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Submitted via email on January 14, 2019

Dale Bowyer
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

Re: Tentative Cease and Desist Order to the California Department of Transportation

Dear Mr. Bowyer:

This letter is submitted on behalf of the Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPPP) and provides comments on the Tentative Cease and Desist Order (Tentative Order) for the California Department of Transportation (Caltrans). SCVURPPP is an association of 13 cities and towns¹ in the Santa Clara Valley, the unincorporated Santa Clara County and the Santa Clara Valley Water District. Along with other San Francisco Bay Area public agencies, SCVURPPP participating agencies are Permittees to the Municipal Regional Stormwater National Pollutant Discharge Elimination System (NPDES) permit in the San Francisco Bay Area (also referred to as the MRP), which is issued by the Regional Water Board. As Permittees, SCVURPPP participating agencies are subject to trash reduction requirements included in the MRP, which require local public agencies to achieve numeric trash load reductions by specific milestones, including 80% trash load reduction by July 2019.

We appreciate the Regional Water Board's attention to this important issue and Caltrans' recent progress towards enhancing coordination with MRP Permittees on potential trash control projects that would mutually-benefit local agencies and Caltrans. Because the 25,000 acres of Caltrans right-of-way (ROW) in the Bay Area is intertwined with MRP Permittee jurisdictional areas, the fact that many of Caltrans stormwater conveyance systems are directly-connected to MRP Permittee systems, and substantial volumes of trash are generated on Caltrans' ROWs, MRP Permittees and their ability to comply with the MRP's ambitious trash load reduction requirements and timetable are directly affected by the success of Caltrans (or lack thereof) achievement of trash reduction milestones.

As governmental partners in reducing the impacts of trash to Bay Area water bodies, we have identified a number of issues in the CDO that should be reconciled before adoption by the Regional Water Board to better address the disparity of the regulatory burdens and timelines placed on Caltrans and local agencies and allow for a better chance of achieving the Regional Water Board's ambitious trash reduction goals within a reasonable time, given the relative resources available to both. Each of these issues are described below.

¹ Campbell, Cupertino, Los Altos, Los Altos Hills, Los Gatos, Milpitas, Monte Sereno, Mountain View, Palo Alto, San Jose, Santa Clara, Saratoga and Sunnyvale

- **Provide More Clarity on Benchmark Acreages**

Provision 1 in the Tentative Order states that Caltrans “shall implement structural and non-structural trash controls to meet full trash capture equivalency in significant trash generating areas of Department ROW as soon as possible but no later than the following benchmark acreages and dates:

- a. 1,150 acres or more by June 30, 2020;
- b. 1,250 acres or more by June 30, 2022;
- c. 1,750 acres or more by June 30, 2024;
- d. 3,720 acres or more by June 30, 2026; and
- e. All additional significant trash generating areas of ROW identified by visual assessments conducted in 2021, 2025, and 2029 by December 2, 2030.”

Based on this language, it is unclear as to whether the benchmark acreages are intended to be additive or absolute. The difference between the two (additive versus absolute) is more than 4,000 acres by 2026. If absolute, it is unclear as to why Caltrans will only be required to achieve full capture equivalency in an additional 100 additional acres over two years (2020-2022), a very low bar for trash control measure implementation in the near-term and inconsistent with the timelines required of MRP Permittees to achieve ambitious trash reduction goals.

Recommendation: The words “an additional” should be inserted prior to the acreages in subprovisions a-d to provide clarity that the benchmark acreages included in provision 1 are additive and not absolute.

- **Ensure Consistent Definition of Trash Generating Areas**

Given SCVURPPP Permittees’ understanding of the levels of trash on Caltrans’ ROWs and the previously identified underestimation of trash levels by Caltrans using an uncalibrated assessment method, the statement included in the Tentative Order that only 8,820 acres of Caltrans’ 25,000 acres of ROW (35%) generate moderate or greater levels of trash is suspect. The vast majority of Bay Area freeways, highways, and other Caltrans areas consistently generate significant levels of trash at moderate or greater levels. While we understand that the baseline mapping and associated assessments is still underway and trash generation levels will be adjusted accordingly, we remain concerned that the standardized definition of trash generating areas (i.e., moderate or greater trash generation as observed via on-land visual assessments) is not being consistently applied by Caltrans.

Recommendation: We appreciate the requirement in the Tentative Order that Caltrans uses the visual assessment methodology developed via the Bay Area Stormwater Management Agencies Association (BASMAA), but to ensure appropriate application of the method, we request that the Regional Water Board require Caltrans to provide full documentation of all assessment results used to establish baseline trash conditions. Furthermore, we request that Water Board staff fully evaluate these results to ensure consistency with the established method now used throughout the State to define trash generating areas. Inconsistencies in the application of these methods could significantly alter the extent of trash control measure implementation by Caltrans and prejudice local agencies in terms of the relative burdens imposed under the Caltrans permit/CDO and the MRP. Therefore, the methods used and the results generated by Caltrans should be fully disclosed and evaluated by both Board staff and local agencies prior to the approval/finalization of baseline trash generation maps.

- **Ensure Consistency Between Caltrans CDO and the MRP Implementation Timelines**

Trash load reduction requirements for MRP Permittees first went into effect in December 2009. Permittees were required to develop baseline trash generation levels/maps and methods to demonstrate trash load reductions in less than two years. MRP Permittees spent significant time and resources to develop baseline trash generation maps and developed assessment approaches that were acceptable to the Regional Water Board. Although it did not shoulder the financial and staff time burden associated with their development, these established methods are now to be used by Caltrans to identify trash generating areas with its ROWs. Given that the methods are already well established and have proven practical in the field, it is unclear why Caltrans is being afforded until October 2019 to develop its Baseline Trash Generation Map.

Additionally, local agencies were required to achieve a 40% trash load reduction in jurisdictional areas within four years of the adoption of the MRP. As described in the Tentative Order, Caltrans is to be afforded almost twice as long to address only 15% of their ROW (3,720 acres), and will be provided an additional four years to address their remaining trash generating areas. This timeline to achieve trash reduction milestones is wholly inconsistent with the milestones in the MRP, which require MRP Permittees to address all trash generating areas by 2022 and will render it impossible for local agencies to meet the MRP's ambitious goals and timelines unless they are similarly readjusted.

Recommendation: To accommodate the practical implications of the Caltrans CDO's timeline and provide consistency and a level playing field, we request that during the reissuance of the MRP, the Regional Water Board provide MRP Permittees with revised timelines for achievement of trash reduction goals to align with what it has afforded Caltrans.

- **Provide More Clarity on Caltrans' Responsibility for Trash Generated on State Highways**

Of the 25,000 acres identified by Caltrans as their ROW, roughly 7,100 acres (28%) are State Highways. These highways also serve as arterial roads that transect Bay Area cities and counties and trash generating areas. These State Highways include El Camino Real (San Mateo and Santa Clara Counties), San Pablo Avenue (Contra Costa and Alameda Counties), International Boulevard (Alameda County), and Ashby Avenue (Alameda County), all of which generate significant levels of trash. Because these arterial roads are directly connected to adjacent land uses, these Caltrans ROW areas are currently included on MRP Permittee Baseline Trash Generation Maps. As a result, their inclusion effectively require local agencies to implement measures to control trash from Caltrans property without Caltrans contributing resources to implement such measures. Although there are maintenance agreements between local agencies and Caltrans to conduct street sweeping and/or storm drain inlet cleaning on certain segments of these highways, many of these maintenance agreements pre-date the Regional Water Board's trash requirements and no agreements have yet to include a provision of funding from Caltrans to local agencies to help defray the local agencies' cost of trash control measure implementation. To date, Caltrans has been unwilling to revise these agreements to assist with enhanced trash control measure implementation or even to enter into meaningful discussions about such burden-sharing.

Recommendation: To ensure that Caltrans takes the appropriate responsibility for controlling trash generated on State Highways, we request that the Regional Water Board ensure that all State Highways, regardless of whether maintenance agreements are in place or not, are included on Caltrans baseline maps and that the trash associated with these areas is fully controlled by Caltrans. Additionally, we request that the Regional Water Board allow MRP Permittees to

remove Caltrans ROWs identified as State Highways from their baseline maps and adjust baseline trash generation accordingly. These revisions to MRP baseline maps and the inclusion of State Highways on Caltrans maps will avoid double counting and provide the mechanism needed for an appropriate allocation of relative burdens. Absent such an adjustment, the needed incentives and impetus for enhanced coordination among MRP Permittees and Caltrans on trash control measure implementation for these land areas will, as a practical matter, continue to be lacking.

- **Require Caltrans to Provide On-Going Funding for the Operation and Maintenance of Trash Full Capture Systems of Mutual Benefit**

As the result of recent discussions between Caltrans and MRP Permittees on potential cooperative agreements to fund the capital costs of trash full capture systems that address trash from Caltrans' ROW and MRP Permittee jurisdictional areas, it is our understanding that should a city or county enter into an agreement with Caltrans, funding for on-going operation and maintenance of these devices would generally not be provided by Caltrans. Because operation and maintenance are required to ensure the proper trash capture performance of a device, the city/county would then be disproportionately and unfairly burdened by the operation and maintenance costs for the life of the device. This lack of O&M funding provides little incentive for MRP Permittees to enter into cooperative agreements with Caltrans for installation of full trash capture devices serving both in the first instance, particularly given that funding for O&M is extremely difficult for cities and counties to secure for long timeframes. Additionally, the lack of O&M funding from Caltrans provides it with little impetus for ensuring that full capture devices serving to address its ROW are maintained and performing adequately.

Recommendation: To ensure that trash full capture systems installed via cooperative agreements between Caltrans and MRP Permittees adequately function and capture trash over time, we request that the Regional Water Board include a requirement in the Tentative Order that requires Caltrans to demonstrate that it is providing for O&M of any full capture devices on which it relies to address its permit/CDO requirements, either by assuming in cooperative agreements with local agencies an appropriate proportion of such maintenance responsibilities itself or by providing an appropriate level of funding to MRP Permittees to take on that proportional share of implementation responsibilities (This requirement could be included in "Trash Control Implementation Workplan" described under Provision #4 of The CDO).

Thank you for the opportunity to provide comments on the Draft Tentative Order. We hope that the Regional Water Board will fully consider these comments and our recommendations for modifications to the Order prior to its adoption. Please contact me directly at (510) 832-2852 (x115) should you have questions regarding our comments and recommendations.

Sincerely,



Adam W. Olivieri Dr. PH, P.E.
Program Manager

cc. SCVURPPPP Management Committee
Tom Mumley, Assistant Executive Officer, SF Bay Water Board
Keith Lichten, Division Chief, SF Bay Water Board