



DEPARTMENT OF PUBLIC WORKS
Road Division

Public Comment
Trash Amendments
Deadline: 8/5/14 by 12:00 noon
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August 4, 2014

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:

Merced County 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). Merced County 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. However, the magnitude of the implementation effort requires additional stakeholder input to craft a plan with the flexibility required to meet local needs and maximize overall water quality benefits.

Merced County shares the State Board's concern for trash 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 Merced County can prioritize management decisions. Merced County does not support the option of developing and implementing regulatory source controls and the potential for time extensions where these are implemented. Furthermore, Merced County does not support the use of priority land uses as a means for identifying trash control measures implementation areas, however, additional local flexibility is needed so that local resources are used wisely to solve "real" problems. As currently drafted, Merced County is not generally supportive of the Proposed Trash Amendments. Our key concerns and recommended improvements to the amendments are detailed below.

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 water bodies are listed for trash and some studies that have quantified trash in areas around the state. However, this represents only 2% of the water bodies in California - meaning that 98% of water bodies 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, Merced County 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 water body 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

Merced County 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

\$5M. This cost is in addition to the millions of dollars in the region in unfunded mandates created by the Bacteria TMDL provisions in the recently adopted MS4 Permit (2013-0001-DWQ). Other public entity permittees statewide would incur similar unfunded requirements set forth in the new policy, Merced County 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 and Chapter II.C of the ISWEBE Plan and Ocean Plan, respectively and a prohibition of trash discharge in Chapter IV.B.2 and Chapter III.I.6 of the ISWEBE Plan and Ocean Plan, respectively. 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 and Chapter III.I.6.a, of the ISWEBE Plan and Ocean Plan, respectively). 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 in compliance with permittees' MS4 Permit.

Recommendation: Merced County 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 comprehensive planning process considers trash, as well as a host 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: Merced County 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) and Chapter III.L.2.a.(1)/Chapter III.L.2.a.(2) of the ISWEBE Plan

and Ocean Plan, respectively]. This would trigger compliance requirements for a storm drain even if only a very small portion of a priority land use drains to the storm drain.

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

Track 1: Install, operate and maintain full capture systems in our jurisdictions for all storm drains that captures runoff in catchment areas where priority land uses comprise >25% of the land area in the catchment; or

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 priority land uses comprise >25% of the land area within the catchment.

5. Priority Land Use Designation

As defined in the Proposed Trash Amendments, the predefined priority areas may not be appropriate for all jurisdictions, does not consider local knowledge of receiving water conditions and 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. Merced County supports the concept of prioritized land uses to address problem areas; however, the approach should allow for more local flexibility in this prioritization.

Merced County and the other municipal separate storm sewer system (MS4) permittees in our watersheds have been working extensively with the 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: Merced County 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.

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 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 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.L.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: Merced County recommends adding language to the Proposed Trash Amendments requiring a permitting authority to consider revision 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, respectively, 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 case other methods are appropriate (e.g. pounds of trash removed through a control measure).

Recommendation: Merced County 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. Jurisdiction 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: Merced County 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. 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. Merced County recommends the State Board adds 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 waste load allocations via a TMDL for MS4 permittees.

Recommendation: Merced County 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.

11. Incorrect Section References

There are several incorrect section reference 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.

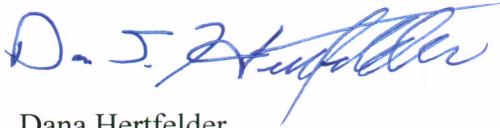
12. Isolated Rural Communities

The well-established Community Planning Groups in these rural areas have established priority issues through rigorous stakeholder planning processes. Rural towns have commercial areas that will be under the Trash Amendments. 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. Based on their local planning processes, the threat of firestorms or other local priorities may be the best use of their limited resources.

Recommendation: Merced County recommends exempting rural areas from the Trash Amendments that are not directly contiguous to urbanized areas.

Thank you for your time and consideration of these comments. If you have questions, please contact Kathleen Chen at (209) 385-7601 or at kchen@co.merced.ca.us

Sincerely,



Dana Hertfelder
Public Works Director,
Merced County
Department of Public Works