

California Regional Water Quality Control Board  
San Diego Region

**Responses to Comments**

**Tentative Investigative Order No. R9-2016-0205**

*An Order Directing the Owners and Operators of Phase I  
Municipal Separate Storm Sewer Systems (MS4s) Draining the  
Watersheds Within the San Diego Region*

*To Submit Technical and Monitoring Reports Pertaining to the  
Control of Trash in Discharges From Phase I MS4s to Ocean  
Waters, Inland Surface Waters, Enclosed Bays, and Estuaries in  
the San Diego Region*

June 2, 2017

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN DIEGO REGION**

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**California Regional Water Quality Control Board  
San Diego Region**

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## Introduction

This report contains the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) responses to written comments received on Tentative Order No. R9-2016-0205, *An Order Directing the Owners and Operators of Phase I Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds Within the San Diego Region to Submit Technical and Monitoring Reports Pertaining to the Control of Trash in Discharges From Phase I MS4s to Ocean Waters, Inland Surface Waters, Enclosed Bays, and Estuaries in the San Diego Region*. The San Diego Water Board provided public notice of the release of the Tentative Order on November 10, 2016 and provided a period of 34 days for public review and comment. The public comment period ended on December 14, 2016. Summaries of the written comments and San Diego Water Board responses are in the table that follows. The comments are organized according to related sections in Tentative Order No. R9-2016-0205. The table indicates if the Tentative Order was revised in response to the comment.

The San Diego Water Board received 22 comment letters during the comment solicitation period.

### List of Commenters:

1. California Manufacturers & Technology Association
2. California Stormwater Quality Association (CASQA)
3. City of Carlsbad
4. City of Coronado
5. City of Dana Point
6. City of Encinitas
7. City of Escondido
8. City of La Mesa
9. City of Lake Forest
10. City of Menifee
11. City of San Clemente
12. City of San Juan Capistrano
13. City of Santee
14. City of Solana Beach
15. City of Vista
16. City of San Diego

17. County of Orange (on behalf of itself and the Cities of Aliso Viejo, Dana Point, Laguna Hills, Laguna Niguel, Lake Forest, Mission Viejo, and Rancho Santa Margarita)
18. County of San Diego
19. Riverside County Flood Control and Water Conservation District
20. San Bernardino County
21. Unified Port of San Diego
22. Upper Santa Margarita River Copermittees (County of Riverside and Cities of Murrieta, Temecula, and Wildomar)

Abbreviations used in this document:

Caltrans	California Department of Transportation
CASQA	California Stormwater Quality Association
ISWEBE Plan	Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California
MS4	Municipal Separate Storm Sewer Systems
Ocean Plan	Water Quality Control Plan for Ocean Waters of California
Order	Order No. R9-2017-0077, the finalized version of Tentative Order No. R9-2016-0205
Regional MS4 Permit	Order No. R9-2013-0001, as amended by Order Nos. R9-2015-0001 and R9-2015-0100
San Diego Water Board	California Water Quality Control Board, San Diego Region
State Water Board	State Water Resources Control Board
Tentative Order	Tentative Order No. R9-2016-0205

Comment No.	Tentative Order Location/Subject	Comment Summary	Submitted By	San Diego Water Board Response
1	General Comment <i>Need for Public Hearing</i>	The San Diego Water Board should hold a public hearing prior to issuance of an Investigative Order.	<ul style="list-style-type: none"> <li>• CASQA</li> </ul>	The San Diego Water Board Executive Officer has reviewed the revised Tentative Order, written comments, and responses in this matter and made the determination to issue the final Order under his delegated authority.
2	General Comment <i>Compliance with Receiving Water Limitations</i>	The Tentative Order should indicate that meeting the trash discharge prohibition via Track 1 or Track 2 would also mean the MS4 permittees are in compliance with Receiving Water Limitations (i.e., meeting the water quality objectives).	<ul style="list-style-type: none"> <li>• City of San Diego</li> </ul>	The San Diego Water Board disagrees that the Tentative Order needs to stipulate that compliance with the trash discharge prohibition means compliance with the receiving water limitations. The Trash Amendments specifically state that MS4 permittees that are in full compliance with requirements for the control of trash, as specified in the implementing permit, shall be determined to be in compliance with the <i>discharge prohibition</i> . However, no such language is included in the Trash Amendments to indicate that full compliance with requirements for the control of trash would also mean an MS4 permittee would be in compliance with either receiving water limitations or water quality objectives. This was not an oversight; this was intended by the State Water Board (see responses to Comment Numbers 4.1 and 10.9 of Appendix F to the State Water Board’s Final Staff Report for Trash Amendments dated April 7, 2015). <sup>1</sup>

<sup>1</sup> Appendix F of the State Water Board Final Staff Report on the Trash Amendments is available on the State Water Board website at [http://www.waterboards.ca.gov/water\\_issues/programs/trash\\_control/docs/trash\\_sr\\_040715.pdf](http://www.waterboards.ca.gov/water_issues/programs/trash_control/docs/trash_sr_040715.pdf) (as of May 17, 2016).

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3	General Comment <i>Unfunded Mandate</i>	The requirements associated with the Tentative Order are state-issued unfunded mandates for which funding has not been provided, and thus the requirements are subject to the provisions of Calif. Const. article XIII B, section 6. The Tentative Order should provide a funding source for these requirements.	<ul style="list-style-type: none"> <li>• City of Dana Point</li> <li>• City of Escondido</li> <li>• City of Lake Forest</li> <li>• City of San Clemente</li> <li>• City of San Juan Capistrano</li> <li>• City of Santee</li> <li>• County of Orange</li> <li>• San Bernardino County</li> </ul>	The San Diego Water Board disagrees that the requirements associated with the Tentative Order are state-issued unfunded mandates. The water quality objective established by the Trash Amendments serves as a water quality standard federally mandated under Clean Water Act section 303(c) and the federal regulations (33 U.S.C. § 1312, 40 C.F.R. § 131). This water quality standard was specifically approved by USEPA following adoption by the State Water Board and approval by the Office of Administrative Law. The final Order is issued under federal authority. The San Diego Water Board has included revisions to clarify the legal authority forming the basis for the final Order.
4	General Comment <i>State Guidelines Needed</i>	The Tentative Order should not be issued until State guidelines on Track 2 implementation (such as interjurisdictional matters including compliance monitoring when trash is discharged into a common MS4) are provided.	<ul style="list-style-type: none"> <li>• City of Lake Forest</li> <li>• City of San Clemente</li> <li>• City of San Juan Capistrano</li> <li>• City of Santee</li> <li>• San Bernardino County</li> </ul>	The San Diego Water Board disagrees that the Tentative Order should not be issued until State guidelines on Track 2 implementation are provided. The San Diego Water Board will issue the final Order in accordance with the timing requirements stipulated in the Trash Amendments. It is the San Diego Water Board's understanding that the State Water Board is not planning to provide guidance on compliance monitoring. However, the San Diego Water Board encourages the MS4 permittees to initiate dialogue with stakeholders, including the San Diego Water Board, to discuss trash reduction proposals. The San Diego

Comment No.	Tentative Order Location/Subject	Comment Summary	Submitted By	San Diego Water Board Response
				Water Board will assist MS4 permittees during Track 2 implementation plan development to clarify interpretation of the final Order requirements.
5	General Comment <i>Jurisdictional Liability</i>	The Tentative Order and implementing permit should include language clarifying that an MS4 permittee is not liable for any trash resulting from other MS4 permittees upstream.	<ul style="list-style-type: none"> <li>• Unified Port of San Diego</li> </ul>	The San Diego Water Board disagrees that the Tentative Order and implementing permit should include language clarifying that an MS4 permittee is not liable for any trash resulting from other MS4 permittees upstream. The purpose of the Order is to implement the statewide Trash Amendments. The requirements therein will be incorporated into the Regional MS4 Permit upon permit reissuance. Provision E.2.b.(6) of the Regional MS4 Permit states that “Each Copermittee must coordinate, when necessary, with upstream Copermittees and/or entities to prevent illicit discharges from upstream sources into the MS4 within its jurisdiction.” Therefore, the San Diego Water Board’s expectation is that MS4 permittees (identified as Copermittees in the Regional MS4 Permit) coordinate to prevent illicit discharges, including trash, as necessary. Downstream MS4 permittees may consider trash monitoring at jurisdictional boundaries to demonstrate that trash discharges originate from upstream areas, beyond their jurisdictional authority.
6	General Comment	The Tentative Order should not be issued until a list of “certified”	<ul style="list-style-type: none"> <li>• City of Dana Point</li> </ul>	The State Water Board will issue a list of “certified” full capture devices



Comment No.	Tentative Order Location/Subject	Comment Summary	Submitted By	San Diego Water Board Response
	<i>List of “Certified” Full Capture Devices and Demonstration of Full Capture Equivalency Needed</i>	full capture devices is made available, as well as guidance on topics such as demonstration of full capture equivalency. This is needed before MS4 permittees can make an informed decision on choosing Track 1 or Track 2.	<ul style="list-style-type: none"> <li>• City of Lake Forest</li> <li>• City of San Diego</li> <li>• City of San Juan Capistrano</li> <li>• San Bernardino County</li> <li>• Unified Port of San Diego</li> </ul>	simultaneously with their planned issuance of a Water Code section 13383 Order to Phase II MS4 permittees regarding implementation of the Trash Amendments. This will occur within the same general time frame as the issuance of the San Diego Water Board’s Order to Phase 1 MS4 permittees in the San Diego Region. The State Water Board may provide limited guidance on demonstrating full capture equivalency. However, the San Diego Water Board encourages the MS4 permittees to initiate dialogue with stakeholders, including the San Diego Water Board, to discuss trash control proposals. The San Diego Water Board will assist with Track 2 implementation plan development as it pertains to interpretation of the requirements of the final Order.
7	General Comment <i>Review of Track 2 Implementation Plans</i>	As Track 1 is the State Board’s preferred option for compliance with the Trash Amendments, Regional Boards should be cautious when reviewing Track 2 Implementation Plans to ensure that full capture system equivalency will be met. Adoption of local product ban ordinances is ineffective.	<ul style="list-style-type: none"> <li>• California Manufacturers &amp; Technology Association</li> </ul>	The San Diego Water Board appreciates the comment. The San Diego Water Board intends to closely review Track 2 implementation plans to ensure proposed strategies comply with the requirement to achieve full capture system equivalency. The definition of institutional controls in the Trash Amendments does not preclude the adoption of local product ban ordinances.
8	General Comment <i>Caltrans and Phase II MS4s</i>	Clear and consistent requirements should be applicable to all regulated parties	<ul style="list-style-type: none"> <li>• City of Dana Point</li> </ul>	The San Diego Water Board agrees that Caltrans and Phase II permittees should be required to address trash at the same time to promote cooperation and

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	<i>Should Have Same Requirements as Phase I Permittees</i>	at the same time to promote cooperation and coordination.		coordination. The State Water Board is the lead agency for issuance of requirements to both Caltrans and Phase II MS4 permittees pertaining to the Trash Amendments. In terms of timing, the Trash Amendments require that Regional Water Boards either modify, re-issue, or adopt an MS4 permit to implement the requirements of the Trash Amendments, or issue an Investigative Order pursuant to Water Code section 13267 or 13383 to implement the requirements of the Trash Amendments within eighteen months of the effective date. The San Diego Water Board has chosen to require the initial steps in planning for the implementation of the Trash Amendments through issuance of a final Order pursuant to Water Code section 13383 on or before June 2, 2017.
9	<i>Finding 4 Inclusion of City of Menifee</i>	The designation of the City of Menifee as an MS4 permittee in the Tentative Order incorrectly implies that all of the requirements of the Tentative Order are applicable to the City, which is inconsistent with Finding 29.b of the San Diego Regional MS4 Permit, which states that the City of Menifee is largely regulated by the Santa Ana Water Board. The Trash Amendments are to be implemented on a jurisdictional	<ul style="list-style-type: none"> <li>• City of Menifee</li> </ul>	The San Diego Water Board agrees that inclusion of the City of Menifee in the Tentative Order is not necessary because the City of Menifee is regulated by the Santa Ana Water Board under Order No. R8-2010-0033 (as it may be amended or reissued). The Santa Ana Water Board is the “permitting authority” with regulatory oversight over the City of Menifee’s jurisdictional runoff management program.

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		basis, and the City of Menifee reports jurisdiction-wide activities to the Santa Ana Water Board.		
10	Finding 4 and Directive A.1 <i>Inclusion of Riverside Co. Flood Control and Water Conservation District</i>	The Riverside County Flood Control and Water Conservation District (District) should not be included in the Tentative Order because the District does not have regulatory authority over priority land uses.	<ul style="list-style-type: none"> <li>• Riverside County Flood Control and Water Conservation District</li> </ul>	The San Diego Water Board concurs with the District that it lacks regulatory authority over Priority Land Uses and is not subject to the requirements of the Tentative Order to declare implementation of Track 1 or Track 2 compliance tracks, as required by Chapter IV.A.3.a of Appendix E of the ISWEBE Plan and Chapter III.L.2.a. of Appendix D of the Ocean Plan. Therefore a footnote was added to Directive A indicating that the requirements applicable to other dischargers described in Finding 4 do not apply to the District. However, the San Diego Water Board disagrees that the District should not be required to implement trash controls in land uses and locations within its jurisdiction that generate substantial amounts of trash. The Trash Amendments were intended to reduce discharges of trash to receiving waters from land uses or locations that generate substantial amounts of trash, not just Priority Land Uses. The District may have facilities, drainage structures, or easements within its jurisdiction that in fact do generate trash, therefore the revised Tentative Order has a new requirement specific to the District (Directive A.4) that requires such areas to

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				be identified. In accordance with the Trash Amendments (Appendix E of the Ocean Plan Chapter III.L.2.d and Appendix D to the ISWEBE Plan Chapter IV.A.3.d), the San Diego Water Board has the authority to determine that specific land uses or locations generate substantial amounts of trash, and may require MS4 permittees to comply with the requirements of the Trash Amendments. The San Diego Water Board may use information submitted as required by Directive A.4 to require the District to comply with the requirements of the Trash Amendments upon Regional MS4 Permit reissuance.
11	Finding 7 <i>Compliance with Water Quality Objective and Trash Prohibition</i>	The Tentative Order should clarify that timely and complete implementation of Track 1 or Track 2 will meet the narrative water quality objectives and constitute compliance with the trash discharge prohibition as described in the Trash Amendments.	<ul style="list-style-type: none"> <li>• CASQA</li> <li>• City of Carlsbad</li> <li>• City of Coronado</li> <li>• City of Encinitas</li> <li>• City of Escondido</li> <li>• City of Solana Beach</li> <li>• City of Vista</li> <li>• County of San Diego</li> <li>• Unified Port of San Diego</li> </ul>	The San Diego Water Board agrees that MS4 permittees in full compliance with the requirements to control trash as described in the Trash Amendments shall be determined to be in compliance with the trash discharge prohibition. The San Diego Water Board disagrees that a MS4 permittee meeting the discharge prohibition is to be deemed in compliance with either receiving water limitations or narrative water quality objectives (see Response to Comment 2). The San Diego Water Board has not modified the Tentative Order in response to this comment. Full compliance with such requirements (Appendix D, Chapter III, section I.6.a of the Ocean Plan and

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				<p>Appendix E, Chapter IV, section A.2.a of the ISWBE Plan) is more than just fully implementing the requirements of Track 1 or Track 2—it also includes compliance with the requirements to meet the schedule, coordinate efforts with Caltrans, and monitor and report. The more appropriate location for describing compliance with trash control requirements is either the implementing Regional MS4 Permit or the associated fact sheet. The San Diego Water Board will consider adding language to the Regional MS4 Permit with respect to a compliance pathway with the discharge prohibition, that is consistent with language from the Trash Amendments, during re-issuance of the Regional MS4 Permit.</p>
12	<p>Finding 7  <i>Omission of Language Providing Flexibility</i></p>	<p>Finding 7 of the Tentative Order describing the Track 2 language omits some of the Track 2 language in the Trash Amendments. <i>“The MS4 permittee may determine the locations or land uses within its jurisdiction to implement any combination of controls.”</i></p>	<ul style="list-style-type: none"> <li>• CASQA</li> <li>• City of Carlsbad</li> <li>• City of Coronado</li> <li>• City of Encinitas</li> <li>• City of Escondido</li> <li>• City of Solana Beach</li> <li>• City of Vista</li> <li>• City of San Diego</li> </ul>	<p>The San Diego Water Board agrees that the Tentative Order omits some of the Track 2 language in the Trash Amendments and has modified the Tentative Order as suggested by the commenters in Finding 7.</p>

Comment No.	Tentative Order Location/Subject	Comment Summary	Submitted By	San Diego Water Board Response
			<ul style="list-style-type: none"> <li>• County of San Diego</li> <li>• County of Orange</li> <li>• Riverside County Flood Control and Water Conservation District</li> <li>• Unified Port of San Diego</li> <li>• Upper Santa Margarita River MS4 Permittees</li> </ul>	
13	Finding 7 <i>Review and Approval Process for Track 2 Implementation Plans</i>	The Tentative Order does not describe the San Diego Water Board’s review and approval process for Track 2 implementation plans. Language outlining the milestones and timing for approval should be added to Finding 7. This is needed to understand implementation expectations.	<ul style="list-style-type: none"> <li>• CASQA</li> <li>• City of Carlsbad</li> <li>• City of Coronado</li> <li>• City of Encinitas</li> <li>• City of Escondido</li> <li>• City of Vista</li> <li>• City of San Diego</li> <li>• County of San Diego</li> <li>• Unified Port of San Diego</li> </ul>	The San Diego Water Board agrees and added language to Finding 7 stating that “Track 2 implementation plans will be deemed accepted by the San Diego Water Board ninety (90) days after submission unless otherwise directed in writing by the San Diego Water Board Executive Officer.”

Comment No.	Tentative Order Location/Subject	Comment Summary	Submitted By	San Diego Water Board Response
14	Finding 7 <i>Implementation Plan Submittal Should Correspond with Implementing MS4 Permit</i>	The due date for the Track 2 Implementation Plans should correspond with the language that is released in the next iteration of the MS4 permit (implementing permit). Otherwise, MS4 permittees will not have a clear understanding of trash related requirements in the implementing permit.	<ul style="list-style-type: none"> <li>• Unified Port of San Diego</li> </ul>	The San Diego Water Board intends to propose language, consistent with the requirements in the Trash Amendments, in the next iteration of the Regional MS4 Permit. The San Diego Water Board will assist during Track 2 implementation plan development to clarify interpretation of the final Order requirements.
15	Finding 7 <i>Ability to Change Compliance Tracks</i>	The Tentative Order should clearly state that MS4 permittees may change tracks, provided they submit sufficient supporting justification. MS4 permittees may wish to choose Track 1 because of simplicity and compliance certainty it provides, but find some locations where full capture system implementation is not possible and therefore need to switch to Track 2.	<ul style="list-style-type: none"> <li>• City of Carlsbad</li> <li>• City of Encinitas</li> <li>• City of Escondido</li> <li>• City of Lake Forest</li> <li>• City of San Clemente</li> <li>• City of San Juan Capistrano</li> <li>• City of Santee</li> <li>• City of Solana Beach</li> <li>• City of Vista</li> <li>• County of San Diego</li> <li>• Riverside County Flood Control and Water</li> </ul>	The San Diego Water Board agrees with this recommendation and has modified Finding 7 of the Tentative Order to clarify that MS4 permittees may change Tracks through the adaptive management process, provided they submit supporting justification to the San Diego Water Board.

Comment No.	Tentative Order Location/Subject	Comment Summary	Submitted By	San Diego Water Board Response
			Conservation District • San Bernardino County • Unified Port of San Diego • Upper Santa Margarita River MS4 Permittees	
16	Finding 7 <i>Credit for Existing Efforts</i>	The Tentative Order should clarify that existing controls may be used and monitored to achieve full capture system equivalency.	• City of Solana Beach	The San Diego Water Board agrees that MS4 permittees should evaluate existing controls to determine appropriateness of including such controls in Track 2 implementation plans. “Determining appropriateness” should include evaluation of existing BMP performance against performance standards of “certified” full capture devices. The San Diego Water Board is amenable to inclusion of existing controls in a MS4 permittee’s implementation plan provided that rationale is included to support that determination. Since this analysis is done in the implementation plan (consistent with what is required in the Trash Amendments), no change to the Tentative Order was made.
17	Finding 8 <i>Full Capture System</i>	The definition for full capture system equivalency omits some language from the Trash Amendments that provides	• CASQA • City of Carlsbad	The San Diego Water Board agrees and has modified Finding 8 of the Tentative Order as suggested by the commenters.



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	<i>Equivalency Definition</i>	needed flexibility to the MS4 permittees. The Tentative Order should read: “ <i>Examples of such approaches include, <u>but are not limited to</u>, the following...</i> ”	<ul style="list-style-type: none"> <li>• City of Encinitas</li> <li>• City of Escondido</li> <li>• City of Solana Beach</li> <li>• City of Vista</li> <li>• County of Orange</li> <li>• County of San Diego</li> <li>• Riverside County Flood Control and Water Conservation District</li> <li>• Unified Port of San Diego</li> <li>• Upper Santa Margarita River MS4 Permittees</li> </ul>	
18	<i>Finding 9.a Priority Land Use Application</i>	Finding 9.a should clarify that the Priority Land Use definition only applies to Track 1.	<ul style="list-style-type: none"> <li>• CASQA</li> <li>• County of Orange</li> <li>• City of Carlsbad</li> <li>• City of Encinitas</li> <li>• City of Escondido</li> <li>• City of Vista</li> </ul>	The San Diego Water Board disagrees that Finding 9 in the Tentative Order should clarify that the Priority Land Use definition only applies to Track 1. The term “priority land uses” was not meant to apply only to the Track 1 compliance option. Section 2.4.1 of the State Water Board’s Final Staff Report for Trash Amendments dated April 7, 2015, states that “ <i>Under the final Trash Amendments,</i>

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			<ul style="list-style-type: none"> <li>• City of San Diego</li> <li>• County of San Diego</li> <li>• Riverside County Flood Control and Water Conservation District</li> <li>• Unified Port of San Diego</li> <li>• Upper Santa Margarita River MS4 Permittees</li> </ul>	<p><i>MS4 Phase I and Phase II NPDES permittees with regulatory authority over land uses can comply with the prohibition of discharge of trash under a dual alternative compliance approach or “Tracks.” The Track requirements would be inserted into NPDES permits. <u>Both Tracks have permittees focus their trash control efforts on priority land uses...</u></i> (emphasis added). Further, the State Water Board’s Response to Comments (Appendix F to the Staff Report), Response to Comment 10.1, states that, “<i>The State Water Board recognizes that other land uses may generate higher rates of trash. To allow for these occurrences the Trash Amendments include a provision for a MS4 permittee to focus on “equivalent alternate land uses” under both Track 1 and Track 2. (See Ocean Plan Amendment and Part I ISWEBE, Definitions Section, for “priority land uses.”)</i> Quantification measures such as street sweeping, mapping, and visual trash presence surveys can be used to prioritize these land uses for Track 1 or Track 2 controls” (emphasis added). Finally, several of the State Water Board’s responses to comments with regards to source control strategies state that “<i>Regulatory source control was included in the proposed amendment as one of several treatment controls that could be utilized by MS4 permittees with</i></p>

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				<p><i>regulatory control over <u>priority land uses</u> to comply with the prohibition of trash under <u>Track 2</u></i> (emphasis added). Based on these citations of the State Water Board’s Final Staff Report, it is clear that that “priority land uses” was intended to apply to both Track 1 and Track 2 compliance tracks. In terms of substituting more appropriate areas or land uses than the “priority land uses” as defined in the Trash Amendments, the process for doing so is similar, but distinct for the two compliance tracks. An MS4 permittee choosing Track 1 must obtain San Diego Water Board approval for substituting “priority land uses” with “equivalent alternate land uses.” An MS4 permittee choosing Track 2 may propose controls in “locations or land uses” other than the “priority land uses” in their implementation plans, which are subject to San Diego Water Board approval. In either case, MS4 permittees must start with assessing trash generated in, and implementing controls in, areas with “priority land uses” first. Based on these considerations, no change to the Tentative Order was made.</p>
19	Finding 9.b	<p>The Tentative Order does not contain the full language from the equivalent land use provisions in the Trash Amendments: “<i>The land use area requested to substitute for a priority land use</i>”</p>	<ul style="list-style-type: none"> <li>• CASQA</li> <li>• County of Orange</li> <li>• City of Carlsbad</li> </ul>	<p>The San Diego Water Board agrees with the comment and modified Finding 9.b of the Tentative Order to include the suggested language.</p>

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		<p><i>need not be an acre-for-acre substitution but may involve one or more priority land uses, or a fraction of a priority land use, or both, provided the total trash generated in the equivalent alternative land use is equivalent or greater than the total trash generated from the priority land uses for which substitution is requested.</i>” Omitting this language reduces the flexibility the MS4 permittees have to define priority land uses within their jurisdictions using local trash-generation information.</p>	<ul style="list-style-type: none"> <li>• City of Coronado</li> <li>• City of Encinitas</li> <li>• City of Escondido</li> <li>• City of Solana Beach</li> <li>• City of Vista</li> <li>• City of San Diego</li> <li>• County of San Diego</li> <li>• Riverside County Flood Control and Water Conservation District</li> <li>• Unified Port of San Diego</li> <li>• Upper Santa Margarita River MS4 Permittees</li> </ul>	
20	<p>Finding 9.d;                      Directive A.4  <i>Requirement to Address Transient Encampments</i></p>	<ul style="list-style-type: none"> <li>• The Tentative Order requirement to address transient encampments exceeds the scope and intent of the Trash Amendments;</li> <li>• Full capture systems are not designed to capture trash generated within the receiving</li> </ul>	<ul style="list-style-type: none"> <li>• CASQA</li> <li>• City of Carlsbad</li> <li>• City of Coronado</li> <li>• City of Dana Point</li> </ul>	<p>The San Diego Water Board carefully reviewed the intent of the Trash Amendments and agrees that the Tentative Order proposed for issuance under Water Code section 13383 is meant to implement the requirements of the statewide Trash Amendments and is not the appropriate regulatory mechanism</p>

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		<p>water as they are usually installed in catch basins and pipes;</p> <ul style="list-style-type: none"> <li>• Transient encampments are nonpoint sources of trash, and the Trash Amendments will ultimately be included in the MS4 Permit issued to point source dischargers;</li> <li>• “Transient encampments in the San Diego River Watershed” are neither a <u>specific land use</u> nor <u>location</u> as discussed in the Trash Amendments;</li> <li>• Full capture systems/suite of BMPs are intended to be placed in areas where MS4 permittees have “regulatory control” over; MS4 permittees do not have effective “regulatory control” over private, state, or federal properties where encampments are common;</li> <li>• MS4 permittees face significant constitutional and statutory restraints on their ability to address trash from encampments;</li> <li>• The requirement to address transient encampments limits the ability of MS4 permittees to be in compliance with either Track 1 or Track 2 because</li> </ul>	<ul style="list-style-type: none"> <li>• City of Encinitas</li> <li>• City of Escondido</li> <li>• City of La Mesa</li> <li>• City of Lake Forest</li> <li>• City of San Clemente</li> <li>• City of San Diego</li> <li>• City of San Juan Capistrano</li> <li>• City of Santee</li> <li>• City of Vista</li> <li>• City of San Diego</li> <li>• County of San Diego</li> <li>• County of Orange</li> <li>• Riverside County Flood Control and Water Conservation District</li> <li>• San Bernardino County</li> </ul>	<p>for addressing trash impacts to the San Diego River generated by transient encampments. As a result, the requirement to describe how the MS4 permittees will address trash generated from transient encampments has been removed. Nevertheless, the San Diego Water Board is committed to finding solutions to the ongoing trash problem in the San Diego River watershed, including trash generated from transient encampments. The San Diego Water Board will continue to seek solutions to this issue with the MS4 permittees and other stakeholders in the watershed.</p>

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		<p>these compliance pathways will be ineffective at addressing a complex social issue;</p> <ul style="list-style-type: none"> <li>• The Tentative Order references information regarding trash generation at encampments but does not explain why MS4 permittees are responsible;</li> <li>• Encampments would be better regulated under WDRs, or waivers of WDRs inclusive of all responsible parties with land use authority or ownership in those areas.</li> </ul>	<ul style="list-style-type: none"> <li>• Unified Port of San Diego</li> <li>• Upper Santa Margarita River MS4 Permittees</li> </ul>	
21	<p>Finding 10  <i>Compliance Schedule Inclusion in Tentative Order</i></p>	<p>The inclusion of an enforceable compliance schedule is not appropriate for an Investigative Order according to Water Code Sections 13267 and 13383. It is more appropriate to include any compliance schedule directly into the implementing permit (Regional MS4 Permit).</p>	<ul style="list-style-type: none"> <li>• CASQA</li> <li>• City of Carlsbad</li> <li>• City of Encinitas</li> <li>• City of Escondido</li> <li>• City of Vista</li> <li>• County of Orange</li> <li>• County of San Diego</li> <li>• Unified Port of San Diego</li> </ul>	<p>The San Diego Water Board agrees that the appropriate location for an enforceable compliance schedule is within the implementing Regional MS4 Permit. That is why the Tentative Order does not include an enforceable compliance schedule, but rather describes the compliance schedule that <i>likely will be proposed</i> for inclusion in the Regional MS4 Permit. Nevertheless, language was added to Finding 10 to further explain that the final compliance <i>date</i>, in addition to the full compliance schedule, will be included in the Regional MS4 Permit.</p>

Comment No.	Tentative Order Location/Subject	Comment Summary	Submitted By	San Diego Water Board Response
22	Finding 10 <i>Interim Milestone Language</i>	The Tentative Order omits language from the Trash Amendments applicable to Track 1 that is needed to demonstrate that interim milestones may take the form of load reductions or “other progress.” Additionally, add a footnote giving examples of interim milestones.	<ul style="list-style-type: none"> <li>• City of Solana Beach</li> </ul>	The San Diego Water Board agrees that additional language from the Trash Amendments pertaining to the forms of interim milestones should be added to the language in the Tentative Order. Therefore, Finding 10 was amended to include language from the Trash Amendments to describe interim milestones “such as average load reductions of ten percent (10%) per year or other progress.”
23	Findings 11 and 14 <i>Reporting Requirements</i>	The Tentative Order needs to provide clarity regarding the monitoring and reporting requirements under Track 1 vs. Track 2. Not doing so could cause unnecessary monitoring and reporting by the MS4 permittees. Language from the Trash Amendments should be added as provided by the commenters.	<ul style="list-style-type: none"> <li>• CASQA</li> <li>• City of Carlsbad</li> <li>• City of Coronado</li> <li>• City of Encinitas</li> <li>• City of Escondido</li> <li>• City of Solana Beach</li> <li>• City of Vista</li> <li>• City of San Diego</li> <li>• County of San Diego</li> <li>• County of Orange</li> <li>• Unified Port of San Diego</li> </ul>	The San Diego Water Board agrees the requirements regarding monitoring and reporting on an annual basis should be clarified in the Tentative Order. A footnote was added to Finding 11 describing the minimum monitoring and reporting requirements that will be considered for inclusion in the Regional MS4 Permit upon reissuance. The footnote references language from the Trash Amendments at Appendix D: Chapter III, section L.5 of the Ocean Plan and Appendix E: Chapter IV, section A.6 of the ISWEBE Plan.

Comment No.	Tentative Order Location/Subject	Comment Summary	Submitted By	San Diego Water Board Response
24	Finding 13 & Directive A.2 Watershed vs. Jurisdictional Approach	<ul style="list-style-type: none"> <li>• A watershed approach to implementing the Trash Amendments was not the intent of the State Water Board;</li> <li>• Trash may not be the most important priority in every watershed;</li> <li>• Watershed scale presents challenges with respect to the determination of Full Capture System Equivalency, which is determined on a jurisdictional basis using local land use trash generation rates;</li> <li>• Flexibility should be given to MS4 permittees to include requirements of Trash Amendments into Water Quality Improvement Plans, jurisdictional runoff management plans, or both.</li> </ul>	<ul style="list-style-type: none"> <li>• City of Carlsbad</li> <li>• City of Coronado</li> <li>• City of Encinitas</li> <li>• City of Escondido</li> <li>• City of Solana Beach</li> <li>• City of Vista</li> <li>• City of San Diego</li> <li>• County of San Diego</li> <li>• County of Orange</li> <li>• Riverside County Flood Control and Water Conservation District</li> <li>• Unified Port of San Diego</li> <li>• Upper Santa Margarita River MS4 Permittees</li> </ul>	The San Diego Water Board agrees with the commenters and modified the Tentative Order at Finding 13 and Directive A.2 (renumbered to Directive A.3) to allow MS4 permittees the option of including trash implementation plans and monitoring and reporting either in the Water Quality Improvement Plans, the MS4 permittees' jurisdictional runoff management plans (JRMPs), or both.
25	Directive A.2	The Tentative Order does not provide adequate information regarding the types of treatment	<ul style="list-style-type: none"> <li>• City of San Diego</li> </ul>	Appendices to both the Ocean Plan and ISWEBE Plan define terms, including "treatment controls" and "institutional



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	<i>Acceptable Types of Controls</i>	controls and institutional controls that would be acceptable for use.		controls.” Both definitions include examples of the types of controls that would be acceptable. Additionally, the State Water Board will issue a list of “certified” full capture devices that are treatment controls and considered acceptable for use.
26	Directive A.2.d <i>Assessment of Controls vs. Plans</i>	The Tentative Order implies that the monitoring and assessment of <i>implementation plans</i> is required rather than monitoring and assessment of efficacy of <i>implementation controls</i> .	<ul style="list-style-type: none"> <li>• City of Solana Beach</li> </ul>	The San Diego Water Board agrees and has modified Directive A.2.d (renumbered to A.3.d) of the Tentative Order as suggested by the commenter.
27	Directive A.2.e <i>Equivalent Alternate Land Uses</i>	The Tentative Order incorrectly links the equivalent alternate land uses with the Track 2 compliance option. Priority land uses/equivalent alternate land uses are only relevant if a MS4 permittee selects the Track 1 compliance option.	<ul style="list-style-type: none"> <li>• CASQA</li> <li>• City of Carlsbad</li> <li>• City of Encinitas</li> <li>• City of Escondido</li> <li>• City of Vista</li> <li>• City of San Diego</li> <li>• County of San Diego</li> <li>• County of Orange</li> <li>• Riverside County Flood Control and Water Conservation District</li> </ul>	The San Diego Water Board disagrees that the Tentative Order incorrectly links the equivalent alternative land uses with the Track 2 compliance option for the reasons cited in the Response to Comment 18, therefore, no change was made to the Tentative Order.

Comment No.	Tentative Order Location/Subject	Comment Summary	Submitted By	San Diego Water Board Response
			<ul style="list-style-type: none"> <li>• Unified Port of San Diego</li> <li>• Upper Santa Margarita River MS4 Permittees</li> </ul>	
28	Directive A.2.f <i>Compliance Schedule Inconsistent with Trash Amendments</i>	The Tentative Order includes language that MS4 permittees include a compliance time schedule based on the “shortest practicable time” to achieve full compliance with the discharge prohibition; however, the Trash Amendments do not include similar language. It is improper to require a compliance schedule through a 13267/13383 Order and it is more appropriately included in the implementing permit.	<ul style="list-style-type: none"> <li>• CASQA</li> <li>• City of Carlsbad</li> <li>• City of Encinitas</li> <li>• City of Escondido</li> <li>• City of San Diego</li> <li>• City of Solana Beach</li> <li>• City of Vista</li> <li>• County of Orange</li> <li>• County of San Diego</li> <li>• Riverside County Flood Control and Water Conservation District</li> <li>• Unified Port of San Diego</li> <li>• Upper Santa Margarita</li> </ul>	The San Diego Water Board disagrees that Directive A.2.f, requiring submission of a time schedule, should be removed from the Tentative Order (the word “compliance” has been deleted). A time schedule is described in Appendix D of the Ocean Plan at Chapter III section L.4.a.(2) and (3), and Appendix E of the ISWEBE Plan at Chapter IV Section A.5.a.(2) and (3). A schedule will be included in the implementing Regional MS4 Permit upon reissuance. MS4 permittees should include schedules during plan development in order to ensure interim milestones and the final compliance date, as specified in the Trash Amendments, are met. This requirement was added to the Track 1 compliance pathway (not just Track 2 implementation plans). The language to achieve full compliance with the discharge prohibition based on the “shortest practicable time” has been removed from the Order to be consistent with the language of the Trash Amendments.

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			River MS4 Permittees	
29	Directive A.3 <i>Reporting of Coordination with Caltrans</i>	The requirement to coordinate with Caltrans should not necessitate a new reporting requirement.	<ul style="list-style-type: none"> <li>• City of Carlsbad</li> <li>• City of Coronado</li> <li>• City of Encinitas</li> <li>• City of Escondido</li> <li>• City of Lake Forest</li> <li>• City of San Clemente</li> <li>• City of San Juan Capistrano</li> <li>• City of Santee</li> <li>• City of Vista</li> <li>• County of San Diego</li> <li>• Riverside County Flood Control and Water Conservation District</li> <li>• San Bernardino County</li> <li>• Unified Port of San Diego</li> </ul>	The San Diego Water Board disagrees that MS4 permittees should not have to describe their plans to coordinate efforts to install, operate, and maintain full capture systems, multi-benefit projects, other treatment controls, and/or institutional controls in significant trash generating areas and/or priority land use areas. The San Diego Water Board recognizes that coordination with Caltrans may not be relevant for each permittee, therefore Directive A.3 (renumbered as Directive A.5) states that the description of plans to coordinate efforts must be included "as applicable." Permittees should coordinate as needed with Caltrans and other stakeholders to ensure compliance with the requirements of the Trash Amendments by the final compliance date.

Comment No.	Tentative Order Location/Subject	Comment Summary	Submitted By	San Diego Water Board Response
			<ul style="list-style-type: none"> <li>• Upper Santa Margarita River MS4 Permittees</li> </ul>	
30	New Directive related to Finding 11 <i>Monitoring and Reporting Clarification</i>	The Tentative Order should have a clear Directive describing the monitoring and reporting required by the MS4 permittees.	<ul style="list-style-type: none"> <li>• City of Carlsbad</li> <li>• City of Encinitas</li> <li>• City of Escondido</li> <li>• City of Vista</li> <li>• County of San Diego</li> <li>• Unified Port of San Diego</li> </ul>	The San Diego Water Board disagrees that the Tentative Order should describe annual monitoring and reporting requirements. The specific monitoring and reporting requirements will be considered for inclusion in the Regional MS4 Permit during the San Diego Water Board's process to reissue the Permit. The minimum requirements to be considered for inclusion are dependent on MS4 permittees' choice of compliance with Track 1 or Track 2, and are described in the Trash Amendments at Appendix D to the Ocean Plan, Chapter III, section L.5 and Appendix E to the ISWEBE Plan, Chapter IV section A.6.