



County of San Diego



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Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

VIA EMAIL TO: commentletters@waterboards.ca.gov

COMMENTS ON PROPOSED AMENDMENTS TO THE WATER QUALITY CONTROL PLAN FOR INLAND SURFACE WATERS, ENCLOSED BAYS AND ESTUARIES OF CALIFORNIA AND THE WATER QUALITY CONTROL PLAN FOR OCEAN WATERS OF CALIFORNIA

Dear Ms. Townsend:

The County of San Diego appreciates the opportunity to provide comments on the Proposed Trash Amendments to the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays and Estuaries of California (ISWEBE Plan) and the Water Quality Control Plan for Ocean Waters of California (Ocean Plan). The County of San Diego is again encouraged by the State Water Resources Control Board's (State Board) stakeholder engagement in the adoption process, as this provides an opportunity to incorporate stakeholder perspectives into the final amendments and develop a sound approach for controlling trash.

The County of San Diego shares the State Board's concern for clean water in our waterways and fully appreciates the important role a Trash Policy would play in ensuring clean water for our communities. We support the use of the narrative water quality objective as proposed, which provides a clear, concise definition from which the County of San Diego can prioritize management decisions. As proposed, the State Board has provided incentives for jurisdictions to develop innovative approaches to regulatory compliance.

Furthermore, the County of San Diego supports the use of priority land uses as a means to identify implementation areas for trash control measures. Still, additional local

flexibility is needed so that local resources are used wisely to solve “real” problems, not perceived problems.

However, as currently drafted, the County of San Diego cannot support the Proposed Trash Amendments. Our primary concern is that the record supporting the Proposed Trash Amendments does not provide sufficient evidence that trash is a statewide problem that requires automatic implementation of all actions by all municipalities. The regulation of trash should be addressed in a manner consistent with other pollutants; that is, in which actions are required only after an impairment has been defined or a water quality objective has been found to be exceeded, and that the regulated entity has contributed to that impairment or water quality objective exceedance (i.e. reasonable potential has been established). The Proposed Trash Amendments bypass this evaluation and preemptively presume that trash is a problem in all waters that require actions by all municipalities that discharge to those waters. The Draft Staff Report does not provide sufficient evidence to justify this conclusion. The Report’s justification for identifying trash as a problem relies heavily on the fact that 73 waterbodies are listed for trash and some studies that have quantified trash in areas around the state. However, this represents only 2% of the waterbodies in California – meaning that 98% of waterbodies in California are not impaired by trash. Only four regions have trash listings, and the majority of those listings are in heavily urbanized coastal areas. Additionally, all but one of the studies cited in Appendix A as justifying the trash problem come from the heavily urbanized coastal areas, with most from Los Angeles and San Francisco areas. The only study from an inland area, the Caltrans study in the Fresno Stockton region, noted that most of the debris collected in the study was vegetation with only 5 to 18% by weight being trash as defined by the Proposed Trash Amendments. The amendments impose costly regulatory requirements upon areas of the state where the regulation is not needed, thereby potentially diverting resources from activities to address priority pollutants in those areas, all in the name of “statewide consistency”. However, the record does not demonstrate why statewide consistency is necessary, or even beneficial, for this pollutant.

Given the lack of justification that trash is a problem in all waters, the County of San Diego proposes the following approach for the Proposed Trash Amendments:

1. Establish the proposed narrative water quality objective.
2. Establish implementation procedures for the water quality objective that are triggered when the water quality objective is exceeded or the waterbody is found to be impaired by trash.
3. Specify that permit conditions consistent with the implementation procedures will be established in NPDES permits only when the water quality objective has been exceeded and the NPDES permit holder has been identified as the source.

We feel this approach would be consistent with the approach that is utilized to regulate all other pollutants in the State and still provide for statewide consistency in addressing trash where it is identified as being a problem. We request that the Proposed Trash Amendments be modified to reflect this approach.

In addition to this overarching concern and proposed modification to the Proposed Trash Amendments, we have identified a number of other key concerns and recommended improvements to the amendments are detailed below.

1. The Proposed Trash Amendments Would Impose New State Requirements on Local Entities Without Identifying a Funding Reimbursement Source

The County of San Diego conservatively estimates that the proposed new requirements reflected in the Proposed Trash Amendments would impose a cost burden on local taxpayers in our County of between \$2.7 and \$4.95M. This cost is in addition to the billions of dollars in the region in unfunded mandates created by the Bacteria TMDL provisions in the recently adopted MS4 Permit (R9-2013-0001). Other public entity copermittees statewide would incur similar unfunded costs imposed by the policy. In order to consider supporting all of the requirements set forth in the new policy, the County of San Diego urges the State Water Resources Control Board to first identify a reliable funding source to reimburse local jurisdictions for the cost of the new requirements, as mandated by the California Constitution.

2. Compliance with Water Quality Objective and Prohibition of Trash Discharge

The Proposed Trash Amendments provide a narrative water quality objective (WQO) in Chapter III.B of the ISWEBE Plan and Chapter II.C of the Ocean Plan, and a prohibition of trash discharge in Chapter IV.B.2 of the ISWEBE Plan and Chapter III.I.6 of the Ocean Plan. The permittees would be considered in full compliance with the prohibition of trash discharge so long as the permittees were fully implementing Track 1 or Track 2 (Chapter IV.B.2.a of the ISWEBE Plan and Chapter III.I.6.a of the Ocean Plan). However, the Proposed Trash Amendments do not indicate that meeting the discharge prohibition requirements would also mean the permittees are in compliance with receiving water limitations (i.e., meeting the WQO). This could result in permittees being subject to a Trash TMDL for the receiving water, even if they are in compliance with the trash provisions contained in their MS4 Permit.

Recommendation: The County of San Diego recommends adding language to the Proposed Trash Amendments indicating the permittees are in compliance with the receiving water limitations so long as they are fully implementing Track 1 or Track 2.

3. Watershed Pollution Prioritization

The County of San Diego and other municipal separate storm sewer system (MS4) Copermittees in our watersheds have been working extensively with the San Diego Regional Water Quality Control Board to develop and implement a MS4 Permit based on watershed planning and the prioritization of water quality conditions.

The comprehensive planning process considers trash, as well as a host of other potential pollutants, with trash currently categorized as a lower tier priority pollutant. Additionally, the expected costs to implement the Proposed Amendments will be substantial and the value of these requirements are

uncertain, given the current receiving water priorities developed through the stakeholder process. As drafted, the Proposed Trash Amendments would supersede existing stakeholder-based watershed planning efforts, effectively determining, without validation, that trash is the highest priority in all watershed areas and potentially requiring the refocusing of resources from stakeholder developed priorities.

Recommendation: The County of San Diego recommends including language after Chapter IV.B.3.a of the ISWEBE Plan and Chapter III.L.2.a of the Ocean Plan that states: A MS4 Permittee may request that compliance requirements for trash be established through a watershed prioritization and planning process outlined in MS4 permit requirements. This prioritization process would allow for evaluation of the trash in the context of other watershed priorities and provide a mechanism for modifying or reducing the requirements for compliance in accordance with the procedures outlined in the MS4 permit and an approved watershed plan. Through this process, monitoring data could be utilized to demonstrate that trash controls are not necessary for all priority land uses.

4. Addressing Priority Land Uses

The Proposed Trash Amendments appear to require implementation of Track 1 or Track 2 for *any* storm drain that captures *any* runoff from a priority land use [Chapter IV.B.3.a.(1)/IV.B.3.a.(2) of the ISWEBE Plan and Chapter III.L.2.a.(1)/Chapter III.L.2.a.(2) of the Ocean Plan]. This would trigger compliance requirements for a storm drain even if only a very small portion of a priority land use drains into the storm drain.

Recommendation: The County of San Diego recommends adding language to Chapter IV.B.3.a.(1)/IV.B.3.a.(2) of the ISWEBE Plan and Chapter III.L.2.a.(1)/Chapter III.L.2.a.(2) of the Ocean Plan, stating that permittees must address catchment areas where the priority land uses are greater than 25% of the total catchment area.

- (1) Track 1: Install, operate, and maintain full capture systems in their jurisdictions for all storm drains that captures runoff in catchment areas where from one or more of the priority land uses comprise >25% of the land area in the catchment in their jurisdictions; or
- (2) Track 2: Install, operate, and maintain any combination of full capture systems, other treatment controls, institutional controls, and/or multi-benefit projects within either the jurisdiction of the MS4 permittee or within the jurisdiction of the MS4 permittee and contiguous MS4s permittees. So long as such combination achieves the same performance results as compliance under Track 1 would achieve for all storm drains that captures runoff in catchment areas where from one or more of the priority land uses comprise >25% of the land area within the catchment within such jurisdiction(s).

5. Priority Land Use Designation

As defined in the Proposed Trash Amendments, the predefined priority areas may not be appropriate for all jurisdictions, the areas do not consider local

knowledge of receiving water conditions and they do not consider previous data collection efforts. As currently drafted, the Proposed Trash Amendments assume that there is a problem in the defined priority areas, effectively forcing a costly "one size fits all" approach onto the jurisdictions. County of San Diego supports the concept of prioritized land uses to address problem areas; however, the approach should allow for more local flexibility in this prioritization.

The County of San Diego has managed an extensive monitoring program for evaluating trash conditions at the MS4 major outfalls for many years resulting in an in-depth understanding of the problem areas within its watersheds. While the Proposed Trash Amendments provide flexibility for the permitting authorities to designate additional priority areas, or for responsible agencies to define alternative priority areas, it does not appear to allow for responsible agencies to lower the priority in certain areas. Local knowledge, supported by data, should be able to suffice as justification for jurisdictions to designate appropriate drainage areas as "non-priority" regardless of land use.

Recommendation: Modify language in Section III.L.2. (Ocean Plan) and IV.B.3 (ISWEBE Plan) by adding Section III.L.2.e and IV.B.3.e, respectively, as follows:

e. A regulated MS4 may determine that areas within priority land uses do not generate trash that accumulates in state waters (or in areas adjacent to state waters) in amounts that would either adversely affect beneficial uses, or cause nuisance. In the event that the regulated MS4 identifies such areas and is able to provide data supporting the finding, the permitting authority may waive the requirement for the MS4 to comply with Chapter III.L.2.a/IV.B.3.a with respect to the identified locations. The regulated MS4 shall submit documentation of the continued condition with annual reports as required under Section III.L.6/IV.B.7.

6. Equivalent Alternate Land Uses

Part (6) of the Priority Land Uses definition from the ISWEBE Plan allows permittees to issue a request to the San Diego Regional Water Quality Control Board to comply with Chapter IV.B.3.a.1 of the ISWEBE Plan using alternate land uses equivalent to the defined Priority Land Uses. However, as written, the Chapter reference for the ISWEBE Plan only allows the permittees to address the equivalent alternate land uses if utilizing Track 1. The reference should be changed to allow the permittees to address the equivalent alternate land uses via Track 1 or Track 2.

Recommendation: Modify the Chapter reference in Part (6) of the Priority Land Uses definition as such: ...comply under Chapter IV.B.3.a.1 and Chapter IV.B.3.a.2.

Part (6) of the Priority Land Uses definition from the Ocean Plan allows permittees to issue a request to the San Diego Regional Water Quality Control Board to comply with Chapter IV.B.3.a.1 of the ISWEBE Plan using alternate land uses equivalent to the defined Priority Land Uses. However, as written, the Chapter reference for the Ocean Plan only allows the permittees to address the equivalent alternate land uses if utilizing Track 1. The reference should be

changed to allow the permittees to address the equivalent alternate land uses via Track 1 or Track 2. In addition, the chapter reference is incorrect. The reference reads Chapter III.J.2.a.1, while it should read Chapter III.L.2.a.1

Recommendation: Modify the Chapter reference in Part (6) of the Priority Land Uses definition as such: ...comply under Chapter III.JL.2.a.1 and Chapter III.L.2.a.2.

7. Permitting Authority's Discretion to Revise Compliance Dates

Chapter IV.B.3.d of the ISWEBE Plan and Chapter III.L.2.d of the Ocean Plan allows permitting authorities to determine that other, specific land uses generate substantial amounts of trash and require permittees to implement Track 1 and Track 2 for those land uses. If a permitting authority adds new priority land uses during the duration of the compliance period, it could be difficult for a permittee to achieve compliance with the Proposed Trash Amendments if the areas they are required to address change late in the 10-year required compliance period.

Recommendation: The County of San Diego recommends adding language to the Proposed Trash Amendments requiring a permitting authority to consider revisions to the final compliance date of the Proposed Trash Amendments if new priority land uses are added during the duration of the compliance period.

8. Track 2 Performance Demonstration

The Proposed Trash Amendments, in Chapter IV.B.7.b and Chapter III.L.6.b of the ISWEBE Plan and Ocean Plan, require permittees implementing Track 2 to monitor in order to demonstrate mandated BMP performance results; effectiveness of the full capture systems, other structural BMPs, institutional controls, and/or multi-benefit projects; and compliance with performance standards. In addition, the permittees must monitor the amount of trash in receiving waters. Demonstration of performance under Track 2 should not be limited to monitoring, as demonstrating effectiveness of trash BMPs through monitoring is extremely difficult. Permittees should be allowed to propose the method of demonstrating performance in their plan. In addition, receiving water monitoring should not be required since other sources contribute trash. While a permittee may want to conduct receiving water monitoring to demonstrate performance, it should not be mandated in the case that other methods are appropriate (e.g. pounds of trash removed through a control measure).

Recommendation: The County of San Diego recommends the State Water Board revise the language in the Proposed Trash Amendments (Chapter IV.B.7.b and Chapter III.L.6.b of the ISWEBE Plan and

Ocean Plan, respectively) to allow for more flexibility in determining Track 2 performance and to remove the requirement for receiving water trash monitoring.

9. Standards of Equivalency

If permittees chose Track 2, they must demonstrate equivalency ("same performance results") as Track 1 (Chapter IV.B.7.b and Chapter III.L.6.b of the ISWEBE Plan and Ocean Plan, respectively). However, standards of equivalency

are not provided in the Proposed Trash Amendments. This information is essential to inform the decisions regarding the choice of track because it is unknown at this time what efforts will be considered "equivalent" to full-capture. Permittees incur financial and compliance risks in choosing a Track, which has no guidelines for determining compliance or placing themselves in a situation where the guidelines would be subject to on-going interpretation. During the Workshop, Mr. Bishop indicated that jurisdictions will likely implement a blend of Tracks 1 and 2 due to practical considerations. To support this pragmatic approach, a reasonable monitoring alternative needs to be proposed for those drainages where a full capture device is not feasible due to engineering constraints or is unnecessary.

Recommendation: The County of San Diego recommends the removal of the standard of equivalency for Track 2 from the Proposed Trash Amendments. Instead, allow permittees to propose a readily achievable and practical way that will indicate compliance with the policy for drainages without full-capture devices.

10. Existing Trash Control Measures

The County of San Diego has implemented various trash control measures within the watersheds under its jurisdiction. However, the Proposed Trash Amendments do not have a provision that details how existing trash control measures would be utilized for evaluating compliance with the Proposed Trash Amendments.

Recommendation: The County of San Diego recommends including language in the Proposed Trash Amendments to clarify that existing trash controls can be considered as contributing to compliance with the Trash Amendments.

11. Trash Total Maximum Daily Load Development

It appears that the Proposed Trash Amendments will serve as an alternative to a TMDL, thereby preventing the need to develop trash TMDLs in the future. The County of San Diego recommends the State Board add additional language to clarify the intent of the Proposed Trash Amendments with respect to the development of future TMDLs. It seems that implementation of the Proposed Trash Amendments represents a single regulatory action addressing MS4 permittee requirements thereby removing the need to develop wasteload allocations via a TMDL for MS4 permittees.

Recommendation: The County of San Diego recommends that language should be included in the Proposed Trash Amendments stating that if the requirements in the Proposed Trash Amendments are being met, then no Trash TMDLs will be developed for those water bodies where the requirements are being fully implemented.

12. Incorrect Section References

There are several incorrect section references in the ISWEBE Plan.

Recommendation: For the ISWEBE Plan, all references to Chapter IV.C.3, Chapter IV.C.3.a, or Chapter IV.C.3.b should be revised to Chapter IV.B.3, Chapter IV.B.3.a., and Chapter IV.B.3.b, respectively.

13. Isolated Rural Communities

The County of San Diego is a Phase I MS4 that encompasses both urbanized communities and rural communities, including 22 Community Planning Areas within the unincorporated county. These rural communities are included in the footprint of the Phase I MS4 out of convenience, not necessity. For example, two of these rural communities, Julian and Campo, have commercial areas that will be under the Proposed Trash Amendments. However, these rural communities have limited resources available to fund programs, and there is not a reasonable return on investment for these small communities to implement extensive trash controls as there is limited trash generation in these areas. The well-established Community Planning Groups in these rural areas have established priority issues through rigorous stakeholder planning processes. Based on their local planning processes, the threat of firestorms may be their highest priority for funding. Furthermore, Julian is a tourist area, which already focuses on mitigating the impacts of trash. Consideration of exempting rural areas from the Proposed Trash Amendments, which are not directly contiguous to urbanized communities, would allow these rural communities to continue to focus their limited resources on their highest priority conditions. In San Diego County, this would only apply to eight rural communities.

Recommendation: The County of San Diego recommends excluding isolated rural communities that are not contiguous to urbanized communities from the requirements of the Proposed Trash Amendments by adding a footnote to the sentence in Chapter IV.B.3.a/Chapter III.L.2.a of the ISWEBE Plan and Ocean Plan, respectively stating: Priority Land Uses contained within isolated rural communities are exempt from the requirements of Chapter IV.B.3.a.(1) and (2)/Chapter III.L.2.a.(1) and (2).

Alternatively, a pathway should be included that allows these isolated communities to opt out with local Regional Board approval. This could be accomplished by modifying language in Section IV.B.3 (ISWEBE Plan) and III.L.2. (Ocean Plan) by adding Section IV.B.3.e and III.L.2.e, respectively, as follows:

e. A regulated MS4 may determine that areas within priority land uses do not generate trash that accumulates in state waters (or in areas adjacent to state waters) in amounts that would either adversely affect beneficial uses, or cause nuisance. In the event that the regulated MS4 identifies such areas and is able to provide data supporting the finding, the permitting authority may waive the requirement for the MS4 to comply with Chapter IV.B.3.a/III.L.2.a with respect to the identified locations. The regulated MS4 shall submit documentation of the continued condition with annual reports as required under Section IV.B.7/III.L.6.

14. General Industrial Stormwater Permit

The Proposed Trash Amendments are inconsistent in the way in which they address the General Industrial Stormwater Permittees. In Section III.I.6. (Ocean Plan) and Section Section IV.B.2.d (ISWEBE Plan), the prohibition of discharge is stated as applying to “the discharge of preproduction plastic by manufactures of preproduction plastics, transporters of preproduction plastics, and manufacturers that use preproduction plastics in the manufacture of other products.” However, the next sections of each Plan require that all industrial activities covered under the General Industrial Stormwater Permit comply with the provisions of the Proposed Trash Amendments. Since not all industrial activities deal with preproduction plastic, this provision should not be applied to all industrial permittees. The County of San Diego requests an exemption to those industries that never use the preproduction pellets to be included. For example, airports, wastewater treatment facilities, and closed landfills should be exempted.

Recommendation: The County of San Diego recommends clarifying that the discharge prohibition is not applicable to all industrial dischargers by modifying Chapter IV.B.3.c/Chapter III.L.2.c of the ISWEBE Plan and Ocean Plan as follows:

Dischargers that are subject to NPDES permits for discharges of storm water associated with industrial activity (including construction activity) that relate to the manufacture of preproduction plastics, transporters of preproduction plastics, and manufacturers that use preproduction plastics in the manufacture of other products shall be required.

Thank you for your time and consideration of these comments. If you have questions, please contact Jo Ann Weber at (858) 495-5317 or at JoAnn.Weber@sdcounty.ca.gov.

Sincerely,



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