

**Staff Report for Draft Order No. R3-2012-0005
ATTACHMENT 2.b**

**CITY OF SALINAS COMMENTS RECEIVED ON
DRAFT ORDER No. R3-2012-0005 AND STAFF RESPONSE**

GENERAL COMMENTS

I. Comments submitted by Gary E. Petersen on October 31, 2011 in letter to the Central Coast Water Board

City of Salinas - 1

"The City of Salinas appreciates the opportunity to submit comments on the September 13, 2011 Draft NPDES Permit (Order No. R3-2012-00XX; NPDES Permit No. CAXXXXX) ("Draft Permit"). Consistent with our email correspondence from October 26, 2011, the City will submit its full set of comments on the Draft Permit by the extended deadline of November 3, 2011. We recognize that the Draft Permit represents over a year's worth of significant and ambitious effort by Central Coast Regional Water Quality Control Board ("Regional Board") staff. To the City's knowledge the Draft Permit is the most extensive and lengthy permit produced by Regional Board staff to date and the City staffs efforts to review and to submit comments on the Draft Permit within the sixty-day comments period has been no less significant an effort. To that end, we appreciate the dialogue that has occurred with you and the other members of the Regional Board staff during our weekly telephone conferences and the public workshops held in Salinas. Included within this letter are general comments on the Draft Permit and on the Draft Permit process. Following this letter on November 3, 2011, will be specific comments on specific Draft Permit provisions. Together this letter and the specific comments we will submit on November 3, 2011, represent the City's comments on the Draft Permit.

In developing its comments, City staff considered the legal, practical, and economic implications of the Draft Permit provisions, particularly in light of the City's existing NPDES Permit (Order No. R3-2004-0135, NPDES Permit No. CA0049981) and its existing storm water management program. We note that the City's existing NPDES Permit is, in full, only sixty-three pages long. By comparison, the Draft Permit is 359 pages long. City staff also considered whether the Draft Permit provisions were clearly and succinctly stated without any ambiguity or misleading language, whether the Draft Permit provisions present the most effective way of achieving water quality standards or whether other options were available, and whether the timelines associated with Draft Permit obligations could be realistically met given existing and anticipated City resources. With respect to the time period during which the City was required to submit its comments, we note that the City received a preliminary copy of the Draft Permit on August 29, 2011, and was given until November 3, 2011-a total of sixty-six days-to submit its written comments on the Draft Permit. The Draft Permit consists of a total of 359 pages, including the Fact Sheet and Findings, which Regional Board staff developed over a period of more than one year. Given the length of the Draft Permit and the detailed manner in which the Draft Permit is written, it was a significant challenge for City staff to complete its review and submit its comments. Through our weekly telephone

conferences it became clear that City staff and Regional Board staff have different interpretations of various Draft Permit provisions and the implications of the Draft Permit provisions on the City's storm water management program. This indicates to us that additional discussions must occur following the City's submittal of these comments to be sure that both City staff and Regional Board staff are in agreement as to the intent and the interpretation of all of the Draft Permit provisions before the permit is considered and approved by the Regional Board. The City must have a full and accurate understanding of the permit's provisions so that we can fully and effectively implement the final permit. Each permit provision must be carefully drafted so that only conditions that are intended to be enforceable as written should be included and all ambiguous or misleading language must be either rewritten or removed from the Draft Permit. In the event these discussions have not concluded by the proposed February 2012 permit consideration date, we suggest the Regional Board's consideration of a final permit be continued to a later date."

Staff Response to Comment City of Salinas - 1

The City has had 60 days to review the Draft Order and submit comments for review and response by Central Coast Water Board staff. Prior to drafting the Draft Order, Central Coast Water Board staff initiated a series of meetings/conference calls with the City to discuss its plans for the Draft Order and to provide the City the opportunity for input on those plans. Following the drafting of the Draft Order, Central Coast Water Board staff met with City staff prior to public release of the Draft Order to explain the Draft Order, and conducted three public workshops in the City during the public review period for the purpose of explaining the Draft Order and answering questions from City staff and other stakeholders. Central Coast Water Board staff also offered to hold weekly conversations during September and October, 2011, to allow further opportunity for questions from the City and discussion of the Draft Order. The City submitted numerous comments on the Draft Order, which Central Coast Water Board staff have reviewed and incorporated into the Draft Order where appropriate. Central Coast Water Board staff also intends to offer to hold further discussions with the City following release of the revised Draft Order no later than January 10, 2012. Therefore Central Coast Water Board staff believes the City will have had sufficient opportunity to discuss and prepare comments on the Draft Order prior to the permit consideration date. The Staff Report for adoption of this Draft Order, Attachment 2.a (Key Issues and Comments) includes details in item number 5 about all the meetings and opportunities for the City and members of the public to learn about and provide input on the Draft Order.

Much of the language contained in the Draft Order is similar in nature to language in existing Order No. R3-2004-0135, to language contained in other Phase I stormwater Permits in California, or to language contained in the Draft Tentative Order for Stormwater Discharges from Small MS4s. Therefore Central Coast Water Board staff believes that most of the language in the Draft Order is not unclear or ambiguous. The City has submitted various comments indicating instances where the City perceives Draft Order language to be unclear. Central Coast Water Board staff has reviewed these comments and has made changes to the Draft Order, where warranted, to clarify Draft Order requirements and intent. Therefore, Central Coast Water Board staff does not plan to recommend that the Central Coast Water Board consider the Draft Order until a later date.

The Staff Report for adoption of this Draft Order, Attachment 2.a (Key Issues and Comments) includes a detailed explanation in item number 1 explaining and justifying the length of the Draft Order.

City of Salinas - 2

“Of primary concern to the City is the economic feasibility of fully implementing the Draft Permit provisions. We are concerned that the City cannot afford to comply with the Draft Permit and that the Draft Permit provisions will have a chilling effect on economic development within the city. Although the Fact Sheet of the Draft Permit suggest that a storm water utility could be used as a financing mechanism for the City's storm water program, such a financing mechanism is not realistic, particularly in the current economic environment, because the City has no authority to impose a fee or to establish a utility without the consent of the voters or the property owners.”

Staff Response to Comment City of Salinas - 2

Central Coast Water Board staff recognizes there are costs associated with compliance with this Draft Order, and that many communities and businesses are experiencing economic challenges. While this Draft Order contains new requirements consistent with the evolving MEP standard, the majority of requirements contained in this Draft Order are also contained in existing Order No. R3-2004-0135 and therefore do not impose significant new implementation costs. In addition, Central Coast Water Board staff has taken steps in consideration of implementation costs. Central Coast Water Board staff does not believe the cost of implementing this Draft Order will be prohibitive, and funding options are available to the City.

Central Coast Water Board staff has provided the following additional response relevant to this comment in Staff Response to Comment City of Salinas – 26:

Central Coast Water Board staff considered cost in developing the Draft Order and drafted the Draft Order to include requirements for implementation of efficient control measures. In addition, Central Coast Water Board staff has considered each of the City's comments identifying specific Draft Order requirements which may create an undue financial burden for the City, and has modified the Draft Order in some cases to reduce Draft Order requirements. Central Coast Water Board staff also received a letter from USEPA staff commenting on the Draft Order. The USEPA comment letter affirms that USEPA staff does not consider the requirements contained in the Draft Order to constitute an unfunded State mandate or to exceed the MEP standard.

Central Coast Water Board staff has provided the following additional response relevant to this comment in Staff Response to Comment Latino – 1:

The State Water Board commissioned a study by the California State University, Sacramento to assess costs of the Phase I MS4 program. Annual cost per household in the study ranged from \$18-46, with the City of Encinitas representing the upper end of the range (See Fact Sheet Section V). The cost of the City of Encinitas' program for the 2002/2003 fiscal year, as discussed in the study, is a reasonable approximation of the cost of the Permittee's program under this Draft Order. Other MS4s assessed in the study, which may have similar compositions to that of the Permittee, include the Cities of Corona and Santa Clarita. These MS4s were found to expend \$32 and \$39 annually per household on their stormwater programs, respectively. Therefore Central Coast Water Board staff does not believe that this Draft Order creates an excessive financial burden for the community of Salinas.

Central Coast Water Board staff has provided the following discussion of funding options available to the City in Staff Response to Comment City of Salinas Supplemental – 12: The State Board also administers the Proposition 84 Storm Water Grant Program, through which \$82 million dollars is available state-wide to provide funds to local public agencies for the reduction and prevention of stormwater contamination of rivers, lakes and streams, with a focus on LID practices and TMDL compliance. The City can learn more about this program through the following link:
http://www.waterboards.ca.gov/water_issues/programs/grants_loans/prop84/index.shtml

City of Salinas - 3

“City staff have estimated that the cost to comply with the Draft Permit provisions will be a substantial increase from the cost already incurred by the City in complying with its existing NPDES Permit. The additional cost to the City results from Draft Permit provisions which City staff understands to contain new programs or higher levels of services from what is required under the City's existing NPDES Permit. During our telephone conferences it was acknowledged that no evaluation has been done to determine the extent to which the Draft Permit contains provisions and program requirements that are the same as what is currently required, which are different from what is currently required or which are in addition to what is currently required. Before a determination can be made that the Draft Permit is consistent with applicable law and that it does not impose an undue burden upon the City and its residents and businesses and that it does not impose unfunded mandates upon the City, a comparison between the City's existing NPDES Permit and storm water program and the Draft Permit and the storm water program which must be in place to implement the Draft Permit must be made. An assessment of the economic feasibility of the control measures proposed in the Draft Permit to reduce pollutants in storm water discharges to the maximum extent practicable must be completed before the Draft Permit provisions become final.”

Staff Response to Comment City of Salinas - 3

To compare the City's current requirements with the requirements of the Draft Order, Central Coast Water Board staff has included Attachment 5 (Comparison of Draft Order No. R3-2012-0005 and Existing Order No. R3-2004-0135) in the Staff Report.

Many of the Draft Order requirements are consistent with the existing Order No. R3-2004-0135. The Staff Report for the adoption of the Draft Order for the February 2, 2012 Central Coast Water Board Meeting includes a description of substantive changes or modifications in the Draft Order compared to the existing Order No. R3-2004-0135, including requirements that have been reduced or eliminated. Also, the comment indicates a comparison between existing Order No. R3-2004-0135 and the Draft Order must be made to determine the legality of the Draft Order and its status relating to unfunded mandates. A comparison between the Orders does not have bearing on these determinations. The Draft Order is written to achieve the maximum extent practicable standard and protect water quality, as required by the Clean Water Act. The MEP standard is not explicitly defined by USEPA to provide permit writers with flexibility in crafting permit requirements. In addition, the Clean Water Act and federal guidance contemplates MEP as an evolving standard; as such, permit conditions are expected to change over time as MEP evolves.

Regarding comments on undue burden, unfunded mandates, and economic feasibility, see item numbers 3 and 7 in Attachment 2.a to this Staff Report (Key Issues and Comments).

Central Coast Water Board staff has provided the following additional response relevant to this comment Staff Response to Comment City of Salinas – Fact Sheet R.3:

In its January, 2009 report 'Clearer Structure, Cleaner Water: Improving Performance and Outcomes at the State Water Boards,' the Little Hoover Commission recommends that, "The water boards must develop standardized economic analysis procedures to help set priorities and determine the most effective and efficient means to improve water quality."¹ The Little Hoover Commission is providing a recommendation to the State Water Boards. It is not a requirement for the State Water Boards to conduct a fiscal analysis of new Phase I Stormwater Permits.

Although Central Coast Water Board staff has not conducted a detailed cost analysis, staff considered cost while drafting the Draft Order requirements. Central Coast Water Board staff has used the best quality data available when considering costs associated with the Draft Order. This data includes information relied upon by USEPA when adopting the federal stormwater regulations, as well as data generated by a statewide study of stormwater program costs conducted by California State University, Sacramento. The Sacramento State study found the cost of various stormwater programs to range from \$18 - 46 per household annually. The permit requirements for some of the stormwater programs analyzed in the Sacramento State study are similar to those in the Draft Order.

¹ *Clearer Structure, Cleaner Water: Improving Performance and Outcomes at the State Water Boards*. Little Hoover Commission, January 2009. Web. 5 December 2011. p.90 <<http://www.lhc.ca.gov/studies/195/report195.pdf>>.

City of Salinas - 4

"The Draft Permit contains specific and prescriptive requirements that are imposed through the permit upon the City. We understand and appreciate the Regional Board staff's desire to provide as much detail as possible in the Draft Permit provisions; however, in doing so some of the Draft Permit provisions have become too prescriptive. Rather than prescribing the methods by which the City must meet its obligations under the law with respect to storm water discharges, the Regional Board should allow the City to comply with the permit in any lawful manner. The Regional Board should not specify the particular manner in which compliance may be had, but should only specify the enforceable requirements to which the City must conform and leave the implementation to the City. In any event, the permit provisions should not exceed the maximum extent practicable standard established under the law."

Staff Response to Comment City of Salinas - 4

Requirements contained in the Draft Order are based on current science and BMPs currently being implemented by numerous Phase I municipalities throughout California and the United States. Therefore Central Coast Water Board staff believes the Draft Order is consistent with the technology-based MEP standard. In addition, Central Coast Water Board staff received a letter from USEPA staff commenting on the Draft Order which affirms that USEPA staff does not consider the requirements contained in the Draft Order to exceed the MEP standard.

Central Coast Water Board staff has provided the following additional response relevant to this comment in Staff Response to Comment City of Salinas Supplemental – 4:

The Draft Order has been written to balance the City's need for flexibility with the need for clear and specific requirements. To achieve this balance, the Draft Order frequently prescribes minimum measurable outcomes, while providing the City with flexibility in the

approaches it uses to meet those outcomes. Measurable outcomes included in the Draft Order are related to implementation, behavioral change, pollutant load reduction, and water quality improvements. Such clear, specific requirements are necessary so all parties understand what must be implemented. This need for clarity is demonstrated by the City's frequent requests for guidance or examples on how to comply with permit requirements. Overly flexible permit language, without clear minimum measurable outcomes, can result in disagreement over the meaning of permit requirements and result in implementation of inadequate programs. In addition, for permit language to be effective, it generally must be enforceable. Permit requirements that allow for too much flexibility are often difficult to enforce, which can lead to poor program implementation, due to decreased risk of enforcement.

The specific requirements of the Draft Order have been tailored to address the watershed processes and runoff conditions in the City's jurisdiction that are impacted by stormwater management in order to protect water quality and beneficial uses. This specificity is meant to shift the focus of the City's efforts from simple program implementation to actions that achieve water quality results. After over 12 years of City program implementation, it is critical that the City's actions are better linked to positive impacts on water quality. Specific permit requirements are appropriate when they target the City's watershed processes and runoff conditions impacted by stormwater management in order to increase tangible program results and protect water quality and beneficial uses.

Where the Draft Order includes detailed requirements, it does so to be in compliance with CWA section 402(p)(3)(B)(iii), which mandates that MS4 permits "shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants." Clearly, the CWA provides the Central Coast Water Board with the discretion to include specific requirements in the Draft Order. Further, the inclusion of detailed requirements in the Draft Order is consistent with USEPA guidance. For example, the preamble to the Phase I NPDES storm water regulations states that "this rule sets out permit application requirements that are sufficiently flexible to allow the development of site-specific permit conditions."¹ In addition, in its review of a City of Irving Texas NPDES municipal storm water permit, the USEPA Environmental Appeals Board stated that Congress "created the 'maximum extent practicable' ('MEP') standard and the requirement to 'effectively prohibit non-storm water discharges' into the MS4 in an effort to allow permit writers the flexibility necessary to tailor permits to the site-specific nature of MS4 discharges."²

It is important to note that throughout the comments from the City, where the Draft Order provides clear and specific requirements, the comments say the Draft Order is too prescriptive. However where the Draft Order provides flexibility, the comments ask for more details and say the Draft Order doesn't provide enough information for the City to know how to comply.

Central Coast Water Board staff has provided the following additional response relevant to this comment in Staff Response to Comment City of Salinas Supplemental – 28: Federal regulations require municipal stormwater permittees to implement BMPs that are effective, and allow permittees to reject only those BMPs which are technically infeasible, cost-prohibitive, or where alternative would be as effective. As cited in the

comment, requirements contained in the Draft Order are based on current science and the Central Coast Water Board's experience of what constitutes requirements that are technically feasible, practical, and economically efficient. The BMPs contained in the Draft Order are currently being implemented by numerous Phase I municipalities throughout California and the United States, and therefore do not appear to be technically infeasible or cost-prohibitive. In addition, the Draft Order contains language providing the City with flexibility to propose alternative BMPs which are as effective as the BMPs contained in the Draft Order.

¹ 55 Fed. Reg. 48038.

² Environmental Appeals Board, USEPA. *NPDES Appeal No. 00-18; Order Denying Review*. 16 July 2001.

City of Salinas - 5

"The timelines proposed for actions to be taken by the City including, for example, completing revisions to the City's Storm Water Development Standards, do not afford City staff a reasonably sufficient time to complete the work. In order for a storm water program at the level proposed in the Draft Permit to be fully implemented and effectively implemented by the City with its limited resources, sufficient time must be afforded to the City. The City is committed to continue meeting its storm water obligations; however, we are concerned that the City not be unintentionally put into a position of non-compliance with permit conditions due to an overly-aggressive timeline."

Staff Response to Comment City of Salinas - 5

Staff adjusted some timelines in response to comments but retained many where they relate to activities already required under the City's existing Order No. R3-2004-0135.

Central Coast Water Board staff has provided the following additional response relevant to this comment in Staff Response to Comment City of Salinas Supplemental – 6: Attachment K in the Draft Order outlines implementation milestones and deadlines for the requirements in the Draft Order. Many of the tasks scheduled to commence in Year 1 are requirements the City is already required to do under its existing Order No. R3-2004-0135; therefore, the City should already be doing a lot of the items required in Year 1. The Draft Order includes modifications from the existing Order No. R3-2004-0135 in order to bring the City to the same level as other Phase I municipalities throughout California and to ensure the program is protective of water quality.

Central Coast Water Board staff has provided the following additional response relevant to this comment in Staff Response to Comment City of Salinas – Provision J.2.a:

The City provided many comments related to the short-term deadlines (3 months after adoption of this Draft Order) in Provision J. This response is meant to serve as the general response for all the comments related to the short-term deadlines in Provision J related to SWDS modifications.

Central Coast Water Board staff is aware of significant land areas zoned in the City of Salinas for future development. To ensure these future developments maintain and restore watershed processes impacted by stormwater management as necessary to protect water quality and beneficial uses, Central Coast Water Board staff finds the conditions outlined in Provision J must be implemented as soon as possible.

Central Coast Water Board staff finds that reorganizing the SWDS will improve implementation of the SWDS. The SWDS under existing Order No. R3-2004-0135, is

over 200 pages (page count does not include attachments). The Draft Order requires the City to reorganize its SWDS to improve the effectiveness of the document and to update some of the content. Currently, as observed by Central Coast Water Board staff during a focused audit, City staff is not sufficiently applying the SWDS to applicable projects; therefore, Central Coast Water Board staff finds that the City must reorganize its SWDS in order to effectively implement its SWDS. The intention of the upfront SWDS updates is to modify the SWDS so the City can effectively apply the standards to applicable projects and to update the standards in order to remove some ambiguity in the numeric criteria and lower the applicability threshold to account for the cumulative effect of small projects. Since these changes are not major, Central Coast Water Board staff does not believe these changes will require the City to conduct extensive outreach on the changes. The intention of the latter SWDS updates is to formalize long-term treatment and flow control requirements in the SWDS. In addition, the City can leave place holders in the initial SWDS reorganization (required by Provision J.2.a) for the updates required after 12 months of adoption of the Draft Order. See the Fact Sheet for Provision J for further justification about SWDS modification requirements.

Central Coast Water Board staff modified the Draft Order to change all of the requirements for SWDS modifications with '3 months after adoption of this Draft Order' deadlines to '18 weeks after adoption of this Draft Order'. Central Coast Water Board staff finds that the task of modifying the SWDS should be within the scope of expertise required to implement existing Order No. R3-2004-0135; therefore, Central Coast Water Board staff does not find that the City should be granted 3 additional months to hire new staff or a consultant. The initial modifications to the SWDS incorporate some additional language and language replacements (exact wording is provided in Provision J) and reorganizing the SWDS (see Provision J.2.a). The City is not required to develop any of its own requirements for the initial SWDS modifications.

II. Comments submitted by Walter Grant on November 3, 2011 in email to the Central Coast Water Board

City of Salinas – 6 (a)

"[The Water-Based Fire Protection Systems Discharge Best Management Practices Manual] is a manual prepared and vetted by a wide cross-section of disciplines, including the Water Board Division of Water Quality Storm Water Section and fire fighters and provides BMPs for Water-Based Fire Protection Systems Discharges. We request that the Draft Permit Provisions page 15 A.6 be modified to include reference to this manual as the standard for regulating and for providing BMPs for discharges from:

- *Water-based fire protection system acceptance testing.*
- *Periodic water-based fire protection system testing and maintenance.*
- *Fire hydrant testing.*
- *Water-based fire protection system leaks and emergency repairs."*

Staff Response to Comment City of Salinas – 6 (a)

Central Coast Water Board staff has not added the City's fire protection BMP manual to Provision A.6 as suggested by the comment. A.6 states that flows from firefighting activities are not prohibited by the Draft Order. The City's manual of BMPs to be implemented for fire protection systems discharges could be made part of the City's SWMP. If the City intends to use the manual to direct BMPs for fire protection system discharges to the MS4, City should verify the manual is in compliance with this Draft Order.

City of Salinas - 6 (b)

"It appears from your November 1, 2011 email that a Draft Permit, revised by Regional Board staff in response to comments received during the public comment period, will be made available on or about January 18, 2012, and that any comments which are submitted on that revised draft must be sent to the Regional Board by January 25, 2012. Our understanding is, then, that a revised Draft Permit will be available for review only during the period of time from January 18, 2012 through January 25, 2012. If our understanding is correct, the City submits that an eight day period is insufficient time to review and to provide further comments, if necessary, on a revised Draft Permit."

Staff Response to Comment City of Salinas – 6 (b)

See Staff Response to Comment City of Salinas – 1. Central Coast Water Board staff intends to offer to hold further discussions with the City following release of the revised Draft Order no later than January 10, 2012, for the purpose of discussing revisions made to the Draft Order in response to comments.

City of Salinas - 7

"As we have indicated in our previous discussions and correspondence, there has been insufficient time to fully review and to comment on the Draft Permit. Additional time is needed for the City to fully understand the Regional Board staff's intent with this Draft Permit. The City's comments are an attempt to elicit a better understanding of that intent, but without a continuing dialogue between City staff and Regional Board staff, and a reasonable opportunity to fully review and understand a revised Draft Permit (eight days during January 2012 will not be sufficient) that understanding may not be sufficiently reached. We again hereby request that the timeline for review and revision of the Draft Permit be extended beyond February 2012 and that a final permit not be put before the Regional Board until we are certain in our understanding of the Regional Board staff's intent with this Draft Permit."

Staff Response to Comment City of Salinas - 7

Central Coast Water Board staff has provided many opportunities for the City to learn about and provide input on the Draft Order. Central Coast Water Board staff does not recommend delaying consideration of the Draft Order by the Water Board. See Staff Response to Comment City of Salinas – 1. Central Coast Water Board staff intends to offer to hold further discussions with the City following release of the revised Draft Order no later than January 10, 2012, for the purpose of discussing revisions made to the Draft Order in response to comments..

City of Salinas - 8

"We also request that the revision of the Salinas Stormwater Development Standards required in the Draft Permit be delayed until the Joint Effort for Hydromodification is complete. It will be inefficient to modify the Standards and train applicants and the AEC community of the changes twice in the space of six months when these efforts can be combined into one revision."

Staff Response to Comment City of Salinas - 8

See Staff Response to Comment City of Salinas – 5.

III. Comments submitted by Walter Grant, on November 3, 2011 in email to the Central Coast Water Board, regarding Draft Order Attachment D (Monitoring and Reporting Program)

City of Salinas - 9

“Overall, some monitoring elements in Table Attachments D2 and D3 are not logically ordered. For example, nutrient parameters should be grouped together, as they are in Table Attachment D4. However, even Table Attachment D4 has some parameters inappropriately grouped (e.g., coliform and algae cover listed under nutrients).”

Staff Response to Comment City of Salinas - 9

See clarification changes made to the Draft Order.

City of Salinas - 10

“Table Attachments D2, D3, and D4 have electrical conductivity and turbidity listed as lab methods. There would be a significant cost savings to have these recorded using field meters (as is the case in the draft permit for pH, dissolved oxygen, and temperature).”

Staff Response to Comment City of Salinas – 10

Central Coast Water Board staff has revised the tables to indicate that electrical conductivity and turbidity can be determined using field measures.

City of Salinas - 11

“Turbidity reporting limit is listed as 1 NTU in three tables and 0.5 NTU in Table Attachment D.4; the SWAMP RL is 0.5 NTU.”

Staff Response to Comment City of Salinas – 11

Central Coast Water Board staff has revised the tables to indicate that the reporting limit for turbidity is 0.5 NTU.

City of Salinas - 12

“Are the zinc and copper analyses listed in Table Attachments D2, D3, and D4 total or dissolved? Also, various reporting limits are listed for copper and zinc in the various tables. SWAMP RLs are 0.10 µg/L (zinc) and 0.01 µg/L (copper).”

Staff Response to Comment City of Salinas – 12

Central Coast Water Board staff has revised the tables to more clearly identify the required analyses. Central Coast Water Board staff agrees that the reporting limit for copper in Table Attachment D.2 and Table Attachment D.3, and in water sampling requirements in Table Attachment D.4, is higher than the reporting limit used by SWAMP. The Draft Order includes the higher reporting limit because some commercial laboratories have difficulty achieving the SWAMP reporting limit. The City has the flexibility to apply the lower reporting limit for copper used by SWAMP if the City prefers to do so.

City of Salinas - 13

“As the objectives/criteria for total metals are hardness corrected, hardness should be one of the parameters in the program; hardness is currently no listed in any of the tables.”

Staff Response to Comment City of Salinas – 13

Central Coast Water Board staff has added hardness to Table Attachment D.3 and Table Attachment D.4. The purpose for correcting metals test results for hardness is that metals are less available, and therefore less toxic, in hard water. Since the Action Levels included in the Draft Order are concerned with concentration rather than toxicity, Urban Catchment Action Level Pilot Program Monitoring results for zinc and copper do not need to be corrected for hardness.

City of Salinas - 14

“What was the source of the reporting limits when none were provided by SWAMP [e.g., pyrethroid pesticides (water and sediment) and herbicides]? Some of the reporting limits are below the capabilities of the best analytical labs in the region (e.g., Caltest lowest RL is 1.5 ng/L).”

Staff Response to Comment City of Salinas – 14

See Staff Response to Comment City of Salinas – 25. Central Coast Water Board staff derived the reporting limits for pyrethroid pesticides from the California Department of Fish and Game, and for other pesticides and herbicides from the California Department of Pesticide Regulation. Central Coast Regional Water Quality Control Board staff does not believe the reporting limits contained in the Draft Order are below the capabilities of analytical laboratories: the Caltest reporting limit cited in the comment is in units of nanograms per liter, and reporting limits in the Draft Order are given in micrograms per liter. One microgram per liter is 1,000 times higher than one nanogram per liter.

City of Salinas - 15

“The pyrethroid reporting limits for gamma-cyhalothrin and lambda-cyhalothrin are not the same in Table Attachments D2 and D3.”

Staff Response to Comment City of Salinas – 15

See Staff Response to Comment City of Salinas – 25. Central Coast Water Board staff has corrected these reporting limits in Table Attachment D.3.

City of Salinas - 16

“Why are pyrethroids monitored in water for the Urban Catchment and Stormwater discharge, but not for the Receiving Water monitoring?”

Staff Response to Comment City of Salinas – 16

See Staff Response to Comment City of Salinas – 25. The Draft Order requirements for Receiving Water Monitoring include sampling for pyrethroids in sediment. Because pyrethroids bond readily to sediment, Central Coast Water Board staff elected not to include water column sampling of receiving water for pyrethroids in order to simplify the monitoring requirements and reduce costs. Sediment sampling for pyrethroids in stormwater discharges is typically impractical because stormwater discharges consist primarily of liquid.

City of Salinas - 17

“For Table Attachments D2 and D3, the pyrethroid list is not the same. Why?”

Staff Response to Comment City of Salinas – 17

See Staff Response to Comment City of Salinas – 25.

City of Salinas - 18

“How was the list of specific pyrethroids selected for sediment analyses? Are they all thought to be pyrethroids applied in urban settings, or are they a mix of pyrethroids used in urban and ag settings?”

Staff Response to Comment City of Salinas – 18

The pyrethroids included in Receiving Water Monitoring sediment sampling are commonly included in studies on urban pesticide use. Central Coast Water Board staff has removed fenvelerate from Table Attachment D.4 because California Department of Pesticide Regulation records for 2009 do not indicate non-agricultural use of fenvelerate in Monterey County.

City of Salinas - 19

"The malathion reporting limit of 0.04 µg/L is lower than the SWAMP reporting limit of 0.05 µg/L."

Staff Response to Comment City of Salinas – 19

Central Coast Water Board staff derived the lower reporting limit for malathion from information published by the California Department of Pesticide Regulation. For consistency with SWAMP standards, Central Coast Water Board staff has revised the reporting limit for malathion in the Draft Order to 0.05 ug/liter.

City of Salinas - 20

"Phosphate analyses are listed in two ways in the tables: orthophosphate and soluble orthophosphate. Should the orthophosphate be listed as soluble orthophosphate?"

Staff Response to Comment City of Salinas – 20

Central Coast Water Board staff has corrected Table Attachment D.4 to read "orthophosphate" instead of "soluble orthophosphate."

City of Salinas - 21

"Why is fecal coliform listed in Table Attachment D2 and total and fecal coliform are listed in Table Attachments D3 and D4."

Staff Response to Comment City of Salinas – 21

Table Attachment D.2 is associated with monitoring for Urban Catchment Action Level Pilot Projects (Section P.3.a). To limit the cost of the monitoring program and to focus the City's resources on obtaining the most useful information, Urban Catchment Action Level Monitoring is concerned with only a limited number of key parameters. Central Coast Water Board staff believes that it is unnecessary for Urban Catchment Action Level Monitoring to include both fecal coliform and total coliform.

City of Salinas - 22

"Urban Catchment Action Level Pilot Projects: The collection of water 'at the point where the urban catchment discharges to the associated receiving water' is a bit unclear. Is this intended to imply that the sample is collected prior to the discharge into the receiving water?"

Staff Response to Comment City of Salinas – 22

Urban Catchment Action Level Projects Monitoring assesses stormwater discharges. Therefore samples are to be collected prior to discharge into receiving waters. Central Coast Water Board staff has modified language in Attachment D.3.c to make this more clear.

City of Salinas - 23

"Receiving Water Monitoring: The lists the Salinas Reclamation Ditch downstream of urban discharges as the receiving water site for achieving the Receiving Water Monitoring requirements. This is problematic, as this site (and other historically monitored Receiving Water sites) have clearly been shown to receive both urban and ag discharges. Without a more rigorous study design, the City will be held accountable for compliance at their receiving water site for influences out of their control (e.g., ag). Such a study design is wrought with problems and will (based on the previous permit design) result in the City exceeding a variety of water quality standards/criteria."

Staff Response to Comment City of Salinas – 23

The City is correct in that the Reclamation Ditch downstream of urban influences contains both urban and agricultural discharges. The City appears to believe that the

Draft Order holds the City responsible for the quality of water found in the Reclamation Ditch at that point, such that the City would be in violation of Draft Order conditions if water quality samples collected at that point exceeded Water Quality Objectives. However, this is not the case if the City is not causing or contributing to the exceedances. Central Coast Water Board staff realizes that the City discharges are only one source of water quality conditions in the Reclamation Ditch downstream of the City's discharges. The purpose of Receiving Water Monitoring is to discern water quality trends over time in the Reclamation Ditch as one source of information about the effectiveness of the City's stormwater management activities, and the Draft Order requires the City to incorporate this information into its evaluation of the stormwater program's effectiveness.

City of Salinas - 24

"The City and the Regional Board should sit back down and discuss how best to design a monitoring program that can truly achieve compliance and help properly identify sources. Meetings occurred to address this issue in the past, but it appears that the Regional Board has simply shifted the responsibility to address this complicated issue to the City rather than to work collectively to design an effective and scientifically defensible monitoring program."

Staff Response to Comment City of Salinas – 24

The Draft Order requires the City to reduce pollutants in its own discharges, and the Monitoring, Effectiveness Assessment, and Program Improvement requirements focus on assessing the effectiveness of the City's efforts at reducing pollutants in its stormwater discharges. As a result, the effectiveness of the monitoring program contained in the Draft Order does not depend on first identifying and quantifying the City's contribution to receiving water quality conditions. The Draft Order provides flexibility for the City to propose modifications to the Monitoring, Effectiveness Assessment, and Program Improvement requirements that achieve the objective of assessing the program's effectiveness at reducing pollutants in the City's discharges.

Comments related to monitoring requirements submitted by the City in the past and in response to the Draft Order suggest the City believes that a monitoring program is needed which can reliably quantify the City's contribution to receiving water quality conditions, distinct from the contributions of other dischargers. The City's comments also suggest the City believes it cannot be fairly regulated until such a quantification is made, so that the City is not held responsible for the contributions of other dischargers or held more responsible for its discharges than other dischargers are for theirs. These comments seem based on a presumption that the Draft Order and the Central Coast Water Board hold the City responsible for water quality conditions in receiving waters.

Central Coast Water Board staff has provided the following additional response relevant to this comment in Staff Response to Comment City of Salinas – Fact Sheet Finding 27 (1):

The Central Coast Water Board recognizes that the City is not the only source of pollutants to waters, and is regulating agricultural lands, other (Phase II) municipalities, and other activities and discharges to hold all dischargers accountable. Nor does the Draft Order hold the City responsible for pollutants that are not discharged through its stormwater conveyance system. The Draft Order requires the City to reduce pollutants in its own stormwater discharges and the monitoring program focuses pollutant impact assessments on the City's stormwater discharges, not on receiving water conditions. Receiving water monitoring is included in the Draft Order in a limited fashion for the

purpose of assessing the long-term impact of the City's pollutant control actions on receiving water quality. The Draft Order does not hold the City responsible for improving receiving water quality problems to which it does not cause or contribute.

The level of the City's contribution to pollutant conditions in receiving waters need not be determined more precisely prior to establishing the City's responsibility for reducing pollutants and protecting water quality and beneficial uses. The pollutant control actions contained in the Draft Order are based on the MEP standard, as well as evidence and the reasonable potential that the City's stormwater discharges contain pollutants. In addition, the monitoring program focuses pollutant impact assessments on the City's stormwater discharges, which are clearly the City's responsibility.

City of Salinas - 25

"Urban Catchment Action Level Pilot Projects: The action levels listed for pyrethroid pesticides are either just slightly above lab reporting limits (bifenthrin) or below lab reporting limits (i.e., all other pyrethroids listed). The City can't be expected to meet Action Levels that are below laboratory reporting limits (1.5 ng/L)."

Staff Response to Comment City of Salinas – 25

Central Coast Water Board staff has removed Action Levels for pyrethroids from the Draft Order. The purpose of Action Levels is to identify "bad actor" urban catchments in which BMPs are likely not achieving pollutant reductions to the MEP. (For this reason, other Action Levels have been established at the 90th percentile of stormwater discharge monitoring data reported by Phase I municipalities to the National Stormwater Quality Database—see discussion in Fact Sheet P.7.) While the pyrethroid Action Levels included in the Draft Order were based on concentrations known to be toxic to aquatic organisms, there is insufficient data at this time to determine concentrations that are likely to indicate failure to achieve the MEP standard. Central Coast Water Board staff has made revisions to the Draft Order and Fact Sheets consistent with this change.

IV. Comments submitted by Walter Grant on November 18, 2011 in email to the Central Coast Water Board

City of Salinas - 26

"You may have already received and reviewed a copy of the attached Memorandum from the US EPA regarding Water Quality and Municipal Stormwater Programs. In our opinion, the Memorandum supports the comments submitted by the City of Salinas on the Draft Storm Water Permit, specifically those comments which encourage the Regional Board to focus on cost-effective measures to protect storm water quality and those requesting delay in adoption and implementation of a new Stormwater Permit."

"The Memorandum makes it clear that in implementing program requirements to meet Clean Water Act mandates, each "particular municipality's financial ability" is to be taken into consideration and that an evaluation of 'a municipality's financial capability in tough economic times and to set appropriate compliance schedules' should be done. As also indicated in the Memorandum, US EPA is working on a framework to help the EPA and its regional offices work with state and local governments toward cost effective decisions."

"In light of this new guidance from US EPA, we request that Regional Board staff take this guidance into consideration as it contemplates the most appropriate and most effective way of moving forward with the Salinas Draft Stormwater Permit."

Attachment 2.b: City of Salinas General Comments Received on Draft Order No. R3-2012-0005 and Staff Response

Staff Response to Comment City of Salinas – 26

Central Coast Water Board staff has reviewed the cited USEPA memorandum. Central Coast Water Board staff considered cost in developing the Draft Order and drafted the Draft Order to include requirements for implementation of efficient control measures. In addition, Central Coast Water Board staff has considered each of the City's comments identifying specific Draft Order requirements which may create an undue financial burden for the City, and has modified the Draft Order in some cases to reduce Draft Order requirements. Central Coast Water Board staff also received a letter from USEPA staff commenting on the Draft Order. The USEPA comment letter affirms that USEPA staff does not consider the requirements contained in the Draft Order to constitute an unfunded State mandate or to exceed the MEP standard.

V. Comments submitted by Walter Grant, on November 30, 2011 in email to the Central Coast Water Board, in response to Central Coast Water Board staff questions about City comments on Draft Order**City of Salinas - 27**

"Provision J (Parcel-Scale Development) - The City explains in its comments that 3 months is an unreasonable amount of time to reorganize the Stormwater Development Standards and revise the existing applicability thresholds.

The City does not have adequate staff to perform the tasks in the new requirements and would either have to hire new staff or hire consultants to perform the work. The current timeline required to hire new staff is 3 months and that does not include preparing the job descriptions that would be required for the new positions. Hiring consultants will also take at least 3 months from preparing the Requests for Proposals (RFPs) to advertising, reviewing consultant RFPs, interviewing the shortlist of consultants, determining consultant rankings and negotiating fees, charge rates and contract forms. The above stated time periods are a minimum and could take much longer. The City could not begin either process until adoption of the Draft Permit so the final scope of the requirements is known. The City would start a minimum of 3 months behind schedule."

Staff Response to Comment City of Salinas – 27

See Staff Response to Comment City of Salinas – 5.

City of Salinas - 28

"Provision L (Development Planning and Stormwater Retrofits) - The City states it, "will need more time than this [3 months of adoption of the Draft Order] to go through it's legally required processes including public notification," for implementing the requirements related to Specific Plan conditions.

The City is not certain of the Regional Board staff's intent with respect to the items listed under Draft Permit Section L.1.a. It appears that in order to meet this requirement City policies and/or code sections may need to be amended. If that is indeed the intended effect of this provision, City policies and/or code sections are subject to a public process which ultimately requires the consideration and the approval of the Salinas City Council. Prior to code amendments being considered by the City Council, City staff will review the proposed changes with interested parties from the public and the timing of that process will depend on the level of public interest and the level and amount of revisions which may result from that public process. Following that, the matter will be presented to the City Council for consideration and approval. Changes to the City code require a two-step consideration process: The first step is for the proposed changes to be introduced

Attachment 2.b: City of Salinas General Comments Received on Draft Order No. R3-2012-0005 and Staff Response

by the City Council during an open and public meeting. At the second step the proposed changes will again be considered by the City Council during an open and public hearing, but this time for adoption. Code changes are not effective until 30-days after they are adopted by the City Council.

Additionally, the provision specifically states that the provisions set out in this section shall be required "Within 3 months of adoption of this Order." That may not be possible as the City has no control over when the property owners and developers of the Future Growth Area will submit their Specific Plans for review by the City. Specific Plans may be submitted at any time and, consequently, the City cannot technically meet the requirement of imposing these provisions on such documents within 3 months of adoption of this Order.

City staff are also not certain of the Regional Board's intent with respect to the term "other master planning documents." What does the Regional Board staff intend to be included within this term? City staff need a clear understanding of the expectations, otherwise it cannot meet the requirement of this provision."

Staff Response to Comment City of Salinas – 28

Provision L.1.a requires the City to require any Specific Plans or other master planning documents adopted for the Future Growth area, not yet adopted, to adhere to the requirements specified in Provision L.1.a.

Central Coast Water Board staff has provided the following additional response relevant to this comment in Staff Response to Comment City of Salinas – Provision L.1.a:

The fact sheet discussion for Provision L explains the importance of accounting for impacts to watershed processes affected by stormwater management during very early planning stages. Central Coast Water Board staff is aware of significant land areas zoned in the City for future development. To ensure these future developments maintain and restore watershed processes to protect water quality and beneficial uses, Central Coast Water Board staff finds Specific Plans must be conditioned with the requirements in Provision L.1.a in a timely manner.

Central Coast Water Board staff does not find that the information provided in the comment is adequate justification for why the City needs more than 3 months to implement the requirements in Provision L.1.a. Given the information provided by the City, Central Coast Water Board staff is unclear what codes and ordinance updates would be required to implement the requirements in Provision L.1.a.

Central Coast Water Board staff intends Provision L.1.a to apply to all principle planning documents adopted for Future Growth Areas. The City has recently adopted a few Specific Plans for portions of its Future Growth Areas. Central Coast Water Board staff identified Specific Plans in Provision L.1.a, but also identified the more broad term, master planning documents, in the event that portions (i.e., drainage infrastructure) of the City's Future Growth Area follow a different planning approval path to address a project's land use disturbance.

VI. Comments submitted by Walter Grant, on December 5, 2011 in email to the Central Coast Water Board, in response to Central Coast Water Board staff questions about City comments on Draft Order

City of Salinas - 29

Attachment 2.b: City of Salinas General Comments Received on Draft Order No. R3-2012-0005 and Staff Response

"While we are currently complying with the existing Permit requirements, any revision to the SWDS must be approved by the City Council since they approved the original SWDS. We must also go through the City ordinances including the subdivision ordinances to make sure there are no conflicts. If there are any conflicts then the ordinances must also be modified. This will then take approval by the Planning Commission if it includes Subdivision Ordinance modification. It takes 6 weeks min. to prepare and internally approve staff reports for this purpose and get on the schedule. We also must do our public outreach as required prior to any of the SWDS being modified. All told it would take at least 4 weeks to go through the ordinances if they are reviewed straight through without interruption, 2 weeks to prepare the revised ordinances as required, 2 weeks to go through the departments (optimistic estimate given staff shortages-we are responsible for our consultants work if hired per the Draft Permit so current City staff must review regardless), at least 4 weeks to do the public outreach (we have a Business Development Task Force meeting once a month-first Thursday-during which we provide explanations of new/modified ordinances/regulations and ask for comments), That's 18 weeks. This is if all goes smoothly and there are no vacations or holidays in between. As previously explained we will most likely need to hire additional staff and/or consultants which is a 12 week process at a minimum. Once the Draft Permit is approved by Region 3 Board, we will most likely go out to RFP for the entire package for the five year period of the new permit for a consultant to assist us in complying with all of the new/revised requirements. It just doesn't make sense to issue several RFPs for several tasks. The RFP process would then take at least two months more since there is a lot of material in the Draft permit which would need to be reviewed by the proposers to provide estimated fees as well as the City must provide a formal outline of the efforts it currently does to comply with the existing Permit so that proposer's have the baseline from which to estimate fees.

[Provision J.]5. will require us to analyze our existing Information Management System for what the City needs to comply with all of the requirements of the Draft permit, not just this section. As you could tell from the audit we are challenged with record keeping due to several factors. It does not make sense to modify our existing system to meet only the requirements of this section when there are several other reporting requirements contained within the Draft we must comply with and coordinate with all of the different Departments within the City. A comprehensive review of the IT system and requirements is needed. The City will need to hire an IT consultant to analyze our existing hardware and software and current needs, the requirements of the Draft Permit, and determine what software/hardware we need. Currently there are several different versions of simple operating and other software including Windows and Word which makes it difficult to prepare the Annual Report because of the different versions within each department. Once we have analyzed the requirements and identified the needs, we need to fund the improvements. With each budget cycle the revenues don't keep up with the ever increasing needs. We lose more staff each budget cycle which also has an affect on record keeping. In the Permit Center we have an added amount (4%) to our building permit costs for our Trakit system for upgrades. This amount varies with the value of building permits which has declined in recent years. This will not cover all of the costs and will not cover the costs of the other departments' required upgrades. Any upgrades needed must also work with our other software and hardware. This is not a fast or simple process. Since we will need more funds we will need to go through the proposition or other process to raise the money unless other agencies provide the funding. Even if we are successful in that process, which is doubtful, the process would take more than a year to complete. The available grants are few and far between and

the competition for those grant monies is fierce and those funds cannot be depended upon.”

Staff Response to Comment City of Salinas – 29
See Staff Response to Comment City of Salinas – 5.

VII. Comments submitted by Jim Pia on November 22, 2011 in letter to the Central Coast Water Board

City of Salinas - 30

“City staff understands that the City of Salinas's draft NPDES Permit (Order No. R3-2012-00XX; NPDES Permit No. CAXXXXX) ("Draft Permit") has been scheduled for Board consideration in February 2012. As you may be aware, the City submitted comments on the Draft Permit on October 31, 2011 and November 3, 2011, and included within those comments was the City's concern with the time schedule for review of the Draft Permit by the City and for consideration of the Draft Permit by the Regional Board. Given the significant impact of the permit on the City's day-to-day operations and the apparent large discrepancy between the City staff and the Regional Board staffs understanding and interpretation of the intent and the effect of the Draft Permit, the City requests that the Regional Board's consideration of the Draft Permit be delayed at least until both the City and the Regional Board staff have reached agreement on their mutual understanding of the Draft Permit provisions.

We appreciate that the February 2012 Board meeting has been scheduled to be held in Salinas to accommodate the local interested parties' desire to participate in that meeting; however, it is important for the City to have a clear understanding of the intent and the effect of the permit provisions so that the City's storm water program can be fully and effectively implemented. In order for that to occur, additional time is needed for our staffs to continue their work on the Draft Permit.”

Staff Response to Comment City of Salinas – 30

For the reasons explained below, the Central Coast Water Board will proceed with the February hearing. At the hearing, the City may recommend whatever actions it determines as appropriate to the Central Coast Water Board.

Central Coast Water Board staff have already accommodated requests by the City for additional time. Central Coast Water Board staff originally planned to recommend that the Central Coast Water Board adopt the revised Draft Order at the December 2011 Board Hearing. At the request of the City, Central Coast Water Board staff postponed the Board Hearing to February 2012, to allow the City more time to comment on the Draft Order. Also, at the request of the City, the Central Coast Water Board changed the meeting location so that the hearing will be in the City's council chambers in Salinas. During the comment period, Central Coast Water Board staff again extended the City's deadline to provide comments. In addition, the City's existing Order No. 2004-0135 was due for renewal in February of 2009.

Central Coast Water Board staff have made substantial efforts to assist the City in their understanding of the intent and effect of the Draft Order and believe these efforts have increased the City's understanding of the Draft Order. Prior to writing the Draft Order, we asked the City for input on improvements to the City's permit. The City provided little input. On August 29, 2011, Central Coast Water Board staff provided the City with a copy of the Draft Order and met with the City to provide an overview of the Draft Order and explain the Draft Order's requirements. During September and October 2011,

Attachment 2.b: City of Salinas General Comments Received on Draft Order No. R3-2012-0005 and Staff Response

Central Coast Water Board staff initiated five conference calls to assist the City in their understanding of the Draft Order requirements. Central Coast Water Board staff answered questions and provided information on the intention of Draft Order language.

During September and October 2011, Central Coast Water Board staff held three public workshops in the City for the purpose of explaining the Draft Order and answering questions from City staff and other stakeholders. Central Coast Water Board staff originally planned to hold two public workshops during the public comment period. Central Coast Water Board staff added a third workshop to provide additional opportunity to receive comments and explain the Draft Order requirements.

On November 3, 2011, the City submitted comments on the Draft Order. Central Coast Water Board staff have drafted detailed responses to each of the City's comments and questions. Central Coast Water Board initiated further discussion with the City on December 20, 2011, to assist the City in their understanding of the Draft Order and explain the revisions made to the Draft Order in response to comments. That discussion was about four hours and seemed to be very positive in terms of increasing the City's understanding of the Draft Order.

The above listed opportunities for the City to be involved in permit development and to understand the draft permit are far more extensive than in a typical permit process.