

**Response to Comments on May 11, 2015 Tentative Order  
Provision C.1. – Compliance with Discharge Prohibitions and Receiving Water Limitations**

Commenter, Comment #	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
ACCWP Legal, 1	C.1 and C.14	Clarify C.1 and C.14	<p>Provision C.1 requires compliance with discharge prohibitions and receiving water limitations. This Provision provides that if exceedances of water quality standards persist in receiving waters, implementation of additional procedures is required. However, the additional procedures are not required for exceedances for water quality standards for pesticides, trash, mercury, PCBs, and bacteria that are managed pursuant to Provisions C.9 – C.14.</p> <p>While there are stand-alone provisions in the Tentative Order for pesticides, trash mercury and PCBs, none exists for bacteria. We agree with and support the intention of this approach as set forth in Provision C.1; however, we note that the bacteria control measures set forth in Provision C.14 currently relate only to the City of Pacifica and San Mateo County Fecal Indicator Bacteria Controls. The exception stated in C.1 for bacteria controls should be clarified in Provision C.14 so as to extend to all Permittees regulated by the permit that effectively implement and manage bacteria controls measures as set forth in Provision C.8.d.vi. for Pathogen Indicators.</p> <p>Recommended Action: In Provision C.1, end the second sentence immediately after “Receiving Water Limitations B.1 and B.2” which would delete the language “for the pollutants in receiving waters identified in the provisions.” In addition, include a statement in Provision C.14 that states that for all receiving waters other than San Pedro Creek and Pacific State beach described in Table 14.1, Permittees are required to comply with the monitoring and follow-up requirements set forth in Provision C.8.d.vi.</p>	See responses to SCVURPPP Legal Comment No.4 pertaining to C.1 and SCVURPPP Legal Comment No. 5 pertaining to C.14.	
ACCWP Legal, 2	C.1	Quote State Board Order for Alternative Compliance Pathway	The State Water Board recently has adopted Order No.WQ 2015-0075. In that Order, the State Board directed that upon issuance/reissuance of Phase I MS4 stormwater permits, the regional boards should consider an alternative compliance approach for receiving water limitation compliance as described in the Order. There is no reference to this Order in Provision C.1 or the findings of the Tentative Order. The only partial reference to alternative compliance pathways considerations is in the Fact	<p>We agree that the Order should reference State Water Board Order WQ 2015-0075 and consideration of its alternative compliance approach principles and their applicability to Provisions C.9 – C.12 and C.14.</p> <p>See response to SCVURRP Legal Comment No. 4 as to why an alternative compliance path does not apply to copper (C.13).</p>	Revise Fact Sheet for Provision C.1 to account for State Water Board Order WQ 2015-0075 and

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			<p>Sheet pp. A-22, but reference is not specifically made to the Order. This is not sufficient.</p> <p>The Provision C.1 alternative compliance relationship to Prohibition A.2 and Receiving Water Limitations B.1 &amp; B.2 that relates to alternative compliance needs to be clarified and strengthened. It is critical to Permittees that they not face the threat of resource-draining enforcement/litigation because the only reference in the permit adoption process is not specifically contained in the findings or provisions of the permit itself, but is only a partial reference in the Fact Sheet.</p> <p>Recommended Action: Finding 11 should be supplemented to acknowledge the precedent of this State Board Order, and expressly state that that, consistent with guiding principles of the State Order, Provisions C.1 and C.9-14 are intended to provide the co- Permittees with an alternative compliance pathway relative to Discharge Prohibition A.2 and Receiving Water Limitations B.1 &amp; B.2 with respect to pesticides, trash, mercury, polychlorinated biphenyls, copper and bacteria.</p>		<p>consideration of its alternative compliance approach principles.</p>
<p>SCVURPPP Legal, 3</p>	<p>C.1. Finding 11</p>	<p>Quote State Board Order for Alternative Compliance Pathway</p>	<p>To avoid ambiguity that could result in years of unnecessary resource-draining litigation through the courts similar to that previously experienced in Southern California, the T.O.'s Finding 11 needs to be further clarified with respect to the relationship between Draft Permit Provisions A.2, B.1-B.2, and C.1. More specifically, Finding 11 should be expanded or supplemented to recognize the State Water Board's June 16, 2015 adoption of precedent order WQ-2015-0075 concerning Receiving Water Limitations ("State RWL Order"), and it should expressly state that, consistent with guiding principles set forth in the State RWL Order, Provisions C.1 and C.9-14 are designed to provide the co-Permittees with an alternative compliance pathway relative to Receiving Water Limitations B.1 and B.2 and Discharge Prohibition A.2 with respect to pesticides, trash, mercury, polychlorinated biphenyls, copper and bacteria.</p>	<p>See response to ACCWP Legal Comment No. 2, wherein we agree to reference State Water Board Order WQ 2015-0075 and consideration of its alternative compliance approach principles. However, it is not necessary or appropriate to revise Finding 11, which is a statement of pollutants of concern in municipal stormwater.</p>	<p>Revise Fact Sheet for Provision C.1 to account for State Water Board Order WQ 2015-0075 and consideration of its alternative compliance approach principles.</p>

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SCVURPPP Legal, 4	C.1	Clarify C.1	<p>As it reinforces and clarifies this Water Board’s longstanding approach in municipal stormwater permitting relative to the management of pollutants of concern and exceedances of water quality standards and will thereby help avoid unnecessary litigation, the Santa Clara Program and its members strongly support Provision C.1’s recognition that compliance with Provisions C.9- C.14 will constitute compliance with Receiving Waters Limitations B.1 and B.2 and that compliance with Provision C.10 will further constitute compliance with Discharge Prohibition A.2. The second sentence of Provision C.1 should, however, end immediately after “Receiving Water Limitations B.1 and B.2” as the words beyond that point are unnecessary, confusing, and could give rise to resource-draining litigation. Consistent with its intent and all prior municipal stormwater permits issued by this Water Board, to further avoid unnecessary litigation, the reference in the third sentence to “Discharge Prohibition A.2” should be changed to “A.1 and A.2.” Finally, the word “copper” appears to have inadvertently omitted from the list of pollutants of concern in the last sentence of the first paragraph in Provision C.1 and should be restored there.</p>	<p>The second sentence is correct as written in the Tentative Order, except as discussed in the copper discussion below, and is necessary and not confusing. Provisions C.9-C.12 and C.14 establish requirements for specific pollutants in the specific water bodies identified in the provisions. The requirements are not applicable to discharge of the specific pollutants to other water bodies and do not provide an alternate means of compliance with Receiving Waters Limitations B.1 and B.2 for the specified or other pollutants in other water bodies. In order to make this even clearer, the second sentence has been modified to refer to “pollutants and the receiving waters” instead of “pollutants in receiving waters.”</p> <p>The commenter is correct that the third sentence should be revised to include Prohibition A.1 in addition to Prohibition A.2. Provision C.10 establishes requirements applicable to both stormwater and non-stormwater discharges of trash, and as such, the requirements should have applied to compliance with Prohibition A.1 for nonstormwater discharges of trash as well. The correction has been made.</p> <p>Copper was purposefully omitted from the list of pollutants in the last sentence of the first paragraph in Provision C.1 and should not have been referenced in the second sentence. Provision C.13, Copper Controls, establishes requirements associated with the implementation plan established in the Basin Plan for copper site-specific water quality objectives for San Francisco Bay. These copper water quality objectives are not exceeded, and,</p>	<p>Revise Provision C.1 second sentence to refer to “pollutants and the receiving waters” instead of “pollutants in receiving waters.”</p> <p>Change the reference in the third sentence to “Discharge Prohibition <u>A.1 and A.2.</u>”</p> <p>Revise Provision C.1 second sentence to refer to “pollutants and the receiving waters” instead of “pollutants in receiving waters.”</p> <p>Remove reference to copper and C.13 in the second and last</p>

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				<p>therefore, copper is not be among the pollutants for which a “safe harbor” is needed. Safe harbors are appropriate during the time rigorous actions are being planned and implemented in order to achieve a water quality standard.</p> <p>The second and last sentences have been corrected to delete references to C.13. In the unlikely event copper exceedances occur, it is necessary that controls be implemented to remedy the exceedance, which is why copper was not omitted in the last sentence.</p>	<p>sentences of the first paragraph.</p>
<p>SCVURPPP Legal, 5</p>	<p>C.1/C.14</p>	<p>Clarify C.1 and C.14 apply to all receiving waters</p>	<p>So as to avoid unnecessary and resource-draining litigation and more fully effectuate the alternative compliance pathway set forth in Provision C.1 for water quality standard exceedances involving bacteria, Provision C.14 needs to be clarified to define the co-Permittees’ compliance obligations relative to receiving waters other than San Pedro Creek and Pacifica State Beach. This could be accomplished by addition of a new subprovision in C.14 that delineates such “For Other Receiving Waters” bacteria-related requirements. Alternatively, since Provision C.8.d.vi. already delineates detailed requirements for investigating pathogen (including Enterococci and E. coli) contamination in local creeks and areas where water- contact recreation is likely, allocates responsibility for addressing such requirements among co-Permittees, and defines a quantitative performance criteria to trigger follow up action under C.8.e, the same result might more easily be accomplished through the addition of a very short additional statement in the opening paragraph of Provision C.14 which speaks to the co-Permittees’ responsibilities for other receiving waters and then just provides a summary cross-reference to Provision C.8.d.vi.</p>	<p>Provision C.14 does not apply to other Permittees and receiving waters. It clearly states that the City of Pacifica and San Mateo County—not other Permittees—shall implement Provision C.14 for fecal indicator bacteria in order to implement the San Pedro Creek and Pacifica State Beach TMDL and wasteload allocations for the City of Pacifica and San Mateo County. There is no ambiguity. The Provision C.14 requirements call for implementation of control measures that are relevant to the City and County’s cause and contribution to exceedances of fecal indicator bacteria water quality objectives in San Pedro Creek and Pacifica State Beach waters. These control measures may or may not be relevant to discharges of fecal indicator bacteria to other water bodies. Also, Provision C.14 establishes monitoring requirements that are only applicable to San Pedro Creek and Pacifica State Beach waters and discharges from the City and County to these water bodies. Receiving Water Limitation A.1 and Provision C.8 are applicable to other receiving waters. To clarify this, the words “identified therein” have been</p>	<p>Add “identified therein” to the second sentence in C.1</p>

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				added to the second sentence in C.1 in reference to Permittees and the Provisions. Expansion of C.14 requirements to cover all Permittees and other receiving waters would require information and analysis that are not readily available.	
Baykeeper, 1	C.1	Safe Harbor Language	Baykeeper is concerned with the addition of the “safe harbor” language in section C.1 of the Draft MRP, which is inconsistent with core requirements of the federal Clean Water Act (“CWA”) requiring that an NPDES permit ensure compliance with the terms included in the permit. (See 33 U.S.C. § 1342(a).) In particular, whereas the present permit requires strict compliance with the narrative and numeric receiving water standards covered by Receiving Water Limitations B.1 and B.2 and Discharge Prohibition A.2, the Draft MRP would effectively eliminate these standards for pollutants covered by sections C.9 through C.14, instead requiring only implementation of the programmatic elements required pursuant to those provisions. Because the ultimate effluent quality permitted for discharge under this permit may contain more pollutants than currently permitted, these provisions are less stringent than the effluent limitations contained in the prior permit, thereby requiring analysis under the anti-backsliding provision of the federal Clean Water Act. (33 U.S.C. § 1342(o)(1); see 40 C.F.R. § 122.44(l)(1).)	<p>The “safe harbor” language in section C.1 is not inconsistent with CWA § 1342(a), under which permit conditions must be prescribed to assure compliance with applicable requirements of the CWA. The draft MRP does exactly that. It is also consistent with State Water Board Order WQ 2015-0075, which calls for allowance of alternative approaches to compliance with Receiving Water Limitations.</p> <p>Anti-backsliding provisions do not apply in all circumstances and are subject to certain exceptions. In MRP 1.0, the Board retained discretion to enforce compliance with the receiving water limitations at any time. The current draft MRP requires compliance with receiving water limitations, but explicitly allows compliance with the requirements in Provisions C.9 through C.12 and C.14 to constitute compliance for those pollutants and water bodies addressed therein, and reserves direct enforcement of the receiving water limitations to situations where a permittee fails to comply with a requirement in C.9 through C.12 and C.14. The approaches under the prior and proposed permit are designed to achieve the same results—compliance with receiving water limitations—but through distinct paths and that are not easily comparable for purposes of the specific, technical anti-backsliding requirements laid out in</p>	Revise the Fact Sheet to better explain the Board’s Revise Fact Sheet findings on anti-backsliding.

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Baykeeper, 2	C.1	Compliance Schedules	The Draft MRP references "compliance schedules" contained in permit sections C.9 through C.14, but is unclear exactly what the basis and scope of these compliance schedules are. If the Draft	CWA § 402(p)(3)(B)(iii) does not require municipal storm water discharges to strictly comply with water quality standards, but NPDES permitting authorities	None

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			<p>MRP proposes to incorporate “schedules of compliance” pursuant to 40 C.F.R. §122.47, it is unclear why any of the pollutants covered by sections C.9 through C.14 should qualify for such a schedule of compliance. The Draft MRP does not propose any new receiving water limitations or discharge prohibitions for any of these pollutants, all of which are presently covered by the existing permit, and none of which are presently subject to any compliance schedules that we are aware of.</p> <p>Lastly, we note specific concerns with the pollutants referenced in this new provision, which are discussed more fully in separate sections of this comment. For example, the language in Section C.1 appears to refer to water quality standards for bacteria relevant to all Permittees, but Section C.14 only contains control measures for the City of Pacifica and San Mateo County.</p>	<p>have the authority and discretion “to determine that ensuring strict compliance with state water quality standards is necessary to control pollutants.” (<i>Defenders of Wildlife v. Browner</i> (9<sup>th</sup> Cir. 1999) 191 F.3d 1159, 1166.) Pursuant to State Water Board precedents (State Water Board Orders WQ 98-1 and WQ 99-05), the Board has required compliance with water quality standards, but required less than strict compliance. (See State Water Board Order WQ 2015-0075.) The draft MRP sets forth concrete milestones and deadlines (compliance schedules) to achieve receiving water limitations for those pollutants and waters identified in Provisions C.9 to C.12 and C.14. Requiring such milestones and deadlines is within the Board’s discretion to require strict compliance with water quality standards. The deadlines are as soon as possible in light of the municipalities’ challenges to immediate compliance. Moreover, the mercury, PCBs and bacteria deadlines are, as required by the federal regulations (40 CFR § 122.44(d)(1)(vii)(B)), consistent with the assumptions and requirements of the wasteload allocations of the relevant TMDL.</p> <p>With respect to bacteria, the control measures of C.14 and any “safe harbor” afforded under C.1 applies only to the City of Pacifica and San Mateo County.</p>	
Baykeeper, 35	C.1	Delete Safe Harbor Language	<p>Receiving Water Limitations are included in NDPES permits to ensure that discharges do not cause to water quality impacts, if technology-based standards are insufficient to protect beneficial uses. Section C.1 states that if a Permittee complies with the mercury controls in Section C.11, the Permittee will be deemed in compliance with Receiving Water Limitations. Yet, to reiterate, the</p>	<p>Provision C.1 is consistent with and implements State Water Board Order WQ 2015-0075 which calls for allowance of alternative approaches to compliance with Receiving Water Limitations and consideration of its alternative compliance approach principles. Order WQ 2015-0075 states MS4 permits</p>	<p>Revise Fact Sheet for Provision C.1 to account for State Water Board Order</p>

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			<p>actual control measures to regulate mercury discharges have not been developed or shown to be effective at protecting water quality. Therefore, Section C.1 takes away any safeguard that Permittees will be held liable for mercury discharges that contribute to water quality exceedances if control measures prove to be ineffective. The Regional Board should revise the Draft MRP to delete the portion of Section C.1 that grants Permittees a safe harbor from violating Receiving Water Limitations, so as to ensure that receiving waters are protected.</p>	<p>should incorporate TMDL requirements and a rigorous alternative compliance path, such as C.1 and the C.11 mercury controls and C.12 PCBs controls, that allows Permittees appropriate time to come into compliance with TMDL requirements and receiving water limitations without being in violation of the receiving water limitations during full implementation of the compliance alternative.</p> <p>Development and implementation of controls for certain pollutants, such as mercury, is challenging. The most effective controls for mercury are green infrastructure systems and Provision C.12 provides time to develop and implement them.</p>	<p>WQ 2015-0075 and consideration of its alternative compliance approach principles.</p>
Baykeeper, 41	C.1.	Delete Safe Harbor Language	<p>The MRP should not grant a safe harbor for violations of Receiving Water Limitations to Permittees even if they are in compliance with Section C.12.</p>	<p>See response to Baykeeper Comment No. 35.</p>	