



August 5, 2014

VIA EMAIL - [COMMENTLETTERS@WATERBOARDS.CA.GOV](mailto:COMMENTLETTERS@WATERBOARDS.CA.GOV)

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

Re: **Comment Letter – Trash Amendments**  
Client-Matter No. 36152.00000

Dear Ms. Townsend and Members of the State Water Board:

The Port of Stockton (“Port”) appreciates the opportunity to comment on the proposed Draft Amendments to the Statewide Water Quality Control Plans to Control Trash (“Trash Amendments,” June 2014).

1) **Trash Reduction Requirements Already Exist and are Working.**

The Port is currently regulated under a hybrid municipal separate storm sewer system (“MS4”)/industrial NPDES stormwater permit (Order No. R5-2011-0005). The Port’s permit contains numerous requirements related to trash, including the following:

C. Receiving Water Limitations - prohibiting discharges from the MS4 that cause exceedances of water quality standards in the receiving water related to oils, greases, waxes, floating material (liquids, solids, foams, **trash**, and scums), suspended material, or settleable material that causes or creates a nuisance or adversely affects beneficial uses.

D.10. Construction Program – requiring implementation and enforcement of a program to control runoff from all construction sites subject to the NPDES General Construction Permit and to ensure the following minimum requirements are effectively implemented at these construction sites:

ii. Construction-related materials, wastes, **trash**, spills, or residues shall be retained at the project site to avoid discharge to streets, drainage facilities, receiving waters, or adjacent properties by wind or runoff

- D. 12.v. Municipal Program – requiring updating and implementing maintenance procedures for catch basins and sumps that include the following:
- a) Prioritizing catch basins and sumps for cleaning based on accumulation of waste and presence or absence of BMPs;
  - b) An inspection and cleaning schedule for removal of accumulated waste (e.g., sediment, **trash**, debris, and other pollutants) based on prioritization effort. At a minimum, cleaning of prioritized catch basins and sumps shall occur prior to the rainy season;
  - c) Record keeping of cleaning and overall quantity of waste removed;
  - d) Proper disposal of waste removed pursuant to applicable laws
- vi. Continue to implement BMPs for storm drain maintenance that include:
- a) A program to visually monitor Permittee-owned open channels and associated drainage structures for **debris** at least annually before the wet weather season (October 1); clean as needed based on visual inspections; and identify and prioritize problem areas of illicit discharge for additional inspections;
  - viii. Update and implement guidelines for operating and maintaining retention basins. These guidelines shall consider, at a minimum, the following: (1) inspection frequency; (2) maintenance frequency for removal of accumulated sediment and **debris**;
  - ix. Continue to implement and update BMPs for streets and road maintenance that at a minimum include: a) Conduct appropriate **street sweeping** frequencies for streets, material handling and storage areas, and docks within its jurisdiction. Develop a plan and tracking system that includes routes, frequencies, and quantity of material removed;

In addition, there are several other sections of the permit that also relate to trash, or are similar to the requirements proposed in the proposed Trash Amendments, which includes: Detection of Illicit Discharges, Public Education and Public Outreach, Water Quality Planning and Design, including Low Impact Development (“LID”) Strategies.

The relevance of this discussion is to demonstrate that the Port is already doing many things to address stormwater quality, *including trash reduction*. Since 2010, the Port has been recycling its general solid waste (i.e., cardboard, plastics, etc.) through Allied Waste, and each week the Port fills a 20 yard bin for recycling, instead of having those same materials end up as trash or fill up a municipal solid waste landfill. Under its Permit, the Port collects data on sweeper debris and recovered drain debris. This material amounted to 110 tons for the 2013/14 stormwater year, but most of this was dirt/sludge- type material, not trash. The Port finds that very little trash gets into its storm drainage system. Nevertheless, the Port participates in Coastal Cleanup activities every year, but the trash in the area is from people dumping garbage by Burns Cut, not on the Port’s side.

The Port currently spends approximately \$900,000 annually on its stormwater quality and surface water protection programs. The Port has no additional funds to spend on addressing trash and no additional financial resources are warranted since, because of the controls and programs already in place, trash is not a problem at the Port. If these Trash Amendments are adopted, the Port may have to reduce its efforts in other areas in order to focus on these unneeded requirements.

2) **The Trash Amendments are a Statewide “Solution” without a Statewide Problem.**

The Trash Amendments will unnecessarily re-prioritize where the Port and other MS4 and industries are forced to focus their limited financial resources. Currently, the Port’s priorities as set forth in its permit are focused on pesticides, dissolved oxygen, and mercury/methylmercury, which all seem to be of higher water quality concern for aquatic life and human health than the predominantly aesthetic concerns related to trash. While trash can be a severe localized problem, particularly at beaches that drain large watersheds, trash is not a problem for 98% of the state. Further, there are no waters in the Central Valley Region listed as impaired for trash. In the waterways near the Port, most of the trash is waterborne, e.g., emanating from recreational boaters or swimmers, not stormwater discharges. Thus, one of the beneficial use the State is trying to protect (e.g., recreation on and in the water) is the main cause of trash in local waterways, and that issue is only tangentially addressed by this new proposed policy. For these reasons, the Port believes that limited public dollars should not be focused on an issue that is not a problem everywhere. Where problems do not exist, the policy or statewide plan cannot be “deemed essential by the state board for water quality control.” Water Code §13142(c).<sup>1</sup>

3) **Statewide Consistency is Unnecessary and Not Ensured by the Trash Amendments.**

One of the main reasons that these Trash Amendments are being proposed is for “statewide consistency.” (See Trash Amendments, Draft Staff Report at pp. 1, 10, 17, 24, 64, 68, 71-72, 74, 79, and 82.) Statewide consistency, while potentially a laudable goal, is not how our state water quality laws were envisioned. Instead, California was split into 9 distinct geographical regions, each of which may have differing water quality issues and priorities. The State Water Board should respect those differences and not superimpose “priorities,” especially costly and unnecessary ones that usurp local watershed programs’ priorities. Such an action by the State Water Board would be contrary to Water Code Section 13225(j), which encourages “coordinated regional planning and action for water quality control.” (Emphasis added.) Furthermore, the proposed Trash Amendments, as drafted, fail to ensure statewide consistency because certain areas (parts of Los Angeles area under Trash TMDLs and combined sewer systems) are excluded from coverage. (See e.g., Trash Amendments, Draft Staff Report at pp. C-17, C-23, C-50.) For

---

<sup>1</sup> In addition, this proposed regulation cannot meet the Administrative Procedures Act requirements for necessity, consistency, or nonduplication. See Gov’t Code §11349 (definitions); §11349.1 (regulatory review standards); §11353(b)(4) (application of section 11349.1 standards to water quality control plans adopted by the State Water Board).

these reasons, the plan should be modified to either adopt the “No Project” alternative and continue to allow regional control over regulating trash, or to narrow the scope to just adopting a consistent statewide narrative water quality objective that would be implemented with current permits and with TMDLs, as needed, when impairments are demonstrated to exist.

**4) The Proposed Trash Amendments Unnecessarily Burden the Port’s Tenants that are Construction and Industrial Permittees.**

Little to no evidence was presented in the Trash Amendments that trash from construction and industrial sites represents more than a fraction of a percent of the trash statewide. Moreover, construction sites are mostly temporary and individually do not qualify as a long-term source of trash, even if trash were to leave a site. The Port has many tenants covered by the Construction and Industrial General Storm Water Permits and does not want to lose more tenants to another state that does not impose such stringent and seemingly unnecessary requirements on their businesses.

Many of the Port’s tenants have already suffered from citizen suits, trying to enforce the requirements of the industrial general permit. Adding explicit trash requirements may increase these suits where trash is found that could be alleged to have left that property. In addition, many of these sites do not have drain inlets, and cannot comply with the full capture track, thereby forcing them into additional work and monitoring when, again, there is no indication of a trash issue. Although the cost estimates for compliance for these sites seems relatively small (e.g., less than \$4000 per facility)(Draft Staff Report at C-48), those cost estimates may not be accurate and many small companies may not be able to absorb this additional cost on top of the cost of all of the new requirements under the State Water Board’s new industrial general permit set to be effective in July of 2015. For these reasons, the Port urges, at the very least, the adoption of an option not including industrial and construction permittees, or any other permittee that can demonstrate no trash problem exists.

**5) The Trash Amendments Seemed to Lack Information on the Actual Cost, Impacts, and Effectiveness of Similar Programs.**

The Los Angeles area trash controls under the various TMDLs have been in place for over a decade. The Port was disappointed not to see a clear analysis of the actual cost and impacts (both environmental and economic) of these programs, as compared to the estimates provided in the TMDLs, to determine if the initial estimates were accurate. In addition, there should have been some analysis of the effectiveness of the programs. For the hundreds of millions of dollars expended, has trash been completely eradicated from those areas, reduced slightly, or is no progress really noticeable? These are the types of analyses that need to be conducted prior to adopting another duplicative program. These analyses would also improve the impacts analysis presented as required under the California Environmental Quality Act (“CEQA”) since the currently included analyses do not seem to capture all possible impacts, or their extent.

**6) The Full Capture Devices Recommended Will Cause Localized Flooding.**

The proposed Trash Amendment recommends the installation and operation of full capture devices that capture all debris (including natural woody and leafy debris) down to a size of 5 mm or greater. (Draft Staff Report at p. 13, fn 5.) Because these devices do not differentiate between the type of debris captured, they can easily become blocked by leaves and other vegetation blown off of trees during the Central Valley's strong winter storms, notwithstanding efforts to clean the inlets prior to storm events. This blockage will back up water that would otherwise go into the drainage system, and will cause localized flooding that could adversely impact Port or tenant buildings and infrastructure, and could impose financial risk to the Port for causing the flooding if claims are made for any damage.

The Trash Amendments give this issue short shrift (Draft Staff Report at p. 135) and conclude that the full capture devices should just be designed with an "automatic release mechanisms or retractable screens that allow flow-through during wet-weather," an "overflow/bypass structure," or to "allow for bypass when storm events exceed the design capacity." (*Id.* at p. 136.) These bypasses thwart the entire reason for the devices in the first place. If the device is merely going to bypass and allow trash and other debris to pass through during wet weather events, that raises the question of the effectiveness of and need for this costly approach.

Given the concerns expressed herein, the Port urges the State Water Board to think very carefully about whether such a statewide plan is necessary. There are other areas where statewide plan amendments would be more valuable and useful. For example, in the San Francisco Bay area, the Regional Board adopted several site specific objectives to modify the general California Toxics Rule ("CTR") criteria. One of these was for cyanide, where the CTR criteria was based on an east coast crab species not found anywhere in California that caused the criteria to be far more stringent than necessary to protect California's aquatic life species. Having the State Water Board act to adopt those objectives statewide would be a much better use of limited State Water Board staff and resources and would free up additional resources by permittees currently spending money to monitor for and attain criteria that have no relevance in this state.

The Port thanks you for your careful consideration of its comments.

Respectfully submitted,

DOWNEY BRAND LLP



Melissa A. Thorme  
Special Counsel to the Port of Stockton