

**Response to Comments on May 11, 2015 Tentative Order
Provision C.6. – Construction Site Control**

Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
CCCWP	33c and d	C.6.b.	30 days for Return to Compliance	Inspectors need to be able to use their expertise and best professional judgment to determine how to best allocate their time. Allow the current 30 days for corrective actions to be implemented for potential discharges.	The Previous Permit did not allow up to 30 days for corrective actions to be implemented. However, it did allow for Permittees to give sites time to implement corrective actions with a rationale. This is also allowed in the proposed Permit. Should a Permittee feel that certain potential discharges warrant longer timeframes for implementation of corrective actions, the Permit allows for it, with the provision of appropriate rationale in reporting. Inspectors have the flexibility to plan their schedules as they see best.	None
SMCWPPP	23a	C.6.b.	Keep " <u>Goal</u> of Correcting Violations"	The current permit requires that all violations before the next rain event are corrected in a timely manner with the "goal" for correcting violations before the next rain event but no longer than 10 business days, and if greater than 10 business days is required, the inspector must record rationale. Adding the language "Permittees shall require" does not allow for flexibility needed by inspectors. Without "goal," sites with minor issues during the dry season (i.e. verbal warnings) would need to be reinspected within 10 business days. This will greatly increase the work load for inspectors. Request that the language from the prior permit be retained.	It is unclear what the commenter considers "minor" issues. Throughout the MRP term, Water Board staff asked for a list of "minor" issues from the Permittees. The only "minor" issue Water Board staff received was open garbage cans/dumpster lids. Water Board staff concurs that open garbage cans/dumpster lids are a minor issues, in that site staff can fix that issue immediately and corrective actions would then have been implemented. The Water Board's construction and industrial inspectors follow similar protocol for open garbage cans/dumpster lids, but will still note the issues in their inspection	None

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					findings. The Permit requires that corrective actions be implemented before the next rain event, but no longer than 10 business days after the potential and/or actual non-stormwater discharges are discovered. More time can be allowed as long as there is a rationale. The Permit does not stipulate that the sites need to be reinspected to determine if corrective actions were implemented.	
SMCWPPP	23b	C.6.b.	Add Language Allowing Other Methods to Confirm Implementation of Corrective Actions	Include language in the Fact Sheet that allows confirmation of corrective actions to happen during the initial inspection, with a photo submitted, or with documentation from the facility.	The Permit does not specify the method that must be used to confirm corrective actions. The method for confirmation of corrective actions of various scenarios has been left to the discretion of each Permittee to include in its Enforcement Response Plan (ERP) as guidance for its inspectors.	None.
Clayton Concord Danville El Cerrito Hercules Martinez Moraga Oakley Orinda Pinole	43 26 26 32 23 29 20 11 23 19	C.6.b.ii.(3)	Actual and Potential Discharges	Delete references that specify types of corrective actions and timeframes for implementation, as these create a disincentive for identifying minor problems and create unproductive administrative work.	The Permit does not specify the types of corrective actions that need to be implemented. It is appropriate to specify time frames to ensure that potential and actual discharges of pollutants are appropriately and timely addressed. Water Board staff's experience is that at many construction sites, minor corrective actions that are not completed	None

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Pleasant Hill San Pablo San Ramon	22 22 29				<p>immediately, or within a few days, are not viewed as priorities and may not be implemented, absent additional inspections. Providing a 10-day window underlines the importance of water quality and operating a clean site, making it more likely that problems will be corrected even when an inspector is not present.</p> <p>If an inspector is unwilling to identify potential discharges because that will trigger a 10-day window to ensure they are corrected, the Permittee has not trained the inspectors adequately and it calls into question the adequacy of the construction site program.</p> <p>See also response above regarding "minor" issues and garbage can/dumpster lids. Having not received information from Permittees regarding other kinds of issues that might be considered minor, that category has not been called out separately in the Permit. It is unclear what additional "minor" problems the commenters are referencing.</p>	
CCCWP	33a	C.6.c.	10-Day Period to Correct Potential Discharges Expensive	All potential discharges should not be considered high priority. Doing so would increase inspection costs and reduce the total number of sites that can be inspected in a year.	The Permit does not state that all potential discharges are considered high priority and neither does it state that a reinspection is the only tool to verify that corrective actions have	None.

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					<p>been implemented. This has been left to each Permittee's discretion. Further, we note that to help fund the business inspection program during times of diminishing public funds, a few Permittees charge for inspections. This has inadvertently become an enforcement tool for these Permittees, and also serves as a means of maintaining and increasing Permittee capacity to complete inspections.</p>	
CCCWP	33b	C.6.c.	No Incentive to ID Potential Problems	<p>Requiring that every observed problem have a 10 business day follow-up creates disincentive for inspectors to proactively identify and communicate potential problems to site operators because it will require the inspector to complete prescriptive follow-up and documentation.</p>	<p>As stated above, the Permit does not state that a reinspection is the only tool to verify that corrective actions have been implemented. This has been left to the Permittee's discretion. In our experience, long periods of time without follow-up deemphasizes to a discharger the importance of the water quality issue and makes it less likely that such issues will be timely addressed.</p> <p>If inspectors are unwilling to identify potential discharges because that will trigger a 10-day window to ensure they are corrected, the Permittee has not trained its inspectors adequately.</p> <p>In addition, it is troubling that the commenter may be suggesting that inspectors do not record potential</p>	None.

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					<p>discharges or ensure that corrective actions are implemented. It is also troubling in that this may result in an inaccurate inspection history for a Permittee's sites.</p> <p>Many Permittees use preprinted inspection forms with the BMPs listed on them. The inspectors would check off the BMPs and make notes/comments, as appropriate. Some inspection forms also serve as the enforcement action notice, with space to list the issues and compliance date for the corrective actions. On the same form, some Permittees have also allotted space for the corrective action verification. This form is filed for each site inspected and available for the next inspector to view the sites' compliance history.</p>	
CCCWP	33c	C.6.b.	Verbal Warnings and Warnings Notices Are Effective Tools	Verbal warnings and warning notices can be effective and efficient tools to identify and address observed problems without triggering the more time intensive follow-up, documentation, and reporting requirements.	Water Board staff agree that verbal warnings can be effective and efficient. As an example, Water Board inspection staff uses verbal warnings for uncovered dumpsters and small amounts of trash on the ground. Staff at the site can then immediately cover the dumpsters and pick up and properly dispose of the trash. The Water Board inspectors then note the issues and corrective actions in their inspection	None.

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					reports. It is of concern that the commenter may be suggesting such potential discharges may not be documented. In that situation, it would be unclear if corrective actions for potential discharges had been implemented, and might be challenging to identify a periodic, but recurring, problem. There is little incentive for sites, some inspected only once every 5 years, to consistently implement appropriate BMPs during the period they are not being inspected if they are always given the opportunity to correct potential discharges and there are no written records of this.	
San Jose SMCWPPP	32 24	C.6.d.ii.(2)	Maintain Current Requirement to Verify NOI Has Been Filed	Determining whether or not a developer has obtained coverage under the CPG is the responsibility of the Water Board and not the Permittees. Maintain the current permit requirement to require verification that a site has filed an NOI for permit coverage under the CGP.	Water Board staff concurs.	See revision in C.6.d.ii.(2)
San Jose	33b	C.6.e.ii.(2)(b)	Use High Priority to Capture	Use the flexibility of the current permit for high priority sites to capture all appropriate construction projects with potential impacts to receiving water bodies. Or add the 15% slope to the current high priority reference to slope.	There were projects, brought to Water Board staff's attention during the Previous Permit, that were on steep slopes. Perhaps partly because they disturbed less than the 1 acre threshold for coverage under the Statewide NPDES Construction Storm Water General Permit, and thus did not require	None.
SMCWPPP	26c	C.6.e.ii.(2)(b)	Use Recommended Language from Administrative Draft	Use the program managers' early input on the Administrative Draft, which would limit inspections of hillside projects "meeting a		

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				minimum size threshold for disturbed land as defined by the Permittee."	Construction General Permit coverage, minimal BMPs were implemented, resulting in a significant threat of construction site pollutant discharge to the storm drain. Therefore, this Permit specifically calls out hillside projects. During development of the Permit, Water Board staff requested from the Permittees specific thresholds or other measures to use in this section. "A minimum size threshold for disturbed land as defined by the Permittee" is not sufficiently specific to ensure that hillside construction sites with the significant potential to discharge construction site pollutants to the storm drain will be appropriately inspected and managed by the Permittees. However, the Permit section does allow Permittees to use their existing hillside development areas or criteria, and otherwise specifies a relatively steep slope (15%) to which this requirement applies, ensuring that at least the most significant sites are inspected and appropriately managed.	
San Jose	33a	C.6.e.ii.(2)(b)	Frequency of Inspections of Hillside Projects	Requirement will add additional tracking and outreach work. The City does not currently track slope. Need more time to make database and inter-departmental process changes to track	The effective date of the new requirement is July 1, 2016.	See footnote to C.6.e.ii.(2)(b).

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				and report the required information. Allow until July 2016 to start implementation.		
SMCWPPP	26b	C.6.e.ii.(2)(b)	Immediate Implementation Date Problematic	Immediate effective date to inspect sites on 15% slope problematic. This should begin at the beginning of the wet season. Postpone implementation to the 2016 wet season.		
SMCWPPP	26d	C.6.e.ii.(2)(b)	Change Language	{add at the end} <u>Effective Date – Immediate, except July 1, 2016 for category (2)(b) hillside projects.</u>		
SMCWPPP	26a	C.6.e.ii.(2)(b)	15% Slope Arbitrary	15% slope arbitrary and has no linkage to whether the project is a significant threat to water quality.	Most municipalities' guidance for slope from the street to the gutter is about 5% and from the property line to the curb is about 2%. Those are the slopes necessary to move water quickly and efficiently into the storm drain systems for public safety. Construction sites with 15% slopes pose a significant threat of discharging construction-related pollutants to the storm drain because they are likely to have higher runoff velocities and because BMPs must be more robust and more-robustly installed and maintained in order to control pollutants, as compared to less-steep sites. Water Board staff has observed storm water move sediment and other construction-related pollutants into storm drains at sites ranging from those with flat slopes to those with slopes greater	None.

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					<p>than 15%. While there is some variation in the threat for sediment-laden and turbid runoff depending on a site's particular conditions, such as soil type, run-on onto the site from adjacent properties, existing vegetative cover, and other conditions, it is reasonable to require inspection and appropriate management of small sites on hillside slopes less than 15%. Planning literature considers 5% or 10% slopes as hillside slopes, and the Permit allows Permittees to define hillside projects based on their own hillside development maps or criteria. If Permittees do not have either, the Permit sets the hillside project definition for sites with $\geq 15\%$ slope, with the intent of ensuring that at least those sites with the greatest potential threat to discharge construction-related pollutants to the storm drain are appropriately inspected and managed.</p>	
CCCWP	36	C.6.e.iii.	Reporting Number of Violations Inconsistent with Timely Correction for All Potential and Actual Discharges	<p>Reporting on the "Number of Violations" is inconsistent with Provision C.6.b.ii (3), which requires timely correction for all potential and actual discharges. <u>Action desired:</u> Revise the reporting requirements to be internally consistent. This would allow the annual reporting process more</p>	<p>The word "violations" has been replaced with "potential and actual discharges" to make the provision consistent. In the previous Permit, Water Board staff intended "violations" to include potential discharges (i.e., situations that</p>	See changes in C.6.e.iii.

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				efficient and effective. C.6.e.iii (2)(g) " <i>Number of <u>actual discharges violations</u> fully corrected prior to the next rain event, but no longer than 10 business days after the <u>actual discharges violations</u> are discovered or otherwise considered corrected in a timely, though longer period.</i> "	threaten discharge of pollutants to the storm drain, even if an ongoing or recent discharge is not observed by the inspector) and actual discharges. The Permit requires construction site inspections to be completed during the rainy season. Particularly during that time, it is vital that potential discharges are corrected in a timely manner so that they do not become actual discharges to the MS4 during a rain event.	
SMCWPPP	26e	C.6.e.iii.(1)	Delay Submittal Date for Certification	Use the following language, "In the <u>2017</u> Annual Report, each Permittee shall certify the criteria it uses to determine hillside developments. If the Permittee is using maps of hillside developments areas or other written criteria, include a copy in the Annual Report."	The commenter has not provided a rationale for why it cannot certify the criteria it uses hillside developments in the 2016 Annual Report. The hillside development area maps or criteria should already be done if Permittees have hillsides for development. If they are not completed, Permittees may use the 15% criterion listed in the Permit.	None.
SMCWPPP	26f	C.6.e.iii.(2)(a)	Change Language	Use the following language: "Total number of active hillside sites disturbing less than one acre of soil requiring inspection, <u>beginning in the 2017 Annual Report</u> "	Water Board staff concurs.	See change in C.6.e.iii.(2)(a)
SMCWPPP	25	C.6.e.iii.(2)(g)	Number of Violations vs. Number of Enforcement Actions	Request that the text in C.6.e.iii.(2)(g) be revised to refer to the number of "enforcement actions fully corrected" instead of the number of "violations fully corrected" so that it will be similar to C4.	Noted.	The Permit will allow Permittees to report by discrete discharges and enforcement actions. See revisions in

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San Jose	34	C.6.e.iii.(2)(g)	Report Number of Violations	Inconsistent with the reporting requirements in Provision C4. City tracks and reports at the violation level. Allow Permittees the option to report data at the violation level or the enforcement level. If the Water Board only wants data at the enforcement level, City needs until the 2016-2017 Annual Report, in order to change database.		C.6.e.iii.(3)(g).
Dublin	9	C.6.ii.e.ii.	Hillside Development Definition	<ul style="list-style-type: none"> • Is this the pre-existing slope or the post-construction slope? • Is this the average slope across the entire project site? What is the definition of "slope" as it applies to this requirement? How is "slope" measured? • If any portion (regardless of the net amount) of the site exceeds the minimum slope threshold does this trigger the requirement for monthly inspections of the entire site (i.e. say 100 SF of a 0.9 acre is considered "hillside")? • <i>The default definition for "hillside" development should be revisited and further discussed prior to implementation. Also, a minimum disturbed surface should be included in the definition of "project."</i> 	<p>This is for construction site controls so it is for pre-existing slope. Slope is the relationship of vertical rise to horizontal run, expressed as a percentage from the toe to the top of a slope.</p> <p>The Permit requires that Permittees have the legal authority to require all construction sites to have year-round effective BMPs. Hillside projects are emphasized because of their relatively greater threat of construction site pollutant discharge, as compared to flatter sites.</p> <p>The Permit gives the Permittees discretion to determine if the hillside project is truly a hillside project. The Permit states that hillside projects disturbing greater than or equal to 5,000 square feet need to be inspected during the rainy season.</p>	None.