

City of  
**SACRAMENTO**  
Department of Utilities



August 5, 2014  
(140264: ke)

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State Water Resources Control Board  
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Electronic Submission: [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)

**SUBJECT: Comments on the Draft Amendments to Statewide Water Quality Control Plans to Control Trash**

The City of Sacramento (City) appreciates the opportunity to provide comments on the Draft Amendments to Statewide Water Quality Control Plans to Control Trash (Proposed Trash Amendments), as issued by the State Water Resources Control Board in June 2014.

As proposed this effort will have significant financial impacts on Municipal Separate Storm Sewer System (MS4) communities that are successfully implementing trash mitigation measures. The City agrees with the concept of implementing a policy on trash that is consistent statewide, but it should be based on a scientific methodology that is calibrated to the impacts of trash on a community and its local waterways. This approach, coupled with the State taking firm action on source control and funding of MS4 trash mitigation programs through producer fees, would provide a much more robust solution to the issue.

The City has reviewed the Proposed Trash Amendments in collaboration with the Sacramento Stormwater Quality Partnership (SSQP) and the California Stormwater Quality Association (CASQA) and incorporates the SSQP and CASQA comment letters on the Proposed Trash Amendments by reference in the City's comments. The City provides the following additional comments on the Proposed Trash Amendments:

**1. Proper identification of impacts from trash on communities**

The Proposed Trash Amendments stem from identified trash-impaired water bodies in highly populated regions of the state (Los Angeles, San Francisco, San Diego, and Colorado River Basin). The City appreciates the efforts of the State and Regional Water Boards to work with municipalities to address the nature of this problem specific to these areas. The current proposal uses studies from these areas and superimposes these solutions statewide. This extrapolation does not translate to the City or other communities of lesser population densities, differing geography, and demographics.

The Proposed Trash Amendments clearly are focused on MS4 discharges as the primary contributor of trash. This is evidenced by the structure of Track 1 and Track 2 alternatives for compliance. For Track 1 compliance, only MS4 discharges are addressed. This track fails to address other sources of trash in waterways which can be the primary contributor of trash in many communities. This could result in implementation of an expensive and ineffective prescriptive methodology for many communities, without any measurable results from a baseline condition to assess true effectiveness.

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Track 2, as proposed, does create somewhat of a methodology for assessment and measurement, but creates an endless process of chasing an unachievable goal of zero trash. Failure to be able to achieve this goal under Track 2 will drive many municipalities to move toward Track 1 based purely on the potential of third party lawsuits and not on what is best for water quality.

We recommend that the Proposed Trash Amendments be modified to require a clearly-defined methodology to perform these assessments to determine the actual impact of trash in all MS4 jurisdictions. This assessment should not be limited to trash from MS4 discharges, but should include identification of all sources (i.e. illegal dumping, windblown trash, etc.). This would allow the municipalities to calibrate their efforts to mitigate trash based on what is the major source contributor. If implemented thoughtfully, the State could be provided much needed data on the primary sources of trash, which could drive science-based regulations for source control.

## **2. Treat the cause, not the symptom, through source control**

The proposed regulations place an undue burden on MS4 communities and do not require the producers of products that negatively impact the environment to be part of the solution. Plastics, fast food wrappers, cigarette butts, and other single use items are the bulk of the items that are contributing to trash in waterways. Where possible the State should take action to eliminate or reduce the source of trash. Through forward-thinking programs, and working with other State agencies such as the Department of Resources Recycling and Recovery, trash reduction can be achieved through statewide bans on specific products and increased fees to incentivize recycling.

There are many great examples already in place where source control or alternative products have been effectively implemented statewide. Chlorpyrifos and Diazinon were once used as primary pesticides for decades and resulted in impairments in water bodies in many regions. Copper used in brakes is also a water quality problem. Through statewide phasing out of these products, and changing to alternative materials that achieve the same results, these impairments are no longer ongoing threats to water quality.

In cases where elimination of a product is not feasible, such as the use of plastic and glass bottles, significant trash reductions could be achieved by increasing redemption values and making recycling more convenient. The Cal Recycle program for waste oil can be a model for implementing and funding these types of activities.

Source control and funding for trash mitigation should be borne by the producer and consumer of these products. By placing the burden to mitigate these issues on municipalities the Proposed Trash Amendments do little to address the source of the issue for the long term.

## **3. Proposed Trash Amendments should be integrated into the pollutant prioritization programs established in MS4 permits**

The City has over 20 years of water quality data that is used to establish which pollutants of concern (POC) or target pollutants are the highest priority for the community. Programs and funding have been defined based on the prioritization of the water quality conditions. The Proposed Trash Amendments will require funding for



implementation, which with the limitations of Proposition 218 will likely require the recalibrating of funds from other water quality priorities. Effectively trash will be the highest priority for funding and resources, while identified watershed based priorities become a secondary issue.

The Proposed Trash Amendments need to recognize the value of current management programs and not divert resources away from ongoing successful efforts to control trash in our waterways or place additional demands on already limited resources. We urge the State Water Board to allow MS4 programs with existing POC-focused water quality implementation plans to address trash in the prioritization context of those existing plans.

#### **4. Proposed Trash Amendments Impose Significant Costs Without Cost Reimbursement**

The cost to local government of complying with the Proposed Trash Amendments is significant. The economic analysis included as Appendix C to the Draft Staff Report estimates an incremental annual cost for Phase I MS4s ranging from \$4 to \$10.67 per capita. This cost estimate includes capital and operation and maintenance (O&M) costs, but the analysis excludes costs of developing implementation plans, monitoring, and reporting, citing the uncertainty of such costs.

For the City of Sacramento, with a population of approximately 475,000 residents, using the State Board's own economic analysis translates to an additional annual cost ranging from \$1.9 million to \$5.07 million to implement the Proposed Trash Amendments. As noted, this does not include costs of developing implementation plans, monitoring, and reporting, which also can be significant based on the City's experience with the development of implementation plans, monitoring, and reporting to meet other NPDES requirements.

The Draft Staff Report does not include any explanation or discussion of how agencies responsible for operation of MS4s, like the City, are expected to pay these significant additional costs to address a problem – the deposit of trash – that the agencies do not create and cannot fully control. The City funds its MS4 NPDES permit compliance from storm drainage rates paid by City businesses and residents. The City's storm drainage system currently has a significant backlog of unmet capital improvement needs because the lion's share of annual revenues from storm drainage rates must be spent to meet current O&M requirements. Adding capital, O&M, implementation, monitoring, and reporting requirements to the City's NPDES permit to comply with the Proposed Trash Amendments will impose significant new costs that the City cannot fund with its current storm drainage rate revenues. Unless funding is provided by the State or from other sources, these new requirements may constitute an unfunded State mandate subject to reimbursement under article XIII B, section 6 of the California Constitution.

Section 6 of article XIII B provides, in relevant part: "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service . . ." This subvention requirement does not extend to federally mandated programs (Government Code § 17556 (c)), and a program that requires a higher level of service does not constitute a mandate within the meaning of article XIII B, if the

local agency has the authority to levy charges, fees, or assessments sufficient to pay for the program (Government Code, § 17556 (d)).

The subvention requirement should apply in this instance, because: (1) the Proposed Trash Amendments are not federal mandates since they exceed any specific requirements for MS4s specified in the Clean Water Act or other federal law; and (2) while the City has authority to impose storm drainage rates to pay its cost to comply with the Proposed Trash Amendments, this authority is significantly constrained by the constitutional requirement specified in Proposition 218 (California Constitution article XIII D, section 6, subd. (c)) for voter approval of any increase in storm drainage rates. Further, the recent passage of Proposition 26 (California Constitution article XIII C, section 1) prevents the City from adopting new regulatory fees to fund such costs without voter approval of a special tax.

For these reasons, imposing the Proposed Trash Amendments on the City's MS4 permit without providing funding may create an unfunded State mandate for which reimbursement will be required.<sup>1</sup>

#### **5. Compliance with Proposed Trash Amendments does not ensure compliance with the Water Quality Objective**

MS4s communities would be considered in full compliance with the prohibition of trash discharge so long as they were fully implementing Track 1 or Track 2. However, the Proposed Trash Amendments do not indicate that meeting the discharge prohibition requirements would also mean the MS4s are in compliance with the stated narrative water quality objective. The City requests language be added to the Proposed Trash Amendments indicating that the MS4s are in compliance with the receiving water limitations so long as they are fully implementing Track 1 or Track 2.

In conclusion, the City believes that the intent of the Proposed Trash Amendments has merit, but fails to address the issue in a well-rounded and scientific manner. We look forward to working with the Board on a collaborative process to move this issue forward and create a consistent trash policy that also addresses the unique nature of each community.

Based on our comments and those comments and concerns expressed by stakeholders at the July 16, 2014 workshop, the City requests that when the revised draft of the Trash Amendments is released for public review that the entire document, not just the changed text, be open for further comment. This will allow stakeholders to consider the revisions in the context of the entire proposal.

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<sup>1</sup> On January 29, 2014, the California Supreme Court granted review of the Second District Court of Appeal decision in State Department of Finance v. Commission on State Mandates (2013) 220 Cal.App.4th 740, which determined that certain MS4 NPDES permit requirements imposed by the Regional Water Quality Control Board in Los Angeles County did not constitute unfunded State mandates subject to reimbursement. As a result of the Supreme Court's grant of review, the Court of Appeal decision has been depublished and may not be cited for any purpose. The California Supreme Court's decision may provide further guidance on this topic.



If you have any questions regarding this submittal, please contact me at 916-808-1455 or via email, [shuun@cityofsacramento.org](mailto:shuun@cityofsacramento.org).

Sincerely,



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