

5 August 2014

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Subject: Comments: Draft Staff Report - *Draft Amendments to Statewide Water Quality Control Plans to Control Trash* (Trash Amendments)

Thank you for the opportunity to comment. The State allowed insufficient time for a complete and thorough review of the complete document, While I am sure other entities/individuals will comment on the language proposed in Appendices D and/or E, I think it important to comment on the supporting draft report (to the extent possible with the time allowed) as that will be the primary document of reference during the litigation the Trash Amendments will cause. Please note that these comments are not fully inclusive of the report's flaws but should assist staff of the State Water Resources Control Board (State Board) with creating a document that is internally consistent and represents the intent of the State Board as discussed at the Sacramento stakeholder meeting and workshop.

- 1) Page 1; First Paragraph; second sentence: Preproduction plastic pellets are an integral part of the plastic product production process; and therefore, are not a waste and should not be defined as trash. To the extent that the State Water Board needs to regulate preproduction plastics, that regulation should occur through the Industrial General Permit (IGP) (including but not limited to expanding the IGP to include all industries that use plastics. But, it needs to be done separately from trash-related Plan Amendments. Suggest removing all references to preproduction plastic pellets from the trash amendments and creating a separately regulatory scheme therefore..
- 2) Page 1; First Paragraph; third sentence: Improper sentence structure or incorrect premise. Appliances (as a sentence two specifically listed form of 'trash') may end-up in a waterway but not 'frequently' nor ever via the method stated. Suggest either removing appliances from the specifically listed types of trash or creating another sentence that recognizes that there are paths not associated with storm drains by which trash enters waterways.
- 3) Page 4; Second full-Paragraph; final sentence: Based on the statement made by this sentence, 'where runoff and storm water transport trash into these water...',

it is not apparent that Water Board Authority extends to appliances. Suggest removing appliances from the specifically listed forms of trash.

- 4) Page 6; Second Paragraph: Asserts that trash, 'jeopardizes public health and safety' and poses 'harm and hindrance...'. Concur with the latter but, 'public health and safety' is a legal concept. As such, an assertion that it is in jeopardy needs a citation that demonstrates the magnitude of that jeopardy.
- 5) Page 6; numeric bullets: Please note that none of the bullets describe a trash-related mechanism applicable to a product line component (aka: preproduction plastic pellets). Suggest that preproduction plastic pellets be removed from the definition of trash.
- 6) Page 6; Final Paragraph; second sentence: 'The main transport pathway of trash to receiving water bodies is through storm water transport.' This statement conflicts with the initial statement of Section 2.4.1 wherein other transport mechanisms also are recognized as being significant. This statement needs at least to be modified for internal consistency and to cite the references upon which it relies. Alternatively, it can be removed. CHECK APPENDIX A
- 7) Page 11; Table 1.: An IGP facility cannot use a full capture device as later-defined (100% to 5mm) to capture preproduction plastic pellets (~1mm). Suggest regulating preproduction plastic pellets as a component of production not as trash.
- 8) Page 11; Section 2.2 Water Quality Objective: The Trash Amendments recognize that MS4 transport of trash is but one of multiple significant transport mechanisms (see Section 2.4.1). Therefore, compliance with the objective ('no trash accumulation...') via implementation through MS4 Permits cannot be obtained. Note: The objective nomenclature modifies the 'no trash accumulation' by stating, 'in amounts that would either adversely affect beneficial uses, or cause nuisance.' However, Appendix A, Table 14 defines the amount of trash necessary to adversely affect beneficial uses and states, 'Any amount of trash impacts this beneficial use' for both the Water Contact Recreation and Non-Contact Water Recreation beneficial uses.
- 9) Page 11; Section 2.2 Water Quality Objective: Need to define 'adjacent to'. Perhaps use normal high water line.
- 10) Page 12; Section 2.4.1 Permitted Storm Water Discharges; first sentence: see comment 7 above.
- 11) Page 13; First full Paragraph; third sentence: 'MS4 storm water permittees that opt...plans to their respective Water Board.' For consistency with the List of Abbreviations and to avoid confusion, correct to either, '...Regional Water Board.' or 'Water Boards.'
- 12) Page 13; Track Discussion: As discussed during the Sacramento stakeholder meeting, while it is recognized that quality Track 2 Plans need to be submitted,

the compliance clock runs regardless of Regional Board approval. Suggest that Water Board be corrected Water Boards (see Comment 11) and the trash amendments either stipulate approval after 6-months or an appeal process involving the State Water Board.

- 13)Page 13; Last Paragraph: Needs clarification or deletion. The list provided (in the second sentence) includes only geographic areas controlled by entities that have the ability to install and maintain full capture devices within the drop inlets on their property. This concept is also true for Non-Traditional MS4s. Therefore, if one of the Water Boards determines that a geographic area is impairing water quality due to a lack of compliance with the trash amendments that Water Board (State or Regional) can Order the owner of that geographic area to comply.
- 14)Page 13; Last Paragraph; last sentence: see Comment 11 regarding 'Water Board'.
- 15)Page 13; Last Paragraph; last sentence: (Comment 13 notwithstanding) If the trash amendments allows one of the Water Boards to require an MS4 to adopt a Track on behalf of/instead of the responsible entity, the trash amendment must also dictate the need for financial restitution by that entity to the MS4 for implementation, maintenance etc. of the required Track.
- 16)Page 13; Last Paragraph; last sentence: The current wording of the last sentence allows the Water Boards to select the Track that that the MS4 is required to implement (regardless of the Track the MS4 is implementing for itself). Suggest adding 'select and implement either' into the last sentence → '...may require the MS4 to select and implement either Track 1 or Track 2...'
- 17)Page 14; Final Paragraph: Fix multiple 'Water Board' references to an accepted abbreviation
- 18)Page 14; Final Paragraph: Does a permittee choosing the second option need to monitor? Is any reporting required for either option?
- 19)Page 15; Nonpoint Source Dischargers; first sentence: At the discretion of which 'Water Board'?
- 20)Page 15; Section 2.5 Time Schedule; First Paragraph; last sentence: Which 'Water Board' can set compliance milestones?
- 21)Page 15; Section 2.5 Time Schedule; Third Paragraph; second sentence: Correct 'Water Board to either 'State Water Board' or 'Regional Water Board'.
- 22)Same as Above: Why not save two years and just require that MS4 Phase 1, MS4 Phase 2 and CalTrans notify the applicable 'Water Board' of their selected Track within 6-months?
- 23)Page 15; Section 2.5 Time Schedule; Third/Fourth Paragraph: There is a Caltrans conflict between these paragraphs. Paragraph 3 says a Water Board will issue a request to Caltrans so Caltrans can notify that Water Board of its

selected Track while paragraph 4 requires that Caltrans use Track 2 via the State Water Board requesting an implementation plan.

- 24)Page 16; First full Paragraph; first sentence: Which 'Water Board'?
- 25)Page 16; Section 2.7 Monitoring and Reporting Requirements; First Paragraph; first sentence: Potential for significant conflict between the monitoring and reporting required by the State Water Board and those required by the Regional Water Board. Suggest 'Water Boards' be replaced by 'Regional Water Board'.
- 26)Page 16; Section 2.7 Monitoring and Reporting Requirements; First Paragraph; second sentence: Empowers State Water Board or Regional Water Board staff to require any magnitude of effort regardless of the Section 4.10 Issue 10 option selected/approved by the State Water Resources Control Board or the Track chosen by the permittee. Recommend deletion of this sentence.
- 27)Page 16; Section 2.7 Monitoring and Reporting Requirements; Second Paragraph; second sentence: To avoid conflict between the intent of this paragraph and that which is stated in the first paragraph of this Section, 'minimum' needs to be deleted from this sentence.
- 28)Page 16; Section 2.7 Monitoring and Reporting Requirements; Second Paragraph; last sentence: Clarify which 'Water Board'.
- 29)Page 16; Section 2.7 Monitoring and Reporting Requirements; Third Paragraph; third sentence: Clarify which 'Water Board'.
- 30)Page 18 Section 2.12 Other Approvals Required to Implement the Trash Amendments:
 - a) The California Ocean Protection Commission (OPC) has a dramatically different approach to trash reduction than that which is being proposed in the Amendments. While their 'approval' may not be necessary, better explanation of the interactions between the OPC's emphasis on source removal and the State Water Board's abandonment thereof should be documented.
 - b) Track 2 has been offered by the State as a path by which a municipality could comply with the Amendments. It is impossible to believe that compliance with the Amendments or assessments of effectiveness can be achieved without significant disturbance of waterways and the areas adjacent thereto. Thus, it seems appropriate for the State Water Board to consult with the State and Federal Fish and Wildlife agencies to ensure that implementation of this Track will not endanger species or disrupt habitat.
- 31)Page 19; Public Process; Second Paragraph; last sentence: incorrect verb tense transition → transitioned, '...projected has transitioned from...'
- 32)Page 22; Section 3.1; First Paragraph: All of the items listed as those comprising 90% of trash could be efficiently controlled via a statewide redemption value

sufficient enough that only accidental releases would occur and those would be mitigated by collectors. The discussion of 'Trash in California' needs to be expanded beyond what municipalities are currently doing and the impacts thereof to include Statewide efforts (e.g. redemption values), the impacts thereof and how adaptation of those efforts could affect trash in California.

33)Page 24; First full Paragraph: The paragraph makes reference to the Land Uses bulleted prior to the paragraph and the first sentence states that the priority land uses proposed for the Trash Amendments are the 'Developed, High Intensity'. 'Developed, High Intensity' is characterized by 80-100 percent impermeable surfaces. The Glossary defines 'high density residential' as >10 units per acre while Sacramento County studies indicate an 80+% impermeability occurs at >20 units per acre (see Table D-1a inserted for your convenience).

Dwelling units per acre	Imperviousness
1	0.17
2	0.25
3,4	0.35
5,6	0.40
7	0.50
8,9	0.55
10-14	0.60
15-20	0.70

34)Page 64; Definitions of Trash: The recommended Consideration (#2) is encompasses virtually everything associated with an operation but nothing one normally considers trash. The State should consider other definitions including but not limited to:

"All improperly discarded materials or products, including, but not limited to, pre-production plastics, convenience food, beverage, and other product packages or containers constructed of steel, aluminum, glass, paper, plastic, and other natural and synthetic materials."

35)Page 67; Water Quality Objective: It is unclear if the proposed Water Quality Objective contained in Appendices D and E is that which was created from use of the recommended Consideration 4 or an adoption of Consideration 2. Because Appendix A, Table 14 states that 'any amount of trash' impacts the contact/non-contact water recreation beneficial uses, the proposed objective language is essentially a 'zero trash' objective. The Amendments are only attempting a treatment approach; and therefore, the objective will not be met via the Amendments.

36)Page 69; Section 4.4; Consideration 2; 'Non-permitted dischargers would either apply with prohibition of discharge or be subject to direct enforcement action'.

What does it mean to 'apply with prohibition'? State needs to define what application process is necessary for currently unpermitted discharges.

- 37) Page 71, Section 4.5; Consideration 3: Concur with the recommendation of focusing on high trash generation rate areas but confused by the internal inconsistency of the report. As noted in Comment 33, 'developed high intensity' is 80+ percent impermeable surface (which equates to > 20 unit per acre. This Section acknowledges local differences but suggests 15-30 units per acre. However, the Appendix E Glossary defines high density as > 10 units per acre. There needs to be an explanation for the use of >10 units per acre to define 'high density residential'.
- 38) Page 74; Section 4.6; Consideration 2 (and 4?): I am assuming that the full capture component of Consideration 4 (recommended) includes all that is discussed in Consideration 2.'The maintenance of such systems...' Municipalities do not have the authority to access private property and maintain devices.
- 39) Page 74; Section 4.6 Consideration 2; Final Paragraph: Because other depositional mechanisms exist beyond the MS4, the monitoring associated with Track 2, or casual observation, will appear to show non-compliance – which will result in litigation. Thus, while the full-capture option will cause an undue burden, it is the only option that can effectively demonstrate compliance.
- 40) Page 75; Section 4.6; IGP/CGP: The Trash definition discussion within the report makes clear that the State Water Board is targeting particle sizes smaller than 5mm (pre-production plastics). However, this recommendation allows a facility to demonstrate compliance by installing a full capture system – which is defined as capturing particle sizes > 5mm. Please provide an explanation of how IGP facilities using production components that are smaller than 5mm can comply via Track 1.
- 41) Page 79; Section 4.9: While titled, 'Should time extensions be provided for employing regulatory source controls?' only the banning of products is discussed within the Current Conditions nor is any data provided that indicates that product banning has reduced the volume of trash in the waterways. 'Source Controls' (extended producer responsibility, redemption values, Green Chemistry, etc.) are the most efficient and effective way to reduce the amount of trash in the environment. However, the above-listed types of source controls can only be effective when implemented on (at least) a statewide basis. The State Water Board recently released for discussion the Storm Water Strategy Initiative Concept Paper which promotes the reduction of pollutants through source control. The treatment-oriented Amendments should (at least) discuss the apparent discrepancy between that which the State Water Board is promoting as its strategic initiative and that which is being proposed via the Amendments.

- 42)Page 82; 5): An MS4 can control the amount of trash discharged from the MS4 (as is required by '4)'). As the report recognizes, other significant trash depositional mechanism exist over which the MS4 has no control. Data collected from the receiving water(s) will be highly variable rendering 'previous year' comparisons meaningless. Furthermore as regards the potential source(s), the MS4 can only speculate. The State needs to explain the rationale for including this monitoring requirement.
- 43)Page 83; Second Paragraph; first sentence: This sentence is disingenuous as it implies that the stakeholders had an open-forum to discuss the manner of compliance and that the sentences that follow convey what the stakeholders proposed. This could not be farther from the truth. The requirements of Track 1 and Track 2 were provided along with implementation timelines. Discussion included statewide source control measures, priority land-use definitions, implementation schedules and State expectations regarding the location of full capture devices relative to the priority land-uses. The State Water Board needs to explain the process through which all of the information provided (with the exception of the Track 1 and Track 2 requirements) was discarded (e.g. statewide source control) or erroneous (housing density, full capture in public easements only, etc.).
- 44)Page 84:Forth Paragraph; first sentence: 'Litter' is inaccurate and needs to be changed to 'trash'
- 45)Page 89 and following; Section 5.2: Institutional Controls are not capable of achieving 100-percent removal to >5mm for the prescribed storm event; and therefore, cannot be considered a viable option for compliance.

Thank you for your consideration of these comments. Please do not hesitate to contact me at jaboorth15@gmail.com for further information or suggested edits.

Sincerely,

A handwritten signature in blue ink, appearing to read "D. Booth", with a large circular flourish on the left side.

Dana W. Booth, PG