



TO: Regional Water Quality Control Board, Region II

FROM: Miriam Gordon, State Director, Clean Water Action

DATE: July 8, 2015

RE: Comments on Draft Municipal Regional Stormwater Permit, Order No. R2-2015-OXXX  
Provision C.10- Trash Load Reduction

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Clean Water Action welcomes the opportunity to provide comment on the proposed revised tentative order and municipal stormwater permit for trash load reduction- Order No. R2-2015-OXXX, Provision C.10. Some of what staff has proposed is an improvement from the earlier order, specifically, the requirement for receiving water monitoring. However, there are many areas of the order that are vague and require greater specificity, and our organization is deeply concerned about the source reduction credit proposed.

**C.10.a Trash Reduction Requirements- the standard for compliance is unclear**

One significant issue is lack of explanation of how the standard set for final compliance will be measured. From our read of the proposed order, there are vague compliance standards. For receiving waters, permittees must demonstrate 100% reduction of trash load by 2022, or no adverse impact to receiving waters. There is no explanation of what “no adverse impact to receiving waters” means. This needs to be specified.

In the Trash Generation Management Areas, it seems that permittees must demonstrate both full capture device equivalency and a reduction of 2009 Very High, High, and Moderate trash generation areas to Low trash generation or better by the mandatory deadlines. The problem with full capture device equivalency – i.e. “actions equivalent to full trash capture” that “send no more trash down the storm drain system than a full capture device would allow, which is essentially no trash discharge except in very large storm flows” - is that there have been no determinations of how much trash is sent down a storm drain system by a full capture device in very large storm flows.

Under Porter Cologne, water quality objectives must be set at a level that is technically and scientifically necessary to protect beneficial uses. There is no acceptable level of trash that may be present in our state’s waters without impairing a number of beneficial uses, including recreation, habitat, and municipal and domestic water supply uses. Current efforts in the state to address trash in our waterways support this conclusion. For example, the analysis surrounding the Los Angeles River Watershed TMDL found that beneficial uses would not be supported in the presence of any amount of trash. As was found by the Los Angeles Regional Water Board, “since littering is unlawful, a target of zero trash” is the “only defensible



position.”<sup>1</sup> Regional Water Board staff “found no study to document that there is an acceptable level of trash that will cause no harm to aquatic life.”<sup>2</sup> The Los Angeles Regional Water Board’s rationale that “even a single piece of trash can be detrimental, and no level of trash is acceptable”<sup>3</sup> can and should be applied to waters across the state. Therefore, it is our recommendation that 100% and “no adverse impact” should be something equivalent to no trash being present in receiving waters as demonstrated by visual and in-water monitoring.

#### **c.10.b Demonstration of Trash Reduction Outcomes**

- **Full Trash Capture Systems-** the Board is asking permittees to demonstrate that they are adequately maintaining their full capture devices by providing records of maintenance. Although the order specifies the number of times per year for different types of devices that maintenance should occur, there is no specification of when the maintenance must occur. We suggest that additional guidance be provided such that inspections occur following storm events. This is the time when full capture devices are likely to become clogged or full.
- **Source Control-** We recognize the challenge of assigning credit for load reduction for various actions and appreciate the Board’s inclusion of credits for source control. Our first recommendation is that the term “source control” be revised to be “source reduction.” Control is what the permittees are doing by managing, capturing, and cleaning up trash. Eliminating or reducing trash at the source is a different idea entirely and we believe that is what the Board intended this 5% credit to be about. It is important to incentivize source reduction, but a total of 5% for all source reduction actions is likely too little, especially since permittees are being offered a 15% credit for addressing direct trash discharges.

Source reduction could achieve a great deal of overall trash load reduction and save permittees and taxpayers millions of dollars in reduced trash management. For example, in Clean Water Action’s 2011 street litter study, straws represented 4% of street litter, plastic lids on beverage containers was 4%, bottle caps were 3%, paper cups were 2%.<sup>4</sup> There is a source reduction action for each of these items that could virtually eliminate these products in the litter stream. Combined, these items alone could achieve a 13% reduction in trash. Adding in other actions to reduce take-out food and beverage packaging, bags, and foam, permittees could achieve even greater reductions of trash.

Reducing trash generation at the source – basically eliminating trash that needs to be controlled or managed at great expense to taxpayers- provides the most environmentally preferable and economically beneficial solution to the problem of trash in the environment.

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<sup>1</sup> *City of Arcadia et al. v. Los Angeles RWQCB et al.*, 135 Cal.App.4th 1392, 1410 (Jan. 26, 2006).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at 1406.

<sup>4</sup> <http://www.cleanwater.org/ca/rethinkdisposable/littersourcesstudy>

In addition, this order fails to address trash smaller than 5mm flowing through MS4s. Although the general industrial permit requires that plastic processors implement Best Management Practices to control pre-production plastic pellets, there is no control or regulation for non-pellet trash smaller than 5mm. This is a significant failure. Small trash flowing through MS4 system should be included or addressed. Source reduction is the only measure in this order that will reduce small debris less than 5mm.

Our recommendation is that the Board provide a greater incentive for permittees to pursue source reduction measures, by allowing them an opportunity to make a case for or demonstrate that their actions deserve a higher percent of credit based on data that they provide, capped at 15%.

- **Receiving water monitoring-** The addition of a receiving water monitoring requirement in addition to on-land visual inspections is appropriate. However, the information cities are expected to submit for their observations needs to be defined. The permit should require permittees to do two types of receiving water monitoring- (1) monitoring of trash at the storm drain outfall, at least two wet season samples and (2) in water assessment, which should be based on the soon to be developed Tracking Trash monitoring program. Since the in water assessment methodology (i.e. in stream flow monitoring) of the Tracking Trash program will not be completed in time for the 2016 milestone, a shoreline visual assessment using the Rapid Trash Assessment or equivalent methodology should be required for this milestone as well as monitoring of trash at the storm drain outfall.

### **C.10.c Trash Hotspot Selection and Cleanup**

**Data-** For visual assessments, photo documentation should be accompanied by a report that characterizes and quantifies the products identified in the photos. It is essential to identify products in hot spots in order for permittees to obtain an improved understanding of the types of trash or litter and their sources. If permittees have a hard time achieving compliance, they will need to work harder to get at the sources. Failure to obtain data during monitoring will make it a challenge to work upstream at reducing trash at the source.

#### **A note about Lack of Enforcement**

There are no consequences for submitting a bad plan. The Board must certify or accept a plan and if it finds that a plan is inadequate, the Board should determine what the full capture equivalent is for the city. For failure to meet the attainment of 2017 mandatory deadline- the Board is suggesting a report of noncompliance. The permittee should be required to do full capture – or the Board specifies what combination of full capture and other measures to create full trash capture equivalent will be required.

The mitigation requirements for not meeting mandatory reductions (70% by 2017 & 100% by 2022) and “performance guidelines” (60% by 2016, 80% by 2019) aren’t strong enough. If cities don’t achieve the performance guidelines, their plan for meeting the mandatory reductions should include the few activities



that are widely accepted as reducing trash – street sweeping, creation of new business improvement districts, or other regular on land cleaning, and full trash capture everywhere that it is feasible. They can include other activities in their plan, but only in addition to these more concrete actions.

Questions or comments can be directed to Miriam Gordon, [mgordon@cleanwater.org](mailto:mgordon@cleanwater.org), (415) 369-9170