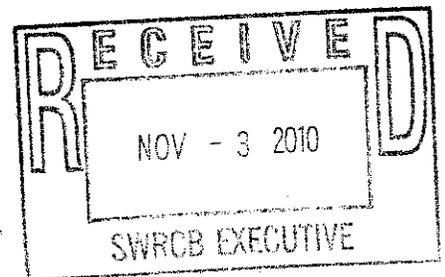


November 3, 2010

Charles Hoppin, Chair and Board Members
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814
c/o Jeanine Townsend, Clerk of the Board
VIA ELECTRONIC MAIL: commentletters@waterboards.ca.gov



Re: Comment Letter – Policy for Controlling Trash in Waters of the State

Dear Chair Hoppin and Board Members:

The undersigned groups represent hundreds of thousands of Californians who care deeply about the health and welfare of their neighborhoods and environment, including the degradation of our waterways, beaches, and ocean by trash. On behalf of the undersigned groups, we welcome the opportunity to provide these comments regarding the scope and content of the environmental information that should be considered in developing a Statewide Policy for Controlling Trash in Waters of the State (Trash Policy).

As the Notice describes, a Trash Policy could contain policy statements, water quality objectives and/or implementation provisions. These comments address each of these elements, both within the context of the supplied Informational Document¹ as well as within a larger context of ensuring coordinated and leveraged inter-agency efforts to effectively reduce the amount of trash-based pollution in the waters of the state. The goal of these comments is to communicate opportunities for developing a goal of zero anthropogenically generated or disposed trash in our waterways, and a set of strategies to achieve that goal. Our findings and recommendations for such a Trash Policy include the following:

- Trash significantly impacts the health of the waters of the state both directly and indirectly, and imposes broader public health and safety impacts as well.
- Water quality objectives must be set at levels that are technically and scientifically necessary to support beneficial uses of water. There is *no* acceptable level of trash that may be present in our state's waters without impairing a number of beneficial uses, demonstrating that the state must adopt a "zero trash" water quality objective statewide.
- Waterways in California and around the country have become so polluted by trash that they increasingly require listing as "threatened" or "impaired" under Clean Water Act Section 303(d). Such levels of pollution must be prevented in waterways not currently listed. For those that require 303(d) listing, a clear, effective process must be established to identify and clean up this pollution to a water quality objective of zero trash.
- Stormwater permits, particularly municipal separate storm sewer system (MS4) permits but also industrial and construction stormwater permits, must include effective provisions to ensure that no trash enters our waterways and communities. The Trash Policy should include a definition of "full capture system" that advances compliance with the Trash Policy and a "zero trash" water quality objective. The Policy should also discuss institutional controls that prevent trash generation in the first instance.
- The proposed Trash Policy should integrate with and leverage efforts of other state and local agencies to prevent trash pollution, including Extended Producer Reliability (EPR) efforts at CalRecycle, the Toxics in Packaging reduction initiative at DTSC, local plastic packaging bans, and trash collection statistics from local Departments of Public Works.
- The proposed Policy should coordinate with and leverage the efforts of the Ocean Protection Council (OPC), the West Coast Governor's Agreement, and the federal government (including federal funding sources) to reduce trash that enters our coastal and ocean waters. Efforts should be specifically coordinated with the National Ocean Plan (NOP) and the Final Action Plan for the West Coast Governor's Agreement on Ocean Health² (including its corresponding Marine Debris Action Plan).³

¹ SWRCB, "Informational Document: Public Scoping Meeting for Proposed Statewide Policy for Trash Control in Waters of the State" (Sept. 2010), http://www.waterboards.ca.gov/plans_policies/docs/trashscoping.pdf

² "West Coast Governor's Agreement on Ocean Health Final Action Plan" (May 2008), http://westcoastoceans.gov/docs/WCGA_ActionPlan_lowest-resolution.pdf

³ Marine Debris Action Coordination Team, West Coast Governor's Agreement on Ocean Health, "Work Plan" (May 2010), http://westcoastoceans.gov/Docs/Marine_Debris_Final_Work_Plan.pdf

We look forward to working with the State Water Resources Control Board, as well as other state and local decisionmaking bodies, to complete and implement the proposed Policy expeditiously.

BACKGROUND: "TRASH" SIGNIFICANTLY IMPACTS BOTH WATERWAY HEALTH AND PUBLIC HEALTH AND SAFETY.

"Trash," for purposes of State Water Resources Control Board policy, should be defined to include anthropogenically-discarded items, as well as anthropogenically-generated material. The comments to the Board by Surfrider Foundation dated October 14, 2010, describe this distinction. We would add to these comments that natural items collected and discarded by humans can also be regarded as a trash disposal activity (for example, while woody storm debris such as driftwood occurs naturally and should not be considered "trash," a truck full of yard clippings would be viewed as anthropogenically-generated or -discarded "trash" that would need to be disposed of properly).

As summarized in the Informational Document, trash impacts the waters of the state, including the health of both humans and aquatic life. Trash also transports other pollutants (bacteria, toxins, invasive species), and can become sources of disease (including mosquito-borne diseases). Significant research has been done with regard to the impacts and mechanism of transport of trash and marine debris.⁴ Among other things, studies have found that:

- plastic makes up the largest percentage of marine debris by composition, with estimates ranging from 60 to 80 percent world-wide;⁵
- single-serving goods and packaging make up the largest percentage of land-based marine debris by product type;⁶ and
- upwards of 80% of the marine debris originating from California is land-based and ranges in size from everyday consumer goods to micro-plastic particles (those smaller than five millimeters).⁷

These and numerous other studies, including but not limited to those outlined on the Ocean Protection Council's website⁸ and elsewhere,⁹ provide a solid foundation for analysis and action pursuant to a Trash Policy.

⁴ See, e.g., California Coastal Commission and Algalita Marine Research Foundation, "Plastic Debris, Rivers to Sea: A Bibliography of Research Related to Debris and Trash in Urban Runoff" (2006) ("BMP Manual") <http://www.plasticdebris.org/bibliography.html>. See also Moore, S. L. et al., "Composition and Distribution of Beach Debris in Orange County, California," *Marine Pollution Bulletin*, Vol. 42, No. 3, pp. 241-45 (2001); Moore, Charles, "Synthetic Polymers in the Marine Environment: A Rapidly-Increasing, Long-Term Threat" *Environmental Research*, Vol. 108, pp. 131-139 (2008).

⁵ Marine Debris Action Coordination Team, West Coast Governor's Agreement on Ocean Health, "Work Plan" (May 2010), pp. 11-12, http://westcoastoceans.gov/Docs/Marine_Debris_Final_Work_Plan.pdf.

⁶ *Id.*

⁷ *Id.*

⁸ <http://www.opc.ca.gov/2010/01/preventing-ocean-litter-2/>; see also OPC, "An Implementation Strategy for the California Ocean Protection Council Resolution to Reduce and Prevent Ocean Litter" (Nov. 20, 2008), http://www.opc.ca.gov/webmaster/ftp/pdf/opc_ocean_litter_final_strategy.pdf.

⁹ See, e.g., U.S. EPA, Marine Debris: <http://water.epa.gov/type/oceb/assessmonitor/debris/index.cfm>.

Moreover, the costs associated with trash pickup from city streets and waterways are substantial; a carefully designed and comprehensive Trash Policy could help reduce these impacts. Local Public Works Departments currently must remove trash from storm drain systems to prevent both pollution and flooding. State and city Parks Departments must clean up litter to maintain safe, healthy, and attractive recreation areas. The California Coastal Commission and volunteer organizations spend thousands of hours and dollars annually coordinating and conducting community cleanups statewide. The California Department of Transportation spends up to \$41 million a year on litter removal.¹⁰ The City of Oakland allocated approximately \$19 million in its 2008-09 FY for litter cleanup and abatement, on top of the \$80 million annually that Waste Management expends for trash collection in the area.¹¹ Other cities expend similar amounts.¹² Some reports have estimated that the cleanup and abatement of litter is costing the California state government up to \$375 million dollars each year.¹³ These costs, including for trash collection, removal, disposal, cleaning, monitoring, regulation and education, affect state and local agencies, including CalTrans, the Coastal Commission, the Department of State Parks, Department of Boating and Waterways,¹⁴ the State and Regional Water Boards themselves, as well as local Public Works Departments, local and regional parks departments, and trash collection entities.

Finally, litter also negatively impacts tourism at California beaches, whose market and non-market values may exceed \$5 billion annually.¹⁵ Conversely, studies have correlated a drop in crime with cleanup of neighborhood trash and blight.¹⁶ Trash-free communities have been demonstrated in a number of studies to be demonstrably safer than polluted communities, reducing other costs to residents.

CALIFORNIA SHOULD ADOPT A "ZERO TRASH" WATER QUALITY OBJECTIVE STATEWIDE

As expressed in both the Surfrider and Heal the Bay comments on this Policy, we support a "zero trash" water quality objective. Water quality objectives must be set at a level that is technically and scientifically necessary to protect beneficial uses.¹⁷ 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

¹⁰ <http://www.donttrashcalifornia.info/>.

¹¹ OPC, "Staff Report: OPC Support for Extended Producer Responsibility Programs" (April 23, 2009), http://www.opc.ca.gov/webmaster/ftp/pdf/agenda_items/20090423/09_EPR%20Panel/0904COPC_09%20EPR%20resolution%20amended..pdf.

¹² The City of San Francisco, for example, spent over \$90 million in annual litter cleanup costs for various departments. *Id.*

¹³ <http://www.earthresource.org/campaigns/capp/capp-economics.html>.

¹⁴ Many urban marinas incur heavy costs skimming litter from their slips and harbors.

¹⁵ Kildow, J. and Colgan, C.S., National Ocean Economics Program, "California's Ocean Economy. A Report to the Resources Agency, State of California" (2005).

¹⁶ See, e.g., Suffolk University, "Research Boosts Broken Windows Theory" (Jan. 13, 2009), <http://www.suffolk.edu/34417.html> (documenting a 20% drop in calls to police in formerly trash-strewn area as compared with control); full study found at: Braga, Anthony A. and Brenda J. Bond, "Policing Crime and Disorder Hot Spots: A Randomized Controlled Trial," *Criminology*. Vol. 46, No. 3 (August 2008).

¹⁷ *Mississippi Comm'n on Natural Resources v. Costle*, 625 F.2d 1269, 1277 (5th Cir. 1980); see also 65 Fed. Reg. 31682, 31708 (May 18, 2000).

the state to address trash in our waterways support this conclusion. The "zero trash" numeric target for the Los Angeles River Watershed TMDL, which became effective on September 23, 2008, was "derived from the narrative water quality objectives [in the Los Angeles Basin Plan], including an implicit margin of safety. Although a substantial number of comments were received in response to the March 17, 2000 Draft TMDL, no information was provided to justify any other number for the final TMDL target that would fully support the designated beneficial uses."¹⁸

It is instructive that the Los Angeles River Watershed TMDL demonstrates 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."¹⁹ 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"; absent such a study, staff is "compelled to adopt a zero target."²⁰ Establishing a statewide numeric "zero trash" water quality objective would properly put into practice this finding. 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"²¹ can and should be applied to waters across the state.

We note that, *at a minimum*, the most stringent existing narrative standard for trash should be the starting point for action statewide, and no action should be taken that could detract from efforts already in effect under narrative criteria in this state to reduce trash (such as the Los Angeles River Watershed Trash TMDL). As a result, we strongly recommend that the State Water Board Trash Policy adopt the more appropriate "zero trash" objective as the numeric objective for *all* Regional Water Boards throughout the state.

STORMWATER PERMITS MUST INCLUDE EFFECTIVE, CLEAR PROVISIONS TO ENSURE THAT TRASH DOES NOT ENTER OUR WATERWAYS AND COMMUNITIES.

Urban runoff is the primary source of marine debris, and littering is the source of most trash in urban runoff.²² Significant research has been done to develop and assess options for eliminating the flow of trash to our waterways and communities.²³ Implementation of a "zero discharge" objective in stormwater permits is key to ensuring effective, enforceable action.

¹⁸ LA RWQCB, "Staff Report: Trash Total Maximum Daily Loads for the Los Angeles River Watershed," p. 20 (August 9, 2007)

http://www.waterboards.ca.gov/losangeles/board_decisions/basin_plan_amendments/technical_documents/2007-012/09_0723/L.%20A.%20River%20Trash%20TMDL_Final%20%20Staff%20Report_August%209.%202007.pdf

¹⁹ *City of Arcadia et al. v. Los Angeles RWQCB et al.*, 135 Cal.App.4th 1392, 1410 (Jan. 26, 2006).

²⁰ *Id.*

²¹ *Id.* at 1406.

²² Los Angeles RWQCB, "Trash TMDLs for the Los Angeles River Watershed" (Sept. 19, 2001); *see* http://www.lastormwater.org/siteorg/program/TMDLs/tmdl_lariver_trash.htm for information on implementation.

²³ *See, e.g.*, Los Angeles Trash TMDL background documents; *see also* California Coastal Commission and Algalita Marine Research Foundation, "BMP Manual."

Numeric Criteria Drive Pollution Prevention More Effectively Than Narrative Criteria

As described in the Informational Document, the Basin Plans currently contain narrative criteria for trash that generally prohibit the presence of floatable, solid, suspended and settleable materials in amounts that adversely affect beneficial uses. Yet, in an increasing number of areas, trash pollution has accumulated in waters to the point at which 303(d) listing is required. This is in large part due to the fact that narrative criteria are less precise, and so less enforceable, than numeric criteria.

The CalEPA Enforcement Initiative succinctly found on this point that:

Currently, one of the greatest difficulties faced by enforcement staff is complicated, ambiguous and/or poorly written permits or multiple, conflicting and confusing regulatory requirements that are unenforceable. Permit requirements must be unambiguous. They should be written in such a way that they are clear, easy to understand, and determining compliance is simple. Similarly, the enforcement consequences for violation should be clear.²⁴

A lack of clarity and objectivity in stormwater permits impacts enforcement, which necessarily becomes extremely staff-intensive. Straightforward requirements – such as numeric limits – will lend themselves to straightforward enforcement and conserve valuable staff resources. For this reason, CalEPA recommended that:

Where appropriate to achieve water quality protection, *numeric limits based on sound science should be incorporated into permits* that define the allowable discharge or pollutants that the Boards determine are high priority.²⁵

We agree with this CalEPA conclusion that numeric limits, as well as clearly established deadlines, are essential to a sound enforcement program.

The State Water Board itself has concluded in its enforcement reports that numeric effluent limits lead to more effective oversight. For example, the 2007 13385(o) Report²⁶ finds that, unlike the numeric effluent limitations present in the “vast majority” of wastewater NPDES permits, which are self-monitored and self-reported by the discharger,

stormwater NPDES permits currently contain no numeric effluent limitations and instead rely upon a suite of general narrative effluent limitations, made specific by a plan that is

²⁴ Memorandum from Terry Tamminen, Secretary, Cal/EPA to BDOs, p. 8 (November 30, 2004) (“CalEPA Enforcement Initiative”).

²⁵ Memorandum from Alan Lloyd, Secretary, Cal/EPA to Art Baggett, Chair, SWRCB, p. 2 (March 23, 2005) (emphasis added).

²⁶ SWRCB, “13385(o) Enforcement Report,” p. 16 (2008),

http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/13385o_2007draft_v9_1.pdf. See also SWRCB, “13385(o) Enforcement Report,” p. 12 (2010),

http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/13385o_2009.pdf (reporting same conclusions).

only kept at the site. Compliance determination these effluent limitations at stormwater facilities therefore depends heavily on site visits

In other words, the 13385(o) reports find that “[e]nsuring compliance with stormwater NPDES permit effluent limitations . . . requires a large field presence,” a recommendation that is at odds with budget realities. While staff verification of discharger reporting and enforcement of any discovered violations would remain critical, numeric limits in stormwater permits would reduce the need for intensive staff oversight and allow the programs to be run more smoothly by the regulated entities.

In sum, tracking enforcement of permits with numeric limits (through self-reporting against the limits) is far less staff intensive (and so less costly) than tracking enforcement with narrative limits, which require site visits. As articulated in the Cal-EPA enforcement memos referenced above, this points to a recommendation to increase use of numeric limits in stormwater permits in order to enhance compliance and streamline enforcement. Where TMDLs are required for a waterway already impaired for trash, the TMDL must include a quantitative limit on trash, and that limit must be incorporated into applicable stormwater permits.

A “Zero Trash Discharge” Objective and Compliance Strategy Should Be Incorporated into Stormwater NDPES Permits

As stated above, we recommend and urge that the Trash Policy include a “zero discharge of trash” water quality objective. We further urge that it serve as the basis for stormwater permits. This is consistent with TMDL practice and should be the goal for permit programs as well. Implementation in permits can occur through both structural and institutional (non-structural) controls. Institutional controls can include existing efforts (e.g., street sweeping), but should also start to pull in related initiatives by other agencies and bodies (e.g., EPR and the DTSC Toxics in Packaging Initiative, as discussed below, as well as additional source reduction efforts). Institutional controls can also include educational support for bans of some of the most problematic trash components, such as polystyrene food containers and plastic bags; this is also discussed further below.

Existing trash TMDLs demonstrate that “zero trash” is a feasible and desired goal in stormwater NPDES permits. Notably, the Los Angeles River Watershed Trash TMDL requires progressive annual reductions in discharges of trash from the Los Angeles County MS4 system from an established baseline for each permittee. The final numeric target of zero trash discharge must be attained by September 30, 2016. The “zero trash” goal had been specifically contested in court, with the Court of Appeals rejecting dischargers’ claim that the target of zero trash is unattainable and inordinately expensive.²⁷ Implementation of this goal to date has shown that not only is “zero trash” attainable and desirable, it is attainable under the expected cost figure and ahead of schedule.²⁸

²⁷ *City of Arcadia et al. v. Los Angeles RWQCB et al.*, 135 Cal.App.4th at 1413, 1427-30.

²⁸ *City of Los Angeles Stormwater Permit Program*, “Los Angeles River Trash TMDL,” http://www.lastormwater.org/siteorg/program/TMDLs/tmdl_lariver_trash.htm.

Finally, incorporation of a statewide “zero trash” goal avoids inter-regional dumping and allows each region to collaborate on successful strategies consistent with existing local trash collection objectives to ensure safe, clean, trash-free communities. It is further consistent with efforts elsewhere in the nation to begin to eliminate trash from our waters.²⁹

The Trash Policy Should Include a Definition of Full Capture Systems Tied to a Zero Trash Objective

As discussed in the Heal the Bay comments, the Trash Policy should include a definition of “full capture system” that advances compliance with the Trash Policy and a “zero trash” water quality objective. The Los Angeles Regional Water Board’s trash TMDLs include a definition of a full capture device as follows:

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.³⁰

This definition was developed through the stakeholder process for the Los Angeles River Watershed Trash TMDL in 2001, and it has been used in all of the Region’s subsequent trash TMDLs.

The provision in this definition with regard to the size of trash particles trapped should be updated, as growing data since 2001 demonstrate that numerous smaller trash particles (less than 5mm in diameter), such as preproduction plastic pellets (“nurdles”), are not prevented from entering our waterways under this definition. Small particles are particularly problematic in the marine environment, as they can be easily mistaken for food by marine species. We accordingly recommend reducing the mesh screen size from 5 mm to a maximum of 2 mm, and potentially less, to account for small particles of trash and preproduction pellets.

The Trash Policy also should be explicit in stating that full capture device installation must be followed by regular operation and maintenance to continue their operation to design standards and compliance with the Policy. Poorly maintained trash screens, and inserts with blocked mesh, fail to prevent pollution and can cause other problems. The Trash Policy should specify that screens and inserts, particularly in more urban areas, must be inspected monthly and cleaned regularly. Reporting requirements must include an operation and maintenance schedule. In addition, annual reporting that demonstrates that the structural controls are functioning as designed, and that the controls are serving to meet a zero trash objective, must be required.

²⁹ See, e.g., the “Trash Free Potomac Watershed Initiative” and accompanying “Potomac River Watershed Trash Treaty,” which commit the area to a “Trash Free Potomac by 2013.” To date, 97 elected officials, representing the District of Columbia, Maryland, Pennsylvania and Virginia, and including all four Governors, have signed this Treaty. (See http://www.fergusonfoundation.org/trash_initiative/trashtreaty_currentSECURE.pdf.)

³⁰ See Memorandum from Jonathan Bishop, LA RWQCB to Michael Yang, LA RWQCB, “Procedures and Requirements for Certification of a Best Management Practice for Trash Control as a Full Capture System” (8/3/04) http://www.swrcb.ca.gov/rwqcb4/water_issues/programs/stormwater/municipal/ms4_permits/los_angeles/LACo_2009/LA%20MS4%20Trash%20Reopener%20Appendix%207-2.pdf.

Compliance schedules tailored to the type of permit at issue, with demonstrations of reasonable progress towards a zero trash objective, would allow for the regulated entity to factor implementation into its activities effectively (e.g., short-term construction projects necessarily would work at a much more expedited time frame than cities in implementing zero-discharge controls.)

Effective Structural Controls Exist and the Technologies Are Evolving Rapidly

The options for achieving zero discharge through full capture exist and are growing. California, through the work of the California Coastal Commission and the Algalita Marine Research Foundation, has published a BMP manual that details many of the methods, systems, and products being implemented in California to control trash in state waters.³¹ Some of the numerous products described are designed to capture other kinds of pollutants beyond trash as well, such as oil, sediment, or metals. A "zero trash discharge" objective will spur further innovation in technology that will increase the selection of options for regulated entities around the state.

As noted above, a program of implementation of effective structural controls should also be paired with a program of institutional (non-structural) controls, especially to help prevent pollution in the first instance. This will help keep down maintenance costs of structural controls, reduce the amount of trash that could blow into waterways, and cut back on the smallest particles that may still reach water bodies through screens.

Bond Funding Should Be Leveraged to Ensure Cost-Effective Implementation of Zero Trash Discharge Provisions

Numerous funding sources potentially apply to the implementation of these recommendations for a Trash Policy, particularly from state bond funds. These should be explored expeditiously to ensure that they are fully utilized before they disappear. For example, the State Water Board's Proposition 84 stormwater funding has yet to be disbursed.³² Its focus on low-impact development (LID) techniques could also have beneficial trash impacts, since slowing the flow of stormwater will similarly slow the flow of stormwater-driven trash into the waters of the state. The Department of Water Resources' recent RFP for funding similarly includes a stormwater component that could be used to advance techniques to reduce trash discharge into waters of the state.³³ Innovative leveraging of these and other funding sources is essential in this era of severely curtailed large public funding sources.

Preproduction Plastics Must Be Controlled at the Source

AB 258 (Krekorian 2007) requires the State and Regional Water Boards to implement a program for the prevention of discharges of preproduction plastics from point and nonpoint

³¹ California Coastal Commission and Algalita Marine Research Foundation, "BMP Manual."

³² http://www.waterboards.ca.gov/water_issues/programs/grants_loans/prop84/index.shtml.

³³ See, e.g., DWR, Proposal Solicitation Package, Integrated Regional Water Management: Proposition 1E (8/2010), http://www.water.ca.gov/irwm/docs/StormwaterFloodManagementGrants/Prop1E_Round1/SWFM_PSP_FINAL_07_20_10.pdf.

sources. The law includes waste discharge, monitoring, and reporting requirements that, at a minimum, target plastic manufacturing, handling, and transportation facilities, and the implementation of specified minimum best management practices for the control of discharges of preproduction plastic.

As the Informational Document outlines, pellets - which often fall well below the existing 5 mm screening requirement - could easily escape a "full capture" device as defined in current Los Angeles TMDLs. The Industrial Stormwater Permit could be used as the regulatory mechanism for pellet discharge, whereby the permit would prohibit the discharge of non-stormwater releases such as plastic pellets and related items. The stormwater division of the State Water Board is working to implement AB 258 requirements,³⁴ and their efforts should be integrated with the Trash Policy to ensure zero discharge of preproduction plastics into the environment. A number of Regional Water Boards are implementing AB 258 through the industrial permit program, and thus would be a logical progression for the Trash Policy.

THE PROPOSED TRASH POLICY SHOULD INTEGRATE AND LEVERAGE EFFORTS WITH OTHER CALIFORNIA STATE AND LOCAL AGENCIES TO ELIMINATE TRASH IN OUR WATERWAYS AND COMMUNITIES

Additional attention should be paid to leveraging and integrating the efforts of other agencies and entities to prevent the introduction of trash into the environment in the first instance, through source control and other methods. Examples are provided below; we urge the State Water Board to investigate and utilize additional opportunities.

CalRecycle: Extended Producer Responsibility

Extended producer responsibility (EPR) programs are an essential element of a successful policy to eliminate trash in the state's waterways and communities. EPR, also known as Product Stewardship, works to place responsibility for end-of-life product management on the producers and the product chain, rather than the general public. It also encourages product design changes that minimize negative impacts on human health and the environment at all stages of the product's life cycle, placing primary responsibility on the entity making design and marketing decisions. CalRecycle (formerly the California Integrated Waste Management Board) approved a set of Strategic Directives in 2007 that includes "Strategic Directive 5: Producer Responsibility,"³⁵ which adopts a "core value" that "producers assume the responsibility for the safe stewardship of their materials in order to promote environmental sustainability." SD-5 also directs staff to seek statutory authority to foster "cradle-to-cradle" producer responsibility. As of October 2010, 108 local governments and other organizations throughout California have demonstrated their support by adopting producer responsibility resolutions.³⁶

The Ocean Protection Council specifically supported EPR as described in the 2008 CalRecycle document, "Overall Framework for an Extended Producer Responsibility System in

³⁴ http://www.waterboards.ca.gov/water_issues/programs/stormwater/plasticdebris.shtml.

³⁵ <http://www.calrecycle.ca.gov/AboutUs/StrategicPlan/2009/SD05.htm>.

³⁶ <http://www.calpsc.org/policies/local/index.html>.

California"³⁷ In their 2009 Resolution, the OPC specifically urged agencies and industry to reduce packaging waste through their EPR initiatives, thereby reducing pollution and also local government trash-related costs.³⁸ EPR should be an integral element of the Trash Policy, particularly with respect to pollution prevention efforts in stormwater permits.

DTSC: Toxics in Packaging

The California Department of Toxic Substances Control (DTSC) is charged with implementing the Toxics in Packaging Act (Health and Safety Code Sec.s 25214.11-25214.26). Through its Toxics in Packaging program,³⁹ DTSC works to limit exposure to regulated metals in the human and natural environment through education and efforts to eliminate regulated toxic metals in packaging prior to manufacturing. The law includes any packaging or packaging component sold in California and affects all manufacturers, distributors, and resellers, as long as the packaging or packaging component is eventually sold or distributed in California. Examples of some packaging covered under the law and the program include, but are not limited to: overwrap for food products sold in retail channels, plastic clamshells that hold a product, cardboard used to protect laptop computers, steel strapping used to secure shipping containers, and recycled materials used to make new packaging. This effort similarly should be an integral element of the Trash Policy, particularly with respect to pollution prevention efforts in stormwater permits.

City Councils, County Boards of Supervisors and Public Works Departments

Clean Water Action has compiled a list of 48 municipalities and counties throughout California with some form of polystyrene packaging ban in place, with more such communities being added every day. This form of packaging is particularly difficult to manage because of its light weight (easily blows about) and propensity to crush into tiny pieces that themselves spread out, to injurious effect. Several jurisdictions, most notably San Francisco, have also banned plastic bags, and numerous others are working on similar bans. The Trash Policy could work to leverage these initiatives into broader efforts to encourage other communities to consider similar bans of some of the most numerous and difficult trash items to control, thus making the overall effort to control debris pollution easier and less costly.

The Water Board's Trash Policy and CEQA analysis would also benefit from close interaction with local governments and public works departments, to obtain statistics on all trash-related costs (direct and indirect) and activities. This will help inform the development and analysis of the Policy. Local trash collection and cleanup operations also offer valuable "lessons learned" in terms of effective strategies throughout the state for achieving society's goal of zero trash in our communities and waterways.

³⁷ <http://www.calrecycle.ca.gov/epr/Framework/Framework.pdf>; see <http://www.opc.ca.gov/2009/11/opc-support-for-extended-producer-responsibility-programs/> for the April 23, 2009 adopted OPC Resolution in support of this EPR Framework.

³⁸ OPC, "Staff Report: OPC Support for Extended Producer Responsibility Programs" (April 23, 2009), http://www.opc.ca.gov/webmaster/ftp/pdf/agenda_items/20090423/09_EPR%20Panel/0904COPC_09%20EPR%20Resolution%20amended.pdf.

³⁹ <http://www.dtsc.ca.gov/toxicsinpackaging/index.cfm>.

THE PROPOSED POLICY SHOULD COORDINATE WITH AND LEVERAGE STATE, REGIONAL AND FEDERAL EFFORTS TO ELIMINATE MARINE DEBRIS IN OUR COASTAL AND OCEAN WATERS.

The West Coast Governor's Agreement⁴⁰ recently received its first appropriation of federal funds; specifically, \$100,000 in the FY 2010 budget for development of a West Coast Marine Debris Strategic Plan through a series of workshops, as well as formation of a tri-state Marine Debris Alliance to oversee and implement the actions in this Plan. In Action 1.4, the Agreement commits the three West Coast states to setting marine debris reduction goals for various prevention measures (such as expanded recycling, improved public sanitation and maintenance, and litter law enforcement). The Agreement's 2010 Marine Debris Action Coordination Team Work Plan⁴¹ implements Action 1.4 (now with the aid of \$100,000 in federal funding). The Work Plan's purpose is described as an effort to outline the steps by which the team will communicate and coordinate across the three states, the federal government, and NGO partners to produce an effective, tri-state marine debris strategy. California's Trash Policy should be an important consideration in this effort.

The 2010 National Ocean Policy similarly calls for "[b]est management practices, use of conservation programs, and other approaches for controlling the most significant land-based sources of" marine debris.⁴² The Water Board should coordinate closely with such activities to leverage both federal funding opportunities as well as federal and regional attention to the control of trash. Trash is a significant pollutant of the state's coastal and ocean waters, and California should ensure that it is dealt with prominently in the Action Plans and other strategies being developed in response to Obama's Executive Order and the Final Recommendation of the Interagency Task Force.

* * *

Thank you for the opportunity to provide these comments in support of "zero trash" waterways. We commend the State Water Board for initiating this effort, and we look forward to working with the Board and staff to ensure the development and adoption of an effective Policy that fully protects California's waterways and communities from trash pollution.

Best regards,

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⁴⁰ "West Coast Governor's Agreement on Ocean Health Final Action Plan" (May 2008), http://westcoastoceans.gov/docs/WCGA_ActionPlan_lowest-resolution.pdf.

⁴¹ http://westcoastoceans.gov/Docs/Marine_Debris_Final_Work_Plan.pdf.

⁴² White House Council on Environmental Quality, "Final Recommendations of the Interagency Ocean Policy Task Force," p. 39 (July 19, 2010), http://www.whitehouse.gov/files/documents/OPTF_FinalRecs.pdf.

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