

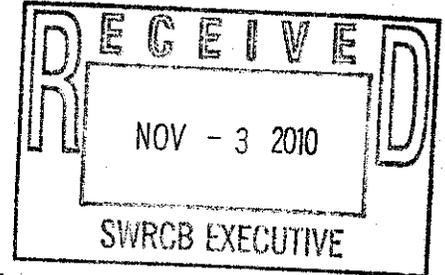


# CLEAN WATER ACTION

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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](mailto:commentletters@waterboards.ca.gov)**



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

Dear Chair Hoppin and Board Members:

Clean Water Action (CWA) and its 60,000 California members applaud the Board for proceeding toward developing a state-wide Trash Policy that would identify trash as a separate pollutant and establish methods to control trash pollution in waters of the state. The Board deserves particular recognition for proposing to establish a policy for source control for trash. This specific provision in the scoping document is remarkable as it is the first regulatory agency in the United States to suggest that source reduction measures must be an integral part of controlling marine trash pollution. To that end, the following comments provide not only support for that element of the scoping document, but suggestions for ensuring the success of that laudable goal. While CWA supports many of the policy statements and objectives suggested in the scoping document, these comments provide several suggestions for strengthening the options proposed by the Board to ensure more effective results in trash control and reduction.

Clean Water Action is a member of the Clean Seas Coalition and a signatory to the comment letter provided by the Coalition. We agree with all the comments and feedback provided in that letter. The purpose of this letter is to provide some additional feedback on source control, addressing pre-production plastics as part of the trash problem, and ....

As the informational document describes, a Trash Policy could contain policy statements, water quality objectives and/or implementation provisions. These comments provide specific responses to each of the sections proposed in the informational document.

## Project Description

Regarding the project description, CWA recommends that the source reduction aspect of the policy be more clearly articulated at the outset. The project description should state that the Trash Policy would identify trash as a separate pollutant and establish methods to control and reduce trash pollution in waters of the state.



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## Elements 1 and 2- Water Quality Policy Statements and Water Quality Objectives

A policy and objectives of “No action” are unacceptable since trash has been demonstrated to impair the beneficial uses of the waters of the state and the Water Boards must act to protect these uses. There is a need for uniform policies across the state to ensure that all dischargers are required to meet adequate water quality objectives and required to implement sufficient actions to achieve them. Furthermore, as there are Regions in which no trash control measures currently exist, the state Water Board must take action to ensure that policies and water quality objectives for trash are implemented state-wide.

- **MEPs and BATs versus Zero**

Establishing a Maximum Extent Practicable (MEP) standard for MS4s and Best Available Technology (BAT) for industrial and construction stormwater dischargers would be a step in the wrong direction. **The appropriate water quality objective for trash should be zero discharge.** All trash discharges are preventable. Trash is easier to monitor and control than any other pollutant.

The Los Angeles Regional Water Quality Control Board is already implementing a trash TMDL for the Los Angeles River Watershed that uses zero discharge as the water quality objective. In supporting that objective, staff concluded that there is no acceptable level of trash that could be present in California’s waterways without impairing a number of beneficial uses, including recreation, habitat and municipal water supply. As described in the final staff report:

“The numeric target for this TMDL is 0 (zero) trash in the water. The numeric target is derived from the narrative water quality objectives, 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. The numeric target was used to calculate the Waste Load Allocations as described in the Implementation Plan”<sup>1</sup>

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<sup>1</sup> LA RWQCB, Final Staff Report, *Trash Total Maximum Daily Loads for the Los Angeles River Watershed*, (August 9, 2007) p. 20

[http://www.waterboards.ca.gov/losangeles/board decisions/basin plan amendments/technical documents/2007012/09\\_0723/L.%20A.%20River%20Trash%20TMDL\\_Final%20%20Staff%20Report\\_August%209.%202007.pdf](http://www.waterboards.ca.gov/losangeles/board%20decisions/basin%20plan%20amendments/technical%20documents/2007012/09_0723/L.%20A.%20River%20Trash%20TMDL_Final%20%20Staff%20Report_August%209.%202007.pdf)



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Allowing dischargers to achieve the water quality objective using MEP or BAT weakens the objective by creating a lack of specificity. Zero discharge provides a sound numeric limit that can be measured. A lack of clarity in stormwater permits often leads to lack of enforcement. Numeric limits are objective and progress towards attaining them can be easily assessed, particularly with trash, which is for the most part, easy to measure.

The most stringent water quality objective must be the starting point for action- adding qualifications on the water quality objective, such as, MEP and BAT, would enable dischargers to install some institutional or structural controls and claim that they had satisfied the objectives. Without MEP and BAT qualifications on the objective, dischargers that fail to achieve zero discharges using some institutional or structural controls, will have to increase their efforts.

Based on the Basin Plan Amendments requirements to protect beneficial uses and the fact that there is no amount of trash that would not impair beneficial uses, the conclusion must be that no amount of trash in California's impaired waterways is acceptable.

- **Establishing a Source Control Policy and Objectives of 25% source control**

Establishing a policy for Source Control is of paramount importance. The policy must establish prevention of litter as the highest priority, as suggested in the scoping document. We support the policy statement in the scoping document that "Preventing pollution is the most effective method of controlling pollution." The scoping document outlines a strategy that places reduction at the top of the hierarchy of actions and that is consistent with California's Integrated Waste Management Act,<sup>2</sup> as well as the priorities set forth in the California Ocean Protection Council's Marine Debris Resolution (2007)<sup>3</sup> and its Strategy for Preventing and Reducing Ocean Litter (2008).<sup>4</sup> In light of these existing state priorities for addressing solid waste, and based on a common sense understanding that preventing the generation of waste is more cost effective and environmentally beneficial than management and control once it is generated, it is appropriate to task dischargers with pursuing prevention first and using control strategies only after eliminating potential sources of trash is demonstrated to be unfeasible.

The Scoping Document is deficient in its failure to include Source Control among the objectives. A policy that states that prevention and source control are the most effective methods of controlling pollution, but then fails to articulate any numeric objective to ensure that these methods are employed, repeats the failures of the state's implementation of AB 939, and other

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<sup>2</sup> California Integrated Waste Management Act of 1989 (AB 939 Sher)

<sup>3</sup> <http://www.opc.ca.gov/2007/02/resolution-of-the-california-ocean-protection-council-on-reducing-and-preventing-marine-debris/>

<sup>4</sup> [http://www.opc.ca.gov/webmaster/ftp/pdf/opc\\_ocean\\_litter\\_final\\_strategy.pdf](http://www.opc.ca.gov/webmaster/ftp/pdf/opc_ocean_litter_final_strategy.pdf)



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waste management regulations across the board. The Board must add numeric objectives for source control and trash prevention into the water quality objectives.

We suggest that dischargers be required to prevent a minimum of some percentage of discharges through source control and prevention measures. Discharges of pre-production resins can be easily reduced by 25% with simple housekeeping practices on site at most plastics processing and transport facilities. Similarly, with bans on disposable products, such as grocery bags, and efforts to reduce the use of disposable food and beverage packaging, local jurisdictions could achieve a 25% reduction in the quantity of litter and trash generated at the local level. Certainly the cost benefit of reducing control measures for 25% of the trash (i.e. reducing the amount of street sweeping, and operation and maintenance of structural controls) would be advantageous to taxpayers and under-funded municipal public works programs.

- **Definition of Trash**

A definition of "trash" is important. The LA RWQCB staff report on the Trash TMDL for the Los Angeles River Watershed already provided a definition of trash as follows:

Litter means 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.<sup>5</sup>

We are in agreement with any definition of trash that includes human-made / synthetic debris. The suggestion of adding green waste to the definition is of concern. While institutional and structural controls for trash do capture vegetative debris such as sediment, leaves, branches and other organic materials, these are not trash items and controlling this type of debris to meet a water quality objective of zero is likely unwarranted. While vegetative debris can contribute to degradation of water quality, we are concerned that the water quality objective for such material may be too stringent, resulting in efforts upstream to control green waste such that it is detrimental to the ecosystem. Therefore, the potential detrimental effects of including "green waste" in the definition of trash, where the water quality objective is zero discharge, should be given greater consideration.

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<sup>5</sup> LA RWQCB Staff Report, p. 4



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- **Establishing a policy for preproduction plastics is important and should go further than the scoping document suggests.**

A policy regarding industrial source of pre-production plastics is imperative as Board action to control these sources is mandated by law (AB 258) and current definitions of "trash" do not regulated debris that is smaller than 5mm. The statement should address not only pellets as pre-production resins, colorants, and chemical additives that impact water come in many forms that defy capture using the 5mm threshold. These pre-production plastic materials include pellets, powders, and fragments. The policy should address all of these forms and not be limited to plastic resins. It should incorporate the additives used in processing and manufacturing of plastics- the chemical additives and colorants as well as resins.

The Waterboard must act to regulate discharges from all facilities per AB 258. Since most of the materials discharged to stormwater are on the outside premises of these facilities (yards and railroad tracks), the Board must regulate activities outside of the buildings and establish authority to regulate activities at rail and shipping yards, where pre-production resin and additive discharges do make their way to storm drains and impaired waterbodies.

## Element 3- Implementation

No action is unacceptable. A hierarchy of implementation strategies should be provided in the final document.

- **Source Reduction and Trash Prevention**

Since prevention is cost- effective and the most environmentally beneficial, the document should begin with prevention and source reduction strategies. Actions that local government can take to prevent trash at the source should be articulated in this document, with a requirement that a minimum of 25% of trash flowing to the impaired water body be reduced at the source- i.e. eliminated. Structural control measures can be used to achieve the remaining trash reduction. The OPC Marine Litter strategy provides good basis for this approach.

1. Extended Producer Responsibility (EPR) or "take-back" by producers, of packaging and print materials;
2. Bans on commonly-littered items (bags, straws) where alternative items exist;
3. Fees on commonly-littered items.<sup>6</sup>

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<sup>6</sup> OPC Strategy- see note 4



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Clean Water Action supports these priorities. Local jurisdictions are already acting to implement them. For example, to date, 48 jurisdictions have placed bans on polystyrene food containers, contributing to examples of reduction of foam litter, as in San Francisco which achieved a 36% reduction of foam litter in the first year. Since polystyrene comprises approximately 15% of street and storm drain litter in many jurisdictions, these bans can substantially reduce plastic debris.

In addition, 6 jurisdictions have banned plastic bags, with many considering action. Bag litter has been estimated to comprise approximately 25% of street litter in many jurisdictions. By eliminating disposable bags, jurisdictions can achieve significant source reduction.

Jurisdictions like the City of Oakland are charging convenience food stores and take-out establishments litter fees. Unfortunately, the consumer is not aware of the fee, and therefore there's no disincentive to buy disposable packaged products. Upfront fees on litter prone items would make clear to the consumer that there are environmental costs associated with the item, and perhaps help to motivate consumers not to buy them, and manufacturers to reduce the packaging and shift toward re-usable products.

Additional measures to reduce disposable food take-out packaging and disposable products can be pursued by local government. Clean Water Action is currently working with several jurisdictions on a model ordinance to phase out take out food packaging. The outline of the model is as follows:

1. Food service businesses would be prohibited from selling or providing food for consumption on the premises of the business that is served using disposable plates, bowls, cups, containers, or cutlery. Customers must be asked whether they want the food or beverage they have ordered to be "for here" or "to go." If the customer plans to have the food or beverage "for here," the vendor must serve the food and or beverage on non-disposable food-ware.
2. Any new food service business that is sited in a jurisdiction that plans to serve food on the premises of the business must have adequate dish-washing capacity to provide food and beverages served on the premises on non-disposable plates, bowls, cups, containers, or cutlery.
3. Food service businesses that sell or provide food or beverage for consumption off the premises of the business shall provide food and/or beverages to customers who bring their own refillable or reusable food or beverage container.



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4. Food service businesses must provide a discount to customers that provide a personal non-disposable / re-usable food or beverage container. The discount for hot beverage containers shall be \$0.XX. The discount for cold beverage containers shall be \$0.XX. The discount for a single portion food container shall be \$0.XX.
5. Food service businesses must prominently display at or within close proximity to the cash register notice to its customers that discounts for non-disposable / re-usable containers are provided at the establishment.

With water quality objectives that mandate source reduction of trash that enters waterways in California, local jurisdictions will be required to develop creative new "out of the box" strategies for reducing disposable products and packaging. This will lead to significant cost and environmental benefits.

On behalf of Clean Water Action, thank you for the opportunity to provide these comments.

Sincerely,

Miriam Gordon  
California Director