

**Response to Comments on May 11, 2015 Tentative Order
Provision C.4. – Industrial and Commercial Site Controls**

Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
Baykeeper	8	C.4.	Require Minimum Number of Inspections	Set percentage (such as 10%) of industrial and commercial sites with potential to discharge stormwater pollutants to be inspected annually.	The Inspection Plan required in C.4.b. is more comprehensive and protective of the environment than the change requested. The Inspection Plan requires Permittees to assign an appropriate inspection frequency for each facility based on the established priority criteria, potential for contributing pollution to stormwater runoff, and commensurate with the threat to water quality. Similar mechanisms have been in place prior to the MRP. Staff reviewed more than one-third of the Permittee's Inspection Plans required pursuant to C.4.b. These Inspection Plans showed that all facilities are inspected at least once every 5 years, with high and medium priority facilities inspected more frequently.	None.
Baykeeper	9	C.4.	Require Inspection of Stormwater Treatment and Flow BMPs	Require an on-going inspection program to annually inspect all stormwater treatment and flow control BMPs and facilities that are owned, operated, or regulated by the Permittees and to implement appropriate maintenance.	This provision is to prevent the discharge of pollutants from industrial and commercial sites. It appears that this comment may be on Provision C.3's treatment and hydromodification facilities. If so, Provision C.3.h. – Operation and Maintenance of Stormwater Treatment Systems requires inspection and maintenance of such public	None.

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					facilities.	
East Palo Alto SMCWPPP	13a and b 19a	C.4.c	Keep " <u>Goal</u> " of Correcting Violations	Request edit to return to prior permit language which had a " <u>goal</u> " of correcting violations within 10 business days, as opposed to "requiring" corrections within 10 business days. Without "goal", sites with minor issues during the dry season (i.e. verbal warnings) would need to be reinspected within 10 business days. There is a potential to eliminate collaboration between City inspectors and property owners/managers to obtain full, long term beneficial compliance. This may increase the workload for inspectors with no water quality benefit.	It is unclear what the commenters consider "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 has concurred that open garbage cans/dumpster lids are minor issues. The sites can correct the open garbage cans/dumpster lids on the spot and corrective actions would then have been implemented. The Water Board's construction and industrial inspectors follow a similar protocol for open garbage cans/dumpster lids, but will still note the issues in their inspection 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, thus allowing time for City inspectors to collaborate with owners/managers to obtain full,	None.

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					long term beneficial compliance. The Permit does not stipulate that the sites need to be reinspected to determine if corrective actions were implemented.	
SMCWPPP	19b	C.4.c	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.
CCCWP	33a	C.4.c.	10-Day Period to Correct Potential Discharges Expensive	All potential discharges should not be considered high priority. This increases inspection costs and reduces 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 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	None.

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					complete inspections.	
CCCWP	33b	C.4.c.	No Incentive to ID Potential Problems	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>As stated above, while appropriate follow-up is required to ensure identified problems are addressed, where such problems cannot be immediately addressed during the initial inspection, there is significant flexibility in the form that follow-up may take. For example, 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.</p> <p>In addition, it is troubling that the commenter seems to imply that its inspectors do not record potential 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. There are existing simple tools for noting problems and appropriately following up. For example, many Permittees use preprinted inspection forms with the BMPs listed on them. The inspectors check off the BMPs and make notes/comments, as</p>	None.

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					<p>appropriate, as they complete an inspection. Some inspection forms also serve as an enforcement notice, with space to list the issues and compliance date(s) 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 site's compliance history.</p>	
CCCWP	33c	C.4.c.	Verbal Warnings and Warnings Notices Are Effective Tools	<p>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.</p>	<p>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 industrial/construction sites can 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 reports. It is of concern that the commenter is 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</p>	None

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					whether a site may have an ongoing problem that is corrected only periodically, when an inspector is present. 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.	
CCCWP Hayward Pittsburg	33c and d 5 4	C.4.c and d	Keep Current Language that Allows 30 Days for Corrective Actions	City will need to inspect more facilities under the new Industrial Discharge permit with the same limited resources. Keeping the current provision of allowing up to 30 days for corrective action to be implemented allows Permittees flexibility to take other actions that may be more effective at getting dischargers to implement corrective actions. Inspectors need to be able to use their expertise and best professional judgment to determine how to best allocate their time.	The Previous Permit did not allow up to 30 days for corrective actions to be implemented. However, it did allow for Permittees give sites for time to implement corrective actions with a rationale. This is also allowed in the proposed Permit. Limited resources is an ongoing issue for public agencies. To help fund the business inspection program during times of diminishing public funds and rising inspection program costs, 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	None.

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					increasing Permittee capacity to complete inspections. Inspectors have full flexibility to plan their schedules as they see fit.	
Clayton Concord Oakley Danville El Cerrito Hercules Martinez Moraga Orinda Pinole Pleasant Hill San Pablo San Ramon	43 26 11 26 32 23 29 20 23 19 22 22 29	C.4.c.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. 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 minor issues. The sites can correct the open garbage cans/dumpster lids on the spot and corrective actions would then have been implemented. It is unclear what additional "minor" problems the commenters are referencing that cannot be corrected immediately. Permittees must have an accurate record of their inspection observations, so it is unclear why their inspectors wouldn't document the "minor" problems in their inspection reports. Lack of documentation also increases the challenge in identifying ongoing minor	None.

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					problems at facilities, which may only be corrected periodically, when an inspector is present. If an inspector is unwilling to identify potential discharges because that will trigger a 10-day window to ensure they are corrected, the Permittee may have failed to train the inspector adequately. That also calls into question the adequacy of the associated inspection program.	
CCCWP	34	C.4.d.	Reporting	Reporting requirements represent a less beneficial task to Permittees. Reduce the following excessive reporting requirements: <ul style="list-style-type: none"> • the number of inspections; • the number of each enforcement action; • the number of enforcement actions resolved in 10 working days, or otherwise deemed resolved in a longer but still timely manner • facilities that are required to have coverage under the General Industrial Permit but have not filed; and, • the dates of trainings, training topics covered, and percentage of inspectors attending training. 	The reporting requirements are necessary to allow the Water Board and the interested public to get a picture of how the Permittees are implementing the requirements of the Permit to minimize polluted discharges to the storm drains and water bodies. The commenter has not provided alternatives for the Water Board to determine Permit compliance with this provision.	None.
San Jose	29	C.4.d.ii.(3)	Keep Existing Language	"Frequency and types/categories of violations observed" and "types of violations noted by business category" in the MRP is not the same as "frequency	It has been streamlined to have the same meaning.	Changed "frequency and types of potential and actual non-stormwater discharges by business

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				and types of potential and actual discharges noted by business category” in the TO. Keep existing language.		category” to “frequency of potential and actual non-stormwater discharges by business category”.
San Jose	28	C.4.d.iii.(3)	# of Violations vs # of Enforcement Actions	The City tracks and reports at the discrete violation level because it believes this gives more accurate information on the types of problems observed. Allow Permittees the option to report data at the violation level or the enforcement action level or allow until July 1, 2016, to transition to enforcement action level reporting.	Water Board staff concurs that tracking and reporting at the discrete violation level provides more accurate information.	Added language to allow reporting at the enforcement action or discrete discharge level.