

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

**TENTATIVE ORDER NO. R2-2021-XXXX
AMENDMENT OF**

CEASE AND DESIST ORDER NO. R2-2019-0007

for

CALIFORNIA DEPARTMENT OF TRANSPORTATION

WHEREAS the California Regional Water Quality Control Board, San Francisco Bay Region (Regional Water Board), finds the following:

1. The Regional Water Board issued Cease and Desist Order No. R2-2019-0007 (CDO) to the California Department of Transportation (Department) on February 13, 2019. The CDO includes required actions, a schedule, and compliance benchmarks to bring the Department into compliance with trash reduction requirements in the State Water Resources Control Board's Order No. 2012-0011-DWQ, as amended, which is a statewide national pollutant discharge elimination system (NPDES) permit that regulates the Department's storm water and permitted non-storm water discharges.
2. The Department conducted visual trash assessments of its right-of-way (ROW) in 2016 and 2018 and used these assessments to assign trash generation ratings of low, moderate, high, and very high for all areas of ROW within the San Francisco Bay region. The assessments and associated trash generation ratings were used to prepare a trash generation map and identified approximately 8,820 acres of ROW as significant trash generating areas. Significant trash generating areas are defined as all moderate or greater trash generating areas.
3. CDO Provision 6 requires the Department to conduct additional region-wide visual assessments of trash generation in all low and moderate rated trash generating areas of Department ROW by December 31, 2021, December 31, 2025, and December 31, 2029. These assessments are required to enable the Department to identify the remaining extent of significant trash generating areas from which trash must be controlled to meet CDO benchmarks and trash reduction requirements by 2030.
4. In a letter dated October 29, 2021, the Department requested an extension of the completion date for the first CDO-required visual trash assessment from December 31, 2021, to December 31, 2022, to allow additional time to develop and improve its visual trash assessment methodology. This improved methodology requires additional time for the Department to incorporate innovative trash assessment artificial intelligence and machine learning technology in partnership with Google and their Litter Insights platform. The additional time to develop this methodology is expected to result in a more accurate representation of trash conditions within Department ROW.

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5. The Regional Water Board agrees that additional time to improve the visual trash assessment methodology may result in a visual assessment that better reflects trash conditions in the Department's ROW, and, therefore, the extension request is reasonable.
6. This Order, therefore, allows the Department an additional year, until December 31, 2022, to complete the first required visual assessment, and requires interim submittals of an updated visual trash assessment methodology by June 30, 2022, and a sample trash generation map produced using the updated methodology by August 30, 2022. These interim submittals are required to allow Regional Water Board review and comment on the methodology prior to its implementation.
7. This Order also updates CDO Appendix A submittals and compliance dates and corrects trash control benchmark acreages so that those acreages correspond to the benchmarks in CDO Provision 1.
8. This Order is an amendment of an enforcement action and, as such, is exempt, as is the underlying enforcement action is exempt, from the provisions of California Environmental Quality Act (Pub. Res. Code § 21000 et seq.) in accordance with Title 14, California Code of Regulations, section 15321.
9. The Regional Water Board notified the Department and interested agencies and persons of its intent to consider adoption of this Order, and provided an opportunity to submit written comments.
10. In a public meeting, the Regional Water Board heard and considered all comments pertaining to this Order.

IT IS HEREBY ORDERED, pursuant to the provisions of California Water Code division 7, and regulations adopted thereunder, that the Department shall comply with Cease and Desist Order No. R2-2019-0007, as amended by this Order, as described below.

1. Order No. R2-2019-0007, Provisions 1 and 6 are amended as follows (additions are shown in double underline, and deletions in ~~strikethrough~~ text):

1. **Implement Trash Controls**: The Department 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. 2,000 acres or more by June 30, 2020;
 - b. 4,000 acres or more by June 30, 2022;
 - c. 6,000 acres or more by June 30, 2024;
 - d. 8,800 acres or more by June 30, 2026; and
 - e. All additional significant trash generating areas of ROW identified by visual assessments conducted in ~~2024~~ 2022, 2025, and 2029 by December 2, 2030.

- 6. Conduct Visual Trash Assessments:** The Department shall conduct a region-wide visual assessment of trash generation in all Low and Moderate rated Department ROW by December 31, ~~2024~~ 2022, December 31, 2025, and December 31, 2029. The following shall be included in the visual assessment and for the December 31, 2022, visual assessment, the Department shall also comply with the submittal requirements in (b):
- a. A trash generation rating that classifies Department ROW into Very High, High, Moderate, and Low trash generation categories. This rating methodology shall be comparable to Provision C.10 of the Municipal Regional NPDES Stormwater Permit, Order No. R2-2015-0049 (NPDES Permit No. CAS612008). While, unlike municipal permittees' properties, Department ROW corridors are generally linear, trash generation ratings will be similar to municipalities based on visual evidence of the amount of trash present over a given area;
 - b. Conduct a visual trash generation assessment within all ROW rated as Low or Moderate including all roadway and off-roadway areas, park-and-ride lots, rest areas, areas under or separate from raised roads, leased areas, ramps, loops, bridges, temporary yards, and maintenance stations. In addition, the assessment shall identify areas of Department ROW where homeless encampments have historically existed or currently exist and areas where illegal dumping currently occurs or has historically occurred. In advance of the December 31, 2022, visual assessment, the following interim submittals are required: by June 30, 2022, an updated visual trash assessment methodology and by August 30, 2022, a sample trash generation map of a portion of Department ROW (such as a highway corridor) that incorporates the updated assessment methodology; and
 - c. Based on the Department's visual trash assessments identify all "significant trash generating areas" within Department ROW. The areas identified as significant trash generating will comprise the total acreage the Department is required to manage to meet the trash reduction requirements. The classification criteria and designation will be subject to review and approval by the Regional Water Board and will determine the number of ROW acres that require trash control implementation to meet Order requirements.

2. Appendix A to Order No. R2-2019-0007 is amended to update the submittals and compliance dates and to correct the trash control benchmark acreages so that those acreages correspond to the benchmarks in CDO Provision 1. The amendments are shown in a revised Appendix A attached hereto.

3. This Order shall become effective immediately upon adoption.

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I, Michael Montgomery, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of a Cease and Desist Order adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, on [Date].

Michael Montgomery
Executive Officer

Appendix A – Revised Summary of Compliance Benchmarks, Required Submittals,
Required Actions, and Compliance Dates

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Appendix A - Revised Summary of Compliance Benchmarks, Required Submittals, Required Actions, and Compliance Dates

Order Provision	Compliance Date
Provision 2: All construction projects in significant trash generating areas shall contain structural trash controls	February 13, 2019
Provision 3: Submit Map Provision 7: Submit Annual Report	October 1, 2019
Provision 4: Submit Workplan Provision 5: Submit 10% Feasibility Study report	December 31, 2019
Provision 1.a: Control trash from 4,150 <u>2,000</u> acres of significant trash generating ROW	June 30, 2020
Provision 3: Submit Map Provision 7: Submit Annual Report	October 1, 2020
Provision 3: Submit Map Provision 7: Submit Annual Report	October 1, 2021
Provision 4: Submit Workplan Provision 5: Submit 50% Feasibility Study report Provision 6: Conduct Visual Assessment	December 31, 2021
Provision 1.b: Control trash from 4,250 <u>4,000</u> acres of significant trash generating ROW <u>Provision 6.a: Submit updated trash generation rating and assessment methodology</u>	June 30, 2022
<u>Provision 6.a.i: Submit sample Map using updated rating and assessment methodology</u>	<u>August 30, 2022</u>
Provision 3: Submit Map Provision 7: Submit Annual Report	October 1, 2022
<u>Provision 6: Conduct Visual Assessment</u>	<u>December 31, 2022</u>
Provision 3: Submit Map Provision 7: Submit Annual Report	October 1, 2023
Provision 4: Submit Workplan Provision 5: Submit 80% Feasibility Study report	December 31, 2023
Provision 1.c: Control trash from 4,750 <u>6,000</u> acres <u>of significant trash generating ROW</u>	June 30, 2024
Provision 3: Submit Map Provision 7: Submit Annual Report	October 1, 2024

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Order Provision	Compliance Date
Provision 3: Submit Map Provision 7: Submit Annual Report	October 1, 2025
Provision 4: Submit updated Workplan Provision 5: Submit 100% Feasibility Study report Provision 6: Conduct Visual Assessment	December 31, 2025
Provision 1.d: Control trash from 3,720 <u>8,800</u> acres of significant trash generating ROW	June 30, 2026
Provision 3: Submit Map Provision 7: Submit Annual Report	October 1, 2026
Provision 3: Submit Map Provision 7: Submit Annual Report	October 1, 2027
Provision 4: Submit Workplan	December 31, 2027
Provision 3: Submit Map Provision 7: Submit Annual Report	October 1, 2028
Provision 3: Submit Map Provision 7: Submit Annual Report	October 1, 2029
Provision 6: Conduct Visual Assessment	December 31, 2029
Provision 3: Submit Map Provision 7: Submit Annual Report	October 1, 2030
Provision 1.e: Control trash from all significant trash generating ROW	December 2, 2030