

DEPARTMENT OF TRANSPORTATION

DISTRICT 4

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*Making Conservation
a California Way of Life.*

January 14, 2019

Mr. Dale Bowyer
California Regional Water Quality Control Board – San Francisco Bay Region
1515 Clay Street, Suite 1400
Oakland, CA 94612

Dear Mr. Bowyer:

The California Department of Transportation (Caltrans) appreciates the opportunity to provide comments on the Tentative Cease and Desist Order, as it continues to implement increasingly rigorous trash reduction efforts in the Bay Area in compliance with the Statewide National Pollutant Discharge Elimination System (NPDES) Permit. The NPDES Permit Attachment V, region specific requirement for the Bay Area requires Caltrans to demonstrate compliance through timely implementation of trash control measures in all high trash generating areas in the San Francisco Bay Region.

Caltrans' mission is to provide a safe, sustainable, integrated and efficient transportation system to enhance California's economy and livability. Caltrans infrastructure is designed with a goal to provide a safe transportation system for its users and reduce pollution in our communities. Trash within Caltrans ROW is generated by the users of the highway system and from homeless encampments.

Caltrans has complied and is committed to continued compliance with the NPDES Permit in the Bay Area through a variety of measures such as installing trash capture devices and manual trash clean-up effort within its right of way (ROW), as well as funding trash capture projects in local municipalities and public education efforts to promote awareness on the importance of preventing litter from entering the waterways. Caltrans also partners with California Highway Patrol on strategies for effective enforcement actions against littering with the aim to reduce litter generation in the Bay Area.

Caltrans will continue to actively engage with the Regional Board and is committed to comply with the resolutions and compliance schedules in accordance with the NPDES Permit. Caltrans has been actively working with the Regional Board to pursue accelerated implementation of trash control measures. The following are examples of Caltrans' increasingly concerted efforts in the Bay Area to address trash:

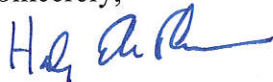
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1. Caltrans increased its litter removal effort and expenditure from \$8.7 million in 2013 to \$18 million in 2018 in the Bay Area. This funding is used for manual trash pickup and homeless encampments and illegal dumpsites cleanup and highway parolee trash pickup programs. Caltrans Adopt A Highway program in the Bay Area includes 500 adopted sites and 965 miles of roadside cleanup efforts. Caltrans picked up approximately 4,470 garbage truck loads of trash and debris in 2017, compared to 3,450 garbage truck loads in 2013 in the Bay Area. Caltrans also conducts sweeping and storm drain cleaning to remove trash and other debris. About 24,000 lane miles are cleaned every year.
2. The California Transportation Commission (CTC) allocates funding through the State Highway Operation Protection Program (SHOPP) for trash capture projects on Caltrans ROW. In addition to implementing stand-alone trash capture projects, Caltrans incorporates trash capture devices, where practicable, in currently programmed transportation projects in the Bay Area, taking safety of our workers and users of the highway system into consideration.
3. Caltrans proactively engages with local municipalities and the Bay Area Stormwater Management Agencies Association (BASMAA) to identify funding opportunities for local trash control projects. Since 2017 Caltrans has committed \$33 million for local projects that capture trash from stormwater runoff from more than 14,000 acres of local and Caltrans ROW.
4. Caltrans teamed up with local communities, elected officials, and CHP to execute pilot projects to cleanup illegal encampments and install fencing to deter further encampment in the Bay Area. These efforts also included collaboration with local agencies to provide social services to the homeless.

Caltrans has evaluated the provisions of the Tentative Cease and Desist Order and has included comments in Attachment I. Caltrans is committed to work with the Regional Board to accommodate mutual priorities, and to pursue efforts that advance Caltrans' and the Regional Board's shared goals of improving water quality in the Bay Area.

If you have any questions, please do not hesitate to contact me at (510) 286-7182.

Sincerely,



Hardeep Takhar, PE
Water Quality Program Manager
Caltrans, District 4

Enclosed: Attachment I

ATTACHMENT I

1. Background, # 10:

“10....Significant trash generation areas as defined in the Trash Amendments are functionally equivalent to moderate or greater trash generation areas using the BASMAA methodology.”

Comments:

Caltrans utilized the BASMAA methodology to conduct visual assessments and comprehensive trash studies that categorized Caltrans ROW of 25,000 acres under the Regional Board’s purview into low, medium, high and very high trash categories. Per the BASMAA methodology moderate trash generation areas are defined as: “Moderate (Slightly Littered) – Predominantly free of trash except for a few littered areas. On average, one piece per two car lengths. The trash could be collected by one or two individuals in a short period of time.”

The Trash Amendments define significant trash generating areas (STGAs) as “all locations or facilities within the Department’s jurisdiction where trash accumulates in substantial amounts”. The Trash Amendments considers very high and high trash areas as significant trash generating areas as trash accumulates in substantial amounts in these areas. Moderate trash generating areas that are defined as areas predominantly free of trash cannot be reasonably asserted as STGAs. Additionally, the Caltrans NPDES Permit requires Caltrans to demonstrate compliance through timely implementation of trash control measures in all high trash generating areas in the Bay Area. Inclusion of moderate areas that are primarily free of trash as STGAs does not align with the statewide Trash Amendments and Caltrans NPDES Permit requirements. The Regional Boards are authorized to enforce the NPDES Permit and the Trash Amendments, but there is no authorization for Regional Boards to impose new or different requirements above and beyond the requirements set forth in these documents. Caltrans requests this section to be deleted.

2. Purpose of Order #14:

“14. ...The Regional Water Board considers trash generation areas defined by the Department as moderate or greater to be significant trash generation areas, with the exception of moderate trash generation areas with vegetation that controls the generated trash. Future assessments of Department ROW within the San Francisco Bay Region are needed to determine how much of the remaining areas of Department ROW are significant trash generation areas.”

Comments:

Caltrans appreciates the Regional Board’s assertion that very high, high and moderate trash areas without vegetative controls is what it considers as STGAs requiring treatment. This corroborates Caltrans and the Regional Board staff’s discussion and understanding that 3720 acres is the footprint of area for treatment. Caltrans trash studies identified 1482 acres as very high/ high trash generating areas (STGAs) and 2238 acres as moderate areas without vegetative controls in the Bay Area. Caltrans partnered with the Regional Board staff to define the boundary of area that Caltrans will address which was decided to be 3720 acres (1482 acres +2238 acres). In alignment with Caltrans commitment and goals to promote sustainability, livability, improve the environment and reduce pollution in communities, Caltrans proactively exceeded expectations of the statewide NPDES Permit and Trash Amendments that requires Caltrans to address 1,482 acres of very high and high trash areas in the Bay Area and added 2238 acres of non-vegetated moderate areas in its footprint of trash control. The remaining Caltrans ROW beyond the footprint of trash control (3720 acres) includes low and moderate trash generation areas with vegetation controls and are in rural areas.

The requirement for future assessments of remaining low and moderate areas are unnecessary and does not add additional insight into the multiple assessments that have already been performed. Caltrans performed comprehensive on-land visual assessments and trash studies in 2016 and 2018 which included statistical analysis of trash collection volume and frequency data, input from

maintenance field staff, and visual assessments performed jointly with staff from a local municipality and the Regional Board to ensure the assessments were consistent with BASMAA methodology. Regional Board staff agreed with the approach and methodology that Caltrans pursued to categorize Caltrans Bay Area ROW into low, moderate, high, and very high trash generation categories. Repetitive assessments of low and moderate areas that are primarily free of trash are unnecessary and excessive. Caltrans is committed to conduct progress monitoring and reporting as required by the Stormwater Permit. Additional reassessments will require a significant undertaking that takes away resources that could be used for implementation of trash control measures that advance Caltrans efforts to meet the benchmarks in the tentative Cease and Desist Order. Caltrans requests the requirement to conduct assessments to identify additional areas be deleted.

3. Purpose of this Order, #15

"15...Transport of trash from the Department ROW to surrounding municipalities unduly puts the burden of capturing trash generated on Department ROW onto the surrounding municipalities."

Comments:

This claim is speculative and is not corroborated through scientific data. Wind blows in many directions and any potential trash transfer to and from Caltrans ROW depends on site specific conditions. Like local municipalities, Caltrans activities by themselves do not generate trash. Managing trash generated by users puts undue burden on both Caltrans' and local municipalities' ability to achieve their respective missions. Caltrans continues to partner with public and private agencies including local municipalities to systematically address trash concerns. Caltrans requests this section to be deleted.

4. Cease and Desist Order Authority, #18

"18. Because the Department is violating Basin Plan Prohibition 7 and Attachment V, Part 2 of its Permit, this Order is necessary..."

Comments:

Caltrans statewide NPDES Permit as per requirement specified in Attachment V states that the "Department shall demonstrate compliance with discharge prohibition 7, Table 4-1 of the San Francisco Bay Basin Water Quality Control Plan (Basin Plan) through the timely implementation of control measures in all high trash generating areas in the San Francisco Bay Region". Caltrans has demonstrated good faith effort and due diligence in pursuing increasingly rigorous efforts for timely trash control measure implementation in the Bay Area. In addition, Caltrans has partnered with local jurisdictions and has funded projects that not only treat runoff from Caltrans ROW but also local jurisdictions ROW. To date Caltrans has committed funds for local Bay Area trash control projects that will treat trash from a combined 14,000 acres of Caltrans and local ROWs. Caltrans has funded public education campaigns to influence public behavior so that Caltrans and local jurisdictions do not have to expend millions of tax payer dollars to clean up and collect litter left by users of roadways. Additionally, Caltrans has demonstrated due diligence to pursue a well-rounded approach to address homeless encampments in the Bay Area by executing efforts to systematically clean up homeless encampments, and partner with local agencies to provide social services. Caltrans has not violated the Basin Plan and Attachment V of the NPDES Permit as it has demonstrated due diligence in implementing trash control measures in a timely manner. Caltrans requests this section to be deleted.

5. Order, Provision #1 – Implement Trash Controls

"1. The Department shall implement structural and non-structural trash control.... the following benchmark acreages and dates: e. All additional significant trash generating areas of ROW identified by visual assessments conducted in 2021, 2025, and 2029 by December 2, 2030.

Comments:

Caltrans has conducted multiple studies and assessments to define the boundary of area (3720 acres) that requires treatment and that is under the purview of the Regional Board. Caltrans and Regional Board staff have collaborated on the footprint of area requiring treatment and there are no additional areas requiring assessments or treatment. Therefore, Caltrans requests to delete the following benchmark: *"e. All additional significant trash generating areas of ROW identified by visual assessments conducted in 2021, 2025, and 2029 by December 2, 2030."* Caltrans conducted trash assessments on its ROW in 2016 and 2018 and successfully pursued efforts to build consensus on the findings with the Regional Board staff. The Regional Board and Caltrans staff have jointly collaborated on the footprint of area that needs treatment (3720 acre). Repetitive visual assessments of the remaining low and medium areas with vegetation controls in 2021, 2025 and 2029 are unnecessary and requires diversion of resources that could be used to implement trash control measures. This hinders Caltrans efforts to timely meet compliance benchmarks indicated in the tentative CDO. Caltrans appreciates the Regional Board's commitment in working with Caltrans and acknowledgement that time extensions to meet benchmarks may be considered based on demonstrable due diligent efforts.

6. Order, Provision #2 – Install Structural Trash Controls on All Construction Projects in Significant Trash Generating Areas

"2...If it is impractical to install structural trash controls due to site constraints or safety reasons, the Department shall identify these areas and report them in its annual report and trash generation map."

Comments:

Caltrans ensures diligence and constructs trash capture devices, where practicable, in currently programmed transportation project in the Bay Area, taking safety of our workers, users of the highway system, site constraints and cost effectiveness into consideration. It may not be feasible to incorporate trash control measures in low budget projects that do not have the capacity to include improvements beyond their strict scopes for transportation improvement. Technical and/or financial infeasibility may make trash control measures impractical in some transportation projects. Additionally, it is infeasible to consider changes to projects after construction funding has already been allocated. Caltrans requests revision to the requirement as follows: "For all ~~construction~~ projects in significant trash generating areas of Department ROW that do not meet full trash capture equivalency and that have not been funded for construction, the Department shall install structural full trash capture devices, where technically and financially feasible, in the storm drain system and/or structural trash controls on the outlets of treatment systems to achieve the full trash capture standard. If it is impractical to install structural trash controls due to site constraints, or safety reasons or cost, the Department shall identify these areas and report them in its annual report and trash generation map."

7. Order, Provision #3 – Prepare and Submit a Trash Generation Map

"3. The Department shall prepare and submit, ...areas under or separate from raised roads, leased areas, ramps, loops, bridges, temporary yards, and maintenance stations..."

Comments:

Areas such as leased areas, areas under and separate from raised roads, homeless encampments, maintenance stations and temporary yards are not included in the Caltrans NPDES Permit or the

statewide Trash Amendments. The CDO requirements cannot impose requirements that are more stringent than the Caltrans NPDES Permit and statewide Trash Amendment requirements. Caltrans utilizes best management practices to ensure appropriate management of facilities, such as maintenance stations and temporary yards. In addition, mapping of homeless encampment sites and enhanced maintenance areas is above and beyond the Permit requirements. Caltrans takes a holistic approach to address the broad issue of homeless encampments and continues to partner with local agencies to systematically pursue initiatives. Caltrans requests the requirements related to these areas be removed from the tentative CDO.

8. Order, Provision #4 - Prepare and Submit a Trash Control Implementation Workplan:

"4.....The Workplan shall include the following:e. Identification of funding needs and resources necessary....the Workplan.....additional funding sources and commitments to be ... requirements. "

Comments:

Caltrans utilizes funds to implement various provisions of the statewide NPDES Permit which includes requirements for implementation of best management practices to address various pollutants such as toxic metals, sediment, pathogens as well as trash. Per the NPDES Permit requirements, Caltrans has prioritized watersheds that are within Caltrans jurisdictions and aligned its efforts to meet waste load allocations for various pollutants. This prioritization is directed at the highest priority pollutants and watersheds with the goal of implementing the necessary statewide controls during a 20-year period. Demands for accelerated effort in one Region adversely hinders Caltrans statewide progress in meeting Permit mandates. Caltrans transportation improvement projects as well as trash control projects are funded through the State Highway Operation Protection Program (SHOPP). The California Transportation Commission (CTC), consisting of eleven voting members allocates funding for Caltrans SHOPP projects and sets plans, policies and priorities for funding to ensure Caltrans mission to provide a safe, sustainable and efficient transportation system is appropriately fulfilled. Of the eleven voting members nine are appointed by the Governor, and the others by the Senate Rules Committee and the Speaker of the Assembly.

9. Order, Provision #5 – Conduct Trash Reduction Feasibility Studies

"5...The Department shall conduct a Trash Reduction Feasibility Study... significant trash generating ROW shall be submitted by December 31, 2025"

Comments:

Conducting stand-alone Trash Reduction Feasibility Studies by corridor, requiring percentages of STGAs studied and timelines for their completion may not always result in timely implementation of structural trash controls. Caltrans project delivery staff conduct trash treatment feasibility assessments to explore treatment options as a routine practice as projects in STGAs are planned and developed in the Bay Area. Separate stand-alone technical feasibility studies are conducted on a case by case basis when there is need for specialized studies. This practice promotes efficiency and ensures prudent use of state resources. Caltrans requests this section to be removed from the CDO. Caltrans is committed to conduct trash control feasibility assessments on all projects in STGAs during project development and delivery process. Mandates for excessive studies and assessments require Caltrans to divert resources that could otherwise be used for advancing trash control implementation efforts in the Bay Area. The requirement for separate feasibility studies hinders Caltrans due diligence in using state resources efficiently. In past discussions Regional Board staff had agreed to delete requirements for stand-alone studies.

10. Order, Provision #5 c (i) – Conduct Trash Reduction Feasibility Studies

"c.(i) If the Department...be of equivalent trash generation to the ROW determined to be infeasible to treat."

Comments:

Caltrans appreciates the opportunity to seek alternative compliance when it is infeasible to implement trash control on Caltrans ROW. However, as the Regional Board only agrees to provide alternative compliance credits if the local ROW treated area is of equivalent trash generation rating, Caltrans requests to receive 1:1 credit for local area treatment (one credit for one acre of equivalent trash treatment in local jurisdiction). Caltrans should not be penalized when all diligent efforts to treat its ROW has been exhausted and the only way to receive credit is to pursue alternative compliance. The arbitrary 2:1 crediting ratio undervalues the immense benefits of cooperative efforts with local partners and disincentivizes Caltrans’ good faith effort to advance trash reduction measures not only within its ROW but also in local jurisdictions. Caltrans requests to revise the following as indicated: “~~Two~~ One acres of local ROW or watershed area treated will yield one acre of alternative compliance credit based on similar trash generation rating, i.e., the non-Department ROW treated area must be of equivalent trash generation to the ROW determined to be infeasible to treat.”

11. Order, Provision #6 – Conduct Visual Trash Assessments

“...Department ROW by December 31, 2021, December 31, 2025, and December 31, 2029.... b. Conduct a visual trash generation ... illegal dumping currently occurs ...occurred. c. Based... “significant trash generating areas” control implementation to meet Order requirements.”

Comments:

Caltrans conducted comprehensive visual assessments and trash studies in 2016 and 2018. In addition, Caltrans will be monitoring progress in meeting benchmarks specified in the tentative CDO and report to the Regional Board annually. The requirement for additional reassessments is not consistent with the requirements of the NPDES Permit and the statewide Trash Amendments, and does not facilitate statewide prioritization, planning and efficiency in the implementation of trash control measures. Assessments of off highway areas such as leased areas, areas under and separate from raised roads, homeless encampments, maintenance stations and temporary yards are beyond the requirements of Caltrans NPDES Permit and the statewide Trash Amendments. Caltrans requests Provision #6 to be removed.

12. Order, Provision #7 – Track and Report on Trash Control Implementation and Maintenance:

“Annual.....the following: c. Acreage of significant trash generating area .. full trash capture equivalency”

Comments:

For reporting and tracking purposes, as per discussion with the Regional Board staff, Caltrans may claim credit for acreage treatment when projects are programmed. Caltrans requests the following provision to be revised as follows: **“c. Acreage of significant trash generating areas converted to full trash capture equivalency. For projects that treat Caltrans ROW, Caltrans may claim credit for treatment when the projects are programmed”**

Citations:

1. BASMAA OVTA Report (trash level rating definition, Table 2.1): <http://basmaa.org/Announcements/tracking-cas-trash-on-land-visual-assessments>
Moderate Trash Level Rating: “Predominantly free of trash except for a few pieces that are easily observed along a city block, or the equivalent. The trash could be collected by one or two individuals in a short period of time.”