



February 09, 2021

The Honorable James McGrath, Chair

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

Dear Mr. Chairman and Members of the Board:

Save The Bay has reviewed Caltrans' latest *Trash Control Implementation Workplan for the San Francisco Bay Region*, submitted on December 31, 2020, to the San Francisco Bay Regional Water Quality Control Board (Regional Board). It has now been two years since the Regional Board adopted a cease and desist order (CDO) requiring Caltrans to submit a workplan that includes "a schedule and list of planned structural and non-structural trash control projects and actions sufficient to meet trash reduction benchmarks and Order requirements anticipated to be completed in the next five years."

We are encouraged to see that the workplan does identify specific Caltrans funds intended to pay for compliance actions, after many years of procrastination and denial. That commitment of significant funding is long overdue, and does create a more realistic prospect for installation and maintenance of full trash capture devices to prevent pollution violations from some of Caltrans roads and right-of way, and for some cooperative implementation projects with municipalities to treat additional acreage.

Unfortunately, Caltrans's latest submission once again fails to meet the CDO's compliance targets. Unless Caltrans addresses the following deficiencies, it will continue to be out of compliance with the CDO's trash reduction benchmarks, necessitating more severe enforcement actions by the Regional Board.

Reliance on Alternative Compliance Credits

Caltrans claims nearly 2,000 acres, almost a full quarter of the CDO's required treatment acreage, will be treated through the use of alternative compliance credits. These credits are problematic for several reasons:

First, the concept of "alternative compliance" has not been approved by the State Water Board.

Second, Caltrans should not be afforded the ability to claim alternative compliance credits without an independently verified demonstration that areas of the right-of-way subject to the CDO are not feasible for on-system or off-system trash capture projects or effective maintenance activities. Caltrans must ensure that all physical trash capture compliance technologies have been evaluated and address any traffic safety and access issues by designing downstream projects that can intercept trash before it impacts the Bay. Any areas conclusively deemed infeasible for trash capture at this time should be re-evaluated regularly for the suitability of new technologies.

Third, Caltrans should not be afforded alternative compliance credits for acreage within local municipalities that is treated by Caltrans-funded local partnership projects. These areas are themselves subject to the Municipal Stormwater Permit (MRP) and cities are already required to eliminate trash from stormwater outflows within these jurisdictions. Allowing Caltrans to claim credit for treating these

areas would be “double-counting” and would not actually reduce ongoing trash pollution from Caltrans’ right-of-way.

Finally, any alternative compliance credits, if allowed (after the exhaustion of on-system controls, off-system controls, and effective maintenance evaluations), should require Caltrans to offset areas subject to the CDO but deemed infeasible with treatment of high trash generating areas that are not otherwise subject to the MRP or other stormwater trash regulations. For example, Caltrans could increase the acreage of municipal high trash generation areas treated with cooperative implementation projects whose construction and maintenance it funds. Caltrans also could partner with local municipalities on direct discharge source controls and cleanups.

Enhanced Maintenance & Vegetation Controls Pilot Studies

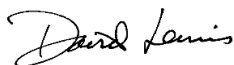
Caltrans claims credit for treating 500 acres covered by the CDO with enhanced maintenance activities, and 700 acres covered by the CDO with existing vegetation controls, based on on-going pilot studies that are as-yet unproven in their effectiveness at achieving full trash capture equivalence. The Regional Board should not permit Caltrans to claim credits for these approaches until Caltrans provides details, and the Regional Board conclusively verifies their effectiveness.

Taken together, Caltrans’ reliance on credits for alternative compliance, enhanced maintenance, and vegetation controls account for more than 3,100 acres of right-of-way subject to the CDO, yet Caltrans cannot demonstrate conclusively that its efforts will provide full-trash capture equivalence or an equivalent reduction in trash from other areas. Therefore, Caltrans’ own workplan demonstrates that it will fail to meet the CDO’s trash reduction benchmarks beginning in 2022.

While Caltrans’ workplan does identify some local partnership projects and significant funding for project delivery, it will not produce compliance with the Regional Board’s CDO. As a result, Caltrans will continue significant trash pollution of the Bay despite years of effort by the Regional Board.

The Regional Board should require Caltrans to address these workplan deficiencies immediately to produce a credible plan for compliance with the CDO, or institute more severe enforcement steps, so the state’s own transportation agency does not continue to be one of the largest sources of continuing trash pollution in the Bay.

Sincerely,



David Lewis,
Executive Director