

**Attachment 1
MUNICIPAL REGIONAL STORMWATER PERMIT (MRP) dated February 11, 2009
City of Newark's
List of Major Issues**

Provision/Pg.	Provision Heading	Issue	Requested Change
C.2	Municipal Operations		
C.2.d.iii	Pump Stations	Reporting on the levels of trash and debris removed from the pump stations is unnecessary. If this information is needed for a specific purpose, a one-time assessment would suffice.	Delete the requirement to collect and report on trash and debris removed from pump stations.
C.3.	New Development and Redevelopment		
C.3.a.i.(2) Page 15	Task Description	"303(d) listed waterbodies" is shorthand jargon.	Replace with full explanatory name.
C.3.b.ii.(1)(d) Page 18	Regulated Projects are defined in the following categories	Beginning 07/01/2011 all references in Provision C.3.bi.(1) change to 5,000 sq. ft.	<u>Maintain project size threshold at 10,000 sq. ft.</u> A study by Regional Board staff found that the existing 10,000 sq.ft. threshold captured 97% of all the impervious surfaces installed in the Cities of Livermore, Dublin, and Pleasanton. Also, the implementation of effective treatment controls becomes significantly more difficult, and less cost-effective, on small sites.
C.3.b.ii.(1) Page 18	Effective Date	For development projects in this category that have received final, major, staff-level discretionary review and approval for adherence to applicable local, state, and federal codes and regulations, before July 1, 2011, the lower 5,000 square feet impervious surface threshold (for classification as a Regulated Project) shall not apply.	<u>Exclude from the 5,000 square foot threshold projects with applications deemed complete per the Permit Streamlining Act</u> prior to July 1, 2011. The State legislature enacted the Permit Streamlining Act in response to a "statewide need to ensure clear understanding of the specific requirements which must be met in connection with the approval of development projects and to expedite decisions on such projects." When an application is deemed complete under the Permit Streamlining Act, expectations are created and a clock starts ticking. If an agency should, in the middle of the review process, impose a new stormwater treatment requirement that was not applicable when the application was deemed complete, this would require the re-design the project and defeat the Legislature's efforts to ensure clear understanding of development permit requirements.
C.3.b.ii.(1)	Effective Date	For development projects in this category that	<u>Better coordination with local permitting processes</u>

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Page 18		have received final, major, staff-level discretionary review and approval for adherence to applicable local, state, and federal codes and regulations, before July 1, 2010, the lower 5,000 square feet impervious surface threshold (for classification as a Regulated Project) shall not apply.	<u>is needed.</u> If the Effective Date section is not revised to coordinate the applicability of the 5,000 square foot threshold with applications deemed complete per the Permit Streamlining Act (see above comment), then Water Board staff should specifically involve permittees in the rewriting of this provision. As written it is confusing to development review staff and reflects the fact that state regulators, given the nature of their job, lack familiarity with the day-to-day functioning of the development review process.
C.3.b.ii(3) Page 19	Other Redevelopment Projects	This section does not mention roadway reconstruction projects. However the Fact Sheet (page 24) states that because Water Board staff expects that most road widening projects will not be able to separate runoff flows from existing lanes of travel from the runoff from new lanes of travel, road widening projects are not allowed the same 50% rule that applies to other redevelopment projects. This rule allows any redevelopment project altering less than 50% of the impervious surface of a previously existing development with no post-construction controls to design stormwater treatment only for the impervious surface being replaced and/or added as part of the project.	<u>Allow roadway widening projects that alter less than 50% of existing impervious surface to treat only the replaced and/or added impervious surface.</u> The MRP should not restrict the ingenuity and resourcefulness of municipal staff and design professionals. It is particularly difficult to provide onsite stormwater treatment facilities in the roadway right of way. It is not reasonable or practicable to burden roadway widening projects with an inflexible requirement to treat all stormwater runoff from the entire roadway.
C.3.b.iii. Page 20	Green Streets Pilot Projects	Permittees shall cumulatively complete 10 pilot green street projects that incorporate LID techniques.....	<u>Eliminate Requirement.</u> The Permit already establishes a requirement for municipalities to comply with treatment requirements for road projects that create 10,000 sq. ft. of impervious surface and compliance with hydrograph modification requirement for new road projects that create an acre or greater of impervious surface. Given the current economic conditions faced by municipalities, expensive Pilot Projects, which are also redundant with other established requirements, should be eliminated from the Tentative Order.
C.3.b.iii. Page 20	Green Streets Pilot Projects	Permittees shall cumulatively complete 10 pilot green street projects that incorporate LID	<u>Include projects implemented since 2003.</u> If the green streets pilot project provision is not

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		techniques.....	eliminated, please allow green streets projects implemented since the last permit was issued, in 2003, to count toward this requirement.
C.3.b.iii.(2) Page 20	Green Streets Pilot Projects	Green street pilot projects shall contain "key elements" (a) through (e).	In the event that the green streets pilot project provision is not eliminated, please clarify that <u>(c) urban greenway segment is offered as an example</u> of an element that a green street may under special circumstances be able to incorporate, but is not required in order for a project to be considered a green street.
C.3.b.iii.(2)(d) Page 20	Green Streets Pilot Projects	A "key element" of green streets is described as "Parking management that includes maximum parking space requirements as opposed to minimum parking space requirements, parking requirement credits for subsidized transit or shuttle service, parking structures, shared parking, car sharing, or on-street diagonal parking.	<u>Eliminate section (d) parking management.</u> Parking management is not a component of a street and is handled through land use regulation as part of an overall strategy to reduce transportation demand generated by retail, office, industrial and other land uses. It is not part of street design.
C.3.b.iii.(2)(d) Page 20	Green Streets Pilot Projects	Permittees are required to conduct "appropriate monitoring of these projects to document the water quality benefits achieved."	<u>Eliminate monitoring requirement.</u> Provision C.8 already places extensive monitoring requirements on the permittees. Unless grant funding becomes available, it will be hard enough for the permittees to implement green streets pilot projects, plus the necessary long-term operations and maintenance and verification inspections. Monitoring water quality benefits from individual LID installations is a cumbersome and costly requirement that will not improve water quality.
C.3.b.iii.(2)(a) and elsewhere Page 20	Green Streets Pilot Projects	In "key element" (a), the term "natural feature" is used to describe a landscape based facility that treats and/or infiltrating stormwater.	"Natural feature" seems like the wrong term because even landscape-based systems are not "natural" per se, they are designed and engineered systems. The term landscape-based is recommended, since it is a term that is associated with design.
C.3.b.iii.	Green Streets Pilot Projects – Due Date	All pilot green streets projects shall be completed by July 1, 2013.	<u>Extend due date to at least July 1, 2014.</u> The unrealistic time frame for identifying projects, obtaining funds, planning, design and construction demonstrates a lack of familiarity with the construction project development process. No one expects regulatory staff to understand the

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			roadway project development process, therefore, the MRP would benefit from better communication and collaboration with permittees who work on roadway improvements on a routine basis.
C.3.b.v.(1)	Annual Reporting, Projects	Reporting requirements are overly detailed	Eliminate categories of data, or make listing optional if not appropriate (such as street addresses that may not exist for new subdivisions), cross streets if an address is given, application date (approval date should be sufficient)
C.3.b.v.(1)(d) Page 21	Reporting	The reporting requirements for regulated projects include total area of land disturbed.	<u>Remove requirement for reporting area of land disturbed.</u> These data have no relevance to Regulated Projects for post-construction stormwater management. Collecting these data is unnecessary and cumbersome.
C.3.b.v.(2)	Annual Reporting, Green Streets	Reporting overly detailed, much data is not relevant to water quality	Report on status only (design, construction, complete) only until project is complete; only report on O&M provisions if entity other than City is responsible, eliminate cost reporting
C.3.b.v.(2) Page 21	Reporting	Permittees shall report the capital costs, operation and maintenance costs, and legal and procedural arrangement in place to address the management of completed Green Street Pilot Projects.	<u>Eliminate Green Streets Reporting Requirement.</u> This is a cumbersome and non-essential reporting task; and therefore, should be eliminated. Green streets projects will be reported in the Table of New Development projects, as required in C.3.v(1).
C.3.c.i.(1)(a) Page 22	Low Impact Development-Source Control	Minimization of stormwater pollutants of concern in urban runoff through measures that may include plumbing of the following discharges to the sanitary sewer, subject to the local sanitary sewer agency's authority and standards.	Provide a statement that clearly establishes that the requirements to plumb discharges to the sanitary sewer are dependent upon the local sanitary sewer agencies approval. <u>Recommend changing "authority" to "approval".</u>
C.3.c.i.(2)(e) Page 23	Low Impact Development-Site Design and Stormwater Treatment	After completion of the site design measures specified in Provision C.3.c.i.(2)(d), treat as much of the remaining stormwater runoff...	<u>Add the words "as practicable" between "stormwater runoff" and "this includes any runoff leaving..."</u> . This is consistent with paragraphs (f) and (g).
C.3.c.i.(4) Page 23	Low Impact Development-Site Design and Stormwater Treatment	Notify the Water Board Executive Officer prior to granting final discretionary approval to any regulated project that proposes to install vault-based treatment systems to provide primary treatment for 10-20% of the total Provision C.3.d	<u>Eliminate Requirement.</u> This requirement adds a burdensome and unnecessary step in the project review process.

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		specified runoff from site. Notification shall include a justification for the use of vault-based system.	
C.3.c.i.(5) Page 23	Low Impact Development-Site Design and Stormwater Treatment	Notify the Water Board Executive Officer prior to granting final discretionary approval to any regulated project that proposes to install vault-based treatment systems to provide primary treatment for more than 20% and up to 50 % of the total Provision C.3.d specified runoff from site. Notification shall include a justification for the use of vault-based system. Justification shall include documentation of site constraints and infeasibility of providing Equivalent Offsite Treatment.	<u>Eliminate Requirement.</u> This requirement adds a burdensome and unnecessary step in the project review process. The requirement to provide justification of the infeasibility to provide equivalent offsite treatment is another burdensome and unnecessary task placed on developers.
C.3.c.i.(6) Page 24	Low Impact Development-Site Design and Stormwater Treatment	Obtain approval from the Water Board Executive Officer prior to granting final discretionary approval to any regulated project that proposes to install vault-based treatment systems to provide primary treatment for more than 50% of the total Provision C.3.d. specified runoff from site.	<u>Eliminate Requirement.</u> The ACCWP is opposed to this provision as it is an interference with local land use decision making. This is a new requirement that was not in the previous Tentative Order, and there is no rationale provided to justify this new requirement. Requiring approval from the Executive Officer puts municipalities at risk of not meeting their obligations to review and process the permit application under the time limits imposed by State Permit Streamlining Act. The Board states that the C.3 requirements are not intended to restrict or control local land use decision-making authority. This requirement, however, is in direct conflict with that statement, and therefore, should be removed from the Tentative Order.
C.3.c.iii.	Implementation Level, LID	Reporting of implementation efforts is redundant with reporting under C.3.b(v)(1), which demonstrates LID elements of each approved project. Reporting is also redundant with ongoing reporting to Board staff regarding use of vault-based treatment measures	Eliminate requirement
C.3.e.i. Page 26	Alternative Compliance with Provisions C.3.b	Alternative compliance is only available for infill projects and redevelopment projects.	<u>Allow alternative compliance in any location.</u> Limiting alternative compliance to infill and

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			redevelopment projects appears to be based on the assumption that currently undeveloped areas should be developed in a manner that reserves ample green space for onsite facilities. Many municipalities with undeveloped areas are seeking to maximize density with smart growth development to avoid the "sprawl" that results from surrounding each separate project with ample landscaping. Also, stormwater runoff from roadways is particularly difficult to manage with onsite treatment. For such projects alternative compliance will be a useful tool.
C.3.e.i.(1)(a) Page 27	Alternative Compliance with Provisions C.3.b	The brownfields exemption is limited to brownfields projects that receive a subsidy or similar benefits.	<u>Eliminate subsidy requirement for brownfields projects to be exempt from hydraulic sizing requirement.</u> This seems unrelated to the goal of facilitating brownfield remediation. Most brownfield redevelopment does not receive subsidies or similar benefits.
C.3.e.i.(1)(d)(i) Page 27	Alternative Compliance with Provisions C.3.b	Transit Village Exemption: A housing or mixed-use development project with a minimum density of 30 residential units per acre	Revise Density requirement to be more flexible.
C.3.e.i.(1)(d)(ii) Page 27	Alternative Compliance with Provisions C.3.b	Transit Village Exemption: Parking restrictions: Restaurants, no more than 3 spaces/1000 sq.ft Offices, no more than 1.25 spaces/1000 sq. ft. Retail, no more than 2.0 spaces/1000 sq. ft.	<u>Revise Parking requirement to allow greater flexibility.</u> These ratios are unrealistically low and will not serve the goal of encouraging transit oriented developed. A more appropriate maximum parking for transit-oriented commercial development would be the following: Restaurants = 5 spaces per 1,000 s.f. Offices = 2 spaces per 1,000 s.f. Retail = 2.5 spaces per 1,000 s.f.
C.3.e.i.(2) Page 28	Alternative Compliance with Provisions C.3.b	Offsite projects must be constructed by the end of the construction of the regulated project. If more time is needed to construct the offsite project, for each additional year, up to three years, after the construction of the regulated project, the offsite project must provide an additional 10% of the calculated equivalent offsite treatment.	<u>Develop a workable alternative to this unworkable penalty.</u> It is reasonable to have as a goal incentivizing the timely construction of the offsite project. However the penalty of requiring additional treatment for tardiness is not reasonable. If, in the middle of the project, unpredicted delays prevent its timely construction,

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			the proposed penalty would require a change to the project, resulting in further delays, and possibly exceeding space limitations on the designated site. Please work with the permittees to develop alternate incentives and/or penalties.
C.3.e.iv.	Alternate Compliance	Reporting on legal authority/ procedural changes provides no value	Eliminate requirement
C.3.f.iii.	Alternative Certification	Reporting on who conducted a plan review is overly prescriptive; city engineer's approval of plans should be evidence of adequate plan review	Eliminate requirement
C.3.g. Page 30	Hydromodification Management (HM)	The HM provision does not include exclusions to the HM requirements that are included in Provision C.3.f.v(a)-(d) of the current municipal stormwater permit as amended by Order No. R2-2007-0027.	<u>Include in the MRP the existing exclusions to HM requirements.</u> The current municipal stormwater permit (as amended) includes the following exclusions from the HM requirement: projects consisting of one single-family home that are not part of the larger common plan of development; sidewalks, bicycle lanes, trails, bridge accessories, guardrails, and landscape features associated with streets, roads, highways, or freeways under the Permittees' jurisdictions; transit village type of development; a project within a "Redevelopment Project Area" that redevelops an existing brownfield site, or the portion of a project that creates housing units affordable to persons of low or moderate income. These exclusions have been omitted in the Tentative Order, despite assurances that the existing HM requirement would not be changed, in view of the fact that HM requirement went into effect very recently.
C.3.g.iv.	HM	Reporting is redundant with reporting under C.3.b(v)(1)	Eliminate requirement
C.3.h.ii.(6) Page 35	Operation and Maintenance of Stormwater Treatment Systems	Inspection of at least 20 percent of the total number (at the end of the preceding fiscal year) of installed stormwater treatment systems and HM controls. Inspection by the Permittee of all installed stormwater treatment systems subject to Provision C.3. at least once every 5 years.	<u>Revise requirement for prioritized inspection plan.</u> If permittee is required to inspect all within 5 years, allow permittee to develop an appropriate inspection plan. Eliminate the yearly 20% requirement. Require permittee to submit an inspection plan indicating how they will inspect all at least once during the 5 year permit cycle.

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C.3.h.iii.	Maintenance Approvals	The provision states that if the responsible party has worked diligently and in good faith, the Permittees are in compliance with the provision.	Revise to state that if the PERMITTEE (not the responsible party) is working diligently and in good faith then the Permittee will be in compliance. What if the responsible party is <u>not</u> working diligently or in good faith but the Permittee is working diligently and in good faith (for example, by taking enforcement action to rectify the situation)? In that situation, the Permittee should not be held in violation of the provision.
C.3.h.iv.(3)	O&M	Reporting on inspections is redundant with C.3h(iv)(1)	Eliminate requirement; any issues should be reported in C.3h(iv)(1)
C.3.i	Required Site Design Measures for Small Projects and Detached Single Family Homes	Permittees shall require all development projects, which create and/or replace >2,500 sq. ft. to <10,000 sq. ft or impervious surface and detached single family home projects to install one or more site design measures.	<u>Eliminate Requirement.</u> All projects are already required to implement stormwater design/treatment requirements to the maximum extent practicable. This requirement is unnecessary, results in additional tracking/monitoring, and will have little or no real impact on water quality given that the majority of projects are already covered under the requirements based on the 10,000 sq. ft. threshold.
C.3.i.iii.	Small Projects	Reporting on this material provides nominal benefit to water quality	Eliminate requirement

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C.4	Industrial and Commercial Site Controls		
C.4.a.ii.(1)	Implementation Level	Legal authority is too broad as regards ability to oversee, inspect, and require expedient compliance and abatement at <u>all</u> sites that cause or contribute to pollution of stormwater runoff. The ordinances that municipalities adopted in early 1990s were for the municipally owned/operated municipal separate storm sewer systems (MS4), not for stormwater runoff in general.	Revise the legal authority to what is required by federal Clean Water Act requirements to control pollutants that flow to municipally owned/operated MS4s.
C.4.a.ii.(2)	Implementation Level	The requirement that violations shall be corrected during certain specified time periods is unrealistic	Replace the requirement to correct violations "prior to the next rain event or within 10 business

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		and unnecessary. Most Permittees require compliance within 30 calendar days. The 10 business day requirement is unrealistic and will significantly increase staff time further depleting already strained resources, and will result in staff spending more time tabulating rationale for not meeting the 10 day compliance goal, thereby ultimately reaching fewer sites for inspections.	days” with a more flexible requirement to correct violations of local stormwater ordinances within 30 days. Eliminate the requirement to provide “rationale... in the tabulated sheets”.
C.4.b.ii.(6)	Record Keeping	The record keeping listed under this section is not as comprehensive as the recordkeeping required under the Enforcement Response Plan (C.4.c.ii.(4)). All of the inspection related record keeping should be listed in one place in this section and not be listed in different places and expressed in different ways.	Consolidate all of the recordkeeping requirements in this section.
C.4.b.iii.	Reporting	The annual reporting requirements listed under this section are not as comprehensive as the annual reporting required under the Enforcement Response Plan (C.4.c.iii). All of the annual reporting should be listed in one place in this section. It is uncertain what the purpose is of including language about the percent of violations resolved within 10 working days or in a timely manner.	Consolidate all of the annual reporting requirements in this section. If there are annual reporting items that merit additional discussion and consideration, these should be worked out following adoption of the MRP.
C.4.c.ii.(2)	Implementation Level	The requirement that violations shall be corrected during certain specified time periods is unrealistic and unnecessary. Most Permittees require compliance within 30 calendar days. The 10 business day requirement is unrealistic and will significantly increase staff time further depleting already strained resources, and will result in staff spending more time tabulating rationale for not meeting the 10 day compliance goal, thereby ultimately reaching fewer sites for inspections.	Replace the requirement to correct violations “prior to the next rain event but no longer than 10 business days after violation is discovered” with a more flexible requirement to correct violations of local stormwater ordinances within 30 days. Eliminate the requirement to provide “rationale... in the tabulated sheets”.
C.4.c.iii.	Enforcement Response Plan	Requirement for reporting on inspection results is redundant with C.4.b.iii.	Eliminate requirement
C.4.d.iii	Staff Training	Reporting % of staff attending training is not of value and difficult to calculate	Modify requirement

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C.5.	Illicit Discharge Detection and Elimination		
C.5.a.ii.(1)	Illicit Discharge Detection and Elimination; Legal Authority; Implementation Level	The requirement to have adequate legal authority for "non-stormwater pollution" is overly broad. The authority should be more specific to non-stormwater discharges to MS4s owned/operated by permittees.	Modify the legal authority requirement to having the ability to control non-stormwater discharges to the permittees' MS4 as required by the federal Clean Water Act.
C.5.a.ii.(2) and (3)	Implementation Level	The requirement to have adequate legal authority for discharges to "storm drains" is too broad.	Modify the legal authority requirement to having adequate legal authority to control discharges to the permittees' MS4.
C.5.b.ii.(2)	Enforcement Response Plan; Timely Correction of Violations	The requirement that violations shall be corrected within prescribed time periods is unrealistic and unnecessary.	Replace the requirement to correct violations "no longer than 10 business days after violation is discovered" with a more flexible requirement to "correct violations of local stormwater ordinances as soon as practicable." Eliminate the requirement to provide "rationale.... if the more than 10 business days is required for compliance..."
C.5.d.	Illicit Discharge Mobile Sources	"establish oversight and control of pollutants from mobile sources" As a city, it is difficult to track or issue business licenses for mobile businesses. Yet we have participated in or shared information leading to enforcement of several mobile sources through collaboration with the Alameda County Environmental Crimes Task Force and County District Attorney's office. The more conditions required of individual agencies, the more staff may be forced to pull back on un-funded regional participation.	Implementation level should consist of developing BMPs and reporting on successful partnering where it is available with entities/agencies that do have control. Example is the recent addition of owner certification to comply with ACCWP BMPs achieved by ACCWP partnering with AICo Env Health Agency who permits mobile catering trucks.
C.5.e.ii.	Collection System Screening – MS4 Map Availability – Implementation Level	The requirement to utilize the USEPA/Center for Watershed Protection publication "Illicit Discharge Detection and Elimination: A Guidance Manual for Program Development and Technical Assessment" is unclear and should simply encourage the use of guidance, such as that provided by this manual.	Modify language to state that the "Illicit Discharge Detection and Elimination: A Guidance Manual for Program Development and Technical Assessment" and other similar manuals may be used for guidance.

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C.5.e.ii.	Collection System Screening – MS4 Map Availability – Implementation Level	The requirement to make MS4 maps publicly available should be simplified to allow fulfillment of this requirement by making the Creek & Watershed Maps produced by the Oakland Museum of California available. These maps depict storm drain lines that are 2-feet or larger in diameter, which should be sufficient for most public interest/educational purposes.	Modify this requirement to allow the use of the Oakland Museum of California Creek & Watershed maps.
C.5.e.(iii)	Collection screening	Inspections and reporting are redundant with C.2, C.8, and C.10	Eliminate Requirement
C.5.f.ii. (3)	Tracking and Case Follow Up – Implementation Level	The information tracked is overly prescriptive and unnecessary. Information tracking about the response times will divert resources from implementing an effective program.	Allow agency to determine means of tracking incidents; annual reporting will indicate number of unresolved issues, if any.
C.6.	Construction Site Controls		
C.6.a.iii.	Legal Authority	Reporting is not of value.	Eliminate requirement
C.6.e.ii.(4)	Implementation Level; Tracking and Reporting	All inspections must be recorded on a written or electronic inspection form...Permittees shall track in an electronic database or tabular format all inspections. This electronic database or tabular format shall be made readily available to the Executive Office and during inspection and audits by Water Board Staff	<u>Excessive Reporting.</u> This reporting requirement is too detailed and requires the development and maintenance of an additional “construction” inspection database. It appears that in order to comply with this reporting requirement, a new construction inspection form that captures the requested data will need to be developed. A database similar to the “Industrial and Commercial Inspection Database” will need to be developed to track these inspections and provide such data for the Annual Report. Revise reporting requirement to include a report on the total number, a summary of the construction inspections performed, and a summary of the violations observed/corrected.
C.6.e.ii.(4)	Implementation Level; Tracking and Reporting	The electronic database or tabular format shall record the following information:	If the requirement to report on individual inspections is not replaced with a requirement to report on a total number with summary information (see above), then <u>reduce the data that must be reported.</u> The “inches of rain since last inspection” is particularly unreasonable and

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			cumbersome to implement.
C.6.e.(iii)	Inspections	Reporting requirements are overly detailed	Provide flexibility in reporting as needed to track and correct problem sites
C.6.f.(iii)	Staff Training	Reporting % of staff attending training is not of value and difficult to calculate	Modify requirement
C.7.	Public Information and Outreach		
C.7.b	Advertising Campaign	“a goal of significantly increasing overall awareness of stormwater runoff pollution prevention messages...” The goal of the advertising campaigns will be to change behavior. The best way to do that may not be to tie it to a stormwater message.	Delete the reference to increasing awareness of stormwater messages.
C.7.b	Advertising Campaign	Required to focus on both trash and pesticides. May be best to focus on one pollutant at a time.	Delete reference to pesticides.
C.7.e.iii.	Public Outreach Events	Reporting requirements are overly detailed	Revise requirements to just the facts and eliminate guessing at effectiveness
C.7.f.iii.	Watershed Stewardship	Reporting requirements are overly detailed and may be redundant with reporting by other groups	Limit reporting to listing the activity or group which the Permittee supports. Consolidate this reporting with C.7e(iii)
C.7.g.ii	Citizen Involvement Events	The requirement to sponsor or host citizen involvement events and provide assessments require an excessive commitment of resources above that currently implemented.	Eliminate requirement to sponsor or host and allow permittees to participate in program wide events. City of Newark has not creeks and all stormwater discharges to concrete lined flood control channels
C.7.g.iii.	Citizen Involvement Events	Reporting requirements are overly detailed	Revise requirements to just the facts and eliminate guessing at effectiveness
C.7.h.iii.	School-Age Children Outreach	Reporting requirements are overly detailed	Revise requirements to just the facts and eliminate guessing at effectiveness
C.8	Water Quality Monitoring		
C.8.a	Compliance Options	Language in paragraph 3 attempts to address the Program's previous comment, but still constrains a regional collaborative to obtaining the “types, quantities and quality of data” prescribed in the MRP, even if alternative designs are supported by the collaborative's scientific panels or expert reviewers. This may effectively prevent permittees	Revise paragraph to allow programs to submit an alternative monitoring design prepared by a regional collaborative, which includes specific justification for collecting alternative types, quantities and qualities of data which will provide equivalent or capability for addressing the objectives or questions stated in the permit. (See

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		from participating in collaboratives if other participants don't accept all of the MRP prescriptions.	related comment for C.8.f below)
C.8.c.ii	Status Monitoring/Rotating Watersheds – Parameters/Methods	Specified time frames are ambiguous; text could be interpreted to mean monitoring must be conducted in each of the named months rather than a time window.	Revise 2 nd sentence to specify spring sampling during “April or May”, dry weather during “June, July, August or September”
C.8.c.iii	Status Monitoring/Rotating Watersheds – Table 8.1	<p>General: Most of the Program's previous comments still apply regarding</p> <p>a) excess specificity and</p> <p>b) inclusion of parameters that are inappropriate or not justifiable in terms of costs vs. benefits.</p> <p>Particular concerns, especially those related to new additions and revisions, are noted below.</p> <p>c) Biological Assessment: Addition of taxonomic identification for 2 types of algae in Footnote 28 is a significant cost increase, offsetting the reduction in number of sites for the earlier parameter list. Also added are additional physical habitat parameters including “reachwide algal percent cover” which does not correspond to any parameters in the draft “SWAMP Reachwide Benthos Method for Stream Algae Sampling and Associated Physical Habitat Data Collection” (Version 3, February 2009). Per our previous comments, requiring the following additional site measurements is excessive and frequently inappropriate for the urban stream reaches targeted in C.8.c.ii:</p> <ul style="list-style-type: none"> • Depth and pebble count+CPOM requires 420 individual measurements or observations that 	<p>a) see also comments by legal counsel and BASMAA</p> <p>b) In view of extreme funding restrictions on Permittees, this permit should limit creek monitoring to core parameters used in the Sediment Quality Triad (benthic macroinvertebrates, bedded sediment toxicity and bedded sediment chemistry). See cost estimates in Attachment Y</p> <p>c) Delete algae from footnote including added physical habitat measures, and substitute under Monitoring Projects <i>design of a characterization study to be conducted next permit term for nutrients and algae together</i>. Delete requirements for other physical habitat procedures that are not included in the SWAMP “basic” level protocol. Coordinate any remaining parameter names to match terminology in reference documents.¹</p>

¹Contrary to the statement in the Water Board's Comments and Response Summary dated March 2009 (page 13 of 24), SWAMP bioassessment procedures are not based on the 1999 US EPA method in "Rapid Bioassessment Protocols for Use in Wadable Streams and Rivers". Draft protocols that have been circulated internally and summarized in public presentations are adapted from the much more detailed and time-consuming procedures used by the Environmental Monitoring and Assessment Program, described in “Surface Waters: Western Pilot Study Field Operations Manual for Wadeable Streams, 2001” edited by Peck, Lazorchak and Klemm (2001). EMAP protocols were designed for use by dedicated professional EPA staff.

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		<p>must be recorded for stones at each sampling site.</p> <ul style="list-style-type: none"> • cobble embeddedness prescribes a “random walk” search for stones of a certain size to augment the preceding measurements if a minimum of 25 cobbles have not been found. Visual assessment that cobbles are absent from the reach is not allowed. <p>d) Nutrients: despite removal of the words “storm event” the Revised Tentative Order still requires sampling “in conjunction with water column toxicity” which includes storm event sampling (see item (e) below) as well as two other times per year. The revised table entry appears to require a significant increase in number of sampling sites from 3 to 20 for both storm event sampling and dry weather sampling. The Revised Tentative Order has also expanded the Nutrient sampling to include additional chemical analytes plus a field grab sample for suspended sediment concentration at each site, without clear justification of why these should be part of an ambient monitoring program.</p> <p>e) Water Column Toxicity & Diazinon/ Chlorpyrifos: per previous comment, “Storm event sampling methods and approach for toxicity and diazinon prescribed in this provision are inconsistent with the regional Urban Creeks Monitoring Plan”</p> <p>f) Bedded Sediment Toxicity and Pollutants: Annual number of sites has been increased to 10. Also, Footnote 34 still includes by indirect reference several analytes not specifically named in the T.O., some of which may not be considered to have reasonable potential for stormwater impacts in the Bay Area, noted in previous MP-2 comment were:</p> <ul style="list-style-type: none"> • Trace Metals: As, Cd, Cr, Pb, and Zn • Organochlorine Pesticides: Endrin, Heptachlor epoxide, and Lindane (gamma-BHC) 	<p>d) Delete Nutrients from table and substitute under Monitoring Projects <i>design of a characterization study to be conducted next permit term</i> see c) above</p> <p>e) Delete grabs for water toxicity and diazinon/ chlorpyrifos from Table 8.1, and <i>add them to the list of Category 2 pollutants in Table 8.5.</i></p>

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		g) Pathogen indicator method is intended for swimming uses.	<p>f) Restore number of sites to 6 as in previous version.</p> <p>Revise footnote and/or table to exclude unnecessary analytes.</p> <p>g) <i>Delete requirement for Pathogen indicator sampling and add design for a screening study to C.8.e.</i></p>
C.8.c.v	Status Monitoring/Rotating Watersheds-Results	Requirement for follow-up Monitoring Projects triggered by single-factor exceedances in Table 8.1 is excessive. Also, Footnote 32 requires results to be compared to Pacific Northwest criteria for salmonids regardless of whether the waterbody actually supports salmonids at the time and place of temperature measurements.	Delete continuous temperature recording from this section per comment on Table 8.1 above. If not, <i>revise or delete Footnote 22 so that temperature reference corresponds to Basin Plan objective</i>
C.8.d.i-ii	Long-Term Monitoring-Parameters & Methods, Frequency	a) General: High cost for efforts that are partly duplicative or would be more efficiently achieved by incorporation in other provisions; per MP-6, "Prescriptive monitoring requirements are not tied to specific objectives, and not coordinated with similar provisions elsewhere in C.8. In particular, a separate wet-weather flow-weighted composite sampling station with capability to sample suspended sediment concentration (SSC) is extremely costly and labor-intensive for little recognizable added benefit."	a) <i>Delete all of C.8.d.</i> High priority pollutants may be added to Category 2 in Table 8.5.

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		<p>b) Water column toxicity sampling for years 2 and 4 of the permit increased from 1 to 4 wet weather events.</p> <p>c) Recommendation for three-week antecedent dry period between storms is confusing and unrealistic. Four evenly spaced isolated storms at this interval would be a minimum of 2.5 months in an "ideal" artificial system.</p>	<p>b) See comment under Table 8.1 above which will move water toxicity sampling to C.8.f, for 2 events in years 2 and 4.</p> <p>c) If provision is not deleted, delete this phrase.</p>
C.8.d	Long-Term - Table 8.3	Concern re follow-up trigger is similar to that for C.8.c.v above. Table is unclear whether repeated sampling after an exceedance can be one of the four annual events.	Delete along with provision; see previous comments re triggers.
C.8.d	Long-Term - Table 8.4	<p>Sites listed are not appropriate for wet weather sampling using methods prescribed. The assertion in the Water Board staff's Summary Response To Comments that "We have discussed Long-Term Monitoring locations with Permittees" is a misstatement since stormwater programs have consistently objected to this provision as poorly constructed and ill-supported². As a specific example, USGS personnel have years of experience monitoring discharge at the newly added "site option" for Alameda Creek at Alvarado Blvd and they consider suspended sediment concentration (SSC) sampling to be infeasible there due to vegetation and backwater conditions varying among multiple channels at different discharge levels. In addition, the width and depth of channel exceed the recommended tubing length and lift for pumps to collect representative flow-weighted</p>	If this provision is retained as a separate monitoring activity, the proposal in Summary Response To Comments to make Table 8.3 non-prescriptive would allow selection of a more suitable site, but C.8.d would then be even more redundant and confusing..

²Workgroup meetings for the MRP did not discuss specific methods or locations for long term trends monitoring of creeks. In August 2007 the regional SWAMP coordinator invited monitoring coordinators from ACCWP and SCVURPPP, as individuals, to "contribute to the discussion" of candidate sites for the SWAMP Long-term Trends Monitoring program then in development. This program, described in "SWAMP Statewide Stream Contaminant Trend Monitoring at Integrator Sites" (July 2008) only samples bedded sediment during dry weather and is not intended to monitor "mass emissions". The MRP was not a topic of those discussions and the site list that resulted should not be automatically assumed suitable for other types of monitoring just because of superficial similarity in program title or some monitoring objectives.

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		composite samples of SSC.	
C.8.e.i	Monitoring Projects - Stressor/Source Identification	<p>Added provisions regarding follow-up investigations are overly prescriptive and/or inappropriate.</p> <p>a) C.8.e.i(1) requires Toxicity Reduction Evaluations or Toxicity Identification. Evaluations. Added option for TRE is a positive change but TRE/TIE can still be inappropriate and potentially ineffective high-cost responses if thresholds are exceeded for parameters other than water toxicity</p> <p>b) C.8.e.i(3) requirement to "implement one or more controls" is inappropriate for this document.</p> <p>c) C.8.e.i(6) legal language is inappropriate for this section.</p>	<p>[See also general comments regarding C.1??]</p> <p>a) Streamlining provisions as described above will also concentrate on monitoring data types with greater potential for productive follow-up.</p> <p>b) <i>Delete provision</i></p> <p>c) <i>Delete provision</i> [or incorporate cross-reference to C.1]</p>
C.8.e.ii	Monitoring Projects - BMP Effectiveness Investigation	<p>New requirement for BMP effectiveness study is unnecessary and redundant. Language requiring any BMPs used for both this provision and C.3.b.iii., C.11.e. and C.12.e to be evaluated for "the range of pollutants generally found in urban runoff" is too broad, would unnecessarily amplify costs instead of leveraging other BMP studies.</p>	<p><i>Delete provision</i> [or allow the investigation to focus on pollutants relevant to Bay Area]</p>
C.8.f	Pollutants of Concern Monitoring-General	<p>Sampling design including locations, methods and frequency should be consistent with the Small Tributaries Loading Strategy being developed through the RMP.</p>	<p>Insert Management Questions developed by Small Tributaries Loading Strategy Team based on information needs statement provided by Water Board TMDL section; see also comments on C.8.a (above) and C.8.f.i-iv (below).</p>
C.8.f.i	Pollutants of Concern Monitoring- Locations	<p>a) Number of required sites too high; see general ACCWP/BASMAA comments regarding prioritization.</p> <p>b) Reference to "Regional SWAMP program" is inappropriate, since this strategy design is not</p>	<p>a) Change requirement to equivalent of 1 station per county in addition to stations operated by the Regional Monitoring Program. [At present if the RMP stops monitoring Zone 4 Line A, ACCWP would be obliged to pick up the cost in addition to monitoring at Castro Valley Creek]</p> <p>b) Revise provision as noted in General comment on this section; alternative design will involve</p>

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		driven by SWAMP needs.	conferring with RMP and Regional TMDL staff.
C.8.f.ii	POC Monitoring- Table 8.5	Pyrethroid pesticides added to the Category 2 list of analytes will increase field and analytical costs [significantly]. Also added are carbaryl and fipronil which are not pyrethroids as implied by the wording in the table.	[Added field and lab costs ~\$2000/year in Year 2 and Year 4?] Revise wording of table listing to distinguish carbaryl and fipronil from pyrethroids.
C.8.f.iv	POC Monitoring - Methods	a) Should be coordinated with Small Tributaries Loading Strategy b) Direction for sampled storms to be separated by 21 days of dry weather is unrealistic and inappropriate, see comment (c) under C.8.d.i-ii (above)	a) Revise provision to permit alternative methods addressing the Management Questions for Pollutants of Concern Loadings. See general comments above on C.8. a and C.8.f. b) Delete phrase
C.8.h.i	Reporting - Water Quality Standard Exceedence	Second sentence requiring 30 day timeframe for reporting to Water Board "when receiving water data indicate an exceedence of applicable water quality standards" is inconsistent with Provision C.1	Revise to conform with or reference C.1
C.8.h.ii	Status & Trends Electronic Reporting	Earlier September 30 due date is unrealistic for summer data.	Restore due date to November 30 as in previous Tentative Order
C.8.h.iii	Urban Creeks Monitoring Report	a) Due date changed to December 15 but the permit needs to maintain an interval after electronic data submittal. b) Under discussion of data, broad requirement to "Develop hypotheses to investigate regarding pollutant sources, trends, and BMP effectiveness" is too open-ended.	a) Revise due date to <i>March 15</i> [of following year]. b) Qualify to require hypothesis development "where appropriate and feasible using available information".
C.9.	Pesticide Toxicity Control		
C.9.a.	Pesticide Toxicity Control	The City does not have the authority to implement a pesticide toxicity control program addressing "others" use of pesticides. The City can and should implement a pesticide toxicity control program for their own usage.	Remove the language "and others"
C.9.b.iii	IPM Implementation	Reporting requirements are overly detailed	Revise to allow a qualitative instead of quantitative discussion of IPM efforts

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C.9.c.iii.	Staff Training	Reporting % of staff attending training is not of value and difficult to calculate	Modify requirement
C.9.d.ii.	Contractor Compliance	Does the Board <u>really</u> want copies of our standard specs and individual contracts? The additional attachments will further complicate permit submittal	Eliminate submittal of documents and allow agencies to summarize IPM requirements
C.9.e ii	Track and Participate in Relevant Regulatory Processes	This requirement is inappropriate to put in a stormwater permit. Pesticide regulation is beyond the jurisdiction of local agencies. The Board should be providing input on these issues to the appropriate State and Federal agencies that regulate pesticides.	Eliminate requirement
C.10	Trash Reduction		
C.10	Trash	Install trash capture devices on catchment area equal to 30% of the Retail/Wholesale Commercial Land use as defined by ABAG 2005 Land Use Statistics. Trash capture devices shall be designed to retain particles by 5mm mesh screen with hydraulic capacity of not less than peak flow rate resulting from a one-year, one-hour storm event in the drainage catchment area.	<u>Allow green streets pilot projects to count toward trash capture.</u> Given the effort and expense that various municipalities will make if the green streets provision is kept in the permit, these projects should count toward trash capture. Filtering roadway runoff through a bioretention area or swale before it enters the storm drain system naturally filters out trash. This would be in keeping with the Water Board staff's preference for landscape-based systems over mechanical systems.
C.10	Trash	The requirements of this section cannot be met financially by the City. Water board staff has estimated a \$6.06 per capita cost to each Permittee which equates to \$27,473,822.04. Permittees, just like the State, are experiencing significant budget shortfalls in stormwater program revenues. Increased revenues are highly unlikely due to the restrictions imposed by Prop 218. The City's general fund cannot absorb the treatment costs associated with this provision.	State and/or Federal funding for this un-funded mandate must be in place before placing this requirement on local public agency Permittees.
C.10.b	Hot Spot Assessment	Overly detailed reporting.	Eliminate photo documentation requirement, due to cost, difficulty of submitting with report, and questionable value in showing true condition of site. Also, correct the typo (10 pieces should be

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			100 pieces, in accordance with URTA standards for "optimal".
C.10.d.(ii-v)	Annual Reports	Requirements for reporting on existing laws related to trash is vague, overly broad, and difficult to achieve.	Restrict to reporting on any new laws or ordinances created by Permittees that are relevant to trash reduction.
C.11 and C.12	Mercury and PCB Controls		
C.11 and C.12	Mercury and PCB Controls	The requirements of these two provisions are similar and need explicit language regarding the number of pilot projects. Without clarifying the provision as suggested, it will not be feasible to meet these requirements	Combine the requirements into one provision and provides explicit language that one pilot project can be credited toward more than one pollutant reduction goal.
C.11.a.i	Mercury Controls-Regional collection and recycling- Task Description	Mercury is already regulated in accordance with the universal waste law, which is enforced at the local level by Certified Unified Program Agency (CUPA) staff and at the state level by the Department of Toxic Substances Control (DTSC). It is redundant to place these overly prescriptive requirements on Permittees.	Acknowledge existing regulations and encourage Permittees to coordinate and cooperate with local and state regulators
C.11.a.ii	Mercury Controls-Regional collection and recycling-Reporting	The requirement to report an estimate of the mass of mercury collected is unreasonable. Mercury is collected at county run household hazardous waste sites and businesses routinely recycle mercury-containing wastes under the Universal Waste regulations implemented by DTSC. Permittees have no way of obtaining or tracking the amount removed from all the sources at the local level.	Eliminate the requirement to report an estimate of the mass of mercury collected. Water Board staff should consult with DTSC to determine amounts of mercury waste managed as a universal waste.
C.13	Copper Controls		
C.13.a.ii.	Copper materials and construction	Construction activities can be handled with a SWPPP under C.3 and C.6. Post-construction activities cannot be reasonably controlled	Eliminate reporting requirements for post-construction
C.13.b.ii.	Copper discharge from pools	This is redundant with C.3 provisions	Eliminate requirement
C.13.d.ii.	Industrial Source	This is redundant with C.4 provisions	Eliminate requirement
C.15.	Exempted and Conditionally Exempted Discharges		

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C.15.b.i.(1)(a)	Conditionally Exempted Non-Stormwater Discharges – Required BMPs/Control Measures	The requirement to “render pumped groundwater free of pollutants” is unnecessarily onerous and inconsistent with Discharge Prohibition A.1. The prohibition characterizes Provision C.15 as providing assurance that the discharge contains no pollutants of concern at concentrations that will impact beneficial uses or cause exceedances of water quality standards.	Modify the language to qualify that the discharge should not have pollutants of concern at concentrations that adversely affect beneficial uses or cause an exceedance of a water quality standard.
C.15.b.i.(1).(b)	Conditionally Exempted Non-Stormwater Discharges – Required BMPs/Control Measures	The language about being “consistent with Order No. R2-2007-033 NPDES No. CAG912004 requirements” should be deleted because NPDES-permitted discharges are exempt from the discharge prohibition.	Delete the new, proposed language about being consistent with Order No. R2-2007-033.
C.15.b.i.(1)(d) and (e)	Conditionally Exempted Non-Stormwater Discharges – Required BMPs/Control Measures	The monitoring of small, incidental discharges of pumped groundwater, foundation drains, crawl space pumped water, and footing drains for the full suite of chemicals listed at a frequency of a minimum of once a month is unnecessary and overly burdensome.	Delete the overly prescriptive monitoring requirements which generally apply to the rare situations where a large discharge of potentially contaminated water merits the types of monitoring proposed.
C.15.b.ii.(1)(b)	Discharge Type – Air Conditioning Condensate – Required BMPs/Control Measures	Discharges of air conditioning condensate from new commercial and industrial air conditioning units is only allowed to landscaped areas or the sanitary sewer, where this is allowed, which is more stringent than the requirements for new large commercial and industrial air conditioning units described under (c). The option to discharge to storm drains should be allowed.	Modify the language to allow discharge to storm drains provided the discharge does not adversely impact beneficial uses or cause an exceedance of a water quality standard.
C.15.b.ii.(1)(c)	Discharge Type – Air Conditioning Condensate – Required BMPs/Control Measures	The discharge of air conditioning condensate from new large commercial and industrial air conditioning units should not be prohibited to discharge to storm drains only when “adequate treatment measures are in place to meet water quality standards” because Discharge Prohibition A.1 only requires that the discharge not impact beneficial uses or cause exceedances of water	Modify the language to state that these discharges may be allowed provided the discharge does not adversely impact beneficial uses or cause an exceedance of a water quality standard.

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		quality standards.	
C.15.b.iii.(1).(b) (i), (ii), and (iii)	Discharge Types – Planned, Unplanned, and Emergency Discharges of Potable Water	These sections require that the either the permittees notify and report specific information or require that the potable water discharger report to the Water Board staff. The permittees should only be responsible for reporting their own activities to the Water Board staff, and additional notification and reporting by third parties should be handled by the Water Board through an NPDES permit or other regulatory mechanism.	Modify this language to make it clear that the permittees must only notify and report to the Water Board staff information about these discharges that they are responsible for implementing.
C.15.b.iii.(1).(c) (i), (ii), and (iii)	Monitoring Requirements	The section establishes monitoring requirements that the permittees shall do or require of planned discharges. The permittees should only be responsible for monitoring of potable water discharges that they are responsible for and not discharges by third parties.	Modify this language to make it clear that the permittees are only responsible for monitoring discharges that they are responsible for and not discharges by potable water dischargers who are not permittees.
C.15.b.iii.(2)	Unplanned Discharges	This section contains requirements for the permittees to implement or require potable water discharges to implement BMPs, notify, monitor, and report to the Water Board staff unplanned potable water discharges. Similar to the preceding comments, the permittees should only be responsible for these requirements for their own discharges and not discharges by third parties. If it is important to the Water Board to have the information listed, it should be addressed through the adoption and implementation of an NPDES permit for potable water dischargers.	Modify this language to make it clear that the permittees are only responsible for BMP usage, notifications, reporting, and monitoring of discharges they are responsible for and not dischargers by potable water dischargers who are not permittees.
C.15.b.iii.(2)	Unplanned Discharges	Some of the requirements are overly prescriptive and may interfere with responding to the unplanned discharges, such as notifying the Water Board within two hours of becoming aware of any aquatic impacts and reporting times of discovery, notification, and responding crew arrival time. In addition, there may be instances where the monitoring is infeasible because monitoring the discharge is unsafe or the discharge has ceased	Modify these requirements to eliminate overly prescriptive record keeping and reporting that interferes with responding to unplanned potable water discharges. In addition, the monitoring requirements should be conditioned with the qualifier that the monitoring should only be done to the extent that time and resources allow and only where and when it is safe to do.

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		prior to being able to monitor.	
C.15.b.iii (2)	Unplanned Discharges	Sheared fire hydrants should fall under the section under section C.15.b.iii. (3) as an emergency discharge; as unauthorized hydrant openings are also addressed here	Move "fire hydrant shearing" to C.15.b.iii (3)
Deletion of Individual Residential Car Washing	No longer included as Conditionally Exempted	The permit would no longer allow the discharge of individual residential car wash water. Some of the language formerly in this section of the permit has been moved to Provision C.7.e.i. This conditionally exempted discharge should continue to be allowed by the permit provided minimal amounts of water and pollutants are generated.	Restore this conditionally exempted discharge to the MRP.
C.15.b.iv.(1)(c)	Discharge Type – Swimming Pool, Hot Tub, Spa, and Fountain Water Discharges	The additional language added about enabling "the installation of a sanitary sewer discharge location to allow draining events for pools, spas, and fountains to occur with the proper permits from the local sanitary sewer agency" is awkwardly worded, unclear, and needs to be rewritten.	Modify the language in this section to make it clear that the permittees are only responsible for providing owners of these features with information about how they may apply for the proper permits to discharge to the sanitary sewer.