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April 2, 2009

The Honorable John Muller, Chair
San Francisco Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

Subject: Revised Tentative Order Municipal Regional Stormwater NPDES Permit

Dear Chairman Muller and Members of the Board:

On behalf of over 25,000 members and supporters throughout the Bay Area, Save The Bay appreciates the opportunity to comment on the Revised Tentative Order (RTO) of the Municipal Regional Stormwater Phase I NPDES Permit (MRP). We value the hard work of the staff of the San Francisco Regional Water Quality Control Board (Regional Board) in drafting the RTO. We also appreciate the Regional Board's consideration of the concerns of community groups and the general public, in addition to permittees and stormwater agencies.

A healthy and vibrant San Francisco Bay is central to our region's quality of life and economy. As the largest estuary in the West, San Francisco Bay defines our region, providing recreation, beauty and vital habitat for fish and wildlife. As the Regional Board knows, the Bay and its tributary waters are threatened by rampant urban runoff pollution. With the Bay Area population expected to grow another 15 percent to 8.1 million by 2020, it is critical to reduce these impairments now before our waters are degraded further.

This Municipal Separate Storm Sewer System (MS4) permit is one of the most important tools for addressing urban runoff pollution. The MRP covers approximately 75% of the Bay Area. In order to be effective, the MRP must include clear, numeric goals and enforceable permit provisions. Unfortunately, despite strong direction from members of the Board, and extensive public encouragement to combat Bay pollution more aggressively, the Revised Tentative Order (RTO) of the MRP fails in several areas to provide the measurable, enforceable provisions necessary for an MS4 permit to make progress on attaining the water quality standards required by law. The RTO is not crafted to ensure the beneficial uses of water bodies within the Board's jurisdiction that has been guaranteed to the people of California.

We are disappointed that each successive draft of the MRP has moved farther away from achieving water quality standards. The RTO lacks numeric effluent limits for several key pollutants of concern, including mercury and pesticides, and its Low Impact Development provisions also lack quantitative requirements. The trash provisions contained in section C.10 are a woefully inadequate response to the documented negative impacts of trash on beneficial uses of



Bay Area waters, the Regional Board's recently approved 303(d) listings for trash impairment, explicit direction to staff from Regional Board members, the *Implementation Strategy to Reduce and Prevent Ocean Litter* of Governor Arnold Schwarzenegger's Ocean Protection Council, and the escalating public demand to reduce marine debris. For all of these reasons, and because Save The Bay has daily direct experience with trash pollution through our shoreline restoration programs, we focus these detailed comments on the RTO's proposed permit provisions for trash.

Trash Pollution is a Documented and Growing Problem

Trash is a pervasive and still unaddressed pollutant of concern that degrades water quality throughout the Bay Area. The quantity of marine debris in our waterways is growing exponentially. Marine debris increased from threefold to one hundred-fold in the world's oceans during the 1990's alone.¹ In the Bay Area, trash pollutes our creeks and Bay, chokes wetlands, discourages recreation and threatens wildlife. The Regional Board's own 2005 study found an average of three pieces of trash along every foot of streams that lead to the Bay.² The majority of marine debris is generated from urban runoff.³ Approximately 80% of marine debris comes from land-based sources.⁴ On Coastal Cleanup Day 2008, 352,000 pounds of trash was collected from Bay Area shorelines.⁵

Save The Bay staff and volunteers remove trash weekly from wetland restoration sites. Each year, we bring more than five thousand students and teachers to explore the Bay by canoe, but rafts of floating trash sometimes create a navigational impediment too great to canoe through. Bay Area residents are deeply concerned about this issue – 19,556 volunteers spent the day cleaning up trash on Coastal Cleanup Day this year – yet these volunteer efforts can only have a negligible impact on a problem this large.

The Regional Board formally acknowledged the extent of trash pollution throughout the Bay in February of 2009 when it voted to list as 24 tributaries and two large sections of Bay shoreline as impaired by trash under section 303(d) of the federal Clean Water Act. As members of the Board noted during public hearings on this action, levels of trash in regional waters demand attention and these listings add to the impetus to tackle the problem with effective controls that can be mandated through permitting actions. Board staff also stated at a January 2009 public hearing that the Municipal Regional Permit can and should address recent 303(d) listings for trash impairment in a more timely fashion than waiting many years for the development of Total Maximum Daily Load requirements. The trash provisions of this regional stormwater permit must be responsive to the serious water quality impairments documented in the Board's recent 303(d) listings.

1 Copello and Quinataro. 2003. Marine Pollution Bulletin 46: 1513-1515; Ogi and Fukamoto. 2000. Bulletin of the Faculty of Fisheries 51(2): 71-93.

2 Moore, S.M., A. Senter, M. Cover. 2005. Surface Water Ambient Monitoring Program, San Francisco RWQCB: A Rapid Trash Assessment Method Applied To Waters Of The San Francisco Bay Region: Region-Wide Results Of Systematic Measurement Of Trash In Streams.

3 Los Angeles Regional Water Quality Control Board. 2001. Trash TMDL for the Los Angeles River Watershed.

4 U.S. Department of Commerce, National Oceanic and Atmospheric Administration, Office of Public and Constituent Affairs. 1999. "Turning to the Sea: America's Ocean Future."

5 Eben Schwartz, California Coastal Commission. 2008 Coastal Cleanup Day results, personal communication.

The Regional Board Must Exercise its Regulatory Authority to Eliminate Trash Discharge

The RTO's descriptive language acknowledges "*the ubiquitous, unacceptable levels of trash in waters of the San Francisco Bay Region...*"⁶ Indeed, as the Board has stated for several years, "*there are excessive levels of trash in virtually all urbanized waterways of the San Francisco Bay Region.*"⁷ The Regional Board has known about these impairments since at least 1997: "*Observations made by members of the public and Regional Board staff since 1997 indicate a preponderance of trash in, on and near water bodies, particularly in urban portions of streams, lakes, and coastlines throughout the San Francisco Bay Region.*"⁸

This discharge of trash and marine debris must be eliminated to comply with the Basin Plan, as well as other applicable state and federal laws and regulations. The Regional Board has a clear legal mandate for this action.

As cited in sections A and B of the RTO, the **Basin Plan** explicitly prohibits discharges of "*rubbish, refuse... or other solid wastes into surface waters or at any place where they would contact or where they would be eventually transported to surface waters, including flood plain areas.*" Receiving water limitations prohibit discharges that cause "*floating, suspended or deposited macroscopic particulate matter, visible, floating suspended or deposited oil or other products of petroleum origin,*" such as plastics, or "*substances present in concentrations or quantities that would cause deleterious effects on aquatic biota, wildlife or waterfowl, or that render any of these unfit for human consumption.*"

As the California Court of Appeal noted in its decision on the Los Angeles River TMDL, the Los Angeles Regional Board established that Basin Plan requirements provide the authority for mandating a goal of zero trash, since: "*Even small quantities [of trash] can maim and kill wildlife, [which] becomes entangled in it or ingest[s] it. [Trash] [c]an obstruct and repel boaters and contact recreators and compromise the aesthetic quality that's essential to the recognized aspect of non-contact recreation beneficial use for the Los Angeles River.*"⁹ The Los Angeles Regional Board "*found no study to document that there is an acceptable level of trash that will cause no harm to aquatic life.*"¹⁰

A majority of beneficial uses of the San Francisco Bay and its tributary watersheds are affected by elevated trash levels, including non-contact and contact recreation (REC-1, REC-2), estuarine habitat (EST), marine habitat (MAR), fish migration (MIGR), rare and endangered species (RARE), fish spawning (SPWN), warm freshwater habitat (WARM), cold freshwater habitat (COLD), commercial and sport fishing (COMM) and wildlife habitat (WILD).

6 Revised Tentative Order Municipal Regional Stormwater Permit Fact Sheet section C.10-4, p.67

7 SFRWQCB. 2001. 2002 Draft 303(d) Staff Report,14.

8 Ibid, 12.

9 The Fourth Appellate District Court of Appeal. January 2006. City of Arcadia et al. v. State Water Resources Control Board: 17.

10 Ibid.: 16.

The **Clean Water Act** requires that MS4 permits "*include a requirement to effectively prohibit non-stormwater discharges into the storm sewers*"¹¹ and federal regulations require MS4s to control pollutant discharges that will cause or contribute to "*an excursion above and State water quality standard, including state narrative criteria for water quality.*"¹²

In early 2009, the Regional Board took decisive action to recognize 24 tributaries and two shoreline sections of the Bay as impaired by trash under the Clean Water Act section 303(d). Action by the U.S. Environmental Protection Agency to approve the 303(d) listings is reasonably foreseeable and provides additional legal authority for the Regional Board to issue an MS4 permit that reflects the severe, established, widespread nature of the regional trash pollution problem.

The problem of marine debris is so dire and pervasive that Governor Arnold Schwarzenegger's California Ocean Protection Council has adopted a statewide *Implementation Strategy to Reduce and Prevent Ocean Litter*. That strategy says "*Regional Water Boards should amend Municipal Separate Storm Sewer System (MS4) permits to require that municipalities install storm sewer catchment devices or otherwise prevent litter from entering waterways that lead to the ocean.*"¹³

In addition to the Basin Plan and the Clean Water Act, the **Comprehensive Conservation and Management Plan** (CCMP) recognizes that the "*full use of the Estuary is being impeded by the presence of pollutants like trash.*"¹⁴ The CCMP is a blueprint for restoring and maintaining the estuary through specific recommended corrective actions. Among these actions, the CCMP recommends "*installation of treatment control facilities*" as a practical strategy to address the trash problem, "*as soon as possible,*" with a performance measure of achieving a "*percentage reduction in trash and other pollutants of concern.*"¹⁵ The CCMP also calls for achieving a "*number of sites (or miles of shoreline) with reduced marine debris*" and a "*percentage decrease in trash around marinas/beaches.*"¹⁶

In spite of these clear legal and policy mandates, staff has explicitly acknowledged in RTO section C.10 and the associated Fact Sheet that the proposed trash provisions are not intended to meaningfully address trash pollution in this permit term. Rather, the provisions relegate established Best Management Practices (BMPs) to only an "*initial pilot scale of deployment, to enable permittees to learn*" and "*begin actions and develop expertise*" for an as yet undefined plan in the future.¹⁷ Structural trash controls are to be implemented only as a "*step toward understanding the appropriate use of the various trash capture device options.*"¹⁸ The C.10 Goal Statement admits that the "*actions required in this permit term are unlikely to eliminate the impact of trash on beneficial uses or achieve the Basin Plan water quality standard for this*

11 Clean Water Act 402(p)(3)(B)(ii)

12 Federal NPDES Regulation 40 CFR 122.44(d)(1)(i)

13 California Ocean Protection Council. 2008. An Implementation Strategy for the Resolution to Reduce and Prevent Ocean Litter: 21.

14 Comprehensive Conservation and Management Plan. 2007. Action PO-1.8: 139.

15 Ibid.

16 Comprehensive Conservation and Management Plan. 2007. Actions AR-9.1 & 9.2: 44-45.

17 Revised Tentative Order, Municipal Stormwater Permit. 2009. C.10.a: 77.

18 Fact Sheet, Revised Tentative Order, Municipal Stormwater Permit. 2009. C.10.a.v: 69.

pollutant after five years." This approach explicitly contradicts the RTO's stated intent "that this Permit shall ensure attainment of applicable water quality objectives and protection of the beneficial uses of receiving waters and associated habitat."¹⁹

Although the Basin Plan offers a strong basis for requiring significant, enforceable restrictions on discharge of trash, the Regional Board has failed to enforce discharge prohibitions and receiving water limitations on trash in the Bay under the current MS4 permit. This lenient approach to enforcement of illegal trash discharge has not yielded reduction in trash pollution or produced increased useful efforts from permittees. The lack of enforcement under the current MS4 permit creates further imperative for the MRP to detail a trash program that includes explicit performance expectations to ensure permittee compliance and Board enforcement — the RTO will not achieve this outcome.

Proposed Revisions to Section C.10

1. Require Immediate Action to Address Documented Problems

Although most permittees failed to assess their jurisdictions as the Regional Board directed in 2001, Rapid Trash Assessments (RTA) and documentation by concerned citizens have revealed many trash-clogged waterways that already qualified for listing as trash impaired on the 303(d) list approved by the Regional Board in February 2009. Through their regular maintenance activities, municipal staff and staff from flood-control districts should already be well aware of additional areas in their jurisdictions where trash accumulates in or near waterways. Santa Clara County permittees in good faith began an extensive assessment and study program for trash, which reported at least 200 trash-polluted sites.

The most logical and appropriate way reduce trash impacts within this permit term is for the Board to start with the directive that any water body already established as trash-impaired through the 303(d) listing process must be the focus of aggressive clean up actions designed to eliminate further trash discharges to receiving waters from these waterways. Permittees should be mandated to spend time and money on further assessments after actions are being taken to resolve already-documented problem areas. The first priority should be to focus on cleaning up the 26 water bodies the Board has approved for 303(d) listing, other locally known trash impairments, and other waterways that subsequently meet the 303(d) criteria during the permit term.

The MRP should require permittees to quickly report these sites to the Board and take initial clean up actions within six months. The list of reported priority water bodies should be made available for public review. Subsequently, these sites should be maintained at "no impact to beneficial uses" or approximately zero trash. Cleanup of these waterways should not be restricted to small three hundred foot segments of shoreline. Rather, trash discharge to these waterways and their receiving waters must be eliminated where it occurs and accumulates. The Regional

¹⁹ Ibid: 2.

Board can then use its discretion to take enforcement action when this requirement is not met, taking into account the efforts of permittees.

In the first year report, permittees should submit documentation of actions they have taken to clean up the first round of trash impaired waterways and locally known trash impairments, along with recent RTA scores for high trash accumulating regions of the water bodies. Permittees should also submit scored results of virtual (photographic) trash assessments along all waterways in their jurisdictions, indicated on maps. Quantitative RTA scores or equivalent (URTA) should be acceptable for submission if completed within the last three years.

The C.10 provisions should ensure a quantitative overview of regional trash pollution while minimizing unnecessary "study" of this well-established and easy-to-identify problem. The Regional Board must not accept the false notion that every part of identifying and reducing trash pollution is difficult or time-consuming. Because research is not a substitute for meaningful action to eliminate pollution, extraneous efforts should be avoided. The RTO's hot spot formulation requires small permittees with no known trash impairments to identify and designate a hot spot that may or may not be significant. Instead, small permittees without known impairments should be directed to map and report the levels of trash along the water bodies in their jurisdictions using the time-efficient "virtual RTA" established and vetted during the 303(d) assessment process.

The immediate directive of the permit's trash provisions should be to clean up obvious, known impairments now. While addressing some trash problems and inputs will take significant time and investment, including for important BMPs like full-capture devices, there are also businesses, schools and other sources that can be pursued immediately with warnings or fines for not controlling trash. Homeless encampments and illegal dumping sites can be remediated, catch basins can be cleared more frequently, and litter enforcement actions can be taken under existing laws. All of these can be accomplished while funding mechanisms are developed for structural trash controls. The RTO should be rewritten to ensure that each year's accomplishments are sustained and built upon through subsequent annual reductions in trash pollution.

2. Require Measured Annual Reductions in Trash Discharge to Water Bodies Across the Permit Jurisdiction

The Regional Board should require measured annual reduction in trash discharge to water bodies, using the best available tools. The permit must either stipulate enforceable performance metrics for the entire permit jurisdiction or require BMPs to reduce trash pollution to the maximum extent practicable (MEP) that can produce significant, measurable success within this permit term. The permit provisions should cultivate programs and practices that will achieve Basin Plan water quality standards and discharge prohibitions in the long-term.

After the first year, a minimum 10% additional annual reduction in trash load should be demonstrated across each jurisdiction. Currently, permittees have limited tools for assessing the actual amount of trash flow in water bodies. The best monitoring methods available include the RTA (which relies on shoreline-caught trash as an indicator), CalTrans protocols, or trash

removed from capture devices – either full capture (>5mm) or trash booms, which catch only a proportion of floatable items. The 10% reduction during this permit term would therefore be reasonably demonstrated by documenting installation and appropriate maintenance of full-capture devices equivalent to catch runoff from 10% of land area or more each year. The RTO does not contain clearly stated mandates and reporting requirements for siting and maintenance of structural trash controls, and should be rewritten to do so. Some permittees may prefer to expressly define and document reasons for choosing one or more alternate BMPs for trash control, including for homeless encampments and illegal dump sites. If the permit is written to allow for this alternative approach, permittees must be required to demonstrate the percent reduction in trash accomplished through these methods by providing quantitative results from actual RTAs across all high trash accumulating areas and lower portions of watersheds within the permit jurisdiction.

In the period covered by this new permit, the Regional Board should ensure that permittees are well trained in the current methodologies, and that data collected and submitted is formatted consistently made available publicly to establish a baseline for trash impacts in the region. In the future, the Board should work to refine methods for measuring trash in water bodies through the Regional Monitoring Program.

3. Explicitly Define Expectations for the “Long-Term Plan”

If the Regional Board intends to allow permittees to submit a self-determined long-term plan for achieving water quality standards for trash, then the Board must provide direction and detail for the objectives those plans will meet and a schedule for attaining Basin Plan water quality standards and discharge prohibitions, which are absent from the RTO. The permit should define no impact to beneficial uses as zero trash, and require that any substitute standard be proven effective at achieving no impact to beneficial uses through peer-reviewed studies that take into account all beneficial uses impacted by trash and marine debris. In addition, the permit should stipulate what is expected in a long-term plan to report and document municipal activities, including siting, maintenance schedules, and funding development plans for full capture devices. Consequences for submitting an inadequate plan and a process for full public review should be detailed.

The RTO trash provisions proposed in C.10 and as stated in the Fact Sheet are explicitly not intended to meaningfully address trash pollution in this permit term. Rather, the provisions require only an “initial pilot scale of deployment, to enable permittees to learn” and “begin actions and develop expertise” for this as yet undefined plan in the future. This approach is unacceptable, and will delay significant trash reductions and improvements in water quality. There is no indications that convoluted provisions proposed in this RTO that would provide essential new information or yield a more robust approach to achieve water quality standards in a reasonable future timeframe.

A long-term plan is only acceptable in conjunction with a significant, quantifiable short-term reduction in trash pollution during this permit term, and must not be used by permittees to further delay achievement of water quality standards. The proposed deadline of 2024 for achieving zero

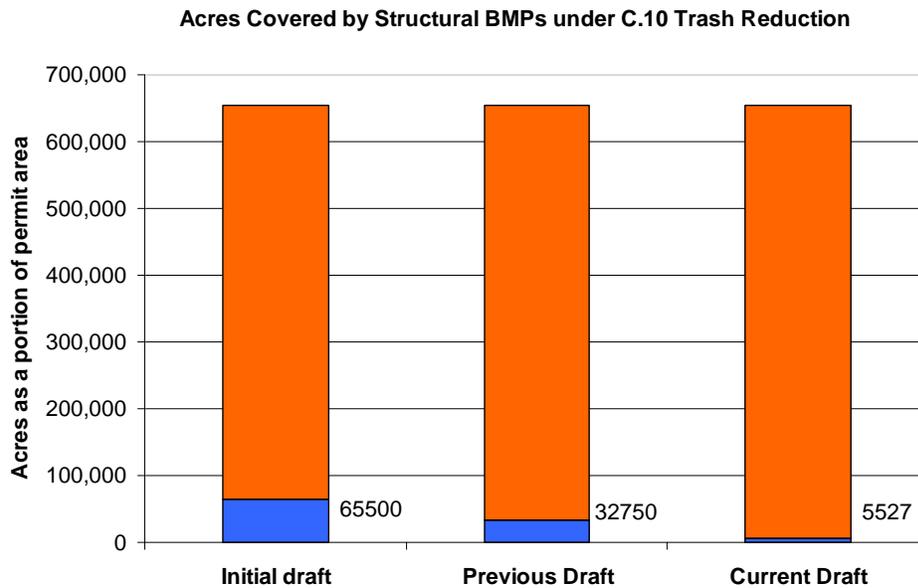
trash discharge, which has already been extended several times, is too generous given the severity of trash pollution and the mechanisms available to reduce it. It has already been twenty-seven years since the Regional Board identified widespread trash impairment of regional waters and twenty-two years since permittees were directed to manage trash pollution in their jurisdictions.

Specific Detailed Comments on Select Provisions in Section C.10

Save The Bay is concerned that each successive draft of the permit language regarding trash has emerged weaker than the previous one. This latest RTO includes drastic reductions in prescribed trash controls and serious gaps in the enforceability of provisions.

1. Unacceptably Limited Spatial Coverage for Established BMPs.

C.10 would require permittees to implement structural trash BMPs in only a tiny portion of the permit area. This RTO slashes spatial coverage and scope of well-established structural trash control BMPs from an already low 10% of urban/suburban acreage in the initial draft. The lack of requirements in C.10 for submitting siting plans or maintenance reports will make it difficult for the Regional Board and the public to understand and evaluate the effectiveness of the limited structural controls required.



The RTO brings the spatial coverage of structural trash BMPs such as full capture devices for the entire permit region from approximately 65,500 acres (102.3 mi²) in the original draft down to 5527 acres (8.6 mi²).

Because structural trash BMPs are generally placed in high-trash generating areas close to the bottom of watersheds, the RTO’s proposed spatial scope of coverage is illogical. It is also

inadequate to address the high levels of trash and associated impacts to beneficial uses that the Regional Board has noted throughout the past decade.

There is also no specified acreage included in the convoluted formulation for allocating trash hot spots and treatment of trash booms is contradictory. While admitting that booms are ineffective at capturing a large portion of trash, Section C.10 still gives booms a credit for 10% of the tributary catchment area, which could easily be all of the acreage required by the 'full-capture device' provisions. For flood-control districts, it is unclear why the allotment for booms is less than that for trash capture devices, and also unclear what the rationale is for either allotment.

Given the spatial coverage of this regional permit (approximately 655,000 acres), the scope of the watersheds draining to the Bay, and the well-established structural BMPs available for trash capture, the spatial coverage of C.10 provisions are indefensibly low.

→ Instead, an annual 10% percent reduction in trash discharge should be required across the entire permit jurisdiction.

2. Inadequate and Arbitrary Minimum Performance Standards

As noted above, the staff's articulation that the performance standards in the RTO are not intended to meet Basin Plan requirements is inconsistent with the expressed intent of the MRP and is unacceptable. We support numeric objectives for trash discharge toward achieving zero trash, but the proposed interim standard is unacceptable. The RTO's minimum performance standard for "Hot Spots" after year three of the permit term is a "Trash Action Level" (TAL) defined as 100 pieces of trash per 100 feet of embankment. This level of trash clearly violates water quality standards by any reasonable interpretation. The RTO also refers to this standard as "urban optimal," following Santa Clara Valley Urban Runoff Pollution Prevention Program's (SCVURPPP) arbitrary categories. This is an unacceptably low minimum performance standard incorporating misleading terminology. The Regional Board must not suggest through this permit that 100 hundred pieces of trash per 100 feet of embankment is "optimal." While the RTO states that meeting the TAL is not equivalent to meeting Basin plan water quality standards, using this TAL and describing it as "urban optimal" could establish this as the *de facto* standard, deterring progress toward achieving actual Basin Plan standards and causing potentially impaired areas to be incorrectly identified as clean.

There is also no definition of "no visual impact" in the RTO or its appendices. "No visual impact" is a stated performance standard that is entirely unenforceable without explicit definition.

→ The Basin Plan requires that there be no impact to beneficial uses and expressly prohibits discharge of trash and debris into receiving waters. The legal interpretation of this has been established as *zero trash*. This permit must reinforce and implement these definitions, not undercut them.

3. Inefficient Hot Spot Formulation Lacks Prescribed Methods to Eliminate Trash Discharge.

Rather than utilize the evidence already established and collected by the Regional Board, Section C.10 of the RTO contains an arbitrary and cumbersome formulation for locating hot spots, and fails to suggest methods of eliminating trash discharge at those spots. The origin and justification for the RTO's requirement of one hot spot per 30,000 residents also is unclear.

For these hot spots, the RTO suggests that unspecified "Enhanced Trash Management Actions" achieve a numeric goal based on a shoreline indicator (one piece of trash per foot of shoreline), but these actions remain undefined and do not have to be reported. In the RTO, failure to achieve the numeric goal for shore-bound trash also carries no specific consequences to remedy the failure.

The RTA methodology was designed as an assessment tool. It does not measure the amount of trash actually in the water column, but indicates what that amount and composition might be. RTA metrics therefore appropriately focus on the trash caught on embankments prior to an assessment-related clean-up (rather than a systematic elimination of trash discharge). Using these metrics as a water quality goal inappropriately blurs the line between monitoring and implementation if they are used without explicit measures to control trash inputs. In fact, the goal for "hot spots" described in the heading of C.10.a is to "demonstrate improved trash *assessments* at trash hot spots."²⁰

- Demonstrating measurable, sustainable results to achieve zero trash discharge for the most critically impaired water bodies is the most reasonable and efficient first step in this permit term. The permit should not mandate searching for over 163 small reaches at which to perform assessments over the next five years, as the RTO does.

4. Other Trash-Related Provisions Should not be Eliminated

The RTO eliminates requirements in Section C.2 for high-efficiency street sweeper upgrades, even though these are the only sweepers that have a documented impact on trash and other sediment-associated pollutants. The RTO also eliminates requirements for cleaning and inspecting storm drain catch basins, even though such actions can help identify trash problems when properly documented. Language in previous drafts that specified pump station retrofit requirements has also been deleted in the RTO.

- These established programs should not be deleted unless replaced with programs that are already clearly documented to be more effective.

²⁰ Revised Tentative Order, Municipal Stormwater Permit. 2009. C.10.a: 77.

The Regional Board must approve a clearly measurable, enforceable permit.

The Regional Board's attempt to eliminate individual Storm Water Quality Plans from permittees is a challenging new approach that increases the imperative for a detailed, specific permit program and an effective implementation strategy that produces significant, measurable reductions in trash. The Board should reject the RTO's approach, which would delay significant reduction of trash pollution far into the future. Only firm, decisive action by the Regional Board can yield meaningful progress to reduce trash and marine debris in our waterways.

The weak language and unenforceable provisions for trash contained within section C.10 of the RTO do not reflect this Board's previously stated intentions to reduce trash pollution, and do not achieve the purpose of NPDES permits. The trash provisions in this RTO, if adopted as written, will fail to make significant progress toward water quality standards, and will undermine the Regional Board's credibility and enforcement capabilities.

We therefore ask the Regional Board to make the following revisions to trash provisions in section C.10 in order to define clear, incremental provisions that facilitate both compliance and enforcement.

- 1) Ensure that the permit stipulates enforceable performance metrics for the entire permit jurisdiction. The permit should achieve a 10% or greater documented yearly reduction in trash discharge, or alternatively, require installation of full-capture structural trash controls that serve, each year, an additional 10% or more of land area over the previous year's baseline.
- 2) Replace the convoluted hot spot provisions with directives to achieve zero trash discharge from waterways meeting the 303(d) listing criteria, including the 26 water bodies recently approved for listing by the Regional Board, new water bodies found to meet the 303(d) criteria during the permit term and locally known trash impairments.
- 3) Define and require full reporting for trash management actions and maintenance of trash controls and replace misleading standards ("Trash Action Level," "Urban Optimal") with quantifiable, prescriptive actions toward achieving zero trash discharge.

Permit provisions must be written so as to result in significant, steady progress toward Basin Plan water quality standards, eliminating trash discharge and trash in receiving waters. The current trash provisions in section C.10 of the Revised Tentative Order (RTO) will provide little concrete, measurable benefit.

The public ultimately pays for all municipal stormwater programs, either as ratepayers or taxpayers, and are primary stakeholders to which permittees are accountable. The public also pays when water quality is degraded or contaminated, as with the rampant trash pollution in waters of our region. Adopting the RTO's trash provisions as is would be an inadequate response to the scope of the trash and marine debris problem in the Bay Area and in the Pacific Ocean,

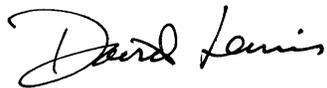
which the Board has acknowledged through its recent actions. It also would be inconsistent with the importance that the regional population places on this issue. State and federal legislators, Save The Bay members and community activists have submitted over *five thousand* comments and petition signatures to this Board calling for stronger trash controls in the MRP. In addition, over 100 local media stories have covered Bay trash in the last year alone, including more than 20 newspaper articles, TV and radio stories about the recent 303(d) listings for trash. While many regulatory agency proceedings are difficult for the public to attend or hard for people to understand, this outpouring of concern about trash pollution indicates that both the problem and its solution are clear to the public.

The Bay cannot afford another permit that lacks meaningful action to curtail trash pollution. Trash is neither difficult to detect, nor a legacy pollutant that requires a long-term, research to understand. The Board should apply now the knowledge and experience gained through trash TMDLs created elsewhere, extensive testing of trash capture technologies, and BMPs performed in accordance with TMDLs other regulatory actions to make tangible progress in this permit term.

We urge the Board to demand stronger, more enforceable trash provisions than those currently outlined in the RTO and also to reject any suggestions to weaken permit provisions even further. We ask the Regional Board to instead require the permit changes we have outlined to strengthen its impact and ensure that the MRP will facilitate compliance and enforcement. Only firm, decisive action by the Board can ensure meaningful progress on trash and marine debris in our urban creeks, the San Francisco Bay and Pacific Ocean.

Thank you very much for consideration of these comments.

Sincerely,

A handwritten signature in cursive script that reads "David Lewis".

Executive Director
Save The Bay