

VIA EMAIL

December 14, 2016

California Water Quality Control Board – San Diego Region
2375 Northside Drive, Suite 100
San Diego, CA 92108-2700
Attention: Christina Arias
Email: sandiego@waterboards.ca.gov

Subject: **Comment – Tentative Order No. R9-2016-0205 Reference 786088,**
Attn: CArias

Dear Ms. Arias:

The San Diego Unified Port District (District) appreciates the opportunity to provide comments in response to the Tentative Order No. R9-2016-0205, *Investigative Order Directing the Owners and Operators of Phase I Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds within the San Diego Region to Submit Technical and Monitoring Reports Pertaining to the Control of Trash From Phase I MS4s to Ocean Waters, Inland Surface Waters, Enclosed Bays and Estuaries in the San Diego Region* (referred to herein as Tentative Investigative Order). Pursuant to Statewide Trash Amendments, the Tentative Investigative Order proposes to require written notice from each San Diego Regional municipal Copermittee (Copermittee) of their chosen trash control measure selection that complies with the State Water Quality Control Board's (State Board) trash discharge prohibition, as well as implementation plan submittals, where required.

As public trustee of San Diego Bay (Bay), the District shares a common interest with the San Diego Regional Water Quality Control Board (Regional Board) in ensuring the protection of the Bay's beneficial uses. The District supports the Regional Board's continued efforts to address trash issues within the Bay and the surrounding inland waters, and remains committed to working collaboratively with the Regional Board to fulfill our respective agencies' shared goals. To this end, the District respectfully submits the following comments on the Tentative Investigative Order.

Subject: **Comment – Tentative Order No. R9-2016-0205 Reference 786088**

Attention: Christina Arias

Page 2

- 1. The deadlines for Copermittees to select an implementation track (Track 1 or 2) and submit an implementation plan (Track 2 only) should be extended until guidance for using full-capture devices has been released from the State Board.**

Per the Tentative Investigative Order, written notices from Copermittees are due within three (3) months from the date of adoption of the Tentative Investigative Order regardless of whether Track 1 or Track 2 is selected. Since the adoption of the Statewide Trash Amendments, the State Board has been developing new guidance pertaining to the identification of certified full-capture devices, full capture equivalency, and alternate/equivalent land uses; however, this guidance has not been completed. The State's guidance on approved full-capture devices can help Copermittees make informed management decisions, as the devices vary significantly in upfront, operating, and maintenance costs. The District recommends the Tentative Investigative Order timelines be set in accordance with the release of the State's guidance document so Copermittees can incorporate the related information into their track selection process (i.e. three (3) months after State's guidance is released).

In addition, Copermittees that select Track 2 are required to submit an Implementation Plan within 18 months of the adoption of the Tentative Investigative Order. However, the 2018 permit language has not been drafted, and Track 2 Copermittees will be required to submit an Implementation Plan without having a clear understanding of the trash related requirements that may be included in the permit. The District strongly recommends the Implementation Plan submittal correspond with the release of permit language that will be included in the 2018 MS4 permit.

- 2. Remove Directive 3 requiring a written plan for Copermittee and Caltrans coordination.**

Directive 3 (page 10) of the Tentative Investigative Order requires Copermittees to coordinate with Caltrans, yet there is no language within the current Caltrans permit; nor is there a Tentative Investigative Order issued to Caltrans requiring the same actions. As such, there is nothing that mandates Caltrans to reciprocate coordination. The District suggests either removing the Caltrans coordination requirement from the Tentative Investigative Order until the same language is issued to Caltrans by means of a permit amendment or Investigative Order; or softening the language to match the current MS4 permit in regards to Caltrans (which simply advises working with Caltrans when possible).

3. The specific monitoring and reporting requirements related to the State Trash Amendments should be available to Copermittees prior to the track selection deadline.

The Tentative Investigative Order has no specific language regarding Track 2 monitoring and reporting requirements. As a result, there are many unknown factors relating to associated monitoring costs and resource requirements that may result from selecting Track 2. Copermittees cannot reasonably be expected to submit their track selection without a clear awareness of the monitoring and reporting requirements for each track. The District recommends including specific monitoring and reporting language in the Tentative Investigative Order.

4. The Tentative Investigative Order should include guidance language and provisions for selecting a track and switching tracks.

Currently the Tentative Investigative Order does not provide language for adjusting management approaches and options to pursue an alternate track should a Copermittee realize, upon initial implementation, that the track declared by their agency is not the most effective approach to manage trash within their MS4. Given that these regulations are new, guidance and flexibility is necessary during the initial implementation process. In the spirit of adaptive management, a provision describing a structured process that enables a Copermittee to switch tracks after their original declaration should be included in the Tentative Investigative Order.

5. Language addressing the jurisdictional liability related to trash from sources outside a Copermittee’s jurisdictional authority and nonpoint sources should be added to the Tentative Investigative Order.

The District requests that the Regional Board include language clarifying that a Copermittee is not liable for any trash resulting from MS4 facilities that the Copermittee does not own or operate. The District recognizes that trash from upstream jurisdictions has the potential to impact receiving waters or portions of the MS4 at or near “end of pipe” locations. For example, San Diego Bay is the receiving water body for a large watershed in which the District is located at the extreme end. Several portions of MS4 systems traverse District tidelands but are owned or operated by upstream Copermittees. Further, the District recognizes that trash also may enter the receiving water from the ocean via tidal transport and surface currents. With this in mind, the District supports jurisdictional accountability throughout the watershed and encourages the Regional Board to incorporate these concepts in both the Tentative Investigative Order and the 2018 MS4 permit renewal.

Subject: **Comment – Tentative Order No. R9-2016-0205 Reference 786088**

Attention: Christina Arias

Page 4

The comments offered in this document by the District are suggestions to assist the Regional Board in effectively implementing the State Trash Amendments. The District also supports the County of San Diego's red-line version of the Tentative Investigative Order as many of the District's aforementioned comments are addressed by the County's proposed changes. The District is committed to participating in management programs that assist in achieving our respective agencies' shared goal of improving water quality in San Diego Bay. The District greatly appreciates the Regional Board's continued efforts to achieve clean water and looks forward to continued collaboration on cleanup and monitoring efforts throughout the Bay.

If you have any questions or would like additional information related to the comments submitted herein, please contact Kelly Tait at (619) 686-6372 or via email at ktait@portofsandiego.org.

Sincerely,



Karen Holman
Principal,
Planning & Green Port
San Diego Unified Port District

CC: Jason Giffen, Assistant Vice President, Planning & Green Port
John Carter, Deputy General Counsel
Kelly Tait, Senior Environmental Specialist