



**Santa Clara Valley
Urban Runoff
Pollution Prevention Program**

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Submitted via email on November 3, 2010

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Jeanine Townsend
Clerk to the Board
California State Water Resources Control Board
Division of Water Quality
1001 J Street, 24th Floor
Sacramento, CA 95814

**Subject: CEQA Scoping for the Proposed State Water Quality Control Policy for
Controlling Trash in Waters of the State**

Dear Ms. Townsend:

This letter is submitted on behalf of the Santa Clara Valley Urban Runoff Pollution Prevention Program (Program) regarding the Proposed State Water Quality Control Policy for Controlling Trash in Waters of the State (Proposed Trash Policy). The Program is an association of 13 cities and towns in the Santa Clara Valley, Santa Clara County and the Santa Clara Valley Water District. Program participants are regulated under a common NPDES permit to discharge municipal stormwater to South San Francisco Bay. The NPDES permit contains specific requirements for reducing trash discharged from municipal separate storm sewer systems (MS4s) to Bay Area receiving waters.

The Program appreciates the opportunity to submit comments on the planned development of the Proposed Trash Policy. Our comments below summarize the Program's most central issues of concern and provide recommendations to help focus the Policy and make it successful in reducing trash in Waters of the State. Our comments are organized into two sections. Our comments are also offered to help ensure that the State Water Board conducts an adequate CEQA review on any Trash Policy it considers so that potentially adverse environmental impacts associated with implementation of such a policy — be they short term or ongoing, or individual or cumulative — are identified, analyzed, and either avoided or mitigated.

The first section of our comments provides general comments and recommendations that the State Water Resources Control Board (Water Board) should consider prior to moving forward on the development of the Proposed Trash Policy. The second section offers comments on the potential elements presented in the State Water Board's "Informational Document" - Public

General Comments

1. Stakeholder Involvement - The State Water Board should incorporate a process into the planned development of the Trash Policy that provides for active stakeholder participation, including representation from municipal stormwater programs and other agencies heavily experienced in trash and litter reduction (e.g., Cal Recycles). In current parallel Policy developments by the State Water Board (e.g., freshwater bio-objectives, nutrient numeric endpoints and sediment quality objectives), stakeholder advisory groups have been developed and incorporated into the process. This involvement provides the opportunity for active participation and opportunities for input from affected public agencies as the Policies are developed.
2. Clarification of the State Water Board's Role - The State Water Board has an essential statewide role in preventing and controlling trash in Waters of the State. We believe that the creation of a well considered Trash Policy offers the State Water Board an opportunity to provide guidance to Regional Water Boards that fulfills the State Water Board's statewide leadership role. There are a number of essential trash water pollution prevention and funding activities that could be implemented by the State Water Board and/or Regional Boards. The following describes the role that the State Water Board should have in pursuing true source control for trash, seeking funding for local governments to implement trash controls, and conducting needed research. These activities have a higher priority for the State Water Board than lower priority activities, such as refining and/or developing existing trash control water quality objectives or Basin Plan trash prohibitions.
 - A. Trash "True" Source Control - The State Water Board could take the lead in identifying how to minimize the "true" sources of litter and trash that pollute certain of the state's waterways. One of the benefits of focusing on true source control for trash is that it would help solve trash water quality problems from multiple sources, not just MS4s. The recent adoption of SB 346 provides an example of true source control for an important source of copper impairing and threatening to impair various waters throughout the state. This legislation will require brake pad manufacturers to reduce the use of copper to no more than 5 percent by 2021 and no more than 0.5 percent by 2025. In a similar fashion, the State Water Board could initiate trash true source control by working with manufacturers and users of items that become important sources of trash and litter in waterways. This collaboration should identify alternatives for reducing priority litter generating uses and implement solutions by promoting the passage of appropriate legislation and facilitating the implementation of voluntary initiatives. For example, the State Water Board could take a lead role in developing a prohibition on the manufacture and use of specific items like expanded polystyrene and plastic bags, which have been found to be problematic in waterways. It makes much more sense to have a unified statewide policy. It is anticipated that achieving true source control will be more cost-effective than building and maintaining potentially hundreds of thousands of trash control devices on every storm drain system, and it will have a more widespread, sustainable, and cost-effective result aimed at protecting beneficial uses. Working on true source control will also engage the people and organizations.

that are most essential for identifying creative and practical solutions to the trash water pollution problem.

B. Trash Control Funding - An essential role for the State Water Board to champion is to identify and obtain funding for local governments implementing trash controls and to pursue the legislative and/or voter approvals needed to secure adequate long-term funding. Since litter and trash control is a statewide problem, it makes sense for the State Water Board to take the lead in seeking long-term funding to solve this problem. To its credit the State Water Board has already taken some initiatives in this area through its awarding of ARRA grant funds for trash control projects, such as the \$5 million grant awarded to the San Francisco Estuary Partnership and Association of Bay Area Governments (ABAG) for its trash demonstration project in the San Francisco Bay Area. While much appreciated, this funding is significantly limited in scope, addressing a small portion of the Bay Area requirements and does not address long-term maintenance concerns. Adequate funding is essential for the implementation of trash control activities, including public education, construction and maintenance of appropriate trash control devices, or staffing additional trash clean ups. There is currently an inadequate level of funding available for trash control, and this will continue to hamper the implementation of trash control solutions in the future. The current approach of putting most of the funding responsibilities on the municipal separate storm sewer system dischargers has proven inadequate to achieve needed trash controls. The State's experience has mirrored this trend. For example, Caltrans is focusing its limited financial resources on meeting its trash control TMDL obligations in the Los Angeles Regional Water Board area, while trash problems from Caltrans' facilities in northern California are largely ignored.

C. Research - An additional essential role for the State Water Board is to undertake or sponsor research to better understand the trash problem in order to be able to identify more cost-effective solutions. Examples of the types of questions that should be addressed at a statewide level include the following:

- i. Do certain types of trash items (e.g., plastic bags, plastic wrappers, preproduction plastic pellets) disproportionately impact beneficial uses? If so, are there discernible relationships between various land uses and the types of trash items?
- ii. What types of priority trash items could be reduced using various true source control tools, such as legislating outright bans or additional use charges, other disincentives for use, or requiring the use of alternative, less polluting wrappers and containers.
- iii. What level of trash (e.g. visual impact) is associated with measurable water quality impairment for different types of waterways and beneficial uses?
- iv. What degrees and types of trash loading may be allowed without unreasonably affecting various types of beneficial uses?
- v. What are the relative contributions of trash to waterways from different pathways, such as MS4s, direct deposition, and wind?

Potential Specific Policy Elements

L. Element #1: Water Quality Policy Statement

- A. Definition of MEP for Trash - The State Board suggests that it may establish a definition of Maximum Extent Practicable (MEP) for trash that "would be determined in part by the land uses and the rate of trash generation within the MS4 permitted area." We believe that any State Water Board action to explicitly define MEP would be unsupported in federal regulation, would conflict with the definition of MEP currently utilized in Phase I MS4 permits and programs throughout the state, and therefore should not be pursued by the State Water Board via the Trash Policy. As has been long recognized, MEP is an iterative standard, the specifics of which are determined through the proposal, review, implementation, assessment, and modification of specific programs, activities, and Best Management Practices (BMPs) by municipalities. The need for environmental review, if any, is undoubtedly best determined at this more specific stage when potential adverse impacts (as well as feasibility and economic considerations) can be foreseen and analyzed more clearly. We believe undertaking the approach contained in the subject document is premature and ill advised, and therefore would also be inconsistent with existing longstanding State Water Board policy and practice. Moreover, the establishment of a "zero trash" water quality objective (see below for additional comments) would effectively over-ride the established interpretation of MEP and require full CEQA review at a much earlier time, which would inevitably lead to challenges to the adoption of the Trash Policy.
- B. Policy for Source Control of Trash - As described in the Informational Document, source control is the most effective method of controlling pollution. If the definition of source control includes "true" source controls (e.g., extended producer responsibility) and not only operational source control practices, we agree and support the development of a flexible Trash Source Control Policy that is not only focused on MS4s and Non-point Sources of trash, but also includes enhanced responsibilities of the State Board. As described in our general comments, one of the potential benefits of the State Water Board developing a Trash Policy would be for the State Water Board to work with the manufacturers to reduce the manufacturing of high priority trash items that degrade water quality. We suggest that the State Water Board provide a more forceful statement of its intent to coordinate with other state agencies, both legislatively and via regulation, to control trash at its source of origin, for example, through reductions in product packaging. Parallel to this statement would be an implementation element in which the Trash Policy identifies roles and long-term funding needs as well as the next steps relative to how the State would secure the funding for the regulated community, for the State Water Board, and other regulatory agencies.
- C. Definition of "Trash" - With respect to the definition of "trash", the proposed scope of the Trash Policy is unclear and thus, cannot be properly analyzed under CEQA. In general, we support the concept of using existing code to define the term "trash". However, in the absence of additional detail, it is unclear how these definitions would coalesce to provide a working definition. To-date, we have assumed that the term "litter" as defined in Gov. Code, § 68055.1, subd.

(g). (2) is synonymous with "trash." If the State Water Board chooses to pursue the development of a definition of trash, the Program recommends that a more specific and precise definition be proposed and distributed to the (to be formed) Stakeholder Advisory Group for review early in the development of the Trash Policy and its associated CEQA process. This will help to provide a common understanding of its potential scope, as well as the potential implications of its implementation on the environment and budgets of those affected.

Likewise, we recommend that the adopted definition be as narrowly prescribed as possible to avoid the need for over-extensive CEQA analysis and/or potential overlap or conflict with other policies or regulatory initiatives. Among other things, we see the broad-scale inclusion of "waste" within the definition as potentially diverting the scope of the Policy from its more obvious priority of addressing litter. Thus we would suggest this definition specifically focus only on manmade sources and clearly differentiate that natural materials such as leaves or debris are not included as a component of the definition. A clearer definition that states trash is associated with manmade products or human activities would help to ensure that CEQA analysis is properly focused, sufficient and consistent with the California Water Code. The definition would also clarify that dischargers' efforts will be focused on addressing controllable pollutants, not naturally occurring debris entering MS4 facilities and thus, clarify that the discharger is not expected to address other relatively uncontrollable conditions, the measures for which might have numerous adverse environmental impacts in addition to being beyond those authorized by the California Water Code on feasibility or reasonableness grounds.

- D. Policy for Source Control of Preproduction Plastic Pellets - We appreciate the State Water Board's desire to streamline policy development, however, the inclusion of plastic pellets in the Trash Policy seems to be overreaching and raise the need for CEQA review on a wide variety of issues. Most problematic facilities receiving pellets are often transient and present particular regulatory and enforcement challenges that deserve a separate focus. In short, the unique challenges associated with pellets are beyond the scope of the contemplated effort.

2. Element #2: Water Quality Objectives

- A. No Action - As described in our general comments, revising existing or developing new water quality objectives should be considered a low priority for the State Board. Resources would be better spent clarifying the State Water Board's role in promoting true source control, identifying and obtaining long-term funding to implement effective trash controls, and conducting research to answer high priority management questions. Therefore, we recommend that the "no action" alternative be selected by the State Board at this time.
- B. "Zero Trash" Water Quality Objective - It is clear that spending limited public resources on this effort does not justify the marginal gain in protecting beneficial uses. Current narrative objectives have been reasonably successful to-date in providing the regulatory authority to identify trash problem areas, prepare TMDLS (where necessary), and implement TMDLS and additional trash control

¹ All improperly discarded waste material, including, but not limited to, convenience food, beverage, and other product packages or containers constructed of steel, aluminum, glass, paper, plastic, and other natural and synthetic materials, thrown or deposited on the lands and waters of the state, but not including the properly discarded waste of the primary processing of agriculture, mining, logging, sawmilling, or manufacturing.

activities though stormwater permits. Also, the State Board, in addition to conducting adequate environmental review under CEQA (which would likely need to be more far reaching for an objective with potential impacts of this magnitude), to consider the technical feasibility, economics, and reasonableness in establishing an objective for trash. Further, the State Board would then (in addition to ensuring avoidance or mitigation of adverse impacts) need to weigh the above factors against the overall benefit to the State. While the Scoping Document does not include such an analysis, we would expect to see one and, likely a full EIR, for this aspect of the Trash Policy. Therefore, the Program does not support this action.

- C. Standardize Existing or Develop a New Narrative Water Quality Objective for Trash - The current approach taken by Regional Water Boards is to apply the broad narrative objective for floatable, settleable, and suspended materials to trash. This approach seems to be successful in focusing actions on man-made litter and debris, which we believe should be the goal of the Trash Policy. Ultimately, the result of implementing a Trash Policy should be the protection of beneficial uses. The statewide establishment of a narrative objective for trash, if necessary at all, would better serve this purpose by allowing needed flexibility not otherwise provided through a zero trash objective.

3. Element #3: Implementation

Given the wide range of approaches that a community might take to address trash, it is critical that the Trash Policy provides flexibility to accommodate local demographics, trash sources and interests. The current list of implementation alternatives does not appear to provide such flexibility. Instead, it should be clear in the Trash Policy that the selection of a likely combination of implementation measures is prioritized by the regulated entity and not prescribed by the State for specified land use types. Along with flexibility we ask that the State Board more directly acknowledge the ongoing work in Southern California and the San Francisco Bay area and make clear that the Trash Policy does not supersede ongoing NPDES Permit programs and TMDL implementation plans. The failure to do so may also have significant implications on CEQA review in addition to other consequences.

We hope you find these comments useful and that you incorporate our recommendations into the development of the Trash Policy. Please contact me at (510) 832-2852 if you have questions regarding the comments or suggested changes. We look forward to continuing to work with you further on these issues.

Sincerely,



Adam W. Olivieri, Dr. PH, P.E.
SCVURPPP Program Manager

cc: SCVURPPP Management Committee
BASMAA Board of Directors
Bruce Wolfe & Tom Mumley (San Francisco Bay Regional Board)