



Ventura Countywide Stormwater Quality Management Program

Participating Agencies

March 6, 2007

Camarillo

County of Ventura

Fillmore

Moorpark

Ojai

Oxnard

Port Hueneme

San Buenaventura

Santa Paula

Simi Valley

Thousand Oaks

Ventura County
Watershed Protection
District

Mr. Jonathan Bishop
Executive Officer
Los Angeles Regional Water Quality Control Board
320 4th Street, Suite 200
Los Angeles, CA 90013

SUBJECT: DRAFT VENTURA COUNTY MUNICIPAL SEPARATE STORM SEWER SYSTEM PERMIT (NPDES No. CAS004002) FOR THE VENTURA COUNTY WATERSHED PROTECTION DISTRICT, COUNTY OF VENTURA AND THE INCORPORATED CITIES

Dear Mr. Bishop:

We are in receipt of your December 27, 2006, Draft Waste Discharge Requirements for Storm Water Discharges from the Municipal Separate Storm Sewer System (MS4) within the Ventura County Watershed Protection District, County of Ventura and the Incorporated Cities therein (Draft Order) (NPDES Permit No. CAS004002). On behalf of the entire Ventura Countywide Stormwater Program (Ventura Program), including the Cities of Oxnard, Thousand Oaks, Simi Valley, San Buenaventura, Camarillo, Moorpark, Santa Paula, Port Hueneme, Fillmore, Ojai, Ventura County Incorporated Areas and the Ventura County Watershed Protection District ("Permittees") we appreciate the opportunity to provide comments on the Regional Water Quality Control Board's (Regional Board) administrative draft as prepared and distributed by the Regional Water Board staff.

As you know, the Ventura Program is a successful collaborative stormwater management program in existence since 1992 and under an NPDES permit since 1994. Our program is currently structured to be comprehensive and flexible to accommodate the diverse needs of the Watershed Protection District, the County and the ten cities in the Ventura Program and the local water quality issues. This letter and its attachments contain the collective comments of the Permittees on the Draft Order. In addition, many of the individual cities will provide comments on the Draft Order's impact to their individual agencies and communities.



Overall, the Draft Order would place undue financial and technical requirements, and risks on the Ventura Program. In many cases the requirements contained in the Draft Order are more restrictive than existing Basin Plan and total maximum daily load (TMDL) requirements. In addition, the resulting stormwater program may not result in achieving the water quality improvements that we and the Board are seeking to obtain. In fact, the current Draft Order does not adequately capture the relevant water quality issues in Ventura County. In lieu of the Regional Board issuing the Draft Order as a tentative order, the Permittees would prefer to work closely with the Regional Board staff to develop a new Draft Order that provides for accountability, supports on-going water quality efforts (i.e. TMDLs) and receives broad public support. In the meantime, we submit the collective comments of the Permittees.

Due to the size of the Draft Order and the large number of concerns we have with its content, we provided comments on most major issues of concern within the body of this letter. In addition, we provided three attachments that contain additional comments. Attachment A includes comments on additional legal and policy issues that have not been included in the cover letter. Attachment B includes technical comments and suggested language on specific requirements contained within the Draft Order. Attachment C is the Municipal Action Levels data

I. VENTURA PROGRAM IS AN AWARD WINNING STORMWATER PROGRAM

The Ventura Program is a mature and comprehensive stormwater management program. Initiated in 1992, the Ventura Program, like other MS4 programs began with the framework established in the federal regulations (40 CFR Part 122). With time, the Ventura Program was modified through the iterative process to better reflect the conditions and needs of the Permittees and local water quality issues. The NPDES permits issued in 1994 and 2000 reflected these insights and the efforts of the Permittees.

The logical, proactive approach taken in implementing the stormwater program was recognized by the Regional Board by winning the prestigious H. David Nahai Water Quality Award for Water Quality Conservation in 2001, and in 2003 winning the United States Environmental Protection Agency's (U.S. EPA) National Clean Water Act (CWA) Recognition Award for Phase I MS4 Storm Water Management Excellence. The intent of U.S. EPA award was to "recognize municipalities and industries that are demonstrating their commitment to protect and improve the quality of the nation's waters by implementing outstanding, innovative and cost-effective Storm Water control programs and projects". The award reflects the Program's commitment to improve and protect water quality in Ventura County through a comprehensive and constructive best management practice (BMP) based program using the iterative process to guide our efforts.

II. CHARACTERISTICS OF VENTURA COUNTY ARE UNIQUE

A close review of the Draft Order shows it to be oriented toward large communities and a more urban environment as might be found in Los Angeles County and not Ventura County. Ventura County is different both in magnitude and distribution of people served and in land uses. The Ventura Program serves four Phase I (populations > 100,000) and seven Phase II (populations < 100,000) communities. The seven Phase II communities in the Program include Port Hueneme (22,388), Moorpark (35,801), Camarillo (64,034), Fillmore (15,180), Santa Paula (29,133), and Ojai (8,156) and County Incorporated (95,602). The total population of the entire County as of January 1, 2006 is 817,346 persons (versus over 10 million persons in Los Angeles County). Although not required by the federal stormwater regulations, coordination between the Phase I and II communities in the Ventura Program has allowed for more consistent program implementation. In particular, the coordination has helped to use local resources efficiently for public outreach efforts and new development program elements. Rather than have Phase I and Phase II municipalities separate out and establish their own Stormwater programs, the Regional Board should recognize the uniqueness of our Program. However, an alternative is to create a tier permitting approach for both Phase I and Phase II Co-permittees.

Virtually the entire north half of Ventura County is within the Los Padres National Forest although there are in-holdings scattered throughout the Forest area. Residential, agricultural and business uses comprise the southern portion of the Region. The County has a total area of 1,199,748 acres (1,843 square miles), of which some 550,211 acres are in the National Forest. There are 42 miles of coastline.

Of the estimated 330,000 acres of agricultural land in the Region, there are approximately 125,000 acres of irrigated land. The Calleguas Creek Watershed contains the highest number of irrigated acres (roughly 60,000), followed by the Santa Clara River Watershed (approximately 50,000) and Ventura River Watershed (approximately 15,000). The Region encompasses three major Watersheds, six smaller Watersheds, and twenty-six groundwater basins. There are ten cities, three wholesale water agencies, over 170 retail water purveyors, two groundwater management agencies, and five sanitary districts.

The total area covered under the Ventura Program is approximately 220 square miles, which is 12 percent of the total land area of Ventura County. Land use delineations for the County are summarized in Table 1.

Table 1. Land Use Delineations of Ventura County

Land Use	Area (Sq. Miles)	Percentage
Urban (subject to NPDES SW permit)	219	12%
Rural	14	.008%
Open	1441	79%
Agriculture	147	8%

Federal lands	11	.006%
Harbor(s)	0.5	.0003%
Total	1833	100%

The land use designations throughout the County show the relative contributions that the urban areas may have on water quality as compared to the other land uses.

Growth potential beyond the present urban areas of the County is limited. From 1995-2002, the residents of Ventura County adopted "Save Open-Space and Agricultural Resources" (SOAR) initiatives. Generally, the County and Cities' SOAR ordinances and initiatives establish "City Urban Restriction Boundary" (CURB) lines around each city and require city voter approval before any land located outside the CURB lines can be developed under the city's jurisdiction for urban purposes.

Under SOAR, rural, open-space areas of the County cannot be developed without voter approval. Thus, the urban areas of Ventura County are unlikely to expand significantly at least over the next 13 years. The County SOAR ordinance requires countywide voter approval of any change to the County General Plan involving the "Agricultural," "Open Space" or "Rural" land use map designations, or any change to a General Plan goal or policy related to those land use designations.

Moreover, in order to maintain the integrity of separate, distinct cities and to prevent inappropriately placed development between city boundaries, some cities and the County have entered into joint *greenbelt agreements*. These agreements protect open space and agricultural lands and reassure property owners located within these areas that land will not be prematurely converted to uses which are incompatible with agriculture or open space uses. The *greenbelt agreements* reinforce the County *Guidelines for Orderly Development*. *Greenbelt agreements* have been adopted for the following areas: Between the cities of Ventura and Santa Paula; between the cities of Santa Paula and Fillmore; between Fillmore and the Los Angeles County Line (excluding the Community of Piru); between the cities of Ventura and Oxnard westerly of Oxnard to Harbor Blvd; Between the cities of Oxnard and Camarillo; East of the City of Camarillo for the westerly portion of the Santa Rosa Valley, and Tierra Rejada Valley.

In other words, the characteristics of Ventura County are significantly different from the other, more urbanized counties (i.e. Los Angeles County) being regulated by the Regional Board. Thus, the Draft Order for Ventura County should reflect the rural, open space nature of the County and recognize the limited area that is actually subject to the jurisdiction of the Permittees.

III. VENTURA COUNTY IS A LEADER IN WATERSHED BASED PLANNING

We would submit that the current Draft Order does not reflect the ongoing watershed planning and protection activities of the County. Agencies and organizations in Ventura County have a long history of working together to address water resources issues, dating

back to the early 1970s. In the past 35 years numerous water supply and conservation, water quality, wetland restoration and reclamation projects have been planned and implemented. Many individuals and agencies have worked together to assure effective management of local water resources and protection of water-dependent environmental resources and species habitats. These entities include local retail and wholesale water districts, cities, sanitary districts, the County of Ventura, environmental and non-profit organizations, the Association of Water Agencies, State and Federal agencies and many others. Multi-jurisdictional and coordinated efforts are taking place on a watershed and/or countywide basis as noted below.

Watersheds Coalition of Ventura County (WCVC)

In April 2006 the Ventura County Integrated Regional Water Management Plan (VCIRWMP) Group and the Calleguas Creek Steering Committee agreed, by resolution to form the Watersheds Coalition of Ventura County (WCVC) for purposes of consolidating integrated regional water management plans (IRWMPs) and for submittal of grant applications for the Proposition 50, Chapter 8 Implementation Grant and other applicable future funds. This consolidated IRWMP is the result of the collaboration of agencies through the new WCVC. The WCVC meets monthly to guide development of the consolidated plan and to address critical water management issues facing the Region. Its success is evident by its recent award of \$25 million by the State Water Resources Control Board. Other examples of successful Ventura County Watershed Groups include the Calleguas Creek Watershed Management Plan Steering Committee, the Santa Clara River Watershed Committee and the Ventura River Watershed Council.

IV. PERMIT COMPLIANCE STRUCTURE IS FUNDAMENTALLY FLAWED

The Permittees are very concerned with the primary compliance structure contained within the Draft Order. The Draft Order proposes to use municipal action levels (MALs) for assessing compliance with the technology-based standard of maximum extent practicable (MEP). The use of MALs to determine MEP compliance is flawed for a number of reasons both legally and technically.

A. The Use of MALs Constitutes the Adoption of a Numeric Effluent Limitation.

First, the use of MALs to determine compliance with the MEP standard actually results in the adoption of numeric effluent limitations. The Draft Order attempts to disguise its use of numeric effluent limitations by characterizing them as MALs. It goes as far to bury this major substantive requirement in a finding and a footnote. (Draft Order at fn. 1, p. 29.) If a Permittee exceeds the MALs (as shown in Attachment C of the Draft Order) two or more times at an "end-of-pipe" compliance point, the Regional Board will presume the Permittee has violated the MEP provisions of the Draft Order. (Draft Order at p. 29.).

Federal law defines effluent limitations as “any restriction established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources” (33 U.S.C. § 1362(11).) The Draft Order does not include a definition for MAL; however, Attachment C of the Draft Order provides tables of the MALs, which are expressed as water column concentrations for various pollutants. (Draft Order at p. C.1.) Stormwater discharged by the Permittees must meet the MALs as established in the Draft Order at an “end-of-pipe” compliance point. If discharged stormwater exceeds the concentration levels twice as contained in the Draft Order, the Permittees are presumed to be in violation of the Draft Order. The MALs thus appear to match closely with the federal definition of effluent limit, as they are restrictions on the concentration of various pollutants discharged from the Permittees’ stormwater conveyance system.

While the use of numeric effluent limits for stormwater regulation may be legally possible, it is not preferred and has questionable technical viability.¹ First, EPA has long expressed its preference of regulating stormwater through the use of BMPs. “In regulating stormwater permits the EPA has repeatedly expressed a preference for doing so by way of BMPs, rather than by way of imposing either technology-based or water quality-based numerical limitations.” (*Divers’ Environmental Conservation Organization v. State Water Resources Control Board* (2006) 145 Cal.App.4th 246, 256.)

Second, the State Board recently posed the question, “[i]s it technically feasible to establish numeric effluent limitations or some other quantifiable limit for inclusion in storm water permits” to a panel of stormwater experts. In response to this question, the State’s Panel issued a report in June of 2006. The Panel’s report clearly states that “[i]t is not feasible at this time to set enforceable numeric effluent criteria for municipal BMPs and in particular urban discharges” (State’s Storm Water Panel Recommendations to the California State Water Resources Board, (“Report”) (June 2006) at p. 8.)

Based on federal U.S. EPA’s long preferred preference of using BMPs and the questionable technical viability of using numeric effluent limitations as expressed by a state panel of experts, the use of MALs to determine compliance with MEP is not appropriate. As stated earlier, the MALs expressed in the Draft Order are clearly meant to act as effluent limitations as they are numeric concentrations applied at the “end-of-pipe.” If the Regional Board’s true intent is to use numeric effluent limitations on stormwater discharges, then the Regional Board must adopt them as such and make the findings necessary to accompany such a decision.

¹ In *Building Industry Association of San Diego County v. State Water Resources Control Board* (“BIA”) (2004) 124 Cal.App.4th 866, the Court of Appeal found that the language of CWA section 402(p)(3)(B) allows the EPA and/or a state approved program the discretion to impose permit limitations that are more stringent than those that come within the definition of maximum extent practicable. (*BIA* at p. 883.) While a more stringent limitation does not necessarily mean only a numeric effluent limitation, it does not preclude the inclusion of a numeric effluent limitation.

B. The Use of MALs is Inconsistent with the MEP Standard

Section 402(p) (3) (B) of the federal Clean Water Act (CWA) provides that “permits for discharges from municipal storm sewers ... shall require controls to reduce the discharge of pollutants to the maximum extent practicable” (33 U.S.C. § 1342(p)(3)(B)(iii).) The Draft Order states that the provisions contained in the order are “intended to develop, achieve, and implement a timely, comprehensive, cost-effective storm water pollution control program to reduce the discharge of pollutants in storm water to the MEP and achieve water quality objectives for the permitted areas in the County of Ventura.” (Draft Order, at p. 36.) It also goes further, contending that its requirements are “necessary” to implement MEP. (*Id.*, at p. 22.) However, the Draft Order goes well beyond the legal understanding of what constitutes MEP. In all, this is inconsistent with both the CWA and various requirements of state law.

While the CWA does not specifically define MEP, the EPA has described MEP as a flexible, site-specific standard. (National Pollutant Discharge Elimination System—Regulations for Revision of the Water Pollution Control Program Addressing Storm Water Discharges, 64 Fed. Regs. 68722, 68732, 68754 (Dec. 8, 1999).) “The pollutant reductions that represent MEP may be different for each [municipal stormwater discharger] given the unique local hydrological and geological concerns that may exist and the differing possible pollutant control strategies.” (*Id.* at 68754.) The Draft Order has taken a completely opposite approach by using national data to establish MEP, which is defined by compliance with the MALs.

California also has not specifically defined MEP for its permitting purposes. However, the state has relied upon other federal programs to guide its understanding of MEP. In particular, the state relied upon the term as used in Superfund legislation and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). (SWRCB Order No. 2000-11 at p. 20.) Using these statutes, the state concluded “MEP requires Permittees to choose effective BMPs, and to reject applicable BMPs only where other effective BMPs will serve the same purpose, the BMPs would not be technically feasible, or the cost would be prohibitive.” (*Id.* at p. 20.)

The state also provided the following guidance to a task force that published the California Best Management Practice manual on the definition of MEP:

Although MEP is not defined by the federal regulations, use of this manual in selecting BMPs should assist municipalities in achieving MEP. In selecting BMPs which will achieve MEP, it is important to remember that municipalities will be responsible to reduce the discharge of pollutants in storm water to the maximum extent practicable. This means choosing effective BMPs will serve the same purpose, the BMPs would not be technically feasible, or the cost would be prohibitive. (Memorandum to Archie Matthews, Division of Water Quality, State Water Resources Control Board, from Elizabeth Miller Jennings, Senior Staff Counsel,

Office of the Chief Counsel, State Water Resources Control Board
(Feb. 11, 1993) at p. 4.)

Thus, the U.S. EPA and the state have long interpreted the term “maximum extent practicable” to mean and include the use of BMPs that rely on an iterative approach for addressing impacts caused by stormwater. For example, in the recently litigated “San Diego Stormwater Permit,” the term MEP is broadly defined in the permit to be a “highly flexible concept that depends on balancing numerous factors, including the particular control’s technical feasibility, cost, public acceptance, regulatory compliance, and effectiveness.” (*Building Industry Association of San Diego County v. State Water Resources Control Board* (“BIA”) (2004) 124 Cal.App.4th 866, 889.)

In contrast, the Draft Order proposes to define “maximum extent practicable” as:

[t]he standard for implementation of storm water management programs to reduce pollutants in storm water. CWA § 402(p)(3)(B)(iii) requires that municipal 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.” Also, see State Board Order WQ 2000-11, page 20 and *Browner* decision (*Defenders of Wildlife v. Browner* (1999) 191 F.3d 1159).

(Draft Order, at p. 100.)

The Draft Order’s proposed definition does not properly define or implement the term “maximum extent practicable” but instead recites the CWA and its requirements for stormwater permits. The Draft Order’s definition also improperly cites the *Browner* decision, implying that that decision helps to define the term MEP. *Browner* does not further define MEP. In fact, in relevant part, *Browner* focuses more on the Congressional intent related to the phrase “and such other provisions” as contained in CWA section 402(p)(3)(B). In *dicta*, the *Browner* court determined that this language of section 402 gives the EPA discretionary authority to impose controls that are stricter than MEP. (*Browner*, 191 F.3d at p. 1166.) The language “and such other conditions” is further evaluated in the *BIA* case. (*BIA*, at 866.) The *BIA* case goes beyond *Browner* by evaluating the statutory construction of the language contained in section 402(p)(3)(B)(iii). Based on its analysis, the Court of Appeal rejected the *BIA*’s argument that “and such other provisions” was meant to identify examples of “maximum extent practicable” controls. (*BIA* at p. 881.) The court found that “such other provisions” means that EPA can require controls in addition to those that come within the definition of “maximum extent practicable.” (*BIA* at pp. 882-883.) Thus, “such other provisions” is not part of the definition of MEP.

As discussed previously, the definition of MEP is considered to include the use of BMPs and site specific and flexible controls. The use of numeric MALs to determine

compliance with MEP does not rely on BMPs, is not site specific and is not flexible. The MALs are not themselves management practices or controls, and an exceedance of two creates a violation of MEP, thereby negating any iterative approach.

Furthermore, the use of MALs to define MEP imposes a non-flexible and non-iterative program on the Permittees. MS4s that are required to meet MALs will be forced to implement treatment control BMPs at stormwater outfalls. By forcing MS4s to install treatment controls, MS4s will need to redirect resources away from source control BMPs. However, in addition to forcing the installation of treatment controls, the Draft Order would mandate prescriptive source control requirements on the Permittees (e.g. street sweeping, new development and redevelopment controls, etc.). As a result, the Permittees will be forced to implement treatment and source control BMPs without consideration of feasibility or cost, which are both important factors in determining compliance with MEP.

Finally, the Draft Order has not considered if the practices necessary to meet the MALs are feasible, effective and not cost prohibitive. Nor are there findings to explain why, if they could otherwise be, the specifically identified MALs in fact define MEP for the Permittees. Consequently, the MALs as used in the Draft Order are inconsistent with state and federal policies interpreting MEP and should not be used to determine compliance with MEP.

C. The MALs Contained in the Draft Order Are Not Supported by SWRCB Blue Ribbon Panel Findings and Recommendations

Besides being inappropriate to define MEP in general, the specific MALs contained in the Draft Order are not technically supported or valid. There are no findings to support their use for the Draft Order's purpose. The State's Blue Ribbon Panel recommended that "action levels" be used to identify circumstances when it might be appropriate to take action. In this case, the action level comes into play when the stormwater is clearly above the normal observed variability. (Report at p. 8.) To develop an appropriate action level, the State's Blue Ribbon Panel suggested various options, which included: (1) consensus based approach; (2) ranked percentile distribution; and, (3) statistically based population parameters.

The Draft Order claims to use a statistical approach that used the central tendency of the dataset and accounting for data variability. (Draft Order, at p. 23.) In its actual calculation, the Draft Order took the median value of a national data set and multiplied it by the coefficient of variation. There is no basis for this approach in establishing action levels. This calculation actually reflects the variability of the data (measured as the standard deviation) and does not account for central tendency of the dataset). The Draft Order's approach is not consistent with the State's Blue Ribbon Panel suggestion for a statistically relevant calculation.

In addition, the Draft Order's use of the national database (Draft Order at p. 23) is not appropriate to generate the MALs. The State's Blue Ribbon Panel noted that there is

greater opportunity to use various data sets for establishing the MALs. Three options proposed in the Report, in order of preference, are:

- Local urban stormwater monitoring data (the Panel even notes the existence of such data sets from Los Angeles County, Orange County and other California MS4 programs)
- Combine municipal permit monitoring datasets if there is a lack of data for specific constituents in any one location
- National database

In this case, the Draft Order selects the least preferred option to generate the MALs even though there are local stormwater data sets available. In fact, California MS4s have more comprehensive data sets than any MS4s in the country. Thus, there is ample opportunity to use local, regional, and statewide data sets to establish action levels and no need to rely on a national dataset.

Furthermore, the derivation and use of action levels as envisioned by the State's Blue Ribbon Panel reflects an approach to identify the "bad actors." (Report at p.8) The use of MALs in the Draft Order establishes hard and fast compliance end points for MEP, regardless of the efforts made by the local agencies to implement effective BMPs. This is not legally justified or supported by the Draft Order or the findings of the Blue Ribbon Panel.

D. The Use of MALs Creates a Permit Term More Stringent than Required by Federal Law

When permit terms are more stringent than federal law, the adopting agency must consider the public interest factors contained in Water Code section 13241. (*City of Burbank v. State Water Resources Control Board* 35 Cal.4th at p. 618.) Section 13241, in turn, requires consideration of economics, site-specific conditions, the need to develop housing in the region, and other factors. The Regional Board must consider and balance such factors to determine if the requirements are reasonable. (Water Code § 13241; Water Code §13263.)

The Draft Order's use of MALs is more stringent than federal law requires. As discussed above, MEP is a highly flexible approach that balances a number of factors, which includes the use of BMP. MEP is not intended to include numeric limitations. Numeric limitations are considered to fall under the "and such other provisions" of CWA section 402(p)(3)(B). (*Browner*, 91 F.3d at p. 1166; *BIA* at p. 881.). The "and such other provisions" are independent of MEP and do not modify MEP. (*BIA* at p. 881.)

Thus, the use of MALs to define MEP exceeds the requirements of federal law. Therefore, the Regional Board must consider the public interest factors as contained in Water Code section 13241 before adopting the Draft Order. The Draft Order suggests that costs required for compliance with provisions contained within the Order have been considered. (Draft Order, p. 24.) However, upon close review of the noted reference, the incremental costs apply only to Los Angeles and do not specifically apply to the

provisions contained within the Draft Order that would apply to the Ventura Program. In other words, the cost considerations currently referenced in the Draft Order do not meet the requirements of section 13241 and therefore are not a substitute for the Regional Board's obligations under section 13241.

E. The Draft Order Lacks Findings And Rationale to Support the Use of MALs

The MAL requirements of the Draft Order are not supported by the findings or logic within the findings. The Regional Board must support decisions with specific findings and must relate evidentiary findings to the ultimate order. The mere recitation of facts is not sufficient. In particular, the Regional Board must "set forth findings to bridge the analytical gap between the raw evidence and the ultimate decision or order." (*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515; see also *In Re Petition of the City and County of San Francisco, et al.*, SWRCB Order 95-4, 1995 WL 576920 at pp. 4-5.)

The Draft Order does not satisfy these requirements. It does not, for example, explain why exceedance of MALs would be presumed to be inconsistent with MEP standards of the permit or why other provisions are required as MEP. By way of other examples, Findings Nos. 15 and 16 recite that the Regional Board has "considered" the need for housing, and costs of implementation. (Draft Order at p. 24.) However, there are no findings that actually spell out what the Regional Board considered with regards to housing and the costs of implementation. The Draft Order also fails to explain how these findings are related to the provisions contained therein. Thus, the Regional Board has not properly bridged the analytical gap between the facts and the ultimate requirements that would be imposed under the Draft Order.

F. MALs are More Restrictive than Basin Plan and TMDLs

The proposed MALs are actually more stringent than Basin Plan water quality objectives that have been adopted into the Basin Plan as part of a TMDL. As an example, the Draft Order addresses the TMDL requirements for Malibu Creek and Lagoon, and Calleguas Creek. (Draft Order at p. 88.). Waste load allocations are identified and noted for a number of constituents including copper, nickel, and zinc. As recommended by federal TMDL guidance, numeric targets have been developed to ensure compliance with water quality standards and adopted into the Basin Plan as water quality objectives. A comparison of the MALs with the TMDL targets as approved in the Basin Plan is shown below in Table 2.

Table 2 - Comparison of MALs v. TMDL Adopted Targets

Constituent³	Municipal Action Levels¹	Basin Plan²
Copper (dissolved, ppb)	12.8	26.3-41.6
Nickel (total, ppb)	9.6	74-1292 ³
Zinc (dissolved, ppb)	104	90-324

1. Attachment C to Draft Ventura Stormwater Order.
2. Attachment A to Resolution No. R4-2006-012.
3. Measured as dissolved.

A review of the table demonstrates that the MALs are considerably more restrictive than the water quality based targets used to comply with water quality standards. In addition, the Draft Order differs from the approved TMDL provisions with regard to implementation schedules and monitoring requirements. The provisions of the Draft Order need to accurately reflect the requirements of the approved TMDL (and as stated in the Basin Plan), including implementation requirements and monitoring. To do otherwise is inappropriate, and creates an inconsistency between two regulatory programs, and goes beyond actions and requirements being imposed on other dischargers listed in the TMDL.

In conclusion, the Draft Order's use of MALs to define MEP is ill conceived as it is inconsistent with state and federal policies, is technically flawed, results in requirements more stringent than federal law, and creates limits that are more restrictive than adopted water quality objectives contained in the Basin Plan.

V. WATER QUALITY BENEFITS VS. COSTS

In addition to our concerns regarding the substantive, prescriptive provisions contained within the Draft Order, we are also concerned that the Draft Order establishes a countywide program that has little connection with the pollutants of concern (POC) as identified by the Permittees. Over the course of the last five years the Ventura Program has spent considerable resources on identifying the pollutants that warrant special attention. In some cases the POC focus complements what the Draft Order specifies and in other cases there is no relationship (e.g. installation of trash excluders on all catch basins even though trash is not listed as a POC).

To better understand the Permittees' liability in meeting the Draft Order provisions, we have compiled our monitoring data for the last 4-5 years for both the land discharge sites and mass emission sites. These data were compared to the MALs which are summarized in Attachment C. A review of the attachment demonstrates that the Permittees are subject to non-compliance and will be required to construct treatment control BMPs to meet the MALs. To further assess the Permittees' exposure, we have estimated the cost for complying with the Draft Order. Our costs reflect a program required to meet the new baseline program element provisions, an enhanced program which includes the baseline program plus the installation and maintenance of trash excluders, and a compliance program which consists of baseline, enhanced, and the cost for constructing BMPs to comply with MALs. We initially developed the cost for the City of Camarillo and expanded it to the Ventura Program. To further put these costs in perspective we compared these costs to the study referenced in Finding No. 16 of the Draft Order. This comparison is shown below:

Summary of Ventura Program Costs Impacts

Program	Annual Cost \$/Household			
	Current Effort	Draft Order Baseline ³	Enhanced ⁴	Compliance ⁵
Statewide Study ¹				
Range	18-46	--	--	--
Mean	29	--	--	--
Ventura County				
Range	18-44 ²	--	--	--
Mean	35	60	87	213

¹ NPDES Stormwater Cost Survey, Prepared by Office of Water Programs for State Water Board, Jan '05. Reflects Annual Budgets for 02/03.

² Based on 03/04 budget submitted in Ventura Countywide 2004/05 Annual Report.

³ Reflects an increase in Permittee staff to meet Draft Order baseline requirements.

⁴ Reflects baseline requirements (see note 3) and installation and maintenance of trash excluders.

⁵ Reflects costs for baseline, enhanced and retrofit (infiltration, wetlands) of outfalls to meet MALs. Treatment BMP costs were based on the Office of Water program NPDES Stormwater Cost Survey (attachment H).

A review of this table demonstrates that the typical household costs will increase approximately six fold for the full compliance option.

In addition, the new requirement under the Planning and Land Development program will result in increases in housing costs. These additional costs impact local affordability and the economic viability of the communities.

VI. PROPOSED PERMIT IS OVERREACHING IN EXPANDED COVERAGE AND SCOPE

Additional major issues of concern for the Permittees are the Draft Order's attempts to expand stormwater permit coverage beyond the jurisdictional boundaries of the Permittees, individually and collectively, and the Draft Order's inclusion of certain requirements that are beyond the scope of the Regional Board's authority as it relates to water quality controls.

A. Improperly Expands Land Use Area Subject to Permit Requirements

The Draft Order attempts to require the Permittees to provide control over pollutant generating activities outside of the limited jurisdictional boundaries that are actually covered by the Ventura Program. For example, the Draft Order attempts to exempt "agricultural lands" and "forest lands." However, the exemption is incomplete and unclear. At a minimum, the exemption needs to be expanded to include open space lands

that are not subject to urbanization. Thus, the exemption should read “agricultural lands, forest lands, and open space lands not subject to urbanization.”

Additionally, regulating all “areas undergoing urbanization” will result in the unnecessary regulation of many remote and *non-urbanized* areas within Ventura County boundaries. Ventura County has vast areas that are sparsely populated and should not be considered to be undergoing urbanization. The Draft Order’s proposed regulation of “areas undergoing urbanization” is beyond the scope of an NPDES permit for MS4 discharges. The Draft Order should more appropriately apply MS4 permit coverage to “Urban Areas” as defined in the most recent U.S. Census Survey. Thus, activities that occur outside of the jurisdictional municipal boundaries of the municipalities (i.e. Urban Areas), individually and collectively, are beyond the scope of the Ventura Program and should be removed from requirements contained within the Draft Order.

B. Improperly Expands Monitoring Requirements

The Permittees believe whole heartedly that an effective stormwater monitoring program is an important tool to assess the impacts of urban runoff and potentially measure the effectiveness of the management program. However, the highly prescriptive monitoring requirements in the Draft Order would not provide the Permittees with useful feedback to make appropriate improvements in the Permittees’ stormwater program. (Draft Monitoring Program—No. CI7388.) For example, the Permittees would be required to collect a significant amount of data on pollutants from non-MS4 sources. The Permittees would then be responsible for preparing plans and corrective actions to remedy problems discovered through the monitoring program. Many of these plans and corrective actions may be for pollutants that are discharged into the receiving waters from non-MS4 sources, therefore depleting valuable local agency resources as to which the local agencies have no jurisdiction.

In addition, there exists in California a Model Monitoring Program for Municipal Separate Storm Sewer Systems in Southern California. This document was developed by the Southern California Stormwater Monitoring Coalition (SMC), represented by three Regional Boards (including the Los Angeles region), municipal Permittees representing six counties, Heal the Bay and the Southern California Coastal Water Research Project. The basic philosophy on environmental monitoring discussed in this document is “Monitoring should be focused on decision making; data not helpful in making a decision about clearly defined regulatory, management, or technical issues should not be collected.” As a model monitoring program developed for Southern California, the Regional Board should incorporate the tenets and philosophy of this program into the monitoring program contained in the Draft Order.

Unfortunately, the monitoring program prescribed in the Draft Order does not follow the philosophy contained in the model program. It is overly broad. The proposed monitoring program would require sampling throughout the watersheds for all storms, regardless of the actual impacts that may be caused by the Permittees. The Permittees contend that such an expansive program in Ventura County would not yield credible information. The

whole of Ventura County includes vast open space and agriculture areas that are intermingled amongst the urban areas. In reality, the MS4s make up only a small percentage of each watershed. (See Table 1.) To be useful for program management, the Ventura Program's limited monitoring resources need to be focused on collecting information specific to the MS4 programs.

Furthermore, state law requires monitoring programs imposed by the Regional Water Board to "bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports." (Water Code § 13267(b)(1).) In addition, the Regional Board must explain the need for reports and identify the evidence that supports requiring a specific discharger to provide the reports. The expansive monitoring requirements contained in the Draft Order clearly do not bear a reasonable relationship to the Permittees' activities as it requires monitoring in areas that are probably not impacted by municipal stormwater discharges, and requires monitoring for constituents that may not be of issue.

For example, the draft monitoring program would require the Permittees to monitor up to 18 tributary sites in one watershed for pyrethroid insecticides. (Draft Order, at p. F-19.) However, there does no information on the presence of pyrethroids in the main stem receiving waters or the tributaries. Until evidence exists that pyrethroids may be a concern, the Regional Board does not have sufficient basis to require such an extensive pyrethroid insecticides study.

Finally, the proposed monitoring requirements in the Draft Order overlook the watershed monitoring efforts that the Permittees, in cooperation with other dischargers, are already implementing to address and identify urban runoff impairments in Ventura County. The Calleguas Creek monitoring program (the only watershed with a clear urban runoff signature in the mass emission station) extensively monitors receiving waters, tributaries, agriculture, POTWs, and stormwater. This is done with cooperation and commitment from the major stakeholders in the watershed. Any increase in requirements to the MS4's monitoring program needs to be considered in the context of the larger monitoring efforts underway to prevent duplication of effort and to further the cooperative stakeholder agreements already in place to continue this monitoring.

Thus, monitoring requirements that extend beyond collecting useful information relevant to the MS4 program are not justified by the Draft Order and therefore must be removed. As an alternative to the prescriptive monitoring requirements contained in the Draft Order, the Permittees and Regional Board staff should work to develop a locally designed MS4 monitoring program that furthers the objectives of the stakeholder monitoring program and provides useful information regarding the Permittees' stormwater programs.

C. Improperly Requires Ecological Restoration Planning and Implementation

Part 5 of the Draft Order requires the Permittees to develop and implement Watershed Ecological Restoration Plans (ERP) for all watershed management areas that have

obtained poor scores, as determined by the bioassessment monitoring program that is also required. The Regional Board's justification for this requirement contained in Finding B.9 is primarily to "reestablish insofar as possible the ecological integrity of degraded aquatic ecosystems." (Draft Order p. 4.) However, the Regional Board fails to indicate how ERP is required for the Permittees to meet MEP or any specific legal requirement or standard. The Regional Water Board's authority to require compliance with water quality standards does not extend to requiring watershed wide ecological restoration planning.

Furthermore, ERPs are required under the Draft Order when bioassessment data for a tributary shows that the reach evaluated is rated as poor or very poor. The bioassessment data and the reach evaluation do not identify potential sources or causes of the poor conditions within the watershed. Under the Draft Order, the Permittees would be responsible for restoring the ecological conditions in the watershed regardless of the Permittees' role in causing the condition. The Permittees should only be responsible for water quality conditions related to discharge from their respective MS4s. Agricultural areas, other NPDES permitted dischargers, nonpoint and natural sources such as invasive species have the potential to contribute to a low index of biological integrity. Additionally, stream segments can be on private property where Permittees have no authority to make improvements and cannot legally spend public funds to do so, as such an improvement may constitute an illegal gift of public funds. (Cal. Const. Art. 16, §6) Because the Regional Board does not have the authority to issue requirements related to watershed wide ecological restoration, and because the Regional Board cannot provide evidence of a causal link between the Permittees' activities and the bioassessment rating of a stream, the ERP requirements must be removed from the Draft Order. Ecological Restoration Planning and implementation of those plans is more correctly conducted through the stakeholder processes such as the IRWMP and WCVV.

D. Improperly Expands Land Development Requirements

1. Smart Growth v. Urban Sprawl

The Permittees applaud a stormwater permit that promotes low-impact development and redevelopment strategies and recognizes the water quality benefits of smart growth. (Draft Order, p. 21.) Many of the Permittees are already choosing high-density, infill development and redevelopment as an alternative to urban sprawl. Smart growth strives to mix land uses, take advantage of compact building design, and create walk able communities. Development pressure on open space, environmental habitat and farmland is diminished by using smart growth practices.

The Draft Order cites to hydromodification and low impact development requirements as provisions within the Draft Order that support smart growth. (Draft Order, p. 21.) However, the specific requirements in the draft permit relating to hydromodification and the restriction of imperviousness are much more easily accomplished in typical urban sprawl developments. Urban sprawl has more room to implement stormwater retention strategies. For example, many smart growth strategies include high-density development

(e.g. subterranean parking garage, retail/office/work space on street level and residential above) that usually results in the entire property being covered by the development and therefore less opportunity for stormwater infiltration. High-density and infill development and redevelopment projects incur water quality benefits in a different way, and these benefits should be recognized and rewarded.

The Permittees are concerned that the Draft Order would in fact hinder smart growth and reward urban sprawl. We request the opportunity to collaborate with you on the specific requirements on land development and redevelopment to assure that they are achievable for high-density, infill projects.

2. Local Land Use Authority

Land use decisions are a local government function. The Draft Order claims that "Permittees retain authority to make the final land-use decisions and retain full statutory authority for deciding what land uses are appropriate at specific locations within each Permittee's jurisdiction. This Order and its requirements are not intended to restrict or control local land use decision-making authority." (Draft Order, p. 22.) The Draft Order, however, contains several requirements that infringe upon local government control over land use planning.

Local land use authority includes mitigating and conditioning the authorized land uses to ensure protection of public health and safety, as well as protection of the environment. (*Berman v. Parker* (1954) 348 U.S. 26; *Associated Home Builders, Inc. v. City of Livermore* (1976) 16 Cal.3d 582; Gov. Code, §§ 65302, 65800-65912.) When including such conditions as part of a land use entitlement process, local government decisions must be made within the context of the applicable General Plans, zoning ordinances, and other local codes. (*Leshar Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553.) Thus, local land use decisions must be consistent with General Plans, zoning ordinances and local codes, and must not create land use inconsistencies with neighboring lands. (*Ibid.*)

The Draft Order requires application of specific land use strategies to address stormwater issues, without any consideration of applicable General Plans, zoning ordinances, or other local codes. (Draft Order at pp. 50-54.) In particular, the Draft Order requires specific limitations on impervious surfaces (Draft Order at p. 50), use of Low Impact Development (LID) strategies (Draft Order at p. 51), and hydromodification mitigation (Draft Order at p. 52) for all New Development and Redevelopment, as defined. Implementation of specific limitations on impervious surfaces, LID and hydromodification strategies are specific land use decisions that are within a local government's discretion. These methods of controlling stormwater discharges are certainly within the tools a local agency can use when addressing stormwater discharges associated with development. The Draft Order, however, requires implementation of these strategies for all new development and redevelopment, regardless of circumstances and without consideration of applicable local agency regulations. The Draft Order,

therefore, undermines a local agency's authority to regulate land uses within its jurisdiction.

Indeed, the Draft Order goes so far as to specify the order of priority for certain land use strategies to address stormwater: LID, Integrated Water Resources Management Strategies, Multi-benefit Natural Feature BMP, Prefabricated/Proprietary Treatment Control BMPs. (Draft Order at p. 50.) This prescription of mandatory land use strategies unlawfully impairs local government's discretion to implement land use strategies that are consistent with existing local government plans and policies, and ignores a local agency's obligation to consider a broader spectrum of issues and options when making land use decisions. (Gov. Code, §§ 65302, 65800-65912; see also Pub. Resources Code, § 21000 et seq.) In fact, the Draft Order appears to restrict a primary strategy used by many municipalities within California to address stormwater, which is the development and construction of stormwater detention basins.

To the extent a project in issue is subject to the California Environmental Quality Act (CEQA), the Draft Order's requirements regarding LID, hydromodification and others are also inconsistent with CEQA's requirement to evaluate project impacts based on evaluation of the whole of the project and consideration of all the potential impacts of the project. (Pub. Resources Code, § 21000 et seq.; see Pub. Resources Code, §§ 21060.5, 21080; 14 Cal. Code Regs., tit. 14, §§ 15003, 15063-15065, 15070.) CEQA requires identification and adoption of feasible mitigation measures for significant impacts of a proposed project, taking into account the specific characteristics of the project in question and the affected environment. (Pub. Resources Code, §§ 21002, 21081; 14 Cal. Code Regs., tit. 14, §§ 15021, 15041.) The blanket application of the identified land use strategies and priorities may not be appropriate in all cases. Yet, the Draft Order would limit a local agency's ability to require implementation of more appropriate land use strategies. Thus, the blanket application of the required land use strategies could have unintended environmental consequences that can only be identified through appropriate environmental review, and which must be evaluated on a project-specific basis.

Similarly, the Draft Order specifically directs periods of time when grading shall be prohibited in certain areas. (Draft Order at p. 63.) This specific requirement is clearly within a local agency's land use authority and the Regional Board has no authority to prescribe what type, when, or how certain land uses should be implemented or allowed.

Thus, the provisions within the Draft Order that require LID, hydromodification controls and others must be revised. The Draft Order may encourage the consideration of such strategies by the Permittees who have land use authority; however, the decision to implement such strategies must be left to the individual Permittees.

Also, the Draft Order specifies BMPs and applies them universally. This approach will lead to many problems. For example the Regional Board is requiring trash excluders on all storm drains inlets rather than other trash mitigation measures which may in turn cause increased flooding in some locations. Homes and businesses will be flooded that are not currently flooded with subsequent liability issues.

E. Overreaching Hydromodification Mitigation Requirements

The Draft Order assumes that all development and redevelopment projects will have a detrimental effect on erosion and on the peak flow and duration of the receiving water. However, in Ventura County, some development projects have little to no effect on the receiving waters pre-development hydrograph due to the size of the natural watershed upstream of the development. For example, the 235 square mile Ventura River Watershed is less than five-percent urbanized. Most of the watershed, and a disproportionately large amount of the rainfall, are within the National Forest. In these cases, the natural storm flow in the rivers is many times greater than storm drain discharges and the timing and flows are dictated by the natural flows that occur long after the storm drain discharges takes place. In other cases, developments discharge through storm drain systems directly to the ocean, without the potential to impact a natural channel or riparian habitat.

These types of analyses should be considered when developing thresholds for hydro modification requirements. The Draft Order be revised to include the rationale for the 50 acre threshold contained in the Interim Criteria in Part (e) of Page 53, and should consider additional exemptions based upon the hydrology of Ventura County Watersheds, rather than the assignment of a size of project.

In practice, it is not possible to exactly match a hydrograph in both peak flow, volume and duration at the same time. Depending on the watershed and the project's hydrologic characteristics, the concept of attempting to equalize pre- and post-project peak flows and/or volume may or may not be appropriate and effective in minimizing erosion effects. The concept of matching flow duration and/or volume may or may not be critical for habitat and ecology, depending on the hydrologic characteristics of the watershed and the project. The Draft Order should allow flexibility based upon the watershed characteristics and erosion protection, habitat and ecology needs. The Draft Order should be revised to provide flexibility or provide the Permittees with engineering methodologies that would allow the exact matching of flow, volume and duration at the same time. Although the comment period has not allowed time to develop and present draft suggested engineering criteria that would protect our watersheds and their habitat. The Permittees are willing to work with you toward this interim criteria.

And finally, the Hydromodification Analysis Study (HAS) also appears similar in scope to CEQA sections (biology, hydrology/water quality/ geology/soils) that determine impacts of a project. The Draft Order needs to be prepared to avoid duplication with the CEQA studies and process.

VII. STORMWATER RECHARGE VS. GROUNDWATER PROTECTION

Groundwater is the single most important source of water in Ventura County. Collectively, groundwater accounts for approximately 67% of the total water demand for the County's agricultural and domestic use. The protection and quality of this important resource are of paramount interest and concern to the residents of Ventura County. We

do agree the use and recharge of uncontaminated stormwater can be an important component of integrated regional water management. However, we are not in agreement with the universal proposal to percolate and infiltrate all stormwater through implementation of LID and other BMPs. This "one size fits all approach" does not take into account Ventura County's site specific and variable conditions such as local geology/hydrogeology and soils. Furthermore, this type of approach might have the unattended consequence of attempting to fix one environmental problem and consequently creating another. A good example of the above happened recently with this the State Air Resources Board mandating oxygenate fuels (MTBE) in gasoline to solve one of its air quality issues, resulting in a much bigger and costlier issue of groundwater contamination and remediation statewide.

U.S. EPA lists the following on its website, warning of potential additional hurdles and requirements for recharging groundwater with stormwater: *"When stormwater is used to recharge ground water - Discharges to ground water may be subject to local, state or federal requirements. Specifically, discharges via subsurface fluid distribution systems or other subsurface infiltrative devices may be subject to the federal underground injection control (UIC) requirements. The UIC program, authorized pursuant to the U.S. Safe Drinking Water Act, exists to prevent the endangerment of underground sources of drinking water. Stormwater injection wells need to be listed on state or federal inventory lists, and should not be used for the disposal of fluids other than storm water. To limit the potential for ground water contamination, EPA recommends that stormwater injection wells be constructed with spill catchment, and not be constructed to intersect the water table."* (U.S EPA website.)

Several communities in Ventura County have underlying unconfined or semi-confined aquifers (along the Santa Clara River), sole sources aquifers, and/or have highly venerable and sensitive recharge areas (e.g. the Oxnard forebay) that cannot use infiltration BMPs for fear of contaminating the community's only drinking water supply. Communities with high groundwater (e.g. Simi Valley) may experience potential flooding with these BMPs, and in other communities with clay or impermeable soils these BMPs will not physically work. The Draft Order should provide provisions to ensure full protection of our limited groundwater resources.

VIII. SUMMARY/CONCLUSION

In closing, the Ventura County Watershed Protection District and the Ventura Countywide Stormwater Program Co-Permittees have very real and very significant concerns about the Draft Order as currently proposed.

Of great concern to the Permittees is the significant incongruity and apparent lack of coordination in the regulatory methodologies being implemented by the State Water Resources Control Board and its Regional Boards. This lack of equity and consistency is apparent both externally in programs and actions taken from Regional Board to Regional Board but now particularly evident between initiatives and programs directed from within the departments of the Los Angeles Regional Board to the regulated community.

The 303(d) impairment identification and subsequent TMDL implementation process in Ventura County has been an exemplary model of a successfully adopted and implemented non-point source, pollution control program focused on the specific constituents that inhibit beneficial uses. This program has been implemented in an allied, co-operative, coordinated manner with the Regional Board serving as a full-partner. This approach has resulted from a unified effort by Regional Board staff with a fully comprehensive body of stakeholders (including the US-EPA, municipalities, the County, major water suppliers, Caltrans, the U.S. Navy, the Ventura County Farm Bureau and other agriculture and environmental interests). These initiatives, implementation schedules and goals will result in tangible water quality improvements, compliance with Basin Plan objectives and protection of beneficial uses for Ventura County watersheds with respect to bacteria, salts, nutrients, metals, pesticides and trash. The TMDL programs are focused by reach, pollutant specific and directed to protecting the identified beneficial uses in the Basin Plan.

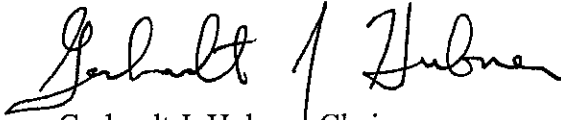
In direct contrast to the Calleguas Creek TMDL process, the Draft Order presents an adversarial, 'command and control' methodology aimed at a smaller sub-set of same stakeholders with less of an ability to affect the overall surface water quality in Ventura County. Yet this Draft Order dictates discharge limitations (MALs, which are inconsistent with previously Board adopted TMDLs and NPDES discharge limits) while demanding implementation and installation specific controls. Additionally, this direction includes how such limitations are to be achieved without any discretionary flexibility as to how these controls are to be implemented or applicability adjustments as to the pollutants of concern. Many significant elements in the proposed permit are unfocused, counter-productive and contrary to the progress and good-faith efforts established in the TMDL process.

As stewards of scarce and limited public funds and the municipal trust, we must demand that the actions and expenditures driven by and determined by state regulators are consistent with each other, are cost-effective and capable of achieving the goals for which those expenditures are intended. As noted throughout these comments, this Draft Order is inconsistent with those goals.

Finally, although we fundamentally disagree with the proposed approach being used by the Regional Board staff, we are in agreement with the need to continue and enhance our award-winning stormwater management program that will lead to water quality protection and enhancement, and provide for adequate accountability. We look forward to working with the Regional Board to craft a revised Draft Order that supports this need.

In order to move towards the development of an appropriate Draft Order, we request a meeting with you at your earliest convenience. We also look forward to a formal written response to each of the comments contained in this letter and its attachments. If you have any questions, please contact me at 805-654-5051 or Gerhardt.Hubner@ventura.org.

Sincerely,



Gerhardt J. Hubner, Chair
Ventura Countywide Program
Stormwater Management Committee

Attachments

- A. Additional Legal and Policy Comments
- B. Permittee' Combined Technical Comments for Ventura County MS4 Permit Draft Order, dated December 27, 2006
- C. Comparison of Discharge Characterization Data with Municipal Action Levels

Cc: Xavier Swamikannu, Senior - Storm Water Permitting, Los Angeles Regional Water Quality Control Board
Ventura Countywide Program Permittees
Jeff Pratt, Director, Ventura County Watershed Protection District
Ron Coons, Public Works Director, County of Ventura

**ATTACHMENT A
ADDITIONAL LEGAL AND POLICY COMMENTS
DRAFT VENTURA COUNTY MUNICIPAL SEPARATE STORM SEWER
SYSTEM PERMIT (NPDES NO. CAS004002)
FOR THE
VENTURA COUNTY WATERSHED PROTECTION DISTRICT, COUNTY OF
VENTURA, AND THE INCORPORATED CITIES**

The following comments are provided in order as the issue appears in the Draft Ventura County Municipal Separate Storm Sewer System Permit (Draft Order).

COMMENTS ON FINDINGS

Finding B.16 (p. 7) – The Draft Order contains a finding regarding atmospheric deposition of pollutants into surface waters located within Ventura County. The Permittees agree that atmospheric deposition can be a major contributing source of pollutants into the waterways of Ventura County. The Permittees are concerned that they may be held responsible (now or in the future) for pollutants that enter the waterways through atmospheric deposition. The Permittees recommend that the Draft Order be amended to delete the finding regarding atmospheric deposition. In the alternative, the Draft Order should clarify that the Permittees are not responsible for pollutants that are atmospherically deposited into the surface waters.

Finding E.6 (p. 13) – The finding refers to the July 2003 303(d) list as the most recently adopted list of impaired waterbodies. This reference is incorrect. The state adopted a newly updated list in 2006. The finding should be revised to reflect the State Water Resources Control Board's (State Board) most recent action on this issue.

Finding E.9 (p. 14) – The second part of this finding refers to the State Board's *Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays and Estuaries in California* (SIP). The reference to this finding implies that this policy applies to stormwater discharges in California. That is not correct. The SIP specifically excludes application of the policy to stormwater discharges and is not relevant. (SIP (2005) fn. 1, p. 3.)

Finding E.18 (p. 18) – Finding 18 incorrectly characterizes the state and federal antidegradation policies in several ways. The finding claims that “[b]oth, state and federal antidegradation policies acknowledge that an activity that results in minor water quality lowering, even if incrementally small, can result in violation of Antidegradation Policies through cumulative effects, for example, when the waste is cumulative, persistent, or bioaccumulative pollutant.” We disagree with the implication of this finding.

This statement does not accurately reflect applicable law and policy with regards to the two anti-degradation policies. The primary purpose of the state and federal antidegradation policies is to protect *high quality waters* that *already* support and

maintain existing beneficial uses and adopted water quality objectives (emphasis added).¹ The finding implies that any discharge that lowers water quality violates the state and federal antidegradation policies or that the policies contain specific terms related to minor changes in water quality. This is not true. Both the state and federal antidegradation policies allow for a lowering of water quality upon meeting certain conditions and “minor” change is routinely permitted. The U.S. Supreme Court found that EPA’s decision to allow some de minimus degradation is not inconsistent with the federal Clean Water Act. (*Arkansas v. Oklahoma* 503 U.S. 91 at 113 and 107, respectively.)

A violation of the state and federal antidegradation policies would only occur if there is degradation below applicable water quality standards and the agency is unable to find that it is for the maximum benefit to the people of the state, or is necessary to accommodate important economic or social development in the area. The state’s policy “does not absolutely require that existing high quality water be maintained; rather, any change must be both consistent with maximum benefit and not unreasonably affect beneficial uses.” (SWRCB Order No. 86-8 at p. 15.) Similarly, the federal policy “is not an absolute bar to reductions in water quality” as long as existing, in-stream beneficial uses will not be impaired, no Outstanding National Resource Waters (ONRW) will be affected; and, the reductions in water quality are “justified as necessary to accommodate important and social economic development.” (Federal Antidegradation Policy, Memorandum to Regional Board Executive Officers from William R. Attwater, Chief Counsel, State Water Resources Control Board (Oct. 07, 1987) at pp. 2-3.)

Finally, we are not familiar with any state or federal antidegradation policy positions that discuss or address the cumulative effects of discharges, especially with regard to bioaccumulative pollutants. At most, APU 90-004 encourages Regional Boards to apply stricter scrutiny to “non-threshold pollutants” when determining if it is necessary to conduct a simple antidegradation analysis or a complete antidegradation analysis. (APU 90-004, pp. 2-3.) Non-threshold pollutants are described as carcinogens, mutagens, and teratogens. To the extent that a bioaccumulative pollutant may also be a non-threshold pollutant, the Regional Board should consider this factor in determining the appropriate level of antidegradation analysis to apply when there may be a lowering of high quality water caused by the proposed activity. The determination of what level of analysis to conduct is not akin to a violation of the antidegradation policies. The determination of violation would occur after the antidegradation analysis is conducted.

Finding E.19 (p. 18) – Finding 19 of the Draft Order states that the hydromodification control and low impact development (LID) provisions of the Draft Order are “intended to promote the State Water Board and federal Antidegradation policies by preventing water quality and habitat (beneficial) degradation.” The Draft Order’s proposed connection between the hydromodification controls and LID provisions is misplaced for several reasons.

¹ SWRCB Resolution No. 68-16 states that “it is the intent and purpose of this Board that such higher quality shall be maintained to the maximum extent possible consistent with the declaration of the Legislature.” Federal Regulation 40 CFR § 131.12 states that “existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.”

First, the Regional Board has no basis for this finding as the state and federal antidegradation policies do not apply to the adoption of this Draft Order. As proposed, the Draft Order does not authorize a reduction in water quality as compared to the last Ventura County MS4 permit and therefore application of the antidegradation policies has not been triggered. "If the Regional Board has no reason to believe that existing water quality will be reduced due to the proposed action, no antidegradation analysis is required." (APU 90-004, Antidegradation Policy Implementation for NPDES Permitting, p. 2.) Likewise, the federal antidegradation policy is only applied if the activity will reduce existing water quality. "The first step in analyzing the requirements of the federal antidegradation policy as applied to a particular activity is to determine if the activity will lower surface water quality; only if there is reduction in water quality must the three-part test be applied to determine if the activity may be permitted." (Federal Antidegradation Policy, Memorandum to Regional Board Executive Officers from William R. Attwater, Chief Counsel, State Water Resources Control Board (October 7, 1987) at p. 3.) In particular, the federal antidegradation policy is usually triggered "by new discharges or expansion of existing facilities." (*Id.* at p. 5.)

In this case, the proposed action is the adoption of a renewed NPDES permit, which is "reasonably expected to reduce the discharge of pollutants via storm water runoff into receiving waters, and to meet the Waste Load Allocations (WLAs) for municipal storm water adopted by the Regional Water Board." (Draft Order, Finding B.1 and Finding F.2 p. 2. and p. 20.) Thus, the Regional Board does not anticipate the proposed action to lower surface water quality.

Second, the Draft Order attempts to equate LID and hydromodification controls to meeting best practicable treatment and control (BPTC) requirements as contained in the state's antidegradation policy. BPTC is required when there is a discharge that may degrade existing high quality waters. (SWRCB Resolution 68-16.) BPTC is not required when the Regional Board has not identified a discharge that may degrade existing high quality waters. In other words, before applying the BPTC standard for meeting waste discharge requirements, the Regional Board would need to find that discharges covered by the stormwater permit may degrade waters that already meet water quality standards. To make this determination, the Regional Board would need to establish the baseline quality of the receiving water, which is a pollutant specific determination. (APU 90-004, p. 4.) In addition, to determine what is BPTC, one must consider a number of factors including "water quality achieved by other similarly situated dischargers and the methods used to achieve that water quality." (SWRCB Order WQO 2000-07, *In re San Luis Obispo Golf and County Club*, pp. 10-11.) Also relevant is "information concerning alternatives and costs of alternatives." (*Id.* at p. 11.)

The Draft Order does not contain any of the required findings or information to determine that 1) there is degradation of an existing high quality water based on a constituent-by-constituent analysis; 2) BPTC must be applied to meet waste discharge requirements for the individual constituents impacted; and 3) LID and hydromodification controls are the appropriate BPTC after considering water quality achieved by others and the cost of

alternatives. Thus, finding E.19 is inappropriate and must be removed from the Draft Order.

Finding E.23 (p. 19) – The finding regarding the application of aquatic pesticides to waterways is irrelevant and has no application to the Draft Order and its provisions. Furthermore, the case cited within the finding has been addressed by a recently issued federal regulation that was adopted in 2006. Thus, this finding should be removed from the Draft Order.

Finding F.7 (p. 22) – Finding F.7 claims that all requirements contained in the Draft Order are prescribed to be consistent with federal law and therefore economic considerations need not be considered in the adoption of this Draft Order. We disagree with this statement. Under federal law, municipal stormwater discharges must comply with section 402(p) of the Clean Water Act, which requires that cities reduce stormwater to the maximum extent practicable. (33 U.S.C. § 1342(p)(3)(B)(iii).) “Congress did not require municipal storm sewer discharges to comply strictly with [water quality standards].” (*Defenders of Wildlife v. Browner* (1999) 191 F.3d 1159, 1166.) Whenever a Regional Board imposes pollutant restrictions in a wastewater discharge permit *more stringent* than what federal law requires, California law requires the board to take into account the public interest factors of Water Code section 13241, which includes economic factors and the cost of compliance. (*City of Burbank v. State Water Resources Control Board* (2005) 35 Cal.4th 613, 627.) Thus, if the Regional Board seeks to impose any requirements that go beyond those set forth in section 402(p), the Regional Board must evaluate the public interest factors in Water Code section 13241 prior to permit adoption.

Whether or not they are within the state’s discretion, numerous provisions of the Draft Order exceed the requirements of federal law. One example, as stated in the attached letter, is that the use of MALs to define MEP is more stringent than federal law. Other requirements are described throughout the comments of the Permittees. Permittees again emphasize that an order issuing a permit must explain how its conclusions are reached. The Permittees find no logic in the Draft Order that would support a conclusion that each requirement is required by federal law.

In addition, a very specific issue of concern is the prescriptive requirements pertaining to land use. In particular, land use is a matter of local control, and the federal government has no role in land use decisions or policies. “Regulation of land use [is] a function traditionally performed by local governments.” (*Hess v. Port Authority Trans-Hudson Corporation*, 513 U.S. 30, 44, (1994).) The Regional Board lacks the authority to infringe on local land use decisions, on which the Legislature has declared the state should impose “only a minimum of limitation in order that counties and cities may exercise the maximum degree of control over local zoning matters.” (*DeVita v. County of Napa*, 9 Cal.4th 763, 782-783 (1995).) Assuming for the sake of argument that the Regional Board does have the power to interfere with local land use policy, such authority cannot be derived from federal law. When enacting the Clean Water Act, Congress chose to “recognize, preserve, and protect the primary responsibilities and rights of States . . . to

plan the development and use . . . of land and water resources” (33 U.S.C. § 1251(b); *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, 531 U.S. 159, 174 (2001).)

Finding F.14 (pp. 23-24) – Finding F.14 and implementing provision Part 4.G.1 of the Draft Order would require the Permittees to implement a number of provisions related to sanitary sewer systems. These provisions are outside the scope of a municipal stormwater permit and should be removed. In May 2006, the State Board adopted WQ 2006-03, Statewide General Waste Discharge Requirements for Sanitary Sewer Systems. All publicly owned collection systems with one mile or more of sewer pipe were required to enroll for coverage under the General WDR by November 2, 2006. The statewide WDR requires all collection system agencies to report SSOs to a statewide online database and to develop, among other detailed requirements, overflow response plans and comprehensive sewer system management plans.

The scope of this Draft Order is the regulation of the municipal separate storm sewer systems operated by the co-permittees. The collection systems, like the wastewater treatment plants and water recycling programs operated by individual co-permittees, are subject to regulation under a separate enforceable permitting mechanisms. It is neither necessary nor justified to duplicate and overlay the requirements set forth in WQ 2006-03 in the stormwater permit.

Finding F.16 (p. 24) – The Permittees object strenuously to the claim made in finding F.16 that the “Order may have incremental effect on costs required for compliance.” As discussed in the body of the main cover letter, the requirements contained within the Draft Order will be costly to implement. Furthermore, the Permittees also object to the statement that the Regional Board is not required to consider costs in preparing the Draft Order. As the Draft Order contains provisions that are more stringent than federal law, the Regional Board is required to consider the public interest factors of Water Code section 13241, including cost. (*City of Burbank v. State Water Resources Control Board* at 627.) Consequently, the Regional Board must prepare and consider the costs associated with implementing the provisions contained within the Draft Order that are not specifically required by federal law.

COMMENTS ON PART 1 – DISCHARGE PROHIBITIONS

Part 1, B.4 (p. 29) – The Permittees understand that the prohibitions contained in Part 1, B pertain to the discharge of non-storm water discharges into the MS4. However, provision B.4 would require the Regional Board Executive Officer to consider the state and federal antidegradation policies before authorizing or prohibiting other categories of non-storm water from discharging to the MS4. The state and federal antidegradation policies apply to discharges into waters of the state and the U.S., respectively. Antidegradation policies do not apply to discharges into the MS4, but only to discharges to the waters of the state and the U.S. Thus, this provision must be revised to clarify the intent of its application by the Regional Board’s Executive Officer.

COMMENTS ON PART 2 – RECEIVING WATER LIMITATIONS

Part 2, 1 (p. 29) – Receiving water limitation provision 1 is in actuality a prohibition that is already contained in Part 1 of the Draft Order. The presence of a prohibition in this section of the Draft Order is confusing, duplicative and not reflective of a receiving water limitation.

Part 2, 2 (p. 29) – Like provision 1, receiving water limitation provision 2 is contained in Part 1 of the Draft Order. Inclusion in this section is duplicative and not necessary.

Part 2, 3(a) (p. 29) – As currently drafted, this provision does not clarify that the determination with regards to discharges applies to discharges “from the MS4,” and not discharges in general. The Permittees are legally responsible for discharges from the MS4 and not all discharges in general. Thus, this provision needs to be amended to clarify that the application of this determination is made on discharges from the MS4.

Part 2, 4 (p. 30) – Provision 4 would provide that members of the public can petition the Regional Board Executive Officer to review alleged receiving water limitations “within 60 days to determine if Part 2 of this Order was violated.” This term is improper and should be deleted for a number of reasons. Waste discharge requirements are adjudicatory orders defining rights and obligations of Permittees. It is inappropriate in any such order to define rights in third parties. Nor does the Regional Board have the authority to create rights in third parties. That is the province of the Legislature. If the provision were merely a restatement of current statute and regulations, it would be unnecessary. But it is not. There are many thousands of permits containing waste discharge requirements throughout the state. If the Regional Board desires to make recommendations to the Legislature to enact a petition process by statute, or to the State Board to prescribe such a process by regulation, it may do so. But the term, as it appears in this Draft Order, is not proper or lawful and must therefore be removed.

Part 2, 6 (p. 30) – Provisions 3 and 5 of Part 2 collectively establish a procedure for complying with receiving water limitations utilizing an iterative best management practice approach, which is appropriate for stormwater. However, provision 6 of this part undermines this process by stating that the Regional Board is not prevented from enforcing *any* provision contained within the order (emphasis added). As drafted, this language means that the Permittees could follow the process outlined in provision 3 when a water quality objective is exceeded and still receive an enforcement action from the Regional Board for exceeding the same water quality objective. The Draft Order’s failure to provide a safe harbor against enforcement when the Permittees are following the procedures contained in provision 3 negates the purpose for these provisions. Provision 6 must be amended to protect the Permittees from enforcement when the Permittees are following the procedures contained in provision 3.

COMMENTS ON PART 3 - STORM WATER QUALITY MANAGEMENT PROGRAM IMPLEMENTATION

Part 3, B.3 and B.4 (p. 33) – B.3 requires each Permittee to update its Storm Water Quality ordinance no later than 6 months from the adoption date of the Draft Order. B.4, on the other hand, requires each Permittee to submit no later than 180 days after adoption of a statement that the Permittee has obtained and possesses all necessary legal authority to comply with the Order through the adoption of ordinances and/or municipal code notifications. There appears to be an inconsistency between the two provisions. B.4 does not clarify if the “180 days after adoption” applies after adoption of the Draft Order or the ordinance, which is required by B.3. The Permittees assume that B.4 applies after the Permittees have adopted updated stormwater ordinances in accordance with B.3, and that notification should then be provided to the Regional Board within 180 days after the updated stormwater ordinance has been adopted. However, the provision should be amended to clarify the timing requirement that is contained in B.4.

Part 3, C.1 (p. 33) – Provision C.1 states that the Permittees “shall allocate all necessary funds to implement the activities required to comply with the provisions of this Order.” The Draft Order purports to enumerate the sources of funds that the Permittees may use for compliance, and requires that a “stormwater budget” be submitted annually the Regional Board. (*Id.* and fn. 3.)

This requirement goes beyond the Regional Board’s purview as a water quality regulatory agency, ignores constitutional constraints on both state power and local government fee authority, and is inappropriate, unlawful and unwarranted.

Water Code section 13000 charges the Regional Board with regulating the quality of the waters of the state “to attain the highest water quality that is *reasonable*.” The Regional Board is to prescribe requirements “as to the nature of” any discharge, which shall implement relevant water quality control plans. (Water Code § 13263(a).) In prescribing such requirements, the Regional Board may not specify “the particular manner with which compliance shall be had with that requirement,” including placing itself in the role of judging whether the amount of local revenue that is to be devoted to permit compliance comports with its notion of the amount “necessary” to do so. (*See* Water Code § 13360(a).) The Regional Board does not possess unfettered authority to involve itself in matters of municipal affairs or to dictate the fiscal policy of local governments.

Local government budgeting is a municipal legislative function. There is no state statutory requirement that cities adopt budgets, and courts are without power to interfere in the budgeting process. (*Scott v. San Bernardino* (1996) 44 Cal.App.4th 684, 698.) In this Draft Order, the Regional Board proposes to assume a supervisory role over local budgeting that is superior to that of either the Legislature or the judiciary. Moreover, this provision ignores very real constraints on the Permittees’ revenue raising authority. The first and most obvious of these is Proposition 218, which prohibits a local government from imposing a fee for stormwater related services without a vote of the electorate. (Cal. Const. Art. XIID, § 6.c.; *Howard Jarvis Taxpayers Association v. City of Salinas* (2002)

98 Cal.App.4th 1351.) A fee may not be imposed on a subset of the community (such as property owners) for a general government service available to the general public. (Cal. Const. Art. XIID, § 6.b.) The California Attorney General has deemed a stormwater fee invalid on this basis. (81 Cal. Opp. Atty Gen. 104 (1998).) Other fees included in the Draft Order's laundry list, such as those for plan review, permits and industrial commercial users, may not exceed the reasonable cost of providing service to the payer. (*Sinclair Paint Co. v. State Board of Equalization* (1997) 15 Cal.4th 866.)

Thus, provision C.1 creates an unfunded mandate that must be removed from the Draft Order.

Part 3, D.1 (p. 34) – The time requirement contained in provision D.1 appears to be inconsistent with the ordinance provision contained above in B.3. In addition, 90 days is not a practical time frame for the Permittees to modify storm water programs, protocols, practices and municipal codes to be consistent with a permit is well over 100 pages. If the Draft Order is adopted as is, the Permittees would likely need at least a year to modify current programs to comply with all of the provisions contained within therein.

COMMENTS ON PART 4 – SPECIAL PROVISIONS (BASELINE)

Part 4, B.1 (p. 36) – Provision B.1 requires the principal Permittee (i.e. Ventura County Watershed Protection District) to participate in a number of watershed management planning meetings. Although the Permittee is supportive of the various watershed programs identified and intends to participate in most, or not all, of the programs identified, the Draft Order does not state how the Regional Board would determine compliance with this provision. Furthermore, it is inappropriate for the Regional Board to mandate in a stormwater permit provision participation in voluntary watershed programs. Such a requirement well exceeds the Regional Board's authority as there is nothing in the Water Code that allows the Regional Board to mandate watershed program participation. At most, the Regional Board can require the Permittees to prepare and submit technical and/or monitoring reports. (Water Code § 13267.) The Regional Board's authority under this provision does not extend to requiring participation in voluntary watershed management programs.

Part 4, D (pp. 41-49) – The Draft Order would require the Permittees to inventory and inspect a number of industrial and commercial facilities. While the Permittees are responsible for inspecting industrial and commercial sites within their jurisdiction for compliance with local municipal codes and ordinances, the Regional Board is responsible for inspecting and enforcing compliance with the State's General Permit for Industrial Activities. (*City of Rancho Cucamonga v. Regional Water Quality Control Board-Santa Ana Region* (2006) 135 Cal.App.4th 1377, 1390.) The provisions contained in Part 4, D appear to expand beyond ensuring compliance with local municipal codes and ordinances. For example, the introductory language for this section states that the minimum requirement is for the Permittees to track, inspect and ensure compliance with municipal ordinances. (Draft Order at p. 41.) This language suggests that the requirements contained in the Draft Order exceed the minimum. In particular, the Draft

Order would require the Permittees to determine if an industrial facility is implementing certain source control BMPs that may or may not be part of a local agencies municipal code or ordinance. (Draft Order at p. 47.) This type of a requirement is beyond the Permittees obligations to ensure compliance with municipal codes and ordinances. The Permittees recommend that the Industrial/Commerical Facilities Program requirements be substantially scaled down to reflect that the Permittees obligations are related to ensuring compliance with local municipal codes and ordinances.

Part 4, D.3(a) & (b) (p. 48) – Provisions D.3(a) and (b) both treat municipal action levels (MALs) as if they are water quality objectives. Please refer to earlier comments on this issue.

Part 4, E.III.12(a) (p. 62) – The California Environmental Quality Act (CEQA) requires an agency to consider if a project will cause a significant environmental impact. (Pub. Res. Code §21080 et seq.) The language contained in at Part 4 would require the Permittees to consider “potential” impacts. As proposed, this language may be inconsistent with CEQA laws and regulations for it requires consideration of only a “potential” impact and not a “significant environmental impact.” To avoid conflicting with CEQA laws and regulations, the CEQA provisions in the Draft Order need to be revised to be consistent with CEQA’s requirements and be tied to considerations of significant environmental impacts.

Part 4, E.III.13(a) (p. 63) – The State’s planning laws require the “Conservation Elements” of a general plan to address conservation of natural resources including water and its hydraulic force. Likewise, the “Open Space Element” is required to identify strategies to preserve open space land with corresponding benefits to water quality and quantity. Thus, both elements are already required to include considerations regarding stormwater – making the requirements contained in the Draft Order to be unnecessary. Also, each general plan element must carry equal weight and be internally consistent. It is therefore unnecessary to require storm water quality and quantity management considerations in the Housing and Land Use Elements of the general plan. Because these provisions are not necessary, the Permittees recommend that they be removed from the Draft Order.

Part 4, F.1(a)(1)(B) (p. 63) – Provision F.1(a)(1)(B) effectively requires the Permittees to prohibit discharges into waterbodies listed on the CWA section 303(d) list from October 1 through April 15 that would occur due to grading activities. Such an activity amounts to a discharge prohibition. The Regional Board must adopt discharge prohibitions through appropriate procedures of the Water Code. (Water Code § 13243.) It is not an activity that the Regional Board can delegate to the Permittees through the Draft Order.

Part 4, F.5 – F.10 (p. 67-71) – The Draft Order contains a number provisions related to tracking and inspections of construction activities that are also subject to the state’s General Permit for Construction Activities. As discussed above, the Regional Board must retain responsibility for determining compliance with the state’s General Permit. (*City of*

Rancho Cucamonga v. Regional Water Quality Control Board at 1390.) To the extent that the provisions in Part 4 obligate the Permittees to take on Regional Board's responsibilities, the Draft Order should be revised. At the most, the Permittees are responsible for ensuring compliance with their own municipal codes and ordinances. Requirements beyond such activities are outside of the Permittees jurisdiction and must be removed from the Draft Order.

Part 4, G.1 (p. 72) – As discussed above with finding F.14, Draft Order's requirements regarding sewage system maintenance, overflow and spill response plan properly falls under the ambit of the State Board's General Waste Discharge Requirements for Sanitary Sewer Systems. (WQO Order No. 2006-0003.) It is not appropriate for the Regional Board to include requirements related to sanitary sewer systems within the scope of the MS4 Draft Order.

Part 4, G.5(a) (pp. 76-77) – Provision G.5 requires the Permittees to use pesticides in a specified manner. In California, pesticides are regulated by the California Department of Pesticide Regulation (DPR). (CA Food and Ag. Code § 11454.) The DPR's primary purposes include 1) providing for the proper, safe, and efficient use of pesticides essential for production of food and fiber; 2) protecting public health and safety; 3) protecting the environment; 4) protecting agricultural and pest control workers; 5) assuring consumers and user that pesticides are properly labeled; and 6) encouraging the development and implementation of pest management systems that stress application of biological and cultural pest control techniques with selective pesticides when necessary. (CA Food and Ag. Code § 11501.) In 1984, the California Legislature declared that "matters relating to (pesticides) are of a statewide interest and concern and are to be administered on a statewide basis by the state unless specific exceptions are made in state legislation for local administration." (Statutes of 1984, Chapter 1386.) To ensure that the state maintained sole jurisdictional authority over the regulation of pesticides, the California Legislature adopted a state statute that vested complete control and regulation of pesticides including the registration, sale, transportation, or use of pesticides to the state, and DPR in particular. (CA Food and Ag. Code § 11501.1.)

Although the state has preempted local authority with regard to the regulation and use of pesticides, it is understood by the DPR that local governing bodies may "pass ordinances that regulate or restrict pesticide use in their own operations." (*Regulating Pesticides: The California Story, A Guide to Pesticide Regulation in California*, published by the California Department of Pesticide Regulation (October 2001) at p. 9.) However, the Regional Board is not vested with the authority to require local agencies to regulate or restrict pesticide use. The Draft Order requires the Permittees to implement jurisdictional wide integrated pest management programs, adopt and implement policies that require the minimization of pesticide use, and include commitments in newly adopted ordinances to reduce and eliminate the use of pesticides. (Draft Order, Part 4 provision 5 at pp. 76 and 77.) As the statutes indicate, DPR is vested with the authority to regulate and restrict the use of pesticides in California. The Regional Board's authority is limited to matters that pertain to water quality. (Water Code § 13225.) It does not include the authority to direct local agencies with regard to its pesticide applications, storage and use records.

Thus, the requirements in the Draft Order that direct the Permittees with regards to pesticide use are unlawful and must be removed.

Part 4, G.5(b)(2) (p. 77) – Provision G.5(b)(2) would require the Permittee to comply with the provisions of WQO No. 2004-0008-DWQ. However, WQO No. 2004-0008, which is a General NPDES permit for the application of aquatic pesticides to surface waters, is no longer necessary. In 2006, the federal EPA issued a new rule that clarified federal regulatory requirements as they apply to the application of aquatic pesticides to surface waters. Basically, the federal regulations state that the application of aquatic pesticides to waters of the U.S. to control pests is not a discharge subject to NPDES permit requirements. (40 CFR § 122.3(h) amended Nov. 27, 2006, 71 Fed. Reg. 68483.) With EPA's regulation, WQO No. 2004-0008 is no longer relevant. The State Board has not yet rescinded the Order due to pending litigation. (*New Pesticide Regulation*, Memorandum to Tom Howard, Acting Executive Director, from Michael A.M. Lauffer, Chief Counsel, Office of Chief Counsel (January 2, 2007), p. 5.) However, the State Board has publicized the new EPA regulation and has created a notice of termination procedure for those that wish to terminate coverage. (*Id.* at p. 5.) Because of the new federal regulation and the tenuous nature of WQO No. 2004-0008, the Regional Board should not require compliance with WQO No. 2004-0008 for the application of aquatic pesticides.

COMMENTS ON PART 7 – DEFINITIONS

Authorized Discharge – The definition of authorized discharge needs to be expanded to incorporate discharges authorized pursuant to state issued permits and conditional waivers. As currently drafted, the definition is limited only to those discharges that are authorized under federal law.

Effluent Limitation – The Draft Order does not include effluent limitations as defined. Thus, this definition is unnecessary and should be deleted.

Maximum Extent Practicable – The definition contained in the Draft Order is not a proper definition for Maximum Extent Practicable (MEP). As provided, the definition is a mere recitation of the law to meet MEP. It does not actually define MEP. The definition of MEP needs to be revised.

Runoff – The definition of runoff contains the statement “[i]t is typically comprised of nuisance flows contaminated with pollutants.” The Draft Order has no basis for including this statement as part of the definition of runoff. The broad generality is not backed by any scientific evidence or known study. Thus, this portion of the definition needs to be deleted from the Draft Order.

COMMENT ON TIME SCHEDULES

The implementation schedules for most of the program provisions are unrealistic and will lead to poor execution and the misdirection of resources. It seems that when the Draft

Order was drafted and where there was an opportunity to provide an implementation schedule it was arbitrarily decided that 180 days was the appropriate time frame. But when all the implementation provisions are put together, the Draft Order creates an impossible schedule. For example, the following requirements stipulate time frames that when combined are impracticable.

1. Modification of SWMP, policies, codes, etc. within 90 days (Draft Order at p. 34)
2. Education strategy developed within 180 days (Draft Order at p. 38)
 - In school effectiveness strategy within 180 days (Draft Order at p. 39)
 - Behavioral change assessment strategy w/in 180 days (Draft Order at p. 39)
 - Pollutant of Concern outreach program w/in 180 days (Draft Order at p. 39)
 - Install trash excluders on all CBs w/in 180 days (Draft Order at p. 78)

The Draft Order must be modified to provide for an overall, practical and realistic schedule.

ATTACHMENT B
SPECIFIC TECHNICAL COMMENTS
DRAFT VENTURA COUNTY MUNICIPAL SPARATE STORM SEWER
SYSTEM PERMIT (NPDES NO. CAS004002)
FOR THE

VENTURA COUNTY WATERSHED PROTECTION DISTRICT, COUNTY OF VENTURA,
AND THE INCOPORATED CITIES

No.	Reference	Comment
1	General	The Draft Order includes reference citations throughout, but mainly in the Findings. It would benefit from deletion of the references in the permit, and incorporation of these references into the staff report. Most of the references used in the development of the permit came from the Los Angeles County municipal stormwater program or other highly urbanized settings. Please explain how the unique characteristics of Ventura County watersheds have been considered in citing these references.
2	General	The Draft Order has a dedicated section (Part 7) for definition of terms used in the permit. The definition section should include all terms that are potentially confusing or subject to interpretation, especially in light of the highly prescriptive nature of the permit. Additionally, the document currently contains definitions within findings and requirements that should more appropriately be included in the definition section. This created potentially contradictory definitions such as "Hydromodification" which, in the definitions, "means the alteration away from a natural state of stream flows or the beds or banks of rivers, streams, or creeks, including ephemeral washes, which results in hydrogeomorphic changes", and in Finding B.4 means "the high volumes and high velocities of storm water discharged from MS4s into natural watercourses can adversely impact aquatic ecosystems and stream habitat and cause stream bank erosion and physical modifications..." Other examples of definition needs are included in the specific comments below. Please incorporate all definitions in the Definition section.
3	General	Many of the Findings in Section B. Nature of Discharge describe potential impacts from stormwater and urban runoff. In the June 30, 1994, update to the Basin Plan, the Urban Runoff component of <i>Strategic Planning and Implementation</i> states that the "Regional Board's urban runoff management program (through both the Storm Water and Nonpoint source programs) continues to assess specific urban runoff problems and control strategies to remediate those problems". Please rectify the Draft Order's approach to pollutants of concern with this Basin Plan strategic effort.
4	General	The Permittees need regular collaboration on NPDES permits issued by the Regional Board that will discharge into the Permittees MS4 systems. What the regional board staff view as non-problematic as far as Basin Plan standards for the discharges they are permitting may be problematic to Permittees in addressing stormwater contributing to water quality impacts, or with TMDLs. Without this some sections of the Draft Order will be impossible to meet. Please provide a mechanism that will give the Permittees input into the permitting process.
5	Page 1, A. 1 and Page 11, D.2. (Findings)	(Permittees) "... have joined together to form the Ventura Countywide Storm Water Quality Management Program to discharge wastes." We actually joined to implement the stormwater program throughout the urbanized areas of the County. This was prior to the development and promulgation of the Phase II Stormwater Regulations. Federal Phase II stormwater requirements now address urban runoff concerns from the smaller cities (Ojai, Port Hueneme, Santa Paula, Fillmore, and Camarillo) and, as the MS4 systems are not considered interconnected (e.g., Los Angeles County and the city of Santa Clarita are not covered by this MS4 permit), there would be equity with other Phase II cities throughout the State if these cities were allowed to release from these very prescriptive

Attachment B - Specific Technical Comments for Ventura County MS4 Permit Draft Order 12/27/06

		requirements. At the time of the first permit only two Municipalities were required to obtain a permit to discharge. Please correct the finding to reflect this.
6	General Comment:	Numerous Findings cite outside source documents for support, however, it appears that at least some of these outside source documents are draft documents, have not undergone public review, or have not been formally adopted. To the extent that these outside source documents have not been finalized, publicly reviewed, and formally adopted, they cannot form the basis to support a Finding. Please inform us if the information found in the listed source documents is supported by the Regional Board and is consistent with the draft Permit.
7	Page 1, section 1	Change all references of "San Buenaventura" to "Ventura".
8	Sections in document relating to BMPs	The document indicates that BMPs shall be implemented. The BMPs referenced in the document were developed as guidelines for managing potential discharges. The RWQCB should clarify if the BMPs are requirements or suggested protocols. Additionally, the RWQCB/NPDES permit should specify if all measures listed in the specific BMPs are mandatory. If the BMPs are mandatory, further evaluation of the BMPs is necessary to determine if the BMPs are feasible. In some instances, changes to local ordinances would be required to implement the BMP.
9	P. 1 A.1 (Permit Parties & History)	In order to better define the co-permittees, the first sentence should be rewritten: "Ventura County Watershed Protection District (Principal Permittee), County of Ventura, Cities of Camarillo, Fillmore, Moorpark, Ojai, Oxnard, Port Hueneme, Ventura, Santa Paula, Simi Valley and Thousand Oaks, hereinafter referred to separately as Permittees..."
10	Page 4, Findings 8 and 9.	The 303(d) list provides information on waterbodies exceeding established water quality standards (40CFR130.7(b)). The 303(d) list does not provide information on, nor should it be used as justification for findings that require bioassessment and ecological restoration. The first sentence of findings 8 and 9 that reference the 303(d) list should be removed.
11	Page 6, Finding 12.	The finding regarding salts is inaccurate and inconsistent with the effective chloride TMDLs and the work being done to develop a salts TMDL in the Calleguas Creek Watershed. Salts impact agricultural and groundwater recharge beneficial uses and are only a concern for aquatic life at levels much higher than those required to protect agriculture. Additionally, swimming pools, though a potential salt source, have not yet been identified as a significant salt source to the waterbodies in any of the TMDL analyses developed to date. Finally, the effective chloride TMDLs do not include allocations for MS4 discharges. Therefore, this finding should be removed.
12	Page 6 B. 12 (Findings)	"Rising groundwater and swimming pool water... control the discharges from these activities in order to directly or indirectly reduce or eliminate discharges of salt to fresh water..." These requirements must match the Basin Plan for the TMDL salt implementation time (15 yrs). Please provide the reference for this Finding in the staff report and rectify the compliance timeline.
13	Page 7, section 15	While working on trash TMDL for the Ventura River Estuary and Calleguas Creek tributaries, staff observed that agriculture is a significant source of litter to watersheds. It is imperative that litter be included in the Waste Discharge Requirements for Discharges from Irrigated Lands. Additionally, litter should be added to the list of pollutants generated from irrigated agricultural facilities contained on page 7, section 15 of the draft MS4 Permit.
14	Page 7, B. 16. Page 8 B. 16	The statement relies on research from Los Angeles County to find that "similar patterns of aerial deposition likely occur in Ventura County." (emphasis added.) Please provide supporting documentation for this assumption.

Attachment B - Specific Technical Comments for Ventura County MS4 Permit Draft Order 12/27/06

	Findings
15	<p>Page 8 B. 18 (Findings)</p> <p>The Draft Order states "Nitrite and nitrate (NH3) are biostimulatory substances that can cause or contribute... Excessive nitrogen can lead to aquatic impairment, but is usually found in all natural systems. Ammonia, especially in its un-ionized form (NH3), is toxic to many aquatic organisms. Please rectify how a naturally occurring compound contributes to water quality exceedences and the biostimulatory characteristics of un-ionized NH3.</p>
16	<p>Page 8, Finding 17.</p> <p>The information referenced in this finding comes from two highly urbanized counties that significantly differ from Ventura County. The trash TMDLs currently being developed in Ventura County are in the process of identifying the sources of the trash and initial indicators suggest that the MS4s may not be the most significant source of trash. Additionally, the amount of trash present in the waterbodies is significantly lower than the amount found in Los Angeles County. Although trash is a potential problem in Ventura County, the problem is not of the same magnitude as that in other Southern California Counties and the finding should acknowledge the differences.</p>
17	<p>Page 8 B. 19 (Findings)</p> <p>"Pesticide categories include: Organochlorine, Organophosphorus, Organophosphate, and Pyrethroid." In Ventura County, the two most used pesticides (DPR Pesticide Use Report) are petroleum hydrocarbons and copper, their use is predominantly agriculture. Please provide a source for your finding.</p>
18	<p>Page 10 C. 4 (Findings)</p> <p>The Permittees were not made aware that the ROWD submitted to the Regional Board was considered " ..partially complete" after the supplemental information requested was sent to the Regional Board. Did the Regional Board inform the Permittees that the ROWD is still considered partially complete? If it is please explain in detail what is missing.</p>
19	<p>Page 10 C. 4 (Findings)</p> <p>Please clarify: "United States Environmental Protection Agency (REGIONAL WATER BOARD)"</p>
20	<p>Page 11 D.5 (Findings)</p> <p>This item states, "permittees are to work together cooperatively to control the contribution of pollutants from one portion of the MS4 to another portion of the system through inter-agency agreements or other formal arrangements." This requirement is ambiguous. Please elaborate as to when such inter-agency agreements or formal arrangements would be deemed necessary under the Permit.</p>
21	<p>Page 12 E. 4 (Findings)</p> <p>"The Porter-Cologne Water Quality Control Act ... authorizes the State Water Resources Control Board (State Water Board), through the Regional Water Boards, to regulate and control the discharge of pollutants into waters of the State and tributaries thereto." Not only is the tributary rule not defined (August 10, 2004, letter regarding the 2004 Triennial Review; March 30, 2005 comment letter on the Draft Tentative Conditional Waiver for Discharges from Irrigated Land), but the definition of Waters of the State would be all-encompassing anyway. Waters of the State covers all surface and groundwater within the State, and does not exclude treatment devices (grassy swale, constructed wetlands, etc.) disconnected surface MS4 features (e.g., curb and gutter). Please rectify this discrepancy.</p>
22	<p>P. 16 - 14 (a) (findings) p. 20 - F.1 (Implementation)</p> <p>This section is specifically directed to LA's SUSMP and not the board approved SQUIMP document for VC. Please rewrite to include specific adoption of SQUIMP. The permittees disagree with the finding that "ministerial projects" were included in SQUIMP. Additionally, the referenced resolution was adopted without solicitation of input from or notice given to Ventura County stormwater permittees. Please provide justification for this applying to Ventura County.</p>

Attachment B - Specific Technical Comments for Ventura County MS4 Permit Draft Order 12/27/06

23	Page 17, 16(b)	Please explain how the Construction General Permit affects or modifies the local MS4 permit regarding construction activities.
24	Page 17 E. 15 (Findings)	"The Regional Water Board supports Watershed Management to address water quality protection in the region... It emphasizes cooperative relationships between regulatory agencies, the regulated community, environmental groups, and other stakeholders in the watershed to achieve the greatest environmental improvements with available resources." In Ventura County the Regional Board has been a partner in TMDL development, however participation in the Countywide Stormwater Management Meetings ended over a year ago and there has been no stakeholder involvement in the development of the draft tentative permit. Please describe what the Regional Board views as a cooperative relationship.
25	Page 19, section 23	As written, this section is confusing. Please explain if it is legal for co-permittees' licensed applicators to properly use an aquatic pesticide, without additional permits or requirements.
26	Page 20 F. 2 (Findings)	The term "receiving waters" is not defined. Please add to Definitions section.
27	Page 20, F. 1	This item suggests that co-permittees should revise current ordinance conditions to modify ministerial projects to be become discretionary, thus becoming subject to storm water mitigation requirements. Including ministerial projects for inclusion under SQUIMP or a similar storm water mitigation program is unreasonable. Currently, the County departments receive several thousand permit applications for ministerial projects each year. Requiring each of these projects would prove to be extremely onerous on the County's resources. Additionally, we would assume that the term "all new development" as it is applied here is subject to the limitation of p. 10 item D.1. This should be clarified.
28	Page 20, F. 2 & F. 4 (Implementation)	The Draft Order requires implementation of BMPs to reduce discharge of pollutants "to the maximum extent practicable (MEP)", but Finding F.4 requires "all necessary control measures". This is not defined and may be different than MEP. Additionally "Successful efforts to reverse the wet weather impairments..." is not possible until critical regulatory tools are developed, including wet weather water quality objectives and "design storm" standards. Please rectify this discrepancy.
29	Page 21, F.3 (Implementation)	This item states, "This Order translates MS4 TMDL WLAs adopted by the Regional Water Board into forms "consistent with the assumptions and requirements of the TMDL", by use of alternate temporal increments, concentrations, presumptive BMPs, prohibitions, and other express limitations." This language is unclear as to exactly how TMDLs will be handled in the Permit. Please use the exact language in the TMDLs and their associated implementation plans or reference them.
30	Page 22, F.8	We greatly appreciate the intention to provide "flexibility" within this section. However, the flexibility requires documentation regarding alternative BMP effectiveness which was not provided for the "established" BMPs. The result is that there can be no meaningful comparative analysis. This applies to Section D.3(a) on Page 48 as well. Please provide a method for accurate comparisons or an alternate method for selecting alternate BMPs.
31	Page 23 F. 11 (Findings)	"Permittees shall implement a timely, comprehensive..." "Shall" language turns the Finding into a Requirement - it should be deleted.
32	Page 23 F. 13	"This Order contemplates that Permittees will ensure that implemented Treatment Control BMPs will not pose a safety or health hazard to the Public..." An example of where there are immediate problems with this Finding is

Attachment B - Specific Technical Comments for Ventura County MS4 Permit Draft Order 12/27/06

	(Findings)	the requirement to install trash excluders on all catch basin inlets. Not only does this requirement increase the flooding potential for most areas to which it would be applied, but a substitute BMP would need to be approved under F.8, that does not have a probable health hazard due to flooding or vectors. Please provide detail on the findings that there will be no safety or health hazard to the Public.
33	Page 25, G.3 (Public Notification)	Although the Board conducted four scoping meetings, none of them involved this level of detail or discussion relating to the possible imposition of these new requirements.
34	Pages 25 & 26 A.1. and A.2.	Both discharge prohibitions should include language regarding "discharge from an MS4 that have not been reduced to the Maximum Extent Practicable"... Please make this change.
35	Page 26 Part 1.A.3	The Draft Order states "Discharges to the MS4 not covered by a NPDES individual or general permit are prohibited." Permittees own and/or operate portions of the MS4 that receive agricultural runoff, which is exempt from NPDES permitting. We would not be able to meet this requirement. Please rectify this discrepancy.
36	Page 26, Part 1, B (Prohibitions)	The Draft Order requires Permittees to "effectively" prohibit non-storm discharges but does not define nor explain what is meant by "effectively" prohibit. Please add to the definitions section.
37	Page 26, Part 1, B.2 (6) (Footnote 2)	The Draft Order states "Releases may only occur with the implementation of appropriate BMPs..." Please revise this sentence to read " <u>Planned</u> releases shall only occur with the implementation of appropriate BMPs...."
38	Page 26, Part 1, B.2 (6) Potable drinking water supply and distribution system releases (Footnote 2)	The Draft Order states "Any agency or Municipal (i.e., water dept., fire dept., etc.) that either individually or collectively discharges or reasonable expects to discharge 100,000 gallons of potable water per year, shall submit an ROWD to obtain a separate NPDES permit under this order [see section G.10]." The permittees have no control over other "agencies" that may discharge potable water. Please define "Any agency or Municipal..." in order that we may understand to whom this requirement applies. Furthermore, please justify why municipal permittees that operate a potable water system should be burdened with a requirement (NPDES permit) that does not apply to private water purveyors and water districts. Also, explain how the 100,000 gallon per year figure was derived and what justification exists for regulating discharges of potable water that are greater than 100,000 gallons per year. Section G.10 (actually Part 3, G.10) Footnote 1 requires Municipal Potable Water Supply Systems to obtain coverage under the Regional Water Board NPDES Permit No. CAG674001 if the discharge is greater than 100,000 gallons per year. This general permit specifically regulates the discharge of Hydrostatic Test Water. Please provide justification on how this general permit applies to nonspecific discharges from a municipally owned potable water system.
39	Page 26, Part 1, B.2 (7) & (9) Drains for foundation, footing & crawl space)	This item lists fourteen categories of allowable "non-stormwater discharges" when conditions in Table 1 are met. However, in Table 1, drains for foundation, footing and crawl drains (item number 7) and water from crawl space pumps (item number 9) are required to have a separate NPDES permit for de-watering. There appears to be a duplicative permit condition. Only one NPDES permit should be necessary for discharge. By categorizing foundation, footing and crawl space dewatering discharge as an allowable "non-stormwater discharge" under the MS4 permit, additional NPDES permits should not be necessary. Please remove the requirement for a separate de-watering permit as indicated in Table 1.

Attachment B - Specific Technical Comments for Ventura County MS4 Permit Draft Order 12/27/06

40	Page 26, Part 1, B.2 (14) (Footnote 3)	The Draft Order states "... BMPs shall be designed to drain within 72 hours" Please amend to read "... within 72 hours of the end of the rain event."
41	Page 27, Part 1, B, Table 1	The Draft Order states "Water that is hyper-chlorinated shall not be Discharged... even after dechlorination." Hyper-chlorinated is not defined in the permit, please add a definition. There is no justification given for this requirement. If the dechlorinated water meets Basin Plan objectives, discharge to the storm drain system should be allowed. Please justify the prohibition.
42	Page 27 Table 1	"Flows from riparian habitats or wetlands" Is the word 'diverted' missing? Please clarify.
43	Page 29, Part 1, A, 3	This provision requires the Permittee to prohibit discharges or require implementation of appropriate or additional BMPs, however, it does not address situations where the Permittee has no jurisdiction or permit authority over the entity conducting the discharge. Please explain the procedure to enable a Permittee to monitor and impose conditions.
44	Page 29 Part 2.1	"Discharges from the MS4 that cause or contribute to a violation of water quality standards are prohibited." Please add the MEP qualifier.
45	Page 29, Part 2, 3	The Draft Order requires "timely implementation" of control measures, but does not define "timely implementation". Please provide a definition.
46	Page 29 Part 2.3 Footnote 1	The Draft Order states "... two or more exceedences of a Municipal Action Level (MAL) will create a presumption that the implementation of measures to reduce the pollutant(s) in MS4 discharges to MEP are inadequate." Proposed MALs are not designed to address Ventura County watershed concerns. Additionally, the proposed MALs are designed to be end-of-pipe triggers, but are contained in the Receiving Water section. Development of a State-wide Stormwater Policy would help in defining the eventual inclusion of MALs in permits.
47	Page 30, Part 3 A (d)	This provision requires that BMPs identified in a Receiving Water Limitations Compliance Report must be implemented within 30 days following approval by the Regional Board. As written, this provision eliminates the opportunity to choose structural BMPs that are a multi-year process to design, fund, obtain environmental permits, and construct. Please delete the last word in the sentence ("implemented"), and replace with "initiated". If structural BMPs are necessitated, implementation will be a multi-year process, not within 30 days, as stated.
48	Page 31, Part 3, B, 1	As written, this provision implies that the storm drain system shall be dry except during storm events. However, this permit, on page 26, section B, recognizes that there are 14 different sources of non-storm discharges into the MS4 that will be allowable, subject to the conditions identified. These 14 conditions recognize an unavoidable reality that non-storm discharges occasionally will occur. In light of this, please modify this provision to read: "... the effective control of dry weather discharges prohibition of non-stormwater discharges, except where such discharges are not a source of pollutants, and meet all conditions identified in Table 1 (Page 27)."
49	Page 32, Part 3, B.1 (b) 5.	Prohibition of swimming pool discharges: This section lists specific discharge limits for specific constituents in swimming pool discharges. What justification exists for regulating swimming pool discharges (de minimus volumes) to this extent? This is not an efficient use of resources to improve water quality. Furthermore, this requirement contradicts the conditions under which swimming pool discharges are allowed in Table 1 (page 28) of the draft permit.

Attachment B - Specific Technical Comments for Ventura County MS4 Permit Draft Order 12/27/06

50	Page 32 Part 3, B.2(b) Page 32 2(b) Findings	<p>"The permittees shall possess adequate legal authority to... Require persons within their jurisdiction to comply with conditions in the Permittees' ordinances, permits, contracts, model programs, or orders (i.e. hold dischargers to its MS4 accountable for their contributions of pollutants and flows)."</p> <p>"Discharges to the MS4 not covered by an NPDES individual or general permit are prohibited." The City owns and/or operates portions of the MS4 that receive agricultural runoff, which is exempt from NPDES permitting. We would not be able to meet this requirement (March 30, 2005, comment letter on the <i>Draft Tentative Conditional Waiver – Waste Discharge Requirements for Discharges from Irrigated Land</i>). There are other sources of discharge over which the Permittees have no authority such as State and Federal buildings. Please explain how the Permittees are to obtain the necessary legal authority.</p>
51	Page 33, Part 3, B. 3 and 4:	<p>Six months is insufficient time to complete major revisions to the Municipal Code. In order for the BMPs to have the force and effect expected by the Regional Board, they cannot simply be incorporated into ordinances by reference, as was done in the permit. At least two years will be required to prepare and adopt operating ordinances and codes. Requiring its legal counsel to declare that the Permittee has "obtained and possesses all necessary legal authority to comply with this Order" is infeasible, especially given the fact that it is unclear how Permittees will have legal jurisdiction to enforce some of the provisions of this Order (see above responses).</p>
52	Page 33, Part 3. C. 1:	<p>"The Permittees shall allocate all necessary funds to implement the activities required to comply with the provisions of this order." This sentence should be removed from the draft permit. Permittees can only allocate funds during the annual budget process and elected bodies have the final say on the budget. Compliance with the permit is a multi-year endeavor. Also, given the onerous financial burdens being imposed by this Order, it may be impossible to allocate sufficient funds to comply. Please rewrite this section in light of these facts.</p>
53	Page 33, Part 3. C. 1. a	<p>In actual practice, tracking time charges will be costly and lack accuracy. Admirably, stormwater efforts have become an ingrained and inseparable portion of many tasks, performed by numerous staff across a wide range of agency programs, and cannot be accurately identified. Some stormwater quality expenses are clearly and readily identifiable, but many are imbedded in myriad activities and cannot be measured. Additionally, Permittees do not typically track inter-program, and interdepartmental actual expenses on this level, and would require extensive staff time to implement a system to record, monitor and report these expenses. Implementation of this provision would not improve water quality, but it would require extensive staff time to implement and report that could otherwise have been spent on water quality improvements. Please eliminate this provision.</p>
54	P. 34 Part 3 – C (Budget) P. 80 Part 4, G.6 (Public Agency)	<p>Street sweeping is an effective BMP for removing pollutants such as trash from curbs/gutters and costs for all street sweeping should be accounted for in the stormwater program budget. If trash excluders are required on all catch basins (including residential areas), street sweeping will be a necessary component for removing the debris that collects in the street and curb area in front of the catch basin excluder; therefore, it should be accounted for in the stormwater program budget. Please allow for its inclusion into the budget.</p>
55	Page 34 Part 3, C.1(3)(B)	<p>"Program Required Activities Implementation (storm water related activities only). Provide figures breakdown of expenditures for the categories below." Please explain what "figures breakdown" means?</p>
56	Page 34, Part 3, D. 1:	<p>Ninety days is insufficient time to complete revisions to "programs, protocols, practices and municipal code". We suggest that the permittees be allowed two years to complete this requirement. Also, this requirement conflicts with Part 3, B. 4 which provides for six months to complete revisions.</p>

Attachment B - Specific Technical Comments for Ventura County MS4 Permit Draft Order 12/27/06

57	Page 35 Part 3, E.1	"The Ventura County Watershed Protection District is hereby designated as the Principal Permittee." Please cite in Finding or Staff Report the authority used to make this designation.
58	Page 35, section 1 and Page 36 Part 4 B 1	Placing mandates on which staff attends certain meetings may create costly and inefficient duplication of efforts. For instance, if a co-permittee is already participating on the County Environmental Crimes Task Force, and is willing to represent the Countywide Stormwater Program at the Task Force, and to report on these issues at the Countywide stormwater meetings, why should the Principal Permittee also attend? Please allow flexibility here so that Permittees can pick the most economical way to comply. Also, Section E should be retitled to "Designation and Collective Responsibilities of the Permittees", to allow permit compliance in the most efficient manner.
59	Page 36 F(e)(f)	Mandatory meeting attendance for mandatory monthly meetings is not an efficient use of time. This is to be a five year permit, and after the first two years many new programs and requirements will have been developed and implemented. During the later half of the permit term the Permittees will not have as much to meet about. The frequency of these meetings is a huge 20-25 staff hours/month drain on city resources (especially smaller cities with small staffs). Additionally, circumstances beyond the Permittee's control can cause them to miss a meeting. Please relax the attendance requirement to 90% for all subcommittees and the management committee and limit the mandatory meetings to quarterly.
60	Page 36 Part 4	Part 4 is titled SPECIAL PROVISIONS (BASELINE) Please explain what Baseline means/ implies?
61	Page 36 Part 4 A 2	The BMPs referenced in the document were developed as guidelines and do not have specific measurable values, no baseline for the standard and no established criteria for evaluation. Please describe how substitute BMPs are to be evaluated and how they compare with the original BMPs.
62	Page 37 C	"To measurably change the waste disposal and storm water pollution . . ." Please explain what kind of measurement is acceptable and what baseline should be used?
63	Page 37, f	Direct stormwater participation in these efforts is a poor use of limited staff and financial resources, with no direct benefit to the steelhead. Non-participation allows more effort in activities that improve water quality, which will then benefit steelhead. Meeting attendance diverts staff time and funding away from water quality efforts. Please delete participation in the (f) Steelhead Restoration and Recovery Plan.
64	Page 37, g	Participation in the Ventura County Task Force of the Wetlands Recovery Project will already connect the stormwater quality and wetlands groups. Traveling to statewide meetings is expensive, time consuming and will not further improve water quality. Please delete participation in the statewide Wetlands Recovery Project.
65	Page 38 Part 1 C. 1. (c) (1)	The consultation, input and assistance of the Permittees will create more effective and better targeted outreach programs. Please change to: Collaboratively the Permittees, shall implement the following activities:
66	Page 38, Part 4, C. 1. (c) (1) (E)	There are already watershed based groups in the major watersheds of Ventura County such as Friends of the Santa Clara River, Calleguas Creek Watershed Management Plan and Malibu Creek Watershed Advisory Council. Working within the existing group structures will be more effective than starting a new group or committee. The sentence should be revised to read: " <u>Work with existing local watershed groups or organize Citizen Advisory Groups/Committees . . .</u> "
67	Page 38, Part 4, C. 1. (c) (5)	The existing permit requirement is 2.1 million impressions based on three times the population of Ventura County. The latest US Census data (2005) shows Ventura County with a population of 796,000. The requirement in the

Attachment B - Specific Technical Comments for Ventura County MS4 Permit Draft Order 12/27/06

		<p>draft for 10 million impressions is 12.5 times the population. This is an inappropriately large increase. During the last reporting period an extra effort was made by all permittees to ensure the success of a new outreach campaign, and through that effort 10 million impressions were achieved. However, that was a unique year and would have not been possible without the in-kind donations given by several media organizations. To make 10 million impressions year-after-year is an excessive increase in the permit requirements. 5 million impressions, still over twice the previous requirement, would be realistically achievable and leave resources available for more in-depth educational opportunities.</p>
68	<p>Page 39 Part 1 C 1. (c) (6)</p>	<p>We are in agreement that educational outreach to children is an important way to affect a change in behavior. However, requiring that this be done in schools presents difficulties. None of the Permittees has the authority to put any material into a classroom. It will be up to the discretion of the educational system to use anything provided to them, including resources from AB1721. Targeting all grades from K-12 compounds the obstacles because not all those grades have in their curriculum subjects that are open to the stormwater pollution message. For example, the stormwater message may be perceived as acceptable to include in earth and life sciences which are taught in grades 6 and 7, but not for physical science which is taught in grade 8. In grades 9-12 science is presented as discipline-specific courses - which are not required to be taken by all students.</p> <p>The Environmental Education Account is an option, however, there is no guarantee that money given to the account will be spent in Ventura County or on stormwater pollution, or that it will even be used in the classroom. According to the Cal/ Environment and Education Initiative website, spending money in the account requires both Legislative appropriation and consultation with the California Integrated Waste Management Board, but no consultation with the State Water Resources Control Board. There is a concern that these funds will be used exclusively for litter and recycling programs, and that the Permittees will still be responsible for measurable improvements.</p> <p>All available resources for children outreach would be spent to meet this prescriptive requirement. That prevents creative alternative approaches that would use other known effective outreach methods such as television, radio and the internet. Reaching a target audience is various ways is considered a more effective method to affect a behavior change.</p> <p>We would suggest a focused requirement to provide educational outreach to the same number of school-aged children. This would allow the Permittees the flexibility to develop a program that will have a better chance of success and maximize the benefit of their resources.</p>
69	<p>Page 39, Part 4, C. 1. (c) (8)</p>	<p>Measuring the effectiveness of outreach to children is an appropriate part of the program. However, we believe a more effective program would be one that is outside the classroom. Any measurement in classrooms will require cooperation from schools to administer the surveys or tests and then share the data. The Permittees have no authority to do this. Also, 180 days to formulate and implement (does implement mean adopt a strategy, begin implementation, or conduct the educational program and measure its effectiveness?) a measurement strategy is insufficient time. Please change to one year.</p>
70	<p>Page 39 Part 4, C.1(d) and</p>	<p>"The Principal Permittee, in cooperation with Permittees, shall coordinate to develop outreach programs that focus on the watershed-specific pollutants identified in Attachment "B" (Pollutants of Concern) no later than..." There are a couple of steps missing in this requirement. Attachment "B" POCs are not watershed-specific, and</p>

Attachment B - Specific Technical Comments for Ventura County MS4 Permit Draft Order 12/27/06

	Attachment B	these POCs, based on receiving water monitoring, have not been compared to land use monitoring, which would give an idea of which POCs are contributed to by urban runoff. Please rectify this requirement or delete.
71	Page 39, Part 4, C. 1. (c)(9)	Please explain what is meant by "develop and implement a behavioral change assessment strategy? This requirement is vague. Also, 180 days to formulate and implement this program is insufficient time. We suggest one year.
72	Page 39, Part 4, C.1(C)(9) (Footnote 1)	"Matching funds shall be equivalent to \$10 per targeted student per year." Please justify how the \$10 per student figure was derived? AB 1721 does not legislate a "dollar per student" equivalent figure. \$10 per student is extremely high. We suggest that the equivalent dollar amount be reduced to \$1 per student, if donation to the Environmental Education Account remains an option. Additionally, does "indexed" refer to the consumer price index? If so, which index? Please state which index it is to avoid time wasting and costly confusion at a later date.
73	Page 40, section 1.A.	Please define "corporate management" and "confer". Also, provide details for handling a corporation that is headquartered in another part of the United States or another country.
74	Page 40 Part 4 C. 2. (a) (2)	Notwithstanding the objections to this requirement, the Corporate Outreach section, Part 1 C 2. (a) (1), defined the minimum number of corporate franchisees to target. Clarification is needed in this section to refer to the targeted franchisees. Please change to: Corporate Outreach to all targeted RGOs . . .
75	Page 40, Part 4, C. 2. (b) (1) Page 40, section B	On-site technical assistance or consultation presents a serious liability problem for the Permittees. The section should be revised to read: "On-site technical assistance, or consultation via telephone or e-mail to <u>provide recommendations or guidelines</u> to identify and implement storm water pollution prevention methods and best management practices."
76	Page 41 Part 4, D.1(a)	The Draft Order states "Each Permittee shall maintain a watershed-based inventory or database of all facilities within its jurisdiction that are critical sources of storm water pollution." The term "critical source" is not defined; however, Attachment D lists "Critical Sources Categories". Also, there doesn't seem to be a Ventura County specific finding on the need for this program. Please add the definition to the permit, and include the rationale for these specific sources in the staff report for the permit. A re-direction of resources for problems that don't exist in Ventura County watersheds is potentially damaging to our program.
77	Page 41, section 1.a.3.A.	It is wasteful and inefficient for the co-permittees to perform this function already performed by the Regional Board, and pulls resources away from activities that will improve water quality. Please delete municipal landfills from the MS4 permit, as the landfills have their own permits from the Regional Board.
78	Page 42, Part 4, D. 2. (a) Page 47 D. 2. (b)(1)(B)	The Draft Order states "Permittees shall require implementation of additional treatment control BMPs where storm water flows from the MS4 discharge to an ESA or a CWA 303(d) listed waterbody" The requirement for the installation of treatment controls BMPs at all critical sources that discharge to a storm drain system which discharges to an ESA or a 303(d) listed waterbody is much too inclusive of facilities and pollutants. Furthermore, the suspected pollutants of concern that would come from a critical source must be matched to the impairment in the 303(d) list for the required treatment controls to be effective. Finally, the legal authority of the Permittees to require a critical source who is not requesting improvement permits to implement additional treatment control BMPs is questionable. In most communities, every critical source would be required to install treatment control BMPs, since most

Attachment B - Specific Technical Comments for Ventura County MS4 Permit Draft Order 12/27/06

		Permittees' storm drain systems drains to 303(d) listed waterbodies. The Permittees have worked cooperatively with the Regional Board to develop TMDLs to address the 303(d) listed waterbodies. The requirement for treatment control BMPs at every critical source is unwarranted and we strongly suggest that the requirement be removed from the permit.
79	Page 42, Part 4, D. 2. (a) (1), (2), (3) and (4)	Tables 2 through 4 list the mandatory BMPs that shall be implemented by the critical sources. These BMPs came from the 2003 California Stormwater BMP Handbook which expressly states that "it is not the intent of this handbook to dictate the actual selection of BMPs... but rather to provide a framework for an informed selection of BMPs". Making these BMPs mandatory is contrary to this statement. Furthermore, each BMP section listed has multiple and redundant BMPs which no single location could feasibly implement. Please change sections to read: "BMPs in <u>from</u> the following Table (X) shall be implemented to <u>effectively control polluted runoff</u> , unless the pollutant generating activity does not occur."
80	P. 48 Part 4 D (Critical Sources inspection)	The Draft Order states "Those BMPs that are not adequate to achieve MALs and/or water quality objectives, Permittee may require additional site-specific controls, such as treatment control BMPs." We do not have a baseline to measure effectiveness of treatment control BMPs. Please provide sources to determine baseline effectiveness.
81	Page 48 D. 3. (a)	Proving that a BMP "will achieve the equivalent reduction of pollutants" would require a database of baseline data on all the BMPs. Please provide this information or change language to read "will achieve the equivalent <u>similar</u> reduction of pollutants".
82	Page 48 (d)(1)	The Draft Order states "Referral of Violations of the Municipal Storm Water Ordinances and California Water Code §13260: A Permittee may refer a violation(s) to the Regional Water Board provided that that Permittee has made a good faith effort of progressive enforcement." While it makes sense for the Permittees to enforce their own ordinances, where appropriate, with escalating enforcement action, there is no mechanism that would allow the municipalities to enforce Porter/Cologne directly – especially for non-payment of fees, or non-submittal of reports. Please delete the reference to the California Water Code.
83	Page 48 3(c)(3)	Permittees found to have enforced local municipal codes in good faith should be exempt from any and all penalties the Regional Board could impose for the violation, i.e. Only the offending party would be penalized, not the Permittee. Please add a definition of Good Faith and include an exemption from penalties to the Permittees.
84	Page 48, Part 4, D. 3. (a) and (b)	The requirement for the installation of additional BMPs at critical sources that discharge to a storm drain system which discharges to an ESA or a 303(d) listed waterbody is much too inclusive of facilities and pollutants. Additionally, determining if a facility is "causing or contributing to exceedences of MALs and/or water quality objectives" requires the Permittees to sample each critical source. This requirement is unwarranted and we suggest that the requirement be removed from the permit.
85	Page 49 (4)	Please explain in detail what is meant by "Support of Regional Water Board Enforcement Actions:..."
86	p. 50 Part 4 E 1 (Planning & Land Dev.)	The Draft Order states "The permittees shall implement a development-planning program that will require <i>all</i> new development and redevelopment projects..." This provision should only apply to projects that disturb soil area of 1 acre or more that are subject to SQUIMP, single family residences and redevelopments under 5,000 SF should remain exempt.

Attachment B - Specific Technical Comments for Ventura County MS4 Permit Draft Order 12/27/06

87	Page 50 Part 4, E. 1	<p>Development projects are defined in the Draft Order to include any construction or reconstruction of residential projects (even if no land disturbing activities are conducted). Requiring these conditions on small home improvement projects is unwarranted and does not provide relief for the hardship of rebuilding a home after a fire or other catastrophe. Please provide a single family residence exclusion or redefine development project to exclude single family residences. This section is also redundant and vague. Subsections d and f, for example, reference Low Impact Development strategies, however, this already appears to be a proposed requirement under the following section E.1.1 labeled "Low Impact Development". Subsection f also requires the selection of an "integrated approach" to mitigate stormwater pollution, but does not define or reference 3 of the 4 available options, including "Integrated Water Resource Management Strategies", "Multi-benefit Natural Feature BMPs", or "Prefabricated/Proprietary Treatment Control BMPs". These options should be defined and referenced. Subsections c, and d also require Permittees to "minimize" impervious surface and pollutants. Also, please provide the criteria to be used to evaluate if these factors have been minimized?</p>
88	Page 50 E.1(b) - Footnote 1	<p>The footnote references the use of "Native Vegetation" and "using approved dispersion techniques" for vegetated swales. This requirement conflicts with the Ventura County Technical Guidance Manual for Stormwater Quality Control Measures for "filter swales" which requires the use of fescue grasses mowed to a height of 4 to 6 inches. Please restate the footnote to read..."Impervious surfaces may be rendered "ineffective" if the storm water runoff is dispersed through properly designed vegetated swales as specified in the Ventura County Technical Guidance Manual for Stormwater Quality Control Measures".</p>
89	Page 50 E.1(b) - Footnote 1	<p>Please provide information on what constitutes a "properly designed vegetated swale ... using approved dispersion techniques?"</p>
90	Page 50, section E.	<p>The Permittees are committed to being national leaders in Smart Growth, using low impact development principles whenever possible. However in the coastal watersheds the hydromodification requirement needs to be clarified. Many of the Downtown storm drains discharge directly into the surf zone, with no hydromodification impacts to natural areas. Please provide an exemption to projects in these direct ocean discharge watersheds that do not increase runoff beyond existing 100% developed conditions.</p>
91	Page 50, section E.1.(b)	<p>Of particular concern is the provision that would require the Effective Impervious Area to be less than 5% of total project area. (Draft Order, p. 50.) Presumably these are drive lane areas of entrance/exits where grade constraints do not allow for softscape diversion. However, smart growth projects such as high-density developments and smaller size drive through restaurants do not have the same options afforded to larger urban sprawl projects yet they are still required to have entrance/exit lanes. Due to space constraints, it would be very difficult for many small, smart growth projects that constitute in-fill to meet the 5% requirements as expressed above. Thus, the Permittees recommend that the Draft Order be amended to remove specific percentage requirements and allow for high density developments that are consistent with smart growth policies.</p>

Attachment B - Specific Technical Comments for Ventura County MS4 Permit Draft Order 12/27/06

92	Page 51, Part 4, E. I. 1. & 3	<p>“All new development and redevelopment projects shall integrate Low Impact Development (LID) principals into project design.” These LID principles must be explicitly defined, with references to related research, source documents, and successful regional case studies, in order to understand proposed requirements. Section E. I. 2. requires the permittees to develop a LID Technical Guidance Document within 18 months from the Order’s adoption date. <u>These materials need to be developed for local and regional conditions before developers can be expected to meet the criteria.</u> Additionally, local pilot studies and case studies have not been performed. Thus 18 months is an insufficient period of time.</p> <p>Part 4, E. I. 1. must specify an effective compliance date for “All new development and redevelopment...” and must exempt projects that have received their entitlements and/or have been deemed complete for processing; development projects that have received their entitlements or have been deemed complete for processing (but have yet to begin construction) may no longer be subjected to new requirements (per State law). A phased approach of research, guidance development, pilot studies, training and implementation would be preferred and would be more effective.</p>
93	Page 51 Part 4, E. I. 1.	<p>The “predevelopment (hydrologic functions)” statement is inappropriate. Redevelopment sites do not have what is termed in the “Definitions” section (Part 7, pg. 104) as “native vegetation and soils,” thus such conservation measures cannot be summarily prescribed for all new development and redevelopment. Such constraints on redevelopment encourage sprawl and discourage smart growth. Please remove this requirement from redevelopment.</p>
94	P. 51 Part 4 E (Low Impact Dev)	<p>“The permittees shall implement a development-planning program that will require <i>all</i> new development and redevelopment projects...” Should only apply to projects that disturb soil area of 1 acre or more that are subject to SQUIMP, single family residences and redevelopments under 5,000 SF should remain exempt.</p>
95	Page 51 Part 4, E. I. 1 & 2	<p>It will be difficult for “all new development and redevelopment projects” to integrate Low Impact Development (LID) principles into the project design when the LID Technical Guidance Document may not be available to the developers for 18 months after the Order’s adoption date. This specific provision requires the completion of a new product, for the new and rapidly changing field of low impact development. A quickly produced document will satisfy the provision, but may not be useful. Please change this deadline from 18 months to three years. Please define “LID Translators”.</p>
96	Page 51, Part 4, E. I. 2. (e) (f) & (h)	<p></p>
97	Page 52, Part 4, E. II. 1(a)	<p>The Dnat Order states “This shall be achieved by maintaining the project’s pre-development storm water runoff flow rates and durations.” The preferred means to maintain runoff at a pre-development rate has been through metered-flow out of a detention facility (tank, open basin, buried pipes, etc). The pre-developed flow rate can be simulated by design, but the <i>duration</i> of that flow must necessarily be longer due to a larger yield-volume being produced by the impervious surfaces of the developed site. If this requirement is included in the final permit language, <u>development must necessarily stop</u> in all watersheds tributary to natural drainage systems, including the Ventura River, Santa Clara River, Calleguas Creek and miscellaneous Ventura coastal watersheds. Please provide alternatives that will allow for continued development and housing.</p>
98		<p>“Numeric Hydromodification Mitigation Criteria” – There seems to be a disconnect between the various sub-</p>

Attachment B - Specific Technical Comments for Ventura County MS4 Permit Draft Order 12/27/06

	<p>Page 52 II.1 (a)</p>	<p>section of this section. Sub-section (a) is mandating "maintaining the project's pre-development storm water runoff flow rates and durations" which appears to be put on hold by sub-section (e) which provides interim requirements. Sub-section (d) and (f) discuss a study by the Southern California Storm Water Monitoring Coalition (SMC) to determine how to best mitigate downstream erosion. Section (g) then requires the permittees to prepare and implement Watershed Hydromodification Control Plans (HCP) based on the SMC study. These HCPs would include setting standards for hydromodification management. If the HCP is intended to determine the most appropriate implementation of hydromodification management, why does section (a) dictate "maintaining the project's pre-development storm water runoff flow rates and durations" when the SMC study and HCP are future products with unknown results? Please rectify these contradictions and inconsistencies.</p>
<p>99</p>	<p>52 / Part 3 E. II. 1. (a)</p>	<p>Local Agencies cannot condition a building permit that would require downstream hydrologic control measures without a clear nexus. These requirements could only be attached through a discretionary permit process or a ministerial grading permit if applicable. Recommend the wording be revised as "<i>Where appropriate and when a direct nexus occurs, the local agency may require new development and re-development to...</i>"</p>
<p>100</p>	<p>Page 52, Part 4, <u>E.1.II.1(c)</u></p>	<p>Upon review of the equations involving Erosion Potential, E_p (in Attachment E), the prolonged flow-duration time resulting from the proposed detention solution discussed above will cause an increase in the delta-time. Similarly, it can be expected that applied shear stress (τ_i) will increase since the flow will be without sediment. Thus, the post-development value of Work (W_{post}) will be higher than the pre-developed (W_{pre}). The ratio value of Ep would therefore always be higher (i.e., exceed the value of 1.0) in the post-development era. If this requirement is included in the final permit language, development must necessarily stop in any watershed tributary to natural drainage systems. Please provide alternatives that will allow for continued development and housing.</p>
<p>101</p>	<p>Page 52, Part 4, <u>E.1.II.1. (d) and (f)</u></p>	<p>Pursuant to a January 24, 2007 conversation with Dr. Eric Stein of the SMC, their study is just getting underway with site-selection in the Spring 2007, with anticipated completion in March 2010. The Ventura Countywide Stormwater Quality Management Program Planning and Land Development Subcommittee intend to join the effort and provide a list of target study sites and tributaries. Given the timeframe of the SMC study, 18 months from the adoption of the proposed permit is insufficient time and should be extended.</p>
<p>102</p>	<p>Page 52, II.1(d)(2)</p>	<p>A phased approach of research, guidance development, pilot studies, training and implementation is requested. Please consider this option.</p>
<p>103</p>	<p>52 / Part 3 II.1.(d)</p>	<p>The NPDES permit should not refer to a future study and whatever that future study finds or concludes will automatically be a part of the permit when it is finalized. That does not allow for public input/debate and for the local agency input. Please delete reference to the future SMC study until it is relevant and available for peer review.</p>
<p>104</p>	<p>Page 53 II.1 (e)</p>	<p>"Numeric Hydromodification Mitigation Criteria" – This sub-section is not a continuation of the requirements of the previous permit as is implied by the statement "Permittees shall continue to implement ..." It would seem more appropriate to continue the previous interim requirements in lieu of the new wording. Please reevaluate this requirement and explain how it is a continuation of the previous permit's requirements.</p>
<p>105</p>	<p>Page 53 II.1(e)(1)</p>	<p>Clarification is requested. Does this apply to every project less than 50 acres, and for what design storm Q? Also, please provide background that any unintended consequences on beach nourishment impacts downstream</p>

Attachment B - Specific Technical Comments for Ventura County MS4 Permit Draft Order 12/27/06

106	p. 52-53 Part 4 E II (Numeric Hydro Mitigation Criteria) II. 1 (e) (1) "Interim Hydro. Criteria –	<p>have been considered.</p> <p>Hydrologic control for projects disturbing land area of less than 50 acres shall involve matching the hydrograph for the 2 year post development peak flow, volume, and duration to the predevelopment peak flow, volume, and duration for the 2 year 24 hour storm event (not exceeding the pre-development flows)."</p> <p>More scientific study is needed before requiring even "interim" hydrologic controls. It is questionable whether matching the 2 yr. post dev. peak flow, volume and duration with the pre-development peak flow is even possible. We suggest that we wait until outcome of SMC HCS is completed; and if necessary, the Permittees be allowed to develop an interim hydrologic criteria within 18 months of permit adoption. Additionally, this requirement should only be applied to new developments and redevelopments that are subject to SQUIMP.</p>
107	Page 53, Part 4, E. II. 1. (e)	<p>Interim hydromodification criteria: As described in the comments above, the proposed requirement to maintain pre-development peak flow, volume and duration is infeasible, particularly on tight soils (i.e., soil types 1, 2 and 3). Please provide relief for these situations.</p>
108	Page 53 II.1 (e)(2)	<p>"Numeric Hydromodification Mitigation Criteria" – This sub-section does not specify which storm event(s) (recurrence interval) must be evaluated to be in compliance with the permit. Please clarify.</p>
109	Page 53 II.1 (e)(2)	<p>"Numeric Hydromodification Mitigation Criteria" – The interim Hydromodification criterion under sub-sections (1) and (2) should only be applicable to projects that connect to unlined drainage systems. Hardened downstream conveyance systems have no potential for downstream erosion. Please exempt projects that drain to hardened downstream conveyance systems.</p>
110	Page 53, section f	<p>Please change "... (18 months from the Order's adoption.)" to "... (18 months from the Order's adoption, or the date the Regional Board notifies the Permittees that the SMC is not proceeding with the HCS, whichever is greater.)</p>
111	53-54 / Part 3 II. 1.(e), (f), (g)	<p>One of the difficulties in this NPDES section is determining the 2-year storm event. In the County of Ventura, rainfall intensity charts are based on 10-year, 25-year, 50-year, and 100-year storm events. Most design engineers and the public at large rely on the Watershed Protection District's rainfall intensity charts, which are provided for in the Hydrology Manual. The County of Ventura strongly recommends that the NPDES Permit storm events be based on available rainfall data that is provided by Watershed Protection District and secondly that the appropriate rainfall storm intensity charts contained in its Hydrology Manual. Secondly, generating storm hydrographs for isolated watersheds less than 50 acres is not common land development engineering practice. Most designers will compare the Q10-year undeveloped flows with the Q10-year developed flows and design that the excess or difference in the flows be contained onsite and either percolated into the ground or allowed to discharge at the Q-10 undeveloped flow rates. County of Ventura highly recommends that a practical and common sense methodology is used that is more in line with what land development engineers provide local agencies for hydrologic and hydraulic review.</p>
112	Page 54, Part 4, E. III.1 (a)	<p>Please change to "... shall require that during the construction design of a single-family hillside home... " "Hillside home" should be defined as homes requiring grading on natural slopes that are 25% or greater, not 20% or greater. The current definition for a hillside in NPDES permit CAS004002 is a slope of 25% or greater.</p>
113	54-55 / Part 3	<p>Post construction BMPs cannot be required on any project unless it is through a discretionary permit process.</p>

Attachment B - Specific Technical Comments for Ventura County MS4 Permit Draft Order 12/27/06

	III .2. (a) & (b)	<p>The post construction BMPs would require a clear nexus for the need of such improvement. For example, most ministerial permits, such as a grading permit or a building permit, would not have the property owner stenciling offsite storm drains and putting up signage because there is no nexus for this. Additionally "conserving natural areas" is vague and arbitrary. There is not a clear standard that can be equally applied to all projects as the NPDES Permit requires. The NPDES Permit should omit and avoid subjective conditions and requirements that legally cannot be applied. Please limit this requirement to discretionary projects.</p>
114	Page 53, section E.II.1(g)	<p>The development of and implementation of Watershed Hydromodification Control Plans will be a lengthy, complex process. As written, Permittees must identify tributary classifications, flow rate and duration control methods, sub-watershed mitigation strategies, and any in-stream control, which will maintain the stream and tributary Erosion Potential at "1", unless an alternative value can be show to be protective of the natural drainage systems from erosion, incision, and sedimentation that can occur a result of flow increases from impervious surfaces. Six months is not enough time to secure consultant services, develop and implement the Plans. The time requirement for this provision should be changed from six months to at least one year.</p>
115	Page 54 Part III.1(a)(1)	<p>Please define "conserve" as it relates to natural areas?</p>
116	p. 54 Part 4 E III 1 (a) (3)	<p>The Draft Order requires each permittee shall require that during construction of a single-family hillside home, measures be taken to...Provide storm drain system stenciling and signage... Marking inlets at SFRs is not practical, they will likely be removed by the owners and there will be no realistic way to enforce this condition after occupancy. This will create much work with little improvement in water quality. Please delete 1(a)(3).</p>
117	55-56 / Part 3 II .2. (a)	<p>On projects under 50 acres, this approach seems extremely difficult since the rainfall data is not readily available for the methodology proposed by the NPDES Permit. As previously noted, generating storm hydrographs for isolated watersheds less than 50 acres is not common land development engineering practice. Most designers will compare the Q10-year undeveloped flows with the Q10-year developed flows and design that the excess or difference in the flows be contained onsite and either percolated into the ground or allowed to discharge at the Q-10 undeveloped flow rates. The Q10-storm data is readily available in Ventura County by the Watershed Protection District Hydrology Manual, which is based on rainfall data in the County of Ventura. Please justify 50 acres as the limitation between small and large projects.</p>
118	Page 54 II.1(g)(2)(G)	<p>Please provide definition or resources for "Goodness of fit criteria".</p>
119	Page 55, Part 4, E. II.1(c)	<p>Reduction from 100,000 sq. ft. (current permit) to 5,000 sq. ft. (draft permit) is extreme and overly burdensome in that it will result in the conditioning of essentially every industrial and commercial development project for the design and implementation of treatment control BMPs. Please change the requirement to 43,560 SF or one acre for commercial and industrial developments. In addition, these conditions should apply to stand alone projects where the developer has control over the site to implement the treatment control BMPs.</p>
120	Page 55, III.1 (c)(2)	<p>Please identify the types of facilities by SIC and NAICS Codes as proposed, including SIC Code 5511, which is the only difference in SIC category between "automotive repair shops" as regulated under the current permit, and the proposed "automotive service facilities" in this draft permit. Please cross-reference definitions of automotive</p>

Attachment B - Specific Technical Comments for Ventura County MS4 Permit Draft Order 12/27/06

121	P. 55 Part 4 E III 2 (a) (Post Construction Mitigation – Tiered Numeric Water Quality Design Criteria)	service facilities and automotive repair shop. "Projects disturbing land areas less than 50 acres – Each permittee shall require that post-construction BMPs incorporate, at a minimum, a volumetric and/or hydrodynamic (flow based) treatment control design standards..." Same comment as comments made above. Please change to projects disturbing land areas between 1 and 50 acres.
122	Page 55, III. 1(c)(1) (2) (3) & (4)	This condition should apply to stand alone projects where the developer has control over the site to implement the treatment controls.
123	Page 55, III. 1.(c)(4)	SIC code 5812 used in the provision is outdated and no longer applicable. Please use the current NAIC codes.
124	Page 55, section c.6	The Draft Order states "street sweeping, catch basin cleaning and catch basin inlet excluders provide ongoing treatment controls for street projects." If this is a finding, please provide a reference or delete this provision.
125	Page 55, III. 1(c) (7) –	Please use the current NAICS numbers instead of SIC.
126	Page 56, Part 4, E. III. 2 (a) (2) (B)	Ventura County has a high variety of rainfall intensities, please change to "... 85 th percentile hourly rainfall intensity for Ventura-County <u>local region</u> ."
127	Page 56, Part 4, III. 2 (b) (1)	Hydrodynamic models can be continuously developed and improved and the selection should not be limited to public domain models. Please allow for other models to be used.
128	Page 56, Part 4, III. 2 (b) (1)	The requirement for developers with projects over 50ac to use HSPF or SWMM to evaluate their water quality impacts appears to be driven by water quality issues. HSPF is a continuous model that cannot be used to evaluate design storm runoff due to development without extensive work to develop a methodology for this. The use of these models requires complex modeling and data gathering efforts. There are only a few consultants in the County that currently have this modeling capability. The Watershed Protection District does not currently have enough expertise to do a thorough review of these models and would need ample time to develop it. Please explain exactly what goals are to be achieved through the use of these models and provide alternatives or the flexibility for them to be developed if there are less cumbersome ways to achieve them.
129	Page 56, III. 3(a)(1)	To avoid confusion of definitions and intent please exempt residential zoning from these requirements.
130	Page 57, section 4	This section penalizes high-density, low impact urban redevelopment projects. Smart growth, in itself, is a best management practice. The desired goal should be to reward increased density, and discourage sprawl. This is not consistent with other sections of the permit that encourage low impact development. Please rectify this inconsistency.
131	Page 57, III.4.(c)	Asphalt and roadway surfaces have a limited service life and maintenance is a continuous, routine and ongoing

Attachment B - Specific Technical Comments for Ventura County MS4 Permit Draft Order 12/27/06

		<p>effort to rehabilitate the surface as it weathers and ages. Rehabilitation projects overlay an existing road footprint and do not disturb additional area or natural earth. Further these projects are considered Categorically Exempt under CEQA and Categorically Excluded under NEPA. To require a higher standard for projects in the County of Ventura is an additional and unfunded requirement not anticipated by Congress when they approved the Clean Water Act or related amendments. Performing this ongoing maintenance does not present the opportunity to redirect flows to treatment with out changing line and grade. Please add "if it changes line and grade", or provide a definition for "impervious surface replacement" as an activity that changes line and grade.</p>
132	Page 57, III.4.(d)	<p>Are structures built as accessory to single family dwelling also exempt from redevelopment requirements? Those would include agricultural structures, detached garages and workshops, pool houses, etc. It should read as (d) "Existing single-family dwellings and accessory structures thereto are exempt from the Redevelopment Requirements."</p>
133	Page 58, Part 4, III.5. (a)	<p>Water quality control BMPs must be adequately maintained if they are to provide long-term water quality protection. Projects need to develop and implement a long-term operation and maintenance plan for water quality protection BMPs. Please change to: "...provide an operation and maintenance plan and verification of ongoing maintenance provisions for Structural and Treatment Control BMPs..."</p>
134	Page 58, III.5	<p>Operation and Maintenance plans for post construction BMPs should be required. Please create a "(b)" section stating: Each Permittee shall require all development projects subject to post-construction BMP requirements to provide a plan for the operation and maintenance of all structural and treatment controls. The Operation and Maintenance plan shall follow the Technical Guidance Manual Appendix D "Maintenance Plan Guidance" (or subsequent guidance manual) for each BMP component. The plan shall be submitted for examination of relevance to keeping the BMPs in proper working order. Where BMPs are transferred to permittee for ownership and maintenance, the plan shall also include all relevant costs for upkeep of BMPs in the transfer. Operation and Maintenance plans for private BMPs shall be kept on site for periodic review by permittee inspectors.</p>
135	Page 58, section 5.a.1.B	<p>Please clarify who the signed statement is submitted to and when it is submitted.</p>
136	P. 59 Part 4 E III 6(b)(2) (Inadequate or Ineffective Post-construction BMPs)	<p>"If the State/US EPA inspection identifies the implementation of post construction BMPs, but they are determined to be inadequate or ineffective... the Regional Water Board will start progressive enforcement action against the Permittee and/or project owner/developer."</p> <p>Please clarify that this means the State General Construction Permit "Permittee" and not the MS4 Permittee. Also, please clarify what is the baseline or standards and what expertise will be used to determine adequate and effective BMPs.</p>
137	Page 59 Part 4, E. III 6. (b)	<p>The Draft Order states "The State / U.S. EPA permitting authority may undertake the following actions for coordination with the post-construction BMP provisions of the State construction activity storm water general permit or individual storm water construction permits..." The intent of this section seems to be to make the developer and/or municipality responsible for the lack of direction and oversight by the State at development sites. The Regional Board has the ability to comment on CEQA documents, as do the municipalities, and the Regional Board receives much of the same documentation from the developers as the process unfolds and are</p>

Attachment B - Specific Technical Comments for Ventura County MS4 Permit Draft Order 12/27/06

138	Page 59, III 6.(b)(2)	able to comment on the appropriateness of post-construction BMPs, as do the municipalities. The time to make comments about the adequacy of these devices is early in the process. Please justify the need for this statement. Please provide a list or reference of approved devices.
139	Page 59, section 7	To be "fiscally sustainable" means that sufficient funding must be collected in advance of construction to ensure that maintenance expenses will be funded from the interest of unspent funds in the mitigation bank. Please provide a provision that mandates the retention of sufficient funding to support perpetual maintenance needs.
140	Page 59-60, Part 4, E.1.III.7(b)(1).	The land use authority in cities allows them to define their own redevelopment districts. Any definition in the Draft Order must take note that it will not be consistent with the cities defined area. Please rectify this language.
141	Page 60, Part 4, III.8	Please provide additional information regarding this entire section, particularly the discussion of funding and waivers. It is unclear if the RWQCB would allow the use of mitigation funding to explore larger scale water quality projects without delaying development projects until mitigation site was effective. Many watershed and non-profit groups are already conducting planning for water quality projects. Please describe how the RWQCB envisions coordination with these groups. Also, the "waiver for impracticability" must be defined and guidelines must be developed for its implementation.
142	Page 60 Part 4, E. III.9(a)	It is not practical that an Inspection and Tracking System for Post-Construction Treatment Control BMPs be developed and implemented no later than 6 months from this Order's adoption. To develop a GIS-based system, populate and verify the data, and integrate into operations will require 24 months from this Order's adoption. Please allow for 24 months to develop this.
143	Page 61, III. 9 (a) (2)	This provision should apply only for City-owned BMPs. Private entities are required to have operation and maintenance plans and report annually on them. Please change the language to reflect this.
144	Page 60-61 Part 4, E.9 (B)	Please provide rationale on why are we tracking and reporting State WDID numbers the required electronic tracking system. Please provide clarification or drop unnecessary requirements.
145	Page 61, Part 4, E.1.III.10(a)(1) Interim Hydrograph Matching.	This requirement has already been declared infeasible in the comments under §4.E.1.II.1. Additionally, the nature of the County's hydrology method is to assume saturation and consequent runoff varies over the course of a significant rain event. The first-day runoff is 10% of the 4 th day runoff. This begs the question, under which day of the storm are we to consider the hydromodification effects? Please provide clarification and rationale for this criteria.
146	Page 61, III. 10 (2)	Please change to: (International BMP database, technical reports, and scientific literature, appropriate for Southern California geography and climate.)
147	Page 61, III.11(a)(1)	Please provide resources of local data required for pollutant removal effectiveness.
148	Page 62, III. 11 (a)	Please provide a list of Regional Board approved devices.
149	Page 62, Part 4, E. III.11(a)(2)	An MOU is an unnecessary and inappropriate mechanism to delineate authority within a municipal organization. Please delete this requirement.
150	Page 62, Part 4, E. III.12 (a)	Please define "with immediate effect".

Attachment B - Specific Technical Comments for Ventura County MS4 Permit Draft Order 12/27/06

151	Page 62, section 12	It is not practical that the CEQA process be incorporated with "immediate effect" to consider storm water quality impacts as the Permit requires that the current process of reviewing discretionary vs. ministerial permits to be reviewed. Page 20 F. 1 states that "A ministerial project may be made discretionary by adopting local ordinance provisions or imposing conditions to create decision making discretion in approving the project. In the alternative, Permittees may establish standards and objective criteria administratively for storm water mitigation for ministerial projects. For water quality purposes regardless of whether a permit is discretionary or ministerial, the Regional Water Board considers that all new development and significant redevelopment activity in specified categories, that receive approval or permits from a municipality, are subject to storm water mitigation requirements". Please provide for a time line that allows for a Permittee to develop the necessary standards and objective criteria.
152	Page 62, Part 4, E. III. 12 (a)	Imposition of these thresholds as environmental issues results in inconsistencies between CEQA and this Draft Order. The result will be the elimination of Categorical Exemptions under CEQA. Furthermore, these thresholds do not distinguish between ministerial versus discretionary projects. Please rectify these inconsistencies.
153	Page 62, Part 4, E.III.12 (a)	This requirement is in direct conflict with many classes of categorical exemptions as provided for in the California Environmental Quality Act (CEQA), as it would require consideration and mitigation of "potential" storm water quality impacts for small projects that do not currently require such mitigation because they are not considered to have a significant effect on the environment. As proposed, this requirement would significantly extend the time necessary for permit processing, add to the applicant's costs to obtain a permit and inspection, and increase all such project's exposure to CEQA legal challenges. This section should therefore be revised to reflect existing CEQA legislation.
154	Page 63, Part 4, E.III. 13	State law governs General Plan amendments and the obligations imposed on cities. If this is to be imposed, it should be done through legislative adoption. Please provide the legal justification for this requirement.
155	Page 63, Part 4, E. III. 13 (a)	State Planning Law already requires that Conservation Elements address the conservation of natural resources, including "water and its hydraulic force", and that Open Space Elements identify strategies to preserve open space land, with corresponding benefits to water quality and quantity. Each general plan element must also carry equal weight and be internally consistent. It is therefore redundant to require storm water quality and quantity management considerations in Housing and Land Use Elements. Please rectify these requirements with existing State Planning Law.
156	Page 63, Part 4, E. III 13(b)	General Plan updates are already provided to the State Clearinghouse for distribution to related agencies such as the Regional Board, therefore it appears redundant to send additional copies directly to the Regional Board. Please delete this requirement.
157	63 / Part 4 F.	Recommend the following revision to the opening paragraph for the Development Construction Program: <i>"Sediment losses due to erosion may occur on construction projects that are unpermitted or on permitted projects that have minimal erosion protection. Sedimentation and siltation discharges from these sites may impact the beneficial uses of downstream watercourses and may detrimentally impact biological systems and water quality. The use and implementation of proper BMPs and the issuance of a building permit and/or grading permit from the local agency with proper inspection has been found to be the most effective at minimizing sedimentation and siltation discharges that may adversely impact downstream watercourses. For these reasons the following recommendations are proposed for a local agency to incorporate with active land development construction</i>

Attachment B - Specific Technical Comments for Ventura County MS4 Permit Draft Order 12/27/06

158	63 / Part 4 F1.	<p>projects.”</p> <p>Please revise the title of this section from “1. Grading Prohibitions” to “1. Recommended Grading Restrictions”. Granting of a grading permit is within the government land use powers of the local agency. <u>The RWQCB does not issue grading permits and therefore the MS4 permit should refrain from creating or implying they have such permitting powers with the phrase “grading prohibitions.”</u></p>
159	Page 63, Part 4, F. 1. (a)	<p>Active sites with properly designed and constructed detention basins will effectively have no discharge and should be exempted from this requirement. Please exempt sites with properly designed and constructed detention basins.</p>
160	Page 63, Part 4, F. 1. (a)(1)(A)	<p>Grading prohibitions: “On hillsides with slopes 20% or steeper prior to land disturbance.” Please clarify how large an area must be in the 20% or steeper terrain for grading to be prohibited. Grading of these areas during the wet season will not present pollutant runoff problems when effective BMPs are in place. More flexibility is warranted rather than a flat prohibition, since a complete prohibition could have more significant environmental impacts than allowing completion of grading. “Hillside” is defined in the current NPDES stormwater permit as a slope of 25% or greater. Please justify the change from 25% to 20%.</p>
161	Page 64, Part 4, F. 1. (b) (1)	<p>A project proponent should be able to apply directly to the Regional Board for a Grading Prohibition Variance. Additionally, any variances granted by the Regional Board should become the Regional Board’s responsibility for inspection, enforcement, and liability if BMPs are determined inadequate. Alternatively, if the Permittees hold all the responsibility for proposed BMP effectiveness, inspection, enforcement and liability, then they should be given the authority to grant the Grading Prohibition Variance, which makes sense because grading permit are a land use entitlement granted by the local agency. Please amend the Draft Order to reflect one of these options.</p>
162	Page 64 Part 4, F.2.	<p>“Each Permittee shall require the implementation of a minimum set of BMPs at all construction sites (see the following Table 6)...” It is unclear whether the BMPs in Tables 6, 7, and 8 are to be implemented in their entirety, or whether they serve as a menu of possible BMPs for certain site conditions, at the discretion of the city of State staff. Please clarify this and add titles to the tables.</p>
163	64 / Part 4 F2. (a)	<p>The Draft Order states “Where the Erosivity Factor (R) for the construction project is 50 or greater, erosion controls (erosion avoidance) will be the preferred BMP. This requirement is a burden on small projects that are less than one acre. This is not a common calculation and it is not used historically on any grading permit projects in the unincorporated County areas. Please allow an exemption for projects under one acre.</p>
164	Page 64-66, Part 4, F. 2. (a), (b), and (c)	<p>These sections require the implementation of the BMPs in Tables 6 through 8, however those table list duplicative BMPs designed to solve the same problems (e.g. six erosion control measures in Table 7). It is not intended that all these BMPs be used concurrently. Please change each section to read: “Each Permittee shall require the implementation of an effective combination of the following BMPs . . .”</p>
165	Page 63, F 1(a)	<p>Please modify the sentence to read, “... construction activity at all construction sites <u>requiring a grading permit within its jurisdiction.</u>”</p>
166	Page 64, F.2(a)	<p>Please include the erosivity factor “R” method of calculation as an attachment to the permit document.</p>
167	65 / Part 4 F3. (a)	<p>Recommend revising the wording to read: “<i>Depending on the project type and area, the applicant shall implement the appropriate Erosion and Sediment BMPs listed in Tables 6 and 7.</i>”</p>

Attachment B - Specific Technical Comments for Ventura County MS4 Permit Draft Order 12/27/06

168	Page 65, Table 6	Many BMP's list suggestions and/or recommendations as part of the BMP, but do not make them mandatory. Please clarify if the suggestions and recommendations in the BMP are to be considered mandatory for compliance with the permit.
169	66 / Part 4 F4. (a)	Recommend revising the wording to read: "Depending on the project type and area, the applicant shall implement the appropriate Erosion and Sediment BMPs listed in Tables 6, 7, and 8."
170	Page 68, section 6. a. 1	This provision restricts paving and repaving activity to exclude periods of rainfall or predicted rainfall. Please define the percent likelihood criteria of predicted rainfall, e.g., "a 60% chance of rain".
171	67 / Part 4 F5. (a) (2) (A)	The owner's could use clarification. A better statement would read "I, (owner's name), am the property owner and agree to implement and maintain the SWPCP or SWPPP as prepared by (name of engineer or architect) for the duration of my construction project. I further understand that my failure to provide adequate sediment and erosion control in accordance with the requirements of my grading and/or building permit from the Local Agency could lead to a stop work order and possible citation by the Local Agency and RWQCB. I further agree to grant access to my property to the Local Agency to conduct all grading and building permit inspections including the mandatory rainy season inspection to verify that I am implementing and maintaining the proper BMPs that my SWPCP or SWPPP requires."
172	68 / Part 4 F5. (a) (2) (B)	Here is more wording that isn't necessary as part of the NPDES Permit. Recommend deletion of (i), (ii), and (iii). All that is needed is "(B) The Local SWPPP or SWPPP shall be signed by the property owner or owner's representative/designee. If the Local SWPPP or SWPPP is being prepared by the Local Agency then the appropriate authority for the Local Agency shall sign the document."
173	Page 68, Part 4, F. 6. (a) (8)	Please clarify with the following revision: "Cover the stockpiled "cold-mix" asphalt..."
174	69 / Part 4 F7.	Many local agencies may have a non-electronic permit tracking system that is just as effective as an electronic one. The data contained in such systems may have confidential information in it and privacy laws may apply limiting or excluding public access. Please explain the intent of requiring such a system on the local agency or delete the requirement for an Electronic Site Tracking System.
175	Page 69, Part 4, F. 8. (b)	During the building process, post construction BMPs may be exposed to some of the worst runoff they will encounter. No post construction BMP will be accepted as constructed in compliance with specifications unless it is cleaned and operational. This initial inspection must include an operation and maintenance inspection. Please strike the last sentence from this section.
176		There are several types of projects that will not obtain a certificate of occupancy at the completion of the permit. Please amend to the following statement: "Prior to the release of the grading permit or building permit, the Engineer or Architect of record who prepared the Local SWPPP or SWPPP, shall provide a letter to the Local Agency that states that all the temporary BMPs implemented by the property owner worked satisfactorily and will be removed by (date) and that post control devices will be in place and satisfactorily working by (date)." The local agency is not responsible for post control devices on private property and the NPDES permit should not shift the burden for inspection or maintenance to the local agency. The burden should remain with the property owner and their engineer and architect.
177	Page 70, Part 4,	To avoid delays in the construction process while waiting for the State to respond to an NOI, permittees would

Attachment B - Specific Technical Comments for Ventura County MS4 Permit Draft Order 12/27/06

178	F. 9. (a) (1) Page 72, Part 4, G. 1.	<p>prefer if proof of application for the CAGSP for construction activities was required instead of coverage. Any projects that have not filed for under the CAGSP would be subject to Part 4 F. 10. (b) and therefore be referred to the Regional Board. Please change to: "Proof of application for coverage under a State NPDES permit . . ."</p> <p>Sewage system Maintenance, Overflow, and Spill Prevention, Response Plans: There is no reason to duplicate or add additional requirements for sewer systems when all collection systems are regulated by the SWRCB's General Waste Discharge Requirements for Sanitary Sewer Systems. We request that these requirements be removed.</p> <p>A compromise would be to insure that this permit contained the exact same language for these items as the existing WDR and NPDES permit for the wastewater treatment plants.</p>
179	Page 72 Part 4, G. 1. (b)(1)	<p>"Identify, repair, and remediate sanitary sewer blockages, exfiltration, overflow, and wet weather overflows from sanitary sewers to the MS4." Please delete exfiltration – there is no way to evaluate this.</p>
180	Page 72 Part 4, G. 1. (c)	<p>The Draft Order requires response within two hours to overflows for containment, upon notification. This requirement is unenforceable. For onsite wastewater treatment systems (septic systems), the Permittees do not have the authority or the right to enter private property in order to respond to or contain overflowing sewage within the timeframe indicated. Furthermore, the County does not have authority to contain overflowing sewage on private property. This requirement is impossible to implement, please delete.</p>
181	P. 73 Part 4 G 2 (a)(b)	<p>"Each Permittee shall implement and comply with the Development Planning Program requirements in part 4. E. and Development Construction Program requirements in part 4.F..."</p> <p>Only public improvement projects that individually disturb 1 acre or more of land and that change line, grade, or capacity of the facility should be subject to the hydromodification, LID, and post construction treatment requirements and requirements for coverage under the CAGSP.</p> <p>Please reword this section as such.</p>
182	Page 73 Part 4, G. 2.	<p><i>Public Construction Activities Management</i> requires the implementation of all of the requirements of "Development Planning Program" and "Development Construction Program" for Permittee owned or operated construction projects. These requirements are impossible to implement, especially for common linear projects. Reducing the percentage of Effective Impervious Area to less than 5% of total project area for road project cannot be done because we cannot reduce the paved area (Effective impervious area) of the road, unless porous pavement is used, and this has been demonstrated as ineffective. Additionally, there is no space available within street right of way to build any of the (f) items for post construction BMP. An example is our sewer trunk line upgrades, where soil and pavement are being disturbed to perform the activity, but there is no way to retrofit infiltration devices to serve as post-construction BMPs. Please limit this requirement to the definition in the CAGSP.</p>
183	Page 73, Part 4, G. 2 (c) (1)	<p>Requirement for coverage under CAGSP for construction activities "does not include regular maintenance activities performed to restore the original line, grade, or capacity of the facility." Long-term maintenance activities are not required by the SWRCB to get coverage under the CAGSP for construction activities and that should not be required under this permit. Furthermore, Permits are issued for specific projects at specific locations, and can't be issued if ". . . 1 or more acres of land are disturbed.... cumulatively as part of several projects involving a</p>

Attachment B - Specific Technical Comments for Ventura County MS4 Permit Draft Order 12/27/06

184	Page 73 Part 4, G. 2.	soil disturbance". "Several projects" could include many locations over an extended period of time. The language from the SWRCB is clear and this requirement should be removed from the permit. <u>Public Construction Activities Management</u> requires the implementation of all of the requirements of "Development Planning Program" and "Development Construction Program" for Permittee owned or operated construction projects. In part, the requirements of these programs "shall be achieved by maintaining the project's pre-development storm water runoff flow rates and duration." Again, many city projects, especially linear projects such as road widening, cannot maintain the above cited condition; however, the increase in flow rate for this type of project is insignificant. Please delete.
185	Page 74, Part 4, G. 3	Permittees would prefer to maintain flexibility in BMP selection from other sources than the Caltrans Stormwater Quality Handbook. Please allow for other sources of BMPs, and please title the BMP Tables.
186	Page 76, Part 4, G. 3. (b)	Requirement for coverage under CASGP for construction activities "does not include regular maintenance activities performed to restore the original line, grade, or capacity of the facility." Long-term maintenance activities are not required by the SWRCB to get coverage under the CASGP for construction activities and that should not be required under this permit. Furthermore, Permits are issued for specific projects at specific locations, and can't be issued if ".1 or more acres of land are disturbed.... cumulatively as part of several projects involving a soil disturbance". "Several projects" could include many locations over an extended period of time. The language from the SWRCB is clear and this requirement should be removed from the permit.
187	Page 76, Part 4, G. 5 (a) (5)	It is beyond the scope of the Permittees' authority to require any public agencies not named in this permit to comply with any section of this permit. This requirement should be removed from the permit.
188	Page 76, Part 4, G. 5 (a) (7)	Entirely eliminating the use of pesticides is a noble goal, but public health and safety must come first. Additionally, the authority to determine if a pesticide is legal to use lies with the California Department of Pesticide Regulation. Please change to: ". . . and timelines with the goal of reducing and ultimately eliminating the use of pesticides . . .".
189	Page 77 Part 4, G. 6. (a)(1)	This provision is in conflict with the provision on page 78, section (e) (1) to install catch basin excluders on all storm drain inlets. If five-millimeter trash excluders are placed over all inlets, trash and debris will not enter, and the inlets will not need cleaning on an increased basis. Requiring additional catch basin cleaning under these circumstances would divert financial resources away from other BMPs that could have a more positive impact on water quality. Delete the provision for prioritization of catch basin cleaning. Notwithstanding, any catch basin cleaning requirement should be to inspect and clean if necessary.
190	Page 78, Part 4, G. 6 (a)(3)	Please revise as follows: "...Permittees shall ensure that any catch basin that is found to be 25% full of trash and debris shall be cleaned out."
191	Page 78, section b.1.D	The five-millimeter trash excluders will stop all litter from entering the storm drain. Please rectify the cleaning of catch basins after public events with the trash excluders requirement.
192	Page 78, Part 4, G. 6 (c)	Trash receptacles at all transit stops and schools: Six months is insufficient time to accomplish this requirement. Locations must be determined, specifications must be developed, the project must be bid, etc. We request one year to implement this requirement.
193	p. 78 Part 4 G 6 (c)	Trash receptacles for schools should be the school's responsibility and included in their NPDES permits. Also, as noted, a trash TMDL is being written for the 303 (d) listed waterbodies in Ventura County with expected adoption

Attachment B - Specific Technical Comments for Ventura County MS4 Permit Draft Order 12/27/06

194	Public Agency Activities – Trash Receptacles Page 78, Part 4,G, 6 (e)	<p>by the end of 2007. This requirement should be placed on hold pending the outcome and solutions required in the trash TMDL. Other stakeholders, such as school districts, will be listed in the Trash TMDL.</p> <p>A trash TMDL is being written for all the waterbodies impaired for trash in Ventura County (Beardsley Wash and Revolon Slough reaches of Calleguas Creek, and the Ventura River Estuary) with expected adoption by the end of 2007. Any requirement for trash excluders should be placed on hold pending the outcome and solutions required in the trash TMDL. Current TMDL work is being conducted, including monitoring of these areas to come up with the best solution to solve the problem. Only the watersheds that have been listed as impaired for trash on the 303(d) list of impaired waterbodies should have specific trash requirements. Those requirements should be made through the TMDL process and the method of compliance determined in the implementation plan.</p> <p>Regional Board staff, through the trash TMDL process, has defined the size of “trash” as five-millimeters to Ventura County Permittees. Existing catch basin inlets have been engineered to accommodate the projected flows within a defined drainage area. If five-millimeter excluders are placed in front of the inlets they will reduce stormwater flows into the inlets, causing extensive localized property damage and unsafe conditions on public streets. To protect public safety and private property from flooding, and the Regional Board from liability this requirement should be removed.</p> <p>Installation costs have ranged from approximately \$1,000 to \$3,000 per inlet. Countywide, Ventura County Co-Permittees have 10,000 to 15,000 storm drain inlets. Capital costs to implement this provision could range from \$10 million to \$45 million for the Ventura County Co-permittees. These costs do not include annual maintenance, cleaning, replacement costs of damaged excluders, and emergency responses during storm events. Permittees’ limited funding should be better focused on Ventura County’s pollutants of concern, of which trash is not one.</p> <p>Ventura Permittee research indicates that Glendale and Rancho Palos Verdes have initiated very small pilot programs (28 and 79 inlets, respectively) to test excluders meeting the five-millimeter criteria. These pilot programs, initiated due to a trash TMDL, are currently underway and final assessments have not been made. The impacts of flooding and bacterial regrowth are not fully understood. A countywide requirement for this is premature until these studies are complete.</p> <p>Notwithstanding, it will not be financially and physically possible to meet this requirement in 180 days. It is doubtful that a manufacturer could even build the required number of inserts in that time. Adding in the time necessary to acquire funding, select a design, bid the job and install the excluders it would be monumental to complete this by the end of the permit cycle.</p> <p>Please allow the TMDL process underway to address the impaired waterbodies.</p>
-----	--	--

Attachment B - Specific Technical Comments for Ventura County MS4 Permit Draft Order 12/27/06

195	Page 79 Part 4, G, 6. (f)(1)F	This provision requires the quantification of the amount of materials removed during open channel maintenance using "standard measures". The term standard measures may imply that each truck load of sediment, tumbleweeds, or other debris will be weighed. Most jurisdictions do not have weigh scales for trucks, nor would it be a cost-efficient or a beneficial action to improve water quality. Current practice has been to use "best estimates" based on what a typical hauling vehicle carries, visually determining the proportion of the vehicle filled, and the number of truck trips. Delete "...standard measures" and replace with "best estimate".
196	Page 79 Part 4, G, 6. (g)(3)	"Any residual water within a treatment control BMP when being maintained shall be:..." Some treatment control devices or BMPs are meant to keep a certain level of residual water to function properly. Additionally, some areas, especially those with high water tables, may have a constant, albeit low, flow entering the device. It would not be possible to constantly remove the incoming water. Please delete this requirement or rewrite addressing the design and inputs to the BMP.
197	Page 80 Part 4, G, 6. (g) Table 10	Please cite the source of these numeric limitations and the rationale for applying them.
198	Page 81, Part 4, G, 8 (a)	Coverage under the CASGP for construction activities should not be required for projects that are performed to maintain or restore original line, grade or capacity. Please justify how roadside maintenance "vegetation removal" would be covered under the CASGP for construction activities. This requirement needs to be removed or revised.
199	P. 81 Part 4 G 10 Public Agency Activities – Municipal Potable Water Supply System	We object to this requirement. Permittees that operate a potable water system should not be burdened with a requirement (NPDES permit) that does not apply to private water purveyors and water districts. The total gallon per year figure is unrealistically low. System flushing of a hydrant can be 2,000 - 6,000 gallons per minute. To flush one hydrant can take 15 to 30 minutes. 30,000 - 60,000 at the first hydrant. When flushing a service area, you could easily be looking at 30 hydrants. This does not include flushing after every shut down for repair. Further, hydrant flushing is required by the State Department of Health Services and no flushing will compromise public health. Section G.10 Footnote 1 requires Municipal Potable Water Supply Systems to obtain coverage under the Regional Water Board NPDES Permit No. CAG674001 if the discharge is greater than 100,000 gallons per year. This general permit specifically regulates the discharge of Hydrostatic Test Water. Please explain how this general permit applies to nonspecific discharges from a municipally owned potable water system. Also, please justify how the 100,000 gallon per year figure was derived and provide justification for regulating the discharges of potable water that is greater than 100,000 gallons per year.
200	Page 82, section 11	This section does not take into account the variety of common water system leaks associated with aging infrastructure. Emergency leaks occur on aging water service pipes and distribution system pipelines and are common to all water systems. The enormous quantity of these types of repairs throughout California will generate immense self-waiver reporting submittals beyond the Regional Board's ability to keep track of the files. Please delete this provision.
201	page 82 (Part 4 G 11)	In the wake of an emergency a large effort will be put forth to return life to normal. Please allow for a longer time period to document water quality impacts in the aftermath of an emergency, 30 calendar days would be preferred.
202	Page 82, section 12	This provision requires the training of employees and contractors within six months of the permit adoption. Current practice is to train employees once each fiscal year. Requiring training within six months, and then

Attachment B - Specific Technical Comments for Ventura County MS4 Permit Draft Order 12/27/06

		<p>annually thereafter, will reset the training year six months away from the permit year. This will complicate reporting and lead to confusion. Please delete "6 months from permit adoption" and replace with "12 months of permit adoption."</p>
203	Page 83, section H.1.b	<p>This provision requires the Permittees to "...map at a scale... incidents illicit connections and discharges on their baseline maps. Please clarify the time period of illicit discharges and connections to be mapped.</p>
204	Page 84, Part 4, H. 3. (a) (1) (A)	<p>Permittees can only be responsible for infrastructure under their control. Please change to: "A GIS layer showing the location and length of <u>Permittee-owned underground storm drain pipes</u>...."</p>
205	Page 84, 3 (a)1a	<p>This provision also requires the Permittees to submit a GIS layer of the Co-permittees' storm drain system. It is highly unlikely that different GIS systems will speak to each other. Each jurisdiction has a separate, stand alone system. To be effective, the GIS storm drain system must reside within the local jurisdictions GIS system, not the Principal Permittee's. Please rewrite this to: "...A hardcopy of the co-permittees GIS layer..."</p> <p>This requires that a GIS database be created showing every drainpipe in Ventura County over 18". It also requires showing all of our channels within the county on a GIS database. There are over 500 miles of channels (roadside ditches) in Ventura County, some of these are partially owned and maintained by the adjacent property owner. There are also numerous drainage pipes and channels in the unincorporated area that were not accepted by the Board of Supervisors when offered by the developer, and therefore not owned and operated by a Permittee. There are public drainage easements for them, but they are not the responsibility of a Permittee to maintain or repair. This action was consistent with the California Subdivision Map Act, and the authority of the Board to accept or to reject public improvements. It is not clear whether these pipes would be counted or not, or who would be assigned the responsibility for NPDES compliance in these areas. Please provide clarification that is to apply to drainage systems wholly owned by the permittees.</p>
206	Page 84, 3.a.1.B	<p>This provision requires Permittees to notify the Principal Permittee of the status of suspected, confirmed, and terminated illicit connections. This action does not improve water quality. The Principal Permittee is not an enforcement arm of the Regional Board, please justify the need for this reporting requirement.</p>
207	Page 84, Part 4, H. 3. (a) (2)	<p>Field screening was performed by Permittees during the term of the first permit and was determined to be an inefficient use of resources considering the time spent and the limited number of illicit connection discovered. This requirement should be removed from the permit. Please provide the justification for requiring an even more rigorous field screening program during the third permit cycle.</p>
208	Page 85, Part 4,H, 4 (a)	<p>The Draft Order states illicit discharge investigation: "...shall take formal enforcement action to eliminate the illegal discharge." Enforcement actions may only be taken when we know, without a doubt, who the responsible party is. This isn't known in many cases. Furthermore, formal enforcement actions aren't necessary to resolve most illicit discharge incidents. Permittees should be allowed some discretion in code enforcement situations. This requirement should be deleted.</p>
209	Page 85, Part 4, H. 4. (b)	<p>In many cases of illicit discharges, even with immediate response, the action and discharge have ceased by the time inspectors arrive on scene. Often the discharge has entered into the MS4 making containment and cleanup an extraordinary effort only necessary in the cases of hazardous materials. Please change to: "...with action to abate, contain, and or clean up all illegal discharges, including hazardous waste."</p>

Attachment B - Specific Technical Comments for Ventura County MS4 Permit Draft Order 12/27/06

210	Page 86, Part 5, 1.	Notwithstanding the objection to this requirement, the index of biological integrity (IBI) alone should not be used; if there are invasive species such as New Zealand mud snails affecting species diversity a segment will be scored very poor even if it has high water quality. Additionally, the Southern California Index of Biological Integrity should not be applied to ephemeral or effluent dominated streams as it was developed for upland perennial streams.
211	Page 86 Part 5, 2	"The Permittees shall develop ERPs for all Watershed Management Areas' (WMA) stream segments that have obtained a score of "poor" and "very poor" from Bioassessment Monitoring" Please provide a definition for the term "stream segments".
212	Page 87 Part 5, 3	"The ERPs shall include the following Restoration Principles..." The requirement section of the permit, complete with "shall" language should include requirements, not principles. Please delete.
213	P. 88 Part 6 -- TMDL	All TMDL language in the Ventura MS4 permit should reference or quote the language in the adopted TMDLs and related adopted Monitoring Plans. The TMDLs that have been developed in Ventura County underwent significant technical analysis, stakeholder input, and public review to develop wasteload allocations and implementation actions that will result in compliance with water quality objectives for the listed pollutants. The TMDLs also lay out direction for how to implement the TMDL provisions into NPDES permits. Rather than following the direction of the TMDL and including identified implementation actions, the Draft Order includes numerous additional requirements and does not appropriately capture the intent of the TMDL. The Draft Order needs to be consistent with the TMDLs to allow for effective implementation of TMDL requirements and to prevent confusion and additional costs for programs that have not been evaluated as part of the TMDL process and may not be effective for implementing the program.
214	Page 88 Part 6 Issue:	There are additional requirements under the TMDL provisions that go beyond approved implementation plans developed by responsible parties. The Malibu TMDL provisions require that there be no discharge from the MS4s during dry weather. This is not prescribed in the TMDL nor a part of the implementation plan. It is also impracticable because there are contributions from outside the permit coverage area, other permitted NPDES discharges such as underground utility box dewatering and water line flushing, as well as natural contributions to MS4 flows. Additionally, requiring specific monitoring under the TMDLs for bacteria and toxicity undermines the collaborative watershed process. Other responsible parties will be disinclined to participate or contribute if the monitoring responsibility is required of another party. Please remove all prescriptive TMDL language and allow the stakeholders as a group to guide the process.
215	Page 88 Part 6 -- Provisions	A continuing problem in TMDL development and implementation is to achieve the participation of responsible parties. Special Districts, State Agencies and agricultural entities often will not participate, and the Permittees have no legal means to force compliance. Add to the second paragraph: The Regional Board shall initiate and continue efforts to bring State agencies, Special Districts, agricultural interests and other responsible parties into TMDL development and implementation for which they are responsible.
216	Page 88 Part 6, 1(a)(1)	"Prohibition: Permittees ... shall conduct field screening of their storm drain systems..." Please explain why this is a prohibition.
217	Page 89, Part 6, 2. (a)	Malibu Creek Bacteria TMDL, WLA Implementation (field screening for illicit discharges): This requirement, which will require substantial time, effort and funds, is not part of the Implementation Plan for the Malibu Creek bacteria TMDL. The Implementation Plan was submitted to the Regional Board on January 24, 2007. There is no

Attachment B - Specific Technical Comments for Ventura County MS4 Permit Draft Order 12/27/06

		justification for placing a higher implementation burden on only a few of the TMDL's Responsible Parties. This requirement should be deleted.
218	Page 89 Part 6, 1(a)(1)(A)	The Draft Order states "All portions of the storm drain system consisting of storm drain pipes and open channels/drain 12 inches in diameter or greater within 5 years after the adoption of this Order." Please define what size open channel. Additionally, field screening procedures in the reference document apply to waters of the U.S.; please clarify if this is the State's interpretation.
219	P. 91 Part 6 3 TMDL	Need to include "City of Oxnard" as an MS4 permittee which is listed as a responsible party in the Calleguas Creek - Toxicity, Chlorpyrifos and Diazinon TMDL.
220	Page 95 definition Areas subject to storm water mitigation	Areas Subject to Storm Water Mitigation Requirements: This definition is in conflict with the stated requirements. California Resources Agency was asked to participate in identifying areas subject to ESA and gave no response. Regardless, this term is not used elsewhere in the permit, please remove.
221	Page 96, Definitions Construction	Construction: "Construction also includes... routine maintenance to maintain original line and grade if greater than 5 acres total but not necessarily at once, hydraulic capacity, or original purpose of facility;..." Definition needs to be revised to exclude projects that are performed to maintain or restore original line, grade or capacity. Also, please explain "greater than 5 acres but not necessarily at once" and include justification for this requirement. "...not necessarily at once" could potentially cover a lengthy period of time (years). Additionally, the phrase "... or any other activity that results in land disturbance" encompasses far too many activities to be reasonable or practical. For example, the definition, as currently stated, would make putting in a small vegetable garden or flowerbed at a home a "construction" project subject to permit requirements. "... or any other activity that results in land disturbance" should be removed from the definition.
222	p. 97 Part 7 Definitions	"Development - means any construction rehab, redevelopment or reconstruction of any public or private residential projects (whether single-family, multi-unit or planned unit dev.); industrial, commercial, retail and any other non-residential projects, including public agency projects; or mass grading for future construction." Requiring these conditions on small home improvement projects is excessive and does not provide relief for the hardship of rebuilding a home after a fire or other catastrophe. Please provide a single family exclusion or redefine development project to exclude single family residences.
223	Page 97, Definitions	Dechlorinated/Debrominated Swimming Pool Discharge: "The term does not includeswimming pool water containing bacteria." Does this mean any type of bacteria, at any concentration? This definition needs substantial revision.
224	Page 97, Definitions	Discharge of a Pollutant. Please define the meaning of "conveyance" in the context of this permit.
225	Page 97, Definitions	Disturbed Area: "...ect..." does not belong in a definition. Please clarify.
226	Page 98, Definitions	Environmentally Sensitive Areas: Need to limit the RARE areas to "unimproved drainage systems" or "Natural Drainage Systems" (as defined in the permit) so that we don't have concrete channels designated as an ESA.
227	Page 98, Definitions	Hillside: Should address grading on natural slopes that are 25% or greater, not 20% or greater. The current definition for a hillside in NPDES permit CAS004002 is a slope of 25% or greater. Please justify the change from

Attachment B - Specific Technical Comments for Ventura County MS4 Permit Draft Order 12/27/06

228	P. 98 Part 7 Definitions	25% to 20%. "Horse Stable" – Please exclude single-family residences from this definition.
229	Page 102, Definitions	The Definition of "Open Channel" is not clear: "Open Channel means a storm drain channel that is not a natural water course." This definition would include underground box (enclosed) channels. Please revise this definition.
230	P. 103 Part 7 – Definitions	"Permittee" – line three should be corrected to read "...include the Ventura County Watershed Protection District..."
231	Page 103, Definitions	Point Zero: Please clarify "...the point at which water from the storm drain or creek initially mixes with water."
232	Page 103, Definitions	"Potable Drinking Water Supply" and the following definition of "Potable Drinking Water Supply Releases" are defined with exactly the same language. The definition is incorrect for "Potable Drinking Water Supply". Please rectify.
233	Page 105 Part 7, Runoff	"Runoff" – means any runoff including storm water and dry weather flows from a drainage area that reaches a receiving water body or subsurface. It is typically comprised of nuisance flows contaminated with pollutants." To define runoff in such a manner is bound to cause confusion. Runoff usually refers to storm water flows, eventually collected under an MS4 scenario. Dry weather flows should be handled with separate terminology -- delete from this definition. Additionally, receiving water is not defined, and should be added to the definitions section. Please provide clarification.
234	Page 110 Definition	"Watercourse" Please remove references to VCFCD and change to VCWPD.
235	Page 111 section B, 1 (a)	Some items may necessitate review and/or approval by a local governing body to authorize a petition. This local action may consume more than 30 days, not counting time spent for staff and legal review. Please change to 60 days for petition.
236	Page 112, section F.1.f.	This provision requires unlimited amounts of water quality monitoring, at any time, without cause. Please provide justification for this open ended requirement or delete this section.
237	Page 118 Part 8, T	"MS4 Annual Reporting Program" Including this language in the Standard Provisions will lead to confusion and potential conflict with the requirements of the monitoring and reporting program – Please reword or delete.
238	Page A-4	Delete Promenade Park Beach and San Buenaventura Beach from the Water Bodies column. They are not 303(d) listed.
239	Attachment C	MALs: The "Municipal Action Levels" (MALs) established in the Draft Order were computed based on an approach recommended by the by the California Water Board's Storm Water Panel in its report, "The Feasibility of Numerical Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Commercial Activities" (June 2006). The State Water Board has yet to take any action upon this report or give direction as to how the recommendations are to be utilized in preparing NPDES permits. The MALs are enforceable limits (...two or more exceedences of a MAL will be ...considered a violation...), yet these limits have never undergone public review or been formally adopted by the State Water Board. The MALs should be removed from the permit.

Attachment B - Specific Technical Comments for Ventura County MS4 Permit Draft Order 12/27/06

240	Page C-1	These tables should be in the earlier section related to MALs.
241	Page F-1, section A.1.a	After several attempts to overcome the obstacles we have determined there are no suitable sites to measure flow and safely sample the Santa Clara River below Freeman diversion. The option of additional sites capturing Ventura and Oxnard is possible, but please reduce to 30% or multiple sites will be required for Ventura effectively tripling the costs to the program with providing little more information.
242	Page 112 Standard Provisions F.1	The Draft Order states "The Regional Water Board, U.S. EPA, and other authorized representatives . . ." Please clarify if the Permittees are authorized representatives, and if so, what was the mechanism that they become authorized representatives.
243	page F-2 , A.6 Issue:	Sampling only first three hours of an event does not accurately measure mass emissions. This deviates from past sampling protocols, in which flow-weighted composites were collected for the duration of the storm. If the purpose of past sampling was to establish baseline conditions, this new protocol will obscure deviations from that baseline. (Some constituents do not peak in concentration until later in storms.) Furthermore, it is unclear how the Program will mix time and flow requirements. Given the way runoff is generated in many watersheds in Ventura County, automatic samplers will be sampling almost non-stop for the first three hours of the storm, especially if QA/QC and flow-weighted toxicity samples are required. Please review this language and confirm that only the first three hours of a storm should be sampled.
244	page F-2, A.9 Issue:	Monitoring every 0.25 inch storm for TSS consumes valuable resources for questionable results. The relationship between TSS and pollutant loading has not been well-established, and with Ventura County's open space and agriculture-dominated watersheds the urbanized contributions of total TSS would be a very small part. Please provide background information on why this is needed. Also, we request a sunset clause for this parameter (similar to the one for other constituents listed in A.11) if it becomes statistically clear that TSS cannot be used to accurately predict pollutant loading and is therefore an unwise use of resources. Monitoring resources need to be focused on obtaining useful data for decision makers. Sampling every 0.25 inch storm is a significant increase in Program cost because it requires staff to be prepared for 10-18 sampling events per year. (This number is based on the range of 0.10" and 0.25" events over the past five years at several stations throughout the county.) The 0.25" trigger is also problematic in the Ventura and Santa Clara Rivers because they do not show a significant increase in flow from even a larger 0.50" rain event. Both watersheds are predominantly open space and agriculture. The first storm event in either watershed will produce very little change in stage and/or discharge. The 2004-2005 Event 1 (first flush) first storm event was forecasted for a 0.5 inch event. The Stewart Canyon Rain gauge recorded 2.00" for this event. The increase in flow was less than 0.2 ft, and just over 10 cfs. The following year first storm event of 2005/2006 had a similar stage change with a 0.5" rain event recorded at the Stewart Canyon rain gauge. Flow at the Santa Clara River mass emission station is typically diverted to the spreading groups as the increase inflow is minimal. A 0.5" trigger would be more appropriate for Ventura County due to the predominant open space and agriculture land uses. Another option is if turbidity could be used as a surrogate for TSS after watershed specific relationships have been appropriate established. This would provide relief because turbidity can be continually monitored onsite while TSS requires staff to perform sampling and laboratory analysis.
245	page F-4, B.1.a.	Using marine species to test toxicity of fresh water presents the opportunity for bias. The Ventura County

Attachment B - Specific Technical Comments for Ventura County MS4 Permit Draft Order 12/27/06

		<p>Watershed Protection District has raised its concerns with the selection of marine test species for the chronic toxicity test organism in several annual report response letters, and during permit negotiations. Our concern in using a marine species in a fresh water sample is the samples requires the addition of salts and aeration to sustain the marine test organisms. This practice may bias the test and introduce a possible source of toxicity. The test species <i>Menidia beryllina</i> (silverside minnow) has been historically used in our NPDES Stormwater toxicity monitoring program. Unlike the <i>Strongylocentrotus purpuratus</i> (sea urchin), minnows are abundant and available to the testing laboratories. We have had several aborted toxicity tests due the analyzing laboratory not being able to obtain the urchin test organism or they failed to spawn.</p>
246	page F-5, B.2 Issue:	<p>The language used to describe need for TIE is confusing. In the past, toxicity units (TUa or TUc) above 1 triggered a TIE. It is unclear what is meant by "showing 90 percent or more toxicity." Does this mean when the survival rate drops below 90 percent? Or does it mean 100 percent minus the LC₅₀? Please explain further what will trigger a TIE.</p>
247	Page F-7 C. Monitoring	<p>Tributary monitoring program: Within the Calleguas Creek watershed, tributary monitoring will be conducted as a part of the TMDL compliance monitoring process. Further monitoring in the watershed is duplicative and a waste of funds. Furthermore, requiring only one of the parties named in the TMDL to do specific monitoring could upset the collaborative process that has been exemplarily in Ventura County.</p>
248	page F-7 C.	<p>The tributaries identified for study may not provide best stormwater program data. Please allow the Principal Permittee the flexibility to develop a tributary monitoring program that will provide quality data in order to meet stated objectives. Potential problems with the identified tributaries are the ability to accurately measure flow and major contributions from non-MS4 sources. Otherwise, provide detailed explanations on why each of these specific tributaries are to be monitored</p>
249	Page F-9, section D	<p>The Principal Permittee is not required to perform TMDL monitoring under the adopted TMDLs. Clarify that the monitoring is to be performed by the responsible parties for the respective TMDLs. Furthermore, requiring only one of the parties named in the TMDL to do specific monitoring could upset the collaborative process that has been exemplarily in Ventura County.</p>
250	Page F-11, D. 2. Monitoring	<p>Malibu Creek Bacteria TMDL: The discharge prohibition, monitoring and implementation requirements are extremely burdensome. The TMDL compliance monitoring plan was submitted to the Regional Board on May 24, 2006. The Implementation Plan was submitted to the Regional Board on January 24, 2007. There is no need, or justification, for including onerous monitoring and implementation requirements for TMDL Responsible Parties located in Ventura County in the draft Municipal Stormwater permit. These requirements should be removed, or revised to reflect the monitoring plan and implementation plan submitted to the Regional Board. Furthermore, requiring only one of the parties named in the TMDL to do specific monitoring could upset the collaborative process that has developed the TMDL Implementation and Monitoring Plans.</p>
251	page F-15, E.5	<p>There is conflicting language regarding requirements of bioassessment monitoring. This requirement conflicts with E.3 which states that bioassessment shall be conducted in "spring/fall." Furthermore, past bioassessment monitoring has been performed in the fall of each year. As mentioned in the comment for A.6, if these previous events have been performed to establish a baseline, switching sampling to spring will create a disconnect between upcoming and previous bioassessment monitoring due to different life stages of organisms and</p>

Attachment B - Specific Technical Comments for Ventura County MS4 Permit Draft Order 12/27/06

252	Page F-17, F Issue:	<p>increased flows. Furthermore, the rationale for favoring spring or fall sampling is not well-established. Please explain why the sampling season has been changed.</p> <p>This requires the Permittees to perform special studies to quantify pollution from non-MS4 sources. Trash and debris are a problem in urban runoff and the permittees are aware of their responsibility for controlling that problem. However, the trash and debris study has a focus on ocean beaches where the referenced study showed that the most abundant items were from overboard disposal from ocean vessels. The required study should be limited to only the inland waters and coastal waters where trash and debris monitored could be assumed from MS4 sources, and therefore provide useful information for the MS4 programs.</p>
253	Page F-18 F. 2 (b)(6)	<p>"Ormond Wetland/ Lagoon" – needs to be defined (February 1, 2003, <i>Comments on the Draft Strategy for Developing TMDLs and Attaining Water Quality Standards in the Los Angeles Region</i>; December 24, 2003, <i>Ormond Wetlands</i> meeting summary; August 10, 2004, <i>2004 Triennial Review</i> comments; February 9, 2005, <i>2004 Triennial Review</i> comments follow-up).</p>
254	G.1 page F19	<p>The Pyrethroid Monitoring requirement is unnecessarily comprehensive. It is not stated in the findings that Ventura County has a known problem with pyrethroids, so requiring an extensive study should be justified. This study is extensive because the potential number of sites required could be very large. For instance, in the years that tributary monitoring (pyrethroid monitoring follows same schedule and sampling stations) is performed on the Santa Clara River, there would be 3 major tributaries with 2-6 stations (6-18 stations total). Secondary tributaries (number undefined) would have 2-3 stations at outfalls (assuming 2-3 secondary tributaries, the total could reach 4-9 sites). Adding these up, the number of pyrethroid monitoring stations could be 10-27 sites. That could be an extraordinary large number of sites to sample in a single rain event. Additionally, this study duplicates much of the effort set forth in the alternative pesticides study required under the monitoring plan for the Calleguas Creek organochlorine TMDL. Please add pyrethroids to the Mass Emission constituents and eliminate this study until the need is proven by the data.</p> <p>Notwithstanding, Where activities required to be conducted for implementation of the other provisions of the order overlap with TMDL requirements, the two programs should be allowed to coordinate. Specifically, the special study required under the Calleguas Creek Toxicity TMDL to investigate the pesticides that will be used to replace diazinon and chlorpyrifos could be used to meet the requirements of the pyrethroid special study.</p>
255	page F19 ,G.1	<p>Not withstanding our objection to the Pyrethroid monitoring, its methods need clarification. The tributary monitoring schedule calls for dry- and wet-weather monitoring. The Regional Board also states that the pyrethroids insecticides monitoring shall coincide with the tributary monitoring programs' "schedule and sampling stations" Given that the Regional Board is prescribing that pyrethroid samples be taken "by skimming the upper 1 cm of the sediment column," it seems unlikely that this method of collection could be performed during wet events. Please review this sampling protocol or provide references on how sediment samples are to be taken in this manner during wet events?</p>
256	page F-22 J.	<p>The required contribution to Southern California Bight Project needs to be justified. Please provide the justification used to require Ventura County to participate in the Southern California Bight Project and an explanation of how the \$250,000 amount (over \$0.30 per Ventura County resident) was determined.</p>
257	page F-24 L.6.(b)	<p>An additional certification requirement on commercial laboratories above and beyond the California Laboratory</p>

Attachment B - Specific Technical Comments for Ventura County MS4 Permit Draft Order 12/27/06

		<p>Accreditation Program seems beyond the scope of the permit. The California Laboratory Accreditation Program certifies analytical laboratories for environmental analysis, and limiting the number of competing labs to those in the "intercalibration study" is creating a new accreditation program. It is also currently impossible to do for some constituents because the intercalibration study has not been developed for all the analysis required in this draft. At a minimum, a six month window should be available for laboratories currently used to participate in the study.</p> <p>Most analytical laboratories typically observe the three major holidays; Thanksgiving Day, Christmas Eve and Day, and New Years Eve and Day. During the holiday season, sample delivery as well as available staff have been and are problematic. Missed holding times due to lab closure compromise data completeness and will be considered circumstance beyond our control. To avoid this we are requesting the addition of three black-out dates for monitoring: November 22, 2007, December 24-25, 2007, and Dec 31, 2007 –January 1, 2008.</p> <p>Two deadlines for the annual report are given, one the anniversary date of issuance (Part 8 T) and the other December 15th (Attachment H). No matter which date is correct, adequate time to compile the requisite information after the end of the permit year will be needed. We request a deadline six months after the end of the permit year.</p>
258	General Monitoring	
259	Deadline for annual report (Part 8 T) and (Attachment H) Page H-1	
260	Part 8 T	<p>The reporting section is in a poorly designed format. This will increase staff time, for both the RWQCB and permittees, with little or no improvement in water quality. We would prefer to keep more to the current reporting format. Please change or provide an explanation for this new unique reporting format.</p> <p>"prohibited all non-storm discharges" –Instead of just asking whether all non-storm discharges were prohibited, it should include language about non-storm discharges for which Permittees have authority to prohibit. Also, does prohibit. Please clarify if this means we implement ordinances prohibiting it or does it mean actually only storm water is allowed to enter the system. If it means the latter, the question is inappropriate since we know everyone will have to respond with a no.</p> <p>"swimming pool discharges? if yes" – the sentence ends here and it looks like a portion is missing.</p>
261	Page H-5 2.a-b	
262	Page H-6 2.i	
263	Page H-18 3.c (the 2 nd c)	<p>"An adjustment factor for within hour rainfall variability" Please explain this incomplete sentence.</p>
264	H-19-20 7.a-h	<p>Some of these are questions where they look like they should be something else. Please clarify if whether we are to have these on file or are these supposed to be attached.</p>
265	Page H-4 4. (a) (1)	<p>Specific watershed based implementation plans are being written and adopted for TMDLs. The responsible parties will be implementing these plans. Please explain the rationale for adding specific implementation requirements to only one segment of the responsible parties into this permit or remove. Tampering with ongoing watershed-wide collaborations risks upsetting the agreements that have taken a long time to develop.</p>

Attachment B - Specific Technical Comments for Ventura County MS4 Permit Draft Order 12/27/06

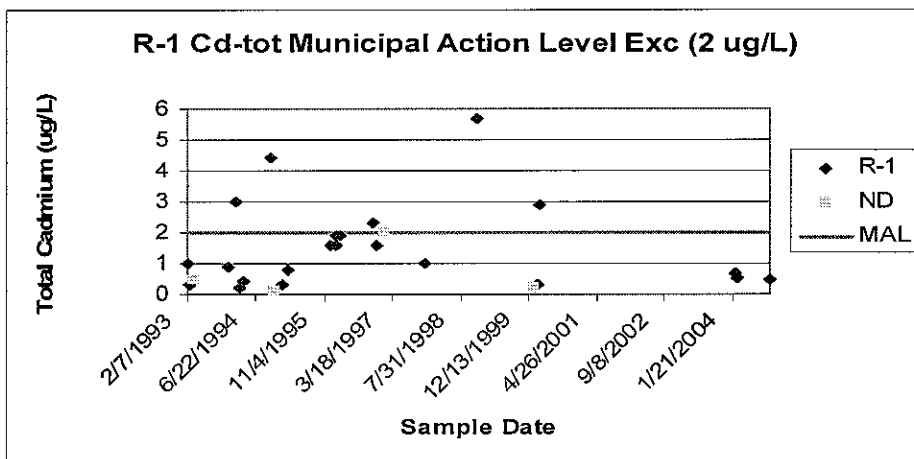
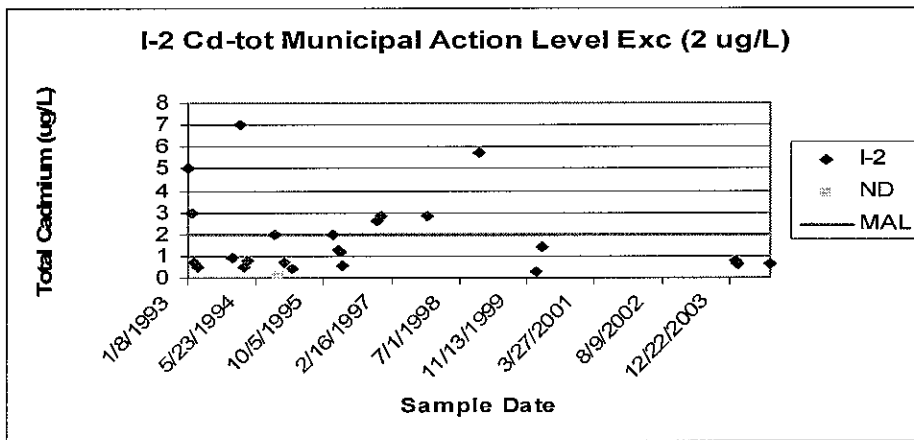
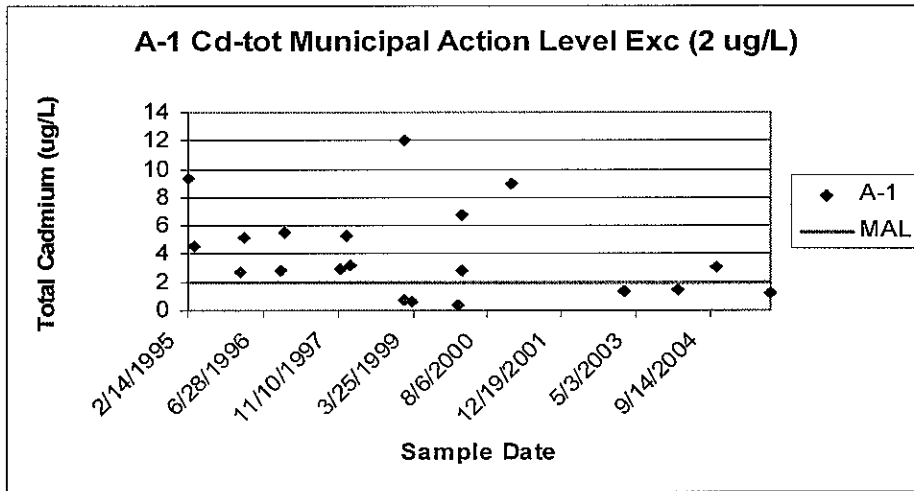
General Errors, Typos, and Omissions

Reference	Correction
Table of Contents Page iv	The Table of Contents is incomplete or missing pages.
P. 20 (Findings – Implementation)	Typo on 12 th line – weather should be whether
P. 58 Part 4 E III 5	(C) and (E) appear to be the same statement – delete one.
Page 63 F.1 (b)	This paragraph references tables 5, 6, and 7 but tables 6, 7, and 8 follow.
Page 77 G 5 (a) (6)	“IMP techniques” correct to “IPM techniques”
Page B-1 and B-3	“Cooper” should be “Copper”
F. 10. (a)	Appears that reference to section F. 7. Electronic Site Tracking System actually should be referring to section F. 8. Inspections.
Page i in the Reporting section H	The Table of Contents is incomplete or pages are missing.
Page H-6 Part 3	Missing “Part 3” designation before “Storm Water Quality Management Program Implementation”
Page H-7 Part 3 B. 3	“By what date certain” Remove the word “certain”
Page H-18 E 3. (a)	“Ho” should read “How”
Page H-20 E 7. (e) and (g)	#7 (e) and (g) are the same, delete (g)
Page H-20 E 10. (b)	“Does include the following” insert “it” “the electronic tracking system” between “Does” and “include”

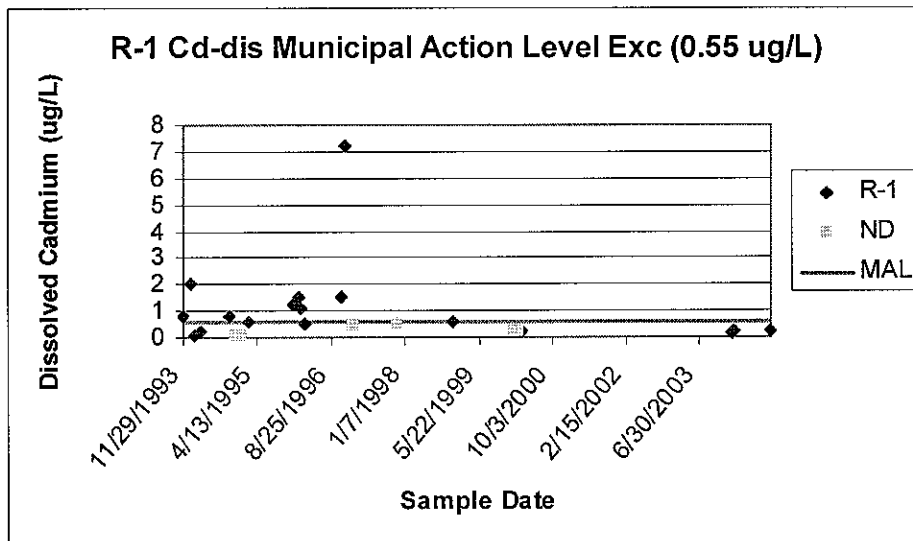
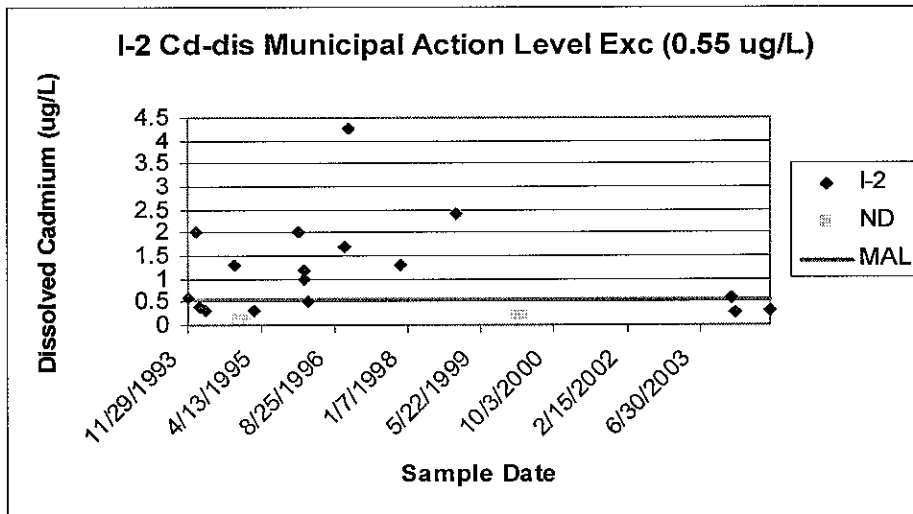
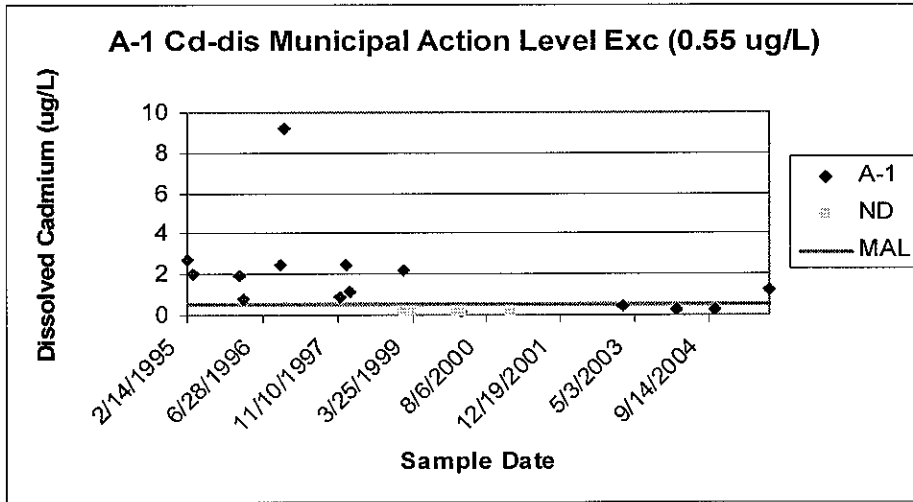
Attachment C

Comparison of Discharge Characterization Data with Municipal Action Levels

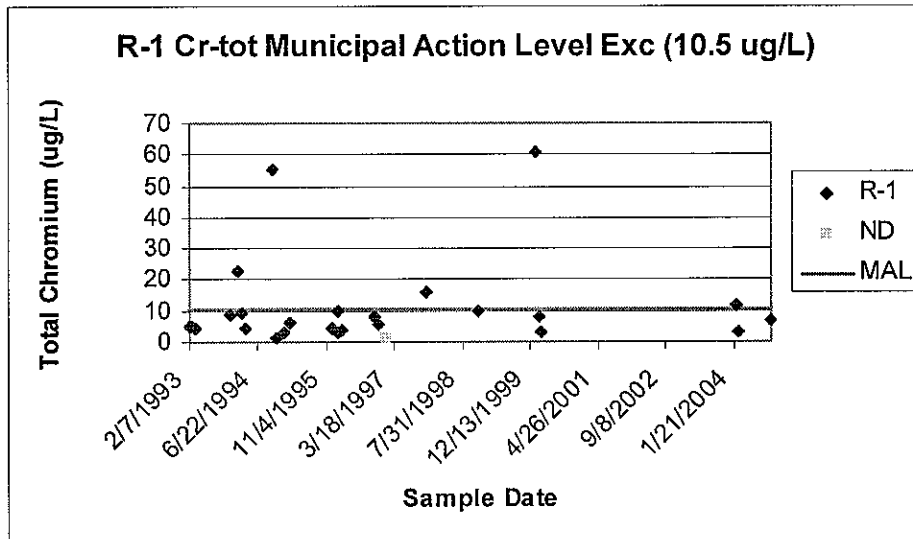
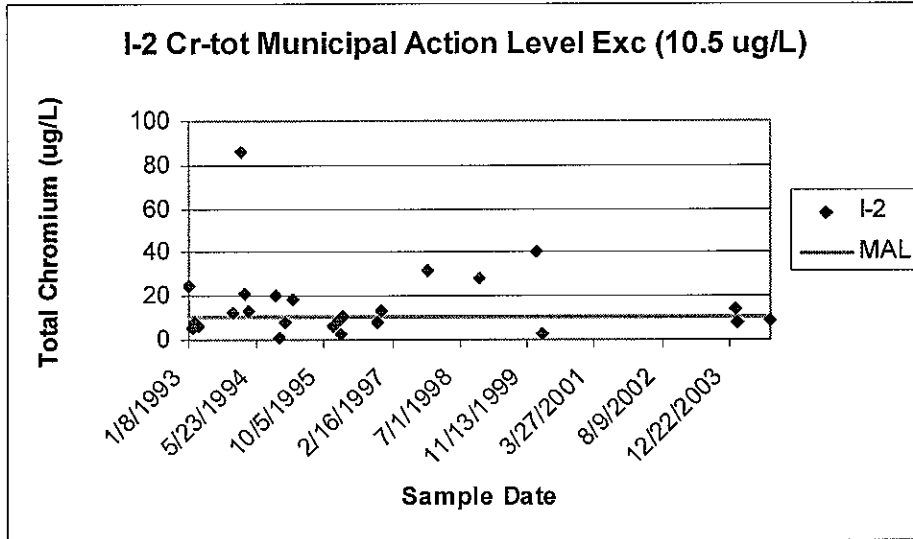
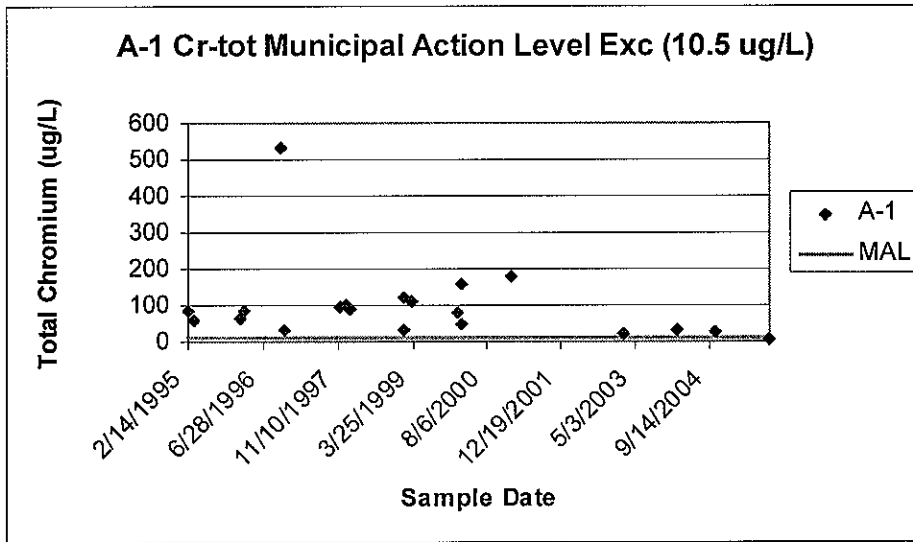
Cadmium, Total



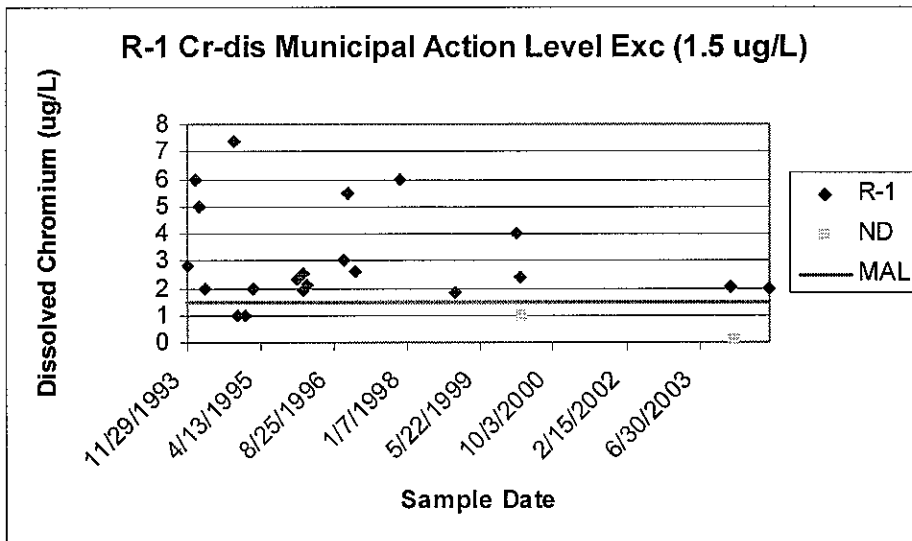
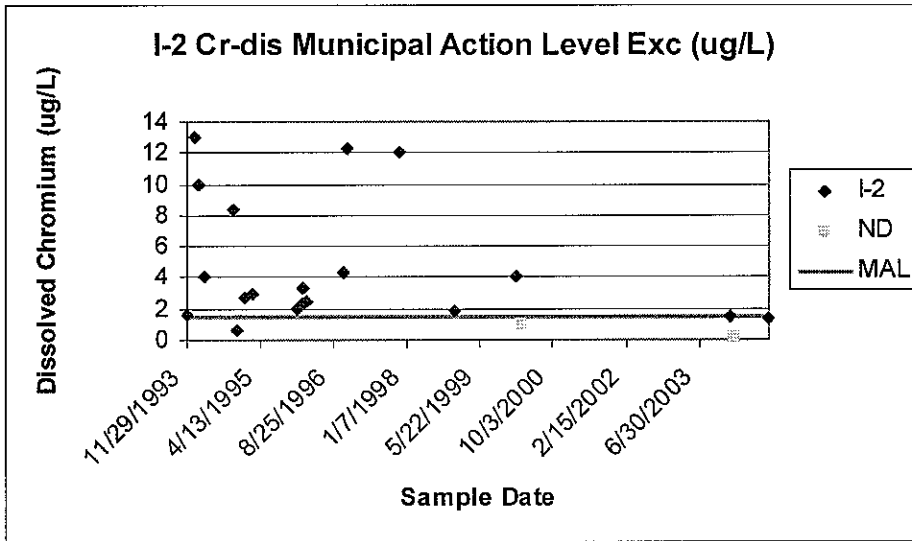
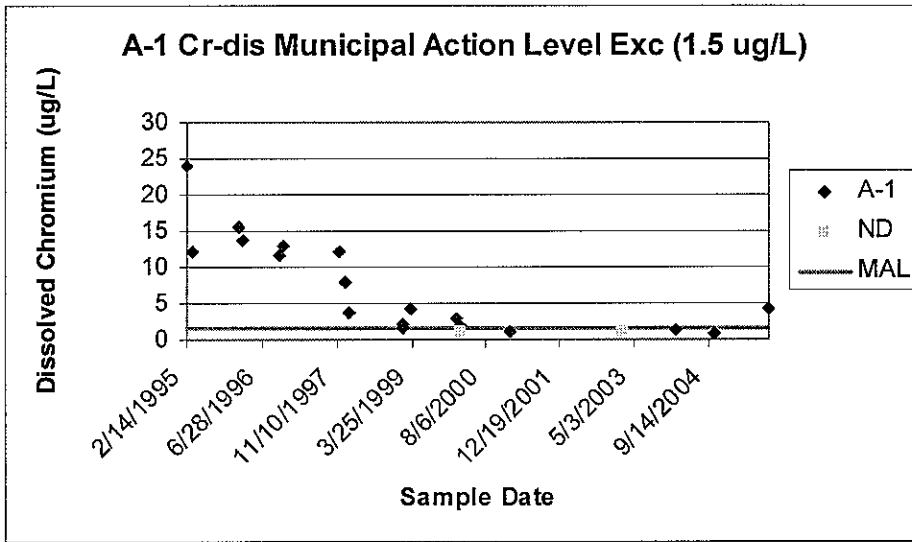
Cadmium, Filtered



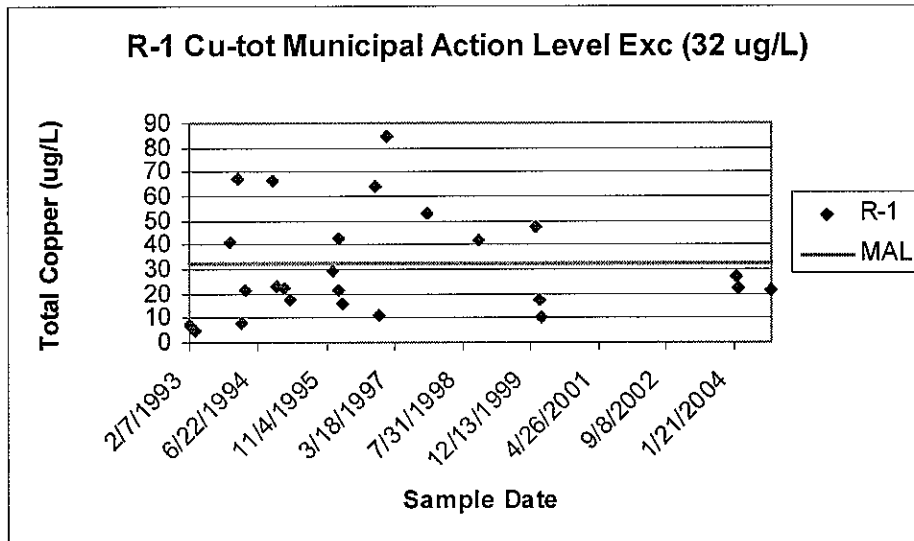
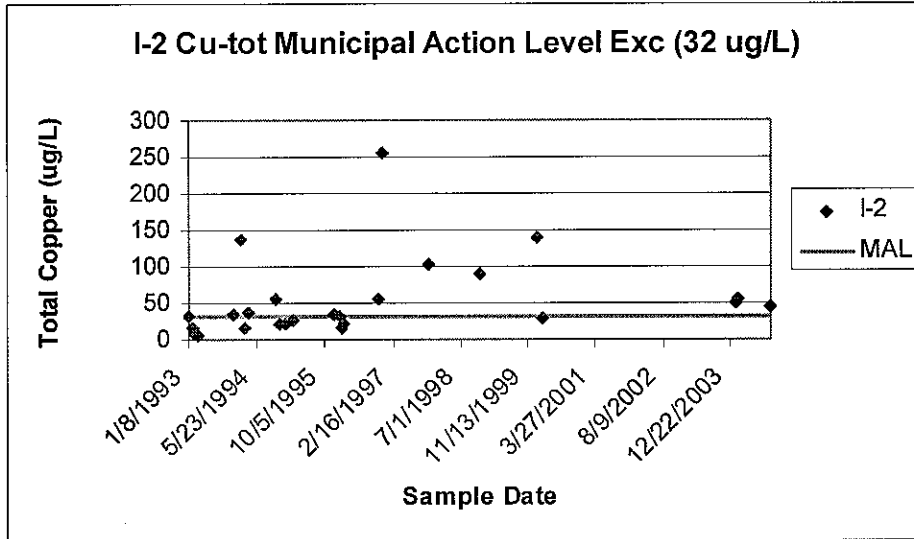
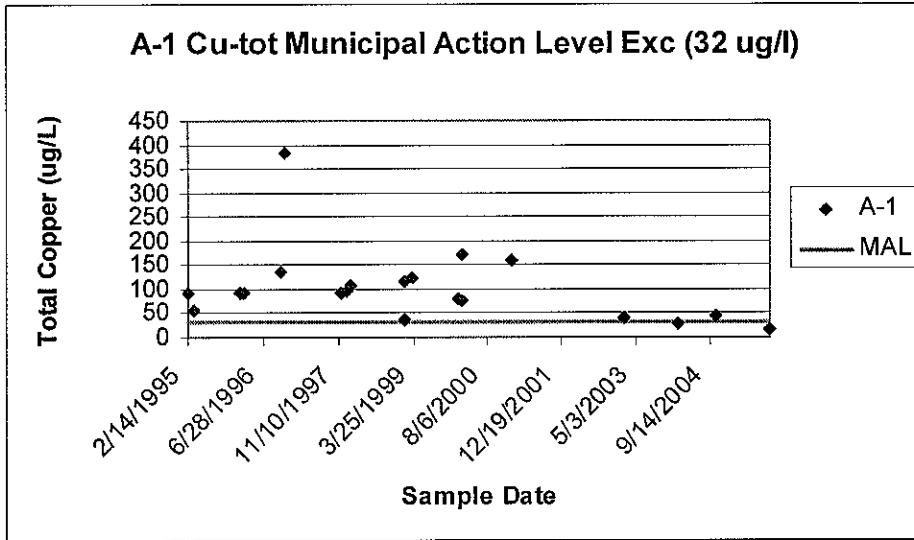
Chromium, Total



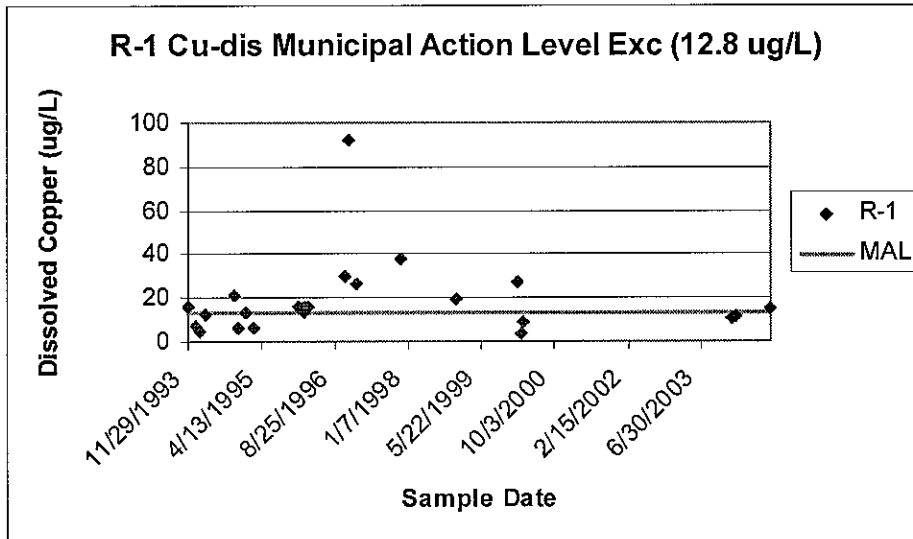
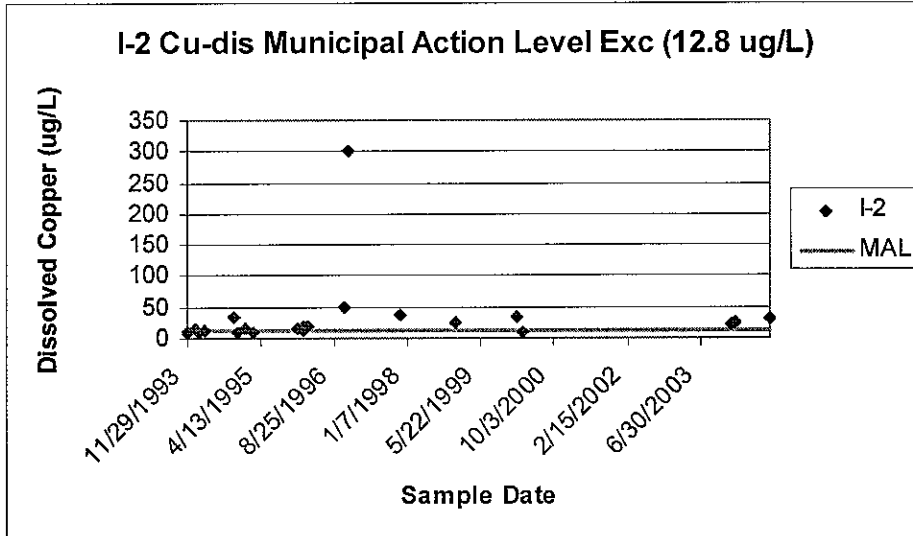
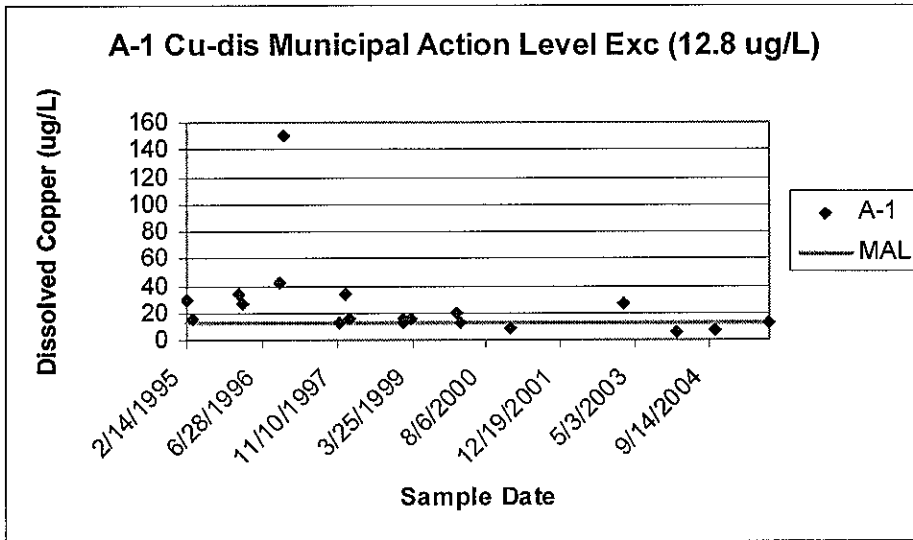
Chromium, Filtered



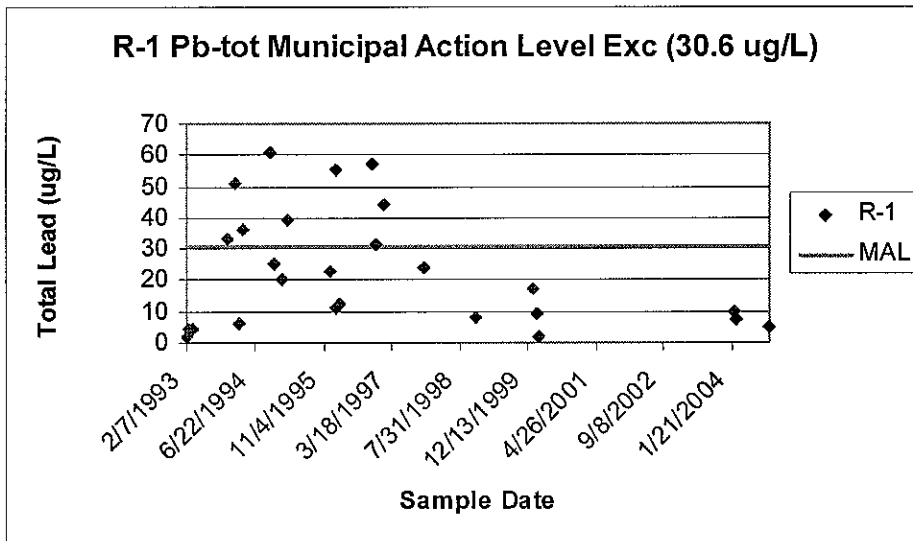
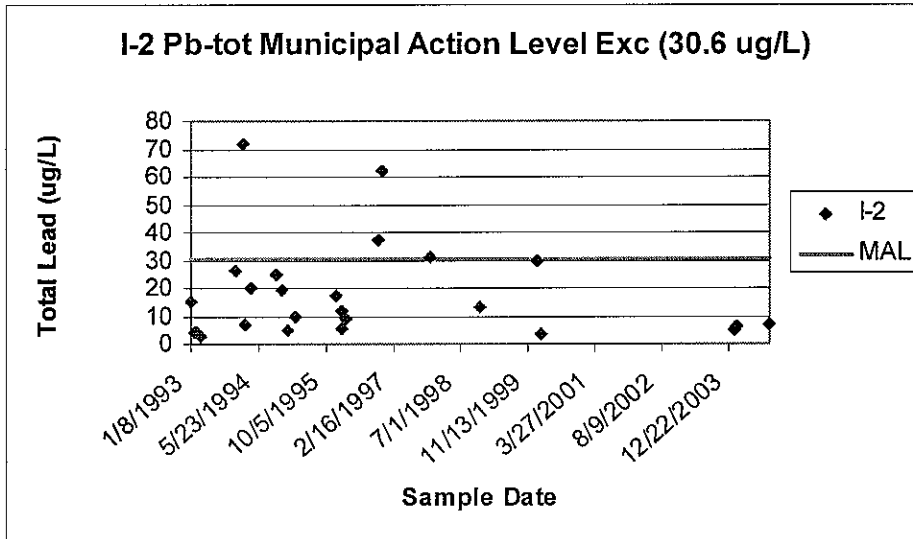
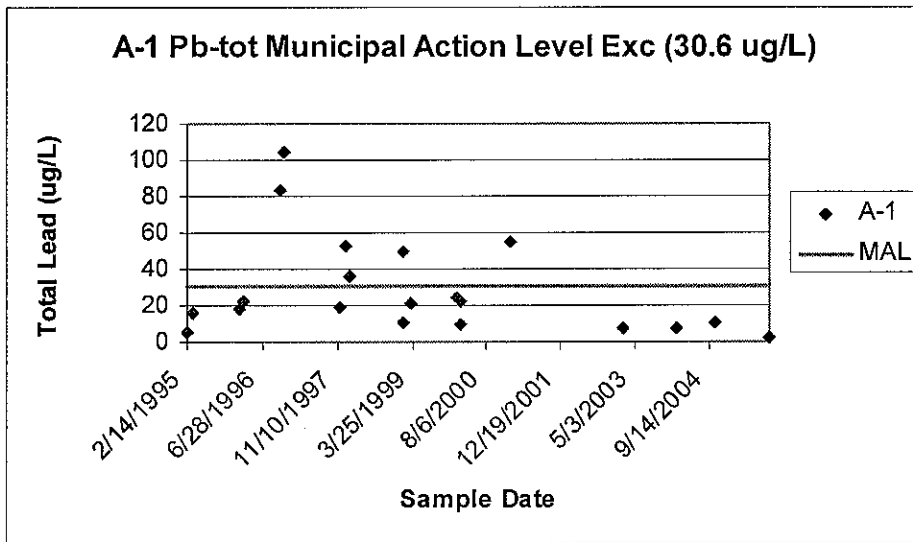
Copper, Total



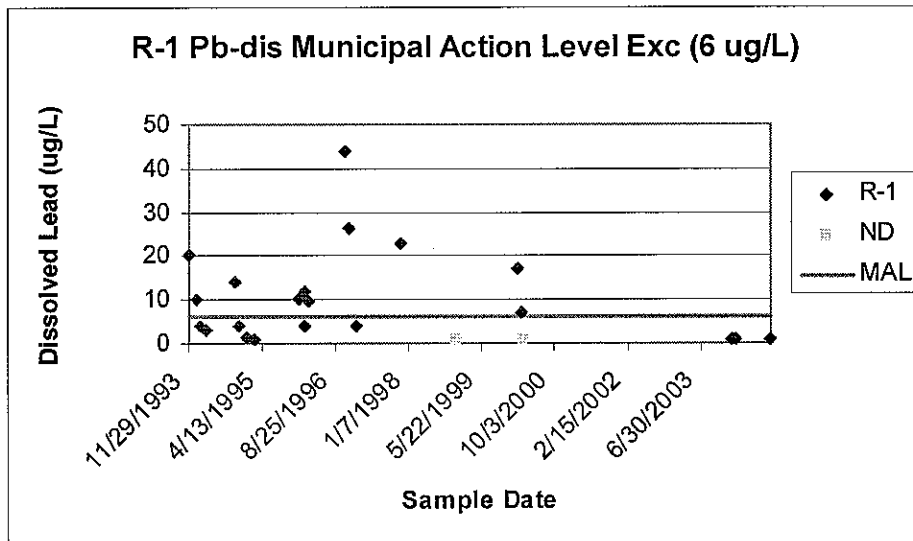
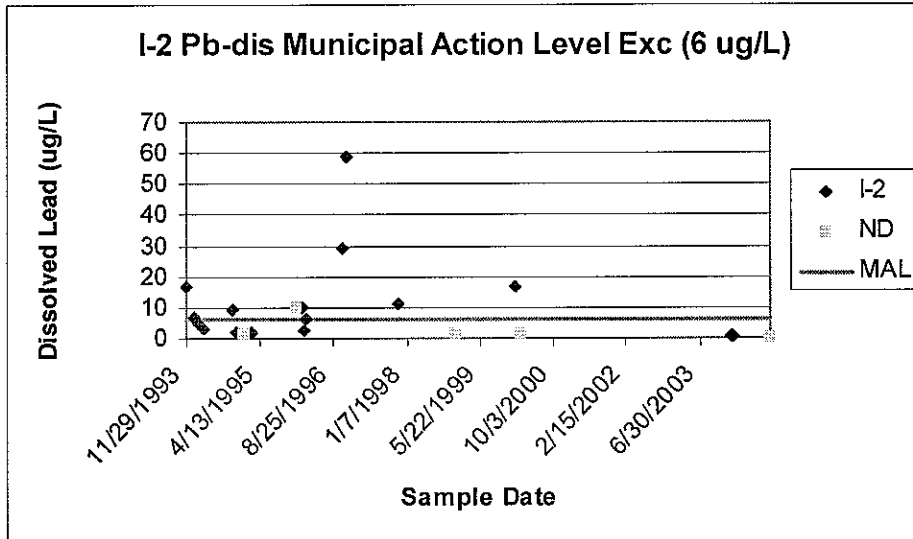
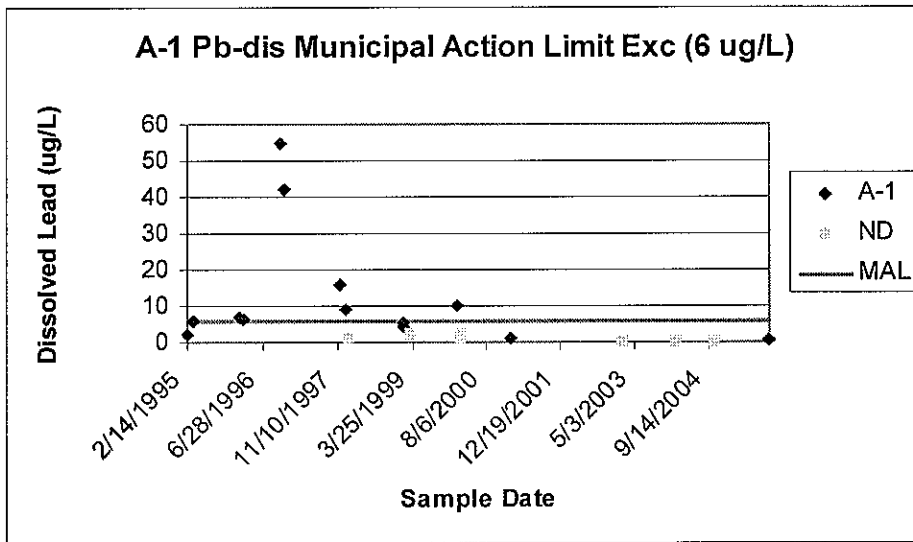
Copper, Filtered



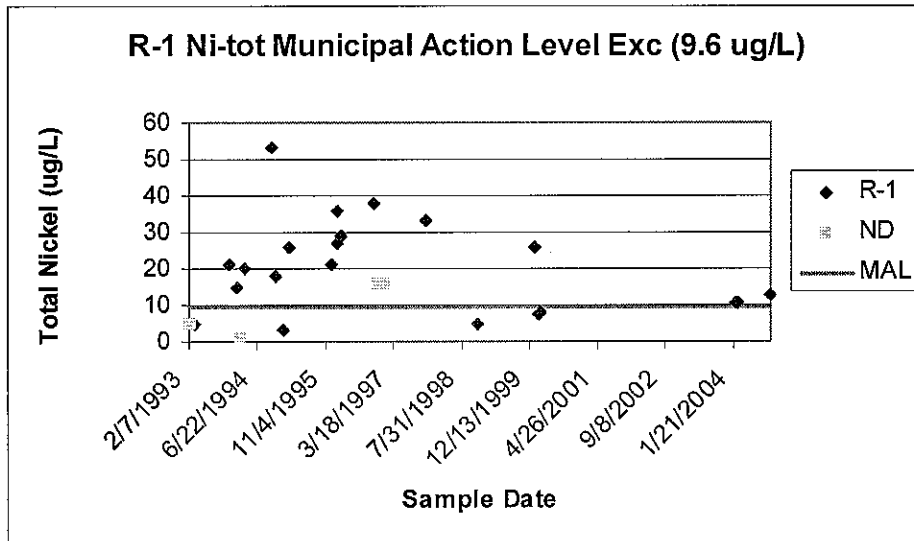
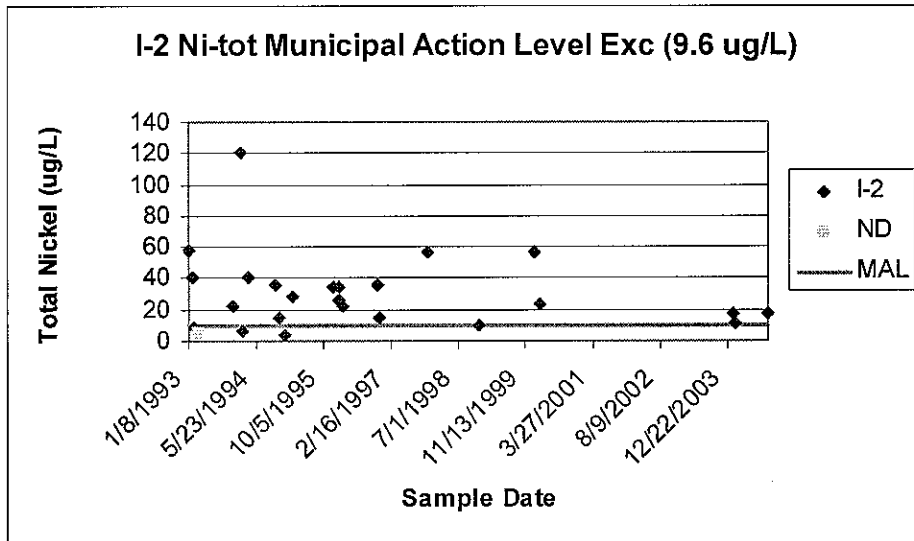
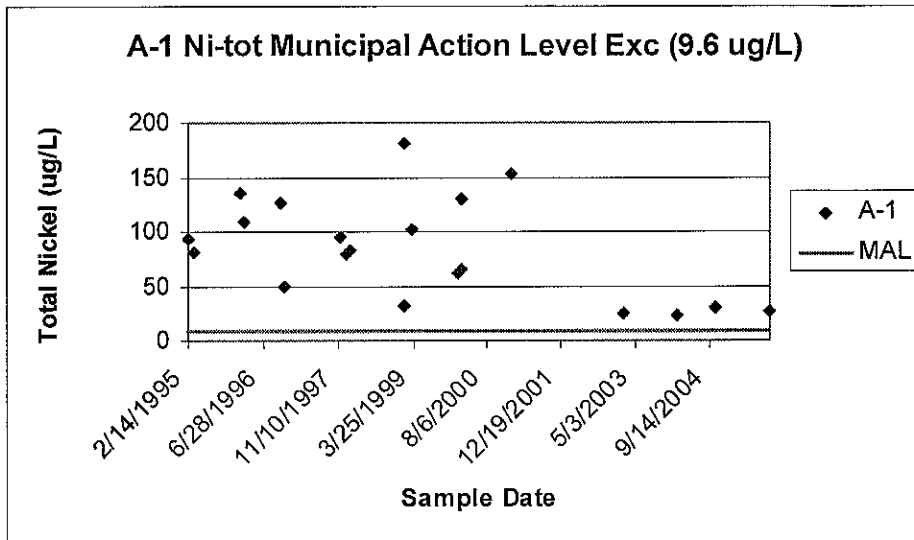
Lead, Total



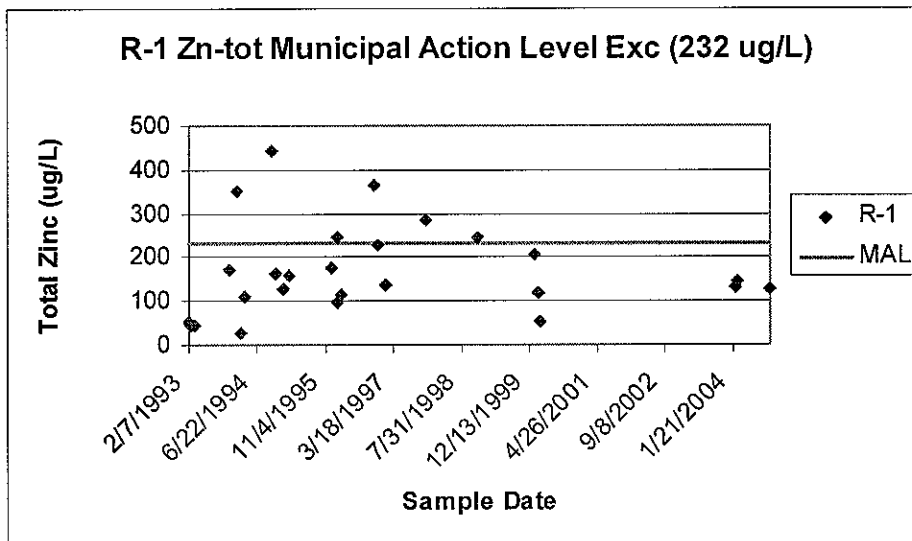
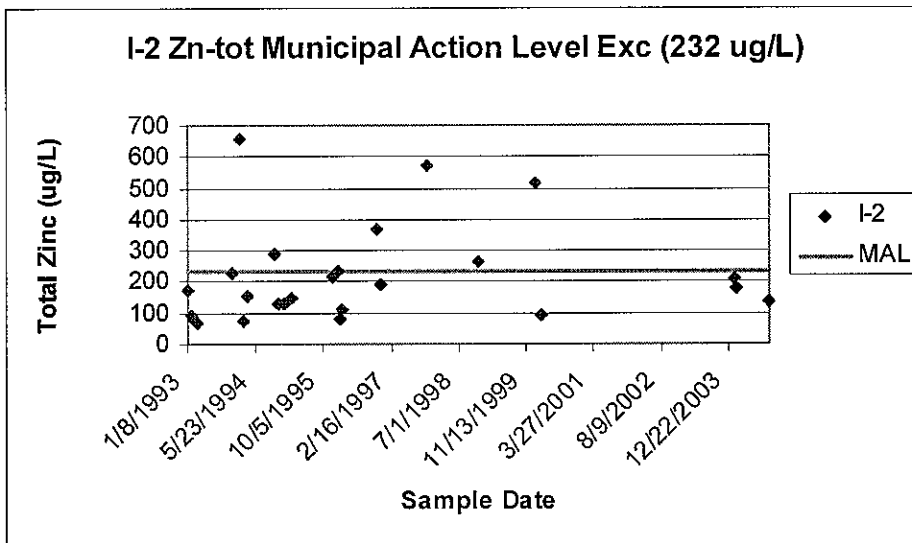
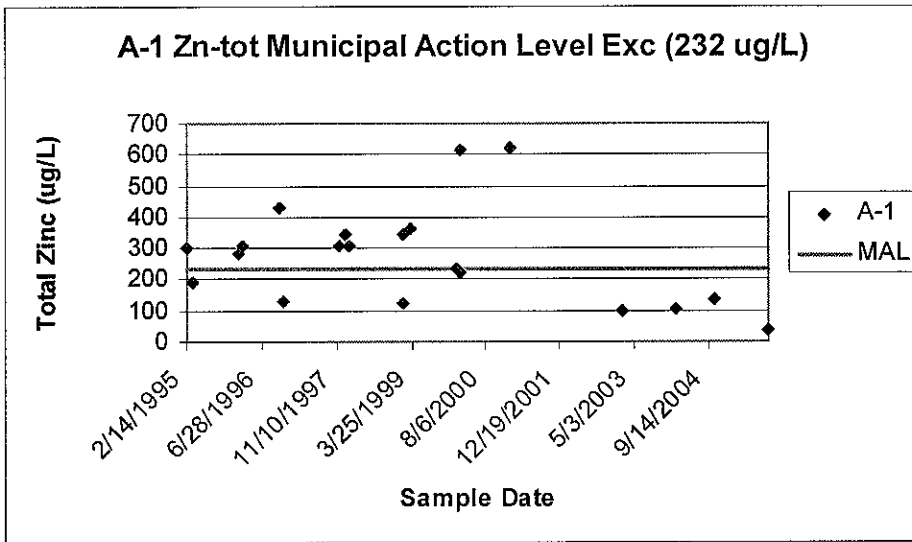
Lead, Filtered



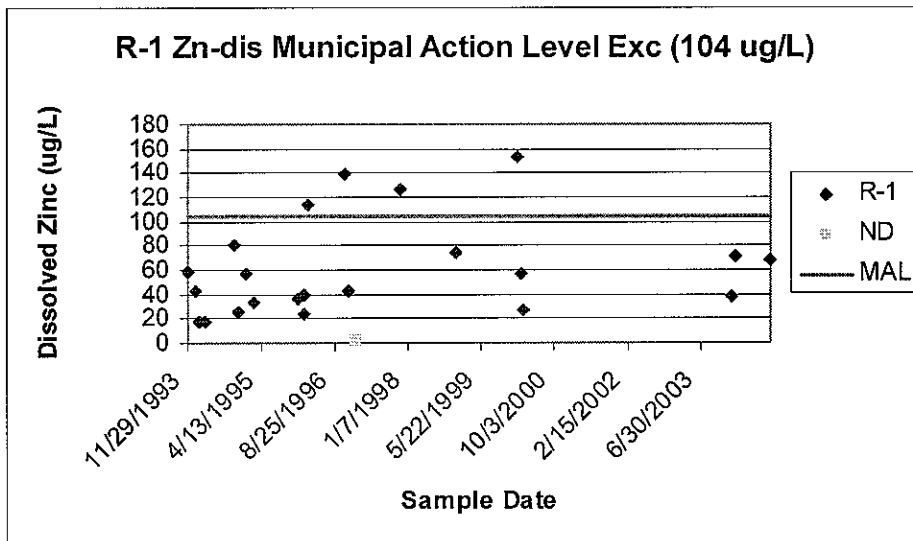
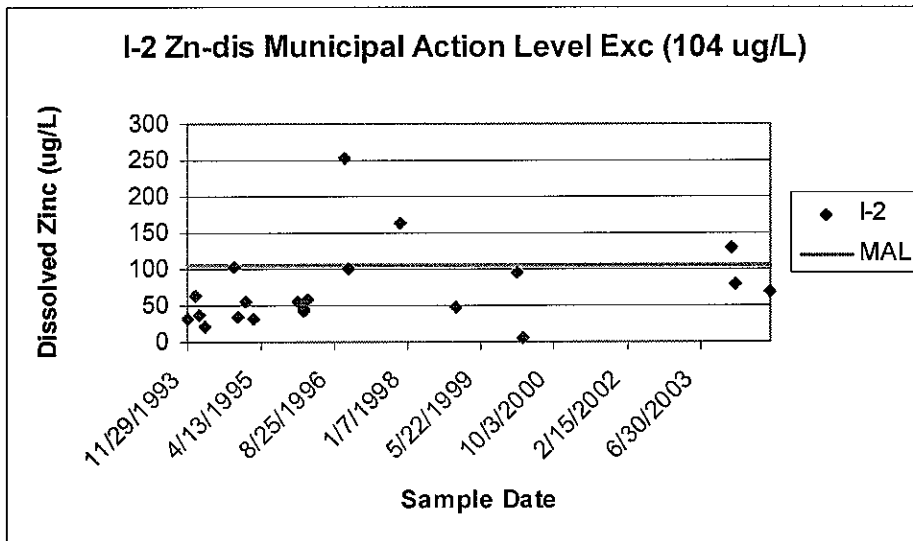
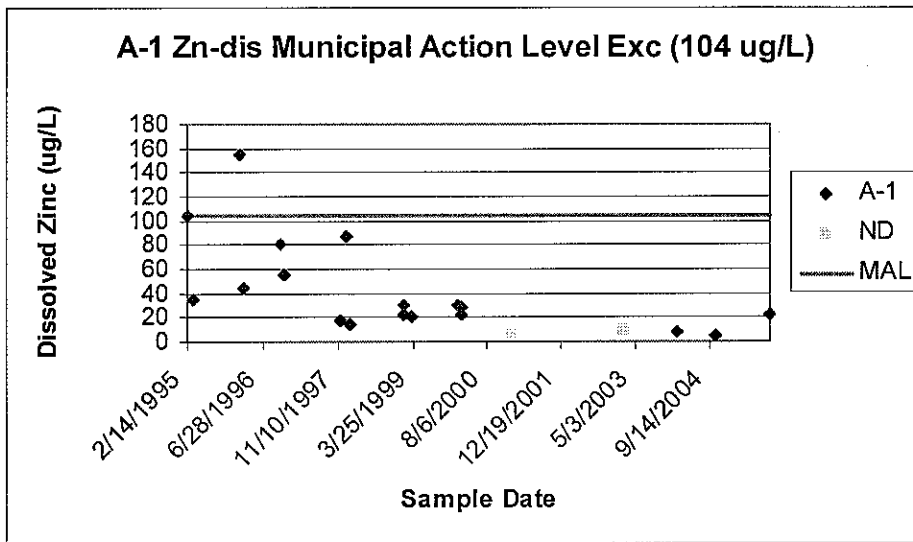
Nickel, Total



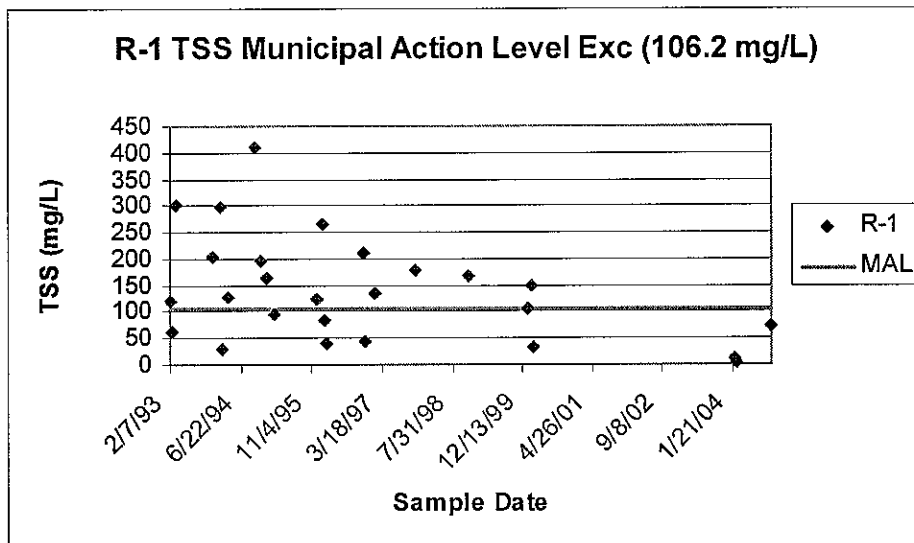
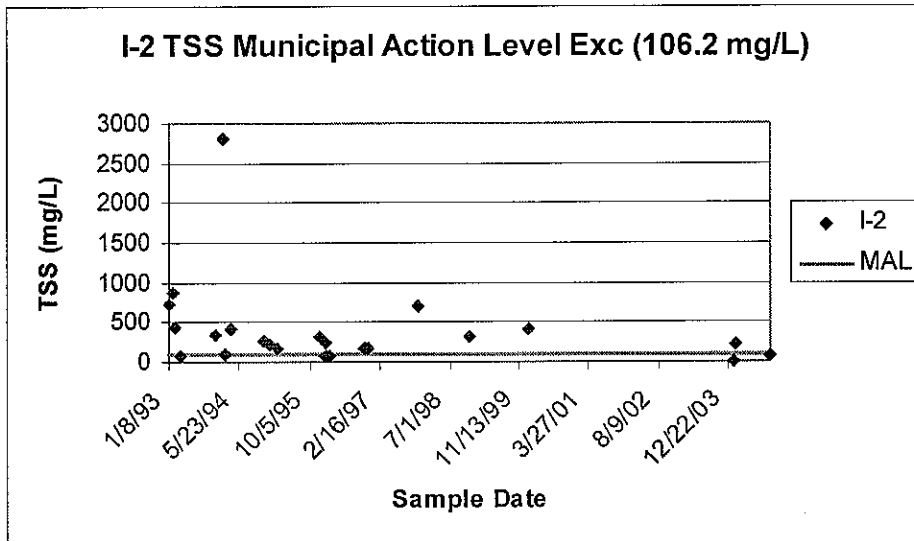
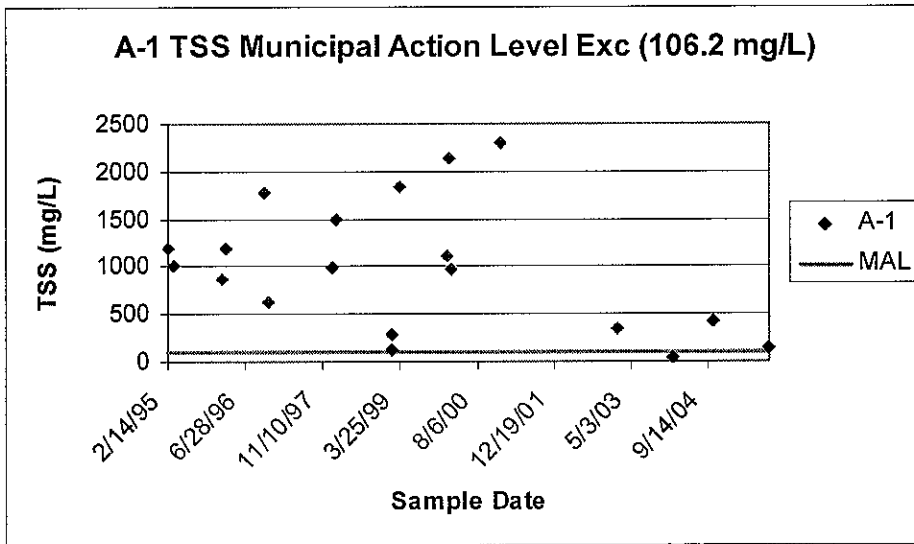
Zinc, Total



Zinc, Filtered



Total Suspended Solids



Chemical Oxygen Demand

