

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

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)¹, 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

¹ 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.² 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”.³

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.”⁴ 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.

² 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

³ 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

⁴ 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”.⁵ 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/. For additional photos of trash and marine debris in East Bay cities and on the outer coast from Mr. James visit <https://coastodian.org>.

5 Ibid. at Section A.2



2018.03.16 - West Frontage Road - site of much waste dumping, human, dog feces dumping

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



2018.03.16 - West Frontage Road - site of much waste dumping, human, dog feces dumping

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)

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". The signature is fluid and cursive, with the first name "Ian" and last name "Wren" clearly distinguishable.

Ian Wren
Staff Scientist, San Francisco Baykeeper