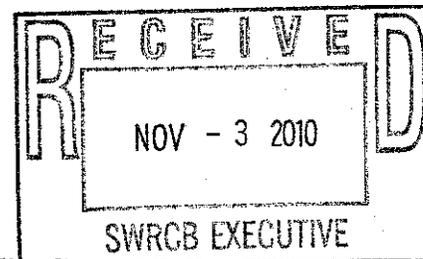


Ms. Jeanine Townsend, Clerk to the Board
California State Water Resources Control Board
Division of Water Quality
1001 I Street, 24th Floor
Sacramento, CA 95814



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 by the City of San José (City) regarding the Proposed State Water Quality Control Policy for Controlling Trash in Waters of the State (Proposed Trash Policy). The City is regulated under a regional NPDES permit to discharge municipal stormwater to 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 City also manages the collection, recycling, and disposal of solid waste from residential, commercial, and public facilities. As part of the San José's Green Vision, the City has set a goal of diverting 100% of waste from landfill by 2022.

The City appreciates the opportunity to submit comments on the planned development of the Proposed Trash Policy. Our comments below summarize our 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. We urge the State Water Board to conduct a thorough 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, individual or cumulative – are identified, analyzed, and either avoided or mitigated.

As a co-permittee of the Santa Clara Valley Pollution Prevention Program (SCVURPPP), the City concurs with the comments provided by SCVURPPP under separate letter. The City also concurs with the comments of the California Product Stewardship Council, which urge the State Water Board to support direct action by State agencies, especially in CalEPA, to support and enforce true source control and extended producer responsibility, and to sponsor Statewide efforts to characterize the trash in Waters of the State. State-level regulation of problem materials, such as cigarette butts and plastic bags, cups, and food packaging, would be more effective and efficient than local action in achieving the goals of this project to eliminate trash, benefiting all impaired water bodies and all other public lands and Waters of the State. Similarly, a State effort to provide sufficient waste characterization information about trash, including both its composition and primary sources, would almost certainly be more useful and much less expensive than efforts by a multitude of local jurisdictions. As a matter of emphasis, the City provides these additional comments:

Potential Specific Policy Elements

1. Element #1: Water Quality Policy Statement

- A. **Definition of "Trash"** – The City recommends that a more precise definition be developed 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. We also recommend that the adopted definition be as focused as possible to avoid the need for over-extensive CEQA analysis and/or potential overlap or conflict with other policies or regulatory initiatives. The City further suggests that this definition specifically focus only on manmade sources and clearly differentiate that naturally deposited materials such as leaves or organic debris are clearly excluded from the definition. Moreover, the City believes it would be beneficial to adopt a definition that acknowledges that certain types of trash items (e.g., plastic bags, plastic wrappers, expanded polystyrene) have a disproportionate impact on beneficial uses. Such a definition would focus prioritization of source control and implementation measures. In addition to aligning the definition of "trash" with those for related terms such as "litter" and "waste" in the Water Code and Government Code, we suggest aligning with the defined terms in the Public Resources Code where possible, and making any differences explicit where terms may continue to have meanings unique to water quality regulation.

2. Element #2: Water Quality Objectives

- A. "Zero Trash" Water Quality Objective - The City does not support this action. This numeric objective is inappropriate and could result in listings of water bodies when beneficial uses are not impaired. Current narrative objectives have been effective to-date in providing the regulatory authority to identify trash problem areas, prepare TMDLs (where necessary), and implement TMDLs and trash control activities through stormwater permits. Also, we urge the State Water Board to weigh the technical feasibility, economics, and reasonableness of establishing a "zero trash" objective against the overall benefit to the State. Although "Zero Waste" and "Zero Litter" are useful rhetorical terms, and may help drive policy decisions, permit terms and requirements have to be achievable.
- B. Standardize Existing or Develop a New Narrative Water Quality Objective for Trash - The current approach taken by Regional Water Boards to apply the broad narrative objective is effective in focusing actions to control man-made litter and debris, which we believe should be the goal of the Trash Policy. The statewide establishment of a narrative objective for trash would better serve this purpose by allowing needed flexibility not otherwise provided through a zero trash objective.

2. Element #3: Implementation

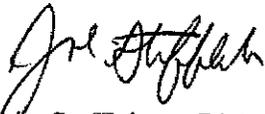
Institutional Controls -- The State Water Board has the opportunity to take the lead in identifying how to minimize the "true" sources of litter and trash that pollute certain state's waterways. One of the benefits of focusing on true source control for trash is that it would address all sources and pathways of trash delivery to water bodies. The State Water Board in consultation with the other state agencies, such as CalRecycle, should initiate true source control by working with manufacturers, users, retailers, and other public stakeholders to identify alternatives, such as extended producer responsibility, product bans, or deposit programs, that will control trash and implement solutions by promoting appropriate legislation and regulation. Working on true source control will also engage the people and organizations most essential for developing creative and practical solutions to the trash water pollution problem. The State Water Board must also recognize the significant restrictions on local jurisdictions with regard to some heavily littered items. The State has preempted local fees on plastic bags, taxes on tobacco products, and most local regulation of beverage containers, including wine bottles, which are exempt from the State's deposit legislation.

Ms. Jeanine Townsend
Comments on CEQA Scoping for a Proposed Trash Policy
November 3, 2010

San José has demonstrated its leadership and initiative in managing solid waste and protecting water quality within our community. We must have the flexibility of directing resources towards the most cost effective actions. The City further wishes to underscore the need for the State Water Board to consider the long-term funding and resource implications a State Trash Policy would have on local jurisdictions.

We hope you find these comments useful and that you incorporate our recommendations into the development of the Trash Policy. Please contact Elaine Marshall, Environmental Program Manager, at (408) 793-5355 if you have questions regarding these comments or suggested changes. We look forward to continuing to work with you further on these issues.

Sincerely,



John Stufflebean, Director
Environmental Services
City of San José