



Environmental Services Department

WATERSHED PROTECTION

August 5, 2014



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

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

The City of San José (City) appreciates this opportunity to comment on the Draft Amendments to the Statewide Water Quality Control Plans to Control Trash. The City supports the goals of the amendments and is encouraged that the State Water Resources Control Board (State Board) is seeking to address the issue of trash reduction. The City is pleased that the State Board is open to alternative approaches regarding this complex issue in the interest of ensuring that San José and the other Bay Area Phase I cities can continue to build upon their extensive efforts to reduce trash in our creeks and waterways. For this reason, the City of San José supports the recommendations proposed in the comment letter submitted by the Bay Area Stormwater Agencies Association (BASMAA) regarding the proposed amendments.

For many years already, the City has assigned high importance to the issue of trash reduction and has directed significant resources to planning and implementing strategies to address it. The City's Long-Term Trash Load Reduction Plan¹ documents the City's strong commitment to reduce trash, and improve the quality of life for its community. Although the City's plan has been only partially implemented, it has already resulted in an observable reduction of trash entering the municipal separate stormwater sewer systems (MS4). The City wishes to continue towards full implementation of its Long-Term Plan, confident that this carefully planned approach is the most appropriate for trash reduction and the improved health of our urban waterways. In addition to a full-time staff in the City's Environmental Services Department dedicated solely to trash reduction, staff from other City departments including Public Works, Transportation, Housing, and Parks, Recreation, and Neighborhood Services are also focused on trash and litter abatement as part of their core responsibilities. To date, the City has installed nine continuous deflective separators (CDS)– treating 1,441 acres of urban service area that are most burdened by trash – throughout San José at a cost of over \$2.5 million and has plans to install up to 20 additional units over the next 3 years at an estimated cost of \$14 million. These planned CDS units have the potential to triple the City's full-trash capture treatment capacity. In addition,

¹ Available at
http://www.waterboards.ca.gov/rwqcb2/water_issues/programs/stormwater/MRP/C10/2014/Santa_Clara_County/San_Jose.pdf

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exceeding the 32 hot spot cleanups mandated by the San Francisco Bay Area Phase I Municipal Regional NPDES Permit (MRP), the City has implemented a series of new creek and shoreline cleanup programs since 2010 and has invested significant additional funding in fiscal year 13-14 collecting 1,500 tons of trash and debris from local creeks and waterways. The City continues to act as a regional leader in the efforts to adopt vigorous new source control reduction policies.

As stated previously, the City supports the recommendations proposed in the comment letter submitted by the Bay Area Stormwater Association Agencies (BASMAA) regarding the proposed amendments. The City wishes to reiterate and expand upon two primary BASMAA recommendations for revisions to the proposed amendments to:

1. Provide consistency between the proposed narrative Water Quality Objective and trash discharge prohibitions by revising the prohibitions to include language that qualify that the trash discharges being prohibited and controlled by the specified implementation requirements, is the trash “in amounts that cause impairment of beneficial uses or conditions of nuisance in receiving waters”.
2. Create an alternative that supports the progress of the Bay Area Phase I MS4s. San José and other cities regulated under the Bay Area Phase I permit have already spent considerable time and resources identifying, mapping, assessing, and programming high trash generating areas in their respective jurisdictions. The option of an alternative track will allow Bay Area cities to continue to focus on their high trash generation areas and implement their specific implementation plans.

As currently written, Track 2 uses simplified land use designations to identify high trash generation areas. This varies significantly from the approach established by the Bay Area Phase I permittees. The proposed Track 2 approach does not contemplate the importance and necessity of applying local knowledge, nor does it account for site-specific variation. While Track 2, as currently drafted, will provide a valuable roadmap for Phase II jurisdictions that have not yet developed plans for trash reduction, it represents a step backward for San José and other cities that have spent years and millions of tax dollars preparing and submitting the required planning and compliance documentation and have made significant progress in targeting high priority trash generation areas.

In addition to the primary comments and recommendations above, the following comments are presented in the interest of enhancing the State Board’s draft by taking advantage of the substantial experience of San José and other Bay Area municipalities in implementing jurisdiction-wide measures, and characterizing and managing high trash generating areas.

Additional Comments

1. The City supports the use of Institutional Controls as discussed in the State Amendments. However, granting a brief time extension for regulatory source control efforts, understates the significance of such actions in improving on-land and receiving water

conditions. The City is observing direct environmental improvements and has documented significant reductions in plastic bag litter as a result of its single-use bag ordinance. City staff has observed a 59% reduction of plastic bag litter on streets and a 71% decrease in single-use disposable bags found at MRP required creek hot spot cleanups. In observing consumer behavior at retail locations, staff has observed an 87% reduction in the use of single-use bags and significant increases in the number of customers using reusable bags (from 3% pre-ordinance to 58% post-ordinance) or not using bags at all (from 13% pre-ordinance to 44% post-ordinance). In addition to these positive improvements, paper bag use has also decreased by 23%, contrary to concerns that the public would switch from one single-use product to another.

Additional weight should also be given to these ordinances due to their effectiveness at removing pollutants that are particularly problematic in receiving waters. In addition to plastic bags, another example of product ban effectiveness may be found in the City's expanded polystyrene or EPS ordinance. A 2000 Caltrans study² showed a high incidence of paper on public streets but a much lower percentage of paper in storm drains while the percentages of EPS on streets and in storm drains stayed relatively constant. This study points to the durability of specific pollutants such as EPS in the MS4 system and brings to light the fact that not all pollutants are created equal. The characteristics that make plastic bags and EPS problematic include their ability to be easily transported to waterways due to their light weights, their highly visible nature in our local creeks, and their propensity to break into smaller and smaller pieces that persist and are difficult to remove. In addition to these characteristics for EPS, the National Academy of Sciences recently confirmed the listing of styrene, at a minimum, as a reasonably anticipated human carcinogen³ in the National Toxicology Program's 12th Report on Carcinogens.

Based on this data and the other supporting studies, the City strongly disagrees with the discussion in the final paragraph of page A18 and respectfully recommends to the State Board staff that this paragraph be stricken from the document due to the number of factual errors and misrepresentations that it presents.

At the time the City passed its single-use bag ordinance, it was the largest city to do so, creating the most encompassing ordinance to date. The work needed to achieve this milestone cannot be understated. Approximately 2.5 years of stakeholder outreach was followed by an additional year of targeted outreach focused on getting retailers and the public ready for implementation. Thirty stakeholder meetings were held in two years and 85,000 reusable bags were distributed.

The City also recommends that the State Board use its authority to incentivize local government collaboration to support statewide advocacy for development of product and

² California Department of Transportation District 7 Litter Management Pilot Study. Caltrans document number CT-SW-RT-00-013

³ <http://www8.nationalacademies.org/onpinews/newsitem.aspx?RecordID=18725>. Accessed July 30, 2014.

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packaging redesign, take-back programs, and deposit legislation. The State Board has an opportunity to provide incentives for creating a collaborative environment that bring local governments together with regulators, private industry, and other stakeholders to work on product stewardship initiatives aimed at specific items such as cigarette butts and other forms of single-use packaging. The State Board can help create positive momentum at a statewide level to affect real change. An example of such an effort is the Brake Pad Partnership or the National Paint Task Force, which led to the successful industry-run Paint Share take-back program. The State Board can make significant lasting contributions to trash reduction through the support of such efforts.

2. The City recommends that the State Board add language that more clearly specifies the expectation that Caltrans and MS4 Phase II permittees will coordinate and fully capitalize on the opportunities presented by combining resources.

The City supports the goals of the State Board trash amendments, but the effort needs to include an alternative track that helps facilitate the Bay Area Phase I co-permittees' current trajectory for compliance. We ask the State Board to give full consideration to our comments as well as the recommendations proposed by BASMAA. Please do not hesitate to contact me if you would like to discuss these comments further or have questions.

Sincerely,



NAPP FUKUDA
Deputy Director