

March 20, 2012



Mr. John Muller, Chair
Attn: Mr. Dale Bowyer - dbowyer@waterboards.ca.gov
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

Dear Chair Muller,

On behalf of the California Grocers Association I write to inform you of our concerns with the “Applicable Trash Control Measures” outlined in the “Trash Load Reduction Method” dated February 1, 2012. We believe the control measures include recommendations that could jeopardize the ability of licensed food facilities, such as grocery stores, to fulfill their mandates under California food safety law. While we understand and respect your focus on storm water issues, we believe contradictory regulatory requirements are being created and should be further reviewed.

The California Grocers Association is a non-profit, statewide trade association representing the food industry since 1898. CGA represents approximately 500 retail member companies operating over 6,000 food stores in California and Nevada, and approximately 300 grocery supplier companies. Retail membership includes chain and independent supermarkets, convenience stores and mass merchandisers. CGA members include a large number of grocery companies operating throughout the San Francisco Bay Area.

The greatest area of concern is CR-7: Single-Use Food And Beverage Ware Ordinances which allows stormwater reduction credit for ordinances which require a discount for “Bring Your Own” food packaging or a fee on single-use beverage ware. As food retailers we have the legal and moral responsibility to provide to customers safe food in accordance with California Health and Safety Code, Part 7. California Retail Food Code. A large portion of this code is focused on the cleanliness of food facilities and food handling practices to ensure consumer safety.

By encouraging “Bring Your Own” food service ware you are asking food facilities to accept and use food containers brought to the store by the consumer. There is no possible way for a food facility to ascertain the cleanliness of a food container brought in by a consumer. Therefore, this mandate would force food facilities to package food in potentially dangerous containers, which could contain contaminants, vermin or pathogens, and not only contaminate the packaged food, but introduce various contaminants to food preparation areas or the food facility itself.

From a practical standpoint if a “Bring Your Own” container was mandated for use at a food facility it would force the facility to clean and sanitize the container, any utensils coming into contact with the container, and the food preparation area for every container used. In some cases the use and handling of the container in food preparation areas could also cause food products to become adulterated and therefore unusable. California Retail Food Code affecting this process includes Chapter 4 Article 1, Chapter 5, and Chapter 7 Article 7, among others.

Mr. John Mueller
March 20, 2012
Page 2

In every case a food facility subject to consumer brought food packaging mandates would be forced to make expensive, and in some cases impossible, operational changes, all of which would include increased use of water and power. The only other opportunity would be for food facilities to only provide prepackaged food containers, which local ordinances rarely have control over.

Beyond the health and safety concerns of mandating “Bring Your Own” container use, CGA also believes state and local jurisdictions are prohibited from mandating a discount or rebate for use or sale of a product. Beyond the legal question, this requirement would only serve to exacerbate the health and safety issues associated with consumer brought containers. We also believe a fee, where the jurisdiction would receive a portion of the monies collected, would require a 2/3 vote of the people in accordance with Proposition 26.

CGA respectfully asks for a review of CR-7: Single-Use Food And Beverage Ware Ordinances in consultation with the California Department of Public Health and other appropriate food safety experts, including food facility operators, before moving forward. We believe you will find the risk of impacting food safety, the conflicts for food facilities to comply with the is mandate and the California Retail Food Code simultaneously, the increased use of resources, especially water, and the inability for local jurisdictions to mandate discounts or control prepackaged food will necessitate dropping this option.

Thank you for your consideration and please contact CGA if you have any questions or to receive food industry information on these matters.

Sincerely,



TIMOTHY M. JAMES
Manager, Local Government Relations