

**Response to Comments on May 11, 2015 Tentative Order
Provision C.9. – Pesticides Toxicity Control**

Commenter & Comment #	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
Baykeeper (22)	C.9	Permittees are not required to reduce pesticide use or only use pesticides when necessary.	Waste load allocations must be incorporated into the MRP and reduction of pesticide loads must occur in accordance with the Pesticides TMDL and the Clean Water Act. The Draft MRP does not establish a system whereby Permittees are required to reduce pesticide use. The last permit iteration required Permittees to establish IPM ordinances and policies and to report pesticide use. The Draft MRP should be revised to require that Permittees reduce their pesticide use in their municipal operations and on municipal property and only use pesticides when necessary.	<p>NPDES permits must contain effluent limits and conditions consistent with the assumptions and requirement of the waste load allocations (WLAs) in the TMDL, not incorporate the WLAs into the permits. See 40 CFR § 122.44(d)(1)(vii)(B). The effluent limits may be numeric, if feasible, or BMPs. U.S. EPA's 2014 memorandum revising its 2002 guidance on TMDLs and stormwater permitting (referred to in the MRP) states that BMPs can be used to achieve WLAs. Here, the point of the BMPs required in the MRP is to reduce use of pesticides of water quality concern.</p> <p>Moreover, we note that the Basin Plan states that although WLAs apply to all urban runoff sources, the responsibility for attaining the WLAs is not the sole responsibility of urban runoff agencies, whose legal authority to regulate pesticide use is constrained. That said, the Board is committed to ensuring that Permittees reduce pesticide usage in their operations as one step in attaining the TMDL. Requiring pesticide use tracking as a tool will help accomplish this goal and inform the Board as to whether additional efforts are warranted.</p> <p>Importantly, we expect implementation of the suite of BMPs laid out in the Basin Plan will ensure attainment of the WLAs for pesticide-related toxicity. As such, the MRP need not be revised further.</p>	None
Baykeeper (23)	C.9	Permit should require continual	The Maximum Extent Practicable (MEP) standard anticipates and requires new	We agree that NPDES stormwater permits should require best management practices to meet the evolving MEP standard. Provision	None

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		improvement of IPM; include discussion of IPM progress.	<p>and additional controls be included with each successive permit. MEP should continually adapt to current conditions and BMP effectiveness and should strive to attain water quality standards. Therefore, the Draft MRP must include a mechanism by which Permittees are required to evaluate and implement new and effective methods of IPM.</p> <p>There is no discussion in the Permit regarding whether pesticide use has decreased since the 2009 permit, whether IPM measures are effective, and whether pesticide concentrations and toxicity targets are being attained.</p>	<p>C.9.g, Evaluate Implementation of Pesticide Source Control Actions, requires Permittees to do just this. To facilitate a meaningful evaluation of effectiveness, Permittees are required to do so only once each permit term.</p> <p>IPM methods are site specific, and various factors affect effectiveness of the IPM method(s) used and amount of pesticide use, but in general IPM is the latest and most effective best management practice to reduce pesticide-related toxicity. Decreases in pesticide use cannot be simply measured and stated because pesticides have widely different levels of toxicity and physical properties, so decreased use of a pesticide does not correlate to less toxicity in our waters. We know there is recurring pesticides-caused toxicity in receiving waters due to pesticides used in accordance with their labels, and we know that overall use of pesticides by the public and businesses far exceed levels used by Permittees. Consequently, we are pursuing regulatory action by US EPA and the California Department of Pesticide Regulation (DPR) as the best means to abate pesticide-caused toxicity, rather than consideration of more stringent IPM requirements in the Permit. There have been successes with this approach, especially at the state level. For example, the DPR has begun to evaluate water quality impacts at the time of pesticide registration. This overall approach is consistent with the TMDL, which has no deadline to meet the targets because the toxicity is caused by federally allowed usage.</p>	

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Dublin (11)	C.9.a.iii. (2)	Reporting	Revise from "Permittees shall describe two IPM actions implemented in the reporting year" to "Permittees shall provide a description of any new IPM actions implemented in the reporting year."	We disagree. During working meetings, Permittees preferred to report on 2 IPM actions, as proposed in the Tentative Order, because many IPM actions continue every year, and as a result, in some years a <i>new</i> IPM action is not taken.	None
SCVURPPP (51)	C.9.c.i	Typographical error?	This requires Permittees to hire IPM-certified contractors AND include contract specifications requiring contractors to implement IPM. Water Board staff has indicated that this is a typo and that they intended to change the "and" to "or" in the revised Tentative Order.	We agree.	Correct typo by changing "and" to "or"
Oakley (14), Clayton (48), Concord (31), Danville (3), El Cerrito (37), Hercules (28), Martinez (34), Moraga (25), Orinda (28), Pinole (24), PleasantHill(27) San Pablo (27) San Ramon (34), CCCWP (55) SCVURPPP (52)	C.9.c.ii	Delete requirement	Requires Permittees to observe pesticide applications by their contractors. Permittees do not inspect pesticide applications by pest control operators and believe this is outside of their jurisdiction and authority.	We disagree that this requirement merits deletion. Permittees are required to implement IPM in all facets of municipal operations (C.9.a). When Permittees hire contractors to do pest management, it logically follows that Permittees must ascertain that such contractors implement IPM on Permittee properties. This can be done by a critical review of invoices and any other records required by the City's IPM policy; it is not required that City staff observe pesticide applicators.	None

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El Cerrito (13), CCCWP (52)	C.9.c.ii	Requirement redundant	All applicators already receive IPM training and sign the City's IPM policy contractor agreement. Increased pesticide application observation is redundant and burdensome.	We disagree. The Urban Creeks Pesticide-Related TMDL implementation plan states that Urban Runoff Agencies will track progress by periodically reviewing the pesticide use by its hired contractors. Based on numerous Permittee Annual Reports, there is little/no evidence that this is done. Further, some cities' contracts for pest control contain contradictory requirements (e.g., "follow IPM policy" and "remove all pests within 24 hours"); similarly, implementation of IPM training varies greatly.	None
Dublin (12), SCVURPPP (52)	C.9.d	Keep current permit requirement	Not all permittees will need to communicate with the county agricultural commissioners. Revise to state that permittees shall describe any communications that they have with the County agricultural commissioners.	We do not understand the comment, because, as written, C.9.d.ii does require Permittees to briefly describe any communications they have had with county agricultural commissioners.	None
CCCWP (53) SCVURPPP (52)	C.9.d	Keep current permit requirement	Replace the language in C.9.d.i(c) with the language in Provision C.9.f.i.(3) of the current permit: "report violations of pesticide regulations (e.g., illegal handling) associated with stormwater management."	We disagree. The Urban Creeks Pesticide-Related TMDL implementation plan states that Urban Runoff Agencies will work with County Agricultural Commissioners (and others) to coordinate education and outreach programs to minimize pesticide discharges. Thus, the TMDL calls for a broader discussion than that requested by the Commenter.	None
SMCWPPP (54), SCVURPPP (53)	C.9.e	Include landscapers in public outreach	Revise to include underlined language: "The Permittees shall conduct outreach to residents who use or contract for structural pest control <u>or</u> <u>landscape professionals</u> by (a) explaining the links	We agree. Please note that current pesticide use data indicate that the pesticides of greatest threat to water quality in our urban creeks are applied primarily by structural pest control operators. Thus, while Permittee outreach to landscapers is worthwhile, we cannot accept it in lieu of ANY outreach to pest control	Make the proposed changes, except replace "or" with "and"

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			<p>between pesticide usage and water quality; <u>(b) providing information about IPM in structural pest management certification programs or landscape professional trainings</u>; and <u>(c) disseminating tips for hiring structural pest control operators or landscape professionals</u>, such as the tips prepared by the UC Extension IPM Program.</p>	<p>operators. Permittees have found structural pest control outreach materials available through UC-IPM and are encouraged to use those materials in conjunction with outreach efforts, rather than conduct additional outreach.</p>	