

STATE OF CALIFORNIA  
REGIONAL WATER QUALITY CONTROL BOARD SAN  
FRANCISCO BAY REGION

ADVISORY TEAM SUMMARY REPORT  
MEETING DATE: February 13, 2019

**ITEM:** 8

**SUBJECT:** **CALIFORNIA DEPARTMENT OF TRANSPORTATION, VIOLATION OF TRASH REQUIREMENTS OF NPDES STATEWIDE STORMWATER PERMIT, ORDER No. 2012-0011-DWQ, AS AMENDED, NPDES PERMIT NO. CAS 000003, REGIONWIDE** – Consideration of Tentative Cease and Desist Order

**CHRONOLOGY:** The Board has not previously acted on this item.

**DISCUSSION:** This Tentative Cease and Desist Order (Appendix A) (Tentative Order) would impose requirements for the California Department of Transportation (Caltrans) to come into compliance with its Statewide Stormwater NPDES Permit (Permit) requirement to control trash discharges in a timely manner from its high trash generating areas in the San Francisco Bay region. The Tentative Order's requirements are consistent with the deadlines in the Trash Amendments to Statewide Water Quality Control Plans, which will require Caltrans to control trash discharges from all significant trash generating areas in the State by December 2030, at the latest.

Board staff have separated functions on this enforcement item. Assistant Executive Officer Lisa Horowitz McCann is the head of the advisory team, which will advise the Board on this enforcement matter. The advisory team also includes Selina Louie, Marnie Ajello and Yuri Won. Interim Executive Officer Thomas Mumley is the head of the prosecution team and will not be advising the Board on this matter. The prosecution team also includes Keith Lichten, Dale Bowyer, Derek Beauduy. They are represented by attorney Julie Macedo from the State Water Resources Control Board's Office of Enforcement.

The State Water Resources Control Board adopted the Permit in September 2012. The Permit included region-specific language, revised in May 2014, requiring Caltrans to timely control discharges of trash from its high trash generating areas. In August 2014, Caltrans submitted the *Caltrans Trash Load Reduction Workplan for the San Francisco Bay Region*. The prosecution team contends that the workplan did not meet Permit requirements because it did not propose sufficient and timely measures to control trash. Caltrans submitted subsequent trash reduction workplans in 2015, 2016, and 2018. Caltrans has not yet submitted an accepted workplan.

The Tentative Order would require Caltrans to implement trash controls on the following minimum acreages in significant trash generating areas of Caltrans right-of-way (ROW) in the region:

- 1,150 acres or more by June 30, 2020;
- 1,250 acres or more by June 30, 2022;
- 1,750 acres or more by June 30, 2024;
- 3,720 acres or more by June 30, 2026; and
- All additional significant trash generating areas by December 2, 2030.

The Tentative Order would also require Caltrans to complete associated actions intended to ensure it achieves the required trash controls, such as additional assessments, budget planning and reporting. The proposed acreages through 2024 reflect Caltrans' currently-planned and reported implementation projects. The 2026 requirement to control trash from 3,720 acres is an outcome of an agency-to-agency negotiation process between the California Environmental Protection Agency and the California State Transportation Agency, which is expected when one state agency is considering an enforcement action against another.

The Tentative Order was public noticed for a five-week comment period and the comments received are attached as Appendix D. Public commenters, including elected officials, Bay Area municipal stormwater programs, and Save the Bay, support the need for Caltrans to complete trash control actions, and generally propose that Caltrans should be required to control trash from a larger area more quickly. Caltrans submitted comments requesting that the Tentative Order requirements be limited to the negotiated maximum of 3,720 acres. Caltrans also requested to minimize requirements for assessments, studies and reporting in the Tentative Order, which requires diversion of resources from efforts to implement trash measures.

The Board received numerous form letters and form letters with personalized messages during the public comment period. Only one copy of the form letter is attached. The other form letters, including those with personalized messages, are available at: [https://www.waterboards.ca.gov/sanfranciscobay/board\\_info/agendas/2019/February/Caltrans/Save\\_the\\_Bay\\_members.pdf](https://www.waterboards.ca.gov/sanfranciscobay/board_info/agendas/2019/February/Caltrans/Save_the_Bay_members.pdf)

The Board also received several letters from elected officials, municipalities and USEPA, prior to the public comment period, on the issue of trash in Caltrans' right of ways and urging the Board to require Caltrans to improve their trash control. They are available here under the heading "Previous Letters Received Regarding Caltrans Trash Issue": [https://www.waterboards.ca.gov/sanfranciscobay/board\\_decisions/tentative\\_orders.html](https://www.waterboards.ca.gov/sanfranciscobay/board_decisions/tentative_orders.html).

The prosecution team provided background information and a response to comments (Appendix B), which provides its understanding of Caltrans' trash generation assessments and Caltrans funding opportunities. Caltrans also provided a response to comments (Appendix C), which notes actions it is taking to control trash in the Bay Area and reiterates its previous comments.

## **RECOMMENDED**

**ACTION:** The advisory team will have a recommendation following the hearing.

**FILE NUMBER:** CIWQS Place ID No. 212806

**APPENDIX:**

- A. Tentative Order
- B. Water Board Prosecution Team Response to Comment Letters Received
- C. Department Response to Comment Letters Received
- D. Comment Letters Received

## **Appendix A**

### **TENTATIVE CEASE AND DESIST ORDER**

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN FRANCISCO BAY REGION**

**CEASE AND DESIST ORDER NO. R2-2019-xxxx**

**CALIFORNIA DEPARTMENT OF TRANSPORTATION**

**WHEREAS** the California Regional Water Quality Control Board, San Francisco Bay Region (Regional Water Board), finds the following:

**Background**

1. The California Department of Transportation (Department) owns, operates, and maintains over 25,000 acres of right-of-way (ROW) within the San Francisco Bay Region. This ROW includes freeway, expressway, and conventional highway facilities, interchanges, bridges, rest areas, park and ride lots, leased areas, and other associated areas.
2. The State Water Resources Control Board (State Water Board) adopted Order No. 2012-0011-DWQ (Permit), on September 19, 2012, issuing waste discharge requirements as NPDES Permit No. CAS000003, *Statewide Storm Water Permit and Waste Discharge Requirements for State of California Department of Transportation*. The State Water Board amended the Permit on May 20, 2014, with Order No. 2014-0077-DWQ, which modified the Department's trash reduction requirements by incorporating the trash reduction requirements referenced herein. This Permit contains prohibitions, limitations, and provisions regulating the stormwater and non-stormwater discharges from the Department's properties and facilities, and discharges associated with operation and maintenance of the State highway system.
3. Permit General Discharge Prohibition A.4 states:

The discharge of storm water or conditionally exempt non-storm water that causes or contributes to the violation of water quality standards or water quality objectives (collectively WQSs), the California Toxics Rule (CTR), or impairs the beneficial uses established in a Water Quality Control Plan, or a promulgated policy of the State or Regional Water Boards, is prohibited. The Department shall comply with all discharge prohibitions contained in Regional Water Board Basin Plans.
4. Permit Attachment V, Part 2, paragraph 1 states:

The Department shall demonstrate compliance with Discharge Prohibition 7, Table 4-1 of the San Francisco Bay Basin Water Quality Control Plan [Basin Plan] through the timely implementation of control measures in all high trash generating areas in the San Francisco Bay Region, identified as the following:

  - a. Freeway on- and off-ramps in high density residential, commercial and industrial land uses;
  - b. Rest areas and park-and-rides;
  - c. State highways in commercial and industrial land use areas; and
  - d. Other freeway segments as identified by maintenance staff and/or trash surveys.
5. Basin Plan Discharge Prohibition 7 (Table 4-1) prohibits the discharge of "[r]ubbish, refuse, bark, sawdust, or other solid wastes into surface waters or at any place where they would



contact or where they would be eventually transported to surface waters, including flood plain areas.”

6. Permit Attachment V, Part 2, paragraph 5.b requires the Department to “[i]nclude trash capture devices on the outlets of treatment systems for new and redeveloped highway projects to achieve the full trash capture standard.”
7. State Water Board Resolution 2015-0019 amended the Water Quality Control Plan for Ocean Waters of California (Ocean Plan) and Part 1 of the Water Quality Control Plans for Inland Surface Waters, Enclosed Bays, and Estuaries of California (ISWEBE Plan), which are hereinafter referred to as the Trash Amendments. These Trash Amendments, which became effective December 2, 2015, include provisions to control trash and a prohibition of trash discharge to surface waters of the State or the deposition of trash where it may be discharged to surface waters.
8. The Trash Amendments, specifically Ocean Plan Chapter III.L.2.b and ISWEBE Plan Chapter IV.A.3.b, require the Department to prohibit the discharge of trash to surface waters of the State or the deposition of trash where it may be discharged into surface waters of the State “in all significant trash generating areas by installing, operating, and maintaining any combination of full capture systems, multi-benefit projects, other treatment controls, and/or institutional controls for all storm drains that capture runoff from significant trash generating areas.”
9. The Trash Amendments require the Department to prohibit the discharge of trash in all significant trash generating areas and demonstrate full capture system equivalency “within ten (10) years of the effective date of the first implementing NPDES permit, along with achievements of interim milestones such as average load reductions of ten percent (10%) per year. In no case may the final compliance date be later than fifteen (15) years from the effective date of the Trash Provisions.” The effective date of the Trash Provisions was December 2, 2015.
10. The Bay Area Stormwater Management Agencies Association (BASMAA) has a methodology for determining trash generation rates and trash generation categories of low, moderate, high, and very high trash generation rates. These categories are defined in Provision C.10 of the Municipal Regional NPDES Stormwater Permit, Order No. R2-2015-0049 (NPDES Permit No. CAS612008). Significant trash generation areas as defined in the Trash Amendments are functionally equivalent to moderate or greater trash generation areas using the BASMAA methodology.

### **Purpose of this Order**

11. Trash reduction requirements have been included in the Permit since its adoption on September 19, 2012 and modification in May 2014 to require timely implementation of trash control measures in high trash generation areas. At the Regional Water Board staff’s request, the Department submitted the *Caltrans Trash Load Reduction Workplan for the San Francisco Bay Region* (Workplan) on August 15, 2014.
12. The Department did not propose implementation actions in the August 15, 2014 Workplan sufficient to meet Permit requirements and Basin Plan Discharge Prohibition 7. After subsequent Workplan submittals on September 1, 2015, and June 24, 2016, several meetings

and exchanges of correspondence regarding the insufficiency of the Department's proposed trash reduction implementation actions, and a Notice of Violation issued on December 14, 2016, the Department submitted a revised Workplan on March 7, 2018, that, again, did not adequately identify the planning, assessment, funding, and associated implementation actions needed to meet the Permit's trash reduction requirements and Basin Plan Discharge Prohibition 7.

13. The Department has identified portions of its ROW that generate significant amounts of trash but has not identified an acceptable schedule for timely implementation of trash controls to meet Permit or Basin Plan requirements. The Department's first trash generation assessment reported in its September 1, 2015, Workplan identified over 40 miles of highways and 45 ramps that generate significant amounts of trash. The Department's most recent trash generation assessment was reported to the Water Board in a November 21, 2018, meeting and is based on trash collection data, a visual assessment conducted in 2016, and a 2018 visual reassessment of a portion of the low and moderate rated areas identified in the 2016 visual assessment. The current assessment identifies approximately 8,820 acres of ROW rated as moderate trash generating or greater.
14. The Department provided a summary of its current trash generation assessments in meetings on November 2, 2018 and November 21, 2018 with Regional Water Board staff, that identified approximately 3,720 acres of ROW as park-and-rides, rest areas, very high and high rated highways and ramps, and all moderate rated highways and ramps that aren't surrounded by vegetation. The Department identified these 3,720 acres as its highest priority for full trash capture implementation or equivalent controls. The total area of ROW rated as moderate (with or without vegetation) or greater was determined to be approximately 8,820 acres in the current assessment. The Regional Water Board considers trash generation areas defined by the Department as moderate or greater to be significant trash generation areas, with the exception of moderate trash generation areas with vegetation that controls the generated trash. Future assessments of Department ROW within the San Francisco Bay Region are needed to determine how much of the remaining areas of Department ROW are significant trash generation areas.
15. The Department's lack of implementation of trash control measures within the ROW may result in the transport of uncontrolled trash via wind and stormwater flow onto properties and municipalities adjacent to, and downstream of, Department ROW. Transport of trash from the Department ROW to surrounding municipalities unduly puts the burden of capturing trash generated on Department ROW onto the surrounding municipalities.
16. This Cease and Desist Order (Order) sets trash reduction benchmarks and a time schedule for implementation of trash controls that will bring the Department into compliance with the Basin Plan and Permit requirements no later than twelve years from issuance of this Order. The time schedule in this Order is consistent with the compliance schedule allowed by the Trash Amendments.

#### **Cease and Desist Order Authority**

17. When the Regional Water Board finds a discharge of waste is taking place or threatening to take place that violates or will violate requirements prescribed by the Board, California Water Code section 13300 authorizes the Regional Water Board to require a discharger to submit a detailed time schedule, with such modifications as the Board may deem necessary,

to correct or prevent a violation of requirements. Water Code section 13301 authorizes the Regional Water Board to issue a cease and desist order directing those persons not complying with the requirements or with discharge prohibitions to comply with them in accordance with a time schedule set by the Board, and/or to take appropriate remedial or preventive action.

18. Because the Department is violating Basin Plan Prohibition 7 and Attachment V, Part 2 of its Permit, this Order is necessary to ensure that the Department cease violating the Basin Plan and achieve compliance with the Permit. The Order establishes a time schedule of no more than twelve years for the Department to complete necessary actions to attain compliance.
19. This Order is an enforcement action and, as such, is exempt from the provisions of the California Environmental Quality Act (Public Resources Code § 21000 et seq.) in accordance with Title 14 of the California Code of Regulations, section 15321.
20. Reports required under this Order are monitoring and reporting requirements pursuant to Water Code section 13383.
21. The Regional Water Board notified the Department and interested persons of its intent to consider adoption of this Order and provided an opportunity to submit written comments and appear at a public hearing. The Regional Water Board, in a public hearing, heard and considered all comments.

**IT IS HEREBY ORDERED**, in accordance with Water Code section 13301, that the Discharger shall cease and desist from discharging and threatening to discharge trash in violation of the Basin Plan and/or Permit by complying with the following provisions:

1. **Implement Trash Controls**: The Department shall implement structural and non-structural trash controls to meet full trash capture equivalency in significant trash generating areas of Department ROW as soon as possible but no later than the following benchmark acreages and dates:
  - a. 1,150 acres or more by June 30, 2020;
  - b. 1,250 acres or more by June 30, 2022;
  - c. 1,750 acres or more by June 30, 2024;
  - d. 3,720 acres or more by June 30, 2026; and
  - e. All additional significant trash generating areas of ROW identified by visual assessments conducted in 2021, 2025, and 2029 by December 2, 2030.

The Regional Water Board commits to working with the Department to identify opportunities for cooperative projects with local municipalities to implement trash controls. If after diligent effort the cooperative agreements are unable to produce the required acreage the Regional Water Board will consider the effort in determining any extensions of time.

2. **Install Structural Trash Controls on All Construction Projects in Significant Trash Generating Areas**: For all construction projects in significant trash generating areas of Department ROW that do not meet full trash capture equivalency, the Department shall install structural full trash capture devices in the storm drain system and/or structural trash controls on the outlets of treatment systems to achieve the full trash capture standard. If it is impractical to install structural trash controls due to site constraints or safety reasons, the

Department shall identify these areas and report them in its annual report and trash generation map.

3. **Prepare and Submit a Trash Generation Map:** The Department shall prepare and submit, by October 1, 2019, a GIS based Trash Generation Map (Map) showing trash generation ratings of all Department ROW including, roadway and off-roadway areas, park-and-ride lots, rest areas, areas under or separate from raised roads, leased areas, ramps, loops, bridges, temporary yards, and maintenance stations. The Map shall be used to track the Department's progress toward full trash capture system equivalency and shall also be used to track trash control maintenance requirements and implementation. Trash Generation Ratings shall be based on BASMAA visual assessment methodology or an equivalent Department-developed methodology. The map shall be updated on October 1 each year to account for implementation of trash controls, observed changes in trash generation, and required visual assessments, and shall include, but not be limited to, the following:
  - a. Trash generation ratings based on BASMAA and the Department's trash generation rating methodology using Very High, High, Moderate, and Low categories;
  - b. Identification of all significant trash generating areas;
  - c. Locations of full trash capture devices that treat Department ROW whether on Department ROW or not;
  - d. Areas where enhanced maintenance is implemented to a level sufficient to meet the full trash capture standard; and
  - e. Areas where homeless encampments and illegal dumping currently or have historically occurred.
4. **Prepare and Submit a Trash Control Implementation Workplan:** The Department shall submit a Trash Control Implementation Workplan (Workplan) that identifies and prioritizes short-term and long-term planning, funding, and implementation commitments for trash reduction controls sufficient to meet the trash reduction benchmarks and compliance dates in this Order. The Workplan shall be submitted by December 31, 2019, with revised Workplan submittals required on December 31, 2021, December 31, 2023, December 31, 2025, and December 31, 2027. The Workplan shall include the following:
  - a. A prioritization strategy for all significant trash generating ROW to guide timely, efficient, and effective trash control implementation actions that meet the trash reduction benchmarks and compliance dates in this Order;
  - b. A schedule and list of planned structural and non-structural trash control projects and actions sufficient to meet trash reduction benchmarks and Order requirements anticipated to be completed in the next five years. Trash control projects may include projects on Department ROW, or projects in areas managed by municipalities or local agencies to which trash from Department ROW is discharged, or other trash control projects within watersheds that reduce trash discharges from Department ROW;
  - c. A description and schedule of ongoing coordination with municipalities and local partners, and project schedule for Cooperative Implementation Agreements, Financial Contribution Only projects, and/or other watershed trash control projects that reduce trash discharges from Department ROW;
  - d. A description of maintenance actions, by the Department or municipal or local agency partners to ensure full trash capture operation of structural controls;
  - e. Identification of funding needs and resources necessary to meet the trash reduction benchmarks and compliance dates in this Order. If current funding sources for trash

control implementation are insufficient to comply with Order requirements, the Workplan shall identify additional funding sources and commitments to be utilized to meet Order requirements.

5. **Conduct Trash Reduction Feasibility Studies:** The Department shall conduct a Trash Reduction Feasibility Study (Feasibility Study) and submit a report that assesses and prioritizes significant trash generating highway corridors for feasibility of implementing structural and non-structural trash controls to comply with the requirements of this Order. A Feasibility Study report assessing no less than 10 percent of significant trash generating ROW shall be submitted by December 31, 2019, a Feasibility Study report assessing no less than 40 percent of significant trash generating ROW shall be submitted by December 31, 2021, a Feasibility Study report assessing 80 percent of significant trash generating ROW shall be submitted by December 31, 2023 and a Feasibility Study report assessing 100 percent of significant trash generating ROW shall be submitted by December 31, 2025.

Trash control implementation feasibility assessment may include a combination of structural trash controls, non-structural trash controls, cooperative implementation with local entities, enhanced trash collection and maintenance, or other actions sufficient to demonstrate full trash capture system equivalency. The Feasibility Study report shall identify the specific corridors and portions of ROW under consideration and include the following:

- a. Locations of storm drains, drainage systems, stormwater treatment controls, and outfalls in the Feasibility Study area;
  - b. Description of the suite of actions the Department will implement to achieve full trash capture system equivalency within the Feasibility Study area. This may include installation of structural controls such as full trash capture devices or non-structural controls such as enhanced maintenance actions that can be implemented within Department ROW or off Department ROW in cooperation with local partners; and
  - c. Identification of areas where it is infeasible, due to safety, inaccessibility, or other reasons, to control trash prior to discharge from Department ROW and an explanation and justification of the reason(s) in each area;
    - i. If the Department and Regional Water Board agree that it is infeasible to implement trash controls sufficient to reach full trash capture equivalency within significant trash generating portions of ROW or in areas managed by municipalities or local agencies to which trash from Department ROW is discharged, or other trash control projects within watersheds that reduce trash discharges from Department ROW, the Department may seek alternative compliance credits. Two acres of local ROW or watershed area treated will yield one acre of alternative compliance credit based on similar trash generation rating, i.e., the non-Department ROW treated area must be of equivalent trash generation to the ROW determined to be infeasible to treat.
6. **Conduct Visual Trash Assessments:** The Department shall conduct a region-wide visual assessment of trash generation in all Low and Moderate rated Department ROW by December 31, 2021, December 31, 2025, and December 31, 2029. The following shall be included in the visual assessment:
- a. A trash generation rating methodology that classifies Department ROW into Very High, High, Moderate, and Low trash generation categories. This rating methodology

shall be comparable to Provision C.10 of the Municipal Regional NPDES Stormwater Permit, Order No. R2-2015-0049 (NPDES Permit No. CAS612008). While, unlike municipal permittees' properties, Department ROW corridors are generally linear, trash generation ratings will be similar to municipalities based on visual evidence of the amount of trash present over a given area;

- b. Conduct a visual trash generation assessment within all ROW rated as Low or Moderate including all roadway and off-roadway areas, park-and-ride lots, rest areas, areas under or separate from raised roads, leased areas, ramps, loops, bridges, temporary yards, and maintenance stations. In addition, the assessment shall identify areas of Department ROW where homeless encampments have historically existed or currently exist and areas where illegal dumping currently occurs or has historically occurred; and
  - c. Based on the Department's visual trash assessments identify all "significant trash generating areas" within Department ROW. The areas identified as significant trash generating will comprise the total acreage the Department is required to manage to meet the trash reduction requirements. The classification criteria and designation will be subject to review and approval by the Regional Water Board and will determine the number of ROW acres that require trash control implementation to meet Order requirements.
7. **Track and Report on Trash Control Implementation and Maintenance:** The Department shall submit an Annual Report on October 1 of each year, commencing in 2019, that describes the Department's progress toward meeting the trash reduction benchmarks and compliance dates in this Order. A summary of the trash reduction benchmarks, required submittals, required actions, and compliance dates described in this Order is included in Appendix A. Annual Reports shall include the following:
- a. An updated trash generation Map;
  - b. Total acreage of significant trash generating areas within Department ROW;
  - c. Acreage of significant trash generating area converted to full trash capture equivalency;
  - d. Cooperative implementation agreements and financial contribution projects implemented the previous year;
  - e. Full trash capture device installations, BMP retrofits, and/or other structural trash controls implemented the previous year;
  - f. Non-structural trash control actions implemented the previous year, including, but not limited to, enhanced maintenance, homeless encampment cleanups, and illegal dumping cleanups;
  - g. Progress toward meeting the Compliance Benchmarks and Dates identified in the Order. If progress is not sufficient to meet the Benchmarks, the Department shall identify accelerated actions sufficient to achieve compliance in the next reporting year (failing to sufficiently meet the Benchmarks violates this Order regardless of accelerated actions taken to return to compliance);
  - h. Plan and schedule for all trash control implementation actions in the subsequent three years, including, but not limited to, cooperative implementation, BMP retrofit projects, capital projects, and enhanced maintenance; and
  - i. Maintenance performed on full trash capture devices the previous year and maintenance scheduled for the upcoming year.

8. **Consequences of Non-Compliance.** If the Department fails to comply with the provisions of this Order, the Executive Officer is hereby authorized to take enforcement action or to request the Attorney General to take appropriate actions against the Discharger in accordance with Water Code sections 13331, 13350, 13385, and 13386. Such actions may include injunctive and civil remedies, if appropriate, or the issuance of an Administrative Civil Liability Complaint for Regional Water Board consideration. The Regional Water Board reserves the right to take any enforcement action authorized by law.
9. **Force Majeure.**<sup>1</sup> If the Discharger is delayed, interrupted, or prevented from meeting the provisions and time schedules of this Order due to a force majeure, the Discharger shall notify the Executive Officer in writing within ten days of the date the Discharger first knows of the force majeure. The Discharger shall demonstrate that timely compliance with the Order or any affected deadlines will be actually and necessarily delayed, and that it has taken measures to avoid or mitigate the delay by exercising all reasonable precautions and efforts, whether before or after the occurrence of the force majeure.

10. **Effective Date.** This Order shall be effective on \_\_\_\_\_.

I, Bruce H. Wolfe, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of a Cease and Desist Order adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, on \_\_\_\_\_.

\_\_\_\_\_  
Bruce H. Wolfe  
Executive Officer

Appendix A - Summary of Compliance Benchmarks, Required Submittals, Required Actions, and Compliance Dates

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<sup>1</sup> A “force majeure” is an event that could not have been anticipated by and is beyond the control of the Discharger, including an act of God; earthquake, flood, or other natural disaster; civil disturbance or strike; fire or explosion; declared war within the United States; embargo; or other event of similar import and character. “Force majeure” does not include delays caused by funding, contractor performance, equipment delivery and quality, weather, permitting, other construction-related issues, CEQA challenges, initiative litigation, adverse legislation, or legal matters (with the exception of an injunction issued by a court of law specifically preventing construction from occurring).

## Appendix A - Summary of Compliance Benchmarks, Required Submittals, Required Actions, and Compliance Dates

Order Provision	Compliance Date
Provision 2: All construction projects in significant trash generating areas shall contain structural trash controls	February 13, 2019
Provision 3: Submit Map Provision 7: Submit Annual Report	October 1, 2019
Provision 4: Submit Workplan Provision 5: Submit 10% Feasibility Study report	December 31, 2019
Provision 1.a: Control trash from 1,150 acres of significant trash generating ROW	June 30, 2020
Provision 3: Submit Map Provision 7: Submit Annual Report	October 1, 2020
Provision 3: Submit Map Provision 7: Submit Annual Report	October 1, 2021
Provision 4: Submit Workplan Provision 5: Submit 40% Feasibility Study report Provision 6: Conduct Visual Assessment	December 31, 2021
Provision 1.b: Control trash from 1,250 acres of significant trash generating ROW	June 30, 2022
Provision 3: Submit Map Provision 7: Submit Annual Report	October 1, 2022
Provision 3: Submit Map Provision 7: Submit Annual Report	October 1, 2023
Provision 4: Submit Workplan Provision 5: Submit 80% Feasibility Study report	December 31, 2023
Provision 1.c: Control trash from 1,750 acres	June 30, 2024
Provision 3: Submit Map Provision 7: Submit Annual Report	October 1, 2024
Provision 3: Submit Map Provision 7: Submit Annual Report	October 1, 2025
Provision 4: Submit updated Workplan Provision 5: Submit 100% Feasibility Study report Provision 6: Conduct Visual Assessment	December 31, 2025
Provision 1.d: Control trash from 3,720 acres of significant trash generating ROW	June 30, 2026
Provision 3: Submit Map Provision 7: Submit Annual Report	October 1, 2026
Provision 3: Submit Map Provision 7: Submit Annual Report	October 1, 2027
Provision 4: Submit Workplan	December 31, 2027
Provision 3: Submit Map Provision 7: Submit Annual Report	October 1, 2028
Provision 3: Submit Map Provision 7: Submit Annual Report	October 1, 2029
Provision 6: Conduct Visual Assessment	December 31, 2029
Provision 3: Submit Map Provision 7: Submit Annual Report	October 1, 2030
Provision 1.g: Control trash from all significant trash generating ROW	December 2, 2030



**Appendix B**

**WATER BOARD PROSECUTION TEAM  
RESPONSE TO COMMENTS**

# **Water Board Prosecution Team's Response to Comments Received on Public Noticed Tentative Cease and Desist Order**

## **Background**

San Francisco Bay Area receiving waters are currently impaired by trash, and the Water Board is implementing permit requirements to achieve a “no adverse effect” level of trash discharge from storm drains to those waters, including creeks, wetlands, and the Bay. Most Bay Area municipalities, permitted under the Municipal Regional NPDES Stormwater Permit (Order No. R2-2015-0047) (MRP), are making significant efforts to reduce trash, and have reduced it by about 70 percent since 2009. By contrast, the California Department of Transportation (Caltrans), despite taking steps to address discharges of trash from its right-of-way (ROW), has not implemented controls at a similar rate, or at a rate sufficient to comply with the requirements of its statewide NPDES stormwater permit (Order No. 2012-0011-DWQ) (Permit).

The Tentative Cease and Desist Order (Tentative Order) would require Caltrans to come into compliance with the Permit's San Francisco Bay Region-specific trash reduction requirements (Permit Attachment V, Part 2). The Tentative Order also sets a path for Caltrans to comply with the Statewide Trash Amendments (State Water Board Resolution No. 2015-0019). The Permit has included language since 2012 requiring Caltrans to control discharges of trash from its right-of-way (ROW) to the storm drain, but progress has been unacceptably slow. As of January 2019, after almost seven years, Caltrans has controlled trash from only about 770 acres of its over 25,000 acres of ROW. That work is the result of two projects: past work by the City of San Jose that treated runoff from about 700 acres of Caltrans ROW, and a cooperative implementation project with the City of Richmond that treated runoff from about 70 acres of Caltrans ROW.

On-land visual assessments are the standard tool used to determine areas where trash controls are needed. Bay Area municipalities under the MRP use a methodology prepared by the Bay Area Stormwater Management Agencies Association (BASMAA). The methodology assigns trash generation rates of low, moderate, high, and very high depending on amounts of trash observed. In the MRP, the Water Board has found that areas of trash generation levels of moderate and above are significant and must be controlled with full trash capture systems or other actions that result in equivalent trash load reductions. Caltrans' assessments of trash generation rates on its ROW have been inconsistent with BASMAA methodology; Caltrans' assessments understated trash levels as compared to that methodology. Even so, Caltrans' assessments suggest that at least 8,800 acres of Caltrans' Bay Area ROW have trash generation rates of moderate or higher. Caltrans has not planned or implemented actions nor allocated funding sufficient to timely address the trash control need, and an enforcement order would assist Caltrans with prioritizing that implementation.

The Tentative Order includes an evaluation mechanism by which Caltrans must periodically reassess its ROW to determine the remaining extent of significant trash generating area; that is, the area from which trash must still be controlled to meet Permit requirements. Caltrans would not be required to reassess the areas of its ROW treated by full trash capture devices, since those devices, if operated and maintained appropriately, should meet the trash control requirements for the ROW draining to them. The effectiveness of those devices would be evaluated and reported on separately.

## Water Board Prosecution Team's Response to Comments

The Tentative Order includes benchmark acreages and compliance dates by which Caltrans must appropriately control significant trash discharges from its ROW. The 2020, 2022, and 2024 benchmarks were determined using a Caltrans District 4 Programming Plan submitted in November 2018. The Programming Plan includes 19 trash control projects that will be constructed by 2024 and funded by Caltrans through their CIA, FCO, or SHOPP programs described below. The 2026 benchmark is the outcome of an agency-to-agency negotiation process that the Governor's office expects to be undertaken when one state agency considers an enforcement action against another. This negotiation led to a commitment by Caltrans to implement trash controls to meet full trash capture equivalency on 3,720 acres of Caltrans ROW by 2026. That agreement is reflected in Tentative Order Provision 1.d.

Since 2014, Water Board staff has met regularly with Caltrans to determine a path to compliance with the current Permit trash control requirements. In addition, we have discussed the implications of future requirements associated with the Statewide Trash Amendments, which would require implementation of trash controls in all significant trash generating Caltrans ROW by 2030. As noted above, information submitted by Caltrans since 2014 indicates that likely more than 3,720 acres of ROW have trash generation rates of moderate or higher significant trash generating area. Thus, more than 3,720 acres of ROW will require trash controls by 2030.

Caltrans has various funding sources and project types available to implement trash controls. Its statewide budget includes about \$130 million per year as part of the State Highway Operation Protection Program (SHOPP) to comply with TMDL requirements. In November 2017, the Permit was amended to clarify Caltrans could spend SHOPP funds on trash controls in non-TMDL areas. SHOPP funds are awarded on a two-year cycle, e.g., 2020 and 2021 funds are in one cycle, and Caltrans staff identify prospective projects 12 to 18 months before a cycle begins for them to be considered for funding. Once funded, SHOPP projects can take up to 3 to 4 years to fully plan, design, and construct.

Caltrans' lengthy project development process leads to considerable lag time in implementation, particularly when projects are on Caltrans ROW. However, Caltrans can pursue projects within adjacent municipalities in areas that receive drainage from Caltrans ROW. Two types of cooperative projects are used by Caltrans to partner with local municipalities to implement trash controls that treat both Caltrans and municipality ROW – Financial Contribution Only (FCO) projects are funded by SHOPP, and Cooperative Implementation Agreement (CIA) projects are funded through other funds. Cooperative projects, particularly FCO projects for which Caltrans pays for projects planned and built by municipalities, can be much more cost-effective as described below and completed much sooner than on-Caltrans ROW projects.

Caltrans has collaborated with MRP permittees to fund cooperative implementation trash control projects through the CIA or FCO mechanisms that treat both MRP permittee and Caltrans ROW. These projects are much more cost effective than projects that directly retrofit Caltrans ROW. Caltrans estimates that on-ROW trash control costs as much as \$200,000 per acre, but by contrast, a cooperative implementation project in the City of Richmond that treated both Caltrans ROW and parts of Richmond cost \$2,600 per acre across all 961 acres treated, or about \$38,000 per acre if only the 70 Caltrans ROW acres treated were considered. A planned South San Francisco project is estimated to cost about \$1,500 per acre, averaged across all 6,300 acres

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treated, or about \$23,000 per acre, averaged across just the 408 acres of Caltrans ROW treated. This collaboration advances the interests of both Caltrans and the municipalities in meeting the trash reduction requirements of their respective permits in a cost-effective way.

Caltrans has also indicated that it can implement design-build projects by awarding a contract with required project parameters and outcome to a contractor that then designs and builds that project to achieve the project goal (for example, using a standard full trash device design that could fit in a shoulder area that wouldn't present traffic flow or worker safety issues to maintain). Another funding option is the voter-approved SB 1 gas tax increase, which generates approximately \$2.5 billion per year statewide in transportation project funds. Caltrans SB 1 funds may be used for stormwater controls, such as trash controls. This allows Caltrans to consider opportunities to add trash controls to SB 1-funded projects. Caltrans has also indicated it will seek redirection of maintenance activities, which could include increased trash pickup frequency and street sweeping (enhance maintenance measures).

In a May 2018 meeting with Water Board staff, Caltrans suggested it may redirect and commit a significant portion of the \$130 million annual statewide SHOPP funds towards Bay Area trash controls, starting with the 2020-2021 round, and continuing through the 2022-2023 and 2024-2025 rounds. This could total more than \$200 million over the next six years. The suggested level of SHOPP funding may be sufficient to cover much, if not all, of the costs of needed trash controls for Caltrans ROW in the Region given the per acre costs achieved by Caltrans using cooperative projects with municipalities, along with likely cost reductions as design improvements and efficiencies are realized over time and opportunities to implement trash controls in SB 1-funded projects. However, costs of enhanced maintenance and maintenance of full trash capture systems remain a challenge.

Over nearly five years of coordination with Caltrans it has become clear that there is a need to establish clear benchmarks and due dates to bring Caltrans into compliance with Permit requirements. The Tentative Order benchmarks set minimum compliance acreages and dates that Caltrans must achieve, as agreed upon through the agency-to-agency process, but we expect that Caltrans will be able to implement trash controls on a faster pace than set forth in the Tentative Order to achieve compliance with the Permit's current and future trash reduction requirements.

The comments in the tables below have been summarized for conciseness but are representative of the original comment submitted.

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### List of Commenters

Comment letters on the Tentative Order are posted on the Water Board website at [https://www.waterboards.ca.gov/sanfranciscobay/board\\_decisions/tentative\\_orders.html](https://www.waterboards.ca.gov/sanfranciscobay/board_decisions/tentative_orders.html).

Letters were received from the following parties in the order of our responses:

California Department of Transportation  
State Senator Beall and Assembly Member Kalra  
United States Environmental Protection Agency – Region IX  
Alameda County Clean Water Program  
Citizens Committee to Complete the Refuge  
Contra Costa Mosquito and Vector Control District  
Friends of Corte Madera Creek Watershed  
Friends of San Pablo Bay National Wildlife Refuge  
Presidio Trust  
San Francisco Baykeeper  
Save the Bay  
Santa Clara Valley Urban Runoff Pollution Prevention Program

We also received over 400 submissions of a form letter emailed by Save the Bay supporters. Those submissions are posted in one PDF document on our website.

Previous comment letters regarding Caltrans trash have been received by the Water Board. These letters were not sent in response to the Tentative Order, so we have not provided a response. The letters are listed below and can be found on our website at the same address as above.

May 7, 2018, letter from United States Environmental Protection Agency – Region IX supporting the Water Board's efforts to hold Caltrans accountable to achieve necessary, measurable trash reductions in the San Francisco Bay Area

November 7, 2018, letter from over 70 local and county level elected officials representing the Bay Area, urging immediate enforcement action for Caltrans' failure to implement trash control measures

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<p><b>California Department of Transportation (Caltrans)</b></p> <p><b>Comment 1:</b> Under its statewide NPDES stormwater permit (Permit), Caltrans is required to control trash from “high” trash generating areas. Under the Statewide Trash Amendments, it must control trash from “significant trash generating areas.” The Tentative Order (Finding 10) states that such areas include moderate trash generating areas under the Bay Area Stormwater Management Agencies (BASMAA) methodology. Finding 10 should be deleted because moderate trash generating areas cannot reasonably be asserted to be either high or significant trash generating areas. In fact, the BASMAA methodology defines moderate areas as “predominantly free of trash.” Thus, the Tentative Order would impose an obligation greater than authorized in the Permit and the Trash Amendments.</p>	<p>We disagree. The Order would require Caltrans to control trash consistent with the Permit and the Trash Amendments. The Permit requires timely implementation of control measures in all high trash generating areas, and includes a broad, open-ended definition for what constitutes such an area. That definition includes the category “other freeway segments as identified by maintenance staff and/or trash surveys” (Permit Attachment V, Part 2, Paragraph 1). The Trash Amendments define significant trash generating areas as all locations or facilities within the Department’s jurisdiction where trash accumulates in substantial amounts, including the category “mainline highway segments to be identified by the Department through pilot studies and/or surveys.” Work completed by Caltrans consistent with BASMAA visual assessment protocols identified substantial areas of Caltrans jurisdiction with moderate trash generation rates. As discussed further below, those are cumulatively and sometimes individually significant, and trash discharges from those areas should be appropriately controlled.</p> <p>Caltrans areas determined to have moderate trash generation pursuant to BASMAA’s visual assessment guidance are significant trash generating areas. The BASMAA guidance notes that trash control measures are needed in areas with moderate trash generation. A protocol prepared for MRP Permittees to evaluate trash generation rates consistent with BASMAA guidance, the March 2018 On-Land Visual Trash Assessment Protocol B – Driving Survey, defines areas with moderate trash generation as “slightly littered,” and “predominantly free of trash, except for a few littered areas.” It also notes that “additional trash reduction measures are needed in the assessment area.” The Water Board has required municipalities under the Municipal Regional NPDES Stormwater Permit (MRP) to control trash from Moderate or greater areas because Moderate areas generate trash to a degree that cumulatively, and sometimes individually, results in significant trash discharge to surface waters. BASMAA’s moderate trash generation level is equivalent to trash discharges of about 5 to 10 gallons per acre, per year in stormwater runoff (BASMAA, Trash Generation Rates Final Report, June 20, 2014). This represents a cumulatively significant source of trash</p>

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	<p>over time and area, and not a level that can be ignored as a source of impact to receiving waters. In its adoption of the MRP, the Water Board considered low trash generation rate areas under the BASMAA protocol as not requiring control. Low levels represent approximately zero to 5 gallons of trash per acre per year. Visual assessments of trash in low trash generation areas typically would not identify trash as being present.</p> <p>In addition, the Permit states that Caltrans must demonstrate compliance with Basin Plan Prohibition 7 (Table 4-1), which prohibits discharge of “[r]ubbish, refuse, bark, sawdust, or other solid wastes into surface waters or at any place where they would contact or where they would be eventually transported to surface waters, including flood plain areas” (Permit Attachment V, Part 2, paragraph 1). This Basin Plan Prohibition broadly requires that trash be controlled where it is present and can be discharged to surface waters. In the MRP, the Water Board considered these areas to be equivalent to moderate trash generating under the BASMAA methodology.</p>
<p><b>Caltrans Comment 2:</b> The Water Board and Caltrans agree that the 3,720 acres rated very high, high, and moderate without vegetation is the extent of significant trash generating area that require trash controls. Therefore, Caltrans requests the removal of the portion of Finding 14 that describes the need for future assessments to determine how much ROW beyond the 3,720 acres is significant trash generating. Trash assessments in 2016 and 2018 were conducted with municipal and Water Board staff to ensure consistency with the BASMAA methodology, so future assessments of low and moderate rated areas are unnecessary. The Water Board agrees with the assessment methodology that was used. Additional assessments will take away resources that could be used for trash implementation actions.</p>	<p>We disagree that the area of Caltrans right-of-way (ROW) on which trash must be controlled is limited to 3,720 acres. We also disagree that Caltrans’ reported assessment methodology adequately assesses the current trash levels on its ROW, in part because Caltrans has not submitted the methodology to the Water Board for review. From what we do know, the methodology likely tends to understate the amount of trash present as compared to the BASMAA methodology accepted by the Water Board in the MRP as the metric for Bay Area municipalities to address trash discharges. In addition, Caltrans has not submitted information demonstrating that its entire ROW has been assessed consistent with the BASMAA methodology. Thus, while Caltrans has identified a substantial amount of ROW from which trash must be controlled, the full extent of needed work is not yet known. There is a need to do so, and assessments must be periodically repeated, as conditions can change over time. Finally, for portions of the ROW where Caltrans is implementing trash control measures other than full trash capture (e.g., street sweeping or pickup by work crews), regular visual</p>

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	<p>assessments are the tool recognized by the Water Board to demonstrate effectiveness of the alternative measures implemented to control trash.</p> <p>Caltrans' on-land visual assessments are generally inconsistent with the BASMAA methodology. For example, Caltrans' 2016 on-land visual assessment used category names similar to the BASMAA methodology, but the levels of trash in each Caltrans category were substantially higher than the similarly-named BASMAA category. We understand that Caltrans' 2018 on-land visual assessment incorporated the BASMAA methodology. However, it covered only about half of Caltrans' ROW, and it combined a number of data sources to determine trash generation rates. The BASMAA methodology was only one data source, and Caltrans has not submitted information describing how the sources were combined to make trash generation rate determinations. In the 2018 survey, Caltrans identified over 8,800 acres of moderate or greater trash generating ROW. As such, the work conducted to date demonstrates that there is a substantially greater area of ROW from which trash must be controlled than 3,720 acres. Those 3,720 acres represent a minimum and "no regrets" area on which Caltrans could immediately control trash.</p> <p>The Tentative Order would require Caltrans to control trash from 3,720 acres by 2026. It would also require compliance by 2030 with the Permit and the Trash Amendments. That includes requiring Caltrans to identify any additional significant trash generating areas that may exist within its ROW. Future assessments would also allow Caltrans to identify changes in trash level on its ROW and evaluate the effectiveness of management measures in those areas where trash is controlled by measures other than full trash capture devices.</p> <p>Caltrans has currently identified a sufficient portion of its ROW as significant trash generating to prioritize near-term trash control implementation. However, the assessments completed to date have not accurately characterized all Department ROW. Future assessments will be needed to refine the area from which trash must be appropriately controlled, as well as determining if conditions of trash generation have changed over the years.</p>



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	<p>Finally, Caltrans notes a category it introduced in its 2018 trash assessment: “moderate with vegetation.” Caltrans proposed that it not be required to control trash discharges from moderate trash generating areas where the ROW includes vegetated areas, although it might consider such controls in the future subject to funding. We disagree with this categorical exclusion of significant trash generating area. While vegetation could provide a benefit in some cases by catching certain trash, Caltrans has not submitted technical information demonstrating how its ROW vegetation, where present, could be as effective as a full trash capture device. Similarly, we are unaware of any studies Caltrans has completed to identify and appropriately evaluate those areas of its ROW where vegetation could play a significant role. For example, Caltrans proposed to exclude from required controls, Interstate 980 through downtown Oakland due to the presence of vegetation beyond the paved shoulders. However, on portions of that highway, the road, paved shoulder, gutter, and storm drain inlets are all below the vegetation, with the result that roadway trash flows along the paved ROW and discharges directly to the storm drain without contacting vegetation. That illustrates the need for further work to develop a technical basis for the role played by roadside vegetation in controlling trash, should Caltrans wish to consider it in its trash control plans.</p>
<p><b>Caltrans Comment 3:</b> Requests Finding 15 be removed because the claim that trash is transported from Department ROW to surrounding municipalities via wind and stormwater flow is speculative, not corroborated through scientific data, and depends on site-specific conditions.</p>	<p>We disagree with the request to remove Finding 15. The Finding correctly states that wind or stormwater <i>may</i> transport trash to adjacent properties. Due to the high-speed nature of the Caltrans’ highway system and the range of flow paths present across the system (e.g., with some Caltrans highways, like El Camino Real and San Pablo Avenue, also serving as city streets, and other situations where runoff discharges from Caltrans ROW into municipal storm drains or ROW), uncontrolled trash in Caltrans ROW may eventually blow or flow to surrounding municipalities and, ultimately, to their municipal storm drains and surface waters.</p> <p>These situations indicate that Caltrans and its neighbors should be working together to address this mutual problem. A significant portion of the municipalities reporting under the Municipal Regional Stormwater Permit show</p>

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	<p>high trash generation conditions in areas adjacent to Caltrans ROW. Identifying that these areas and conditions exist gives reason for Caltrans and neighboring municipalities to collaborate on trash generation assessment and trash control implementation projects.</p>
<p><b>Caltrans Comment 4:</b> Requests Finding 18 be deleted as Caltrans has not violated the Basin Plan and Permit Attachment V because it has demonstrated due diligence in implementing trash control measures in a timely manner. This includes pursuing increasingly rigorous efforts for timely trash control implementation in the Bay Area, partnering with local municipalities by committing funds to control trash from 14,000 acres of Caltrans and local municipality ROW, funding public education campaigns, and demonstrating due diligence to pursue a well-rounded approach to address homeless encampments through partnership with local agencies to provide social services.</p>	<p>We disagree that Caltrans has timely implemented trash control measures sufficient to address the scope of trash discharges from its ROW. That is the reason for the Tentative Order, as described in Finding 18. The Permit has included trash reduction requirements since 2012. Water Board staff has worked with Caltrans for nearly five years to bring about compliance through trash control implementation in high trash generation areas. We recognize Caltrans' efforts in working with local municipalities to implement cooperative implementation projects to treat both Caltrans and municipal ROW and to identify future Caltrans construction projects that could include trash controls. However, considering the scope of the trash reduction implementation needed regionwide to comply with the Permit, the actions to date, which have addressed trash discharges from approximately 770 acres of Caltrans ROW (likely less than 10 percent of the area on which trash must be controlled), are not sufficient to be considered "timely implementation."</p>
<p><b>Caltrans Comment 5:</b> Requests to delete Provision 1.e, which requires Caltrans to implement trash controls by December 2, 2030, in "all additional significant trash generating areas of ROW identified by visual assessments conducted in 2021, 2025, and 2029..." A benchmark beyond the 3,720-acre 2026 benchmark is not necessary because multiple studies and assessments have been conducted and Caltrans and the Water Board have collaborated to determine that 3,720 acres is the full extent of significant trash generating areas requiring trash control implementation. Requiring repetitive visual assessments is unnecessary and requires diversion of resources that could be used to implement trash control measures, also</p>	<p>We disagree that Provision 1.e should be deleted. The Tentative Order's benchmark acreages through 2024 were determined based on Caltrans' existing funding constraints and project implementation timelines identified in its District 4 Programming Plan. The 2026 benchmark was determined via the State agency-agency negotiation, in which the California Transportation Agency committed Caltrans to implementing trash controls in 3,720 acres of ROW by 2026, and the California Environmental Protection Agency committed the Water Board to working with Caltrans to identify opportunities for cooperative trash control implementation projects with local municipalities.</p> <p>Provision 1.e is needed because 3,720 acres does not comprise the total significant trash generating area required to comply with the Permit and Trash</p>

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hindering Caltrans' efforts to timely meet compliance benchmarks.	<p>Amendments. Caltrans must further identify significant trash generating areas through additional assessments and then implement trash controls to meet full trash capture equivalency in those significant trash generating areas. We encourage Caltrans to plan and conduct future visual assessments strategically by considering past implementation actions, past visual and data assessments, and changes in observed trash generation conditions to make the process more efficient and produce effective data.</p> <p>See also response to Caltrans Comments 1 and 2.</p>
<p><b>Caltrans Comment 6:</b> Requests revising Provision 2, which requires installation of structural trash controls on all construction projects in significant trash generating areas, because it may not be feasible to incorporate trash controls in low budget projects due to funding or technical reasons. It is also infeasible to consider changes to projects after construction funding has been allocated.</p>	<p>We agree that some transportation projects may have constraints not specifically identified in Provision 2 that make structural trash control implementation infeasible. However, that is already addressed in the Provision's wording. Caltrans' inability to increase funding for a currently-funded project or to implement structural trash controls on a small project such as a guardrail or sign replacement could be considered a "site constraint." When Caltrans determines that it is infeasible to install structural trash controls on a construction project for any reason, it must identify the project and/or site constraints that make it infeasible and report it in the Annual Report required under the Permit.</p> <p>Provision 2 is meant to help ensure that Caltrans does not miss opportunities to implement trash controls within significant trash generating areas. Compliance with the Tentative Order's 2030 benchmark will require Caltrans to control trash in all significant trash generating areas. When a project is programmed in these areas, Caltrans has an opportunity to implement trash controls as part of that project, instead of needing to plan, program, and implement an alternative stand-alone trash project to treat that area.</p>
<p><b>Caltrans Comment 7:</b> Requests removal of the requirements of Provision 3 related to mapping trash generation rates on areas of its jurisdiction such as leased areas, areas under and separate from raised roads, maintenance stations, homeless encampments, and temporary yards. This is because Caltrans is not required to control trash discharges from those areas. They</p>	<p>We disagree. The mapping requirement needs to be retained because the areas can generate significant amounts of trash that is discharged to storm drains and receiving waters. These areas are included in Permit Finding 2, which states "[t]his statewide permit regulates storm water and non-storm water discharges from Caltrans' properties and facilities, and discharges associated with operation and maintenance of the State highway system. Caltrans properties include all</p>

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<p>are not included in the Permit or Trash Amendments and the Tentative Order cannot impose requirements that are more stringent than the Permit or Trash Amendments. Mapping homeless encampment sites and enhanced maintenance areas is above and beyond the Permit requirements.</p>	<p>[ROW] owned by Caltrans. Caltrans facilities include, but are not limited to, maintenance stations/yards, equipment storage areas, storage facilities, fleet vehicle parking and maintenance areas and warehouses with material storage areas.”</p> <p>Mapping of homeless encampment sites within the ROW will help Caltrans identify and track areas that generate significant trash loads over and above normal highway trash conditions because encampments have historically been a significant source of trash generation and discharge to surface waters. Water Board staff is aware that Caltrans crews currently work to address impacts associated with homelessness on Caltrans ROW.</p> <p>Enhanced maintenance is one method Caltrans may choose to meet full trash capture equivalency. If Caltrans implements enhanced maintenance, such as increased street sweeping or trash collection frequency on a portion of ROW, then that ROW should be identified on the map so that the Water Board and the public know what trash reduction methods Caltrans is using to comply with the Permit, just as the location of, and area treated by, full trash capture devices must be included on the Map. This will also help Caltrans to review the effectiveness of its control measures over time.</p>
<p><b>Caltrans Comment 8:</b> Regarding Provision 4.e. requiring funding and resource needs be included in the Workplan, Caltrans has prioritized watersheds for implementation of best management practices to meet TMDL waste load allocations for various pollutants statewide within 20 years. Demands for accelerated effort to implement trash controls in one region adversely hinders statewide progress in meeting Permit mandates. Caltrans transportation improvement projects and trash control projects are funded through the State Highway Operation Protection Program (SHOPP). SHOPP funds are allocated by the California Transportation Commission to meet Caltrans’ mission to provide a safe, sustainable and efficient</p>	<p>We disagree that implementation of trash controls in the Bay Area will substantially reduce other progress statewide. Rather, requiring Caltrans to identify the funds and resources needed to comply with trash control requirements will help it plan, program, and implement stand-alone and cooperative trash control projects, and to align those efforts with its broader work.</p> <p>Additionally, the Permit has included San Francisco Bay Region-specific trash control requirements since 2012, but the Department has not yet identified funding sufficient to ensure timely implementation of trash controls. Caltrans’ delay in complying with the region-specific requirements does not release it of that responsibility just because there are other statewide stormwater funding obligations. This requirement also ensures transparency by allowing the Water</p>

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<p>transportation system. No specific request to remove or revise language in the Tentative Order.</p>	<p>Board and the public to review and track Caltrans' use of funds to meet Permit requirements.</p> <p>Caltrans has indicated that its partnership with municipalities to cooperatively implement trash control projects does not have a dedicated funding source and those projects are often funded with money left over from other transportation projects. SHOPP funding is allocated on a two-year cycle and the amount of trash control implementation that Caltrans has planned through 2024 with SHOPP funds falls far short of putting it on a path to meet the Trash Amendment requirements to control trash in all significant trash generating areas by 2030. For these reasons, Provision 4.e's requiring reporting of funding and resources needed to meet trash control requirements is appropriate.</p>
<p><b>Caltrans Comment 9:</b> Requests Provision 5, the requirement to conduct Trash Reduction Feasibility Studies, be removed from the Tentative Order because these studies may not result in timely implementation and mandates for excessive studies and assessments requires Caltrans to divert resources that could otherwise be used for advancing trash control implementation efforts. Caltrans staff conducts trash treatment feasibility assessments as a routine practice as projects in significant trash generating areas are planned. Stand-alone technical feasibility studies are conducted on a case-by-case basis, promoting efficiency and prudent use of state resources. In previous discussions, Water Board staff has agreed to delete requirements for stand-alone studies.</p>	<p>We disagree that Provision 5 should be deleted and note that we did not previously agree to delete requirements for stand-alone studies. Rather, the requirement for feasibility studies will help Caltrans evaluate its significant trash generating areas and highway corridors on a larger scale than specific smaller ROW segments within the limits of planned transportation projects. This will assist Caltrans with implementation of control measures over time. Due to the significant lack of timely implementation of trash controls to meet Permit requirements, the Tentative Order would require these studies to help guide the Department's planning and programming of funds to determine the most beneficial and cost-effective way of achieving compliance.</p> <p>Caltrans staff originally proposed the idea of feasibility studies and conducted a 2017 study along a 50-mile stretch of the I-80 and I-880 corridors to identify opportunities to retrofit existing storm drains and stormwater treatment measures to meet full trash capture equivalency. The information from this study can be used as trash controls are included in corridor projects, to identify stand-alone trash implementation projects, and to coordinate with municipalities on cooperative implementation.</p> <p>Before and during drafting of the Tentative Order, we met regularly with Caltrans staff to discuss trash control requirements and the contents of the</p>

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	<p>Tentative Order. During these discussions we encouraged Caltrans to propose alternative, simplified methods appropriate for identifying and reporting on feasibility of trash control implementation in its ROW to meet benchmark requirements. This included the possibility of reducing the number of reports and submittals by combining Workplan, Feasibility Study, and Annual Report requirements. We did not receive a response to those requests.</p>
<p><b>Caltrans Comment 10:</b> Requests revision of Provision No. 5.c.i., to award 1:1 alternative compliance credit (instead of 2:1) for non-Caltrans ROW treated (one acre of local ROW treated yields one acre of alternative compliance credit based on similar trash generation rating). Revision requested because the 2:1 crediting ratio is arbitrary and Caltrans should not be penalized by a 2:1 alternative compliance ratio when all diligent efforts to treat its ROW has been exhausted and the only way to receive credit is to pursue alternative compliance.</p>	<p>We disagree. The 2:1 ratio was originally proposed by Caltrans as a way of complying with Permit requirements in areas where it is infeasible to implement trash controls within its ROW. If a 1:1 ratio is appropriate based on trash generation conditions when Caltrans claims alternative compliance credit, we will evaluate appropriateness at that time.</p> <p>The benchmark acreages through 2024 are based on information that Caltrans has provided to us regarding their funding and project implementation commitments. The 2026 benchmark acreage is based on the agency agreement and commitment by Caltrans to control trash from 3,720 acres. Based on the provided information and agreement, we do not anticipate considering granting alternative compliance credits until after the 2026 benchmark is met. Under the Tentative Order, credit would only be applicable for ROW areas that are infeasible to treat through structural means or enhanced maintenance due to safety, maintenance, accessibility, or other justifiable reasons.</p> <p>In addition, we have proposed this Tentative Order to bring Caltrans into compliance with the Permit and Trash Amendments through implementation of trash controls to treat significant trash generating areas of its ROW. We expect that before any alternative compliance credit is granted, the Department will exhaust all treatment opportunities within its ROW through structural controls or enhanced maintenance, or off its ROW through cooperative implementation projects that treat ROW areas.</p>
<p><b>Caltrans Comment 11:</b> Requests Provision 6, the requirement to conduct future visual trash assessments, be removed</p>	<p>We disagree. Future visual assessments are necessary to determine the full extent of significant trash generating areas of Caltrans ROW and to determine the</p>

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<p>because Caltrans conducted comprehensive visual assessments and trash studies in 2016 and 2018 and will be monitoring and reporting annually on its progress in meeting the benchmarks in the Tentative Order. The requirement is inconsistent with the Permit and Trash Amendments, and does not facilitate statewide prioritization, planning, and efficiency in implementing trash control measures. Also, assessments of off-highway areas, such as leased areas, areas under and separate from raised roads, homeless encampments, maintenance stations, and temporary yards are beyond the requirements of the Permit and the statewide Trash Amendments.</p>	<p>effectiveness of Caltrans trash control activities in ROW areas where methods other than full trash capture are used.</p> <p>See also responses to Caltrans Comments 1, 2, 5, and 7.</p>
<p><b>Caltrans Comment 12:</b> Requests Provision 7.c be revised to allow Caltrans to claim credit for treatment when a project is programmed, per discussion with the Water Board.</p>	<p>We disagree that trash control credit should be given when a project is programmed, because full trash capture equivalency is not achieved until project construction is complete and the project is operating. In addition, the Tentative Order's final compliance benchmark date is December 3, 2030; this is not a "programmed by" date. Rather, this is a date that trash controls must be implemented by to achieve full trash capture equivalency and ensure trash discharges are reduced to a no adverse effect level. Knowing that the dates are when project construction must be completed should allow Caltrans to plan and program trash control projects to timely meet the Tentative Order's requirements.</p>
<p><b>Letter to Caltrans from State Senator Jim Beall and Assemblymember Ash Kalra:</b> Past trash control efforts are inadequate and Caltrans needs to act quickly to reduce and eliminate trash in storm water flowing to creeks in the San Francisco Bay Area. Action needs to go beyond the minimum to protect the health and well-being of our community.</p>	<p>Comment noted.</p>
<p><b>United States Environmental Protection Agency (U.S. EPA) Comment 1:</b> The Board should consider significantly</p>	<p>We agree that work completed to date by Caltrans indicates it will need to control trash from substantially more of its ROW than the Order's specified</p>

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<p>increasing the acreage of moderate and high-trash generating areas required to be addressed by 2026. An alternative compliance schedule to consider would be to require a benchmark of 100 acres within a year of the order taking effect to demonstrate readiness by Caltrans, and then step up by increments of approximately 1,000 acres in the following years with a goal of 6,000 acres by the end of 2024.</p>	<p>3,720 acres. The benchmarks and schedule through 2026 are based on Caltrans' funding constraints and lengthy project implementation process and were agreed upon at an agency level as described in the Introduction. The benchmarks in the Order are "no later than" dates and we expect Caltrans to exceed the acreages as feasibility studies are completed, transportation projects begin including full trash capture devices, and additional cooperative implementation projects with municipalities are implemented.</p> <p>See also responses to Caltrans Comments 1, 2, 4, and 5.</p>
<p><b>U.S. EPA Comment 2:</b> EPA supports the requirement for creation of a Map for tracking annual progress. Encourages the Map to have as much overlap with the existing BASMAA maps as possible for comparability over time. Map should be publicly accessible.</p>	<p>We agree. The Map will be publicly accessible. As described in Provision 3, Caltrans is required to use the same trash generation categories as BASMAA and a rating methodology equivalent to the BASMAA methodology.</p>
<p><b>U.S. EPA Comment 3:</b> EPA recognizes the effort to implement and track compliance with the Order will be a long-term workload for the Regional Board. In addition to review of documents submitted, EPA encourages Board staff to perform site inspections and continue to hold meetings with Caltrans throughout the term of the Order to ensure compliance obligations are met.</p>	<p>We agree. Water Board staff plans to conduct site inspections and hold meetings with Caltrans throughout the term of the Tentative Order to ensure compliance is achieved.</p>
<p><b>U.S. EPA Comment 4:</b> "[C]ertain terms in the Order, such as "full trash capture equivalency" and "full trash capture standard" could be misinterpreted. It would be prudent to identify if the terms are being used in ways that are consistent with the definitions in Statewide Trash Amendments Staff Report (Section 2.4.1, Permitted Storm Water Dischargers) or more interchangeably. We recommend citing the appropriate</p>	<p>We agree. The terms "full trash capture standard" and "full trash capture equivalency" are used interchangeably in the Tentative Order. They refer to a trash "full capture system," defined in the Trash Amendments as "[a] treatment control, or series of treatment controls, including, but not limited to, a multi-benefit project or a low impact development control that traps all particles that are 5 mm or greater, and has a design treatment capacity that is either: a) of not less than the peak flow rate, Q, resulting from a one-year, one-hour, storm in the subdrainage area, or b) appropriately sized to, and designed to carry at least the</p>



## Water Board Prosecution Team's Response to Comments

Commenter and Summarized Comment	Water Board Prosecution Team Response
documents or creating a definition section in the Order for key terms used in the Order.”	same flows as, the corresponding storm drain.” This citation could be added to Tentative Order Findings 6 and 9 for clarification.
<b>Alameda Countywide Clean Water Program Comment 1:</b> Proposed benchmarks are not consistent with the Municipal Regional Stormwater Permit (MRP) making coordination on cooperative projects difficult. Request the compliance schedule be revised to align with MRP trash compliance schedule of 100% trash reduction by 2022.	We agree the Tentative Order compliance schedule is different than the MRP’s schedule to achieve no adverse effect from trash discharges. That is because the region-specific trash reduction requirements in the Caltrans statewide stormwater Permit are different than the MRP requirements and were adopted later. This does not preclude the opportunity for municipalities to work with Caltrans to identify and implement cooperative projects. In addition, the Water Board may consider the differences during the MRP reissuance process.
<b>Citizens Committee to Complete the Refuge (CCCR) Comment 1 and</b> <b>Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPPP) Comment 1:</b> Are benchmarks acreages in Provision 1 additive or absolute?	As expressed in the Tentative Order, benchmark acreages are absolute, not additive. The benchmarks and schedule through 2026 are based on Caltrans’ funding constraints and lengthy project implementation process and were agreed upon at an agency level as described in the Introduction. The benchmarks in the Order are “no later than” dates and we expect Caltrans to exceed the acreages as feasibility studies are completed, transportation projects begin including full trash capture devices, and additional cooperative implementation projects with municipalities are implemented.
<b>CCCR Comment 3; Save the Bay Comment 2; Save the Bay Members Comment 2:</b> Require submittal of a trash generation map within three months.	We disagree. The Tentative Order’s requirement for Caltrans to submit a trash generation map by October 1, 2019, is appropriate considering the extent of Caltrans ROW. In addition, Caltrans has already identified a substantial area of ROW from which trash must be controlled. As such, the October 1, 2019, trash map submittal date is not delaying implementation of actions now. The Water Board could require an earlier trash generation map submittal date if it finds that appropriate.
<b>CCCR Comment 4:</b> Require submittal of a Workplan within three months.	We disagree. The Workplan submittal requirement by December 31, 2019, is appropriate considering the length of the compliance schedule and the fact that a submittal in May (as suggested) versus a submittal in December will not

## Water Board Prosecution Team's Response to Comments

Commenter and Summarized Comment	Water Board Prosecution Team Response
	noticeably change the outcome of near-term required actions. The Water Board could require an earlier Workplan submittal if it finds that appropriate.
<p><b>Contra Costa Mosquito and Vector Control District</b></p> <p><b>Comment 1:</b> Caltrans is responsible to ensure devices or features installed to achieve compliance with the Tentative Order do not breed or harbor vectors, or otherwise create a nuisance. Selection of trash capture devices should ensure ready access by District employees and robust maintenance measures should prevent devices from creating or maintaining a public nuisance. Caltrans must ensure District staff has safe, ready access for surveillance and control measures that fall within its jurisdiction.</p>	<p>We agree. Caltrans is aware of this issue and is part of the statewide collaborative effort to address potential vector issues associated with full trash capture devices. We have urged them to notify local vector control districts as projects are in the early planning stages to ensure installation and maintenance of devices meets the needs of these districts and is appropriately protective of public health.</p>
<p><b>Friends of Corte Madera Creek Watershed Comment 1:</b></p> <p>We strongly support stronger, legally binding measures that will force Caltrans to address the substantial trash problem in our watershed and throughout the San Francisco Bay Region by providing funding and staff to meet its legally binding permit requirements.</p>	<p>Comment noted.</p>
<p><b>Friends of the San Pablo Bay National Wildlife Refuge</b></p> <p><b>Comment 1:</b> The schedule for evaluating feasibility should be accelerated and creative non-structural solutions should be instituted sooner than the overall 12-year compliance period provided for in the Tentative Order.</p>	<p>We disagree. The Tentative Order schedule for evaluating feasibility is appropriate given the compliance benchmarks. Feasibility studies are one tool that Caltrans can use to prioritize high-benefit trash control actions as it plans and programs transportation projects, cooperative trash implementation projects with municipalities, and stand-alone trash control implementation projects in its ROW.</p>
<p><b>Presidio Trust Comment 1:</b> Two major Caltrans highways bisect the Presidio, covering approximately 52 acres. The Trust would like to ensure that leased areas, ramps, loops, bridges, temporary yards, and maintenance stations on the Presidio are</p>	<p>Caltrans is required to meet full trash capture equivalency (i.e., reducing trash discharges to a no adverse effect level) in all of its significant trash generating areas by December 2, 2030. We encourage the Presidio Trust to work cooperatively with Caltrans to identify significant trash generating areas within</p>

## Water Board Prosecution Team's Response to Comments

Commenter and Summarized Comment	Water Board Prosecution Team Response
<p>considered in determining any compliance actions under the tentative Order.</p>	<p>combined Trust and Caltrans jurisdiction and implement trash capture devices or actions to control trash from these areas.</p>
<p><b>San Francisco Baykeeper Comment 1:</b> The Tentative Order fails to require trash capture in all significant trash generation areas, pursuant to the Trash Amendments. The current implementation schedule does not explicitly require full capture equivalency from all significant generating areas and is inconsistent with the recommended average load reductions of ten percent per year, as well as the fifteen-year mandatory maximum compliance deadline in the Trash Amendments. Baykeeper proposes a revised schedule of 3,600 acres by 2020, 4,600 acres by 2022, 5,700 acres by 2025, and all additional significant trash generating ROW by December 2, 2030. Caltrans must demonstrate that a combination of full trash capture systems, multi-benefit projects, other treatment controls, and/or institutional controls achieves “full trash capture equivalency.”</p>	<p>We disagree that the current implementation schedule does not explicitly require full trash capture equivalency from all significant trash generating areas, as Provision 1.e requires this.</p> <p>We agree that the Tentative Order benchmarks do not meet the recommended average load reductions of ten percent per year in the Trash Amendments. The benchmarks and schedule through 2026 are based on Caltrans’ funding constraints and lengthy project implementation process and were agreed upon at an agency level as described in the Introduction. The benchmarks in the Order are “no later than” dates and we expect the Department to exceed the acreage as feasibility studies are completed, transportation projects begin including full trash capture devices, and additional cooperative implementation projects with municipalities are implemented.</p>
<p><b>San Francisco Baykeeper Comment 2:</b> The Water Board’s definition of significant trash generating areas is inconsistent with the Trash Amendments. The Trash Amendments do not provide an exemption for significant trash generating areas surrounded by vegetation and Caltrans and the Water Board have not explained how vegetation prevents discharge into surface waters and staff has not referenced a method for making this determination. The Water Board must explicitly require control of all significant trash generating areas within the implementation schedule and prohibit discharge of trash to surface waters of the State or the deposition of trash where it may be discharged into surface waters of the State, consistent with the Trash Amendments.</p>	<p>Provision 1.e requires all significant trash generating areas to implement trash controls by December 2, 2030. Finding 14 notes that trash generation areas defined by Caltrans as moderate or greater are significant trash generating areas, with the exception of moderate areas with vegetation <i>that controls the generated trash</i> (emphasis added). Caltrans has proposed that vegetation in the ROW provides a level of trash control greater than if there is no vegetation. Caltrans must show, through scientific study, that vegetation within its ROW controls trash equivalent to a full trash capture system, in order for us to consider that area to be full trash capture equivalent. If vegetation cannot control trash to full trash capture equivalency—for example, because crews cannot get out to remove the trash before it discharges to the storm drain, or because the vegetated areas are not in the flow path to the storm drain or are otherwise an insufficient filter—Caltrans would be required to implement trash controls to treat that area.</p>

## Water Board Prosecution Team's Response to Comments

Commenter and Summarized Comment	Water Board Prosecution Team Response
	See also response to Caltrans Comment 2.
<p><b>San Francisco Baykeeper Comment 3:</b> The Order does not require management of other non-stormwater discharges contributing to significant trash loading. Recommends the Water Board strengthen the Tentative Order to require greater action from Caltrans to address the most serious and known homeless encampments along its ROW.</p>	<p>We agree that homeless encampments present some of the most challenging trash control issues that Caltrans and municipalities must contend with. There is not an easy solution to controlling trash from homeless encampments, as we often see cleared encampments on Caltrans or non-Caltrans ROW quickly reestablish at the same site or nearby, and therefore result in continued trash generation and discharge to surface waters. The Tentative Order requires Caltrans to control trash from all significant trash generating areas and track homeless encampments on their Map to better inform Caltrans and the Water Board of the most significant areas to implement trash controls. This is a statewide issue that could be given more attention in the upcoming reissuance of the Permit.</p>
<p><b>Save the Bay Comment 1 and Save the Bay Members Comment 1:</b> Require Caltrans to install full trash capture or implement actions equal to full trash capture according to the following timeline:</p> <p>1,150 acres by 2020</p> <p>2,750 acres by 2022</p> <p>6,000 acres by 2024, and</p> <p>all significant trash generating area – no less than 8,820 acres – by 2028.</p> <p>The April 2018 draft of the Order included these timelines – we see no reason to establish a slower compliance timeline.</p>	<p>The Tentative Order's benchmarks and schedule through 2026 are based on Caltrans' funding constraints and lengthy project implementation process and have been agreed upon at an agency level as described in the Introduction. The benchmarks in the Order are "no later than" dates and we expect the Department to exceed the acreages as feasibility studies are completed, transportation projects begin including full trash capture devices, and additional cooperative implementation projects with municipalities are implemented.</p> <p>Save the Bay has suggested revised benchmarks and timing that are those set forth in an April 2018 administrative draft of the Tentative Order, which was completed prior to the conclusion of the State agency -agency negotiation process. As noted in the Background section, due to shortcomings in Caltrans' assessments, the full extent of significant trash generating area on its Bay Area ROW is not clear. The Tentative Order includes requirements that Caltrans conduct future assessments, consistent with Bay Area standards, and appropriately control trash discharges from identified significant trash generating areas.</p>
<p><b>Save the Bay Comment 3:</b> Remove references to potential time extensions. Municipalities do not have this option and</p>	<p>We do not expect that Caltrans will need time extensions because the benchmarks through 2026 have been developed through agreement with</p>

## Water Board Prosecution Team's Response to Comments

Commenter and Summarized Comment	Water Board Prosecution Team Response
have diligently identified solutions to a variety of trash reduction feasibility issues.	Caltrans. We leave open the possibility that unexpected delays may arise due to Caltrans' near-term funding constraints and typical project implementation timelines. The Trash Amendments require all significant trash generating areas to achieve full trash capture equivalency by December 2, 2030, so Caltrans will be required to meet all benchmarks by that date.
<b>Save the Bay Comment 4 and Save the Bay Members Comment 3:</b> Require Caltrans to include operation and maintenance funding in cooperative agreements with municipalities.	We propose to leave the determination of how to fund the installation, operation, and maintenance of trash capture devices to Caltrans and municipalities as they develop their cooperative implementation agreements.
<b>SCVURPPP Comment 2:</b> Ensure consistent definition of trash generating areas. The statement in the Tentative Order that only 8,820 acres of Caltrans' 25,000 acres of ROW (35%) generate moderate or greater levels of trash is suspect. Request that the Water Board require Caltrans to provide full documentation of all assessment results used to establish baseline trash conditions, and that Water Board staff fully evaluate these results to ensure consistency with established methods.	<p>We agree that Caltrans must demonstrate consistency with established methods of defining trash generation. The Tentative Order requires Caltrans to submit a trash generation map based on BASMAA or equivalent methodology. The 8,820 acres of moderate or greater trash generation is based on Caltrans' latest trash generation assessment and the Tentative Order requires Caltrans to conduct future assessments to determine the full extent of significant trash generating areas.</p> <p>The Water Board will make the documentation of assessment results and methods received from Caltrans available for public review.</p>
<b>SCVURPPP Comment 3:</b> Request that during reissuance of the MRP, the Water Board provide MRP permittees with revised timelines for achievement of trash reduction goals to align with the timelines in the Tentative Order. It is unclear why Caltrans is being afforded until October 2019 to develop its baseline trash generation map.	We recognize the Tentative Order compliance schedule is not the same as the MRP's requirements on MRP permittees and note that the region-specific trash reduction requirements in the Caltrans statewide stormwater Permit are different than MRP requirements. In addition, the trash control requirements were first established in the permits at different times—2012 for Caltrans, and 2009 for MRP permittees. The Water Board may consider this discrepancy during the MRP reissuance process.
<b>SCVURPPP Comment 4:</b> Request that the Water Board ensure that all State Highways (e.g., El Camino Real, San Pablo Avenue, and International Blvd.), regardless of whether	We agree that all Caltrans-owned ROW, including State Highways, must be identified on its trash generation map whether maintenance agreements are in

## Water Board Prosecution Team's Response to Comments

Commenter and Summarized Comment	Water Board Prosecution Team Response
<p>maintenance agreements are in place, are included on Caltrans trash generation maps and that trash associated with these areas is fully controlled by Caltrans. Also request that the Water Board allow MRP Permittees to remove Caltrans ROW areas identified as State Highways from their baseline maps and adjust baseline trash generation accordingly.</p>	<p>place or not. Past versions of Caltrans' trash generation map have included State Highways and we will continue to require those highways on future maps.</p> <p>The request to remove Caltrans ROW areas from MRP Permittees' baseline maps could be considered as part of reissuing the MRP.</p>
<p><b>SCVURPPP Comment 5:</b> Request that the Tentative Order (possibly Provision 4) require Caltrans to ensure that full trash capture systems installed via cooperative agreements between Caltrans and MRP Permittees adequately function and capture trash over time. This should be done by requiring Caltrans to demonstrate that it is providing for operations and maintenance of any full capture devices on which it relies to address the requirements of the Tentative Order, either by assuming an appropriate proportion of such maintenance responsibilities itself or by providing an appropriate level of funding to MRP Permittees to take on that proportional share of implementation responsibilities.</p>	<p>See response to Save the Bay Comment 4.</p>
<p><b>Save the Bay Members, Personalized Comments:</b></p> <p>Save the Bay created a form letter that members could electronically sign and email to the Water Board. When submitting the form letter, senders had an option to include a personalized comment. We received over 400 emailed form letters, of which over 200 included personalized comments. Each of the comments was reviewed, and the following is a summary of the personalized comments submitted by Save the Bay members:</p> <ul style="list-style-type: none"> <li>• Trash along Caltrans roads is significantly worse than in other states and Caltrans needs to be held accountable for cleaning up its roads.</li> </ul>	<p>We note these comments and recognize the concern among the Bay Area citizenry regarding trash on Caltrans ROW. these comments are publicly available for Caltrans to review on our public notice website and we will transmit a summary of personalized comments to Caltrans so maintenance staff can address specific concerns, particularly regarding specific segments of Caltrans roads identified as having high levels of trash. Otherwise, the comments are addressed in the Background section and generally in the responses above.</p>

## Water Board Prosecution Team's Response to Comments

Commenter and Summarized Comment	Water Board Prosecution Team Response
<ul style="list-style-type: none"><li>• Make Caltrans control trash sooner than what is required in the Tentative Order.</li><li>• Trash conditions seen while driving on Caltrans roads are “depressing,” “disgraceful,” “appalling,” “despicable,” etc. The amount of trash is increasing, and Caltrans needs to put more effort into controlling trash.</li><li>• Caltrans should be educating the public about the damage littering does to the environment.</li><li>• Caltrans needs to take quick action to deal with homeless encampments in the ROW.</li><li>• Numerous comments identified specific segments of Caltrans roads where commenters described significant amounts of trash.</li></ul>	

## **Appendix C**

### **CALTRANS RESPONSE TO COMMENTS**



**DEPARTMENT OF TRANSPORTATION****DISTRICT 4**

P.O. BOX 23660, MS 1A  
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Making Conservation  
a California Way of Life.

February 1, 2019

Ms. Marnie Ajello  
California Regional Water Quality Control Board – San Francisco Bay Region  
1515 Clay Street, Suite 1400  
Oakland, CA 94612

Dear Ms. Ajello:

The California Department of Transportation (Caltrans), appreciates the opportunity to submit the following information for consideration by the Advisory Team and the Regional Water Quality Control Board (Regional Board) in the Caltrans Tentative Cease and Desist Order (Tentative Order) Hearing scheduled on February 13, 2019.

- Technical analysis supporting Caltrans' commitment to continued compliance with the National Pollutant Discharge Elimination System (NPDES) Permit requirements in the Bay Area.
- Caltrans response to comments received during public commenting period.

1. Technical Analysis Supporting Caltrans Continued Compliance with the NPDES Permit:

Caltrans statewide NPDES Permit became effective on July 1, 2013. The NPDES Permit as per requirement specified in Attachment V states that the "Department shall demonstrate compliance with discharge prohibition 7, Table 4-1 of the San Francisco Bay Basin Water Quality Control Plan (Basin Plan) through the timely implementation of control measures in all high trash generating areas in the San Francisco Bay Region".

Caltrans has complied and is committed to continued compliance with the NPDES Permit in the Bay Area through implementing a variety of measures such as installing trash capture devices and manual trash clean-up within its right of way (ROW), as well as funding trash capture projects in local municipalities and public education efforts to promote awareness on the importance of preventing litter from entering the waterways. Caltrans also partners with California Highway Patrol on strategies for effective enforcement actions against littering with the aim to reduce litter generation in the Bay Area. Caltrans has demonstrated good faith effort and due diligence in complying with the NPDES Permit by implementing the following increasingly rigorous efforts:

- Caltrans increased its litter removal effort and expenditure from \$8.7 million in 2013 to \$18 million in 2018 in the Bay Area. The Bay Area maintenance program expended more than 70% of its field maintenance budget for storm water improvement efforts in 2018 which includes litter removal, illegal encampment clean-up, storm drain/culvert cleaning and sweeping activities.

- Since 2017 Caltrans has committed \$33 million for local projects that will capture trash from storm water runoff from more than 14,000 acres of local and Caltrans ROW by 2021.
- Since 2016 Caltrans has pursued multiple trash control projects within its ROW in the Bay Area with an estimated total cost of \$78 million. These projects are in various phases of project delivery.
- Caltrans teamed up with local communities, elected officials, and CHP in 2018 to execute pilot projects to cleanup illegal encampments and install fencing to deter further encampment in the Bay Area. These efforts also included collaboration with local agencies to provide social services to the homeless. The total cost for the pilot projects is \$10 million.

Caltrans shares mutual goals with the Regional Board in enhancing the environment, promoting positive public behavior to reduce littering and ensuring trash does not reach California waterways. Caltrans will continue to actively engage with the Regional Board and is committed to continued compliance with the NPDES Permit requirements in the Bay Area.

## 2. Response to Public Comments:

Caltrans has reviewed the twelve comment letters (excluding Caltrans letter) received during the public commenting period for the Tentative Order and has the following comments.

([https://www.waterboards.ca.gov/sanfranciscobay/board\\_decisions/tentative\\_orders.html](https://www.waterboards.ca.gov/sanfranciscobay/board_decisions/tentative_orders.html))

- Comment letters have been submitted that indicate that all very high, high and moderate trash areas are significant trash generating areas (STGAs), which translates into 8,820 acres of Caltrans ROW within the Bay Area requiring trash control measures. Caltrans collaborated with the Regional Board staff and utilized the BASMAA methodology to conduct visual assessments and comprehensive trash studies that categorized Caltrans ROW of 25,000 acres under the Regional Board's purview into low, medium, high and very high trash categories. Per the BASMAA methodology moderate trash generation areas are defined as: *"Moderate (Slightly Littered) – Predominantly free of trash except for a few littered areas. On average, one piece per two car lengths. The trash could be collected by one or two individuals in a short period of time."* Moderate areas that are predominantly free of trash should not be reasonably categorized as STGAs. Additionally, the statewide Trash Amendments define STGAs as "all locations or facilities within the Department's jurisdiction where trash accumulates in substantial amounts". The Trash Amendments considers very high and high trash areas as STGAs as trash accumulates in substantial amounts in these areas. Caltrans trash studies identified 1,482 acres as very high/high trash generating areas (STGAs) and 2,238 acres as moderate areas without vegetative controls in the Bay Area. The NPDES Permit and the statewide Trash Amendments require Caltrans to address 1,482 acres that are under the purview of the Regional Board. Caltrans partnered with the Regional Board staff to proactively exceed expectations of the statewide NPDES Permit and Trash Amendments and added 2,238 acres of non-vegetated moderate areas in its footprint of trash control (3720 acres). The remaining Caltrans ROW beyond its footprint of trash control are in rural areas and includes low and moderate trash generation areas that are



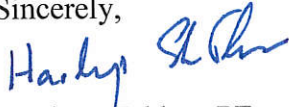
mainly free of trash and have vegetation controls. Caltrans requests the Regional Board to not revise its footprint for trash control that is specified in Provision 1 of the Tentative Order.

- Comments have been made that urge the Regional Board to revise Caltrans schedule for compliance to ensure alignment with the trash reduction goals and schedules of the Bay Area municipal permits for local municipalities. The Bay Area municipal permits for local agencies that include trash control provisions were adopted by the Regional Board in 2009. Caltrans statewide NPDES permit, issued by the State Water Resources Control Board became effective four years later in 2013. Caltrans and local municipalities have unique challenges in addressing trash within their jurisdictions. Caltrans is committed to fulfilling the obligations of the NPDES Permit and has taken measures to go above and beyond what is required by the Permit. Given the scale of effort to address trash within Caltrans vast Bay Area ROW and the fact that Caltrans Permit became effective later, Caltrans requests the Regional Board to not revise the compliance schedule in Provision 1 of the tentative Order.
- Caltrans appreciates acknowledgment and support from local municipalities for Caltrans' continued effort to fund trash control projects within local jurisdictions. Caltrans shares mutual responsibility to address the difficult challenge of improving water quality and is committed to fund additional local projects that advances water quality improvement efforts in the Bay Area region. Caltrans funded local trash control projects will be treating 14,000 acres by 2021, which will provide significant water quality benefit in the region. Caltrans often encounters challenges to construct trash capture devices or enhance trash pick-up efforts within its constricted ROW due to safety and accessibility concerns. Caltrans is committed to explore innovative solutions to address challenges within its ROW and has demonstrated due diligence to offset this challenge by advancing trash control efforts in local jurisdictions.
- Comments have been made that acknowledge that the tentative Order requires submission of maps, assessments and reports that are otherwise not required by the statewide NPDES permit. The Regional Boards are authorized to enforce the NPDES Permit and the Trash Amendments, but there is no authorization to impose new or different requirements above and beyond the requirements set forth in these documents. Caltrans requests that the tentative Order Provisions 3, 5 and 6 be deleted to not require submittal of additional trash generation maps, stand-alone feasibility studies and visual trash assessments.
- Caltrans shares mutual concerns expressed in comment letters regarding the broad issue of homelessness and its impacts to trash generation in the region. Caltrans agrees that strict enforcement of laws, regulations and fines is needed to address the vast detrimental implications of illegal dumping and camping. Caltrans also believes that public education and campaigns against littering and promoting positive public behavior are important components in addressing the persistent trash issues in the Bay Area.

Caltrans appreciates the Advisory Team and the Regional Board's consideration and support and is committed to collaborative efforts that advance Caltrans' and the Regional Board's shared goals of improving water quality in the Bay Area. Caltrans comments submitted during the public comment period are attached to this letter for additional reference.

If you have any questions, please do not hesitate to contact me at (510) 286-7182.

Sincerely,



Hardeep Takhar, PE  
Water Quality Program Manager  
Caltrans, District 4

Enclosed: Caltrans letter submitted on January 14, 2019

***Citations:***

1. Caltrans National Pollutant Discharge Elimination System (NPDES) Permit  
[https://www.waterboards.ca.gov/board\\_decisions/adopted\\_orders/water\\_quality/2012/wq2012\\_0011\\_dwq\\_conformed\\_signed.pdf](https://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2012/wq2012_0011_dwq_conformed_signed.pdf)
2. BASMAA OVTA Report (trash level rating definition, Table 2.1):  
<http://basmaa.org/Announcements/tracking-cas-trash-on-land-visual-assessments>  
Moderate Trash Level Rating: "Predominantly free of trash except for a few pieces that are easily observed along a city block, or the equivalent. The trash could be collected by one or two individuals in a short period of time."
3. Trash Amendment, Appendix D - Final Amendment to Water Quality Control Plan for Ocean Waters of California to Control Trash (STGA and jurisdiction definitions):  
[https://www.waterboards.ca.gov/water\\_issues/programs/trash\\_control/docs/trash\\_app\\_d\\_1210\\_15.pdf](https://www.waterboards.ca.gov/water_issues/programs/trash_control/docs/trash_app_d_1210_15.pdf)

## **Appendix D**

### **COMMENT LETTERS RECEIVED**



**DEPARTMENT OF TRANSPORTATION**

DISTRICT 4

P.O. BOX 23660, MS 1A  
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*Making Conservation  
a California Way of Life.*

January 14, 2019

Mr. Dale Bowyer  
California Regional Water Quality Control Board – San Francisco Bay Region  
1515 Clay Street, Suite 1400  
Oakland, CA 94612

Dear Mr. Bowyer:

The California Department of Transportation (Caltrans) appreciates the opportunity to provide comments on the Tentative Cease and Desist Order, as it continues to implement increasingly rigorous trash reduction efforts in the Bay Area in compliance with the Statewide National Pollutant Discharge Elimination System (NPDES) Permit. The NPDES Permit Attachment V, region specific requirement for the Bay Area requires Caltrans to demonstrate compliance through timely implementation of trash control measures in all high trash generating areas in the San Francisco Bay Region.

Caltrans' mission is to provide a safe, sustainable, integrated and efficient transportation system to enhance California's economy and livability. Caltrans infrastructure is designed with a goal to provide a safe transportation system for its users and reduce pollution in our communities. Trash within Caltrans ROW is generated by the users of the highway system and from homeless encampments.

Caltrans has complied and is committed to continued compliance with the NPDES Permit in the Bay Area through a variety of measures such as installing trash capture devices and manual trash clean-up effort within its right of way (ROW), as well as funding trash capture projects in local municipalities and public education efforts to promote awareness on the importance of preventing litter from entering the waterways. Caltrans also partners with California Highway Patrol on strategies for effective enforcement actions against littering with the aim to reduce litter generation in the Bay Area.

Caltrans will continue to actively engage with the Regional Board and is committed to comply with the resolutions and compliance schedules in accordance with the NPDES Permit. Caltrans has been actively working with the Regional Board to pursue accelerated implementation of trash control measures. The following are examples of Caltrans' increasingly concerted efforts in the Bay Area to address trash:

Mr. Dale Bowyer  
January 14, 2019  
Page 2

1. Caltrans increased its litter removal effort and expenditure from \$8.7 million in 2013 to \$18 million in 2018 in the Bay Area. This funding is used for manual trash pickup and homeless encampments and illegal dumpsites cleanup and highway parolee trash pickup programs. Caltrans Adopt A Highway program in the Bay Area includes 500 adopted sites and 965 miles of roadside cleanup efforts. Caltrans picked up approximately 4,470 garbage truck loads of trash and debris in 2017, compared to 3,450 garbage truck loads in 2013 in the Bay Area. Caltrans also conducts sweeping and storm drain cleaning to remove trash and other debris. About 24,000 lane miles are cleaned every year.
2. The California Transportation Commission (CTC) allocates funding through the State Highway Operation Protection Program (SHOPP) for trash capture projects on Caltrans ROW. In addition to implementing stand-alone trash capture projects, Caltrans incorporates trash capture devices, where practicable, in currently programmed transportation projects in the Bay Area, taking safety of our workers and users of the highway system into consideration.
3. Caltrans proactively engages with local municipalities and the Bay Area Stormwater Management Agencies Association (BASMAA) to identify funding opportunities for local trash control projects. Since 2017 Caltrans has committed \$33 million for local projects that capture trash from stormwater runoff from more than 14,000 acres of local and Caltrans ROW.
4. Caltrans teamed up with local communities, elected officials, and CHP to execute pilot projects to cleanup illegal encampments and install fencing to deter further encampment in the Bay Area. These efforts also included collaboration with local agencies to provide social services to the homeless.

Caltrans has evaluated the provisions of the Tentative Cease and Desist Order and has included comments in Attachment I. Caltrans is committed to work with the Regional Board to accommodate mutual priorities, and to pursue efforts that advance Caltrans' and the Regional Board's shared goals of improving water quality in the Bay Area.

If you have any questions, please do not hesitate to contact me at (510) 286-7182.

Sincerely,



Hardeep Takhar, PE  
Water Quality Program Manager  
Caltrans, District 4

Enclosed: Attachment I



## ATTACHMENT I

### 1. Background, # 10:

*“10....Significant trash generation areas as defined in the Trash Amendments are functionally equivalent to moderate or greater trash generation areas using the BASMAA methodology.”*

#### Comments:

Caltrans utilized the BASMAA methodology to conduct visual assessments and comprehensive trash studies that categorized Caltrans ROW of 25,000 acres under the Regional Board's purview into low, medium, high and very high trash categories. Per the BASMAA methodology moderate trash generation areas are defined as: “Moderate (Slightly Littered) – Predominantly free of trash except for a few littered areas. On average, one piece per two car lengths. The trash could be collected by one or two individuals in a short period of time.”

The Trash Amendments define significant trash generating areas (STGAs) as “all locations or facilities within the Department's jurisdiction where trash accumulates in substantial amounts”. The Trash Amendments considers very high and high trash areas as significant trash generating areas as trash accumulates in substantial amounts in these areas. Moderate trash generating areas that are defined as areas predominantly free of trash cannot be reasonably asserted as STGAs. Additionally, the Caltrans NPDES Permit requires Caltrans to demonstrate compliance through timely implementation of trash control measures in all high trash generating areas in the Bay Area. Inclusion of moderate areas that are primarily free of trash as STGAs does not align with the statewide Trash Amendments and Caltrans NPDES Permit requirements. The Regional Boards are authorized to enforce the NPDES Permit and the Trash Amendments, but there is no authorization for Regional Boards to impose new or different requirements above and beyond the requirements set forth in these documents. Caltrans requests this section to be deleted.

### 2. Purpose of Order #14:

*“14. ...The Regional Water Board considers trash generation areas defined by the Department as moderate or greater to be significant trash generation areas, with the exception of moderate trash generation areas with vegetation that controls the generated trash. Future assessments of Department ROW within the San Francisco Bay Region are needed to determine how much of the remaining areas of Department ROW are significant trash generation areas.”*

#### Comments:

Caltrans appreciates the Regional Board's assertion that very high, high and moderate trash areas without vegetative controls is what it considers as STGAs requiring treatment. This corroborates Caltrans and the Regional Board staff's discussion and understanding that 3720 acres is the footprint of area for treatment. Caltrans trash studies identified 1482 acres as very high/ high trash generating areas (STGAs) and 2238 acres as moderate areas without vegetative controls in the Bay Area. Caltrans partnered with the Regional Board staff to define the boundary of area that Caltrans will address which was decided to be 3720 acres (1482 acres +2238 acres). In alignment with Caltrans commitment and goals to promote sustainability, livability, improve the environment and reduce pollution in communities, Caltrans proactively exceeded expectations of the statewide NPDES Permit and Trash Amendments that requires Caltrans to address 1,482 acres of very high and high trash areas in the Bay Area and added 2238 acres of non-vegetated moderate areas in its footprint of trash control. The remaining Caltrans ROW beyond the footprint of trash control (3720 acres) includes low and moderate trash generation areas with vegetation controls and are in rural areas.

The requirement for future assessments of remaining low and moderate areas are unnecessary and does not add additional insight into the multiple assessments that have already been performed. Caltrans performed comprehensive on-land visual assessments and trash studies in 2016 and 2018 which included statistical analysis of trash collection volume and frequency data, input from



maintenance field staff, and visual assessments performed jointly with staff from a local municipality and the Regional Board to ensure the assessments were consistent with BASMAA methodology. Regional Board staff agreed with the approach and methodology that Caltrans pursued to categorize Caltrans Bay Area ROW into low, moderate, high, and very high trash generation categories. Repetitive assessments of low and moderate areas that are primarily free of trash are unnecessary and excessive. Caltrans is committed to conduct progress monitoring and reporting as required by the Stormwater Permit. Additional reassessments will require a significant undertaking that takes away resources that could be used for implementation of trash control measures that advance Caltrans efforts to meet the benchmarks in the tentative Cease and Desist Order. Caltrans requests the requirement to conduct assessments to identify additional areas be deleted.

### **3. Purpose of this Order, #15**

*"15...Transport of trash from the Department ROW to surrounding municipalities unduly puts the burden of capturing trash generated on Department ROW onto the surrounding municipalities."*

#### **Comments:**

This claim is speculative and is not corroborated through scientific data. Wind blows in many directions and any potential trash transfer to and from Caltrans ROW depends on site specific conditions. Like local municipalities, Caltrans activities by themselves do not generate trash. Managing trash generated by users puts undue burden on both Caltrans' and local municipalities' ability to achieve their respective missions. Caltrans continues to partner with public and private agencies including local municipalities to systematically address trash concerns. Caltrans requests this section to be deleted.

### **4. Cease and Desist Order Authority, #18**

*"18. Because the Department is violating Basin Plan Prohibition 7 and Attachment V, Part 2 of its Permit, this Order is necessary..."*

#### **Comments:**

Caltrans statewide NPDES Permit as per requirement specified in Attachment V states that the "Department shall demonstrate compliance with discharge prohibition 7, Table 4-1 of the San Francisco Bay Basin Water Quality Control Plan (Basin Plan) through the timely implementation of control measures in all high trash generating areas in the San Francisco Bay Region". Caltrans has demonstrated good faith effort and due diligence in pursuing increasingly rigorous efforts for timely trash control measure implementation in the Bay Area. In addition, Caltrans has partnered with local jurisdictions and has funded projects that not only treat runoff from Caltrans ROW but also local jurisdictions ROW. To date Caltrans has committed funds for local Bay Area trash control projects that will treat trash from a combined 14,000 acres of Caltrans and local ROWs. Caltrans has funded public education campaigns to influence public behavior so that Caltrans and local jurisdictions do not have to expend millions of tax payer dollars to clean up and collect litter left by users of roadways. Additionally, Caltrans has demonstrated due diligence to pursue a well-rounded approach to address homeless encampments in the Bay Area by executing efforts to systematically clean up homeless encampments, and partner with local agencies to provide social services. Caltrans has not violated the Basin Plan and Attachment V of the NPDES Permit as it has demonstrated due diligence in implementing trash control measures in a timely manner. Caltrans requests this section to be deleted.

### **5. Order, Provision #1 – Implement Trash Controls**

*"1. The Department shall implement structural and non-structural trash control.... the following benchmark acreages and dates: e. All additional significant trash generating areas of ROW identified by visual assessments conducted in 2021, 2025, and 2029 by December 2, 2030.*

**Comments:**

Caltrans has conducted multiple studies and assessments to define the boundary of area (3720 acres) that requires treatment and that is under the purview of the Regional Board. Caltrans and Regional Board staff have collaborated on the footprint of area requiring treatment and there are no additional areas requiring assessments or treatment. Therefore, Caltrans requests to delete the following benchmark: *"e. All additional significant trash generating areas of ROW identified by visual assessments conducted in 2021, 2025, and 2029 by December 2, 2030."* Caltrans conducted trash assessments on its ROW in 2016 and 2018 and successfully pursued efforts to build consensus on the findings with the Regional Board staff. The Regional Board and Caltrans staff have jointly collaborated on the footprint of area that needs treatment (3720 acre). Repetitive visual assessments of the remaining low and medium areas with vegetation controls in 2021, 2025 and 2029 are unnecessary and requires diversion of resources that could be used to implement trash control measures. This hinders Caltrans efforts to timely meet compliance benchmarks indicated in the tentative CDO. Caltrans appreciates the Regional Board's commitment in working with Caltrans and acknowledgement that time extensions to meet benchmarks may be considered based on demonstrable due diligent efforts.

**6. Order, Provision #2 – Install Structural Trash Controls on All Construction Projects in Significant Trash Generating Areas**

*"2...If it is impractical to install structural trash controls due to site constraints or safety reasons, the Department shall identify these areas and report them in its annual report and trash generation map."*

**Comments:**

Caltrans ensures diligence and constructs trash capture devices, where practicable, in currently programmed transportation project in the Bay Area, taking safety of our workers, users of the highway system, site constraints and cost effectiveness into consideration. It may not be feasible to incorporate trash control measures in low budget projects that do not have the capacity to include improvements beyond their strict scopes for transportation improvement. Technical and/or financial infeasibility may make trash control measures impractical in some transportation projects. Additionally, it is infeasible to consider changes to projects after construction funding has already been allocated. Caltrans requests revision to the requirement as follows: "For all ~~construction~~ projects in significant trash generating areas of Department ROW that do not meet full trash capture equivalency and that have not been funded for construction, the Department shall install structural full trash capture devices, where technically and financially feasible, in the storm drain system and/or structural trash controls on the outlets of treatment systems to achieve the full trash capture standard. If it is impractical to install structural trash controls due to site constraints, or safety reasons or cost, the Department shall identify these areas and report them in its annual report and trash generation map."

**7. Order, Provision #3 – Prepare and Submit a Trash Generation Map**

*"3. The Department shall prepare and submit, ...areas under or separate from raised roads, leased areas, ramps, loops, bridges, temporary yards, and maintenance stations..."*

**Comments:**

Areas such as leased areas, areas under and separate from raised roads, homeless encampments, maintenance stations and temporary yards are not included in the Caltrans NPDES Permit or the



statewide Trash Amendments. The CDO requirements cannot impose requirements that are more stringent than the Caltrans NPDES Permit and statewide Trash Amendment requirements. Caltrans utilizes best management practices to ensure appropriate management of facilities, such as maintenance stations and temporary yards. In addition, mapping of homeless encampment sites and enhanced maintenance areas is above and beyond the Permit requirements. Caltrans takes a holistic approach to address the broad issue of homeless encampments and continues to partner with local agencies to systematically pursue initiatives. Caltrans requests the requirements related to these areas be removed from the tentative CDO.

**8. Order, Provision #4 - Prepare and Submit a Trash Control Implementation Workplan:**

*"4.....The Workplan shall include the following: .....e. Identification of funding needs and resources necessary....the Workplan.....additional funding sources and commitments to be ... requirements. "*

**Comments:**

Caltrans utilizes funds to implement various provisions of the statewide NPDES Permit which includes requirements for implementation of best management practices to address various pollutants such as toxic metals, sediment, pathogens as well as trash. Per the NPDES Permit requirements, Caltrans has prioritized watersheds that are within Caltrans jurisdictions and aligned its efforts to meet waste load allocations for various pollutants. This prioritization is directed at the highest priority pollutants and watersheds with the goal of implementing the necessary statewide controls during a 20-year period. Demands for accelerated effort in one Region adversely hinders Caltrans statewide progress in meeting Permit mandates. Caltrans transportation improvement projects as well as trash control projects are funded through the State Highway Operation Protection Program (SHOPP). The California Transportation Commission (CTC), consisting of eleven voting members allocates funding for Caltrans SHOPP projects and sets plans, policies and priorities for funding to ensure Caltrans mission to provide a safe, sustainable and efficient transportation system is appropriately fulfilled. Of the eleven voting members nine are appointed by the Governor, and the others by the Senate Rules Committee and the Speaker of the Assembly.

**9. Order, Provision #5 – Conduct Trash Reduction Feasibility Studies**

*"5...The Department shall conduct a Trash Reduction Feasibility Study... significant trash generating ROW shall be submitted by December 31, 2025"*

**Comments:**

Conducting stand-alone Trash Reduction Feasibility Studies by corridor, requiring percentages of STGAs studied and timelines for their completion may not always result in timely implementation of structural trash controls. Caltrans project delivery staff conduct trash treatment feasibility assessments to explore treatment options as a routine practice as projects in STGAs are planned and developed in the Bay Area. Separate stand-alone technical feasibility studies are conducted on a case by case basis when there is need for specialized studies. This practice promotes efficiency and ensures prudent use of state resources. Caltrans requests this section to be removed from the CDO. Caltrans is committed to conduct trash control feasibility assessments on all projects in STGAs during project development and delivery process. Mandates for excessive studies and assessments require Caltrans to divert resources that could otherwise be used for advancing trash control implementation efforts in the Bay Area. The requirement for separate feasibility studies hinders Caltrans due diligence in using state resources efficiently. In past discussions Regional Board staff had agreed to delete requirements for stand-alone studies.

**10. Order, Provision #5 c (i) – Conduct Trash Reduction Feasibility Studies**

*"c.(i) If the Department...be of equivalent trash generation to the ROW determined to be infeasible to treat."*



**Comments:**

Caltrans appreciates the opportunity to seek alternative compliance when it is infeasible to implement trash control on Caltrans ROW. However, as the Regional Board only agrees to provide alternative compliance credits if the local ROW treated area is of equivalent trash generation rating, Caltrans requests to receive 1:1 credit for local area treatment (one credit for one acre of equivalent trash treatment in local jurisdiction). Caltrans should not be penalized when all diligent efforts to treat its ROW has been exhausted and the only way to receive credit is to pursue alternative compliance. The arbitrary 2:1 crediting ratio undervalues the immense benefits of cooperative efforts with local partners and disincentivizes Caltrans' good faith effort to advance trash reduction measures not only within its ROW but also in local jurisdictions. Caltrans requests to revise the following as indicated: "~~Two~~ One acres of local ROW or watershed area treated will yield one acre of alternative compliance credit based on similar trash generation rating, i.e., the non-Department ROW treated area must be of equivalent trash generation to the ROW determined to be infeasible to treat."

**11. Order, Provision #6 – Conduct Visual Trash Assessments**

*"....Department ROW by December 31, 2021, December 31, 2025, and December 31, 2029.... b. Conduct a visual trash generation ... illegal dumping currently occurs ...occurred. c. Based.... "significant trash generating areas" control implementation to meet Order requirements."*

**Comments:**

Caltrans conducted comprehensive visual assessments and trash studies in 2016 and 2018. In addition, Caltrans will be monitoring progress in meeting benchmarks specified in the tentative CDO and report to the Regional Board annually. The requirement for additional reassessments is not consistent with the requirements of the NPDES Permit and the statewide Trash Amendments, and does not facilitate statewide prioritization, planning and efficiency in the implementation of trash control measures. Assessments of off highway areas such as leased areas, areas under and separate from raised roads, homeless encampments, maintenance stations and temporary yards are beyond the requirements of Caltrans NPDES Permit and the statewide Trash Amendments. Caltrans requests Provision #6 to be removed.

**12. Order, Provision #7 – Track and Report on Trash Control Implementation and Maintenance:**

*"Annual.....the following: c. Acreage of significant trash generating area .. full trash capture equivalency"*

**Comments:**

For reporting and tracking purposes, as per discussion with the Regional Board staff, Caltrans may claim credit for acreage treatment when projects are programmed. Caltrans requests the following provision to be revised as follows: "**c.** Acreage of significant trash generating areas converted to full trash capture equivalency. For projects that treat Caltrans ROW, Caltrans may claim credit for treatment when the projects are programmed"

**Citations:**

1. BASMAA OVTA Report (trash level rating definition, Table 2.1):  
<http://basmaa.org/Announcements/tracking-cas-trash-on-land-visual-assessments>  
Moderate Trash Level Rating: "Predominantly free of trash except for a few pieces that are easily observed along a city block, or the equivalent. The trash could be collected by one or two individuals in a short period of time."

# CALIFORNIA LEGISLATURE

STATE CAPITOL  
SACRAMENTO, CALIFORNIA  
95814

January 9, 2019

Caltrans  
Director Laurie Berman  
P.O. Box 942873  
Sacramento, CA 94273-0001

RE: Litter in the San Francisco Bay Area

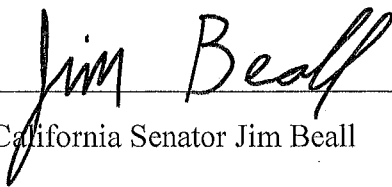
Dear Director Berman,

It is no secret California's roads and highways are in need of attention. The backlog from years of deferred maintenance has finally caught up with us and with it, a whole host of negative consequences associated. From the number of potholes and dilapidated bridges to an increase in homeless encampments filled with people looking to seek refuge on Caltrans property. This along with the increase in traffic congestion in the Bay Area from long commutes due to the soaring cost of housing has ultimately caused an increase in heavy litter and trash on our roads.

I applaud Caltrans for actively collaborating with the San Francisco Regional Water Quality Control Board to pursue accelerated implementation of control measures at trash hotspots in the Bay Area. Examples of accelerated efforts include installation of trash capture devices and manual trash clean-ups within Caltrans right-of-way (ROW) as well as funding of trash control projects in local municipalities outside of Caltrans ROW. However, this effort is still inadequate. Caltrans needs to act quickly to reduce and eliminate trash in storm water flowing to creeks in the San Francisco Bay. Action needs to go beyond the minimum to protect the health and well-being of our community.

We know that our freeway conditions are nowhere near where we want them to be, but this is going to help us get where we want to go. Thank you for your attention- We look forward to working with you in the months to come.

Sincerely,

  
California Senator Jim Beall



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California Assemblymember Ash Kalra

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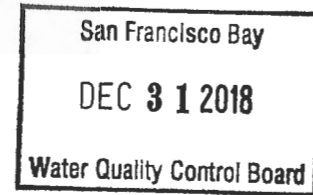


UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street  
San Francisco, CA 94105-3901

DEC 28 2018



Mr. Dale Bowyer  
San Francisco Bay Regional Water Quality Control Board  
1515 Clay St., Suite 1400  
Oakland, CA 94612

Re: Draft Cease and Desist Order to Caltrans (No. R2-2019)

Dear Mr. Bowyer:

EPA is writing to provide comments on the draft Cease and Desist Order (Order) recently proposed for comment by the San Francisco Bay Regional Water Quality Control Board (Water Board). We support the Water Board's efforts to ensure Caltrans achieves necessary, measurable trash reduction in the San Francisco Bay Area. We are encouraged by recent efforts by Caltrans and municipalities such as Oakland, San Jose and San Pablo to begin collaboration on trash capture installations in areas that have been mutually identified to be high priorities for trash reduction.

We understand the draft order would require Caltrans to address a maximum of 3,720 acres of Caltrans jurisdiction by 2026. The draft order indicates that 8,820 acres have been identified through improved visual assessments as significant trash generating areas, rated between moderate and very high. EPA expects that to achieve "full trash capture equivalency" as set forth in the statewide trash amendments that Caltrans will need to eventually address all 8,820 acres, and we note the Order requires this by December 2030. We recommend that the Board consider significantly increasing the acreage of moderate and high-trash generating areas required to be addressed by 2026 in the Order. An alternative compliance schedule to consider would be to require a benchmark of 100 acres within a year of the month the order takes effect to demonstrate readiness by Caltrans, and then step up by increments of approximately 1000 acres in the following years with a goal of 6000 acres by the end of 2024.

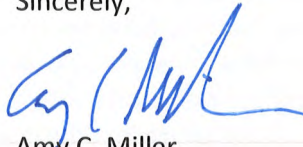
Increasing these goals would help ensure that Caltrans makes more timely progress in addressing significant trash generating areas within its jurisdiction and would make Caltrans' trash control obligations more commensurate with the Bay Area cities' obligations under the municipal regional stormwater permit (MRP). For example, we note that the 76 Bay Area cities have been steadily making investments in trash reductions pursuant to their stormwater permit requirements, most achieving a 70% reduction in 2017, with the mandate of "no adverse impacts" by 2022. Moreover, increasing the area Caltrans is required to address under this order would create greater incentives for Caltrans to partner with Bay Area cities to identify trash control options and implement projects that benefit both Caltrans and the neighboring cities. We expect that such technical and financial partnerships between Caltrans and Bay Area cities will be necessary to enable the cities to meet the 2022 target set in the MRP.

The Order also identifies a commitment for Caltrans to produce and annually update a trash generation map to track progress. EPA supports creating this map for the purposes of having a way to track annual progress and encourages as much overlap with the existing BASMAA maps as possible for comparability over time. The maps should also be publicly accessible. Furthermore, we recognize the effort to implement and track compliance with the Order will be a long-term workload for the Regional Board. In addition to review of documents submitted, EPA encourages Board staff to perform site inspections and continue to hold meetings with Caltrans throughout the term of the Order to ensure compliance obligations are met. EPA is available to discuss how we may be able to assist Regional Board staff in this effort.

Lastly, certain terms in the Order such as “full trash capture equivalency” and “full trash capture standard” could be subject to misinterpretation. It would be prudent to identify if the terms are being used in ways that are consistent with the definitions in Statewide Trash Amendments Staff Report (Section 2.4.1 Permitted Storm Water Dischargers) or more interchangeably. We recommend citing the appropriate documents or creating a definition section in the Order for key terms used in the Order.

We value our partnership with the Water Board in implementing the Clean Water Act and continue to offer our services and technical expertise to improve San Francisco Bay waters. Should you have any questions, please contact me at 415-947-4198.

Sincerely,



Amy C. Miller

Acting Director, Enforcement Division





## Protecting Alameda County Creeks, Wetlands & the Bay

January 14, 2019

Mr. Dale Bowyer  
California Regional Water Quality Control Board,  
San Francisco Bay Region  
1515 Clay Street, Suite 1400  
Oakland, CA 94612

Dear Mr. Bowyer:

399 Elmhurst St.  
Hayward, CA  
94544  
p. 510-670-5543

SUBJECT: COMMENTS ON CALIFORNIA DEPARTMENT OF TRANSPORTATION  
TENTATIVE CEASE AND DESIST ORDER

These comments are submitted on behalf of the Alameda Countywide Clean Water Program's seventeen member agencies. We appreciate this opportunity to comment and request that our comments be made part of the administrative record for these proceedings. Our member agencies are committed to improving water quality and the beneficial uses of our creeks and the Bay, and we hope you find these comments useful as you consider adoption of the subject order.

### MEMBER AGENCIES:

Alameda

Albany

Berkeley

Dublin

Emeryville

Fremont

Hayward

Livermore

Newark

Oakland

Piedmont

Pleasanton

San Leandro

Union City

County of Alameda

Alameda County Flood  
Control and Water  
Conservation District

Zone 7 Water Agency

As you are well aware, trash along the California Department of Transportation (Department) right-of-way (ROW) poses a significant threat to our local creeks and the San Francisco Bay. We appreciate your effort to address the issue, especially as the trash along the Department ROW hampers our member agencies' efforts to address trash discharges from their jurisdictions.

Our member agencies have worked cooperatively with Department staff to implement numerous trash control projects, and look forward to implementing many more cooperative projects with the Department in the future. We are generally supportive of the Tentative Order. Our most significant concern is that their proposed schedule for implementing full trash capture is not consistent with and different from the requirements of the Municipal Regional Stormwater Permit (MRP 2) (R2-2015-0049). MRP 2 requires our member agencies to reduce trash discharges by 80% by July 2019, with a goal of 100% by July 2022. The Tentative Order has what appear to be similar targets for full trash capture equivalency of 3,720 acres and approximately 8,820 acres. However, the compliance dates are June 2026 and June 2030 respectively. This discrepancy makes it exceedingly difficult to coordinate effectively with the Department on cooperative projects. It will also make it difficult for the municipalities to comply with their own MRP 2 requirements as the trash along the Department ROW is transported by wind and rain to adjacent jurisdictions. We request that the Department's compliance schedule be aligned with the compliance schedule of our member agencies.

We look forward to continuing our cooperative working relationship with Water Board and Department staff as we endeavor to address the significant challenges in improving water quality, an objective to which the Alameda Countywide Clean Water Program is firmly committed.

Sincerely,

James Scanlin,  
Program Manager



## CITIZENS COMMITTEE TO COMPLETE THE REFUGE

453 Tennessee Lane, Palo Alto, CA 94306

Tel: 650-493-5540

[www.bayrefuge.org](http://www.bayrefuge.org) [cccrrrefuge@gmail.com](mailto:cccrrrefuge@gmail.com)

San Francisco Bay Regional Water Quality Control Board  
1515 Clay Street, Suite 1400  
Oakland, CA 94612  
Attn: Dale Bowyer, Chair Young and Members of the Board

January 14, 2019

Re: Comments regarding Cease and Desist Order No. R2-2019-xxxx

Dear Mr. Bowyer, Chair Young and Members of the Board,

This responds to Cease and Desist Order No. R2-2019-xxxx proposed to be issued to the California Department of Transportation (Caltrans), regarding the persistent failure of Caltrans to adequately maintain their 25,000 acres of right-of-way (ROW) within the San Francisco Bay Area, and has resulted in rubbish, refuse and other solid wastes entering waters of the State. Enforcement of the Cease and Desist Order is critical as Caltrans has failed to develop an adequate plan of action despite issuance of a Notice of Violation back in December 2016. The Citizens Committee to Complete the Refuge fully supports the San Francisco Bay Regional Water Quality Control Board's (SFBRWQCB) efforts however we believe the Cease and Desist Order must be strengthened to protect waters of the State, given the failure of Caltrans to produce an action plan in a timely manner.

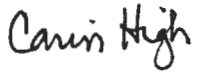
1. Implementation of Trash Controls – As we read the Order, it appears Caltrans has until 2026 to meet full trash capture equivalency for 3,720 acres. The Order notes in Item 14 that Caltrans has identified 3,720 acres of ROW as “very high and high generation areas” in its trash generation assessment and 8,820 acres as being “moderate trash generation areas.” Does this mean that the total acreage of “very high,” “high” and moderate trash generation areas is 12,540 acres? If this is the case, the timeline proposed by this Order seems totally inadequate. It is not unreasonable, given the negative impacts of trash on the Bay ecosystem, to expect a focused effort targeting those trash generation areas that produce the highest levels of potential pollution to the waterways of San Francisco Bay. The target should be at minimum full trash capture equivalency for 8,130 acres by June 30, 2026, including the 3,720 acres of highest trash generation and half of the acreage of areas producing moderate levels of trash generation. Full trash capture should be expected for no less than 12,540 acres by 2028.

3. Prepare and Submit a Trash Generation Map – We believe three months from the date of the effective date of this Order should be an adequate time frame to provide a Trash Generation Map that at least identifies Very High, High and Moderate categories of trash generation and all significant trash generating areas.

4. Prepare and Submit a Trash Control Implementation Workplan - We are opposed to a deadline of December 31, 2019 for submission of a Trash Control Implementation Workplan. A deadline set so far out into the future could allow more than a year of continued non-compliance to transpire should Caltrans fail to meet this deadline. As with the trash generation map, we believe three months should be an adequate time frame to produce at minimum, a draft workplan.

We hope the Board will approve this Cease and Desist Order with the recommendations made above. It is vital that the aquatic resources of San Francisco Bay are protected from the degradation of continued inputs of trash from Caltrans' right-of-ways. Many areas of significant ecological importance such as the San Francisco Bay National Wildlife Complex of Refuges lie immediately adjacent to major roadways and are adversely impacted by trash blown from the roadways and stormwater runoff. We thank the SFBRWQCB staff and Board for the opportunity to provide comments.

Sincerely,

A handwritten signature in black ink that reads "Carin High". The signature is written in a cursive, flowing style.

Carin High  
CCCR Co-Chair



155 Mason Circle  
Concord, CA 94520  
phone (925) 685-9301  
fax (925) 685-0266  
[www.contracostamosquito.com](http://www.contracostamosquito.com)

December 19, 2018

California Regional Water Quality Control Board  
San Francisco Bay Region  
Attn Dale Bowyer  
1515 Clay Street, Suite 1400  
Oakland, CA 94612

Re: California Department of Transportation Cease and Desist Order

Dear Mr. Bowyer,

Thank you for the opportunity to express the position of the Contra Costa Mosquito & Vector Control District (the District) regarding the tentative cease and desist order requiring the California Department of Transportation to achieve compliance with the San Francisco Bay Region-specific timely implementation of trash control measures under the NPDES Statewide Stormwater Permit.

The District is tasked with reducing the risk of diseases spread through vectors within Contra Costa County by controlling them in a responsible, environmentally-conscious manner. A "vector" means any animal capable of transmitting the causative agent of human disease or capable of producing human discomfort or injury, including, but not limited to, mosquitoes, flies, mites, ticks, other arthropods, and rodents and other vertebrates (California Health and Safety Code §2002). Property owners retain the responsibility to ensure that the structure(s), device(s), and/or other features resulting from compliance with the tentative order do not breed or harbor vectors, or otherwise create a nuisance. Property owners must immediately abate any nuisance caused by the structure(s), device(s), and/or other feature(s). Maintaining a nuisance on any such properties may lead to abatement by the Contra Costa Mosquito & Vector Control District and civil penalties pursuant to California Health & Safety Code §2060-2067.

Stormwater conveyance, treatment, or trash capture features have the potential to produce standing water and vector breeding habitat, possibly creating a health hazard for neighborhood residents, workers, and visitors. Vector species that may breed in such habitats have the ability to affect not only nearby individuals, but potentially spread disease viruses to citizens several miles away. Historically, the District has observed various trash capture and stormwater treatment devices become ideal vector breeding habitat. Additionally, trash capture devices may impede access and limit the District's disease vector surveillance and control efforts. Careful selection of capture devices should ensure ready access by District employees, and robust maintenance measures should prevent devices creating or maintaining a public nuisance. At no time should any device or feature attract, harbor, or breed vectors of any sort. If vector production is suspected, the District should be contacted immediately.

As always, please ensure District staff has safe, ready access for surveillance and control measures throughout the project area that fall within our jurisdiction. If further guidance on the selection and

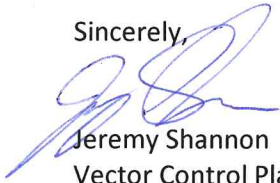
*Protecting Public Health Since 1927*

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Danville **RANDALL DIAMOND** • Hercules **Vacant** • Lafayette **JAMES FITZSIMMONS** • Martinez **DANIEL PELLEGRINI** • Moraga **ROBERT LUCACHER** • Orinda **Vacant**  
Pittsburg **RICHARD AINSLEY, PhD** • Pleasant Hill **RICHARD MEANS** • Richmond **SOHEILA BANA, PhD** • San Pablo **Vacant** • San Ramon **PETER PAY** • Walnut Creek **JAMES MURRAY**

implementation of devices is needed or vector-related issues arise, don't hesitate to reach out to the Contra Costa Mosquito & Vector Control District for assistance.

Sincerely,



Jeremy Shannon  
Vector Control Planner

925-771-6119

[jshannon@contracostamosquito.com](mailto:jshannon@contracostamosquito.com)



**FRIENDS OF  
CORTE MADERA CREEK  
WATERSHED**

January 7, 2019

Dale Bowyer  
California Regional Water Control Board  
San Francisco Bay Region  
1515 Clay Street, Suite 1400  
Oakland CA 94612  
Email: dale.bowyer@waterboards.ca.gov

Re: Comment Letter: Caltrans CDO

Dear Mr. Bowyer:

Thank you for this opportunity to submit comments on the draft Caltrans Cease and Desist Order R2-2019-xxxx (to be numbered when adopted). As a volunteer group active in the Corte Madera Creek watershed of eastern Marin County, we are keenly interested in improving and protecting water quality and the natural resources that depend on clean water and healthy habitats. High on our list is reducing the amount of trash entering our creeks and ultimately the Bay and ocean.

Casual observers of Caltrans rights-of-way in the Corte Madera Creek watershed can easily believe that virtually no effort is made to clean trash. In meetings convened by Clean Marin, a coalition of environmental organizations, municipal and county agencies, businesses, and individuals that work together to create a litter-free Marin, we have been told that Caltrans does not have the staff or budget to do more trash control in Marin County.

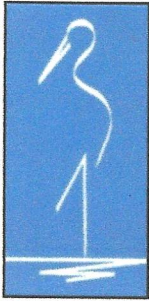
Clearly, relying on Caltrans to meet its permit obligations is not working. We strongly support stronger, legally binding measures that will force Caltrans to address the substantial trash problem in our watershed and throughout the San Francisco Bay Region by providing funding and staff to meet its legally binding permit requirements.

Sincerely,

Sandra Guldman, Vice President

c: Robert Carson, MCSTOPPP





## Friends of the San Pablo Bay National Wildlife Refuge

7715 Lakeville Hwy  
Petaluma, CA 94954

FSPBNWR@gmail.com  
sanpablobayrefugefriends.org

January 14, 2019

San Francisco Bay Regional Water Quality Control Board  
1515 Clay Street, Suite 1400  
Oakland, Ca 94612  
Attn: Dale Bowyer

Subject: Comments on the Tentative Order for the California Department of Transportation (CalTrans)

Dear Mr. Bowyer,

The Board of the Friends of the San Pablo Bay National Wildlife Refuge support the San Francisco Bay Water Board's adoption of a Cease and Desist Order against CalTrans and respectfully request that the time schedule for compliance be accelerated. San Francisco Bay's wildlife refuges, by virtue of their location along the Bay's shoreline, are impacted by trash generated off-site from highways and roads, that is then transported via wind and stormwater to the refuges' sensitive wildlife habitat. While we support the planning activities required by the Tentative Order, the Order as written allows seven years to evaluate the feasibility of addressing the identified significant trash generating right-of-way areas (ROW), which is only a portion of the potential trash generating areas along the State's highways in the Region, and 12 years to come into compliance with the State's trash regulations. We understand the challenges posed by implementing structural solutions and the need for feasibility studies, but the schedule for evaluating feasibility should be accelerated and creative non-structural solutions should be instituted sooner than the overall 12-year compliance period provided for in the Tentative Order.

Sincerely,



Justin Bodell  
Board President



Presidio  
Trust

103 Montgomery Street  
P.O. Box 29052  
San Francisco, CA 94129-0052  
T (415) 561-5300  
[www.presidio.gov](http://www.presidio.gov)

January 8, 2019

Mr. Dale Bowyer  
California Regional Water Quality Control Board  
San Francisco Bay Region  
1515 Clay Street, Suite 1400  
Oakland, CA 94612

Subject: Comments on Tentative Cease and Desist Order for the California Department of Transportation

Dear Mr. Bowyer,

The Presidio Trust (**Trust**) is writing to express our support for the tentative Order No. R2-2019-xxxx, Cease and Desist Order for the California Department of Transportation (**Caltrans**) and its goal of increasing trash control measures to improve water quality.

As background, the 1,491-acre Presidio of San Francisco (**Presidio**) is located within the boundaries of the Golden Gate National Recreation Area. Under authority granted by the Presidio Trust Act, 16 U.S.C. § 460bb appendix, the Trust manages the 1,168-acre inland area of the Presidio known as Area B; the National Park Service (**NPS**) manages the shoreline, or Area A. In cooperation with the NPS, the Trust's mission is to "bring alive the unique historic, natural, and recreational assets of the Presidio for the inspiration, education, health, and enjoyment of all people."

Two major Caltrans highways bisect the Presidio: the newly-constructed Presidio Parkway (formerly Doyle Drive) and Highway 1 (see attached map). Approximately 52 square acres of these highways are located within the Trust's area of management responsibility. The Trust would like to ensure that these Presidio highway areas, including any off-roadway areas, areas under or separate from raised roads, leased areas, ramps, loops, bridges, temporary yards, and maintenance stations on the Presidio, are considered in determining any compliance actions under the tentative Order.

If you have any questions or need additional information, please contact me at 415-561-4294 or [sgenito@presidiotrust.gov](mailto:sgenito@presidiotrust.gov).





Sincerely,

Salvatore Genito  
Chief Land and Building Stewardship Officer  
The Presidio Trust

Attachment  
Caltrans Highways on the Presidio





	<h1>Presidio Trust</h1>	 <p>Sheet No. 1 of 1</p>	<p><b>The Presidio of San Francisco</b></p> <p>By: Hans Barnaal</p> <p>Scale: 1 inch = 800 feet      Absolute Scale: 1:9,600</p> <p>Date: 01/04/19</p>	<p> Presidio Parkway HED Area - 43.24ac</p> <p> Hwy 1 Permit Area - 8.7ac</p> <p>0   200   400   800   1,200   1,600 Feet</p>	<p><b>Trash Control Implementation Map</b> Presidio Parkway and Highway 1</p>
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January 14, 2019

Board Chair, Terry Young Ph.D  
Attn: Mr. Dale Bowyer  
San Francisco Bay Regional Water Quality Control Board  
1515 Clay Street, Suite 1400  
Oakland, CA 94612

Via electronic mail to [dbowyer@waterboards.ca.gov](mailto:dbowyer@waterboards.ca.gov)

Re: Draft Cease and Desist Order No. R2-2019-xxxx, CA Dept. of Transportation

Dear Chair Young and Regional Water Board Members,

Please accept these comments on the draft Cease and Desist Order (Order) under consideration by the San Francisco Bay Regional Water Quality Control Board (Water Board). In support of the goal to minimize ecological, visual, and recreational impacts associated with trash discharges to San Francisco Bay, Baykeeper respectfully submits these comments on behalf of our over 5,000 members and supporters who live, work, and recreate in and around San Francisco Bay. Since 1989, San Francisco Baykeeper has identified the biggest threats to San Francisco Bay's water quality and held pollution sources accountable for the benefit of the Bay's ecosystems and surrounding communities.

Baykeeper supports the Water Board's efforts to bring the State of California Department of Transportation (Caltrans) into compliance with actionable and measurable trash reduction standards to reduce trash loading from the region's major roadways. To this end, we ask the Board to revise the Order to maintain compliance with the Statewide Storm Water Permit and Waste Discharge Requirements for Caltrans (Permit)<sup>1</sup>, the San Francisco Bay Basin Water Quality Control Plan (Basin Plan), as well as the Water Quality Control Plans for Inland Surface Waters, Enclosed Bays, and Estuaries of California (ISWEBE Plan). The current Order is inconsistent with requirements of the State Water Board's Trash Amendments and rewards Caltrans for non-compliance. The Order neither represents a penalty nor compels other Caltrans districts and dischargers to comply with the Permit or trash-related municipal stormwater requirements.

### **Order Fails to Require Trash Capture in All Significant Trash Generation Areas, Pursuant to the Trash Amendments**

As detailed in the Order, State Water Board Resolution 2015-0019 amended the Ocean Plan and Part 1 of the ISWEBE Plan. These amendments, known as the Trash Amendments, became effective December 2, 2015. They include provisions to control trash, and a prohibition of trash discharge to surface waters of the State or of the deposition of trash in areas where trash may discharge to surface waters.

The Trash Amendments include Caltrans-specific requirements to comply with the prohibition of discharge of trash. These are similar to Track 2 for MS4 Phase I and II permittees, requiring the installation, operation, and maintenance of a combination of full capture systems, multi-benefit projects, other treatment controls, and/or institutional controls, in all significant trash generating areas. Caltrans must demonstrate that such combination of

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<sup>1</sup> The State Water Board adopted Order No. 2012- 0011-DWQ, on September 19, 2012, issuing waste discharge requirements as NPDES Permit No. CAS000003, and amended the Permit on May 20, 2014, with Order No. 2014-0077-DWQ, which modified the Department's trash reduction requirements by incorporating trash reduction requirements.

controls achieves 'full capture system equivalency'. Furthermore, in areas where Caltrans' operations overlap with the jurisdiction of a MS4 Phase I or II permittee with regulatory authority over priority land uses, the final Trash Amendments direct the applicable parties to coordinate efforts to install, operate, and maintain treatment and institutional controls.<sup>2</sup> The Trash Amendments also prohibit "the discharge of [trash] to surface waters of the State or the deposition of [trash] where it may be discharged into surface waters of the State".<sup>3</sup>

Pursuant to the Trash Amendments, Caltrans must demonstrate full capture system equivalency from all significant trash generating areas "within ten (10) years of the effective date of the first implementing NPDES permit, along with achievements of interim milestones such as average load reductions of ten percent (10%) per year. In no case may the final compliance date be later than fifteen (15) years from the effective date of the Trash Provisions."<sup>4</sup> Ten and fifteen years from the effective date falls on Dec 2, 2025 and Dec 2, 2030, respectively.

As detailed in the Order, the Regional Board expects Caltrans to control trash from 8,820 acres of significant trash generating areas. Therefore, the Order must explicitly include an implementation schedule, with associated acreage-based metrics. Revisions to the existing implementation schedule (p.4 of the Order) should approximate this schedule, assuming a December 2, 2015 baseline of 8,820 acres of significant trash generating areas and a ten percent annual load reduction rate:

- a) 3,600 acres or more by December 2, 2020;
- b) 4,600 acres or more by December 2, 2022;
- c) 5,700 acres or more by December 2, 2025; and
- d) All additional significant trash generating areas of right of way (ROW) by December 2, 2030.

The current implementation schedule does not explicitly require full capture equivalency from all significant trash generating areas and is inconsistent with the recommended average load reductions of ten percent (10%) per year, as well as the fifteen-year mandatory maximum compliance deadline.

### **Water Board's Definition of Significant Trash Generating Areas is Inconsistent with the Trash Amendments**

As detailed in the Order, Caltrans self-identified 8,820 acres as moderate or greater trash generation areas – with vegetation apparently surrounding or encompassing 5,100 acres of this category. The Order indicates the Water Board considers trash generation areas defined as moderate or greater to be significant trash generation areas, with the exception of such areas featuring vegetation that controls the generated trash. The Trash Amendments do not provide an exemption for significant trash generating areas surrounded by vegetation and we ask the Board to require control of all significant trash generating areas, consistent with the Trash Amendments.

Apparently, the Water Board agrees with Caltrans' opinion that these areas are not the 'highest priority for full trash capture implementation or equivalent controls'. The Water Board has therefore developed an arbitrary alternative definition of significant trash generating areas that assumes the presence of grass, bushes and trees serves as an appropriate and effective trash management control, and that such areas do not qualify as significant trash generation areas. As a result, the implementation schedule does not explicitly require management of such areas.

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<sup>2</sup> State Water Resources Control Board. April 7, 2015. Final Staff Report: Amendment to the Water Quality Control Plan for the Ocean Waters of California to Control Trash and Part 1 Trash Provisions of the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California. Available at [www.waterboards.ca.gov](http://www.waterboards.ca.gov)

<sup>3</sup> Refer to Appendix E of the prior reference (Final Part 1 Trash Provisions of the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California) at Section A.2

<sup>4</sup> Ibid at Section A.5.b(2)

Over the last decade, characteristics of the Water Board's approach to trash management in the region include shifting trash load baselines and behind-door agreements on issues ranging from the definition of trash, which sources are subject to regulation, and the methods for tracking progress. The Water Board's new and arbitrary definition, regarding which areas are subject to management at the timeline established in the Permit and Trash Amendments, is consistent with this trend.

We ask the Water Board to require full compliance with the Permit and provisions of the Trash Amendments, which underwent a lengthy and open review process prior to approval by the State Board. The Trash Amendments prohibit "discharge of [trash] to surface waters of the State or the deposition of [trash] where it may be discharged into surface waters of the State".<sup>5</sup> Caltrans and the Water Board have not explained how vegetation prevents discharge into surface waters and staff has not referenced a method for making this determination. Under this vague definition, presumably all right of ways (ROWs) with an adjacent vegetated buffer would qualify for this exemption. This may also include screened constructed wetlands designed to prevent discharge of large debris but otherwise destined to become vegetated trash receptacles.

To address this issue, we ask the Water Board explicitly require control of all significant trash generating areas within the implementation schedule.

### **Order does not Require Management of Other Non-Stormwater Discharges Contributing to Significant Trash Loading**

In the region's more urbanized sections, the nexus between trash, homelessness, and direct dumping in Caltrans ROWs is unavoidable to any driver. The issue relates to regional unaffordability and lack of social services, as well as poor interaction between Caltrans, local and county governments. There is currently little incentive for Caltrans to enhance lines of communication with local governments or social service providers, let alone conduct cleanups of active homeless encampments—and local communities refuse to patrol or enforce illegal camping on Caltrans ROWs due to real or perceived lack of jurisdiction. In cities with the most acute homeless crises, Caltrans ROWs and urban creeks have become de-facto homeless shelters.

We ask the Board to consider strengthening the Order to require greater action from Caltrans to address the most serious and known homeless encampments along its ROWs. The current draft requires only the submission of maps, visual assessments, and reports of cleanups not otherwise required by the Permit. This approach to trash compliance is consistent with trash management strategies from the municipal stormwater permitting structure, where compliance is measured not in terms of benefits to habitats and communities surrounding San Francisco Bay, but by the volume of paperwork submitted to the Water Board.

Baykeeper recognizes the difficulty of confronting water quality issues with a strong social welfare component and need to forge partnerships with non-traditional allies. Yet unfortunately, homelessness lies at the heart of some of the most serious water quality issues in our region. If the Water Board is serious about trash management, and restoring or reducing harm to urban creeks, permits must require greater action to compel enforcement of existing laws related to illegal camping and dumping, while increasing the availability of social services and coordination with providers.

Figures 1 through 6 show a known hotspot along I-80 at various times in 2018, near the Berkeley-Emeryville border. These and other photos were taken by concerned citizen, Richard James, and available at [coastodian.org/impact-of-homeless-camps-and-illegal-dumping-in-berkeley-ca-march-october-2018/](https://coastodian.org/impact-of-homeless-camps-and-illegal-dumping-in-berkeley-ca-march-october-2018/). For additional photos of trash and marine debris in East Bay cities and on the outer coast from Mr. James visit <https://coastodian.org>.

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5 Ibid. at Section A.2





*Figure 1. North-facing view of SF Bay towards Berkeley Marina (Richard James)*



*Figure 2. Trash and syringes on SF Bay beach between Emeryville and Berkeley Marinas (Richard James)*





Figure 3. Overflowing trash bins adjacent to I-80 in Berkeley, CA (Richard James)



Figure 4. Homeless encampment debris in a Caltrans ROW, on I-80 near the Berkeley-Emeryville border (Richard James)





Figure 5. Homeless encampment debris in a Caltrans ROW, on I-80 near the Berkeley-Emeryville border (Richard James)



Figure 6. Homeless encampment debris in a Caltrans ROW, on I-80 near the Berkeley-Emeryville border (Richard James)

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Thank you for considering Baykeeper's comments. We urge you at this time to strengthen the Order in light of lasting violations of Basin Plan Prohibition 7 and Attachment V, Part 2 of its Permit, as well as disregard for the statewide Trash Amendments. The current order rewards Caltrans for non-compliance, discourages cooperation with Bay Area municipalities subject to relevant municipal stormwater permits, and gives the impression that non-compliance with trash-related requirements across all permits will receive light enforcement.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ian Wren', with a stylized, cursive script.

Ian Wren  
Staff Scientist, San Francisco Baykeeper





Terry Young, Chair  
San Francisco Bay Regional Water Quality Control Board  
1515 Clay St  
Suite 1400  
Oakland, CA 94612

January 14, 2019

**Re: Tentative Order for Caltrans Trash Control Implementation**

Dear Chair Young and Board Members,

Thank you for the opportunity to comment on the Tentative Order for Caltrans Trash Control Implementation. Save The Bay has worked for over a decade to prevent trash from impacting Bay water quality and wildlife. While the Municipal Regional Stormwater Permit is achieving progress by holding local agencies responsible for their share of Bay pollution, Caltrans has not complied with its stormwater permit and has delayed significant implementation for years, even after formal notice of violation from you. As written, the Tentative Order will not adequately reduce trash flows to the Bay from Caltrans roads and does not ensure compliance with the Federal Clean Water Act. You should make significant changes to strengthen the Order, accelerate its implementation, and increase the trash generating acreage treated in the next few years.

Cities and counties are required to implement 80 percent full trash capture or equivalent actions in their MS4 by July of this year. Much of their progress to date by has occurred over the past four years with the installation of hundreds of trash capture devices across the region, and other trash control strategies. In the same time period, Caltrans has been in repeated violation of its stormwater discharge requirements and has yet to develop an acceptable trash control plan for thousands of acres of agency right-of-way in the Bay Area.

This draft order fails to hold Caltrans accountable for the same trash control requirements you impose on our cities and counties. The order's protracted timeline and inadequate treatment acreage requirements will hamper cities' ability to meet their permit requirements in a timely manner, while continuing to decrease beneficial uses and enjoyment of the Bay by residents and visitors.

We strongly urge you to revise the draft order in the following ways:

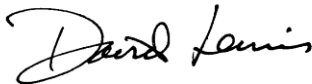
- **Require Caltrans to install full trash capture or implement actions equal to full trash capture according to the following timeline:**
  - 1,150 acres by 2020
  - 2,750 acres by 2022
  - 6,000 acres by 2024
  - All significant trash generating area—no less than 8,820 acres—by 2028

In their April 2018 draft of this order, Regional Board staff included these interim deadlines for full trash capture or equivalent in 2022 and 2024 and a final deadline for full trash capture in all significant trash generating areas by 2028. We see no reason to establish a slower compliance timeline, as trash has been fouling the watershed and Bay waters for far too long.

- **Require Caltrans to submit a trash generation map and initial work plan within 3 months of order adoption.** This order is already long overdue and Caltrans has already failed for the last four years to submit sufficient plans despite your repeated requests. You should require Caltrans to submit a detailed and explicit plan immediately that includes a specific commitment to provide implementation funds in current and future budgets.
- **Remove references to potential time extensions.** Bay Area municipal permittees do not have this option and have diligently identified solutions to a variety of feasibility issues. Caltrans must be required to comply with the Clean Water Act and the deadlines and requirements of your final order, and should collaborate with cities and counties to meet those deadlines and requirements.
- **Require Caltrans to include operation and maintenance (O&M) funding in cooperative agreements with municipalities.** In addition to capital costs, maintaining large trash capture devices over their lifetime is a major expense that municipalities should not bear alone.

Our shared vision for a Bay free of trash has the force of law, regulations and approved permits. But that objective can only be achieved if all responsible agencies are held to the same strong standards for compliance and accountability. Equal application of these requirements will ensure continued enjoyment of the Bay by all, and will protect the ecological health of a resource that our region depends so deeply upon. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "David Lewis". The signature is fluid and cursive, with the first name "David" and last name "Lewis" clearly distinguishable.

David Lewis  
Executive Director



Campbell • Cupertino • Los Altos • Los Altos Hills • Los Gatos • Milpitas • Monte Sereno • Mountain View • Palo Alto  
San Jose • Santa Clara • Saratoga • Sunnyvale • Santa Clara County • Santa Clara Valley Water District

*Submitted via email on January 14, 2019*

Dale Bowyer  
San Francisco Bay Regional Water Quality Control Board  
1515 Clay Street, Suite 1400  
Oakland, CA 94612

**Re: Tentative Cease and Desist Order to the California Department of Transportation**

Dear Mr. Bowyer:

This letter is submitted on behalf of the Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPPP) and provides comments on the Tentative Cease and Desist Order (Tentative Order) for the California Department of Transportation (Caltrans). SCVURPPP is an association of 13 cities and towns<sup>1</sup> in the Santa Clara Valley, the unincorporated Santa Clara County and the Santa Clara Valley Water District. Along with other San Francisco Bay Area public agencies, SCVURPPP participating agencies are Permittees to the Municipal Regional Stormwater National Pollutant Discharge Elimination System (NPDES) permit in the San Francisco Bay Area (also referred to as the MRP), which is issued by the Regional Water Board. As Permittees, SCVURPPP participating agencies are subject to trash reduction requirements included in the MRP, which require local public agencies to achieve numeric trash load reductions by specific milestones, including 80% trash load reduction by July 2019.

We appreciate the Regional Water Board's attention to this important issue and Caltrans' recent progress towards enhancing coordination with MRP Permittees on potential trash control projects that would mutually-benefit local agencies and Caltrans. Because the 25,000 acres of Caltrans right-of-way (ROW) in the Bay Area is intertwined with MRP Permittee jurisdictional areas, the fact that many of Caltrans stormwater conveyance systems are directly-connected to MRP Permittee systems, and substantial volumes of trash are generated on Caltrans' ROWs, MRP Permittees and their ability to comply with the MRP's ambitious trash load reduction requirements and timetable are directly affected by the success of Caltrans (or lack thereof) achievement of trash reduction milestones.

As governmental partners in reducing the impacts of trash to Bay Area water bodies, we have identified a number of issues in the CDO that should be reconciled before adoption by the Regional Water Board to better address the disparity of the regulatory burdens and timelines placed on Caltrans and local agencies and allow for a better chance of achieving the Regional Water Board's ambitious trash reduction goals within a reasonable time, given the relative resources available to both. Each of these issues are described below.

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<sup>1</sup> Campbell, Cupertino, Los Altos, Los Altos Hills, Los Gatos, Milpitas, Monte Sereno, Mountain View, Palo Alto, San Jose, Santa Clara, Saratoga and Sunnyvale

- **Provide More Clarity on Benchmark Acreages**

Provision 1 in the Tentative Order states that Caltrans “shall implement structural and non-structural trash controls to meet full trash capture equivalency in significant trash generating areas of Department ROW as soon as possible but no later than the following benchmark acreages and dates:

- a. 1,150 acres or more by June 30, 2020;
- b. 1,250 acres or more by June 30, 2022;
- c. 1,750 acres or more by June 30, 2024;
- d. 3,720 acres or more by June 30, 2026; and
- e. All additional significant trash generating areas of ROW identified by visual assessments conducted in 2021, 2025, and 2029 by December 2, 2030.”

Based on this language, it is unclear as to whether the benchmark acreages are intended to be additive or absolute. The difference between the two (additive versus absolute) is more than 4,000 acres by 2026. If absolute, it is unclear as to why Caltrans will only be required to achieve full capture equivalency in an additional 100 additional acres over two years (2020-2022), a very low bar for trash control measure implementation in the near-term and inconsistent with the timelines required of MRP Permittees to achieve ambitious trash reduction goals.

**Recommendation:** The words “an additional” should be inserted prior to the acreages in subprovisions a-d to provide clarity that the benchmark acreages included in provision 1 are additive and not absolute.

- **Ensure Consistent Definition of Trash Generating Areas**

Given SCVURPPP Permittees’ understanding of the levels of trash on Caltrans’ ROWs and the previously identified underestimation of trash levels by Caltrans using an uncalibrated assessment method, the statement included in the Tentative Order that only 8,820 acres of Caltrans’ 25,000 acres of ROW (35%) generate moderate or greater levels of trash is suspect. The vast majority of Bay Area freeways, highways, and other Caltrans areas consistently generate significant levels of trash at moderate or greater levels. While we understand that the baseline mapping and associated assessments is still underway and trash generation levels will be adjusted accordingly, we remain concerned that the standardized definition of trash generating areas (i.e., moderate or greater trash generation as observed via on-land visual assessments) is not being consistently applied by Caltrans.

**Recommendation:** We appreciate the requirement in the Tentative Order that Caltrans uses the visual assessment methodology developed via the Bay Area Stormwater Management Agencies Association (BASMAA), but to ensure appropriate application of the method, we request that the Regional Water Board require Caltrans to provide full documentation of all assessment results used to establish baseline trash conditions. Furthermore, we request that Water Board staff fully evaluate these results to ensure consistency with the established method now used throughout the State to define trash generating areas. Inconsistencies in the application of these methods could significantly alter the extent of trash control measure implementation by Caltrans and prejudice local agencies in terms of the relative burdens imposed under the Caltrans permit/CDO and the MRP. Therefore, the methods used and the results generated by Caltrans should be fully disclosed and evaluated by both Board staff and local agencies prior to the approval/finalization of baseline trash generation maps.

- **Ensure Consistency Between Caltrans CDO and the MRP Implementation Timelines**

Trash load reduction requirements for MRP Permittees first went into effect in December 2009. Permittees were required to develop baseline trash generation levels/maps and methods to demonstrate trash load reductions in less than two years. MRP Permittees spent significant time and resources to develop baseline trash generation maps and developed assessment approaches that were acceptable to the Regional Water Board. Although it did not shoulder the financial and staff time burden associated with their development, these established methods are now to be used by Caltrans to identify trash generating areas with its ROWs. Given that the methods are already well established and have proven practical in the field, it is unclear why Caltrans is being afforded until October 2019 to develop its Baseline Trash Generation Map.

Additionally, local agencies were required to achieve a 40% trash load reduction in jurisdictional areas within four years of the adoption of the MRP. As described in the Tentative Order, Caltrans is to be afforded almost twice as long to address only 15% of their ROW (3,720 acres), and will be provided an additional four years to address their remaining trash generating areas. This timeline to achieve trash reduction milestones is wholly inconsistent with the milestones in the MRP, which require MRP Permittees to address all trash generating areas by 2022 and will render it impossible for local agencies to meet the MRP's ambitious goals and timelines unless they are similarly readjusted.

**Recommendation:** To accommodate the practical implications of the Caltrans CDO's timeline and provide consistency and a level playing field, we request that during the reissuance of the MRP, the Regional Water Board provide MRP Permittees with revised timelines for achievement of trash reduction goals to align with what it has afforded Caltrans.

- **Provide More Clarity on Caltrans' Responsibility for Trash Generated on State Highways**

Of the 25,000 acres identified by Caltrans as their ROW, roughly 7,100 acres (28%) are State Highways. These highways also serve as arterial roads that transect Bay Area cities and counties and trash generating areas. These State Highways include El Camino Real (San Mateo and Santa Clara Counties), San Pablo Avenue (Contra Costa and Alameda Counties), International Boulevard (Alameda County), and Ashby Avenue (Alameda County), all of which generate significant levels of trash. Because these arterial roads are directly connected to adjacent land uses, these Caltrans ROW areas are currently included on MRP Permittee Baseline Trash Generation Maps. As a result, their inclusion effectively require local agencies to implement measures to control trash from Caltrans property without Caltrans contributing resources to implement such measures. Although there are maintenance agreements between local agencies and Caltrans to conduct street sweeping and/or storm drain inlet cleaning on certain segments of these highways, many of these maintenance agreements pre-date the Regional Water Board's trash requirements and no agreements have yet to include a provision of funding from Caltrans to local agencies to help defray the local agencies' cost of trash control measure implementation. To date, Caltrans has been unwilling to revise these agreements to assist with enhanced trash control measure implementation or even to enter into meaningful discussions about such burden-sharing.

**Recommendation:** To ensure that Caltrans takes the appropriate responsibility for controlling trash generated on State Highways, we request that the Regional Water Board ensure that all State Highways, regardless of whether maintenance agreements are in place or not, are included on Caltrans baseline maps and that the trash associated with these areas is fully controlled by Caltrans. Additionally, we request that the Regional Water Board allow MRP Permittees to

remove Caltrans ROWs identified as State Highways from their baseline maps and adjust baseline trash generation accordingly. These revisions to MRP baseline maps and the inclusion of State Highways on Caltrans maps will avoid double counting and provide the mechanism needed for an appropriate allocation of relative burdens. Absent such an adjustment, the needed incentives and impetus for enhanced coordination among MRP Permittees and Caltrans on trash control measure implementation for these land areas will, as a practical matter, continue to be lacking.

- **Require Caltrans to Provide On-Going Funding for the Operation and Maintenance of Trash Full Capture Systems of Mutual Benefit**

As the result of recent discussions between Caltrans and MRP Permittees on potential cooperative agreements to fund the capital costs of trash full capture systems that address trash from Caltrans' ROW and MRP Permittee jurisdictional areas, it is our understanding that should a city or county enter into an agreement with Caltrans, funding for on-going operation and maintenance of these devices would generally not be provided by Caltrans. Because operation and maintenance are required to ensure the proper trash capture performance of a device, the city/county would then be disproportionately and unfairly burdened by the operation and maintenance costs for the life of the device. This lack of O&M funding provides little incentive for MRP Permittees to enter into cooperative agreements with Caltrans for installation of full trash capture devices serving both in the first instance, particularly given that funding for O&M is extremely difficult for cities and counties to secure for long timeframes. Additionally, the lack of O&M funding from Caltrans provides it with little impetus for ensuring that full capture devices serving to address its ROW are maintained and performing adequately.

**Recommendation:** To ensure that trash full capture systems installed via cooperative agreements between Caltrans and MRP Permittees adequately function and capture trash over time, we request that the Regional Water Board include a requirement in the Tentative Order that requires Caltrans to demonstrate that it is providing for O&M of any full capture devices on which it relies to address its permit/CDO requirements, either by assuming in cooperative agreements with local agencies an appropriate proportion of such maintenance responsibilities itself or by providing an appropriate level of funding to MRP Permittees to take on that proportional share of implementation responsibilities (This requirement could be included in "Trash Control Implementation Workplan" described under Provision #4 of The CDO).

Thank you for the opportunity to provide comments on the Draft Tentative Order. We hope that the Regional Water Board will fully consider these comments and our recommendations for modifications to the Order prior to its adoption. Please contact me directly at (510) 832-2852 (x115) should you have questions regarding our comments and recommendations.

Sincerely,



Adam W. Olivieri Dr. PH, P.E.  
Program Manager

cc. SCVURPPPP Management Committee  
Tom Mumley, Assistant Executive Officer, SF Bay Water Board  
Keith Lichten, Division Chief, SF Bay Water Board



**From:** [David Lewis](#)  
**To:** [Bowyer, Dale@Waterboards](mailto:Bowyer.Dale@Waterboards)  
**Subject:** Letter to the Regional Water Quality Control Board  
**Date:** Monday, January 14, 2019 8:52:08 PM

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*Dear Chair Young and Members of the Board:*

*California's state agencies should be leaders in complying with federal and state pollution laws that protect San Francisco Bay and other waterways. But the California Department of Transportation (Caltrans) has failed for years to comply with the Clean Water Act and its stormwater permit requirements to control trash.*

*More than two years after a formal Notice of Violation, Caltrans still has not produced an acceptable plan to halt its illegal pollution. We appreciate the Board finally proposing a Draft Order requiring Caltrans to take specific trash control measures, but that order must be significantly strengthened to reduce damage to the Bay. We urge you to revise the draft order to require:*

- Accelerated installation of full trash capture actions that intercept trash from an additional 1,000 acres each year to achieve 6,000 acres of treatment by 2024, and treatment of all significant trash generating areas – no less than 8,820 acres – by 2028,*
- Submission by Caltrans of a detailed trash generation map and explicit work plan within 3 months of permit adoption, and commitment of budgeted funds to implement the order,*
- Cooperative agreements with municipalities to fund operation and maintenance of trash capture devices in addition to installation.*

*These changes are essential to protect the Bay's ecology and recreational value, achieve timely compliance with pollution laws, and hold Caltrans accountable for the same trash control requirements you impose on cities and counties. The Board should vote to approve the Order with these changes.*

*Thank you for taking these crucial actions to stop pollution of the Bay from Caltrans roads.*

*Sincerely,*

**First Name**

████

**Last Name**

██████

**Email**

██████████████████

**City**

██████████

**ZIP Code**

[REDACTED]

**Petition Signed**

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