



THE CITY OF SAN DIEGO



July 31, 2014

Electronic Submission: commentletters@waterboards.ca.gov

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

Dear Ms. Townsend:

Subject: Comment Letter – Draft Amendments to Statewide Water Quality Control Plans to Control Trash

The City of San Diego, Transportation & Storm Water Department (City) appreciates the opportunity to provide comments on the Draft Amendments to Statewide Water Quality Control Plans to Control Trash (Proposed Trash Amendments), dated June 2014. The City 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 protecting beneficial uses that are impaired due to trash.

The City shares the State Board's concern for trash in our surface waters and fully appreciates the important role of the Proposed Trash Amendments in improving water quality for our communities. We support the use of the narrative water quality objective as proposed as it provides a clear, concise definition from which the City can prioritize management decisions using our existing watershed management plans. The City also supports the option of developing and implementing regulatory source controls and the potential for time extensions where these are implemented. As proposed, the State Board has provided incentives for local jurisdictions to develop innovative approaches to regulatory compliance.

While the City is generally supportive of the approach utilized for the Proposed Trash Amendments, we note the following primary concerns as well as the additional comments presented in the attached table:

- The City and the other MS4 Copermittees that share watersheds with the City have, and continue to, work extensively with the San Diego Regional Water Quality Control Board to develop and implement watershed-based planning and prioritization of water quality conditions under their MS4 Permit (Order R9-2013-0001). This comprehensive planning process considers trash, as well as a host of other potential pollutants for the prioritization of water quality conditions.

Transportation & Storm Water Department

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- As drafted, the Proposed Trash Amendments would supersede existing stakeholder watershed-based planning efforts by effectively determining, without validation, that trash is the highest priority water quality condition, which would potentially require the refocusing of resources from stakeholder developed priorities. Multiple pollutant TMDLs are allowed a 20 year compliance schedule to achieve the necessary load reductions. It is recommended to expand the compliance schedule to 20 years when trash is being included in a watershed with other TMDLs.
- As one of the largest cities in California, the expected costs to the City to implement the Proposed Trash Amendments are substantial while the value of these proposed requirements are uncertain in light of the current receiving water priorities that have been developed through the stakeholder process. Please provide the detailed cost benefit analysis that was performed with the notes and assumptions used.
- The Proposed Trash Amendments need to recognize time schedule differences between implementation and certification of full capture systems. While the Los Angeles TMDL program has provided a list of certified full captured systems, the Proposed Trash Amendment should allow permit holders an opportunity to evaluate additional full capture systems that are applicable at the local level. It is recommended that the compliance schedule start when the Certification of a Full Capture Systems proposed by a permit holder has been approved by the State Board.

The City would like to reiterate its support of the State Board's process of engaging stakeholders during the development of the Proposed Trash Amendments. The City hopes to continue this interaction process through additional stakeholder meetings in order to further refine the State Board's approach for addressing trash in our watersheds.

If you have additional questions, please contact Ruth Kolb at (858) 541-4328 or at rkolb@sanidiego.gov.

Sincerely,



Drew Kleis
Deputy Director

DK\rk

Enclosure: City of San Diego Comment Table

cc: Tony Heinrichs, Deputy Chief Operating Officer, Office of the Mayor
Kris McFadden, Transportation & Storm Water Department Director
Amanda Guy, Deputy City Attorney, City Attorney's Office
Ruth Kolb, Program Manager, Transportation & Storm Water Department
Karina Danek, Acting Program Manager, Transportation & Storm Water Department

#	Page	Section	Topic	Comment
1	N/A	General	TMDLs	<p>It appears that the Proposed Trash Amendments will in effect be an alternative to a TMDL, thereby preventing the need to develop trash TMDLs in the future. The City recommends additional language be added to clarify the intent of the State Water Resources Control Board with respect to the development of future TMDLs and that implementation of the Proposed Trash Amendments represents a single regulatory action addressing MS4 NPDES Permittee requirements thereby removing the need to develop wasteload allocations via a TMDL for MS4 NPDES Permittees. Multiple pollutant TMDLs are allowed a 20 year compliance schedule to achieve the necessary load reductions.</p> <p>Recommendation – Expand the compliance schedule to 20 years when trash is being included in a watershed with other TMDLs.</p>
2	D-1 E-2	III.I.6 IV.B.2	Compliance with Discharge Prohibitions and Receiving Water Limitations	<p>It is unclear whether implementation of Track 1 or 2 would ensure compliance with all of the provisions in the Proposed Trash Amendments, including the water quality objectives. Language should be included within the Proposed Trash Amendments to state that implementation of Track 1 or Track 2 constitutes compliance with the discharge prohibitions and receiving water limitations.</p> <p>Recommendation – Amend language in III.I.6 (Ocean Plan) and IV.B.2 (Inland Surface Waters, Enclosed Bays, and Estuaries Plan) as follows:</p> <p>The discharge of Trash to surface waters of the State, or the deposition of Trash where it may be discharged into surface waters of the State is prohibited. Compliance with this prohibition of discharge and with the receiving water limitations shall be achieved as follows:</p>

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3	D-2 E-2	III.L.2.a. IV.B.3.a.	Prioritization of Water Quality Conditions	<p>The Proposed Trash Amendments do not account for current watershed planning and prioritization efforts occurring throughout southern California. Under the current Phase I MS4 Permit for the San Diego Region (Order R9-2013-0001), the watershed Copermittees and stakeholders (including San Diego Water Quality Control Board, Region 9 staff) are required to identify, assess, and prioritize pollutants, including trash, within the various watersheds in the San Diego region. As proposed, the Proposed Trash Amendments will supersede recent planning efforts, diverting limited resources from the highest priority water quality conditions (e.g., bacteria) within a particular watershed to trash, which has often not been found to be the highest priority water quality condition in a watershed.</p> <p>The watershed planning and prioritization process in the Proposed Trash Amendments is well aligned with the San Diego Regional Water Quality Control Board's Practical Vision for protecting receiving waters. The Practical Vision creates a set of guiding principles including prioritization of water quality conditions based on receiving water quality, which is followed by implementation of strategies to address the highest priority water quality conditions.</p> <p>Implementation of the Proposed Trash Amendments should be required in watersheds where either trash has been identified as causing impairment or, if through a watershed management planning process, trash has been identified as the highest priority water quality condition. Where trash has not been identified as causing an impairment or as a highest priority water quality condition, it should be addressed according to current MS4 Permit requirements.</p> <p>Recommendation – Modify language in Section III.L.2.a. (Ocean Plan) and IV.B.3.a. (Inland Surface Waters, Enclosed Bays, and Estuaries Plan) as follows:</p> <p>a. <u>For discharges to waterbodies in which the beneficial uses are impaired by trash or discharges to waterbodies located in regions where MS4 permittees have determined trash to be a highest priority water quality condition pursuant to a watershed management program required under a MS4 Permit, MS4 permittees with regulatory authority over priority land uses shall comply with the prohibition of discharge in Chapter III.L.6.a. herein by either of the following measures:</u></p>

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4	D-3 E-2	III.L.2.a.(1) App I IV.B.3.a.(1) App A	Low Impact Development BMPs and Definition of Full Capture Systems	<p>The Proposed Trash Amendments state “treatment controls likely to be used for compliance with the proposed Trash Amendments may include installation of catch basins inserts within existing catch basins.” In many cases, municipalities are moving toward LID installations, so installing a catch basin insert may not line up with the green infrastructure plans. While LID is included as an option under Track 2, the amendments and certified trash capture devices should recognize LID measures under Track 1, as full-capture devices.</p> <p>Recommendation – Amend language for Track 1 as follows:</p> <p>(1) Track 1: Install, operate and maintain full capture systems (e.g., catch basin inserts, hydrodynamic separators, low impact development BMPs)</p>
5	D-3 E-2	III.L.2 IV.B.3	Priority Land Use Requirements	<p>The Proposed Trash Amendments appear to require implementation of Track 1 or Track 2 for <i>any</i> storm drain that captures <i>any</i> runoff from a priority land use. 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.</p> <p>Recommendation – Amend language for Tracks I and II to designate a threshold (e.g., priority land use covers a percent of the catchment area) that would trigger implementation within the catchment.</p> <p>(1) Track 1: Install, operate and maintain full capture systems in their jurisdictions for all storm drains that capture runoff in catchment areas where priority land uses comprise >25% of the land area in the catchment area.</p> <p>(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 priority land uses comprise >25% of the land area within the catchment area.</p>

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6	D-4 E-4	III.L.2 IV.B.3	Priority Land Use Designation	<p>As defined in the Proposed Trash Amendments, the defined priority areas may not be appropriate for all jurisdictions because they do not consider local knowledge of receiving water conditions and previous data collection efforts. As currently drafted, the amendments assume that there is a problem in the defined priority areas, effectively imposing a costly “one size fits all” approach onto the local jurisdictions. The City supports the concept of prioritized land uses to address problem areas; however, the approach should allow for more local flexibility in this prioritization.</p> <p>The City 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 Regional Boards to designate additional priority areas, it does not appear to provide flexibility for Responsible Agencies to lower the priority in certain areas. Local knowledge, supported by data, should suffice as justification for local jurisdictions to designate appropriate drainage areas as “non-priority,” regardless of land use.</p> <p>Recommendation – Modify language in Section III.L.2. (Ocean Plan) and IV.B.3 (Inland Surface Waters, Enclosed Bays, and Estuaries Plan) by adding Section III.L.2.e and IV.B.3.e, respectively, as follows:</p> <p>e. <u>A regulated MS4 permittee may determine which priority land use areas in its jurisdiction generate trash accumulation in receiving waters (or in areas adjacent to receiving waters) in such amounts that do not adversely affect beneficial uses, or cause a nuisance condition. In the event that the regulated MS4 permittee identifies such areas and provides data supporting such a finding, the permitting authority may waive the compliance requirement of Chapter III.L.2.a/IV.B.3.a for that MS4 permittee with respect to the identified priority land use locations. The regulated MS4 permittee shall submit documentation supporting a continued finding of no beneficial use impairment or nuisance condition with annual reports as required under Section III.L.6/IV.B.7.</u></p>

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7	D-4 E-4	III.L.2.c IV.B.3.c	Industrial and Construction Storm Water Dischargers	<p>Construction sites may generate significant amounts of trash and the City supports regulation of trash from facilities covered under the Construction General Permit. However, where construction does not result in the developed site falling into a priority land use category under the Proposed Trash Amendments, controls specific to trash should only be required during construction.</p> <p>Recommendation – Add language in Section III.L.2.c (Ocean Plan) and IV.B.3.c (Inland Surface Waters, Enclosed Bays, and Estuaries Plan) to clarify.</p> <p>Termination of permit coverage for industrial and construction storm water dischargers shall be conditioned upon the proper operation and maintenance of all <u>post-construction</u> controls as <u>required by local land development regulations</u> (e.g., full capture systems, other treatment controls, institutional controls, and/or multi-benefit projects) used at their facility(ies).</p>
8	D-4 E-4	III.L.2.d. III.L.3 IV.B.3.d IV.B.4	Regional Water Quality Control Board Discretion	<p>Through provisions III.L.2.d and III.L.3 (Ocean Plan) and IV.B.3.d and IV.B.4 (Inland Surface Waters, Enclosed Bays, and Estuaries Plan), the Regional Water Quality Control Board is provided discretion to add additional requirements for other sources, including non-point sources. While local flexibility may be appropriate (see Comments #3, #6), a statewide approach that provides broad discretion to Regional Water Quality Control Boards can result in uneven implementation and undermines the concept of a statewide approach.</p> <p>Recommendation – The Proposed Trash Amendments should provide clear guidance on how the discretion should be used by the Regional Water Quality Control Boards.</p>

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9	D-4 E-4	III.L.3 IV.B.4	Other Sources of Trash with Permit Requirements	<p>It is evident that other regulated sources (e.g., individual NPDES permit holders, agricultural operations) often contribute trash to receiving waters. While the City continues to work with its partners to identify successful management strategies for preventing trash from reaching receiving waters, it is critical that the Proposed Trash Amendments limit the liability of MS4 Permit holders for these other regulated sources and support a process that allows the City to apply its resources towards controlling trash within its areas of responsibility. The City recommends that the State Water Resources Control Board require that other regulated entities (e.g., individual NPDES permit holders, agricultural operations) implement the Proposed Trash Amendments through a regulatory process external to the NPDES Phase I and Phase II MS4 permits.</p> <p>Recommendation – Language in III.L.3 (Ocean Plan) and IV.B.4 (Inland Surface Waters, Enclosed Bays, and Estuaries Plan) appears to provide direction/authority to the permitting authority to address other sources of trash. Examples should be added to include other NPDES permit holders and agricultural operations. The language could be strengthened by citing the authority from which this oversight is provided in the California Water Code (i.e., CWC §13263, 13267). The State Water Resources Control Board should also include provisions to require implementation of the Proposed Trash Amendments, not only through inclusion in MS4 Permits, but through other NPDES Permits, WDRs, and Waiver Provisions.</p>

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10	D-6 E-6	III.L.5 IV.B.6	Time Extension for Regulatory Source Controls	<p>The City supports the option for time extensions where regulatory source controls are implemented and supports the concept of allowing credit for source control programs that are implemented prior to the effective date of the Proposed Trash Amendments. However, source control initiatives can take many years to come to fruition. Therefore, limiting the timeframes for implementation to three years from adoption may not be sufficient time to conduct research and outreach to communities in order to gain local support for true source control methodologies that may require behavioral changes on the part of the public.</p> <p>Due to the significant time necessary to develop and implement regulatory source controls, the three-year implementation timeframe in order to be considered for a time extension of the full compliance requirements, should be removed. In cases where regulatory source controls are employed within the 10-year compliance timeframe, Responsible Agencies should be eligible for the one year time extensions.</p> <p>Recommendation – Modify language in Section III.L.5 (Ocean Plan) and IV.B.6 (Inland Surface Waters, Enclose Bays, and Estuaries Plan) as follows:</p> <p>The permitting authority may give MS4 permittees that are complying under Chapter III.L.2.a up to a three (3) year time extension for achieving full compliance in areas where regulatory source controls are employed that take effect prior to or within <u>ten (10) years</u> of the effective date of these Trash Provisions. Each regulatory source control employed by an MS4 <u>permittee</u> will be eligible for up to a one (1) year time extension.</p>

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11	D-6 E-6	III.L.6.b. IV.B.7.b	Track 2 Demonstration of Performance	<p>Demonstration of performance under Track 2 should not be limited to monitoring. MS4 permittees should be allowed to propose the method of demonstrating performance in their implementation or watershed management plans. Receiving water monitoring should not be required since other sources outside of the control of MS4 permittees may contribute trash. While an entity may decide to conduct receiving water monitoring to demonstrate performance, it should not be mandated in the event another method is more appropriate (e.g., pounds of trash removed through a control measure).</p> <p>Further, The City has managed an extensive monitoring program for evaluating trash conditions at the MS4 major outfalls for 11 years. It is important for the Proposed Trash Amendments to recognize the value of existing data sets to answer management questions about the status and trends of any trash discharged from the MS4. As such, the Proposed Trash Amendments should include the flexibility to allow existing trash monitoring programs to continue under the Track 2 implementation requirements for areas that are not represented by a full capture device.</p> <p>Recommendation: Include a provision in Track 2 monitoring requirements to allow for existing monitoring programs to fulfill implementation requirements at MS4 outfalls not fitted with a full capture device, as long as monitoring efforts demonstrate that trash is not accumulating in amounts that adversely affect beneficial uses or cause a nuisance condition.</p>

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12	D-8 E-8	App I App A	Certification of Full Capture Systems	<p>The Proposed Trash Amendments indicate that the State Water Resources Control Board will take responsibility for the certification process for full capture systems, but those full capture systems previously certified by the Los Angeles Regional Water Quality Control Board would remain certified for use by permittees as a compliance method. A more extensive list of certified devices should be prepared prior to the adoption of the Proposed Trash Amendments. Full-trash capture devices vary widely in capital and maintenance costs. Therefore, having a better idea of the devices that will be certified is necessary for MS4 permittees to develop credible costs estimates that inform the permittees whether to commit to Track 1 or Track 2. Alternatively, the language could be revised to indicate that any full-capture device that meets the stated criteria fulfills the certification requirement.</p> <p>Additionally, the timeframe for obtaining certification is a concern. The Executive Officer approval process needs to have a rapid turnaround time to allow permittees to move forward with planning and installation within the time schedule granted.</p> <p>Recommendation – Amend language in Appendix I to define full-capture systems as follows:</p> <p>Prior to installation, full capture systems must be certified by the Executive Director, or designee, of the State Water Board. Uncertified full capture systems will not satisfy the requirements of these Trash Provisions <u>unless they meet the criteria for full capture systems as defined above.</u></p> <p>Recommendation – Modify the compliance schedule to start when the state of California provides a list of certified full capture systems.</p>

Attachment: City of San Diego Comment Table Regarding Proposed Amendments to Statewide Water Quality Control Plans to Control Trash

#	Page	Section	Topic	Comment
13	N/A	General	Actual Costs and Implementation	<p>The City has many responsibilities and recognizes the importance of finding cost-effective approaches to provide the services our community requires and expects, while providing safe and clean water. As one of the largest cities in California, the expected costs to implement the Proposed Trash Amendments will be substantial and the value of implementing the provisions on a City-wide basis is uncertain given that trash has often not been identified as a receiving water priority through the watershed planning processes required under the current MS4 Permit (Order R9-2013-0001). Furthermore, the City's funding is limited and catch basin inserts and other likely control devices will not be considered eligible for the water supply exception resulting from AB 2403.</p> <p>As noted in previous comments (see comments #3, #6), the City would prefer that the Proposed Trash Amendments allow local jurisdictions to prioritize trash as a highest priority water quality condition, where substantiated, by taking into account all other water quality conditions and regulatory obligations. Further, the City should be allowed to use recently collected data to evaluate existing land uses to determine where there is a need for trash control, thus resulting in the implementation of controls where necessary and appropriate. It would not be a prudent use of public funds to implement trash controls in all priority land uses, as designated in the Proposed Trash Amendments, without a local evaluation of the problem where data are available.</p> <p>Recommendations – Modify language in Section III.L.2.a. (Ocean Plan) and IV.B.3.a. (Inland Surface Waters, Enclosed Bays, and Estuaries Plan) as follows:</p> <p>(1) <u>For discharges to waterbodies that are impaired by trash and for discharges to waterbodies located in regions where MS4 permittees have determined trash to be a highest priority water quality condition pursuant to a watershed management program required under a MS4 Permit, MS4 permittees with regulatory authority over priority land uses.</u></p> <p>(2) Modify language in Section III.L.2. (Ocean Plan) and IV.B.3 (Inland Surface Waters, Enclosed Bays, and Estuaries Plan) by adding Section III.L.2.e and IV.B.3.e, respectively, as follows:</p>

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				<p>e. <u>A regulated MS4 permittee may determine which priority land use areas in its jurisdiction generate trash accumulation in receiving waters (or in areas adjacent to receiving waters) in such amounts that do not adversely affect beneficial uses, or cause a nuisance condition. In the event that the regulated MS4 permittee identifies such areas and provides data supporting such a finding, the permitting authority may waive the requirement of Chapter III.L.2.a/IV.B.3.a for that MS4 permittee with respect to the identified priority land use locations. The regulated MS4 permittee shall submit documentation supporting a continued finding of no beneficial use impairment or nuisance condition with annual reports as required under Section III.L.6/IV.B.7.</u></p> <p>Recommendation –Please provide all calculations, notes, and assumptions used to determine proposed costs shown in Appendix C, Section V.</p>