



California Stormwater Quality Association®

Dedicated to the Advancement of Stormwater Quality Management, Science and Regulation

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State Water Resources Control Board
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Electronic Submission: commentletters@waterboards.ca.gov

Subject: Comment Letter – Trash Amendments

The California Stormwater Quality Association (CASQA) appreciates this opportunity to comment on the subject Draft Amendments to Statewide Water Quality Control Plans to Control Trash (Proposed Trash Amendments) developed by the State Water Resources Control Board (State Water Board) in June 2014.

CASQA shares the State Water Board's concern regarding trash in our streams and oceans and recognizes the important role of amendments to the Inland Surface Waters, Enclosed Bays and Estuary Plan and the Ocean Plan in helping to protect our local water bodies.

Controlling trash is a societal problem and Municipal Separate Storm Sewer Systems (MS4s) will be an important part of the solution. As drafted, the Proposed Trash Amendments almost exclusively focus on point sources of trash delivered to receiving waters through MS4s. MS4 point source discharges are not the only means by which trash enters waterways and stormwater programs will not be able to solve the societal trash problem alone. The provisions of the Proposed Trash Amendments need to recognize this in establishing implementation and assessment requirements to achieve the trash water quality objectives.

CASQA supports the proposed narrative approach to establishing water quality objectives for trash and the focused implementation on priority land uses with high trash-generating rates as well as the flexibility offered to permittees to select between the two implementation tracks.

CASQA also supports the option of developing and implementing regulatory source controls (product bans, packaging stewardship programs, etc.) and the potential for time extensions where these programs are implemented. These are key provisions to encourage the removal of some of the more persistent components of trash from the environment and emphasize product and packaging stewardship – one of the more cost-effective approaches available. To achieve the highest impact, we would prefer that these controls be implemented at the state, not local level.

While CASQA is generally supportive of the approach reflected in the Proposed Trash Amendments, we have the following concerns and suggestions to improve their implementation and function.

1. Focus of trash-control in high trash-generating land uses and implementation flexibility

CASQA supports the focus on high trash-generating land uses. Focus on these areas within a community will allow stormwater programs to invest resources where they will provide the best return (i.e., more trash removal) on the investment in the controls. High generating land uses may vary by community across the state. There may be instances, especially in Phase II communities but also rural areas within a Phase I footprint, where some portion of the priority land use area may not in fact be a high trash-generating area. Rather than installing devices or institutional controls in areas where the return on the investment will be low, we recommend that the Trash Amendments allow for flexibility by establishing a process through which permittees could petition their Regional Water Board to review the areas in question and give the public agency the authority to exempt such areas if they are found not to be high trash-generating. The exemption could include a ‘sunset date’ or a requirement to revisit priority areas at some frequency in the event the trash situation in those areas worsens. The exemption process could include visual assessments of the priority areas as a first step in determining where and what controls to put in place.

The draft Trash Amendments say that *“an MS4 may request that its permitting authority approve an equivalent alternative land use (...) if that MS4 has land use(s) within its jurisdiction that generate trash at rates that are equivalent to or greater than one or more of the priority land uses listed”*. This gives permittees the option of adding land uses, but does not allow the exclusion of low generating sub-regions of an otherwise high trash land use. We suggest the addition of language to indicate *“an MS4 may request its permitting authority to approve an exemption from treatment controls if that MS4 has areas within its jurisdiction that generate trash at rates that are significantly lower than estimated for the priority land use listed.”*

2. Recognition of current watershed management and pollutant prioritization programs

Many MS4 permittees around the state have been working extensively with the Regional Water Boards to develop and implement watershed management programs, often based on watershed-specific prioritization of pollutant and water quality conditions. These comprehensive watershed planning processes consider trash, as well as many other pollutants of concern (POCs). As drafted, the Proposed Trash Amendments would supersede and undermine existing watershed planning efforts, effectively determining that trash is the highest priority and taking resources away from the established watershed based priorities.

The Proposed Trash Amendments need to recognize the value of current management programs and not divert resources away from ongoing successful efforts to control trash in our waterways. CASQA urges the State Water Board to allow MS4 programs with existing watershed-based management plans or POCs-focused water quality implementation plans to address trash in the prioritization context of those existing plans.

3. Approach to Performance Demonstration and Receiving Water Monitoring

Demonstration of performance under Track 2 should not be limited to monitoring BMP performance (e.g., counting, weighing, measuring volume) as demonstrating effectiveness of trash BMPs. Monitoring requiring quantification of trash is extremely difficult and expensive.

Permittees should be allowed to propose the method of demonstrating performance in their plan. For instance, rigorous visual assessments have proven to be effective tools in some jurisdictions. A current effort in the San Francisco Bay Area, funded by a Proposition 84 grant, may provide additional assessment tools for permittees to incorporate into their plans in the future. (The project is expected to be completed in 2017.)

CASQA supports the approach to not requiring monitoring or performance demonstration for Track 1. In reality most permittees that select Track 2, will implement a combination of full capture devices and other control measures. The Trash Amendments should make it clear that permittees who select Track 2 do not need to monitor or demonstrate performance in those portions of their jurisdictions served by full capture devices.

CASQA objects to the requirement for MS4 permittees to conduct receiving water monitoring. As noted, other sources contribute trash to receiving waters and imposing this requirement on MS4 permittees will not provide a definitive indication of the effectiveness of stormwater trash control programs. While MS4 permittees may want to conduct receiving water monitoring to demonstrate performance, it should not be mandated.

4. Funding mechanisms for compliance with the Trash Amendments

It is essential that the program be developed in conjunction with a funding mechanism. Municipal stormwater agencies do not generate the trash and should not bear the full responsibility for funding and implementing the corrective measures. The State Water Board needs to assist with the development of funding sources for permittees to comply with the Trash Amendments. CASQA does not dispute the water quality benefits of controlling trash. However, the costs presented in the Staff Report and Economic Analysis exceed most communities' ability to fund. Grant funds have assisted many communities to install full capture devices. This type of competitive grant funding while valuable, takes a significant effort to win and manage. Grants, such as the Proposition 84, do not address the ongoing costs of managing and maintaining treatment devices.

Proposition 218 currently precludes MS4 permittees from raising their fees for stormwater management (where fees even exist). Even with the recent changes to Proposition 218, the typical full capture devices are catch basin inserts and would not be considered eligible for the water supply exception resulting from AB 2403.

CASQA recommends that the State Water Board partner with MS4 permittees to explore the creation of a non-competitive program to fund trash control measures. One such program that could serve as an example is the Used Oil Payment Program (OPP). The California Oil Recycling Enhancement Act (Act) provides funding to assist local governments in maintaining an ongoing used oil and used oil filter collection/recycling program for their communities. The OPP is funded by a state tax on automotive oil. Another example is the program that exists for automobile tires. A fee is paid at purchase to fund the proper disposal at the end of the tire's life.

CASQA strongly encourages the State Water Board to explore mechanisms to create economic incentives for producers of products determined to be the primary components of trash in the MS4 and water bodies. Such mechanisms might include requiring producers to:

- 1) Redesign the product to be biodegradable in water (and define what biodegradable means).
- 2) Design and implement a recycling/collection programs that result in significant reductions of that product ending up as trash in MS4 or receiving waters.
- 3) If those things cannot be achieved, consider bans on products.

In short, make the producers create the solution and pay for it, and not externalize and spread the cost of packaging stewardship to MS4 permittees and the public.

5. Full Capture Device Certification

The Proposed Trash Amendments indicate that the State Water Board would take responsibility for the certification process for full capture systems. Full-capture devices vary widely in capital and maintenance costs. This process would likely be burdensome to the State Water Board and delays in certification would impede the ability of MS4 permittees to make an informed choice between Track 1 and Track 2. It is critical for permittees to know which devices are permissible early in the planning process.

CASQA recommends that the State Water Board create a list of certified devices *prior to the adoption* of the Proposed Trash Amendments or revise the language to indicate that any full capture device that meets the stated criteria fulfills the certification requirement. This latter approach has the further advantage of allowing the suite of allowable devices to be dynamic as permittees learn which devices prove more (or less) effective and allows manufacturers to modify their designs and introduce or remove devices from their product line.

CASQA concurs with automatically continuing the certification of full capture devices previously approved by the Los Angeles Regional Board. However, like agencies in the Los Angeles region, agencies in other regions have invested significant funds to purchase, install, and maintain devices that meet the “full capture” definition in existing permits. CASQA recommends that automatic certification be extended to any full trash capture device approved by a Regional Water Board to comply with existing NPDES permits. This certification can be extended for the life of the installed device.

6. Controlling Other Sources of Trash

As noted, other regulated and non-regulated sources (e.g., individual NPDES permit holders, agricultural operations, non-point sources) often contribute trash to receiving waters. While MS4 permittees work to create partnerships to identify successful management strategies for preventing trash from reaching receiving waters, it is critical that the Proposed Trash Amendments limit the liability of MS4 permittees. CASQA recommends that the State Water Board require that other regulated entities implement the Proposed Trash Amendments through a regulatory process external to the MS4 permits. The State Water Board should include provisions to require implementation of the Proposed Trash Amendments, not only through inclusion in MS4 permits, but through other NPDES Permits, WDRs, and Waiver Provisions.

7. Provide Off Ramps for MS4s Where Trash is not a Problem

The Proposed Trash Amendments do not recognize that the majority of surface waters with California are not impaired for trash. In fact, by one assessment 98 percent of the surface waters in California are not impaired by trash.

Region	# Inland Surface Waters²	# Impaired by Trash	% Not Impaired by Trash
North Coast (1)	151	0	100.0%
San Francisco (2)	533	26	95.1%
Central Coast (3)	490	0	100.0%
Los Angeles (4)	330	42	87.3%
Central Valley (5)	117	0	100.0%
Lahontan (6)	1,085	0	100.0%
Colorado River (7)	52	1	98.1%
Santa Ana (8)	230	0	100.0%
San Diego (9)	561	3	99.5%
Total	3,549	72¹	98.0%
¹ From review of 2010 California 303(d) list of Water Quality Limited Segments. Differs from total of 73 segments identified in Draft Staff Report ² From manual summary of surface waters listed in Basin Plans			

It appears that the Proposed Trash Amendments assume that impairments exist in all areas and all areas require aggressive implementation actions. Considering the costs associated with implementing the Proposed Trash Amendments, CASQA recommends the State Water Board consider providing off ramps from the requirements for MS4 permittees that do not have trash impaired waters where the permittee can demonstrate they do not have a trash or litter problem.

The Proposed Trash Amendments can recognize that many surface waters in the state are not impaired for trash and provide an option that if the MS4 permittees can demonstrate any of the following the Amendments should not apply to that MS4.

- 1) The MS4 does not have any of the high trash generating land uses within its jurisdiction; or
- 2) The MS4 is currently meeting the discharge prohibition of no discharge of trash to surface waters of the State, or the deposition of trash where it may be discharged into surface waters of the State; or
- 3) The MS4's receiving waters meet the water quality objective of trash in amounts less than that adversely affecting beneficial uses or causing nuisance.

8. Implications of Timeline for Implementation

The Proposed Trash Amendments appear to take a hybrid approach of establishing a water quality objective within the typical constructs of a Total Maximum Daily Load (TMDL) implementation framework, including a compliance schedule. However, this approach,

universally applied statewide, presents certain challenges that can be addressed via TMDLs, but cannot be addressed in the current construct of the Proposed Trash Amendments. For example, Regional Water Boards are given discretion to add in additional high trash generating areas, but this discretion is not time-limited. Therefore, a Regional Water Board could require a permittee to address additional areas well into the timeline provided for in the Proposed Trash Amendments (e.g., year 8 of the 10 year timeline) without being able to provide additional time to the permittee to implement controls in those areas.

CASQA therefore requests the Proposed Trash Amendments be modified to either (1) provide Regional Water Boards the discretion to add additional time for implementation or (2) limit the timeframe in which Regional Water Boards can add additional priority land uses to the initial establishment of the permittee's program.

9. Compliance with Water Quality Objective and Prohibition of Trash Discharge

The Proposed Trash Amendments propose narrative water quality objectives for the Inland Surface Waters, Enclosed Bays and Estuary Plan and the Ocean Plan, and proposes a prohibition of trash discharge in those Plans. The MS4 permittees would be considered in full compliance with the prohibition of trash discharge so long as the permittees were fully implementing Track 1 or Track 2 (Chapter IV.B.2.a and Chapter III.I.6.a, of the ISWEBE Plan and Ocean Plan, respectively). However, the Proposed Trash Amendments do not indicate that meeting the discharge prohibition requirements would also mean the permittees are in compliance with receiving water limitations (i.e., meeting the water quality objectives).

CASQA recommends adding language to the Proposed Trash Amendments indicating the MS4 permittees are in compliance with the receiving water limitations so long as they are fully implementing Track 1 or Track 2.

10. Trash Total Maximum Daily Load Development

It appears that the Proposed Trash Amendments will serve as an alternative to a TMDL, thereby preventing the need to develop trash TMDLs in the future. CASQA recommends the State Water Board add language to clarify the intent of the Proposed Trash Amendments with respect to the development of future TMDLs. It seems that implementation of the Proposed Trash Amendments represents a single regulatory action addressing MS4 permittee requirements thereby removing the need to develop wasteload allocations via a TMDL for MS4 permittees.

CASQA recommends that language be included in the Proposed Trash Amendments stating that if the requirements in the Proposed Trash Amendments are being met, then no Trash TMDLs will be developed for those water bodies where the requirements are being fully implemented.

11. Consistency between Prohibition of Discharge and Water Quality Objective

In accordance with the California Water Code, the proposed narrative water quality objectives for trash correctly recognize that trash in discharges in "amounts that adversely affect beneficial uses or cause nuisance" should be regulated. However, as drafted, the proposed Prohibitions of Discharges for Trash do not include language corresponding to this aspect of the water quality objectives and could be misinterpreted to apply literally to any and all trash. This is inconsistent with the Water Code's charge that State Water Quality Control Plans and implementation

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requirements be economically reasonable and technically feasible and has potentially significant resource demands and adverse enforcement implications for the regulated community.

The State Water Board should provide consistency between the water quality objectives and prohibitions by revising the trash prohibitions to include language that qualify that the trash discharges being prohibited and controlled by the specified implementation requirements, is the trash “in amounts that cause impairment of beneficial uses or conditions of nuisance in receiving waters.”

In closing, given the breadth of the our comments and those comments and concerns expressed by stakeholders at the July 16, 2014 workshop, CASQA requests that when the revised draft of the Trash Amendments is released for public review that the entire document, not just the changed text, be open for further comment to allow stakeholders to consider the whole of the revised proposal.

We thank you again for the opportunity to provide our comments and we ask that the State Water Board carefully consider them. We would like to reiterate our support of the State Water Board’s process of engaging stakeholders during the development of the Proposed Trash Amendments.

If you have any questions, please contact CASQA Executive Director Geoff Brosseau at (650) 365-8620.

Sincerely,

A handwritten signature in cursive script that reads "Gerhardt J. Hubner".

Gerhardt Hubner, Chair
California Stormwater Quality Association

cc: CASQA Board of Directors and Executive Program Committee