Comment 95

Public Comment
Phase II Small MS4 General Permit
Deadline: 9/8/11 by 12:00 noon

Mojave River Watershed Group
Protecting our High Desert Community from Stormwater Pollution

September 7, 2011

Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
P.O. Box 100
Sacramento, California 95812-2000

RE: DRAFT GENERAL NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT FORSTORMWATER DISCHARGES FROM SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEMS (MS4S) TENTATIVE ORDER COMMENT LETTER

Dear Ms. Townsend and Members of the Board:

The Mojave River Watershed Group (MRWG) would like to thank the State Water Resources Control Board (State Board) for allowing us to provide written comments on the draft Tentative Order for the Phase II Small MS4 General Permit (Draft Permit). The MRWG represents the Town of Apple Valley, City of Hesperia, City of Victorville and County of San Bernardino unincorporated areas within the Mojave River Watershed Group which have coverage under the current Phase II Small MS4 General Permit (Renewal Traditional Small MS4) and several Census Designated Places identified as New Traditional Small MS4s.

The MRWG recognizes the significant effort that State Board staff has put into developing this Draft Permit. While the MRWG understands the State Board's efforts are well-intentioned, we believe the proposed requirements in the Draft Permit will result in many challenges for Phase II communities and yet not achieve the ultimate goal of protecting water quality. Our overall general comments are summarized as follows in this letter, with specific comments and recommendations included in the enclosed comment matrix.

SUPPORT FOR THE PROPOSED CHANGES IN THE CASQA COMMENT LETTER

The MRWG is aware that the California Stormwater Quality Association (CASQA) formed a Phase II subcommittee with several subgroups to review, assess the impacts of, and determine the feasibility of implementing the proposed Draft Permit. This subcommittee consists of a broad representation of Phase II Traditional, Non-Traditional, new and existing designees who developed an extensive set of comments and recommendations for revising the Draft Permit. In general, the MRWG supports CASQA's proposed changes to the Draft Permit.

95.1 The MRWG recommends that the State Board direct staff to form a steering committee, similar to the CASQA subcommittee, composed of a broad cross section of Phase II communities throughout the State to develop a revised Draft Permit with stakeholder input.

95.2 As stated in the CASQA comment letter, the MRWG is concerned with the Draft Permit's significant increase in requirements compared to the current version of the Phase II Small MS4 General Permit (Order No. 2003-005-DWQ). Requirements within the Draft Permit go above and beyond the existing Minimum Control Measures and in some instances, actually exceed existing Phase I program requirements. These proposed requirements and provisions will adversely affect Phase II communities. For example, imposing drastically short timeframes to implement provisions that go above and beyond current requirements in a single permit term is unfeasible. Measures imposed on Phase I programs were implemented over several permit terms, allowing Permittees ample time to build up their program, secure funding, and acquire experienced staff and resources necessary to fulfill permit requirements. Imposing

a shorter timeframe for implementation of permit requirements will not yield faster results; instead, many Phase II communities will be left unable to comply with the Draft Permit requirements. The MRWG suggests the State Board consider accomplishing the goals in the Draft Permit over the course of several permit terms. Extending the proposed permit provisions over several permit terms will considerably assist Phase II communities in building up their programs, especially for those who are new designees and have no staffing or experience related to compliance with waste discharge requirements. 95.3

ECONOMIC CLIMATE

One of the underlying concerns for Phase II communities is the estimated cost to comply with the Draft Permit. The harsh reality is that local jurisdictions have unprecedented budget constraints given the dismal state of our economy. Significant additional funds and staffing will be needed to implement the proposed requirements. Phase II communities are estimating program costs will have to be increased in excess of three times current program costs to implement the Draft Permit. These increases are immediate and take place in the first year of implementation. Many Phase II communities are not able to obtain additional staffing due to economic constraints that have already resulted in furloughs, layoffs, and/or hiring freezes. 95.4

Phase II communities are also severely limited in the ability to raise revenues due to judiciary constraints, such as Proposition 218, which require voter approval on local taxes, assessments, and fees. Due to these restrictions, it is impossible to accomplish the goals set forth by the Draft Permit without financial assistance from the State or the elimination of new programs or higher levels of service that qualify as unfunded state mandates. 95.5

While augmenting municipal staff, raising taxes, or increasing work schedules may be impossible, carefully reviewing the Draft Permit to eliminate redundancies and prioritizing permit goals can result in a feasible approach to attaining the State Board's objectives. After reviewing the Draft Permit, the MRWG identified many redundancies, assessments, and burdensome reporting requirements that will not result in the ultimate goal of protecting water quality. For example, proposed permit requirements such as creating an inventory of active construction sites is redundant with the readily available list of construction sites with Waste Discharge Identification numbers via the State Board's Storm Water Multiple Application and Report Tracking System database. Asking Phase II communities to collect the same data is redundant and adds unnecessary time and expense with no benefit to water quality. 95.6

Another way to reduce permit implementation costs would be to prioritize the proposed permit requirements. Instead of requiring the Phase II communities to implement all the requirements at once, the State Board should consider implementation over several permit terms, requiring the most critical requirements first. This would allow Phase II communities to gradually build up their program, secure funding, and retain necessary resources to comply with the Draft Permit provisions. By addressing the redundancies and excessive assessment and reporting requirements in the Draft Permit, and prioritizing the most critical requirements, Draft Permit compliance would be more realistic and result in long term benefits to protecting water quality. 95.7

ONE SIZE DOES NOT FIT ALL

Permittees and the geographic areas they cover vary greatly and the MRWG believes that one size does not fit all when it comes to Phase II communities, especially with the addition of so many non-traditional permittees and physical differences between coastal and desert regions and other inland and mountainous areas. A less prescriptive, Permittee-developed approach would result in better water quality outcomes. Achieving Permittee "buy in" with this Draft Permit could be accomplished more effectively by allowing Phase II communities to structure individual stormwater programs to fit their budgets and resources, and focus on known areas of concern. By focusing on priority program elements rather than reporting efforts, Phase II community programs would achieve the State Board's ultimate goal of protecting water quality. Developing a successful program utilizing this approach with input from the California Regional Water Quality Control Boards would provide a win-win scenario. 95.8

UNFUNDED MANDATES

95.9 The Draft Permit includes many new programs or higher levels of service that qualify as unfunded mandates. Article XIII B, Section 6(a) of the California Constitution (Section 6) states that whenever the "Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service." As seen in the County of Los Angeles v. Commission on State Mandates and County of San Diego v. State of California, Section 6 also applies to stormwater permits issued by the State Board and Regional Water Quality Control Boards. Many of the proposed requirements found in the Draft Permit include new programs or higher levels of service that the Commission has either already determined constitute unfunded state mandates or which the Commission's analysis in the Los Angeles and San Diego Test Claims would suggest are unfunded state mandates. For example, the Post-Construction Stormwater Management Program requirement for a watershed baseline characterization, watershed sediment budget, interim hydromodification management, and long-term watershed process management contains higher levels of service. Other examples include, but are not limited to the requirement to develop a trash reduction program, receiving water monitoring program, and industrial/commercial runoff program. The MRWG recommends the State Board remove all unfunded state mandates from the Draft Permit.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) COMPLIANCE

The Draft Permit, under Finding 49, states that the action to adopt an NPDES Permit is exempt from the provisions of CEQA. However, several provisions in this Draft Permit require retrofits such as the requirement to retrofit flood management facilities with water quality and habitat enhancement features.

95.10 This type of retrofit project results in physical changes 'on the ground' and could potentially lead to environmental impacts and should not circumvent the CEQA process. The "whole of an action" that may cause either a direct physical change to the environment or a reasonably foreseeable indirect physical change in the environment is considered a project and subject to CEQA. In addition, adoption of a plan or policy that may result in a significant environmental impact is also subject to CEQA. Therefore, the MRWG recommends the State Board comply with the appropriate CEQA process for policies and requirements proposed in the Draft Permit that are not exempt from the provisions of CEQA.

We appreciate the opportunity to provide comments on the Draft Permit. However, as evident by our comments above and in the enclosed comment matrix, we have considerable concern regarding the permit as currently structured. We strongly urge the State Board to reconsider its approach and work with Phase II communities, CASQA, and other relevant stakeholders to produce a more reasonable Phase II Small MS4 General Permit that can realistically lead to water quality protection.

If you have any questions, please contact Gia Kim at (909) 387-8145 or Nancy Sansonetti at (909) 387-1866.

Respectfully,

NANCY SANSONETTI, AICP, Senior Planner
Environmental Management Division – On Behalf of the Mojave River Watershed Group

NS:mb/MRWG Phase II Small MS4 General Permit.doc

Enclosure

cc: Annesley Ignatius, Deputy Director – Land Development & Construction
Gia Kim, Land Development Division/NPDES Section
Nancy Sansonetti, EMD
Mojave River Watershed Group

Draft Phase II Small MS4 General Permit Review Comment Matrix
MOJAVE RIVER WATERSHED GROUP

Comment No.	Permit Element/Section	Page No.	Comment/Suggested Revision
Discharge Prohibitions			
1	Allowable Non-Stormwater Discharges – Section B.3	15	Section B.3 lists several allowable non-stormwater discharges. However, other commonly recognized discharges listed in other Municipal NPDES Permits are missing. Allowable non-stormwater discharges that should be added to this list include: 1. Discharges composed entirely of stormwater 2. Landscape irrigation 3. Irrigation water 4. Lawn watering 5. Individual residential/non-commercial vehicle washing 6. Street wash water 7. Waters not otherwise containing wastes as defined in California Water Code Section 13050(d)
2	Discharges of Incidental Runoff – Section B.4.a	16	The correction of detected leaks within 72 hours or prior to the release of 1,000 gallons may not be reasonable. Once a leak or release is detected, a responsible party must first be identified. Then a Permittee would follow its enforcement procedures to initiate corrective actions. This process will likely take more than 72 hours to achieve the desired results, especially in circumstances where the responsible party will not cooperate or lacks the financial means to address the detected leak. It is recommended that this provision be modified to eliminate the required compliance timeframe and volume threshold.
3	Discharges of Incidental Runoff – Section B.4.c	16	During rain events the availability of Permittee resources are limited due to flood operation, maintenance, and protection activities. Although Permittees can require responsible parties to not water during precipitation events, the enforceability of this provision is not realistic and renders it ineffective. It is suggested that this provision be deleted.
4	Discharges of Incidental Runoff – Section B.4.d	16	What is the value/purpose of the Regional Water Quality Control Board receiving notification of a discharge from a recycled water pond during a 25-year, 24-hour storm event or greater? Similar to the Compliance Storm Event for effluent standards in the Construction General Permit, recycled water pond discharges associated with larger storm events should be exempt from provisions of this permit. Unless there's a required action associated with this discharge it is recommended that this notification requirement be eliminated since Permittee resources are limited during rain events.

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Program Management Element			
5	Legal Authority – Section E.4.a.(i)	19	The review and revision of relevant ordinances within one year of permit adoption is not feasible. The internal review process will be cumbersome and involve the participation and input of jurisdictional Counsel and several other municipal Departments. Coordination, review, and commenting on existing ordinances and the new permit requirements will require at a minimum six to nine months to perform. Another six to nine months will be necessary for these same groups to prepare and concur on proposed ordinance language. Once the revised ordinance language is ready for adoption it must be scheduled for public discussion at an upcoming San Bernardino County Board of Supervisors or City Council meeting. Scheduling an item on these meeting agendas typically requires two to three months advance notice. If there is public opposition to the proposed ordinance revisions, there may be delays in the final adoption of language providing the necessary legal authority to implement the Phase II Small MS4 General Permit provisions. It is recommended that Permittees be given at least two years to comply with this provision.
6	Legal Authority, Implementation Level – Section E.4.a.(ii).(b)	19	It is recommended that Permittees not be required to provide adequate legal authority to address discharges from charity car washes, mobile cleaning, and pressure wash operations. Regulating charity car washes is unrealistic and unenforceable given its transitory nature and that most of these events occur on weekends when Permittee resources are severely limited. Similarly, regulating mobile cleaning and pressure wash operations are unrealistic and unenforceable since these types of businesses typically do not register for business licenses and are transitory in nature.
7	Legal Authority, Implementation Level – Section E.4.a.(ii).(g)	19	Permittees can establish legal authority to request and review information, submittals, and records associated with Construction and Industrial General Permit coverage. However, Permittees should not be required to enforce Construction and Industrial General Permit requirements issued by the State Water Resources Control Board unless permit fees are given to the Permittees to implement this program.
8	Legal Authority, Implementation Level – Section E.4.a.(ii).(l)	20	Permittees will require more than one year as specified in Section E.4.a.(i) to establish interagency agreements to control the contribution of pollutants and flows from one portion of the MS4 to another portion. It is recommended that Permittees be given two years to comply with the legal authority provisions.
9	Certification, Reporting – Section E.4.b.(iii)	21	To establish adequate legal authority, more than one year will be required. Therefore, to submit as part of the Annual Report a signed statement certifying the Permittee has adequate legal authority should be modified to year two to be consistent with the suggested timelines for establishing adequate legal authority.

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10	Enforcement Measures and Tracking, Implementation Level – Section E.4.c.(ii).(d)	22	To streamline implementation and reporting, Permittees should be encouraged to electronically refer Construction and Industrial General Permit non-filers using the State Water Resources Control Board's reporting form at: http://www.waterboards.ca.gov/water_issues/programs/stormwater/nonfiler_form.shtml.
11	Enforcement Measures and Tracking, Implementation Level – Section E.4.c.(ii).(f)	23	This permit should define what constitutes a "chronic violator." Suggest it be defined as any more than 3 or 4 violations per year.

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Public Outreach and Education Program			
12	Public Outreach and Education, Task Description – Section E.5.b.(i)	26	The implementation schedule for the Public Outreach and Education Program is too aggressive and unrealistic. Setting up a program as described in this draft permit will require more than one year. Permittees establishing Memorandums of Understanding (MOUs) with other Permittees to collaborate on a Countywide or regional outreach program will require a significant amount of time to agree on individual roles, responsibilities, and monetary contributions, and will require sufficient time for legal reviews and adoption by a County Board of Supervisors or City Council. The process of establishing an MOU between Permittees requires lengthy negotiations, multiple party consensus, and considerable legal review prior to being heard and approved by an elected body. Obtaining approval will also require public discussion at a Board of Supervisors or City Council meeting which could result in opposition causing further delays. It is recommended that Permittees be given at least two years from permit adoption to setup a Public Outreach and Education Program. This provision also states that Permittees shall measurably increase the knowledge and change the behavior of target audiences within one year of permit adoption. Increased knowledge and measureable changes are documented and observed over a long-term basis, not within one year. Permittees will first need to establish baseline levels of public understanding and behaviors before any measureable changes can be assessed. It is suggested that measurable increases in knowledge and behavior changes not be required until year five of this permit.
13	Public Outreach and Education, Implementation Level – Section E.5.b.(ii).(i)	27	While Permittees can provide technical assistance and implementation guidance related to stormwater friendly landscaping in the form of public outreach and education materials, providing financial assistance is not acceptable given the lack of funds for other high priority Permittee needs. It is recommended that any reference to providing financial assistance related to stormwater friendly landscaping be removed.
14	Public Outreach and Education, Implementation Level – Section E.5.b.(ii).(l)	27	This provision should not specify the use of California's Education and Environmental Initiative Curriculum or equivalent. Permittees should be allowed the flexibility to develop their own stormwater education program for school-age children.

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15	Industrial/Commercial Outreach and Education Program, Task Description – Section E.5.c.(i)	28	It is not feasible to develop and implement a comprehensive industrial/commercial outreach and education program, and show a measureable increase in knowledge and measureable change in behavior by the industrial/commercial community within one year of permit adoption. Initially, time will be required to develop and implement the outreach and education program. The program will then require multiple years of surveys to gauge the level of awareness and change in behavior of the industrial/commercial community. Increased knowledge and measureable changes will need to documented and observed over a long-term basis, not within one year. It is suggested that Permittees be given two years to develop and begin implementation of the industrial/commercial outreach and education program. Also recommended is that measurable increases in knowledge and behavior changes not be required until year five of this permit.
16	Construction Outreach and Education Program – Section E.5.d	30	A Construction Outreach and Education Program targeting construction sites smaller than one acre is futile. The majority of construction projects smaller than one acre are conducted by homeowners, volunteer groups, small businesses, and other similar individuals and groups. It is irresponsible to focus and spend resources on a target audience that may only be involved in one or two small construction projects in their lifetime. A much more effective outreach and education program would target contractors, developers, and related trade associations that are in the business of conducting construction activities on project sites larger than one acre.

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Public Involvement and Participation Program			
17	Public Involvement and Participation Program, Implementation Level – Section E.6.(ii).(b)	33	The establishment and participation of a citizen advisory group can be hit or miss. It is suggested that Permittees be allowed the option to create another mechanism to engage the public in the development and implementation of the stormwater program. This would allow the Permittee to choose the option that is most appropriate for their community.

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Comment No.	Permit Element/Section	Page No.	Comment/Suggested Revision
Illicit Discharge Detection and Elimination Program			
18	Illicit Discharge Detection and Elimination Program – Section E.7	33	Costs associated with an Illicit Discharge Detection and Elimination (IDDE) Program is prohibitive for Phase II entities. According to the Center for Watershed Protection *IDDE A Guidance Manual for Program Development and Technical Assessments*, the average startup cost for a Phase II IDDE Program is $62,300 and the annual implementation costs average $84,750 per year. The IDDE Program should eliminate or reduce requirements associated with costly program elements such as sample analysis and program administration and reporting.
19	MS4 Mapping, Task Description – Section E.7.a.(i)	34	Permittees are required to map and maintain an up-to-date and accurate storm drain system map within a Geographical Information System (GIS). This can be very costly and many Permittees do not have the financial or staff resources for complying with this requirement. It is suggested that MS4 Mapping be encouraged but not required.
20	MS4 Mapping, Task Description – Section E.7.a.(i).(e)	34	Define what are considered "urbanized area boundaries based on the latest Census data."
21	Identifying Priority Areas, Implementation Level – Section E.7.b.(ii)	34	What is the basis for 20 percent of the Permittee's urbanized boundary being identified as a priority area?
22	Identifying Priority Areas, Implementation Level – Section E.7.b.(ii).(a)	34	Define what is considered to be "older infrastructure."
23	Identifying Priority Areas, Implementation Level – Section E.7.b.(ii).(f)	34	Define "upstream of sensitive water bodies." This definition should include a distance from the priority area to the sensitive water bodies.
24	Field Screening to Detect Illicit Discharges, Task Description – Section E.7.c.(i)	35	Compliance date of May 15, 2015 does not match with the compliance date of May 15, 2014 identified in Section E.7 c) on Page 33. An IDDE Program consisting of an analytical monitoring program is very costly. Permittees do not have the resources available to fund an elaborate dry weather sampling program. Dry weather field screenings should be limited to visual observations similar to those already required under Phase I Permits. Should pollutants be observed or suspected in a dry weather illicit discharge, then upstream source tracking should be performed to find and eliminate the source. It is recommended that requirements for an analytical monitoring program be removed.

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Comment No.	Permit Element/Section	Page No.	Comment/Suggested Revision
25	Field Screening to Detect Illicit Discharges, Implementation Level – Section E.7.c.(ii).(a).(1)	36	Define "major outfalls." It is suggested that major outfalls consist of storm drain outlets 36-inches or larger.
26	Field Screening to Detect Illicit Discharges, Implementation Level – Section E.7.c.(ii).(b)	36	Should analytical monitoring program requirements not be removed from this permit, what analytical monitoring needs to take place? What analytes are required to be monitored?
27	Field Screening to Detect Illicit Discharges, Reporting – Section E.7.c.(iii)	36	Since an Annual Report must be submitted the same year as the program implementation compliance year, then September 15, 2015 should be revised to September 15, 2014.
28	Illicit Discharge Detection and Elimination Source Investigations, Task Description – Section E.7.d.(i)	36	Compliance date of May 15, 2016 does not match with the compliance date of May 15, 2015 identified in Section E.7 c) on Page 33.
29	Illicit Discharge Detection and Elimination Source Investigations, Implementation Level – Section E.7.d.(ii).(e)	37	Requiring dischargers to eliminate illicit discharges within 48 hours of notification is unrealistic. Phase I Permits currently require illicit discharges to be eliminated or permitted within 120 to 180 days of discovery. It is suggested that this provision be revised to be consistent with other current Phase I Permit requirements.
30	Illicit Discharge Education and Training, Task Description – Section E.7.f.(i)	38	Compliance date of May 15, 2015 does not match with the compliance date of May 15, 2014 identified in Section E.7 c) on Page 33.

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Construction Site Storm Water Runoff Control Program			
31	Construction Site Inventory, Task Description – Section E.8.a.(i)	39	Requiring Permittees to maintain an inventory of all grading and construction activity within its jurisdiction for land disturbances of one acre or more is redundant with the SMARTS database. With limited resources, Permittees are forced to choose between preparing and submitting reports and inventories and taking action to control runoff. Permittees can readily understand and address construction runoff issues without the need for formal inventory preparation and maintenance of this redundant database because it can be easily referenced using SMARTS. This program should be revised to focus on construction site runoff control using the SMARTS database to reference active projects with WDID numbers requiring inspection.
32	Construction Site Inventory, Implementation Level – Section E.8.a.(ii)	39	Most of the construction site inventory information identified under this provision is already included in the SMARTS database. It is recommended that this section be modified to use existing information available through SMARTS to generate a construction site inventory list.
33	Construction Plan Review and Approval Procedures, Task Description – Section E.8.b.(i)	40	Compliance date of May 15, 2013 does not match with the compliance date of May 15, 2014 identified in Section E.8 a) on Page 38.
34	Construction Plan Review and Approval Procedures, Implementation Level – Section E.8.b.(ii).(b)	40	Requiring that erosion and sediment control plans quantify the expected soil loss from different BMPs is unrealistic. Most BMP fact sheets provide information supporting the rationale for their use. However, quantifying the expected soil loss from different control measures is very difficult as their performance data can change drastically depending on factors such as rainfall amounts and intensities, topography, soil types, site conditions, etc. What is the value of this information given that projects subject to the Construction General Permit have already performed a project specific Risk Assessment (for both Sediment and Receiving Water Risk) and have determined their respective Risk Level or Type for which very prescriptive BMP requirements are already in place? It is recommended that this requirement focus on the plans complying with the Permittee's erosion and sediment control ordinance.
35	Construction Plan Review and Approval Procedures, Reporting – Section E.8.b.(iii)	40	Since an Annual Report must be submitted the same year as the program implementation compliance year, then September 15, 2013 should be revised to September 15, 2014.

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Comment No.	Permit Element/Section	Page No.	Comment/Suggested Revision
36	Construction Site Inspection and Enforcement, Implementation Level – Section E.8.c.(ii).(a) Table A	42	If the State Water Resources Control Board is going to require Permittees to conduct inspections and enforcement actions on construction projects covered by the Construction General Permit, then collected permit fees should be provided to Permittees for the implementation. It is inequitable to require compliance with a permit such as the Construction General Permit and then pass on the compliance inspection and enforcement responsibilities to another Permittee with no financial compensation to perform the services on the State Water Resources Control Board's behalf. Furthermore, the Construction General Permit requires that each construction project have a Qualified Storm Water Pollution Prevention Plan (SWPPP) Practitioner (QSP) to implement, repair, and maintain required BMPs, conduct inspections and monitoring, and fulfill all reporting requirements. Having Permittees conduct construction site inspections is redundant with existing Construction General Permit requirements. It is recommended that all inspection and enforcement requirements are deleted from this permit unless collected permit fees are provided by the State Water Resources Control Board. Table A states the inspection frequency shall occur at "...2) within 48 hours of a ½-inch rain event and at least once every two weeks." Are inspections required every two weeks after a ½-inch rain event has triggered inspection or is it required every two weeks regardless of rain events? Please clarify.
37	Construction Site Inspection and Enforcement, Implementation Level – Section E.8.c.(ii).(b).(5)	42	Requiring Permittees to inspect 10% of all projects to ensure final landscaping and site stabilization is redundant with the State Water Resources Control Board's responsibility to issue a Notice of Termination (NOT) for projects covered under the Construction General Permit. Unless the State Water Resources Control Board provides collected permit fees to Permittees, it is recommended that this final landscaping and site stabilization inspection requirement be eliminated.
38	Permittee Staff Training, Reporting – Section E.8.d.(iii)	44	Since an Annual Report must be submitted the same year as the program implementation compliance year, then September 15, 2014 should be revised to September 15, 2013.
39	Construction Site Operator Education, Reporting – Section E.8.e.(iii)	45	Since an Annual Report must be submitted the same year as the program implementation compliance year, then September 15, 2015 should be revised to September 15, 2013.

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Pollution Prevention/Good Housekeeping for Permittee Operations Program			
40	Pollution Prevention/Good Housekeeping for Permittee Operations Program – Section E.9 c)	45	Compliance dates are missing for E.9.i and E.9.j.
41	Inventory of Permittee-Owned and Operated Facilities, Reporting – Section E.9.a.(iii)	46	Since an Annual Report must be submitted the same year as the program implementation compliance year, then September 15, 2014 should be revised to September 15, 2013.
42	Facility Assessment, Task Description – Section E.9.c.(i)	47	The definition for the term "hotspots" in the glossary should further elaborate on what is meant by "may generate high stormwater pollution."
43	Storm Water Pollution Prevention Plans, Task Descriptions – Section E.9.d.(i)	48	Compliance date of May 15, 2015 does not match with the compliance date of May 15, 2014 identified in Section E.9 c) on Page 45.
44	Storm Water Pollution Prevention Plans, Reporting – Section E.9.d.(iii)	48	Since an Annual Report must be submitted the same year as the program implementation compliance year, then September 15, 2015 should be revised to September 15, 2014.
45	Inspections, Visual Monitoring and Remedial Action, Task Description – Section E.9.e.(i)	48	Compliance date of May 15, 2016 does not match with the compliance date of May 15, 2015 identified in Section E.9 c) on Page 45.
46	Inspections, Visual Monitoring and Remedial Action, Implementation Level – Section E.9.e.(ii).(a)	48	Requiring weekly hotspot visual inspections is excessive. A Standard Operating Procedure (SOP) should be sufficient if employees are trained and educated on what to look for. It is recommended that hotspot visual inspections be conducted on a quarterly basis.
47	Inspections, Visual Monitoring and Remedial Action, Implementation Level – Section E.9.e.(ii).(c)	49	It may not be feasible to remedy pollutant sources or BMPs within three days or before the next storm event. Facilities consist of permanent buildings, structures, and BMPs and fixing certain issues may involve physical alterations which require more than three days to design and construct. It is suggested that language such as "shall be remedied as soon as practicable" be used.
48	Inspections, Visual Monitoring and Remedial Action, Reporting – Section E.9.e.(iii)	49	Since an Annual Report must be submitted the same year as the program implementation compliance year, then September 15, 2016 should be revised to September 15, 2015.

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49	Storm Drain System Assessment and Prioritization, Task Description – Section E.9.f.(i)	49	Compliance date of May 15, 2015 does not match with the compliance date of May 15, 2014 identified in Section E.9 c) on Page 45.
50	Storm Drain System Assessment and Prioritization, Implementation Level – Section E.9.f.(ii).(a)	49	Define the priorities for the storm drain system ranking criteria. What is the basis for 20 percent of catch basins being prioritized as high priority?
51	Storm Drain System Assessment and Prioritization, Reporting – Section E.9.f.(iii)	50	Since an Annual Report must be submitted the same year as the program implementation compliance year, then September 15, 2015 should be revised to September 15, 2014.
52	Maintenance of Storm Drain System, Task Description – Section E.9.g.(i)	50	Compliance date of May 15, 2016 does not match with the compliance date of May 15, 2015 identified in Section E.9 c) on Page 45.
53	Maintenance of Storm Drain System, Implementation Level – Section E.9.g.(ii).(b)	50	Requiring that all catch basins and other systems found to be one-third full be cleaned within one week of inspection is unrealistic. Scheduling maintenance crews and other resources may require more time. It is suggested that language be revised to read "Clean all catch basins and other systems found to be one-third full prior to each storm season."
54	Maintenance of Storm Drain System, Reporting – Section E.9.g.(iii)	50	Since an Annual Report must be submitted the same year as the program implementation compliance year, then September 15, 2016 should be revised to September 15, 2015.
55	Permittee Operations and Maintenance Activities (O&M), Task Descriptions – Section E.9.h.(i)	51	Compliance date of May 15, 2014 does not match with the compliance date of May 15, 2013 identified in Section E.9 c) on Page 45.
56	Permittee Operations and Maintenance Activities (O&M), Implementation Level – Section E.9.h.(ii).(d)	51	Requiring the inspection of BMPs associated with O&M activities on a quarterly basis is excessive and unnecessary. It is suggested that this BMP inspection be performed on an annual basis.
57	Permittee Operations and Maintenance Activities (O&M), Reporting – Section E.9.h.(iii)	51	Since an Annual Report must be submitted the same year as the program implementation compliance year, then September 15, 2014 should be revised to September 15, 2013.

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Draft Phase II Small MS4 General Permit Review Comment Matrix
MOJAVE RIVER WATERSHED GROUP

Comment No.	Permit Element/Section	Page No.	Comment/Suggested Revision
58	Incorporation of Water Quality and Habitat Enhancement Features in Flood Management Facilities – Section E.9.i	52	Requiring the retrofit of existing flood management facilities to incorporate water quality and habitat enhancement features is overreaching and excessive. Existing flood management facilities may be undersized or at capacity to handle required design storms. The incorporation of water quality and habitat enhancement features may reduce facility capacity and/or restrict the operation and maintenance of the facility due to the creation of endangered species habitat and other regulatory obstacles. It is recommended that this requirement be revised to only require water quality and habitat enhancement features for new flood management facilities, where feasible.

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Draft Phase II Small MS4 General Permit Review Comment Matrix
MOJAVE RIVER WATERSHED GROUP

Comment No.	Permit Element/Section	Page No.	Comment/Suggested Revision
Trash Reduction Program			
59	Trash Reduction Program – Section E.10	54	Trash Abatement Plan requirements are overreaching and should be removed from this permit. This proposed provision is an unfunded mandate and is redundant with established State of California programs enforced by the California Department of Resources Recycling and Recovery (CalRecycle) mandating reductions in waste, promoting the management of all materials to their highest and best use, and protecting health and safety and the environment. Several trash abatement and reduction programs already exist; such as the waste diversion planning, school district waste reduction, and waste tire hauling and storage programs. Permittees also already require new development and redevelopment projects to protect trash collection areas with enclosures to minimize the transport of trash materials to the MS4 by wind or water. What is the rationale for selecting 20 percent of the Permittee's jurisdiction zoned commercial retail/wholesale? Large trash generation areas will vary from Permittee to Permittee.
60	Trash Reduction Program, Implementation Level – Section E.10.(ii).(b)	54	Define the term "trash capture structural controls." Does this term refer to hydrodynamic separators, filters, and other similar BMPs or could it include an enclosed and/or roofed solid waste collection area? Examples of acceptable controls should be identified.

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Draft Phase II Small MS4 General Permit Review Comment Matrix
MOJAVE RIVER WATERSHED GROUP

Comment No.	Permit Element/Section	Page No.	Comment/Suggested Revision
Industrial/Commercial Facility Runoff Control Program			
61	Industrial/Commercial Inventory – Section E.11	55	An industrial/commercial facility inspection program was never anticipated under the Federal Phase II Rule. All of Section E.11 should be removed. The State Water Resources Control Board already has the Industrial General Permit to regulate discharges from industrial facilities. This requirement would require Permittees to establish new fees for inspections. Since the State Water Resources Control Board already collects fees of facilities under the Industrial General Permit, this will result in facilities being charged twice for the same work. If the State Water Resources Control Board is going to require Permittees to conduct inspections and enforcement actions on industrial facilities covered by the Industrial General Permit, then collected permit fees should be provided to Permittees for the implementation. It is unreasonable to require compliance with a permit such as the Industrial General Permit and then pass on the compliance inspection and enforcement responsibilities to another Permittee with no financial compensation to perform the services on the State Water Resources Control Board's behalf.
62	Industrial/Commercial Inventory, Task Description – Section E.11.a.(i)	55	The implementation schedule for the development of an industrial/commercial inventory is too aggressive and unrealistic. The timeframe for completing this work is not reasonable given the number of facilities within each Permittee's jurisdiction and the requirement to collect the extensive information listed in Section E.11.a.(ii).(a). It is suggested that two years be provided for developing this industrial/commercial facility inventory.
63	Industrial/Commercial Inventory, Implementation Level – Section E.11.a.(ii).(a)	56	Minimum industrial/commercial facility inventory information requires a narrative description including SIC codes. The North American Industry Classification System (NAICS) is gradually replacing the SIC system. It is suggested that NAICS codes be used instead of SIC codes. Permittees are required to incorporate facility information into GIS. This can be very costly and many Permittees do not have the financial or staff resources for complying with this requirement. It is suggested that the use of GIS be encouraged but not required.

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Draft Phase II Small MS4 General Permit Review Comment Matrix
MOJAVE RIVER WATERSHED GROUP

Comment No.	Permit Element/Section	Page No.	Comment/Suggested Revision
64	Industrial/Commercial Inventory, Implementation Level – Section E.11.a.(ii).(b).(1)	56	Many of the commercial facilities/sources listed are activity-specific rather than facility specific. For example, the activity cement mixing or cutting is listed whereas a facility such as cement plant facilities should be used instead. It is recommended that this list of commercial facilities/sources be revised to identify specific facilities and not activities. The inventory and inspection of mobile businesses is extremely difficult. Mobile businesses do not typically file for a business license and are transitory in nature. An education and outreach approach may be more effective for these types of mobile businesses.
65	Industrial/Commercial Inventory, Implementation Level – Section E.11.a.(ii).(c)	57	To streamline implementation and reporting, Permittees should be encouraged to electronically refer Industrial General Permit non-filers using the State Water Resources Control Board's reporting form at: http://www.waterboards.ca.gov/water_issues/programs/stormwater/nonfiler_form.shtml.
66	Industrial/Commercial Storm Water BMPs, Task Description – Section E.11.b.(i)	58	Requiring Permittees to require industrial and commercial facilities to select, install, implement, and maintain stormwater BMPs is unreasonable. This is stating that industrial and commercial facilities should be retrofitted, which may be considered an unfunded mandate. Existing businesses cannot be expected to make significant structural changes to meet standards in this permit. It is recommended that Section E.11.b be deleted and that any retrofit related requirements be incorporated into the Industrial General Permit.
67	Industrial/Commercial Facility Inspections, Implementation Level – Section E.11.c.(ii).(b)	61	What is the basis for 20 percent of inventoried commercial and industrial facilities being prioritized as high priority?
68	Inspection Requirements, Task Description – Section E.11.d.(i)	61	Define "at a regular frequency."
69	Scope of Inspection, Implementation Level – Section E.11.e.(ii).(a)	62	Requiring industrial and commercial facilities to select, install, implement, and maintain stormwater BMPs is unreasonable. This is stating that industrial and commercial facilities should be retrofitted. Existing businesses cannot be expected to make significant structural changes to meet standards in this permit. It is recommended that this evaluation requirement be deleted.
70	Scope of Inspection, Implementation Level – Section E.11.e.(ii).(b)	62	Evaluating the appropriateness and effectiveness of active BMPs by reviewing facility/source monitoring data is very time consuming. It is recommended that this evaluation requirement be deleted.

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Draft Phase II Small MS4 General Permit Review Comment Matrix
MOJAVE RIVER WATERSHED GROUP

Comment No.	Permit Element/Section	Page No.	Comment/Suggested Revision
Post Construction Storm Water Management Program			
71	Watershed Baseline Characterization, Task Description – Section E.12.b.1.(i)	65	The requirement for a watershed baseline characterization exceeds the U.S. Environmental Protection Agency's six Minimum Control Measures and is an unfunded mandate requiring State compensation or withdrawal of the requirement. Similar watershed characterizations have been very costly and required technical expertise beyond the capabilities of existing Permittee resources. The results of these characterizations have been mixed and don't justify the significant cost associated with using this approach. A watershed baseline characterization limited to available data and kept to a desktop analysis would be less costly. However, it is recommended that the requirement for performing a watershed baseline characterization be removed.
72	Watershed Baseline Characterization, Implementation Level – Section E.12.b.1.(ii).(d)	66	The rapid stream assessment should be removed from this permit. The watershed baseline characterization should be limited to available data and a desktop analysis.
73	Watershed Baseline Characterization, Implementation Level – Section E.12.b.1.(ii).(e)	66	Should the watershed baseline characterization requirement remain, there is no guidance provided on how to compile, process, and interpret the data collected and how to identify key subwatershed processes as they relate to development. It is also unclear how Permittees are to "rank the health" of the watershed processes listed.
74	Development of Watershed Sediment Budgets, Task Description – Section E.12.b.2.(i)	66	If the development of watershed sediment budgets is dependent on the watershed baseline characterization, the compliance date should be revised to coincide with the characterization compliance date. Sediment supply and delivery to stream channels appears to already be addressed as part of the watershed baseline characterization in Section E.12.b.1.(ii).(e).(4). This is redundant and it is recommended that the requirement for the development of watershed sediment budgets be removed.

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Draft Phase II Small MS4 General Permit Review Comment Matrix
MOJAVE RIVER WATERSHED GROUP

Comment No.	Permit Element/Section	Page No.	Comment/Suggested Revision
75	Water Quality Runoff Standards – Section E.12.b.3	66	The first sentence should be revised to read "The Permittee shall require all discretionary projects fitting..." with the underlined word added. The first sentence of the second paragraph should read "For regulated discretionary projects and projects located..." Provide clarification for subwatersheds that have a "high rank" for groundwater recharge and/or discharge. Requiring that excess runoff volume that cannot be captured, infiltrated, and evapotranspired onsite, must be retained elsewhere within the same subwatershed may not be feasible. Permittees should not be required to create and administer an offsite mitigation program.
76	Water Quality Runoff Standards – Section E.12.b.3.i	67	The first sentence should be revised to read "Regulated Discretionary Projects – By May 15, 2014, the Permittees shall regulate discretionary projects." with the underlined word added.
77	Water Quality Runoff Standards – Section E.12.b.3.i.(a)	67	Revise "Regulated Special Project Categories" to "Regulated Discretionary Project Categories."
78	Water Quality Runoff Standards – Section E.12.b.3.i.(a).(1)	67	Specific exclusions provided are very limited. Exclusions and infeasibility criteria should be expanded to include high groundwater table constraints, protection of source water, potential for pollutant mobilization, clay and impermeable soils, potential geotechnical hazards, land use concerns, impairment of beneficial uses, conflict with water conservation goals, and lack of demand for harvested stormwater.
79	Water Quality Runoff Standards – Section E.12.b.3.i.(a).(1).(i)	67	Commercial developments are listed under Regulated Special Project Categories that create and/or replace 5,000 square feet or more of impervious surface. However, commercial developments are also listed under Other Development Projects in Section E.12.b.3.i.(b) for projects that create 10,000 square feet or more of impervious surface. Why are commercial developments listed under both categories and what is the minimum threshold for a commercial development?

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Draft Phase II Small MS4 General Permit Review Comment Matrix
MOJAVE RIVER WATERSHED GROUP

Comment No.	Permit Element/Section	Page No.	Comment/Suggested Revision
80	Water Quality Runoff Standards – Section E.12.b.3.i.(a).(5)	68	Requiring treatment thresholds is counterintuitive since Regulated Special Projects must capture, infiltrate, and evapotranspirate the entire 85th percentile storm event, or excess runoff volume that cannot be captured, infiltrated, and evapotranspired onsite, must be retained elsewhere within the same subwatershed. This approach results in no runoff generated from the 85th percentile storm requiring no treatment thresholds. Assuming there is runoff remaining to be treated, it is recommended that treatment BMPs be selected based on the pollutants of concern likely to be discharged from the project site. Treatment BMPs should be selected based on having a medium to high effectiveness for removing or reducing the targeted pollutants of concern. BMP handbooks such as the CASQA Stormwater BMP Handbook for New Development can be used for this determination.
81	Water Quality Runoff Standards – Section E.12.b.3.i.(b)	68	Revise "Other Development Projects" to "Other Discretionary Development Projects." Specific exclusions are not included for "Other Development Projects." Do the specific exclusions included under "Regulated Special Project Categories" also apply here? If so, these exclusions are limited and should be expanded to include full retention infeasibility criteria.
82	Water Quality Runoff Standards – Section E.12.b.3.i.(c)	68	Revise "Other Redevelopment Projects" to "Other Discretionary Redevelopment Projects." Regulated Special Project Categories and Other Development Projects include an exclusion for detached single-family home projects that are not part of a larger plan of development. It is recommended that this exclusion be included for Other Redevelopment Projects. This category is missing text that states which standards apply to these project types, such as "...are held to the standards above" as noted in Section E.12.b.3.i.(b). Please clarify the standards that are required for this category of projects.
83	Water Quality Runoff Standards – Section E.12.b.3.i.(d).(1)	69	Define what is considered a "new street or roads."
84	Water Quality Runoff Standards – Section E.12.b.3.i.(d).(3)	69	Requiring treatment for impervious trails that are greater than 10 feet wide or are creek-side (within 50 feet of the top of bank) is likely to be infeasible. These projects are typically located within a narrow right-of-way where the width would not accommodate retention BMPs. It is recommended that imperious trails be removed from the list of regulated projects.

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Draft Phase II Small MS4 General Permit Review Comment Matrix
MOJAVE RIVER WATERSHED GROUP

Comment No.	Permit Element/Section	Page No.	Comment/Suggested Revision
85	Water Quality Runoff Standards, Reporting – Section E.12.b.3.(iii)	70	Define what is meant by "Alternative compliance measures for Regulated Project (if applicable)."
86	Interim Hydromodification Management – Section E.12.b.4	70	Interim hydromodification standards should be removed and implementation of the stormwater retention standard in Section E.12.b.3 should be deemed compliant with hydromodification requirements during the interim period.
87	Interim Hydromodification Management – Implementation Level – Section E.12.b.4.(ii)	71	Matching the pre-project hydrograph for every project is not feasible. Allowable exemptions and infeasibility criteria should be included for, but not limited to, high groundwater table constraints, protection of source water, potential for pollutant mobilization, clay and impermeable soils, potential geotechnical hazards, land use concerns, impairment of beneficial uses, conflict with water conservation goals, and lack of demand for harvested stormwater. When the 85th percentile storm and interim hydromodification management criteria apply simultaneously to a project, which requirement takes precedence?
88	Long-Term Watershed Process Management, Implementation Level – Section E.12.b.5.(ii)	72	The terms used are vague and it is not clear what numeric criteria need to be developed and implemented. Similar to the watershed baseline characterization this requirement exceeds the six Minimum Control Measures and should not be required. It is recommended that the requirement for long-term watershed process management be removed.
89	Long-Term Watershed Process Management, Reporting – Section E.12.b.5.(iii)	72	The online Annual Report compliance date of September 15, 2015 is before the Task Description compliance date of May 15, 2016 in Section E.12.b.5.(i). This is in conflict and would require reporting before the program is required to be developed and implemented.
90	Watershed-Based Storm Water Management, Implementation Level – Section E.12.b.7.(ii).(3)	73	The design principles listed are vague and don't provide sufficient guidance to understand the desired outcomes.
91	Watershed-Based Storm Water Management, Reporting – Section E.12.b.7.(iii)	72	What is meant by "NOI" in the context of this provision? The word "City" should be revised to "Permittee."

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Draft Phase II Small MS4 General Permit Review Comment Matrix
MOJAVE RIVER WATERSHED GROUP

Comment No.	Permit Element/Section	Page No.	Comment/Suggested Revision
Receiving Water Monitoring			
92	Receiving Water Monitoring – Section E.13	76	A receiving water monitoring program was never anticipated under the Federal Phase II Rule. This section should be removed from this permit.
93	Receiving Water Monitoring, Compliance Tiers – Section E.13.a	76	The population threshold for the receiving water monitoring requirement should be increased from 25,000 to greater than 50,000. Rationale for the population increase is the associated monitoring program cost and that the scope of requirements is equivalent or greater than those for existing Phase I Permittees. Small Permittees do not have the staff or fiscal resources to implement such a resource intensive monitoring program. Overall, it is recommended that the receiving water monitoring program requirement be eliminated. Define the term "CDP" and add to the Acronyms and Abbreviations list.
94	Receiving Water Monitoring, Compliance Tiers – Section E.13.b	76	This provision requires Permittees that discharge to an ASBS or AB411 Beaches to comply with the monitoring provisions in the latest Ocean Plan. The California Ocean Plan, Appendix III – Standard Monitoring Procedures, is still being finalized and cannot be commented on at this time. It will be difficult to implement the current monitoring procedures since they are specific to wastewater treatment plants.
95	Receiving Water Monitoring, Implementation Level – Section E.13.(ii).(a)	77	The population thresholds for receiving water monitoring should be increased from 25,000 to greater than 50,000.
96	Receiving Water Monitoring, Implementation Level – Section E.13.(ii).(a).(3)	77	This provision does not specify a population threshold. This should be revised to be consistent with the other Implementation Level requirements.
97	Receiving Water Monitoring, Reporting – Section E.13.(iii)	78	Requiring online Annual Reports by September 15, 2013 on the status of receiving water monitoring leads to the assumption that the program must commence in year one of the permit. This is not feasible since it takes time to develop a receiving water monitoring program and then begin implementation. The monitoring start date should be clear in this section and it is suggested that it begin in year three of the permit or later.
98	Receiving Water Monitoring, Table B – Section E.13.(iv)	80	Permittees should only be required to monitor receiving water monitoring parameters for which their respective receiving water bodies are impaired. For example, if Permittee XYZ is discharging to a water body impaired for pathogens and nutrients, then monitoring should only be required for the pathogen indicators and nutrients parameters. Footnotes 46 and 56 are missing.

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Draft Phase II Small MS4 General Permit Review Comment Matrix
MOJAVE RIVER WATERSHED GROUP

Comment No.	Permit Element/Section	Page No.	Comment/Suggested Revision
99	Receiving Water Monitoring, Table B – Section E.13.(iv)	82	The algae bioassessment protocol for the State of California, cited in footnote 54, is currently in draft form and to-date has not been fully tested. Therefore, algae bioassessment should not be required by the permit until such protocols are finalized and the State has fully evaluated the utility of algae bioassessment results.

Draft Phase II Small MS4 General Permit Review Comment Matrix
MOJAVE RIVER WATERSHED GROUP

Comment No.	Permit Element/Section	Page No.	Comment/Suggested Revision
Program Effectiveness Assessment and Improvement			
100	Best Management Practice Condition Assessment, Task Description – Section E.14.b.(i)	88	Define the term "urban storm water BMPs." Is this referring to post-construction BMPs? If so, the term used throughout the permit should be consistent.
101	Best Management Practice Condition Assessment, Implementation Level – Section E.14.b.(ii)	88	Requiring each Permittee to use the Lake Tahoe BMP Rapid Assessment Methodology may not be practical or the most cost-effective approach to inventory, map, and determine the relative maintenance condition of the urban stormwater BMPs. This prescriptive methodology requires that three visual inspections be performed each year. Depending on the Permittee, this may be unrealistic. Also requiring the use of GIS mapping can be very costly. It is recommended that Permittees be given more flexibility and that language be revised to the effect of "Develop and implement a methodology to inventory, map, and determine the maintenance condition of post-construction BMPs." Permittees vary greatly and the one size or methodology fits all approach doesn't always work. For example, conditions assessed within coastal watersheds are going to vary significantly from desert watersheds and other inland areas, and priorities for these areas will also be different.
102	Municipal Watershed Pollutant Load Quantification, Compliance Tiers – Section E.14.c	89	This provision should not apply to Traditional Permittees with a population greater than 25,000 (or 50,000 as recommend in these comments) since they are already required to conduct receiving water monitoring under Section E.13.
103	Municipal Watershed Pollutant Load Quantification, Task Description – Section E.14.(i)	90	Where are Permittees to quantify annual subwatershed pollutant loads, at the receiving water or Permittee outfall? It is recommended that the requirement to identify stormwater retrofit opportunities be removed. Permittees have limited funding and requiring costly retrofits will not be feasible. This provision may also been determined to be an unfunded mandate.
104	Municipal Watershed Pollutant Load Quantification, Implementation Level – Section E.14.ii)	90	Permittees should not be required to develop costly models to calculate annual runoff, pollutant loads, and BMP removal efficiencies. Specific data sets are also referenced in this provision such as the National Stormwater Quality Database. However, these data sets may not be representative of the Permittee's watershed(s). It is recommended that this requirement to develop a model based on the Center for Watershed Protection's Watershed Treatment Model or other equivalent be removed since it is very expensive to develop and may provide results which are not representative or accurate of the Permittee's watershed(s).

Draft Phase II Small MS4 General Permit Review Comment Matrix
MOJAVE RIVER WATERSHED GROUP

Comment No.	Permit Element/Section	Page No.	Comment/Suggested Revision
Attachments			
105	Acronyms and Abbreviations	1	Revise the acronym for QSP from "Qualified SWPPP Fractioned" to "Qualified SWPPP Practitioner."
106	Attachment A – Renewal Traditional and Non-Traditional Small MS4 Permittees	8	"San Bernardino City" should be revised to "San Bernardino County."
107	Attachment B – New Traditional Small MS4 Permittees	5	Big Bear City CDP, Bloomington CDP, Mentone CDP, and Muscoy CDP are already covered under the Phase I San Bernardino County Municipal NPDES Permit and should be removed from Attachment B. The percentage growth for several Unincorporated San Bernardino County areas provided in Attachment B is not representative of the actual growth rates. The following proposed New Traditional Small MS4 Permittees should be removed from Attachment B since Year 2000 population information was not used to determine the percentage of population growth: ➢ Lucerne Valley CDP (estimated Year 2000 population – 5,251) ➢ Oak Hills CDP (estimated Year 2000 population – not available) ➢ Phelan CDP (estimated Year 2000 population – 12,449) ➢ Pinon Hills CDP (estimated Year 2000 population – 4,262) ➢ Silver Lakes CDP (estimated Year 2000 population – 4,936) Although the Phelan CDP has a population of at least 10,000 it does not meet the density requirement of at least 1,000 people per square mile or the required percentage growth. The Oak Hills CDP area does not meet the density requirement of at least 1,000 people per square mile or a demonstrable required percentage of growth. The City of Barstow should be included in the New Traditional Small MS4 Permittee list.