



CITY OF BRISBANE

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February 29, 2008

Mr. Bruce Wolfe, Executive Officer
California Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

Comments on the Tentative Order for the Municipal Regional Stormwater National Pollutant Discharge Elimination System Permit

Mr. Wolfe:

The City of Brisbane (City) appreciates the opportunity to review and comment on the above-referenced document. The City fully supports the goal of protecting water quality and reducing stormwater pollution; however, as a small municipality, we have significant concerns with many of the proposed requirements in the draft Municipal Regional Permit (MRP). This letter and attached table provide our comments and concerns. General comments are discussed herein and specific comments are included in the attached table. The City also supports and incorporates by reference the comments provided by the San Mateo Countywide Water Pollution Prevention Program (SMCWPPP) and the Bay Area Stormwater Management Agencies Association (BASMAA) in their comment letters on the same document.

Reduced City Revenue Available for Increased Costs of Compliance

Brisbane is a small municipality, with approximately 3,600 residents and 20 square miles of area, 17 of which are in San Francisco Bay. The City is currently facing reduced revenues from both property and sales taxes, which, combined, make up approximately 50 percent of the City's General Fund. As a result, the City is reassessing its current two-year budget and making plans to cut \$2.2 million from its operating budget. The City's current budget situation is not unique, as you are well aware with the State's current financial issues. With Governor Schwarzenegger calling for across-the-board cuts in State programs, I am certain you appreciate the urgent need for state and local programs to prioritize activities to provide maximum benefit to their constituents within existing resource constraints. Municipalities are severely restricted under Proposition 218 from increasing funding for stormwater management programs.

While the City of Brisbane is fortunate to have a dedicated assessment to fund portions of its stormwater management activities, this revenue source only provides approximately \$50,000 per year. In funding the City's local program, the current annual assessment for a single family home in Brisbane is just under \$10, which is in addition to separate assessments that fund the countywide stormwater program. This amount is relatively consistent with per-household estimates in your MRP Fact Sheet for costs to implement municipal stormwater programs; however, estimates by San Mateo municipalities indicate costs to comply with the proposed requirements in the MRP will increase significantly, on the order of two to five times existing costs. This is especially troubling for a municipality like Brisbane, which has relatively few

residents over which increased costs could potentially be spread and given the voter approval requirements mandated by Proposition 218 for increasing stormwater assessments.

Questionable Cost-Benefit of Changing Existing Provisions

In addition to adding new program areas, the proposed MRP requirements increase the compliance effort for Bay Area municipalities in all existing program areas, including long-established programs addressing municipal maintenance activities, public education and outreach, commercial and industrial business inspections, construction inspections, and illicit discharge control. The recently-approved (2003) C.3 provisions addressing new and redevelopment projects and post-construction stormwater management are also proposed for revision, even though municipalities are still in the very early stages of implementing the existing requirements for development projects, some of which just took effect in 2006. Monitoring requirements, which are extremely expensive, are dramatically increased and have questionable water quality benefit for the cost. Requirements for addressing conditionally exempt non-stormwater discharges have become prohibitively prescriptive and are forcing municipalities to regulate special districts that should really be regulated by your agency.

Inflexibility of Proposed Trash and Litter Requirements

With regard to new requirements, the proposed trash and litter control requirements are extremely prescriptive, expensive, and don't allow municipalities the needed flexibility to first determine if trash conveyance through their municipal storm drain system is impacting water quality, and if so, what may be the most cost-effective solution. While mandating installation of structural trash control devices on an arbitrary percentage of urbanized area may address a symptom of something that is by and large a cultural issue, an integrated approach across multiple jurisdictions is necessary to effectively direct limited resources toward this issue.

We understand your Board directed creation of a "trash task force," including entities such as the Integrated Waste Management Board and the State Water Resources Control Board. We do not believe the proposed trash control requirements are consistent with that directive and recommend you convene such a task force (including representation from local municipalities, non-governmental organizations, and the public) to develop a comprehensive strategy for addressing trash and litter issues, especially since the impacts extend beyond water quality.

For the other new pollutant of concern requirements, such as for mercury and PCBs, municipalities can not be held responsible for achieving cleanup of identified hot spots on private property. Municipalities can help identify such locations, but direction of cleanup activities should appropriately be managed by your agency or the Department of Toxic Substances Control. All of these new expensive requirements need to be phased over multiple permit terms and linked to municipalities actually securing the necessary funding to implement them. For example, if a municipality attempts to get additional funding through a Proposition 218 election and the voters turn it down, municipalities should not be considered in noncompliance.

Excessive Proposed Recordkeeping and Reporting Requirements

The draft permit also requires an excessive amount of recordkeeping and reporting. In the City of Brisbane, given our small size, the majority of our stormwater compliance activities are managed by one person. In order to comply with these requirements, this person will need to spend a

significant amount of time creating and maintaining databases of information and preparing the "streamlined" 100+ page annual reporting forms and associated attachments, which will limit the amount of time that can be spent addressing issues in the field. We strongly recommend you revise the reporting requirements to be more consistent with what is being done for developing sanitary sewer management plans, where entities maintain the necessary records for review, but simply certify compliance through an online system. The SMCWPPP already submits a five-volume annual report to your office and it is unclear how the proposed dramatic increase in reporting volume your office will receive will improve water quality, especially since your own resource limitations prevent your staff from providing meaningful feedback on the reports you already receive.

In summary, while we strongly support protection of water quality and recognize our role and responsibility in this issue, the proposed requirements are extremely prescriptive, far too expensive to implement with current resources, provide limited water quality benefit for the added cost, and are too extensive for a five year permit term. We believe revisions to the proposed MRP are necessary and appropriate, and can be categorized as follows:

1. Given municipal resource constraints, permit provisions should be prioritized to focus on the greatest threats to water quality and phased over multiple permit terms. The Board should consider linking permit requirements and compliance timeframes to municipalities successfully securing necessary funding.
2. For existing programs, other than minor revisions or improvements, maintain the existing level of compliance effort, as there is no evidence these programs need "fixing" and reduce excessive monitoring requirements that provide little benefit to water quality.
3. Given the current focus on trash and litter as a water quality priority, provide flexibility to municipalities to evaluate where problem areas are located and determine the most cost effective solutions.
4. Ensure reporting and recordkeeping is both streamlined and provides useful data.

As indicated above, our detailed comments are included in the attached table. We look forward to providing additional information at the March 11 public hearing. Should you have any questions on this letter or attached table, please contact Matthew Fabry of my staff at 415-508-2134.

Sincerely,



Clayton L. Holstine
City Manager

Encl: Table of Specific Comments

**Issues Raised by Draft Municipal Regional Stormwater
 NPDES Permit Dated December 14, 2007 and Possible Solutions**

Program Element	Program Activity/Draft TO Sub-provision	Provisions of Concern	Recommended Solutions to Proposed New Requirement
Municipal Operations Provision C.2	1. Street Sweeping	<ul style="list-style-type: none"> 75% of replaced street sweepers shall have particulate removal of regenerative air sweepers or better. 	<ul style="list-style-type: none"> Municipalities need to consider all of their operational needs and local conditions when deciding on the purchase of street sweepers. Regenerative air sweepers are not good for all situations, especially for removing leaf-drop, and Brisbane is unaware of any technical studies that demonstrate using regenerative air sweepers improve stormwater quality. Brisbane contracts for street sweeping services, and to require a sweeping company to provide both broom and regenerative air sweepers for each sweeping event will significantly increase our costs. Brisbane recommends the draft permit requirement be modified to encourage municipalities to utilize sweepers that will be effective for the type of debris likely to be encountered given time of year and local conditions. In addition, mandating contract sweeper companies replace sweepers with a certain kind is outside of our jurisdiction. If you are replacing your single sweeper, how does 75% work?
	2. Sidewalk/Plaza Maintenance	<ul style="list-style-type: none"> Prohibition of wash water entering storm drains even if effective BMPs allowed by BASMAA mobile surface program are implemented. 	<ul style="list-style-type: none"> The draft permit should be modified to allow the discharge of washwaters to storm drains as described in BASMAA's BMPs for Mobile Surface Cleaner Program. The draft permit states that these BMPs shall be used, but it implies their use means that there would be no discharges to storm drains, which is inaccurate.
	3. Catch Basin Inspection and Cleaning	<ul style="list-style-type: none"> Inspect and clean ALL (i.e., regardless of ownership) inlets at least once per year before rainy season Inspect and maintain inlets with excessive sediment, trash, and debris twice a year. 	<ul style="list-style-type: none"> Brisbane recommends that the draft permit be changed to limit inlet inspection and cleaning requirements to inlets municipalities own or operate and are part of the MS4 covered by the permit. Also, the language should be changed to only require inlet cleaning when an inspection shows cleaning is needed. The draft permit allows the following alternative to the requirement for twice a year inlet inspections and maintenance: do what is required for compliance with Provision C.10 (Trash Reductions). Brisbane suggests that the permit should allow other alternatives to this permit requirement as long as the alternatives help to lessen the accumulation of sediment, trash or debris.
	4. Corporation Yard BMP Implementation	<ul style="list-style-type: none"> Requirement to develop SWPPPs for non-NOI corp. yards/facilities. Requirements for annual inspection. Retrofitting all wash areas to plumb to sanitary sewer. 	<ul style="list-style-type: none"> Brisbane recommends the draft permit be modified to require that municipalities use appropriate BMPs to control potential pollutant sources at corporation yards they own or operate, but not to prepare Stormwater Pollution Prevention Plans for facilities not subject to the State's General Industrial Activities Stormwater Permit. The requirement for routine inspections should be allowed as part of City crews regular activities, as crew members are typically in and out of the corporation yard multiple times a day, so formal inspections

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			<p>are unnecessary.</p> <ul style="list-style-type: none"> The draft permit should prohibit discharge of vehicle washwater to the storm drain system, but not require discharge to sanitary sewer if municipalities can develop alternative wash rack facilities that flow to vegetated areas or other areas that do not impact MS4 water quality. Brisbane's corporation yard does not have a sanitary sewer connection.
<p>New Development and Redevelopment Provision C.3</p>	<p>1. Performance Standard Implementation (C.3.a)</p>	<ul style="list-style-type: none"> Implement basic elements upon MRP adoption Need for clarification about reference to “<u>all</u> new development and redevelopment projects not regulated by C.3” means. Revise General Plans to require implementation of Provision C.3 for all regulated projects 	<ul style="list-style-type: none"> The permit should allow an adequate period to phase in new requirements that are similar, but not identical to existing requirements. Brisbane recommends that the permit allow a two-year phase in period because of all of the other competing MRP requirements that municipalities need to meet. Brisbane recommends that additional language be added to clarify that the language under C.3.a.(6) and (7) means all projects that are subject to the municipalities development project review. Otherwise, this becomes a new requirement that extends to a much larger group of projects, would be significantly burdensome on municipal staff, and impossible to implement immediately upon permit adoption. General Plan revisions were already required under the existing C.3 provisions, which did not require inclusion of General Plan language requiring implementation of Provision C.3 for all regulated projects. General Plans were modified to integrate water quality and watershed protection principles, but this new requirement will automatically put all municipalities into non-compliance. Brisbane recommends revision of this language to reflect the existing Provision C.3 requirement to ensure General Plans integrate water quality and watershed protection principles, but not specifically require implementation of Provision C.3.
	<p>2. Regulated Projects</p> <ul style="list-style-type: none"> Special Land Use Categories Other Development Projects Other Re-Development Projects New Road Projects Road Expansion or Rehabilitation 	<ul style="list-style-type: none"> Reduces impervious threshold to 5,000 square feet in 2 years for special land uses (automotive, gas stations, restaurants and parking lots). Contains revised requirements for street, sidewalk and trail projects that may increase number of projects covered by C.3. Regulates replacement of arterial roads within existing footprint (i.e., even if no expansion). For project data reporting, requires additional specificity regarding location of project, watershed, developer, tracking of phases, and project application date. 	<ul style="list-style-type: none"> It is recommended that the permit keep the size threshold for all “Regulated Projects” at 10,000 square feet because the stormwater pollutants from smaller “Special Land Use Categories” types of projects can be adequately handled using good site design and source controls by applying low impact development principles. Also, Brisbane recommends that the permit include an exemption for parking lots with no exposure to rainfall (such as covered or underground parking lots). The current permit excludes stormwater treatment for “sidewalks, bicycle lanes, trails, bridge accessories, guardrails, and landscape features” (Provision C.3.c.i.2) in order to promote alternative modes of transportation. Given the priority that the state is placing on controlling greenhouse gas emissions, it makes sense that these exclusions be continued in the MRP. The current permit allows “road pavement structural section rehabilitation” (C.3.c.i.3) within the existing footprint without triggering a requirement to treat stormwater. The proposed permit should allow this exclusion to continue because of space limitations to construct treatment systems in these situations. The draft permit requires stormwater treatment for arterial roads that are rehabilitated. Brisbane requests that the current permit language (Provision C.3.c.i.3) be retained. The amount of reporting should be minimized given that this reporting does not bear a reasonable relationship to the cost of preparing these reports. Additional reporting requirements should be deleted.

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	3. Low Impact Development (LID)	<ul style="list-style-type: none"> Definition of LID incorporates source control and treatment controls as well as site design 	<ul style="list-style-type: none"> Some of the LID requirements are overly prescriptive. For example, there may be places in watersheds where maintaining or a replicating pre-development hydrologic regime is appropriate and other locations, such as tidal areas or heavily urbanized areas, where it is not. The proposed language requires all Regulated Projects minimize their impervious footprint. In some locations where there is existing infrastructure, it may be better to promote denser development with more impervious surface to lessen urban sprawl. Brisbane recommends the permit language in these sections be changed to require these types of measures “where applicable” (the fact sheet uses this language in describing this provision).
	4. Operation and Maintenance of Stormwater Treatment Systems	<ul style="list-style-type: none"> Requires minimum inspection of 20% of total number of BMP facilities annually as part of O&M program. Requires reporting of compliance status for facilities inspected for O&M. 	<ul style="list-style-type: none"> The current permit requires permittees “inspect a subset of prioritized treatment measures for appropriate O&M, on an annual basis” (Provision C.3.e.i). The fact sheet does not describe the basis for significantly increasing the required level of effort, or the specific basis for requiring that the number of inspections be a minimum of 20% of the total number. Brisbane recommends the permit continue to allow municipalities flexibility on the exact number and percentage of treatment controls inspected provided that the municipality has an effective program of assuring stormwater treatment systems are being maintained. The draft permit requires detailed reports on O&M inspections that would result in an excessive amount of effort being directed to reporting, and this will have a detrimental effect on the amount of time available for doing inspections and correcting problems. The amount of reporting should be limited to the total number of treatment measures inspected each year and a summary of the categories of problems found. The use and reporting of “compliance rate/percentage” is a not a good metric of the effectiveness of municipalities’ operation and maintenance verification programs, and Brisbane recommends its deletion from the permit’s requirements.
	5. Detached Single Family Homes	<ul style="list-style-type: none"> Requires implementation of lot scale BMPs for single family homes creating and/or replacing 5,000 square feet or more of impervious surface 	<ul style="list-style-type: none"> This provision does not provide any flexibility to municipalities in cases where lot scale BMPs are not feasible due to site specific constraints. Brisbane recommends including exemption language for projects in which it is infeasible to incorporate these types of BMPs. With limited infiltration capacity in Bay Area soils, these proposed BMPs may not be feasible and may cause drainage issues on single family home properties. This requirement should be limited to single family homes adding or replacing over 10,000 square feet of impervious surface, as it is much more likely there will be adequate vegetated areas to direct runoff toward. For a 5,000 square foot lot that does complete build-out, there may be little to no vegetation, and often no driveways. Underdrain systems can significantly add to the cost of drainage systems, and often will not work function properly to get stormwater into a gutter.
	6. Impervious Surface Data Collection	<ul style="list-style-type: none"> Requires Permittees to jointly propose regional pilot study for collection of impervious surface data Requires selected pilot study permittees to report C.3. project data for small projects (that create/replace 1,000 to 10,000 SF). Four months to prepare pilot study; begin 	<ul style="list-style-type: none"> Brisbane recommends that the proposed requirements to collect additional impervious surface information for projects smaller than 10,000 square feet be deleted from the permit. The collection of this information is unnecessary because it was collected previously and there is no significant reason to collect additional information now. The Water Board staff previously collected information from the following cities about the amounts of impervious surface being created and/or replaced during the following time periods: Dublin (January – December 2005), Fairfield (July 2004 – June 2005), Livermore (January – December 2005), Menlo Park (April 2000 – March 2005), Palo Alto (October 2001 – December 2005), Pleasanton (January 2003 – November 2005), and Suisun City (July 2004 – June

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		<p>data collection in 1 year; does not say how long to collect data.</p>	<p>2005). The amount of impervious surface being created that is not being regulated under the current permit requirements is very small.</p>
<p>Industrial and Commercial Site Controls Provision C.4</p>	<p>1. Legal Authority for Effective Site Management</p>	<ul style="list-style-type: none"> • Confirm key elements within 12 months. • The draft permit’s footnote 9 defines dischargers as “any responsible party or site owner or operator within the Permittees’ jurisdiction whose site discharges stormwater runoff or a nonstormwater discharge.” • Requirement for Permittees to notify Water Board of extended timeframes for abatement, which draft permit sets as within 48 hours for discharges and 45 days for threatened discharge • Requirements to have the ability to levy citations or administrative fines against responsible parties immediately at the site or within a few days. 	<ul style="list-style-type: none"> • The draft permit requires that any revisions to local ordinances be completed by July 1, 2009. Brisbane requests that the permit require that any ordinance changes needed to comply with this and other sections of the permit be completed within one year of the permit’s adoption. • Brisbane recommends that the proposed permit’s requirements regarding violation responses be clarified that these are violations of local municipal stormwater ordinances. In addition, the draft permit’s footnote 9 should further clarify that to be a discharger for purposes of this permit, the discharge must flow to an MS4 owned or operated by a municipality covered by the permit. • The Water Board staff should not be notified of extended abatement timeframes unless it requests this information. Brisbane recommends that to help streamline the implementation of the permit, the language should be conditioned, such as the following: “the Permittees shall notify the Water Board <u>when requested by the Water Board</u> of extended time frame...” • Levying citations or administrative fines is not always the most effective method of enforcement, and Brisbane suggests that the permit allow municipalities the flexibility to choose from a variety of enforcement tools that may exclude one or both of these alternatives.
	<p>2. Industrial and Commercial Business Inspection Plan (Inspection Plan)</p>	<ul style="list-style-type: none"> • High, medium and low priority facilities listed/prescribed (added facility types beyond local control – Water Board authority). Minimum freq. of inspections of 1x/5 yrs for facilities with low potential for stormwater pollution and 1x/3yrs for medium potential. • Inspect high potential sites 1x/yr and requires this frequency of inspection for NOIs, landfills, SARA Title III, and haz mat disposal, storage & recovery. • Required to determine which facilities need NOI coverage and include in Annual Report. • Required to inspect mobile businesses. • The permit requires inspection of 	<ul style="list-style-type: none"> • There should be flexibility in what businesses are inspected and how frequently, similar to what is currently and successfully being implemented. Municipalities should be able to assign businesses to either a high or low priority for inspection. Businesses to be inspected should be limited to ones that discharge to a MS4 that is owned or operated by the municipality that has coverage under the permit similar to what is described in the fact sheet. Brisbane recommends that the permit incorporate flexibility by allowing municipalities to use a reasonable potential analysis to choose the types of businesses and particular businesses within the types for inspection from among those listed in C.4.b. ii. Brisbane would also argue that facilities regulated under the State’s General Industrial Permit would be considered low priority because they have already developed a Stormwater Pollution Prevention Plan, perform annual stormwater sampling, are inspected by Regional Board staff, and are likely far more aware of stormwater issues because of their permit coverage than other facilities. • The proposed permit is overly prescriptive in requiring annual inspections of the listed facilities. As described above, Brisbane suggests that the permit allow municipalities flexibility based on a reasonable potential analysis to determine how frequently to inspect each business. • Considerable judgment is needed to determine which facilities need coverage under the state’s Industrial General Permit. The Water Board staff is in the best position to make decisions about which

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		<p>“commercial or industrial sites/sources” tributary to impaired waters.</p> <ul style="list-style-type: none"> Establishes minimum inspection frequency of once per five years for all facilities. 	<p>businesses require coverage under this permit. Municipalities have been willing to forward information about businesses that might need to obtain Industrial General Permit coverage when Water Board staff has requested this type of information.</p> <ul style="list-style-type: none"> Brisbane recommends that the permit specify that municipalities are only required to inspect mobile businesses whose principle place of business is located in a municipality. Brisbane suggests that the requirement to inspect “site/sources” be changed to “businesses” that discharge impairing pollutants generated by their business operations at above background levels to a municipality’s MS4. As recommended above, the permit should be simplified to require that inspections occur either once every five years or annually for businesses that merit inspections. The basis for the once every three year inspection category is not described in the fact sheet, reduces municipalities flexibility, and seems overly prescriptive and unnecessary.
	<p>3. Legal Authority for Effective Site Management and Enforcement Response Plan</p>	<ul style="list-style-type: none"> Additional highly detailed BMP specifications and guidance (very prescriptive approach), including definitions of violations based solely on non-stormwater discharges. Create electronic database for detailed reporting of all inspection data including enforcement follow-up data/records; database must include record of all verbal warnings. Requirements for 48 hr cleanup and/or abatement of an ongoing discharge or spill. Requirement for up to 45 day response to correct a <u>threatened</u> discharge. Requirement for a three-year rolling window to track violations. Required to regulate discharges outside municipal jurisdiction (essentially regulate all discharges to waters of the state). 	<ul style="list-style-type: none"> Brisbane suggests the following changes to the permit: Either delete the Enforcement Response Plan (ERP) requirements or if the Water Board insists on having ERP requirements, combine all of the ERP requirements (currently located in this section and the Illicit Discharge Detection and Elimination and Construction Site Control Provisions) into one integrated and consistent set of requirements. The inclusion in the definition of a Tier Two violation of “evidence of potential or threatened polluted discharge” is vague, unnecessary, and should be deleted. The draft permit’s requirements that “verbal warnings are allowed only for the first observed Tier Two offense within a yearly period” provides too little flexibility for inspectors to identify the optimum use of their limited time to obtain compliance with local municipal stormwater ordinances. The requirements for electronic databases of inspections in various permit sections should be consistent with each other and allow the flexibility of using alternative means of recordkeeping to document compliance with local municipal stormwater ordinances. The requirements for an ongoing discharge may be overly restrictive if the discharge does not pose a significant threat to water quality. Brisbane suggests that the permit be modified to allow inspectors to use their judgment. The up to 45-day response to threatened discharge should be made more flexible because some threats are more serious than others, and businesses should not be inspected if they do not pose at least some threat to discharge. Brisbane suggests that the permit be changed to allow this flexibility. The technical rationale for using a three-year rolling window to track violations is not explained in the fact sheet. This type of detail should be left to each municipality to decide as part of the development of its ERP or a policy set by each municipality. The federal Clean Water Act requirements are for regulating discharges from a MS4, and the permit should be limited to imposing requirements on businesses that discharge to a MS4 owned or operated by a municipality with coverage under the permit.

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	4. Staff Training	<ul style="list-style-type: none"> Requirement specifying training frequency and methods 	<ul style="list-style-type: none"> This requirement, and all training requirements, should be revised to allow municipalities to determine the necessary frequency and method of providing training, and should simply state permittees shall ensure inspectors are properly trained. This requirement is overly prescriptive and the requirement to detail training topics covered, dates of training, and percentage of inspectors attending is unnecessary. Inspectors may receive training through other organizations and should not be mandated to receive annual training if it's not justified as necessary for protecting water quality.
<i>Illicit Discharge Detection and Elimination Provision C.5</i>	1. Legal Authority	<ul style="list-style-type: none"> Confirm legal authority within 4 months. Establish legal authority over significant trash/litter generating activities regardless of connection to stormwater. 	<ul style="list-style-type: none"> Different sections of the permit have a range of dates for when adequate legal authority should be established, and Brisbane recommends that at least one year from permit adoption be provided for municipalities to make any improvements that might be needed to control discharges to their MS4. Allowing 4 months for the legal authority in this section is also inconsistent with the realistic one year period provided under the Industrial/Commercial Inspection Program provision. Brisbane recommends that any legal requirements in the permit for controlling "significant trash/litter generating activities" be limited to these activities that affect the quality of water in the MS4 system owned or operated by a municipality with coverage under the permit.
	2. Enforcement Response Plan	<ul style="list-style-type: none"> Develop ERP by Nov. 30, 2008. Requirements to expand ICID well beyond Clean Water Act. ICID requirements to cover tracking, investigation and enforcement to a wide variety of threatened discharges to systems within municipal jurisdiction as well as beyond municipal jurisdiction. Requirement for response and fix discharge or spill within 48 hrs and 45 days for a threatened discharge. Required to notify Water Board within 48 hrs of "Tier One violation that does not enter the municipal conveyance." 	<ul style="list-style-type: none"> As described above, Brisbane recommends that the ERP requirements be deleted from the permit because they are not required by the federal Clean Water Act. If the Water Board insists on requiring an ERP, an adequate amount of time will be needed to develop an ERP. Based on our experience, Brisbane recommends that the permit allow one year after adoption of the permit. The ERP needs to be supported by local ordinances that require adequate time to draft, allow public review comment, and adopt. The fact sheet does not explain the basis of allowing only 4 months to develop an ERP. Following development of the ERP, the permit should allow one year to complete training on the ERP in order for the training to fit into an annual training workshop. The requirement to control "trash/litter generating activities of varying seriousness" (C.5.b.i.(4)) should be conditioned upon the trash and litter adversely affecting water quality in an MS4 owned or operated by a municipality with coverage under the permit. Section C.5a.i.(1)(a) requires that permittees control certain activities by "responsible parties" within their jurisdiction; this requirement should be limited to controlling responsible parties' pollutant generating activities where these pollutants adversely affect water quality of the MS4 system that the municipality owns or operates. The permit needs to allow flexibility in responding to discharges and threatened discharges. This comment is expressed above under the similar permit requirement for Industrial and Commercial Site Controls. Brisbane recommends that the permit be modified to delete the requirement that municipalities notify the Water Board within 48 hours of a Tier One violation where there is no discharge to the MS4. Notifications of the Water Board should be left to the judgment of municipal staff implementing the permit.
	3. Collection System	<ul style="list-style-type: none"> Required to survey at least 1 system 	<ul style="list-style-type: none"> The fact sheet does not provide the technical basis for why municipalities need to survey strategic

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	Screening - Municipal Separate Storm Sewer System (MS4) Map Availability	<p>check point per square mile once per year.</p> <ul style="list-style-type: none"> • Make MS4 maps publicly available in 12 months. 	<p>collection system check points at a density of one screening point per square mile. It is unnecessary to specify the minimum number of checkpoints if municipal staff is trained to check for illicit discharges while performing other routine maintenance activities. Brisbane recommends that the one check point per square mile requirement be deleted from the permit because it may unintentionally divert municipalities' efforts from effectively prohibiting non-stormwater discharges to the MS4.</p> <ul style="list-style-type: none"> • The draft permit's requirement to make MS4 maps available to the public is unnecessary and overly prescriptive as all municipal maps are public documents available upon request. Due to security issues with infrastructure in a post-9/11 world, Brisbane does not believe it is appropriate or necessary to advertise the availability of utility maps. Brisbane suggests that this requirement be deleted and substituted with a requirement to use the Oakland Museum of California maps, where available, of creeks and storm drains. These maps have been completed with financial assistance from the San Mateo Countywide Water Pollution Prevention Program. These maps provide information that would be useful to the public.
	4. Tracking and Case Follow-up	<ul style="list-style-type: none"> • Increased tracking and reporting. • Required to develop/maintain database. 	<ul style="list-style-type: none"> • Brisbane suggests that the tracking and reporting be limited to significant incidents or discharges that are confirmed to have entered the MS4 owned or operated by the municipality and found to be threatening water quality. • The draft permit's requirement to "create and maintain a water quality and dumping complaint tracking and follow-up database system" (C.5.e.ii) is overly prescriptive. Brisbane suggests that municipalities be allowed the flexibility of using a database or equivalent system of their choosing to track illicit discharges. In addition, it is unclear what "water quality" is being referred to in this permit requirement, and it should be deleted or clarified.
Construction Site Control Provision C.6	1. Legal Authority for Effective Site Management	<ul style="list-style-type: none"> • Required to have legal authority by November 30, 2008 to impose fines 	<ul style="list-style-type: none"> • As described above under Illicit Discharge Detection and Elimination Program comments, the draft permit has a range of dates for when adequate legal authority must be established. Brisbane recommends that at least one year from permit adoption be provided for municipalities to make any needed improvements to control discharges to their MS4. The proposed specific permit requirement to be able to impose fines is overly prescriptive and, as described above, Brisbane recommends that the permit allow municipalities flexibility to identify in its local policies the enforcement tools that it believes are necessary and effective to achieve compliance with its municipal stormwater ordinance.
	2. Enforcement Response Plan	<ul style="list-style-type: none"> • Requires one element of ERP to be citations, fines and other administrative action • Develop ERP by November 30, 2008. 	<ul style="list-style-type: none"> • As described above, Brisbane recommends that the requirement for an ERP be deleted. If the Water Board insists on requiring an ERP, municipalities need to have the flexibility to levy citations with civil penalties or to use administrative actions to obtain compliance with local municipal stormwater ordinances. The proposed permit requirement to levy citations with civil penalties is not supported by USEPA's Compliance Assistance Guidance cited in the fact sheet. As drafted the permit does not provide municipalities with sufficient flexibility, and it negates the value of each municipality developing an ERP or local policy that fits its unique stormwater program.

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			<ul style="list-style-type: none"> If the Water Board insists on requiring an ERP, there should not be three separate permit provisions that prescribe ERP requirements that are different from each other. As described above under Illicit Discharge Detection and Elimination Program comments, an adequate amount of time is needed to develop an ERP. Brisbane recommends that the permit allow one year after permit adoption to develop an ERP.
	3. Minimum Required Management Practices	<ul style="list-style-type: none"> Required use of advanced treatment for sediment removal at sites “that are determined by the Permittee to be an exceptional threat to water quality.” 	<ul style="list-style-type: none"> The requirements for advanced treatment should be the same as those that will be prescribed in the next Construction General Permit. Brisbane recommends that the draft permit either delete the requirements for advanced treatment for sediment removal or state that the requirements are interim and will only apply until advanced treatment requirements are adopted in the reissued Construction General Permit.
	4. Erosion Control Plan Approval Process		<ul style="list-style-type: none"> No Comments
	5. Type/Contents of Inspections	<ul style="list-style-type: none"> Requirements to track in an electronic database or equivalent system all wet season, stormwater-specific inspections and screening inspections that found a violation. 	<ul style="list-style-type: none"> Brisbane suggests that the draft permit’s requirement be limited to maintaining a record of each wet season, stormwater specific inspection and each screening inspection that found a significant violation of a municipal stormwater ordinance. Construction inspectors need to focus on identifying and correcting problems. The amount of recordkeeping and reporting should be limited to the minimum amount needed to resolve significant problems.
	6. Frequency of Inspections	<ul style="list-style-type: none"> Inspect high priority construction sites, which include ones that pose a significant threat to water quality, every 2 weeks. By Sept. 1st, send pre-wet season notification letters or inspect all sites > 1 acre 	<ul style="list-style-type: none"> The municipalities should have flexibility in deciding what frequency it inspects high priority construction sites to check on erosion and sediment control. There are typically periods in the wet season where rainfall does not occur for several weeks, and the municipalities need to be able to allocate their inspection time based on particular circumstances. Brisbane recommends that an explicit inspection frequency for high priority construction sites not be included in the permit. Brisbane recommends that the methods allowed to notify construction site owners or operators about pre-wet season inspections be expanded to also include emails, text messages, faxes, or telephoned messages.
	7. Staff Training		<ul style="list-style-type: none"> Same comments as above on overly prescriptive training requirements – municipalities should determine the frequency and contents of training requirements for their inspectors, and should have the flexibility have inspectors trained in any manner or location deemed appropriate.
	8. Tracking and Reporting	<ul style="list-style-type: none"> Use electronic database or equivalent to track number of inspections and all violations at active sites, for threatened or actual discharges. 	<ul style="list-style-type: none"> The permit should not require tracking of stormwater-specific inspections that identify a threatened discharge. Brisbane recommends that the permit limit tracking to significant violations of municipal stormwater ordinances.

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Public Information and Outreach Provision C.7	1. Advertising Campaign	<ul style="list-style-type: none"> Specifies two pollutants of concern. Requires two separate campaigns and two surveys. 	<ul style="list-style-type: none"> The draft permit specifies that “trash/litter in waterways and pesticides” be the two pollutants of concern to target in advertising campaigns/media buys. This will result in overly diffuse campaigns. Since the state regulates the use, sale, and transportation of pesticides, Brisbane recommends that the permit be modified to require that municipalities focus entirely on trash/litter that is transported through MS4s. Brisbane suggests that the permit require only one advertising campaign and assessment survey because these campaigns are expensive and there are higher priorities for use of public education funds.
	2. Public Outreach	<ul style="list-style-type: none"> Specified number of events. Co-permittees can only get credit for half of Program events. 	<ul style="list-style-type: none"> The number of required outreach events is a concern because footnote 10 states that municipalities may only claim credit for up to half of the number of countywide program events. Limiting the credit municipalities receive for participating in countywide events would discourage participation in these events. Brisbane recommends that the permit be modified to allow municipalities the opportunity to claim credit for all of the countywide events that they fund or participate in.
	3. Citizen Involvement Events	<ul style="list-style-type: none"> Specified number of events. Co-permittees can only get credit for Program events if events are in their jurisdictions. 	<ul style="list-style-type: none"> Involving citizens in monitoring and other watershed types of activities should be encouraged by the permit. Brisbane suggests that the permit specify that each citizen monitoring event, watershed field activity, and workshop/conference/meeting will count as one citizen involvement event. The draft permit’s footnote 12 requires that municipalities may only claim credit for countywide activities that are conducted within a municipality’s jurisdiction. This is overly restrictive since many countywide events may be held in one municipality, but draw volunteers from other municipalities, such as Coastal Cleanup Day. Brisbane recommends that the permit be revised to allow municipalities the opportunity to claim credit for all SMCWPP-sponsored citizen involvement events that occur anywhere in the county and that the municipality helps to fund or participate in.
	4. Research Surveys, Studies, Focus Groups	<ul style="list-style-type: none"> Level of effort required for compliance is unclear. 	<ul style="list-style-type: none"> Municipalities do not have the resources to be funding research. In addition, as described above, there should be only one advertising campaign, not two as proposed in the permit. Brisbane recommends that the requirement to “undertake research to identify and quantify audiences, knowledge, attitudes, practices, and trends...” (Provision 7.1.ii) be deleted from the permit because municipalities can rely on existing information to plan their advertising campaign.
Water Quality Monitoring Provision C.8	<ul style="list-style-type: none"> Given the programmatic nature of the monitoring requirements, Brisbane supports the comments provided by SMCWPPP and BASMAA regarding the proposed monitoring requirements. 		
Pesticides Toxicity Controls Provision C.9	Introduction	<ul style="list-style-type: none"> Requires control of pesticides that “pose a threat to water quality.” Requires permittees to address use of pesticides by other sources within the 	<ul style="list-style-type: none"> Brisbane recommends that the permit be modified to require that the threat to water quality be “significant” because virtually all pesticides pose some threat to water quality. Brisbane suggests that the permit language replace “municipal conveyance system” with “MS4 owned or operated by the municipality with coverage under the permit.” Municipal separate storm sewer system is

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		<p>permittees jurisdiction that “have the potential to enter the municipal conveyance system.”</p>	<p>the term used in the federal Clean Water Act and is defined in the permit’s Glossary, unlike municipal conveyance system.</p>
	<p>1. Adopt IPM Policy/Ordinance</p>	<ul style="list-style-type: none"> Submit IPM ordinance or policy to Water Board by October 2009. 	<ul style="list-style-type: none"> Brisbane recommends that the permit be modified to not require the submission of the ordinance or policy if this has been done previously.
	<p>3. Municipal Employee Training</p>	<ul style="list-style-type: none"> Training and orientation of municipal employees that apply pesticides including over-the-counter pesticides. 	<ul style="list-style-type: none"> Municipalities should not be required to expend time training employees on how to apply over the counter pesticides, and Brisbane recommends this requirement be deleted from the permit.
	<p>5. Track/Participate Regulatory Processes</p>	<ul style="list-style-type: none"> Track California Department of Pesticide Regulation (DPR) activities and encourage it to coordinate California Food and Ag Code with California Water Code. Requirement to assemble and submit information to California DPR and County Ag. Commissioners 	<ul style="list-style-type: none"> Municipalities should not have a permit requirement to encourage coordination of codes controlled by different state agencies. This is clearly not required by the federal Clean Water Act, and Brisbane recommends that this requirement be deleted. Again, municipalities should not have a permit requirement to collect data to assist the California DPR because it is not a requirement of the federal Clean Water Act. Brisbane recommends that this requirement be deleted from the permit.
	<p>7. Annual Source Control Evaluation</p>	<ul style="list-style-type: none"> Requires annual evaluation. 	<ul style="list-style-type: none"> The draft permit requires a report in October 2012, when this report should be tied to the fourth annual report that is prepared following permit adoption. In addition, there is no point in including the word “annual” evaluation as implied by the heading to this section. On this basis Brisbane recommends that the permit required report be due as part of the fourth Annual Report prepared under this permit and that the word “annually” be removed from the following title: “Annually, Evaluate Implementation of Source Control Actions Relating to Pesticides” of subprovision C.9.g.
	<p>8. Public Outreach</p>	<ul style="list-style-type: none"> Report annually on “quantity of outreach material distributed” 	<ul style="list-style-type: none"> There is no benefit to reporting on the number or pounds of outreach material distributed. Brisbane recommends that the permit be modified to simply require information on the types of outreach material that were distributed.

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Trash Reduction Provision C.10	1. Pilot Trash Control Implementation	<ul style="list-style-type: none"> • Requiring that <u>ALL</u> of the enhanced measures below be implemented in 10% of urban area for each Co-permittee regardless of Trash Impacts/Loading Rates: <ul style="list-style-type: none"> ▪ Street Sweeping (weekly) ▪ Catch Basin Cleaning (4x/yr) ▪ Dumping site cleanup ▪ Public Outreach • Install Full Capture Treatment Devices in at least 5% of urban area, even if enhanced measures have been implemented. • No certification process for “full capture” devices 	<ul style="list-style-type: none"> • In addition to the written comments in our letter, Brisbane supports SMCWPPP's and BASMAA's written comments recommending a more flexible approach to making measurable improvements in solving trash and litter problems affecting MS4s. • Requirements to install full capture trash control devices need to be linked to municipalities obtaining the necessary funding for installation and ongoing operation and maintenance, as this will be a very expensive requirement for all municipalities. As described in our comment letter, municipalities should be given an opportunity to determine whether trash and litter is a problem in their stormwater discharges and to decide upon the most cost effective long-term solution to that problem, if it exists. • The 5% and 10% numbers for trash management are arbitrary, not justified in the Fact Sheet, and should be deleted from the permit.
	2. Long-Term Plan for Trash Impact Assessment	<ul style="list-style-type: none"> • Develop a long-term plan that will address impacts from ALL sources of trash (stormwater and non-stormwater). 	
Mercury Controls Provision C.11			<ul style="list-style-type: none"> • Given the programmatic nature of implementing this provision, Brisbane supports SMCWPPP's comments on this section of the permit.
PCB Controls Provision C.12			<ul style="list-style-type: none"> • Given the programmatic nature of implementing this provision, Brisbane supports SMCWPPP's comments on this section of the permit.
Copper Controls Provision C.13			<ul style="list-style-type: none"> • Given the programmatic nature of implementing this provision, Brisbane supports SMCWPPP's comments on this section of the permit.
PBDEs,			<ul style="list-style-type: none"> • Given the programmatic nature of implementing this provision, Brisbane supports SMCWPPP's comments on this section of the permit.

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<i>Legacy Pesticides and Selenium Provision C.14</i>			
<i>Exempted and Conditionally Exempt Discharges Provision C.15</i>		<ul style="list-style-type: none"> • Establishes new requirements for permittees to regulate dischargers that are not co-permittees under the MRP. Includes requirements that dischargers implement specific BMPs, monitoring, and reporting. discharges (uncontaminated gw, foundation drains, crawl space drainages) • Permittees will have to make sure dischargers test pumped groundwater, foundation drains, water from crawl space pumps, and footing drains for TSS, total petroleum hydrocarbons, VOCs, and metals • Permittees shall only allow dewatering discharges to storm drain collection system if there are no other feasible disposal alternatives • Requires that any discharge of 10,000 gpd or more groundwater be authorized by Water Board and it meet water quality levels in NPDES General Permits for fuel and VOCs. • The amount of reporting is overly prescriptive. • Required to discourage individual car washing and to encourage use of commercial car washes. • Permittees are required to regulate dischargers' planned potable water 	<ul style="list-style-type: none"> • The Water Board adopted a reasonable way to regulate these minor types of non-stormwater discharges in its amendment to SMCWPPP's permit in July 2004. This 2004 permit amendment provides a simple list of BMPs that would need to be implemented to address minor non-stormwater discharges. Brisbane recommends that this permit provision be totally rewritten to include a simplified table of BMPs similar to what was done in the 2004 permit amendment. In addition, language should be added to the permit to provide municipalities flexibility to choose whether they want to take responsibility for ensuring water utilities comply with the requirements proposed for potable water discharges. For municipalities that choose not to assume responsibility for water utility discharges, the Water Board should adopt a General Permit for these types of discharges. • The permit should be modified to delete any monitoring requirements because these conditionally exempted types of discharges should not contain petroleum hydrocarbons, VOCs, or unusual concentrations of metals. If the Water Board is interested in having one-time test data to show that a particular type of discharge qualifies for the conditional exemption, the specific monitoring information should be flexibly determined based on the type of discharge, its location, and the likelihood that it might contain particular pollutants at concentrations of concern. • All of the exempted and conditionally exempted discharges should be limited to ones that discharge to an MS4 owned or operated by a municipality covered under the permit. Many municipalities lack the authority to allow discharges to the sanitary sewer. • The permit should be modified to delete the proposed requirement that new discharges of uncontaminated groundwater at flows of 10,000 gpd or more be reported to the Water Board and local agencies before being discharged. If the Water Board desires this level of oversight it should simply state that the local agencies are not allowed to authorize these types of discharges because they are more appropriately regulated by the Water Board through a separate NPDES permit. In addition, the permit should be modified to delete the requirement for meeting water quality levels in NPDES General Permits because discharges that contain fuel or VOCs should not qualify for the conditional exemption under the MRP. • The amount and frequency of reporting is more appropriate for inclusion as regulatory requirements under one or more separate NPDES General Permits. The permit should be modified to drastically reduce the amount of reporting so that it is reasonable for a municipality to implement, or adopt NPDES General Permits for all of the minor types of discharges listed in Provision C.15.

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		<p>discharges including numeric benchmarks for chlorine residual, pH, and turbidity; requirements to notify interested parties, including NGOs; document potable water dischargers responses and complaints; and submittal of monthly electronic summary reports and annual self-audit summary reports of all discharges.</p> <ul style="list-style-type: none"> Requires significant new database and reporting 	<ul style="list-style-type: none"> Requirements on individual car washing, similar to all of the other types of discharges described in Provision C.15, should be limited to discharges that flow to the MS4 owned or operated by a municipality with coverage under this permit. The permit proposes too many requirements for planned potable water discharges. These requirements should be reduced substantially to a simple list of BMPs as described in a 2004 amendment to SMCWPPP's current permit, referenced above. The first bullet in this section contains other recommendations for modifying the permit as regards potable water discharges. The permit should drastically reduce the amount of reporting required to match the low risk posed by these minor types of non-stormwater discharges.