

Heal the Bay

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Santa Monica CA 90401

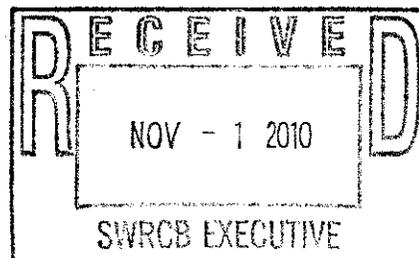
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CEQA Scoping Mtgs (10/7 & 14/10)
Policy for Controlling Trash
Deadline: 11/3/10 by 12 noon

November 1, 2010

Chairman Charles R. Hoppin and Board Members
State Water Resources Control Board
1101 I Street, 24th Floor
Sacramento, CA 95814
Sent Via Email [commentletters@waterboard.ca.gov]



Re: Comment Letter – Trash Policy Scoping

Dear Chair Hoppin and Board Members:

On behalf of Heal the Bay, we submit the following comments on the proposed State Water Quality Control Policy for Controlling Trash in Waters of the State (“Trash Policy”). We commend the State Board for moving forward with a Trash Policy and appreciate the opportunity to provide comments. We incorporate by reference the comments submitted by California Coastkeeper Alliance.

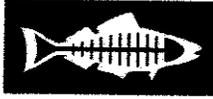
As Heal the Bay can attest to through our 20 year management of Los Angeles County’s Coastal Cleanup Day and our efforts leading thousands of beach cleanups over the last two decades, local beaches and stream banks look like landfills after every rain. Much of this trash makes its way into streams and the Pacific Ocean, wreaking havoc on aquatic life and severely impacting beneficial uses.

Heal the Bay has been intimately involved in the development and implementation of all trash TMDLs in the Los Angeles Region (12 total), which address trash-impaired waterbodies. The trash TMDL program has been a success in our Region, with over a million pounds of trash being captured prior to discharge annually and many responsible parties ahead of TMDL compliance schedules and under budget. In general, we believe that the State Board’s Trash Policy should build from the Los Angeles trash TMDLs. Our specific recommendations are discussed in detail below.

WATER QUALITY OBJECTIVES

Create a Statewide Numeric Water Quality Objective of “Zero Trash”.

The State Water Board acknowledged that a “zero trash” discharge requirement was an appropriate regulation with the approval of all twelve trash TMDLs adopted by the Los Angeles Regional Water Quality Control Board. A zero trash limit is the only water quality objective that meets the threshold of attaining and maintaining water quality standards as set forth in the Clean Water Act. Subsequent legal decisions regarding the Los Angeles Trash TMDL by the judicial system further validate this limit of zero trash. Many Basin Plans call for no floatables or settleables that will cause a nuisance or



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adversely affect beneficial uses. Even small quantities of trash violate the Clean Water Act and Basin Plans. For instance, small amounts of trash can maim or kill wildlife that becomes entangled in or ingests the debris. Plastic pieces are commonly mistaken for food by marine life and can contribute to organism starvation through stomachs filled with marine debris. Plainly, zero is the only fair interpretation of the Basin Plan water quality standards that will guarantee protection of the beneficial uses of waterbodies in California. As narrative criteria are less precise and harder to enforce than numeric criteria, it is critical that a numeric objective of zero trash is developed.

In the same vein, we urge the inclusion of a numeric water quality objective of "zero" for preproduction plastic pellets. This is consistent with California Water Code §13367 ("Preproduction Plastic Debris Program"). Also, pellets can be a source of contaminants as the pellets act as a pollution "sponge" that sorbs organic contaminants on the pellet surface.

IMPLEMENTATION

Establish a Definition of Full Capture Treatment System.

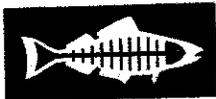
The Trash Policy should include a definition for a "full capture system" to create an opportunity for compliance with the Trash Policy in areas served by such a system. The Los Angeles Region's trash TMDLs include a definition of a full capture device:

"A full capture system is any device or series of devices that traps all particles retained by a 5 mm mesh screen and has a design treatment capacity of not less than the peak flow rate (Q) resulting from a one-year, one-hour, storm in the subdrainage area."

This definition was developed through the stakeholder process for the Los Angeles River Trash TMDL in 2001 and has been used in all of the Region's subsequent trash TMDLs. As a result, approximately 50,000 catch basin screens and inserts have been installed that have reduced trash discharge in the LA region by over one million pounds a year.

The drawback to this definition is that it allows for the passage of smaller trash particles (less than 5mm in diameter) such as preproduction plastic pellets. We suggest reducing the mesh screen size from 5mm to 2mm to account for small particles of trash and preproduction plastic pellets. Small particles are particularly problematic in the marine environment, as they can be easily mistaken for food by marine species.

In addition, the Trash Policy must specify that full capture device installation must be followed by proper operation and maintenance to continue compliance with the Policy. All too frequently, we've seen poorly maintained trash screens and inserts with blocked mesh. The end result is increased flood risk and ineffective BMPs. The Trash Policy



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requirements should specify that screens and inserts in commercial areas must be inspected monthly and cleaned at least once in the dry season and cleaned at least twice in the rainy season. Also reporting requirements should include an operation and maintenance schedule and annual reporting that demonstrates that the BMPs are functioning as designed.

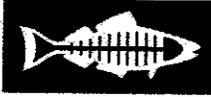
Provide a compliance deadline “bonus” if responsible parties develop local trash ordinances.

Institutional controls such as local trash ordinances are key to reducing trash pollution. As small particles can pass through the mesh of a full capture device, it is critical that source control measures are also explored. Many jurisdictions in the state have already moved forward with local ordinances banning the “worst offending” types of trash such as plastic bags, Styrofoam and cigarette butts (cigarette butts, polystyrene pieces and plastic bags are some of the most commonly found items at Heal the Bay’s approximately 400 beach clean ups a year, including Coastal Cleanup Day), in order to reduce the amount of trash impacting their communities and waterways.

In order to recognize the achievement of these local trash ordinances and focus effort on source control measures, we suggest that the State Board consider a provision in the Trash Policy that allows for additional years (recommended two years) for final compliance if comprehensive local ordinances targeting plastic bags, Styrofoam and cigarette butts are adopted within two years from the effective date of the Trash Policy. Specifically, the cigarette butt ordinance would ban smoking on the beach and in public places (LA City and Santa Monica are examples). Perhaps a one cent per cigarette tax could be instituted like the city of San Francisco (20 cents a pack) to clean up cigarette trash. Single use polystyrene food packaging bans (including cups and clamshells – Santa Monica, Malibu and West Hollywood are examples) should be the second ordinance requirement. And finally, single use plastic bags should be banned (Malibu as an example) as the third requirement to earn the extra compliance time. The compliance extension would only be granted to local governments that implement all three source reduction ordinances. This provision would appropriately recognize these critical institutional efforts made by local governments.

Prohibit discharges of preproduction plastic pellets.

A prohibition of preproduction plastic pellets is prudent to ensure beneficial uses are protected. As the scoping document outlines, pellets are often as small as 1 mm and would easily escape a full capture device as defined in current TMDLs. The Industrial Stormwater Permit should be used as the mechanism for regulating pellet discharge. Specifically, the permit would prohibit the discharge of non-stormwater such as pellets. California Water Code § 13367 has been in place since 2007 (AB 258). It requires implementation of BMPs to eliminate the threat of discharge from an industrial site. Many regional boards are already implementing AB 258 through the industrial permit program, and thus would be a logical progression for the Trash Policy. In addition, the State Board should consider other mechanisms to regulate pellets during the transportation process.



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CONCLUSION

In sum we are very supportive of the State Board moving forward expeditiously with a Trash Policy. It is critical that "zero trash" is included as a numeric water quality objective, the full capture definition is strengthened, and that discharge of pellets is prohibited. Also we highly encourage the State Board to consider the creative incentive based approach to institutional controls for local trash ordinances that is discussed above.

If you have any questions, please contact us at 310-451-1500.

Sincerely,

Kirsten James
Water Quality Director

Mark Gold, D. Env
President