practices” and further authorizes its use in Section 5.3.6, “The State Water Board recognizes that the variability and complexity of municipal accounting for stormwater programs may present a challenge for Permittees to track and report permit implementation costs using a list of standardized categories and line items, and as such, many of the costs reported may be estimates based on Best Professional Judgement. Permittees shall develop and maintain supporting documentation explaining their cost estimation process, when applicable.” LASAN agrees with the commenters and the State Water Board Staff response to comment H1 which was the justification to include Section 5.3.6 in the Revised Draft Policy. LASAN strongly supports the use of Best Professional Judgement to determine costs and sources of funds as this allows for cost reporting to be completed within a reasonable timeframe and level of effort. LASAN is concerned that the use of Best Professional Judgement is not supported by the Guidance Document where Permittees are guided to report source funds based on “...actual funds received (expenditure), not budget estimates.” LASAN requests that the Guidance Document be amended to better align with Section 5.3.6 of the Revised Draft Policy to allow for the use of Best Professional Judgement to meet all requirements of the Revised Draft Policy. This would allow, with the requisite Permittee justification, Permit implementation costs to be reported either by using budget estimates, actual expenditures, or some combination of the two.

Requested Action:

- Revise the first paragraph in the “Source of Funds” section of the Guidance Document as follows:
Permittees may use the following list to identify the types of sources used to fund their permit implementation activities. Permittees should ~~report the actual funds received (expenditure), not budget estimates~~ use Best Professional Judgement in reporting funds received and develop and maintain supporting documentation consistent with the requirements of the Policy.

Response 11.4: Please see the response to SC 12. Unlike expenditure reporting, the Policy does not require category specific reporting for funding sources. As such, best professional judgement should not be necessary to report actual funds received for stormwater management.

Comment 11.5: The Revised Draft Policy should be revised to appropriately outline what actions are required of a Duly Authorized Representative.

Section 7.3 requires that “[a] Duly Authorized Representative shall compile and submit

required reporting on behalf of the Permittee.” The role of a Duly Authorized Representative is to certify that information submitted was prepared under their direction or supervision. Presently, the Revised Draft Policy places the responsibility of “compiling” on the Duly Authorized Representative which is not the intended purpose of such a designated person. LASAN believes that a Duly Authorized Representative should align with the language of 40 Code of Federal Regulations (CFR) §122.22 which outlines the requirements for “[s]ignatories to permit applications and reports.” LASAN agrees with the need for a Duly Authorized Representative to direct, oversee, authorize, and sign the Cost Report, however the onus of compiling and submitting the Cost Report should fall within the purview of qualified LASAN staff under the direction of the Duly Authorized Representative or other approved staff as defined in 40 CFR§122.22(a)(3).

Requested Actions:

- Remove Section 7.3.
- Revise Section 7.4 as follows:
Annual expenditure Reports for MS4 Permit implementation shall be submitted electronically using the MS4 Cost Data Portal. Each submission shall be certified by a Duly Authorized Representative electronically in the manner or as otherwise specified by the State Water Board

Response 11.5: Please see the response to SC 8.

Comment 11.6: The Revised Draft Policy and Guidance Document should provide additional cost category clarification reporting for structural BMP projects that fall outside of the Planning and Land Development category.

Table 1 of the Revised Draft Policy only lists structural BMP projects as a sub-category under “4. Planning and Land Development.” The Guidance document then goes on to define Planning and Land Development as “includ[ing] expenditures for [...] new development and redevelopment projects.” LASAN’s Phase I MS4 Permit typically considers new development and redevelopment projects as private developments. However, this does not apply to regional projects (such as those found within Watershed Management Programs). As the Revised Draft Policy and Guidance Document are currently written, LASAN would likely attribute costs associated with regional structural BMP projects to the Permit-Specific Special Programs category. LASAN is aware that other regional permits categorize structural BMP projects differently, and therefore this sub-category is likely to be applied inconsistently across regions. LASAN is seeking further clarification on which category/sub-category costs associated with structural BMP projects outside the category of new development and redevelopment should be reported.

Requested Actions:

- Add language to Table 1 of the Revised Draft Policy that specifies a category or sub- category for cost reporting on structural BMP projects that are not associated with new development or redevelopment projects.

- Update the Guidance Document to reflect changes to Table 1 of the Revised Draft Policy including language to clearly define the new sub-category created.

Response 11.6: Table 1 in the Policy was updated to specify subcategory 4b for reporting cost of structural BMP projects that are not associated with new development or redevelopment projects. This comment is noted, and the guidance document will be updated based on the final adopted version of the Policy.

Comment 11.7: The Revised Draft Policy should clearly define that Permit language should directly reflect Policy language and that any documents produced to aid and assist Permittees shall not be incorporated into Permits.

LASAN greatly appreciates the development of the Guidance Document and anticipates utilizing the information within to help with meeting the requirements of the Revised Draft Policy when incorporated into the Los Angeles Regional Phase I MS4 Permit. While this document serves as a useful guide to assist Permittees, it should be clear that regional water boards should not incorporate any aspect of the Guidance Document into reissued MS4 Permits. Presently, the Revised Draft Policy does not define the role of the Guidance Document. Furthermore, State Water Board staff indicated in the June 4th, 2024 State Water Board meeting that the Guidance Document is intended to be a “living document” subject to updates and changes without a full public review process. LASAN is concerned that MS4 Permit writers may interpret the Guidance Document not as a resource for Permittees, but as a source of language to incorporate into MS4 Permits. As such, the Guidance Document could be the basis for new Permit requirements upon reissuance that do not go through the requisite public review processes. If the role of the Guidance Document and any other future accessory documents are clearly defined in the Revised Draft Policy, it allows for the Guidance Document to serve its intended purpose of guiding Permittees in the reporting of MS4 Permit implementation-related costs and not to guide MS4 Permit language. Furthermore, the Guidance Document may then successfully remain a “living document” and allow State Water Board staff to freely update it as necessary to help Permittees in implementing the Revised Draft Policy.

Requested Actions:

- Add Section 8.6 as follows:
State Water Board staff may produce documentation to aid Permittees in the interpretation and implementation of this Policy. Such guidance documents are intended to be updated and revised by State Water Board staff as necessary to adapt to Permittees’ needs and frequently asked questions. The incorporation of this Policy into MS4 Permits must reflect the plain language of this Policy and not draw on elements from any guidance documents.

Response 11.7: Please see responses to SC 1, SC 10, and 7.2. The Policy explicitly mentions that after the effective date of the Policy, any cost reporting requirements in the MS4 permits shall be consistent with the Policy. Further, the Cost Accounting Guidance document is acknowledged in the Policy as section 5.3.7:

The State Water Board shall develop and maintain a cost accounting guidance

document. The document will provide general guidelines for cost tracking and reporting, examples of activities for each cost category, and description of funding sources. This guidance document is not intended to establish policy or regulation, nor does it represent a new application or interpretation of the Policy. The document may be updated annually (as needed) based on Permittees' needs and frequently asked questions.

Comments from The City of Cloverdale (Comment Letter 12)

Comment 12.1: Many separate reporting requirements were reduced down, and this was appreciated but it is still too much of an impact to City of Cloverdale Staff to track all this data. Although we do agree with the intent of the Cost Reporting metrics, to date little has been done with cost reporting data we have put together and submitted. The proposed policy requires a much greater level of detailed subcategory tracking which municipalities are not structured to capture.

Response 12.1: Although many Phase I MS4 permittees currently report cost of permit implementation data, the utility of this data is limited due to insufficient detail and the absence of a standardized, robust cost reporting framework. The proposed Policy aims to establish a uniform cost reporting framework and data portal, ensuring that permit implementation cost data can be utilized for the purposes outlined in Policy Section 1.1.

Comment 12.2: We are supportive of the revised approach for the Phase II permittees and request that the SWRCB consider the same approach for Phase I permittees, until such time that it seems necessary that more specific information is really needed. This approach will allow municipalities the necessary time to collect similar data and the SWRCB to evaluate initial data and develop internal guidance for State and Regional Water Board staff on the use and interpretation of the data, define gaps needed for future cost reporting, and support the intent of the iterative process of the NPDES MS4 permits. Both Phase I and Phase II permittees are required to implement the same minimum control measures which includes six permit elements, as defined in 40 CFR § 122.34, that, when implemented in concert, are expected to result in significant reductions of pollutants discharged into receiving waterbodies: Public Education & Outreach; Public Involvement & Participation; Illicit Discharge Detection & Elimination; Construction Site Stormwater Runoff Control; Post Construction Stormwater Management (BMPs); and Stormwater Pollution Prevention & Good Housekeeping. Having statewide consistent data tracked from both Phase I and Phase II permittees provides greater value for future permit iterations...

Specific recommendations related to the current draft policy are as follows:

- Remove section 5.1 and revise section 5.2 to include both Phase I and Phase II Permittees.

Response 12.2: Please see the response to SC 3.

Comment 12.3: The City of Cloverdale currently manages 13 active LID projects that account for 61 individual features. This number is only increasing with every development. It is very time consuming to ensure maintenance, as well as design review, which features are sold or changed. As project thresholds continue to decrease (10,000 sq ft to 5,000sq ft) and a greater number of smaller features are installed to comply with treating each on-site tributary area, tracking and reporting this data will require significant staff time and database development. BMP surface area, volumetric loading rate, and drainage area data are engineered calculations that are not always

readily available or extractable from construction and design documents. The City of Cloverdale is supportive of section 5.3.6 and appreciates the acknowledgment from the State Water Board regarding the difficulty of reporting actual cost and for the allowance of Best Professional Judgement.

Specific recommendations related to the current draft policy are as follows:

- Section 5.1.3: Provide further definition that this section is related to public improvement projects only.

Response 12.3: Please see the response to SC 7. The Policy was revised to clarify that Section 5.1.3 is only for permittee-owned structural stormwater BMPs.

Comments from The Orange County Public Works (Comment Letter 13)

Comment 13.1: The Draft Policy Should Only Require Annual Reporting of Expenditures Based on Primary Cost Categories (not Sub-Categories) that are Consistent with the Applicable Stormwater Permit(s). [Draft Policy Section 5.1 and Table 1]

In the October 23, 2023, comment letter, the Permittees requested that fiscal reporting only be required for the primary, standardized categories that are identified in Table 1 of the Revised Draft Policy. While the County is supportive of and can report costs at the primary cost category level, it should be noted that focusing on the primary cost category level alone will take a significant amount of time to track, compile, and report on an annual basis.

Although the Permittees agree with the modifications to streamline the sub-categories in the Revised Draft Policy, the fundamental issues and concerns with trying to report fiscal information at this level of discretization remain.

Within the Response to Public Comments document, State Water Board staff stated that the remaining sub-categories were "...essential to achieving the Policy objective to understand the cost of certain permit elements and are a necessary part of the cost reporting framework" and "Based on the beta testing results, reporting costs in these remaining sub- categories will not require modification of Permittees' accounting systems."

Our specific concerns with the State Water Board's inclusion of the sub-categories remain and include the following:

- The requirement to report the fiscal information at the sub-category level is not required by the Federal Regulations.
- The requirement to provide the fiscal information at the sub-category level is not based on any previous fiscal or gap analyses conducted by the State Water Board. Thus, the sub-categories have been identified based on what staff think may be helpful without any technical analysis to support the finding that they are necessary to achieve the goals of the Revised Draft Policy.
- It is premature to require every municipality in the State of California to revise their financial/accounting processes and/or job codes and track/compile additional data to provide this level of detail when it is unclear how this information will be used to inform the two key goals of the Revised Draft Policy, which are to:
 - Determine what it costs to implement each Permittee's municipal stormwater program as required by the applicable permit; and
 - Gather adequate levels of data with appropriate details to inform cost effective permit development and equitable investment in municipal stormwater programs around the State.
- Before the sub-categories are required, the State Water Board should collect and

analyze several years of data for the Standardized Categories to determine how this data, which will be voluminous for the entire state, may be used to achieve the stated goals.

- Despite the statement in the Response to Public Comments, the sub-categories cannot be calculated and compiled without significant modifications to the County-wide accounting processes and systems. Due to our current job coding, accounting processes, and breadth of the departments and staff that are involved in the implementation of the stormwater program throughout the County, we are not able to separate our annual expenditures by the sub-categories proposed by the Revised Draft Policy.
- Examples of the sub-categories that are not applicable, unclear, or cannot be tracked include the following:
 - Reporting – The Permittees do not currently have job codes or time tracking procedures that would allow for this type of accounting of time spent on Annual Reports. It is also widely variable as to who works on the Annual Reports and what level of data collection, tracking, compilation, and analyses should be included in this category. The implementation actions associated with this sub-category are integrated within many of the primary categories and not identified or tracked separately.
 - Illicit Discharge Detection and Elimination vs. Spill Response – These actions are part of the same overall effort and cannot be tracked separately.
 - Water Quality Monitoring - For over 20 years, the Permittees have developed comprehensive water quality monitoring programs for each municipal stormwater permit that are funded from a regional shared-cost budget that uses the same County staff, equipment, contracts, and analytical labs. Sampling activities often overlap between various program requirements to achieve multiple objectives. As such, the County would not be able to bifurcate costs.

Thus, reporting at this level of detail will significantly increase the level of effort required for the fiscal reporting process with no identified benefit or explanation regarding how the data that is obtained would be used.

Recommendation

- Only require cost reporting at the Primary category level - Modify Table 1 as follows:
 - “Table 1: List of standardized categories ~~and sub-categories~~ for reporting cost of Phase I implementation”
 - Delete the sub-categories column
- Instead of requiring cost reporting at a sub-category level, the Revised Draft Policy could require a) a supplemental narrative; and/or b) a cross-walk table (similar to that which was provided as an example in the Permittee October 2023 comment letter) so that the elements that are included in each of the primary

categories can be identified and linked directly to the permit requirements.

- The Revised Draft Policy could allow for optional sub-categories and note that the potential inclusion of the sub-categories will be re-evaluated after a five-year period and full analysis of the data collected as a part of the Primary categories.

Response 13.1: Please see the response to SC 5. The proposed Policy identifies Water Code section 13383 and the federal MS4 regulations at 40 CFR sections 122.26(d)(1)(vi)(A) and 122.26(d)(2)(vi) as sources of legal authority the State Water Board considered in developing the proposed Policy. They are not cited for the proposition that the proposed Policy's cost reporting requirements are mandated by federal or state law. Water Code section 13383 broadly authorizes the Water Boards to require reporting and recordkeeping requirements, among others, pertaining to waste discharge requirements/NPDES permits issued pursuant to Water Code sections 13376 and 13377. Such permits include Phase I and Phase II MS4 permits.

The cost subcategories were refined based on insights from a six-month beta test and feedback from permittees on the draft policy released in August 2023. Collecting only category-specific cost data, as suggested in the comments, would not meet the stated objectives of the proposed Policy. Although some initial modifications to the municipal cost tracking and accounting system may be necessary during the first reporting year, these adjustments are anticipated to be minimal in subsequent reporting periods. The proposed cost reporting framework, including the cost subcategories, ensures that the Policy's goals are effectively achieved, ultimately leading to more accurate and useful data to inform regulatory steps and management decisions.

The adopting resolution for the final draft proposed policy will include a commitment to evaluate the Policy after collecting five years' worth of cost data. Any change in the Policy language before or after such evaluation would need to be adopted by the State Water Board through a public process.

Comment 13.2: The Draft Policy Should Only Require Cost Reporting Data and Information that will be Used to Achieve the Identified Goals. [Draft Policy Section 5.1.3, 5.3.4]

In the October 23, 2023, comment letter, the Permittees requested that Section 5.1.3 and Section 5.3.4 (renumbered from the Draft Policy) be modified to remove the requirement to provide programmatic data and information regarding structural BMP and street sweeping implementation.

In the Response to Public Comments, State Water Board staff stated that the programmatic data and information is necessary for the following reasons:

- Structural BMPs
 - "As a result, Permittees across the state will have access to a data repository where cost comparison information for different BMP types is readily available to inform improved BMP selection and implementation."
 - "...these project details put the reported cost data in context and make the data usable for Permittees to make management decisions."

- Street Sweeping:
 - “Since street sweeping requirements may vary significantly between MS4 permits, it is necessary to obtain additional information to be able to better understand what is being reported and to allow meaningful evaluation of the data across Permittees.”

It remains concerning that the Revised Draft Policy is still requiring that programmatic data and information be submitted as a part of the cost reporting requirements. The cited reasons for this requirement include the development of a BMP data repository, the need for context for making management decisions and comparing data across municipalities. This is concerning since the development of a BMP data repository would require far more work and information than what is being requested as a part of the Revised Draft Policy. Additionally, comparing data between municipalities should only be done after significant research is conducted as expressly noted within the Draft Staff Report, if conducted at all.

Lastly, it should be noted that every municipal stormwater permit is different, and every municipality (both Phase I and II) develops and implements their program differently based on the available resources, local and regional partnerships, historical aspects of their programs, and local priorities. Thus, the programmatic and/or cost data from individual municipalities should not be compared broadly across the state.

Recommendation

- Modify Section 5.1.3
Phase I MS4 Permittees shall track and report construction costs for structural stormwater BMPs upon project completion. ~~Permittees shall also include relevant project details, including location (address and Global Positioning System coordinates), BMP type, BMP surface area, volumetric loading rate, and drainage area with the total project cost of the completed project.~~
- Modify Section 5.3.4
Permittees may attribute expenditures incurred while performing routine activities that are part of municipal operations required by an MS4 Permit (e.g., street sweeping, storm drain cleaning) entirely to the MS4 program. Permittees shall only report costs for the Permit-required frequency (costs incurred past the Permit- required frequency shall not be included). ~~Permittees shall include relevant details of street sweeping, including area swept, type of sweepers, and volume of debris collected.~~

Response 13.2: Please see responses to SC 6 and SC 7. The policy does not require development of a “BMP data repository,” rather, collecting structural BMP cost data from permittees through a statewide data portal will enable the State Water Board to make this data publicly accessible. This data may be used as part of potential future efforts to develop a database of BMP information. The State Board anticipates permittees may find this large repository of detailed information useful for their own management decisions but is not requiring permittees to evaluate the data.

Furthermore, section 4.4 of the Policy explicitly states that the reported cost data shall not be used as a proxy for compliance. Similarly, permit implementation costs should

not be compared across permittees without considering factors such as program specifics, local conditions, and challenges. To ensure accurate interpretation of the costs associated with structural BMP implementation and street sweeping programs, the Policy mandates the collection of additional data related to BMP design elements and street sweeping activities.

Comment 13.3: The State Water Board Should Include Language in the Adopting Resolution that Commits to a Future Review of the Policy and Guidance.

The Permittees support the comments submitted by the California Stormwater Quality Association (CASQA) and would like to highlight the comment regarding language that is proposed for the adopting resolution.

As written, the Revised Draft Policy does not formally recognize the Draft Guidance Document, which is meant to assist municipalities in determining how to record and compile permit implementation costs in accordance with the Policy.

While it is understood that the Draft Guidance Document is meant to be a living document that will be refined as new information is gained or updated permits are developed, there needs to be a formal process for reviewing and revising both the Policy and the Guidance, as needed and based on the lessons learned from the implementation of the Policy requirements.

In addition, this review and revision process should allow municipalities enough time to review potential changes and modify their internal procedures for implementation in the next applicable reporting period if the Policy and/or Guidance are modified in the future. Establishing a clear process will help to ensure that modifications made to the Policy and/or Guidance in the future are not expected to be implemented in the middle of a reporting period.

Recommendation:

- Include language in the adopting resolution that:
 - Formally recognizes the Draft Guidance Document;
 - Commits to a process of reviewing both the Policy and Guidance documents in the future to determine if revisions are necessary; and
 - Recognizes that, if modifications are made to the Policy and/or Guidance documents that municipalities will need an adequate amount of time to modify internal account coding and processes in order to implement the changes to the cost reporting.

Response 13.3: See response to summary comment SC 9. The adopting resolution will acknowledge the guidance document as requested. Also, the adopting resolution will include a commitment to evaluate the Policy after collecting five years' worth of cost data. Any change in the Policy language before or after such evaluation would need to be adopted by the State Water Board through a public process. Therefore, there is no need to include provisions in the currently proposed Policy that addresses implementation of future change in the Policy language.

Comments from The California Coastkeeper Alliance (CCKA) (Comment Letter 14)

Comment 14.1: In good faith, we approach the Cost Policy with the hope of standardizing cost of compliance reporting, but we remain leery that municipal permittees will use this Policy to complain that compliance is unaffordable and that less stringent permit terms are necessary to achieve compliance rather than municipalities doing their part to raise the appropriate level of funding. We look forward to ‘phase II’ of the Cost Policy to “trim the fat” off existing stormwater permits, but we fear that providing permittees with too much discretion will lead to uncredible reporting data. Ultimately, we hope the Cost Policy will result in accurate and detailed-enough reporting so that we can focus on installing on-the-ground BMPs to improve water quality, rather than the current status quo of paying consultants to develop tools and reports that simply excuse polluters from accountability, moving the goal posts by changing standards, or complaining that the Clean Water Act is unaffordable when they do nothing to raise stormwater fees.

Response 14.1: The comment is noted. The Policy intends to establish requirements for reporting adequate levels of data with appropriate details without overburdening the permittees.

Comment 14.2: The State Water Board Should Re-Insert Section 4.4 In Its Entirety to Be Fair and Balanced.

The State Water Board’s Revised Cost Policy is unbalanced and unnecessarily favors permittees’ use of the Policy to weaken permits. At the September 2023 Board Workshop, CCKA made it clear that Section 4.4 was extremely important – to both NGOs and permittees – but that we found the Section fair and balanced. We did not support the first provision that stated reported costs could not be used to determine the level of municipal compliance. In our experience, many municipalities do not put in the effort to raise stormwater funding, so that their lack of resources can be used as an excuse for non-compliance. Yet we appreciated that this Policy was not intended to determine levels of compliance. We also believed – in good faith – that the first sentence was acceptable because the second sentence balanced it out. The second sentence, which we did support, stated that “the financial resources necessary to comply with a Permit shall not be used to justify noncompliance by a permittee or as a rationale to request less stringent permit requirements.” That second provision – the one drafted to provide NGOs comfort – was stricken from the Revised Draft. This is unacceptable.

By striking the second provision of Section 4.4, the State Water Board is sending a message to permittees (and NGOs), that it is acceptable to conclude that expensive permits are an excuse to not comply with the Clean Water Act. The striking of the second provision also sends the message that it is acceptable for Regional Boards to write less stringent permit requirements into permits due to expense imposed on permittees. This was not the stated purpose or intent of the Cost Policy; therefore, we find the deletion of the second provision in Section 4.4 unacceptable.

No state policy can quell a permittee's right to advocate however they wish. It is our understanding that the second provision in Section 4.4 was removed because of permittee concern that they could not use reported data to advocate. That is a nonsensical position to take. The State Water Board and all stakeholders understand that advocates have a First Amendment right to use data from this Cost Policy to advocate how they wish. The first sentence in Section 4.4 is certainly not going to stop CCKA or other NGOs from using cost data to advocate that certain municipalities need to spend more resources to achieve permit compliance. Similarly, municipal permittees know that the second provision in Section 4.4 will not stop them advocating for less stringent permit terms. But removing the provision sends a message that the Water Boards can use the permittees' cost data to forgive noncompliance or develop weaker permits to save municipalities money. Because this outcome is antithetical to the purpose of the Cost Policy, we strongly urge the State Water Board to re-insert the second provision in Section 4.4 that has been deleted from the Revised Draft. Additionally, the State Water Board should re-insert the provision with slight modifications to appease permittees as follows:

Recommended Slight Modifications to Section 4.4 (only if the previous 4.4 is not fully restored):

4.4 The reported cost of Permit implementation data shall not be used as a surrogate for the level of compliance activities performed by a Permittee. Additionally, the financial resources necessary to comply with a Permit shall not be used by Water Board staff to justify noncompliance ~~by a Permittee~~ or as a rationale ~~to request for~~ less stringent permit requirements.

CCKA approached the Cost Policy in good faith to achieve what the State Water Board stated was the Policy intent: to develop a common methodology for calculating the cost of compliance, and subsequently, to identify unnecessary permit terms to save resources so that funding can be better spent on improving water quality. Without the full restoration of Section 4.4, we view this Cost Policy as just another tool for permittees to skirt compliance and weaken permits.

Response 14.2: Section 4.4 of the policy has been revised as follows:

4.4 The reported cost of Permit implementation data shall not be used as a surrogate for the level of compliance activities performed by a Permittee. **Additionally, the financial resources necessary to comply with a Permit shall not be used to justify noncompliance.**

This change is consistent with the response J3 in the [Response to Public Comment document previously posted for first round of public comments](#). While permittees retain the ability to advocate for permit terms during the public permit development process, the State Water Board does not intend that the cost data collected consistent with the proposed Policy provide the basis for or justify non-compliance with the elements of an existing permit.

Comment 14.3: Ensure that Unrequired Reporting Costs Shall Be Reported Completely Separate from Costs of Permit Compliance.

Consistent with the intent of the Cost Policy, unnecessary permit costs should not be

commingled with the costs of permit compliance. During the September 2023 Board Workshop, we were very concerned that unnecessary costs – such as lobbying expenses would be commingled with the costs of complying with the permit terms. We see this as a fundamental issue for the Cost Policy’s success. If permittees are allowed to report costs that are unnecessary towards specific compliance, then costs estimates will be over-exaggerated, phase II of eliminating unnecessary permit provisions will be impossible due to the lack of credible cost estimates, and participants will lose faith in this process. We were happy to see unnecessary permit terms like lobbying prohibited from the original Draft Cost Policy. However, the Revised Draft Policy now allows unnecessary costs to be reported. Revised Section 6.1 states that permittees have the “option to report stormwater program management expenditures for activities not required by their MS4 permits.” We accept this provision, but only if the State Water Board is explicit that these unnecessary costs should be reported completely separately from the cost of permit compliance. We appreciate the Revised Policy stating that unnecessary costs do “not replace any mandatory cost reporting requirements established by this Policy.” But this statement is not enough to ensure permittees will not commingle unnecessary and necessary costs. Any voluntary unnecessary costs reported should be done independently of the required reporting costs in a distinct and separate location – so that the public can easily determine what was necessary to achieve compliance verse what the permittee spent funding on unnecessarily.

To ensure permit costs are reported accurately and the Cost Policy retains credibility, we recommend the following addition to Section 6.1 of the Policy:

Optional Unrequired-Cost Reporting

6.1 Permittees shall have an option to report stormwater program management expenditures for activities not required by their MS4 permits. Reporting such cost is voluntary and does not replace any mandatory cost reporting requirements established by this Policy. Unrequired costs shall be reported completely separate and distinct from mandatory cost reporting requirements.

Response 14.3: The current language in the Policy (section 6.1) clearly states that expenditures reported under the Optional Cost Reporting are not considered MS4 permit implementation costs. Furthermore, Optional Costs will be collected using a data entry form separate from the cost data for implementation of MS4 permits. The following language was added to Section 6.1 of the Policy based on this comment:

Optional costs shall be reported separate and distinct from cost reporting requirements described in Section 5.

Comment 14.4: The State Water Board Should Make Best Professional Judgment Supporting Documentation Available to the Public.

To establish credibility that permittees are accurately reporting necessary permit costs, it’s absolutely critical that reporting data is made publicly available. Therefore, we strongly support the inclusion of Section 8.4.

CCKA has witnessed a long history of stormwater permittees asserting flawed compliance costs to advocate for less stringent permit terms. At the beginning of this

Policy's stakeholder process, we witnessed stakeholders ask for double counting, reporting costs that have nothing to do with permit requirements, and exaggerating estimates. The success of this Policy will be determined by its credibility. Public access to reporting costs – and the underlying justifications – will hold permittees accountable while providing stakeholders with confidence that the costs reported are accurate.

The Revised Policy now allows permittees to estimate their costs using best professional judgment. While we have concerns this will be a slippery slope to inaccurate cost estimates, we understand State Water Board Staff are trying to reduce reporting burdens on permittees. Flexibility is important but should come with accountability. And we are concerned that the State Water Board lacks the resources to verify the accuracy of cost estimates using best professional judgment.

The Revised Policy states that the underlying documentation used to make best professional judgment estimates shall be kept for five years and turned over to the Water Boards upon request. We fear that this provision will go unused, as the Water Boards will not have the capacity to effectively review background documentation to hold a large number of municipal permittees accountable. This is particularly concerning if Section 4.4 is not restored to its prior version, and non-compliance is excused based on cost data using unreliable best professional estimates. Concerns about the valid use of best professional judgment will be even more pronounced if permittees are able to lump in unrequired costs of compliance into their general cost estimates, rather than reporting those unrequired costs separately. If cost estimates are going to be allowed using best professional judgment, then the underlying documentation should be made publicly available.

To provide accountability and ensure public confidence in the Cost Policy and permittee reporting, we request the following changes to Section 5.3.6:

Recommended Changes to Section 5.3.6. :

5.3.6 The State Water Board recognizes that the variability and complexity of municipal accounting for stormwater programs may present a challenge for Permittees to track and report permit implementation costs using a list of standardized categories and line items, and as such, many of the costs reported may be estimates based on Best Professional Judgment. Permittees shall develop and maintain supporting documentation explaining their cost estimation process, when applicable. Such documents shall be retained by the Permittees for at least five years and **shall be made publicly available provided to the regional water boards or State Water Board** upon request.

Response 14.4: Making these documents publicly available by uploading and maintaining them on the cost data portal would impose a significant burden on both permittees and water boards, with little discernible benefit. Under the California Public Records Act (PRA), the public has the right to request access to documents used to justify Best Professional Judgment. Interested parties can review these documents by submitting a request directly to permittees within the document retention period specified in the Policy.

Comments from The California Stormwater Quality Association (CASQA) (Comment Letter 15)

Comment 15.1: THE STATE WATER BOARD SHOULD ADD LANGUAGE IN THE ADOPTING RESOLUTION THAT PROVIDES DIRECTION AND INTENT FOR FUTURE REVIEW AND IMPLEMENTATION.

As the first of its kind policy for stormwater, there will undoubtedly be lessons learned that should be reflected in future updates to the Policy and Guidance. Significant amounts of data will be collected and submitted. A future review should not only evaluate the data submitted, but also the utility of that data in meeting the goals of the Policy (e.g., what data are important, what data are not as useful, etc.). Also, as the Policy will impact several permittees with existing cost reporting requirements, direction on this transition period is necessary and warranted.

CASQA Recommendations:

- Include language that addresses the context and use of data obtained pursuant to the BMP and Street Sweeping data required in Section 5.1.3 and 5.3.4, respectively (see Comment #6).
- Provide direction to State Water Board staff that the data collected as a result of the implementation of the Policy will be compiled, reviewed, and presented to the State Water Board within five (5) years after the effective date of the Policy, identifying the lessons learned and potential modifications that may be made to the Policy and/or Guidance document.
- Provide direction to the Regional Water Boards that currently have cost reporting requirements in their municipal stormwater permits (Los Angeles Regional Water Board, Central Coast Regional Water Board, and San Francisco Regional Water Board) to ensure that the municipalities have clarity regarding the reporting requirements and timing. (see Comment #2).

Response 15.1: Comments are noted and will be addressed as the resolution is drafted for the State Board's consideration of adoption of the Policy. Additionally, see responses to summary comments SC 6, SC 7, SC 9, and SC 10.

Comment 15.2: THE POLICY SHOULD CLARIFY HOW MUNICIPALITIES WITH EXISTING COST REPORTING REQUIREMENTS IN THEIR PERMITS WILL TRANSITION TO THE NEW STATEWIDE POLICY

Several municipalities currently have cost reporting requirements in their MS4 permits. Direction to the Regional Water Boards is needed to ensure these municipalities (1) are only complying with one version of cost reporting requirements and (2) have adequate time to transition from their existing permit requirements to the statewide policy requirements. This issue could also be addressed in the adopting resolution.

Response 15.2: See response to summary comment SC 10.

Comment 15.3: CLARIFY THE EFFECTIVE DATES FOR INITIAL DATA COLLECTION AND REPORTING

The Revised Draft Policy does not currently include an effective date for either the initial data collection or annual reporting. The Response to Comments identifies “2025” as the “First reporting year to require Standardized Cost Reporting.” The Draft Policy itself should be clear and explicit.

CASQA Recommendations:

- Add the following to Section 7.1:
Data collection for the Standardized Cost Reporting Policy will commence the first fiscal year after an applicable regulatory action requiring implementation of the Policy and no sooner than fiscal year 2025-2026, The first data submission shall occur concurrent with the applicable MS4 annual report for that fiscal year (e.g., no earlier than the report submittal deadline for FY 2025-2026).

Response 15.3: The adopting resolution will include clarification regarding the effective date of initial data collection and reporting. Permittees will have to start tracking their permit implementation cost consistent with the proposed policy starting July 1, 2026. The first reporting year for all permittees statewide will be FY 2026-2027.

Comment 15.4: REMOVE THE REQUIREMENT FOR A DULY AUTHORIZED REPRESENTATIVE TO COMPILE THE DATA

It is unusual to specify that the Duly Authorized Representative (DAR) must compile the data that is submitted. This requirement is also inconsistent with the definition of a DAR on page 3. Compiling the data will also likely involve many municipal staff members, which may or may not include the DAR.

CASQA Recommendation:

- Remove the word compile from Section 7.3 as follows:
A Duly Authorized Representative shall ~~compile~~ and submit required reporting on behalf of the permittee.

Response 15.4: Please see the response to SC 8. Policy section 7.3 was revised as requested.

Comment 15.5: ADD LANGUAGE THAT DESCRIBES THE ROLE AND USE OF THE GUIDANCE

Permittees will rely on the Guidance Document to establish their internal policies and procedures, and Water Board staff may rely on it to interpret the data they are provided. The Policy itself should recognize the existence of the Guidance Document, and provide some clarity for its use.

CASQA Recommendation:

- Add a new Section, Section 9, Titled “Guidance Document” that includes:
 - Language that describes why it has been created, how it should be used,

and that if there are discrepancies between the two documents, the Policy is the prime / controlling document.

- Language that states any modifications to the Guidance Document should be made with enough time (no less than 6 months) for Permittees to modify their internal procedures and the changes should be effective July 1 (so all data from a FY is reported consistently).

Response 15.5: Based on the comments received, the Policy was revised to add language that recognizes the cost accounting guidance and its purpose. Please refer to new section 5.3.7 in the Policy:

The State Water Board shall develop and maintain a cost accounting guidance document. The document will provide general guidelines for cost tracking and reporting, examples of activities for each cost category, and description of funding sources. This guidance document is not intended to establish policy or regulation, nor does it represent a new application or interpretation of the Policy. The document may be updated annually (as needed) based on Permittees' needs and frequently asked questions.

Comment 15.6: BMP AND STREET SWEEPING DATA REQUIREMENTS SHOULD FOCUS ON INTERPRETATION OF COST DATA AND NOT ON EFFECTIVENESS

For these particular requirements, confusion and concern remain, both in terms of the extent of its applicability and its purpose.

In terms of applicability, municipal permits require the installation of BMPs, though not all are installed directly by a municipality and many are installed by private developers. Providing clarity that BMP installation and maintenance costs should only be reported for municipally-owned BMPs would aid in the reporting as well as future use of the data. See Comment #7 for other edits that would add clarity based upon the language in the Guidance Document.

In terms of purpose, the justification noted in the Response to Comments on the Draft Policy skews away from cost reporting data and states that this data will be used for BMP effectiveness, BMP databases, and BMP selection. All of these uses require significantly more considerations beyond cost, resulting in confusion as to its utility and the effort and burden to report it as part of the Cost Reporting Policy. In addition, the Response to Comments suggests this data will be compared *across permittees*. This comparison is counter to the Revised Staff Report that states (emphasis added): "It should be noted that the permit implementation cost data *will not be used as a surrogate for the level of compliance of activities a permittee performs. Cost data shall not be used to compare permittees' performance and assess the efficacy of their MS4 programs.* Any comparisons between permittees would need to take local socio-economic conditions and challenges the different permittees face into account."

During the June 5, 2024 workshop, Water Board staff indicated that collection of the additional information is necessary to interpret cost data reported for BMPs and street sweeping. In that context, if these data are required, it is important to accurately frame why this information is required and how it will be used, specifically relating to

interpreting reported cost data, and not to assess across Permittees. The requirements should also be modified to correlate directly to the information needed to normalize data, as well as align the data with what is commonly available and required by the applicable MS4 permit. Identifying what information is most applicable and appropriate to normalize the data should be an area of discussion prior to the consideration of the final Policy. CASQA is ready to work with our members and Water Board staff to evaluate and propose what additional information for BMPs and street sweeping will most effectively support normalizing the cost data.

CASQA Recommendations:

- In the adopting resolution, include language that addresses the following:
 - Cost is only one of many factors for effectiveness and BMP selection
 - The additional information for BMPs and street sweeping in Section 5.1.3 and Section 5.3.4 shall be used to understand and normalize data for individual BMPs
 - The additional information for BMPs and street sweeping in Section 5.1.3 and Section 5.3.4 shall be reevaluated to determine the utility of requiring these data in a future update to the Policy.
- Section 5.1.3 and Section 5.3.4:
 - Prior to adoption of the Final Cost Reporting Policy, work with CASQA and member agencies to evaluate and identify the appropriate and applicable information categories for BMPs and street sweeping that will most effectively support normalizing the cost data.
 - As a general principle, the additional information needs to be numeric to achieve the goal of normalizing the data. If included anything that is not numeric (e.g., BMP type or Street Sweeper type) needs to be provided as a drop-down menu with defined options (or else the information reported may be so variable that it limits its use)

Response 15.6: Please see responses to SC 6 and SC 7. The Policy language has been revised to make it clear that the BMP cost data requirement is only for costs incurred by permittees for implementing permittee-owned structural BMPs.

A statewide structural stormwater BMP cost database has the potential to enhance the selection process for future BMPs. However, the scope of the proposed policy does not mandate BMP selection based strictly on cost. Rather, the proposed cost reporting framework seeks to establish a standardized approach for reporting structural BMP costs, facilitating more precise data interpretation. Furthermore, any additional requested information pertaining to BMP details and street sweeping programs will be either numerical or selected from a drop-down menu.

Comment 15.7: THE TERMINOLOGY FOR THE SUB-CATEGORIES (TABLE 1) SHOULD BE CLARIFIED AND BE CONSISTENT WITH THE DRAFT GUIDANCE

CASQA acknowledges and appreciates the modifications that were made to Table 1

from the Revised Draft Policy from the August 2023 version to the May 2024 version. These modifications will assist in streamlining the effort to collect and report cost data.

Table 1 was modified based on the comments received in October 2023. There are additional edits that would provide more clarity and would be consistent with the terminology used in the Draft Guidance document.

CASQA Recommendations:

- The Draft Guidance should explicitly identify what should be included in each of the Sub-categories (see Comment #10).
- Modify Table 1 – Sub-categories per the recommendations below

Category Name	Recommended Modifications
1. Overall Program Management and Administration	Clarify that the type of reporting that is to have its own accounting for cost reporting is only Annual Reporting. a. <u>Annual</u> Reporting
3. Illicit Discharge Detection and Elimination (IDDE) and Spill Response	a. IDDE – program to proactively detect and remove sources of illicit discharges to MS4s. b. Spill Response – the estimated portion of the IDDE program that is focused on response to reported water pollution reports/spill events.
4. Planning and Land Development	Provide a clear distinction between the two sub-categories and clarify the types of projects that are included within each. a. Costs for Post-construction BMPs for public projects that must comply with the new or redevelopment projects development standards (i.e. regulated projects) b. Costs for New structural other public non-regulated, green street, and/or regional stormwater BMP <u>public</u> projects (with total stormwater related budget higher than \$200,000)
8. Trash Management	Clarify the types of costs that should be included. a. Full capture device design, permitting construction, device purchase , installation and maintenance for public projects b. Street sweeping

9. Water Quality Monitoring	<p>Clarify the types of costs that should be included.</p> <p>a. Receiving water and outfall monitoring program(s) inclusive of all associated costs</p> <p>b. BMP monitoring project(s)/program(s) inclusive of all associated costs</p>
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Response 15.7: Please refer to the Response to SC 5.

Comment 15.8: MODIFY SEVERAL DEFINITIONS FOR ACCURACY AND CLARITY.

There are several definitions where we offer suggested modifications for accuracy and clarity. See the table below.

Revised Draft Policy Definitions	Page 3	<p>Modify Best Professional Judgement definition to reflect the type of effort that is necessary for cost reporting.</p> <p>Replace the current definition with the following:</p> <p>Best Professional Judgement - The best opinion developed by the municipal staff after consideration of all reasonably available and pertinent data or information that forms the basis of the cost reporting estimates.</p>
Revised Draft Policy Definitions	Page 3	<p>Modify Easement definition to align it with more formal definitions based in California property law.</p> <p>Replace the current definition with the following:</p> <p>Easement - Where a landowner gives another a limited right to use their land for a specific purpose. It is not an ownership right in the land, it is the mere right to use another's land for limited purposes.</p>
Revised Draft Policy 1 Purpose	Page 5	<p>Modify section 1.2 to reflect the development of the Draft Guidance.</p> <p>The Draft Policy describes the cost categories that Phase I MS4 Permittees and traditional Phase II Permittees shall use to track their Permit implementation costs. <u>The companion Cost Accounting Guidance provides information intended to assist municipalities in determining how to estimate permit implementation costs, including best practices for cost accounting.</u></p>

Response 15.8: The definitions were rephrased as follows:

Best Professional Judgement- A determination based on the best available scientific

or engineering knowledge and all reasonably available and pertinent data or information that forms the basis of the cost reporting estimates.

Easement- Where a landowner gives another a limited right to use their land for a specific purpose. It is not an ownership right in the land, it is the mere right to use another's land for limited purposes.

Please refer to Response 15.5 for the comment related to recognizing the guidance document in the Policy.

Comment 15.9: THE DRAFT GUIDANCE SHOULD BE CONSISTENT WITH THE APPROACH DESCRIBED IN THE REVISED DRAFT POLICY AND THE ACKNOWLEDGEMENT THAT ESTIMATES OF EXPENDITURES MAY BE NECESSARY.

The Revised Draft Policy acknowledges that, given the complexity of the accounting for the implementation of the stormwater program and the numerous departments and staff that are involved, municipalities may need to estimate expenditures as a part of the cost reporting process. This is stated in several places throughout the Policy including, but not limited to the following [emphasis added]:

- Purpose (Section 1.1) – “The purpose of the Draft Policy for Water Quality Control for Standardized Cost Reporting in Municipal Stormwater Permits....is to ensure that municipal separate storm sewer system (MS4) permittees (Permittees) in California estimate, track, and report annual expenditures in a consistent manner...”
- Cost Accounting (Section 5.3.3) – “For activities that serve purposes in addition to stormwater management, Permittees shall estimate a percentage of expenditures that can be directly attributed to Permit implementation.”
- Cost Accounting (Section 5.3.6) – “The State Water Board recognizes that the variability and complexity of municipal accounting for stormwater programs may present a challenge for Permittees to track and report permit implementation costs using a list of standardized categories and line items, and as such, many of the costs reported may be estimates based on Best Professional Judgment...”

However, there are several statements within the Draft Guidance that are not in alignment with this stated approach and should be revised (see below). In addition, the same best professional judgement and estimations will likely be necessary when trying to quantify funding sources.

CASQA Recommendations:

Modify the following statements within the Draft Guidance so that they are consistent with the approach for cost reporting as described in the Revised Draft Policy:

- General Guidelines #3 – “The sum of all actual or estimated costs reported should not be higher than the ~~actual~~ total actual or estimated expenditure for permit implementation during the reporting period.”
- General Guidelines #4 – “Permittees must report actual or estimated permit

implementation expenditures incurred during the reporting period; ~~a budget estimate does not satisfy the requirements set by section 5 of the Proposed Policy.~~

- Source of Funds – Permittees should ~~report the actual funds or estimated funds received (expenditure), not budget estimates~~ use Best Professional Judgement in reporting funds received and develop and maintain supporting documentation consistent with the requirements of the Policy.

Response 15.9: Please refer to the response to SC 13.

Comment 15.10: THE DRAFT GUIDANCE SHOULD IDENTIFY WHICH TYPES OF EXPENDITURES ARE POTENTIALLY APPLICABLE TO SPECIFIC COST CATEGORIES.

Given the fact that there are 11 different standardized cost categories and 4-5 different types of expenditures that may apply to each, CASQA strongly recommends that the Draft Guidance Document include a reference table that identifies which types of expenditures may be reported for each of the cost categories. Without this type of visual guidance, many municipalities may be confused as to what types of expenditures should be reported for which cost categories.

Although CASQA requested the inclusion of this table in the Policy itself in our October 2023 comment letter, now that the Draft Guidance document has been developed, it would be appropriate for inclusion in the Guidance. CASQA is therefore resubmitting this comment.

CASQA Recommendations:

The Draft Guidance should identify the types of expenditures that may apply to each of the cost categories and include an Example table to help guide the municipalities.

Example Table for Expenditures that May be Reported for Each Cost Category

Cost Category	Total Cost	Expenditures				
		Staff Wages and Benefits (Not O&M) [b]	External Professional (Not O&M) [b]	Capital Investments		Operation and Maintenance [a]
				Planning, Design, Permitting & Construction	Land / ROW Easement Acquisition	
1. Overall Program Mgmt and Administration	\$	\$	\$			

2. Public Education, Outreach, Involvement and Participation	\$	\$	\$			
3. Illicit Discharge Detection and Elimination and Spill Response	\$	\$	\$			
4. Planning and Land Development [c]	\$	\$	\$	\$	\$	\$
5. Industrial and Commercial Facilities	\$	\$	\$			
6. Construction Site Management	\$	\$	\$			
7. Municipal Operations	\$	\$	\$	\$	\$	\$
8. Trash Management [c]	\$	\$	\$	\$	\$	\$
9. Water Quality Monitoring	\$	\$	\$			
10. Permit-specific Special Programs	\$	\$	\$	\$	\$	\$
11. Miscellaneous Costs	\$	\$	\$			

[a] This line items covers O&M of publicly owned and operated assets/structures, not inspection of privately owned stormwater BMPs.

[b] The line item for O&M is fully inclusive of all associated costs and is comprised of Personnel and Overhead, External Professional, and other, associated costs.

[c] This cost category does not include the capital or O&M expenditures associated with the installation or maintenance of privately owned stormwater BMPs.

Response 15.10: Please refer to the response to SC 13.

Comment 15.11: THE DRAFT GUIDANCE SHOULD IDENTIFY THE “EXAMPLE ACTIVITIES” THAT SHOULD BE CONSIDERED FOR EACH OF THE SUBCATEGORIES IDENTIFIED IN THE REVISED DRAFT POLICY

The Revised Draft Policy requires specific cost reporting for several subcategories of cost as identified in Table 1. In order to provide clarity to the municipalities, the Draft

Guidance should include each of the subcategories within the corresponding section of the Guidance document and identify the example activities for each.

For example, for Illicit Discharge Detection and Elimination and Spill Response, there are two subcategories:

- IDDE
- Spill Response

IDDE is an entire program, of which spill response activities are a subset of that program. The Guidance Document could provide clarity here, noting perhaps that IDDE is a permittee’s proactive aspect of the program, while spill response is the reactive aspect of the program (e.g., something has happened and the permittee is addressing it). When it comes to data interpretation, cumulatively, both of these subcategories are a permittee’s IDDE program.

CASQA Recommendations:

- Add the subcategories identified in Table 1 within the corresponding section of the Draft Guidance and identify the example activities that would be included as a part of the cost reporting.

Response 15.11: Please refer to the response to SC 13.

Comment 15.12: MODIFY SEVERAL DEFINITIONS FOR ACCURACY AND CLARITY

The following table provides suggested edits to provide additional definition and clarity to the terms and requirements of the Draft Guidance Document. The third column identifies the issue and provides suggested revisions:

<p>Draft Guidance Cover and throughout</p>	<p>Cover</p>	<p>The title of the document should be revised. The Guidance Document has been developed to provide clarity to the municipalities regarding the Cost Reporting Policy, not on how accounting for the stormwater program should occur. The title of the document and references throughout should refer to the document as the “Cost <u>Accounting Reporting</u> Guidance”.</p>
<p>Draft Guidance General Guidelines #9</p>	<p>Page 4</p>	<p>Costs should be as accurate as possible in order to convey the full cost of permit implementation. Including a \$0 insinuates that there is a permit requirement that is applicable, but that there are no implementation expenditures. 9) If costs under a certain category or line item are not available or applicable, permittees should report such costs as <u>“not available” with a brief</u></p>

		<u>explanation or “not applicable” zero (\$0).</u>
Draft Guidance Description of Cost Categories and Sub- categories for Phase I MS4 Permittees	Pages 5-11	The Guidance should clearly indicate that the costs associated with training should be included in each of the categories instead of as a part of Program Management.
Draft Guidance Overall Program Management and Administration	Page 5	Expenditures associated with activities conducted for the reapplication for and renewal of NPDES permits should be included within the Overall Program Management and Administration category. These activities (e.g., a Report of Waste Discharge) occur as the state has issued a permit to the Permittee and these activities can take a substantial amount of time. In addition, the State cannot dictate how a Permittee completes tasks that are required pursuant to the Permits or permit renewals. “It should be noted that the use of paid external consultants or contractors to advocate for or oppose permit provisions is not considered permit implementation costs.”
Draft Guidance Industrial and Commercial Facilities	Page 7	It is not clear what the following Example Activity is referring to (what permit requirement is this related to?) - Permit issuance
Draft Guidance Trash Management	Page 9	Modify the Example Activities to include: Full capture device <u>design</u> , <u>permitting</u> , purchase, installation, <u>construction</u> , and maintenance costs
Draft Guidance Water Quality Monitoring	Page 9	The Guidance Document must be consistent with the Revised Draft Policy. Water quality monitoring costs are broken down into subcategories such as receiving water & outfall monitoring <u>and</u> BMP effectiveness

		monitoring, and facility specific monitoring
Draft Guidance Miscellaneous Cost	Pages 10-11 and 15-16	The Draft Guidance should only include the Permit fees once – they are currently included in Overall Program Management and Administration and Miscellaneous Cost.
Draft Guidance Miscellaneous Cost	Pages 10-11 and 15-16	<p>The Draft Guidance should clarify that expenditures related to regional memberships should be subdivided amongst the Categories, if possible. These costs typically support implementation of different permit components. Several programs collaborate at the regional level and some county agencies provide services on behalf of cities (e.g., countywide programs). Alternatively, they could be included under Program Management.</p> <ul style="list-style-type: none"> - Membership fees for stormwater related organizations and - Regional partnerships/Countywide programs (if possible the expenditures related to regional partnerships/Countywide programs should be sub-divided amongst the categories)
Draft Guidance Optional Cost Reporting	18	<p>Expenditures associated with activities conducted for the reapplication for and renewal of NPDES permits should be included within the Overall Program Management and Administration category. These activities are explicitly taking place as the state has issued a permit to the Permittee and these activities can take a substantial amount of time. In addition, the State cannot dictate how a Permittee completes tasks that are required pursuant to the Permits or permit renewals.</p> <ul style="list-style-type: none"> - Hiring a contractor to negotiate terms of MS4 permits before or during adoption. - Personnel cost to discuss future permit terms with the water boards.

Response 15.12: Please refer to the response to SC 13.

Comments from the County of Sonoma (Comment Letter 16)

Comment 16.1: While the County appreciates the revisions made to the prior draft, we continue to find the requirements in the Draft Policy to impose unfunded mandates that are exceedingly burdensome and that will counter-productively divert resources away from the protection of water quality. By way of example, the proposed policy continues to require a level of detailed subcategory tracking which our government is not structured to capture. The County has a split jurisdiction, managing both a Phase I MS4 permit (issued by the North Coast Regional Water Quality Board) and a Phase II MS4 permit (issued by the San Francisco Bay Regional Water Quality Control Board). We implement our stormwater program requirements across several County departments, many of which do not structure their operations to Regional Water Board permit boundaries, presenting an already considerable challenge to accurately meet current annual reporting cost requirements for two separate MS4 permits. The professional judgement rule will be used in most cases because our environmental work, like that of other similar agencies, is not solely related to MS4 permit compliance.

Response 16.1: The comment is noted.

Comment 16.2: This policy is an unfunded state mandate that is not grounded in federal requirements, and that cannot be reimbursed through agency fees; local reimbursement by the state will be required. *Department of Finance v. Commission on State Mandates*, 1 Cal.5th 749 (2016); *Department of Finance v. Commission on State Mandates*, 18 Cal.App.5th 661 (2017). The brief discussion in the draft policy of the authority for it cites federal MS4 permit requirements generally, specific sections of permit application regulations (40 CFR sections 122.26(d)(1)(vi)(A)) and 122.26(d)(2)(vi)), and in the case of Phase II permits Water Code section 13383.

Federal regulation 40 CFR sections 122.26(d)(1)(vi)(A) requires that a Phase I application contain the following information:

“A description of the financial resources currently available to the municipality to complete part 2 of the permit application. A description of the municipality's budget for existing storm water programs, including an overview of the municipality's financial resources and budget, including overall indebtedness and assets, and sources of funds for storm water programs.”

This regulation does not mandate this State Board policy, and in reality, it is not clear why this regulation is cited at all. As an application requirement, this is a fiscal planning regulation and not an expenditure monitoring regulation. Section 122.26(d)(2)(vi) similarly requires that the Phase I permit application contain:

“For each fiscal year to be covered by the permit, a fiscal analysis of the necessary capital and operation and maintenance expenditures necessary to accomplish the activities of the programs under paragraphs (d)(2) (iii) and (iv) of this section. Such analysis shall include a description of the source of funds that are proposed to meet the necessary expenditures, including legal restrictions on the use of such funds.”

Again, this regulation does not mandate this State Board policy, and it is not clear why

this regulation is cited.

It appears that State Water Resources Control Board staff acknowledge that there is no federal basis for the proposed policy in the Phase II regulations, as Water Code section 13383 is cited instead. However, section 13383 relates to discharges, not generic agency budgeting. The recordkeeping that can be ordered under Section 13383 is limited to that “authorized by Section 13160, 13376, or 13377 or by subdivisions (b) and (c) [of section 13383],” and none of these apply. It does not appear that there is a statutory basis for this initiative, and it would be appropriate to have a statutory basis given the Legislature’s need to address the funding for this policy. In any case, the State is making a policy choice to require this information; it is not mandated by federal law or regulation.

Response 16.2: Please see response to SC 11. The Water Code authorizes the State Water Board to develop water quality control policies. (See Wat. Code § 13140, et. seq.) The proposed Policy identifies Water Code section 13383 and the federal MS4 regulations at 40 CFR sections 122.26(d)(1)(vi)(A) and 122.26(d)(2)(vi) as sources of legal authority the State Water Board considered in developing the proposed Policy. They are not cited for the proposition that the proposed Policy’s cost reporting requirements are mandated by federal or state law. Water Code section 13383 broadly authorizes the Water Boards to require reporting and recordkeeping requirements, among others, pertaining to waste discharge requirements/NPDES permits issued pursuant to Water Code sections 13376 and 13377. Such permits include Phase I and Phase II MS4 permits.

Comment 16.3: We support the revised approach for the Phase II permittees and request that the SWRCB consider the same approach for Phase I permittees, until such time that it seems necessary that more specific information is really needed. This approach will allow municipalities the necessary time to collect similar data and the SWRCB to evaluate initial data and develop internal guidance for State and Regional Water Board staff on the use and interpretation of the data, define gaps needed for future cost reporting, and support the intent of the iterative process of the NPDES MS4 permits. Having statewide data tracked from both Phase I and Phase II permittees provides greater value for future permit iterations, and somewhat reduces the complexity of attributing costs to two separate permits for split jurisdictions like Sonoma County.

In summary, this policy is more burdensome than necessary without a clear pay off, and Sonoma County has the following requested change:

1. Remove section 5.1 and revise section 5.2 to include both Phase I and Phase II Permittees.

Response 16.3: Please see the response to SC 3.

Comments from The Contra Costa Clean Water Program (Comment Letter 17)

Comment 17.1: The Revised Policy Should Clarify that it Only Takes Effect Upon Inclusion in an MS4 Permit.

The timeline associated with implementation of the Policy states that the permittees' first reporting period under the Policy is next year (2025). However, the Revised Policy correctly states that it does not take effect until incorporated into an applicable MS4 permit (see Sections 1.4 and 8.1). To avoid any uncertainty among the permittees and Regional Boards, the State Board should clarify that the Policy, if adopted, would be implemented in the first full fiscal year following the Policy's incorporation into an MS4 permit, either through an amendment or reissuance of the permit.

Assuming the Policy is adopted in June 2024, the earliest that a Regional Board could incorporate the Policy into an MS4 Permit by amendment or re-issuance would likely be in the Spring of 2025 due to the public notice, comment, and hearing process associated with amending an MS4 permit.

In that case, the earliest possible fiscal year for implementation would be fiscal year 2025-2026. This underscores the need for flexibility depending on the specific circumstances of the region and MS4 permit at issue.

On a related topic, the Policy should also clarify that, once incorporated into an MS4 Permit, the Policy is the exclusive cost reporting protocol applicable to the permittees and supersedes any other cost reporting requirements in the permit. This is particularly important for the CCCWP and other permittees within the San Francisco Bay Region, as the current MRP already contains comprehensive cost reporting requirements. The CCCWP has expended a substantial amount of time and resources preparing to implement the MRP's new cost reporting requirements but will now have to quickly revise its procedures in order to implement the Policy. The State Board should work with the Regional Board to ensure that MS4 Permits do not contain conflicting or redundant cost reporting requirements, as it is burdensome for permittees to be trendsetters at the regional level when the State Board intends to pursue its own policy objectives.

Response 17.1: Please see responses to SC1 and SC 10. The proposed cost reporting framework will not become mandatory until its requirements are incorporated into a new or amended MS4 permit issued by the regional boards or the State Water Board.

Considering that many MS4 permits may not be amended or reissued within the next five years, the State Water Board may issue an investigative order pursuant to California Code Section 13383 upon adoption of the proposed policy. Such an order would require permittees to report their permit implementation costs using the proposed framework. Permittees will be provided with adequate time to familiarize themselves with the new cost reporting requirements and to adjust their cost tracking and accounting systems to ensure compliance with the investigative order.

Comment 17.2: The Revised Policy Should Explain How Cost Data Will Be Used by the Water Boards.

The Revised Policy includes a number of stated purposes, but it remains unclear how each of the requested cost categories furthers those purposes. This is especially true for the cost sub-categories that the State Board has elected to retain in the Revised Policy, as there is no clear statement of purpose for why they were selected over others in the responses to comments. The CCCWP requests that, for each of the items below, identify what cost categories and related data will be used to assess the item and how the results will be used to inform the item:

- 1.1.b – “Gather adequate levels of data with appropriate details to inform cost effective permit development and equitable investment in MS4 programs around the state.”
- 4.1 – Regional and State Boards shall use this data to “inform the regulatory steps necessary to implement state and federal water quality laws for the protection of public health and the environment, including consideration of economic information in the development of new Permits and Permit reissuances.”
- 4.3 – “The Water Board’s plan to use standardized cost data, in the long-term, to identify and address environmental justice issues in municipal stormwater management...”

In addition, Section 8 should be clarified to confirm that permittees need only submit cost reporting data to the Regional Board (and not the State Board), and then who will have access to the data.

Response 17.2: The primary purpose of the data collection is to provide a comprehensive understanding of the cost of permit implementation, ensuring that cost data are reported in a standardized manner by all permittees statewide. Additionally, the standardized reporting of this data will fulfill several other purposes as outlined in the proposed policy.

As outlined in the responses to SC 5, SC 6, and SC 7, cost reporting framework, in its entirety, is essential for achieving the Policy's objectives. For instance, the directive to "gather adequate levels of data with appropriate details" pertains to the proposed categories, sub-categories, and specific cost line items. Merely collecting category-specific data does not meet the criteria for "adequate levels" or "appropriate details."

Furthermore, multi-years of data collected across various regions will inform the regional boards' economic analyses when considering new permits. This data analysis will enable regional boards to derive insights into the costs associated with specific permit elements, such as street sweeping, receiving water/outfall monitoring, and structural stormwater BMP implementation.

Additionally, the integration of BMP location information, BMP cost data, and the costs of permit implementation, combined with the geographic distribution of disadvantaged and BIPOC communities, can be a valuable tool in identifying and addressing environmental justice issues associated with stormwater management.

The permittees will submit the data through the statewide cost data portal. The cost data will then be reviewed by the regional boards staff. Upon completion of the review and approval, the data will be made publicly available via the cost data portal.

Comment 17.3: Extraneous Requirement Unrelated to Cost Should Be Removed from the Policy.

The CCCWP previously commented that, if the Policy's purpose is to track and report permittees' permit implementation costs, then the Policy should omit requirements to report extraneous non-cost information. For example, Section 5.1.3 requires detailed information regarding structural BMPs and Section 5.3.4 requires detailed information about street sweeping. These additional reporting obligations are not inconsequential; they will require meaningful staff resources and time across disciplines to aggregate the information and place them in the required format. State Board staff notes that this information is necessary in order to compare project cost breakdowns on a per-project basis. The CCCWP understands and supports the State Board's desire to compare costs across different jurisdictions to help the Water Boards understand the "economic implications of new permit requirements." However, the reality is that the cost of any structure BMP is influenced by land value, contractor availability, and other factors, such that comparing projects on an apples-to-apples basis is not feasible. The Revised Policy shifts the burden of evidence-based policy making from the Water Boards to the permittees without any funding to pay for this mandate.

The Policy should also confirm that costs incurred by private entities that choose to install structural BMPs as part of their development obligations under the MRP. Obtaining cost information from private developers could be difficult and may not be current or accurate. In sum, permittees should not be held responsible for reporting on costs incurred by private development when such information is not within the permittees' control.

Response 17.3: Please refer to the response to SC 6 and SC 7 regarding the need for additional information related to cost data for implementing structural stormwater BMPs and street sweeping programs. The response to comment 17.2 also highlights the need for cost of permit implementation data at "adequate levels" and "with appropriate details" to satisfy the stated policy objectives. Please also see response to SC 11 regarding the role of the Commission on State Mandates and sources of funding to implement the proposed Policy's cost reporting requirements once they are incorporated into applicable MS4 permits.

Based on the comments received, the Policy language was revised to clarify that the requested structural BMP cost data is only for publicly funded structural stormwater BMPs (not for BMP costs incurred by any private developer).

Comment 17.4: Additional Support Is Needed for the Remaining Cost Sub-Categories.

The CCCWP appreciates that the State Board made revisions to simplify the sub-categories by removing a number of them and combining others. However, the CCCWP continues to recommend that all sub-categories be removed. The responses to comments note that the Revised Policy's remaining sub-categories ("Reporting;" "Illicit Discharge Detection and Elimination;" "Spill Response;" "Post-Construction BMPs;" "Structural BMPs;" "Full Capture Device Installation;" "Street Sweeping;" and "BMP

Monitoring”) “will not require modification of Permittees’ accounting systems.” The only support for this assertion is beta testing results that may not have tested the specific accounting systems of CCCWP agencies. As stated previously, CCCWP believes that retaining these sub-categories will cause significant administrative changes, challenges, and costs on the part of Permittees. CCCWP therefore requests evidentiary support for the Revised Policy’s retention of the sub-categories listed above and evidence as to why they will not result in modifications to the permittees’ accounting systems.

Response 17.4: Depending on a permittee’s existing cost reporting method, tracking and reporting the costs of permit implementation to comply with the proposed Policy may necessitate modifications to the municipal stormwater cost accounting system. Based on beta testing results and discussions with beta test participants, the number of required subcategories has been significantly reduced. Although permittees may need to invest resources to adjust their existing accounting systems to comply with the proposed subcategory level cost reporting, the subsequent “administrative changes” or “challenges” should be minimal following this initial investment.

Comment 17.5: The Documentation Required for Cost Estimation Is Not Always Available or Feasible.

The CCCWP welcomes the State Board’s understanding that the Policy will necessarily require some level of cost estimation by permittees. This may be due to a need for rounding in the permittee’s accounting system or the estimation of work completed, but not fully reflected in an invoice. The process of creating estimates may be done on a case-by-case basis and simply reflects the best efforts of permittees to show their work.

The new language in Section 5.3.6 requires the permittees to develop additional supporting documentation that explains how they reached an estimate, which is then retained for five years. The supporting documentation must be based on “best professional judgment,” which as defined in the Policy, is a “determination based on the best available scientific or engineering knowledge and best management practices.” Best professional judgment is too high a standard for a process of estimating costs, which may have little scientific or engineering basis (this is an accounting exercise); it is often based on the judgment of well-intentioned staff to fully report costs as accurately as possible. The CCCWP requests that the language of Section 5.3.6 be revised to omit best professional judgment as the applicable standard for an estimation process.

Response 17.5: To ensure transparency and consistency, it is important to document how municipal staff estimated an amount when actual cost data is not available or feasible through tracking. Based on the comment(s) received, the definition of Best Professional Judgement was revised as follows:

Best Professional Judgement— A determination based on the best available scientific or engineering knowledge **and all reasonably available and pertinent data or information that forms the basis of the cost reporting estimates** ~~best management practices.~~

Comment 17.6: Further Guidance and Flexibility is Needed in the Use of Cost Data.

In its Comment letter on the Policy, the California Stormwater Quality Association asked the State Board to develop a guidance document to assist Regional Boards with the review and interpretation of cost data submitted by permittees. The guidance document would outline important considerations such as the limitations associated with the interpretation of the cost reporting data and intended uses of the data provided by permittees. The CCCWP believes that in order to make the Policy useful, the Regional Boards should work closely with permittees in order to refine MS4 permit requirements in response to the cost data. Absent this guidance, the Policy is simply an additional mandate without a clear policy outcome from the effort.

Further, the CCCWP disagrees that a refinement process is not necessary in the Policy because the State Board periodically evaluates its adopted policies. Such a process for adaptive management is critical for a Policy that attempts to standardize cost reporting across all MS4s, large and small. A streamlined process for responding to legitimate comments from the permittees and Regional Board should be a component of the Policy or, if not, the Regional Boards should be given greater flexibility to make changes to the Policy as necessary in their MS4 permits.

Response 17.6: Developing a guidance document to assist regional boards with interpreting the standardized cost data is out of the scope of this project. However, such guidance may be developed as a separate project in the future.

California Water Code § 13143 requires the State Water Board to periodically review all state policy for water quality control and revise if necessary. Therefore, it is not required to include specific language in this Policy to make commitment for future review of the Policy.

Comment 17.7: Detailed Reporting of Funding Sources & Cost Recovery Places Unnecessary Risk on Permittees.

The CCCWP continues to recommend the removal of requirements related to detailed reporting of the source of funds used for MS4 permit implementation. The Board has not shown that identifying specific amounts for each funding source is necessary to align with the Policy's purpose. The responses to comments state: "the reporting structure has been amended to no longer require a funding breakdown for each individual cost category. The Revised Draft Proposed Policy will only require breakdown of the funding sources and an itemized list of cost recovered." However, it is unclear which language in the Revised Policy has been updated to reflect this change and implement this point. In any event, for the reasons previously stated, the CCCWP has an ongoing concern about the broader implications of reporting sources of funds at this level. It could jeopardize future funding avenues by opening Permittees up to specious challenges and lawsuits.

Response 17.7: Please see the response to SC 12. The Policy language is revised (Section 7.2) to specify the level of details required for reporting sources of funds for implementing permit implementation.