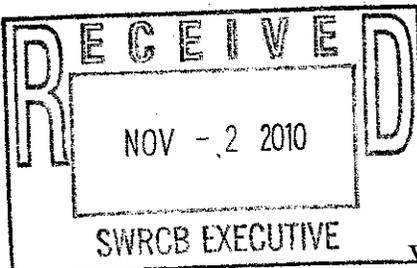


# COALITION FOR PRACTICAL REGULATION

"Cities Working on Practical Solutions"

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



3 November 2010

Via Electronic Mail

State Water Resource Control Board  
1001 I Street, 24<sup>th</sup> Floor  
Sacramento, CA 95814  
Attn.: Jeanine Townsend, Clerk to the Board  
[commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)

Subject: Comment Letter – CEQA Scoping for Proposed Policy for Controlling  
Trash in Waters of the State

Dear Ms. Townsend and Members of the Board:

I am writing on behalf of the Coalition for Practical Regulation (CPR), an *ad hoc* group of 39 cities in Los Angeles County that have come together to address water quality issues. As permittees subject to the Los Angeles River Trash TMDL, many of our member cities have experience with implementing a Trash TMDL and are keenly interested in the State Water Board's proposal for a statewide policy for controlling trash in California. The regulation would impact over 450 cities statewide in a time where local governments are facing historic budget deficits, furloughing or laying off municipal works and reducing or eliminating local services and programs. We urge the Water Board to carefully consider this new regulation, cost-effective alternatives and the funding methods that we are suggesting.

During the October 14 scoping session, Board staff indicated that they wanted to build on efforts by the Los Angeles and San Francisco Bay Regional Water Boards and expand the program for statewide consistency. At the conclusion of the scoping session, Vice Chair Frances Spivy-Weber stated that the Board would apply the lessons learned in Regions 2 and 4. CPR hopes that the Board will consider the lessons learned by municipalities attempting to comply with the Region 4 trash TMDLs as well as the opinions of Regional Board staff and environmental groups. The CEQA analysis of the proposed Trash Policy should specifically include research on the experiences of the 16 small to medium-sized cities currently installing "full-capture" treatment control devices in catch basins throughout the Los Angeles River Watershed portions of their jurisdictions.

In concept, CPR supports the development of a statewide Trash Policy. One of the ongoing problems with the stormwater program in California is that, in cases in

ARCADIA  
ARTESIA  
BALDWIN PARK  
BELL GARDENS  
BELLFLOWER  
CARSON  
CERRITOS  
COMMERCE  
COVINA  
DIAMOND BAR  
DOWNEY  
GARDENA  
HAWAIIAN GARDENS  
INDUSTRY  
IRWINDALE  
LA CAÑADA FLINTRIDGE  
LA MIRADA  
LAKEWOOD  
LAWDALE  
LYNWOOD  
MONTEREY PARK  
NORWALK  
PALOS VERDES ESTATES  
PARAMOUNT  
PICO RIVERA  
POMONA  
ROSEMEAD  
SANTA FE SPRINGS  
SAN GABRIEL  
SIERRA MADRE  
SIGNAL HILL  
SOUTH EL MONTE  
SOUTH GATE  
SOUTH PASADENA  
VERNON  
WALNUT  
WEST COVINA  
WHITTIER

which State policy has not been established, the State Water Board is unable to use its authorities under CWC § 13146 to address the sources of pollutants – in this case the sources of trash, especially plastic trash. Furthermore, the Regional Boards are put in the position of crafting their own, often inconsistent, policies. However, we are concerned that the current proposal is overly broad and contains elements that could lead to regulatory confusion and possible litigation. The following sections provide an overview of CPR's concerns with the overall nature of the proposed Trash Policy as well as comments on specific elements of the Policy.

### **California Needs to Address True Source Control to Effectively Reduce Trash**

In its 2008 report, *An Implementation Strategy to Reduce and Prevent Ocean Litter*, the California Ocean Protection Council noted as the number one objective of the Implementation Strategy to “Reduce single-use plastic packaging and promote sustainable alternatives.” The method proposed to accomplish this objective was changing producer behavior. The report further identified three priority actions for litter reduction and prevention:

1. Implement a producer take-back (extended producer responsibility, or EPR) program for convenience food packaging.
2. Prohibit single-use products that pose significant ocean litter impacts where a feasible, less damaging alternative is available.
3. Assess fees on commonly littered items.

CPR would like to draw to the Board's attention the work of the California Product Stewardship Council (CPSC), a coalition of local governments that formed in 2006 to promote EPR for products that end up in the waste stream. The mission of the CPSC is:

“To shift California's product waste management system from one focused on government funded and ratepayer financed waste diversion to one that relies on producer responsibility in order to reduce public costs and drive improvements in product design that promote environmental sustainability.”

Although CPSC was formed to address other problems and costs, such as handling toxic waste in landfills, benefits of its work to water quality are potentially great. EPR is a form of true source control – it can create incentives for product manufacturers to substitute less toxic materials in the manufacture of products and to take back products containing toxic materials. CPSC fights vigorously for passage of legislation that supports true source control, including the recent successful passage of SB-346 (Kehoe), which will phase out copper in vehicle brakepads.

The State Water Board should also review the work of StopWaste.Org, a joint public agency created by the Alameda County Waste Management Authority and the Alameda County Source Reduction and Recycling Board, that works diligently to promote sustainable consumption and

disposal patterns in Alameda County. Its Recycling Plan, *Alameda County Source Reduction and Recycling Plan – Vision 2010: 75% and Beyond*, outlines specific programs, objectives, and strategies, and describes the Agency's long-range thinking about how to lead its jurisdiction to "a more sustainable future."<sup>1</sup>

CPR urges your Board to carefully consider the work of CPSC and StopWaste.Org, and to explore ways to partner with them or support their efforts at engaging producers in reduction of plastic trash through EPR. As noted in the OPC report, "EPR for packaging places the responsibility for collection and disposal of packaging waste on those throughout the distribution chain, including producers of packaging and manufacturers of products that use packaging. EPR motivates producers to reduce waste in order to avoid the costs associated with managing packaging waste." Cities, the Board, and other state agencies should work together, and with agencies such as CPSC and StopWaste.Org, to educate and advocate for change among manufacturers. Improved coordination among agencies will be key to affecting change on the part of product manufacturers. Without their ultimate support in controlling plastic packaging, we will be unable to adequately reduce or eliminate trash in California's waterways. A true source control alternative and the work of both CPSC and StopWaste.Org should be addressed in the CEQA analysis for the proposed Policy.

### **The State Board Should First Focus on Plastic Trash**

Product waste is the largest component of trash in urban runoff. The June 2006 Final Report of the State Board-funded Plastic Debris – Rivers to Sea Project<sup>2</sup> stated that, of marine debris, "60-80% overall and 90% of floating debris is plastic." As "most of these products are conveyed through runoff from urban areas to the marine environment," CPR believes these percentages to likely also be applicable to waterways within our jurisdictions, including the Los Angeles River.

As stated in the staff presentation at the October 14, 2010 CEQA scoping session, trash consists primarily of plastic materials – and plastic endures. Staff notes on page 3 of the Trash Policy *Informational Document*,

"Plastic trash, including plastic bag trash, is a nuisance and also poses a threat to aquatic life. Plastic does not degrade; rather, it breaks down into very small pieces. Small preproduction plastic pellets as well as postproduction discards float at various depths in the ocean and affect organisms at all levels of the food chain."

CPR recommends that, at this time, your Board develop and adopt, not a broad Trash Policy, but a focused Plastic Trash Policy. By doing so, the State Board will be able to target the most persistent and troubling sources of trash. Plastic's unique characteristics make it a challenging

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<sup>1</sup> [www.stopwaste.org](http://www.stopwaste.org)

<sup>2</sup> *Eliminating Land-based Discharges of Marine Debris in California: A Plan of Action from The Plastic Debris Project*, Plastic Debris – Rivers to Sea, a joint program of the the Algalita Marine Research Foundation (AMRF) and the California Coastal Commission (CCC), June 2006.

pollutant to control; it is unlikely to be adequately addressed without utilization of a broad range of source control approaches.

The alternatives considered in the State Water Board's CEQA analysis of the environmental effects of a new "Statewide Policy for Trash Control in Waters of the State" should include a focused Plastic Trash Policy emphasizing true source control. Such a policy would undoubtedly have many fewer adverse environmental effects on local governments than alternatives that include construction and widespread installation of treatment control devices.

### **Preproduction Plastic Pellets Should Be Addressed Through Industrial NPDES Stormwater Permits**

The *Informational Document* indicates that the proposed statewide Trash Policy could include a specific policy for source control for industrial sources of preproduction plastic pellets. The document also specifies two possible implementation methods for controlling the sources of preproduction plastic pellets. One of these is a prohibition against discharging preproduction plastic pellets to Waters of the State. The document indicates that this could be implemented through the Industrial General Storm Water NPDES Permit. The other control option presented is the development and issuance of a statewide general NPDES permit for the control of preproduction plastic pellets.

Both of these methods of implementation would be appropriate, but control of this critical source of plastic pollution would be unduly delayed if it awaits adoption of the proposed Trash Policy. Instead, CPR recommends that State Water Board staff immediately prepare language for insertion in the Industrial General Permit currently being prepared for public review and comment. This language could also be provided to the Regional Water Boards for inclusion in applicable individual NPDES permits for facilities that manufacture, process and handle plastic pellets. Based on our experience in installing trash nets, catch basin excluders and inserts, local government will not be able to install treatment devices that can capture plastic pellets while preventing localized flooding, due to the small size of the pellets and ability of the pellets to clog screening devices.

The Algalita Marine Foundation has completed several studies ("*Working Our Way Upstream, Snapshot of Land-based Contributions of Plastic, and other Trash to Coastal Waters and Beaches in Southern California*" and "*A Brief Analysis of Organic Pollutants Sorbed to Pre and Post-Consumer Plastics from the Los Angeles and San Gabriel River Watersheds*") on the sources of plastic pellets in the region's watersheds. These studies document spillage during transport and shipping, related to the use of railroad hopper cars and other forms of transportation and offloading. It is hoped that the new trash policy can concentrate on working with the railroads, shippers and end-users of the pellets on new technology to prevent spills and improved spill cleanup procedures.

**The State Board Should Use the New Trash Policy to Facilitate Use of the Authorities Granted by CWC 13146 to Engage the Assistance of Other Agencies to Focus on Source Control**

Trash is a “pollutant” with unique management problems. Everyone has access to a waterbody of the state, as well as to something with which to “pollute” it, either purposefully or inadvertently. As noted by State Board staff in the *Informational Document*, pollution prevention is the most effective method of controlling pollution. A multi-faceted approach is necessary. It should include public education and outreach, and effective trash management strategies. The real solution, however, is true source control.

Municipalities and other permittees are in the position of being held responsible for a ubiquitous “pollutant” that they cannot completely control. True source control is the best way for the State Board and other agencies to begin to gain momentum in making a real impact in trash reduction. This is particularly important in terms of plastic trash, which does not biodegrade and clogs our waterways and our landfills. Plastic packaging is used for a vast number of consumer products and must be specifically addressed.

The Board should take advantage of the authorities available to it through application of CWC §13146 to gain the assistance of other agencies. Your Board and local governments need the help of other state agencies to achieve existing water quality objectives; the addition of further objectives will only amplify the need for assistance. CWC §13146 provides a potentially valuable tool for the State Water Board, and one that should be unutilized. Application of the CWC §13146 authorities to engage the assistance of other agencies in support of a focused Plastic Trash Policy is the most direct way to begin to effectively address the problem of trash pollution in the waters of the state. In order to use all the tools available to it to achieve water quality improvements, your Board must explore the use of CWC §13146 authorities to assist in addressing source control – especially true source control. The use of the 13146 authorities should be addressed in the CEQA analysis for the proposed Trash Policy.

**“Zero Trash” Is a Good Goal, Not a Practicable Water Quality Objective**

The State Water Board and the entities it regulates cannot achieve “zero trash.” It is simply not within the power of municipalities to prevent every single piece of trash from entering the waterways. Even the most rigorous trash capture program could not be successful at achieving the zero numeric target; trash is, as stated before, ubiquitous. There is no such thing as eliminating trash once and for all. This laudable goal was presented as a water quality numeric target in TMDLs in the Los Angeles region, which resulted in litigation – when faced with a literally unattainable requirement that there be “zero trash” in the Los Angeles River, cities believed they had no choice but to pursue legal action. Referencing “zero trash” as anything other than a goal for the State will put cities and counties across the state at constant risk for costly third-party lawsuits.

Ultimately, the Los Angeles Regional Water Board developed a “deemed in compliance” approach based on the installation of certified “full-capture” devices that will capture trash

greater than 5 mm in size. However, this approach is not well focused. It requires the installation and maintenance of full-capture devices in catch basins throughout areas subject to the Trash TMDL requirements, even areas with very low trash generation rates. There are an estimated 150,000 catch basins in the Los Angeles River Watershed. Even if certified "full-capture" devices could be installed in all of these catch basins, the costs for compliance in the urbanized portion of the watershed would be at least \$150 million, plus the costs for long-term maintenance. A policy that requires installation of treatment control devices must focus on the areas with the highest trash generation rates in order to be cost-effective. If such a policy does not target high trash generating areas, the adverse impacts on other public services will be tremendous. This issue must be thoroughly addressed in the CEQA analysis of the proposed trash policy.

The State Water Board should not attempt to establish a statewide numeric water quality objective for trash, due to the difficulties in meeting the numeric limit, problems with exceeding them and costs and potential enforcement impacts. The *Informational Document* for the Proposed Trash Policy explains that a statewide numeric water quality objective of zero trash "would require that all surface waters not contain trash including man-made litter and other debris." The document correctly acknowledges that, "Effectively, this performance-based numeric objective would result in a trash discharge prohibition." An absolute prohibition would make compliance impossible for MS4 permittees. Even if a zero-trash numeric water quality objective were accompanied by a deemed compliant approach such as the one in the Los Angeles River Trash TMDL, it would lead to waste of public funds if widespread installations of full-capture devices were required to achieve compliance.

If the Board were to develop a focused policy based on true source control, a statewide water quality objective for trash would not be needed. However, if the Board decides to pursue development of a statewide water quality objective for trash, it should focus on standardized narrative objectives for either plastic trash or man-made litter. It should not include "other debris" because that term is too broad and could be interpreted to include leaves and vegetative debris that is dislodged in natural channels during high-flow events. Furthermore, if the State Water Board pursues development of new or revised water quality objectives, it must follow the requirements of CWC Sections 13241, 13050, and 13000 in doing so.

#### **Catch Basin Prioritization and Protection Plan Alternative**

In order to achieve full compliance with the Los Angeles River Trash TMDL, local governments are installing full capture devices in areas of their community that generate little or no debris. This includes many single-family residential neighborhoods, where streets are swept weekly. We believe that this is resulting in a tremendous waste of scarce government resources, in both the initial capital costs of installation of catch basin devices, but also in the new maintenance requirements and eventual replacement costs of these devices. Cities see this as the only option to guarantee that they will not be subjected to Regional Board enforcement actions and third-party litigation, since the Trash TMDL is being enforced through the NPDES Permit.

If the Board pursues a policy that includes installation of "full capture devices," it will inadvertently trigger the installation of hundreds of thousands of catch basin devices throughout the State, where no real impairments can be documented. USEPA funded a study of storm drain trash in Los Angeles County, which is very instructional and should help the Board to prioritize the policy. This study documented that 15% of all storm drain inlets account for 50% of the waterborne trash. The study traced trash generation to commercial corridors, industrial areas and multi-family neighborhoods. The study resulted in the development of the "Catch Basin Prioritization and Protection Plan," and is based on the recognition that "approximately 15% of all storm drain inlets account for 50% of waterborne trash...[and that if] verified by additional data, very significant pollutant reductions and cost savings can be achieved by first focusing compliance efforts on controlling trash loads at these locations."<sup>3</sup> The Plan relies on individual community litter surveys, based on the Litter Index as developed by Keep America Beautiful, and would be used to prioritize catch basin drainage areas for installation of full-capture controls.

Each municipality would submit its Plan, inventorying the catch basins and full-capture devices proposed by the city, either installed in the catch basins or after the catch basins and before the receiving waters. The Plan could contain a schedule of installation of the devices, and would be submitted to the appropriate Regional Board for review and approval. The Plan could include a phased implementation schedule. For example, ten percent (10%) of the catch basins in high trash generation areas could be protected in each of the first two years after the Regional Board's approval of the Plan, followed by the protection of an additional 15% of the catch basins in years three and four (for a total of 50% of the catch basins in the high trash areas).

In the fifth year, a report to the Regional Board could be provided on the remaining unprotected areas of the community. This report could include an estimate of the number of catch basins that would require protection in the remaining high, medium, and low trash generation areas.

Such a plan should be included in the CEQA analysis for the proposed Policy as a project alternative to reduce environmental impacts, to provide municipalities with a cost-effective option to widespread installation of full capture devices, and to achieve the State Board's goal of trash reduction in a timely manner.

CPR encourages the State Board to consider seriously the ways trash can be managed at the municipal level, given real world city finances and real world technology. Your Board's development of a statewide policy regarding trash, particularly plastic trash, is an opportunity to create positive change in trash control in our waterways – as long as it is a focused document that emphasizes true source control and coordination with other agencies using CWC §13146, and not unachievable water quality objectives, such as "zero trash." If the Board considers a zero trash water quality objective, the potential adverse impacts of such a requirement must be addressed in the CEQA analysis of the proposed policy.

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<sup>3</sup> "Market Based Strategies for Reducing Trash Loading to Los Angeles Area Waterbodies," prepared by the Coalition for Environmental Protection, Restoration, and Development, March 006, USEPA.

### **A Broad New Definition of Trash Should Not Be Attempted by the State Water Board**

The State Board should not attempt a broad new definition of trash in isolation. We already have a codified definition of litter. Litter is defined in Government Code §68055.1, subd. (g), as:

- (2) “all improperly discarded waste material, including, but not limited to, convenience food, beverage, and other product packages or containers constructed of steel, aluminum, glass, paper, plastic, and other natural and synthetic materials, thrown or deposited on the lands and waters of the state, but not including the properly discarded waste of the primary processing of agriculture, mining, logging, sawmilling, or manufacturing.”

The Trash Policy should be based on the Government Code definition of litter. Included in this definition is most of what your Board would likely include in a definition of trash. Plastic is specifically cited in the list of “improperly discarded waste material.” If the State Board were to develop a focused Plastics Trash Policy, staff could define plastic trash in consultation with the California Department of Resources Recycling and Recovery (CalRecycle). Such a definition would expand upon rather than conflict with the established definition of litter. An attempt at a broad definition of trash could lead to confusion; it will take legislation to redefine trash.

Any attempt to combine the definition of litter from the Government Code with the definition of waste from the Water Code could lead to confusion and unintended consequences. During the October scoping session, a representative of a recycling council expressed concern about the possible redefining of trash. He indicated that members of his industry were sensitive about definitions because they can affect local agency franchises and specifically warned about the potential for unintended consequences. Stormwater permittees are also concerned about possible unintended consequences of changing or attempting to combine definitions. CPR recommends that the Board avoid this potential quagmire and work with the existing codified definition of litter.

### **The Trash Policy Should Not Define Maximum Extent Practicable (MEP)**

As the National Research Council (NRC) acknowledged in Chapter 2 of its report *Urban Stormwater Management in the United States* (October 2008), “the MEP performance standard was created out of the difficulty experienced by EPA in finding a feasible way to apply the CWA to stormwater.” The Board’s *Informational Document* for the proposed Trash Policy indicates that one element would address the issue of establishing a statewide water control policy that defines MEP and best available technology (BAT) for the cleanup and removal of trash from the storm drain. For MS4 discharges, MEP would be determined in part by the land uses and the rate of trash generation within the permitted area. An alternative approach is described as establishing a policy for source control of trash. MS4 dischargers would be required to work with the public within their jurisdictions to eliminate potential sources of trash to stormwater. Both of these alternatives focus on operational source control, and the first one appears to be intended to apply a numeric standard to the MEP concept. As discussed above, CPR strongly recommends that any new Trash Policy adopted by the State Water Board focus on true source control, especially with respect to plastic trash, which State Board staff has indicated is a priority concern.

Furthermore, CPR believes that it is inappropriate and contrary to the Clean Water Act to develop a statewide definition of MEP for a specific pollutant or to develop numeric expressions of the MS4 standard of maximum extent practicable. The application of a numeric standard to the MEP concept is misguided. If the MEP were converted to a numeric standard, municipal stormwater managers could be in the untenable position of facing instant non-compliance due to non-achievable permit limits. The writers of the NRC report themselves comment on the inherent difficulty of developing a numeric standard:

“The challenge of defining MEP as a runoff reduction or pollutant load limit is that considerable scientific and engineering analysis is needed to establish the performance standards, evaluate SCM capability to meet them, and devise a workable computational approach that links them together at both the site and watershed levels.”

The National Association of Flood and Stormwater Management Agencies (NAFSMA) notes in its comments on EPA’s current stormwater rulemaking, “...the Congressional record clearly shows that MEP was intended as a new performance objective for a new type of NPDES permit, created specifically to accommodate the physical uniqueness of stormwater.”

CPR supports the working definition of MEP described by Elizabeth Jennings of the Office of Chief Counsel of the California Water Board, in a frequently quoted 1993 memo. As noted in the NRC report,

“A legal opinion issued by the California Water Board’s Office of Chief Counsel in 1993 stated that MEP would be met if MS4 permittees implemented technically feasible SCMs [storm control measures], considering costs, public acceptance, effectiveness, and regulatory compliance (Memorandum from Elizabeth Miller Jennings, Office of Chief Counsel, to Archie Matthews, Division of Water Quality, California Water Board, February 11, 1993).”

The NRC Report also notes:

“In its promulgation of the Phase II Rule in 1999, the EPA described MEP as a flexible, site-specific standard, stating that:

‘The pollutant reductions that represent MEP may be different for each [MS4 Permittee] given the unique local hydrological and geological concerns that may exist and the differing possible pollutant control strategies. (64 Fed. Reg. 68722, 68754)’”

Ms. Jennings’ understanding of actions that would satisfy the MEP standard recognized the highly variable nature of stormwater runoff, as did EPA’s 1999 description of MEP as a flexible, site-specific standard that must take into consideration “unique local hydrological and geological concerns.” The functional definition of maximum extent practicable can, out of necessity, be just

as variable as stormwater itself. Any attempt by the State Water Board to codify MEP into a numeric standard, although well intentioned as a potential enforcement tool, could have the serious adverse effect of creating a standard with which some jurisdictions literally could not comply.

Congress developed the MEP concept because of the varied nature of stormwater throughout the nation. If the State Water Board chooses to address potential guidance implementing MEP in California, it should not be done through the proposed Trash Policy. It should be addressed through a separate process and codified through legislation. The Board should take into account the finite financial resources of local communities and the need to balance water quality improvements with other critical local public services. We believe that Congress intended this balance as one of the tests for determining when a community has achieved MEP.

#### **Beneficial Uses Impacted by Trash**

In the Existing Regulatory Structure section of the *Informational Document*, staff notes, "One of staff's goals for this Trash Policy is to ensure that beneficial uses are protected." This section lists a number of beneficial uses of water as being impacted by trash, including: contact recreation; non-contact recreation; warm fresh water habitat; wildlife habitat; estuarine habitat; marine habitat; rare, threatened, or endangered species; migration of aquatic organisms; spawning, reproduction, and early development of fish; commercial and sport fishing; wetland habitat; and cold freshwater habitat. However, no evidence is given to support the assertion that each of these beneficial uses is actually impaired due to trash. Such evidence must be presented in State Water Board's CEQA analysis for the proposed policy.

#### **Funding Sources for this New State Mandate**

The State Board needs to consider the reality that local governments do not have sufficient funds for this new mandate, especially due to the effects of the recession on municipal budgets. It may be several years before existing levels of services can be restored for many of California's communities. Additionally, in 2009 the State Legislature raided about \$5 billion from local governments and since 1992 the State has taken \$11.2 billion in locally approved revenues for the state budget. The State Board must also recognize the difficulty that local governments face in raising new revenues as the results of Propositions 13 and 218, as well as the various court rulings on fees and taxes. Attorneys for the State and Regional Boards have devoted countless hours arguing that new regulations are not unfunded mandates on local government, as a way to dodge a real dialogue on the funding problems passed down by the State Board to local governments. This brainpower should be directed to work creatively with local governments to locate funds to reach the common goal of eliminating trash from the State's water bodies.

For example, the State Board should be working with the Department of Resources, Recycling and Recovery to identify funding sources for cities to implement new trash reduction regulations. One potential source of revenue is the California Beverage Container Recycling and Litter Reduction Act (Bottle Bill). Since much of the waste characterized in storm drains consists of plastic and glass bottles, this fund should be explored for assisting local government in affording the new State Board policy. The State Board should also consider working with the Department

in expanding the deposit bill to polystyrene containers and cups, since trash generation studies indicate that polystyrene is the number one manmade constituent found in catch basins. This may require legislation, which local governments could assist the Board and the Department in pursuing.

Finally, at the writing of this letter, it is unclear if Proposition 26 on the November 2, 2010 ballot will be passed by Californians. Attorneys familiar with the issues believe that passage of the proposition will create years of litigation and havoc in state and municipal finances. The proposition would recategorize a broad cross section of state and local fees as taxes, setting up a supermajority voter approval hurdle for what are now considered regulatory fees that can be adopted by a simple majority of the State Legislature and city councils. These would include water quality impact fees for education, clean-up, health and other programs of general benefit. The environmental document for the new Trash Policy needs to address the impacts of Proposition 26 on municipal services, if the proposition passes on November 2<sup>nd</sup>.

### Conclusion

CPR is pleased that the State Water Board is considering development of a statewide Trash Policy that could provide a framework for a comprehensive approach to reducing the pollution of California waterways by trash. However, we are concerned that the project described in the *Informational Document* is primarily intended to apply the requirements of the Los Angeles River Trash TMDL statewide through policy adoption and that the substitute environmental document will be a perfunctory analysis of environmental impacts designed to meet the minimum requirements of the California Environmental Quality Act. Based on our experiences of being at "ground zero" of the Trash TMDL this would be a major disservice to California's communities.

We strongly urge the Board and its staff to listen to the concerns of municipal NPDES permittees and rethink its proposed Trash Policy. The State Water Board has an opportunity to develop a creative policy that would address the sources of trash, especially plastic trash, rather than continuing the current policies of depending on MS4 permittees to use operational source controls and structural treatment (capture) controls as the primary measures to keep trash out of the receiving waters. These tools are useful, but they should be used as secondary tools to support a vigorous true source control policy designed to prevent trash, especially plastic trash, from being introduced into the environment. We also urge the Board and its staff not to pursue development of a "zero trash" water quality objective and to follow the requirements of CWC sections 13241, 13050, 13000 in developing any new or revised water quality objectives.

In addition, we urge the Board and its staff to not use the proposed policy as a vehicle to create a new definition of trash or as a vehicle to define MEP. We urge the Board and its staff to prepare a comprehensive substitute environmental document, including a series of meaningful effects of a new Statewide Policy for Trash Control in Waters of the State. Lastly, the Board can assist local governments in developing funding sources to assist cities in implementing any new trash policy or regulation.

Thank you for the opportunity to provide these comments.

Sincerely,



Larry Forester,

Vice Mayor, City of Signal Hill

On Behalf of the Coalition for Practical Regulation

Cc: CPR Member Cities