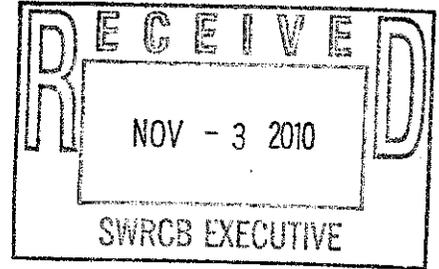




B A S M A A



Alameda Countywide  
Clean Water Program

Contra Costa  
Clean Water Program

Fairfield-Suisun  
Urban Runoff  
Management Program

Marin County  
Stormwater Pollution  
Prevention Program

Napa County  
Stormwater Pollution  
Prevention Program

San Mateo Countywide  
Water Pollution  
Prevention Program

Santa Clara Valley  
Urban Runoff Pollution  
Prevention Program

Sonoma County  
Water Agency

Vallejo Sanitation  
and Flood  
Control District

November 3, 2010

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

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

Dear Ms. Townsend:

On behalf of the Bay Area Stormwater Management Agencies Association (BASMAA)<sup>1</sup>, I am writing to provide comments regarding the scope and content of the environmental information that should be considered in developing a Statewide Policy for Controlling Trash in Waters of the State (Trash Policy). We have a number of comments and suggestions to help focus the policy and to ensure that is technically feasible and economically reasonable, particularly in these difficult times. [Our comments are also offered to help ensure that the State Water Board conduct 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.] BASMAA also fully supports the comments and recommendations made by the California Stormwater Quality Association (CASQA).

Additionally, as the Municipal Regional Stormwater Permit (MRP), which covers all of the 76 Phase I permittees in the Bay Area, already contains a provision dedicated to trash, including mandated load reductions on time-certain schedules, we are very interested in ensuring that any State Policy on trash not inadvertently undermine the MRP and that any State Policy be flexible enough to accommodate what is already being implemented in the Bay Area

Our comments are organized to parallel the informational document.

### **Background**

Bay Area  
Stormwater Management  
Agencies Association  
P.O. Box 2385

Recognize the multi-faceted nature of trash and trash control. In 2003-2006, the State Water Board provided significant funding (a Proposition 13 grant) to the Plastic Debris – Rivers To Sea project. The final report from this project - *Eliminating Land-based Discharges Of Marine Debris In California: A Plan of Action from The Plastic Debris Project*, June 2006 - concluded that controlling marine debris from

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<sup>1</sup> BASMAA is a 501(c)(3) non-profit organization comprised of the municipal stormwater programs in the San Francisco Bay Area representing 96 agencies, including 84 cities and 7 counties. BASMAA is focused on regional challenges and opportunities to improving the quality of stormwater that flows to our local creeks, San Francisco Bay and Delta, and the Ocean.

## BASMAA comments on CEQA Scoping for Proposed State Water Quality Control Policy for Controlling Trash in the Waters of the State

land-based discharges would need a multi-faceted response including, among other things, increased research, litter control, construction debris control, improved garbage management, and reductions in product and packaging waste. The report also concluded that delivery of this response would necessarily require coordination between a number of state agencies including California Coastal Commission, California Department of Boating and Waterways, California Department of Conservation, California Department of Transportation (Caltrans), California Integrated Waste Management Board, California State Parks, Ocean Protection Council, San Francisco Bay Conservation and Development Commission, and State Coastal Conservancy, in addition to the State Water Resources Control Board. BASMAA fully supports CASQA's recommendation that, as the Trash Policy is developed, that there be explicit and early recognition of the conclusions of this earlier work, including the key conclusion that achieving "zero trash" cannot and should not be expected to be achieved exclusively by the State and Regional Water Boards and the entities that they regulate.

### Water Quality Policy Statement

Provide a statement to support true source control. The information document identifies the option to establish a policy for source control of trash (item #3). This option appears worthy of the State Water Board's consideration and our potential support and should be included in a CEQA analysis, but we also believe the policy statement should be expanded to address "true" rather than only operational source control practices. The current scope is primarily focused on source control through education, which appears to be too narrow and may lead to inadequate CEQA analysis. We suggest that, among other things, 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 state-mandated reductions in product packaging and then provide environmental/CEQA analysis based on such the potential implementation of such an approach, not only by the regulated community, but also for the other agencies involved, including the State Water Board itself.

Clarify the scope of the policy. With respect to the definition of "trash", the proposed scope of the Trash Policy is unclear and, hence, cannot be properly analyzed under CEQA. In general, we support the concept of using existing code to define the term. However, as presented, it is unclear how these definitions would coalesce to provide a working definition of "trash." Trash is initially defined as including, or potentially including, all of the following:

- Litter as defined in Gov. Code, § 68055.1, subd. (g), (2) (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);
- "floating debris," "floatable waste," and "settleable waste"; and
- "Waste" as defined in Water Code, § 13050 ("...includes sewage and any and all other waste substances, liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or processing

BASMAA comments on CEQA Scoping for Proposed State Water Quality Control Policy for Controlling Trash in the Waters of the State

operation, including waste placed within containers of whatever nature prior to, and for purposes of, disposal.”)

In the absence of additional detail, it is difficult to see how these definitions can be reconciled in a way that is not overly inclusive, potentially pulling unintended elements into the scope of the Trash Policy and raising many more potential adverse environmental impacts that will require analysis under CEQA. BASMAA fully supports CASQA's recommendation that a more specific and precise definition be proposed and distributed 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 on 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 a 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 and its associated CEQA analysis from its more obvious priority of addressing litter, i.e., improperly discarded materials that would normally be discarded in trash containers. Thus, among other things, we would suggest this definition specifically focus only on manmade sources of litter and clearly differentiate that other material, including leaves or debris are not included as a component of the definition. A clearer definition along these lines would help to ensure that CEQA analysis is properly focused and sufficient; consistent with the Water Code, it would also clarify that dischargers will be focused on addressing controllable pollutants entering MS4 facilities and not be 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 Water Code on feasibility or reasonableness grounds. (The Plastic Debris – Rivers To Sea project may again be an instructive reference in this regard.)

In a similar vein, the Trash Policy statement and CEQA analysis should recognize and analyze the implications of the non-point source nature of trash, even where discharged from MS4s. CASQA has consistently maintained that stormwater is a non-point discharge regulated under a point source regulatory framework – attempting to fit the square peg of the former into the round hole of the latter portends numerous potential adverse environmental impacts (for example those associated with the installation and/or operation of certain equipment) which are required to be analyzed under CEQA. The ubiquitous nature of trash further underscores the need to recognize this distinction.

Avoid inconsistency in the interpretation of a MEP standard. Item #2 of the Trash Policy Statement suggests that the State Water Board might 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, in addition to requiring extensive and highly specific CEQA analysis (and likely full environmental impact review) any State Water Board action to explicitly define MEP would raise other significant legal concerns, and would conflict with the definition of MEP currently utilized in Phase I permits and programs throughout the state. The following definition, taken from the San Diego County MS4 permit, is typical:

## BASMAA comments on CEQA Scoping for Proposed State Water Quality Control Policy for Controlling Trash in the Waters of the State

“...the definition of MEP is dynamic and will be defined by the following process over time: municipalities propose their definition of MEP by way of their urban runoff management programs. Their total collective and individual activities conducted pursuant to the urban runoff management programs becomes their proposal for MEP as it applies both to their overall effort, as well as to specific activities (e.g., MEP for street sweeping, or MEP for MS4 maintenance). In the absence of a proposal acceptable to the Regional Board, the Regional Board defines MEP.”

As has long been 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 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. Currently, the State Water Board or a Regional Water Board would impose its own interpretation of MEP for trash or any other constituent only as a last resort, deferring the need for potential CEQA compliance only if such an occasion arose (and where it would arise in a more specific and concrete context). To do otherwise would presuppose the absence of an effective process through existing MS4 permits, TMDLs, or other means and require CEQA review at an earlier and less concrete stage requiring a more cautious approach to the analysis. We believe undertaking such an approach is premature and ill advised, and would also be inconsistent with 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. (In addition, a “zero trash” interpretation of this provision would be highly problematic for municipalities concerned about undue exposure to enforcement or citizen lawsuits.)

Establish a separate plastic pellet policy. 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 of a wide variety of issues that otherwise will not present themselves and need to be considered. Typical structural controls cannot capture plastic pellets of a size smaller than 5 mm; hence, it is important to analyze the potential adverse environmental impacts of what such a potential requirement would portend instead of separately trying to address this pollutant prior to entering the environment in the first instance. At the same time it is recognized that many of the most problematic facilities receiving pellets are often transient and present particular regulatory and enforcement challenges such that mitigation measures to address adverse environmental impacts of trying to address this within the Trash Policy may not be feasible. In short, the unique challenges associated with these pellets should be recognized as being beyond the scope of the contemplated Trash Policy as it will only cloud its likelihood of success under CEQA and otherwise.

### Water Quality Objectives

Establish “Zero Trash” as a goal, not as a numeric objective. In addition to needing to address it adequately under CEQA, pursuant to CWC §13241 the State Water Board in establishing a water quality objective must consider the following:

## BASMAA comments on CEQA Scoping for Proposed State Water Quality Control Policy for Controlling Trash in the Waters of the State

- (a) Past, present, and probable future beneficial uses of water.
- (b) Environmental characteristics of the hydrographic unit under consideration, including the quality of the water available thereto.
- (c) Water quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area.
- (d) Economic considerations.
- (e) The need for development housing within the region.
- (f) The need to develop and use recycled water.

While some of these factors may not apply, the State Water 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), must consider technical feasibility and economics and reasonableness in establishing an objective for trash and then (in addition to ensuring avoidance or mitigation of adverse impacts) weigh these 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 a Trash Policy. We believe a more constructive approach would be to instead make "zero trash" a goal of the Trash Policy that would be implemented through narrative objectives; this would allow prioritization of resources (and therefore economics) and hot spots and allow for more specific CEQA review to be considered at a later stage.

Establish a specific narrative objective for trash. The current approach taken by Regional Water Boards is to apply the broad narrative objective for floatables, settleable, and suspended materials to trash. This approach does not impose new demands under CEQA at this stage and 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 give rise to a categorical exemption or negative declaration under CEQA and would allow much needed flexibility not otherwise provided through a zero trash objective that would allow more tailored CEQA review at a later stage if such were then necessary.

### Implementation

Establish a prioritized implementation alternative. The informational package acknowledges that implementation measures may ultimately be prioritized, but it is difficult to envision how adequate CEQA analysis can be conducted before such priorities are defined. BASMAA joins CASQA in suggesting that, at a minimum, the State Water Board identify an implementation alternative that more directly acknowledges the need for prioritization of sites and control measures and set forth how and when that will occur and on what basis. To make CEQA analysis/compliance easier at this point, we would also strongly suggest that an implementation alternative that includes establishing baseline information, identifying hot spots and optimizing source and structural controls be included. Such an approach is currently in the San Francisco Bay Regional Stormwater Permit.

BASMAA comments on CEQA Scoping for Proposed State Water Quality Control Policy for Controlling Trash in the Waters of the State

Establish flexibility with implementation alternatives. Given the wide range of approaches that a community might take to address trash, it is important that the Trash Policy provide flexibility to accommodate local demographics and interests as such might have significant implications on a CEQA analysis and when and how it should occur, as well as affect potential support for or criticism of the Policy itself. 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 measure is to be prioritized by the regulated entity and not prescribed by the State for specified land use types; otherwise the CEQA burden will be the State Water Board's to meet at the time it adopts the Trash Policy itself – a daunting possibility. Along with flexibility, we also ask that the State Water Board more directly acknowledge the ongoing work in Southern California and the Bay Area and make clear that the Trash Policy does not supersede ongoing permit programs and TMDL implementation plans. (The failure to do so may also have significant implications on CEQA review in addition to other consequences.)

In closing, we hope that our comments will assist you in clarifying the scope and content of the environmental information that should be considered in developing a State Trash Policy. Our members are facing significant challenges in implementing stormwater programs with the resources they have at hand. We want and support the need for clean water waterways but we must be able to have the flexibility to direct our resources to critical water quality problems be it trash or other pollutants.

Please contact me at (510) 670-6548 if you have any questions or would like to discuss our comments further.

Sincerely,



James Scanlin  
Chair, Bay Area Stormwater Management Agencies Association

cc: Charles Hoppin, Chair, State Water Board  
Tom Howard, Executive Director, State Water Board  
Jonathan Bishop, Assistant Executive Director, State Water Board  
Bruce Fujimoto, Greg Gearheart, and Joanne Cox, State Water Board  
Bruce Wolfe, Executive Officer, San Francisco Bay Regional Water Board  
Tom Mumley, Assistant Executive Officer, San Francisco Bay Regional Water Board  
BASMAA Board of Directors