

CALLEGUAS CREEK



Public Comment
Trash Amendments
Deadline: 8/5/14 by 12:00 noon



A COOPERATIVE STRATEGY FOR RESOURCE MANAGEMENT & PROTECTION

August 5, 2014

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

Subject: COMMENT LETTER – TRASH AMENDMENTS

Dear Ms. Townsend:

The Calleguas Creek Watershed Stakeholders (Stakeholders) appreciate the opportunity to provide comments on the Proposed Amendments to the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays and Estuaries of California (ISWEBE Plan) and the Water Quality Control Plan for Ocean Waters of California (Ocean Plan). The Stakeholders appreciate the opportunity to provide comments on the amendments to develop a sound approach for controlling trash. As a result of the Trash TMDL for Revolon Slough and Beardsley Wash and requirements to address trash in the existing Ventura County MS4 permit, the Stakeholders have several years of experience in implementing BMPs to control trash and monitoring for trash. The comments provided are based on this experience.

The Stakeholders share the State Board's concern for trash in our surface water bodies and the Stakeholders fully appreciate the important role the Proposed Trash Amendments will play in ensuring clean water for our communities and State Board's efforts towards statewide consistency in regulating trash impairments. We strongly support the use of the narrative water quality objective as proposed, which provides a clear, concise definition from which the Stakeholders can prioritize management decisions. The Stakeholders also support the option of developing and implementing regulatory source controls and the potential for time extensions where these are implemented. As proposed, the State Board has provided incentives for jurisdictions to develop innovative approaches to regulatory compliance. Furthermore, the Stakeholders support the use of priority land uses as a means for identifying trash control measures implementation areas and encourage the incorporation

of this concept into existing Trash TMDLs in the Los Angeles Region. While the Stakeholders are generally supportive of the approach to the Proposed Trash Amendments, we have the following concerns.

1. Compliance with Water Quality Objective and Prohibition of Trash Discharge

The Proposed Trash Amendments provide a narrative water quality objective (WQO) in Chapter III.B and Chapter II.C of the ISWEBE Plan and Ocean Plan, respectively and a prohibition of trash discharge in Chapter IV.B.2 and Chapter III.I.6 of the ISWEBE Plan and Ocean Plan, respectively. The permittees would be considered in full compliance with the prohibition of trash discharge so long as the permittees were fully implementing Track 1 or Track 2 (Chapter IV.B.2.a and Chapter III.I.6.a, of the ISWEBE Plan and Ocean Plan, respectively). However, the Proposed Trash Amendments do not indicate that meeting the discharge prohibition requirements would also mean the permittees are in compliance with receiving water limitations (i.e., meeting the WQO).

Recommendation: The Stakeholders recommend adding language to the Proposed Trash Amendments indicating the permittees are in compliance with the receiving water limitations so long as they are fully implementing Track 1 or Track 2.

2. Regional Board's Ability to Include Permit Provisions in Areas with Existing Trash TMDLs

The Proposed Trash Amendments require permitting authorities to re-open, re-issue or newly adopt NPDES permits to include requirements consistent with the Proposed Trash Amendments (Chapter IV.B.5 and Chapter III.L.4 of the ISWEBE Plan and the Ocean Plan, respectively). The Proposed Trash Amendments also include a requirement for the Los Angeles Regional Water Quality Control Board to convene a public meeting to reconsider the scope of the TMDLs¹ to include provisions consistent with the Proposed Trash Amendments (Chapter IV.B.1.b.(2) and Chapter III.L.1.b.(2) of the ISWEBE Plan and the Ocean Plan, respectively). However, by the time the Proposed Trash Amendments become effective and the Los Angeles Regional Water Quality Control Board modifies the TMDL(s), it will likely be too late to meaningfully impact the implementation of compliance measures for point source-responsible permittees subject to the TMDL(s). As a result, having a mechanism to streamline incorporation of permit requirements consistent with the Proposed Trash Amendments in lieu of TMDL requirements, if requested by the permittees, should be included.

Recommendation: The Los Angeles Regional Water Quality Control Board should be allowed to include permit provisions consistent with the Proposed Trash Amendments in areas where TMDLs exist if they desire without needing to reconsider the applicable TMDL(s).

¹ This is required for all Trash TMDLs within the jurisdiction of the Los Angeles Regional Water Quality Control Board except for the Los Angeles River Trash TMDL and the Ballona Creek Trash TMDL.

3. Priority Land Use Designation

The Stakeholders support the concept of prioritized land uses to address problem areas; however, based on the work that has already been done in the watershed, we are requesting a few modifications to the prioritization process to support existing prioritization processes and allow flexibility to incorporate local knowledge into the process.

The MS4 permittees in the watershed have already been required to develop a prioritization scheme for implementation of trash controls. The Trash Amendments should recognize and allow for established prioritization schemes to be utilized in lieu of the proposed scheme if they have already been approved by the Regional Water Board or required in a permit without the need to provide additional documentation. While Part (6) of the Priority Land Uses definition from the ISWEBE Plan and the Ocean Plan allows permittees to issue a request to the Los Angeles Regional Water Quality Control Board to comply with Chapter IV.B.3.a.1 and Chapter III.J.2.a.1 of the ISWEBE Plan and the Ocean Plan, respectively, using alternate land uses equivalent to the defined Priority Land Uses. However, the permittees are required to provide documentation as to the equivalency of the alternate land uses. It would be more efficient to allow the permittees to address the previously identified and Regional Board-approved land uses without having to go through an additional and duplicative documentation procedure.

Additionally, while the Proposed Trash Amendments provide flexibility for the permitting authorities to designate additional priority areas, it does not appear to allow for responsible agencies to lower the priority in certain areas. Local knowledge, supported by data, should be able to suffice as justification for jurisdictions to designate appropriate drainage areas as “non-priority” regardless of land use. The language should also provide flexibility to assign priorities based on metrics other than just land use if those metrics better address high trash generating areas.

Recommendation: Modify language in Chapter IV.B.3 (ISWEBE Plan) and Chapter III.L.2. (Ocean Plan) and by adding Chapter IV.B.3.e and Chapter III.L.2.e, respectively, as follows:

e. If a regulated MS4 has a Regional Water Board approved or permit required prioritization scheme that differs from the priority land uses outlined in the amendment, the approved prioritization scheme can be utilized in lieu of the priority land uses to comply with the Trash Amendments. Additionally, a regulated MS4 may determine that areas within priority land uses do not generate trash that accumulates in state waters (or in areas adjacent to state waters) in amounts that would either adversely affect beneficial uses, or cause nuisance. In the event that the regulated MS4 identifies such areas and is able to provide data supporting the finding, the permitting authority may waive the requirement for the MS4 to comply with Chapter IV.B.3.a (III.L.2.a) with respect to the identified locations. The regulated MS4 shall submit documentation of the continued condition with annual reports as required under Chapter IV.B.7 (III.L.6).

4. Addressing Priority Land Uses

The Proposed Trash Amendments appear to require implementation of Track 1 or Track 2 for *any* storm drain that captures *any* runoff from a priority land use [Chapter IV.B.3.a.(1)/IV.B.3.a.(2) and Chapter III.L.2.a.(1)/Chapter III.L.2.a.(2) of the ISWEBE Plan and Ocean Plan, respectively]. This would trigger compliance requirements for a storm drain even if only a very small portion of a priority land use drains to the storm drain.

Recommendation: The Stakeholders recommend adding language to Chapter IV.B.3.a.(1)/IV.B.3.a.(2) and Chapter III.L.2.a.(1)/Chapter III.L.2.a.(2) of the ISWEBE Plan and Ocean Plan, respectively stating that permittees must address catchment areas where the priority land uses are greater than 25% of the total catchment area.

Track 1: Install, operate and maintain full capture systems in their jurisdictions for all storm drains that captures runoff in catchment areas where ~~from one or more of the~~ priority land uses comprise >25% of the land area in the catchment ~~in their jurisdictions~~; or

Track 2: Install, operate, and maintain any combination of full capture systems, other treatment controls, institutional controls, and/or multi-benefit projects within either the jurisdiction of the MS4 permittee or within the jurisdiction of the MS4 permittee and contiguous MS4s permittees, so long as such combination achieves the same performance results as compliance under Track 1 would achieve for all storm drains that captures runoff in catchment areas where ~~from one or more of the~~ priority land uses comprise >25% of the land area within the catchment ~~within such jurisdiction(s)~~.

5. Permitting Authority's Discretion to Revise Priority Land Uses

The Proposed Trash Amendments provide flexibility to permitting authorities to revise the priority land uses as well as define new trash sources (Chapter IV.B.3.d of the ISWEBE Plan and Chapter III.L.2.d of the Ocean Plan). However, the Proposed Trash Amendments do not require the permitting authorities to provide significant justification of the changes. Allowing the permitting authorities to impose more stringent requirements without criteria to justify such requirements contradicts the establishment of consistent statewide trash requirements. A statewide plan that gives broad discretion to regional permitting authorities often results in uneven implementation of the plan.

Recommendation: The Stakeholders recommend that the Proposed Trash Amendments should either eliminate the discretion or have very clear guidance on how the discretion should be used.

6. Equivalent Alternate Land Uses

Part (6) of the Priority Land Uses definition from the ISWEBE Plan and the Ocean Plan allows permittees to issue a request to the Los Angeles Regional Water Quality Control Board to comply with Chapter IV.B.3.a.1 and Chapter III.J.2.a.1 of the ISWEBE Plan and Ocean Plan, respectively, using alternate land uses equivalent to the defined Priority Land Uses. However, as written, the chapter references only allow the permittees to address the equivalent alternate land uses if utilizing Track 1. The references should be changed to allow the permittees to address the equivalent alternate land uses via Track 1 or Track 2. In

addition, the chapter reference for the Ocean Plan is incorrect. The reference reads Chapter III.J.2.a.1, while it should read Chapter III.L.2.a.1.

Recommendations:

- 1) Modify the ISWEBE Plan Chapter reference in Part (6) of the Priority Land Uses definition as such: ...comply under Chapter IV.B.3.a.1 and Chapter IV.B.3.a.2.
- 2) Modify the Ocean Plan Chapter reference in Part (6) of the Priority Land Uses definition as such: ...comply under Chapter III.~~J~~.L.2.a.1 and Chapter III.L.2.a.2.

7. Track 2 Performance Demonstration

Demonstration of performance under Track 2 should not be limited to monitoring BMP performance (e.g., counting, weighing, measuring volume) as demonstrating effectiveness of trash BMPs. The monitoring is extremely difficult and expensive. Permittees should be allowed to propose the method of demonstrating performance in their plan. For instance rigorous visual assessments have proven to be effective tools in some jurisdictions. A current effort in the Bay Area, funded by a Proposition 84 grant, may provide additional tools for permittees to incorporate into their plans in the future. (The project is expected to be completed in 2017.)

The Stakeholders object to the requirement for stormwater permittees to conduct receiving water monitoring. Based on our Trash TMDL implementation experience, other sources contribute trash to receiving waters and imposing this requirement on stormwater permittees will not provide an indication of effectiveness stormwater trash control programs. While stormwater permittees may want to conduct receiving water monitoring to demonstrate performance, it should not be mandated.

Recommendation: The Stakeholders recommend the State Water Board revise the language in the Proposed Trash Amendments (Chapter IV.B.7.b and Chapter III.L.6.b of the ISWEBE Plan and Ocean Plan, respectively) to allow for more flexibility in determining Track 2 performance and to remove the requirement for receiving water trash monitoring. In addition, remove “receiving waters” from Chapter IV.B.7.b.(5) and Chapter III.L.6.b.(5) of the ISWEBE Plan and Ocean Plan, respectively to read: “Has the amount of Trash in the MS4 decreased from the previous year? If not, explain why”.

8. Permitting Authority’s Discretion to Revise Compliance Dates

Chapter IV.B.3.d of the ISWEBE Plan and Chapter III.L.2.d of the Ocean Plan allows permitting authorities to determine that other, specific land uses generate substantial amounts of trash and require permittees to implement Track 1 and Track 2 for those land uses. If a permitting authority adds new priority land uses during the duration of the compliance period, it could be difficult for a permittee to achieve compliance with the Proposed Trash Amendments if the areas they are required to address change while they are attempting to address those areas.

Recommendation: The Stakeholders recommend adding language to the Proposed Trash Amendments requiring a permitting authority to consider revisions to the final compliance

date of the Proposed Trash Amendments if new priority land uses are added during the duration of the compliance period.

9. Watershed Pollution Prioritization

As drafted, the Proposed Trash Amendments would supersede existing stakeholder-based watershed planning efforts, effectively determining, without validation, that trash is the highest priority constituent throughout the Calleguas Creek Watershed and potentially requiring the refocusing of resources from stakeholder developed priorities.

Recommendation: The Stakeholders recommend including language after Chapter IV.B.3.a of the ISWEBE Plan and Chapter III.L.2.a of the Ocean Plan that states: A MS4 Permittee may request that compliance requirements for trash be established through a watershed prioritization and planning process outlined in MS4 permit requirements. This prioritization process would allow for evaluation of the trash in the context of other watershed priorities and provide a mechanism for modifying or reducing the requirements for compliance in accordance with the procedures outlined in the MS4 permit and an approved watershed plan. Through this process, monitoring data could be utilized to demonstrate that trash controls are not necessary for all priority land uses.

10. Certified Full-Capture Devices

The Proposed Trash Amendments indicate that the State Water Board would take responsibility for the certification process for full capture systems, but those full capture systems previously certified by the Los Angeles Regional Water Quality Control Board would remain certified for use by permittees as a compliance method (Chapter IV.B.1.b.(1) and Chapter III.L.1.b.(2) of the ISWEBE Plan and Ocean Plan, respectively). Full-capture devices vary widely in capital and maintenance costs. Therefore, having a better idea of the devices that will be certified is necessary for developing credible costs estimates to inform permittees whether to commit to Track 1 or Track 2. Alternatively, the language could be revised to indicate that any full-capture device that meets the stated criteria fulfills the certification requirement.

Additionally, the time frame for obtaining certification is a concern. The Executive Officer approval process should have a rapid turnaround time to allow permittees to move forward with planning and installation within the time schedule granted.

Recommendation: The Stakeholders recommend that a more extensive list of certified devices should be prepared prior to the adoption of the Proposed Trash Amendments. The Stakeholders also recommend refining the full-capture device certification process to streamline the certification process as much as possible.

11. Existing Trash Control Measures

The Stakeholders have implemented various trash control measures within the watersheds under its jurisdiction. However, the Proposed Trash Amendments do not have a provision that details how existing trash control measures would be utilized for evaluating compliance with the Proposed Trash Amendments.

Recommendation: The Stakeholders recommend including language in the Proposed Trash Amendments to clarify that existing trash controls can be considered when determining compliance with the Trash Amendments.

12. Trash Total Maximum Daily Load Development

It appears that the Proposed Trash Amendments will serve as an alternative to a total maximum daily load (TMDL), thereby preventing the need to develop trash TMDLs in the future. It seems that implementation of the Proposed Trash Amendments represents a single regulatory action addressing MS4 permittee requirements thereby removing the need to develop wasteload allocations via a TMDL for MS4 permittees.

Recommendation: The Stakeholders recommend the State Board adds additional language to clarify the intent of the Proposed Trash Amendments with respect to the development of future TMDLs. The Stakeholders recommend adding language to the Proposed Trash Amendments stating that if the requirements in the Proposed Trash Amendments are being met, then no Trash TMDLs will be developed for those water bodies where the requirements are being fully met.

13. Incorrect Section References

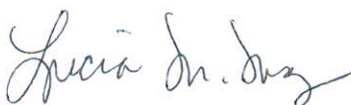
There are several incorrect section references in the ISWEBE Plan.

Recommendation: For the ISWEBE Plan, all references to Chapter IV.C.3, Chapter IV.C.3.a, or Chapter IV.C.3.b should be revised to Chapter IV.B.3, Chapter IV.B.3.a., and Chapter IV.B.3.b, respectively.

As funding has been an on-going challenge, we are looking forward to the State Board's assistance with the development of funding sources for permittees to comply with the Proposed Trash Amendments.

Thank you for your time and consideration of these comments. If you have any comments or questions, please contact Anita Kuhlman, at akuhlman@cityofcamarillo.org or 805-383-5659 or Ewelina Mutkowska, at ewelina.mutkowska@ventura.org or 805-645-1382.

Sincerely,



Lucia McGovern

Chair, Stakeholders Implementing TMDLs in the Calleguas Creek Watershed

cc: Stakeholders Implementing TMDLs in the Calleguas Creek Watershed