



---

## CITY OF SOLANA BEACH

635 SOUTH HIGHWAY 101 • SOLANA BEACH, CA 92075 • (858) 720-2400 • Fax (858) 720-2455

---

[www.cityofsolanabeach.org](http://www.cityofsolanabeach.org)

December 14, 2016

Christina Arias, PE  
Water Resource Control Engineer  
California Regional Water Quality Control Board  
San Diego Region  
2375 Northside Drive, Suite 100  
San Diego, CA 92108

**SUBJECT: City of Solana Beach Comments, Tentative Investigative Order  
No. R9-2016-0205, Reference 786088: CArias**

Dear Ms. Arias:

The City of Solana Beach (City) appreciates the opportunity to comment on Tentative Investigative Order 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 (Tentative Order). The City acknowledges the San Diego Regional Water Quality Control Board released the Tentative Investigative Order to meet the requirements of the Statewide Trash Amendments to the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California (ISWEBE Plan) and the Water Quality Control Plan for Ocean Waters of California (Ocean Plan) (referred to hereafter as "Trash Amendments").

The City generally supports the intent of the Tentative Investigative Order to the extent that it is necessary to implement the Statewide Trash Amendments. We respectfully submit the following comments and suggested revisions to address certain issues.

**Issue #1 – Consistency with Trash Amendments and Clear Definition of Track 1 and Track 2 Requirements (Findings 7, 8, 9.b, 11, 14; Directive A.2.f)**

The City requests revisions to the Tentative Order to ensure that its language is consistent with language from the Trash Amendments and that Track 1 and Track 2 requirements are clearly defined and distinguished. Statewide consistency is a stated goal of the State Water Resources Control Board (State Water Board) in developing the Trash Amendments. Since the Tentative Order will be issued prior to incorporation of the Trash Amendments into the Regional MS4 Permit, it will be the regulatory document defining key required components. It is therefore essential that the Tentative Order

findings and directives include the same language and clarity as the Trash Amendments. Suggested revisions are provided for the following Tentative Order items:

**Finding 7.** *Language from the Trash Amendments regarding Track 2 implementation is omitted.*

**Finding 8.** *Definition of Full Capture System Equivalency omits some of the language from the Trash Amendments.*

**Finding 9.b.** *Language from the Trash Amendments regarding Equivalent Alternative Land Uses is omitted.*

**Finding 10.** *Language from the Trash Amendments regarding interim milestones is omitted.*

**Finding 11.** *Language from the Trash Amendments regarding Track 1 and Track 2 monitoring and reporting is omitted.*

**Finding 14.** *Language should be clarified to specify which requirements apply to Track 1, Track 2, or both.*

**Directive A.2.f.** *Language imposes a schedule based on the “shortest practicable time,” which is not consistent with the schedule requirements within the Trash Amendments.*

#### **Finding 7. MS4 Permit Implementation of the Trash Amendments**

Finding 7 presents the Track 1 and Track 2 compliance options detailed in the Statewide Trash Amendments. However, the Track 2 language omits some of the Track 2 language within the Statewide Trash Amendments.

Recommendation: Add the omitted language (underlined below) from the Statewide Trash Amendments to the Tentative Investigative Order. Suggested revision:

*Track 2: Install, operate, and maintain any combination of full capture systems, multi-benefit projects, other treatment controls, and/or institutional controls within either the jurisdiction of the MS4 permittee or within the jurisdiction of the MS4 permittee and contiguous MS4 permittees. The MS4 permittee may determine the locations or land uses within its jurisdiction to implement any combination of controls. The MS4 permittee shall demonstrate that such combination achieves full capture system equivalency. The MS4 permittee may determine which controls to implement to achieve compliance with full capture system equivalency. It is, however, the State Water Board’s expectation that the MS4 permittee will elect to install full capture systems where such installation is not cost-prohibitive.*

#### **Finding 8. Full Capture System Equivalency**

Finding 8 presents the definition for Full Capture System Equivalency. However, the definition omits some of the language within the Statewide Trash Amendments.

Recommendation: Add the omitted language (underlined below) from the Statewide Trash Amendments to the Tentative Investigative Order. Suggested revision:

*Examples of such approaches include, but are not limited to, the following:*

### **Finding 9.b. Land Uses and Locations Requiring Trash Controls – Equivalent Alternative Land Uses**

Finding 9.b does not contain the full language from the Equivalent Land Use Provisions in the Statewide Trash Amendments. Finding 9.b omits “*The land use area requested to substitute for a priority land use 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.*” The Statewide Trash Amendments included this language because the State Water Board recognized there is variability in trash generation within the same land use type based on local conditions. Omitting this language reduces the flexibility MS4 Permittees have to define the priority land uses within their jurisdictions using local trash-generation information.

Recommendation: Add the omitted language (underlined below) from the Statewide Trash Amendments to the Tentative Investigative Order. Suggested revision:

*An MS4 permittee with regulatory authority over priority land uses may issue a request to the San Diego Water Board that the MS4 permittee be allowed to substitute one or more a land uses identified above with an alternate land uses within the MS4 permittee’s jurisdiction that generates rates of trash that is equivalent to or greater than the priority land use(s) being substituted. The land use area requested to substitute for a priority land use 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. Comparative trash generation rates shall be established through the reporting of quantification measures such as street sweeping and catch basin cleanup records; mapping; visual trash presence surveys, such as the “Keeping America Beautiful Visible Litter Survey”; or other information as required by the San Diego Water Board.*

### **Finding 10. Compliance Time Schedule**

Finding 10 presents the compliance time schedule and states that, through the implementing permit, MS4 permittees will be required to demonstrate achievements of interim milestones. Clarity on interim milestones is provided in the Trash Amendments but is omitted in the Tentative Order.

Recommendation: Add omitted language (underlined below) from the Statewide Trash Amendments to the Tentative Order. Suggested revision:

*In addition, the implementing permit must require the MS4 Permittees to demonstrate achievements of interim milestones such as average load reductions of ten percent (10%) per year or other progress.*

The State Water Board also included a footnote in the Trash Amendments to add clarity to “other progress.” Since Track 1 is an implementation-based compliance option, interim milestones shall not be exclusive to water quality or load reduction measures. Per the language in the Trash Amendments, other progress should be clarified to include measures of implementation such as ten percent (10%) of full capture systems installed per year. The ambiguity implies that interim milestones may not include implementation-based milestones. Implementation-based milestone as an example of “other progress” would be appropriate for Track 1 as Track 1 does not requiring monitoring.

Recommendation: Add a footnote to add clarity for interim milestones. Suggested revision:

*In addition, the implementing permit must require the MS4 Permittees to demonstrate achievements of interim milestones<sup>1</sup>...*

<sup>1</sup> Interim milestones are quantitative measures of progress towards full compliance of Track 1 or Track 2. An example may be average load reductions of ten percent (10%) per year or other progress such as 10% of full capture systems installed per year.

## **Finding 11. Monitoring and Reporting**

Finding 11 does not provide adequate information related to the monitoring and reporting requirements specific to the Track 1 and Track 2 compliance options as detailed in the Trash Amendments. By not providing the specific requirements for the Track 1 and Track 2 compliance options, the Tentative Order leaves the monitoring and reporting requirements ambiguous and could cause unnecessary or noncompliant monitoring and/or reporting by the MS4 Permittees.

Recommendation: Add the omitted language (underlined below) from the Statewide Trash Amendments to the Tentative Order. Suggested revision:

*The MS4 permittees will be required to provide reports to the San Diego Water Board on an annual basis to monitor progress toward achieving full compliance with the trash discharge prohibition. The monitoring and reporting requirements are dependent on the measures elected to be implemented by a MS4 permittee.*

- a. MS4 permittees that elect to comply with the Track 1 compliance option shall provide a report to the Regional Board demonstrating installation, operation, maintenance, and the Geographic Information System- (GIS-) mapped location and drainage area served by its full capture systems on an annual basis

- b. MS4 permittees that elect to comply with the Track 2 compliance option shall develop and implement monitoring plans that demonstrate the effectiveness of the full capture systems, multi-benefit projects, other treatment controls, and/or institutional controls, and compliance with full capture system equivalency. Monitoring reports shall be provided on an annual basis and shall include GIS-mapped locations and drainage area served for each of the full capture systems, multi-benefit projects, other treatment controls, and/or institutional controls installed or utilized by the MS4 permittee.

#### **Finding 14. Basis for Requiring Technical and Monitoring Reports**

Finding 14 states that the technical and monitoring reports are needed to provide information, however, the language does not specify which of the items relate to Track 1 and/or Track 2. Without the specific requirements, the Tentative Order leaves the monitoring and reporting requirements ambiguous and could cause unnecessary monitoring and/or reporting by the MS4 Permittees.

Recommendation: Revise language in Finding 14 to specify which items relate to Track 1 and/or Track 2. Suggested revision:

*The technical and monitoring reports required under this Investigative Order are needed to provide information to the San Diego Water Board regarding (a) the measures each MS4 permittee is electing to implement (i.e. Track 1 or Track 2) within its jurisdiction to comply with the trash discharge prohibition (Track 1 and Track 2), (b) the plan that will be implemented by each MS4 permittee to comply with the trash discharge prohibition (Track 2), (c) the interim milestones that each MS4 permittee will achieve within its jurisdiction (Track 1 and Track 2), (d) the schedules to achieving the interim milestones, and full compliance with the trash discharge prohibition (Track 1 and Track 2), and (e) the monitoring (Track 2) and reporting (Track 1 and Track 2) that will be implemented to demonstrate progress toward achieving full compliance with the trash discharge prohibition.*

#### **Directive A.2.f. Technical and Monitoring Reports – Implementation Plans**

Directive A.2.f states that a compliance schedule should be developed and based on the “shortest practicable time.” This schedule requirement is not consistent with the schedule requirements within the Trash Amendments.

Recommendation: Delete “based on the shortest practicable time” to maintain consistency with the Trash Amendments. Suggested revision:

*A compliance time schedule ~~based on the shortest practicable time~~ to achieve full compliance with the trash discharge prohibition, including interim milestones (such as average load reductions of ten percent per year) and a final compliance date. The final compliance date must not be later than fifteen (15) years from the effective date of the Trash Amendments (i.e. December 2,*

2030).

## **Issue #2 – Compliance through Implementation of Track 1 or Track 2 and Approval Process for Track 2 Implementation Plan (Finding 7)**

Finding 7 does not clearly state that the MS4 Permittee will be in compliance with the Trash discharge prohibitions and water quality objectives through implementation of Track 1 or Track 2.

Recommendation: Include language that clearly states that permittees in full and timely compliance with Track 1 or Track 2 are deemed to be in compliance with the discharge prohibition and narrative water quality objectives as incorporated into the MS4 Permit. Suggested language to include:

*MS4 Permittees fully complying with Track 1 or Track 2 are deemed to be in compliance with the trash discharge prohibition and narrative water quality objectives incorporated into the MS4 Permit.*

MS4 Permittees that choose Track 2 need to submit an Implementation Plan “*subject to approval by the San Diego Water Board.*” However, there is no language that identifies what the process and timing are for the Regional Water Board’s review and approval of the Track 2 Implementation Plans.

Recommendation: Include language in Finding 7 describing the Regional Board’s approval process for Implementation Plans developed under a Track 2 approach. Suggested language to include:

*Track 2 Implementation Plans will be deemed approved by the San Diego Water Board ninety (90) days after submission unless otherwise directed in writing by the San Diego Water Board Executive Officer.*

## **Issue #3 – Clarification of a Jurisdiction’s Ability to Change Compliance Tracks with Supporting Justification (Finding 7)**

Jurisdictions should be provided with the ability to change their initial determination of which compliance track to pursue. Implementation of the Trash Amendments will surely involve many lessons learned and efficiencies to be gained along the way. The State Water Board has clearly expressed its expectation “that the MS4 permittee will elect to install full capture systems where such installation is not cost-prohibitive.” A jurisdiction may be inclined to pursue Track 1 because of the simplicity of the approach and the compliance certainty it provides. As implementation progresses, installation of some full capture systems may be found to be not possible or cost-prohibitive. Allowing jurisdictions to change tracks during the implementation period, with sufficient, supporting justification, is reasonable and would provide jurisdictions with much needed flexibility to implement this 10-year program.

Recommendation: Add language to Finding 7 stating MS4 permittees may change tracks, provided they submit sufficient, supporting justification. In addition, this

language should be added to the first implementing permit (Regional MS4 Permit reissued after June 27, 2018). Suggested language to include:

*MS4 Permittees may elect to change tracks through their adaptive management process during the 10-year implementation period, provided they submit sufficient, supporting justification to the San Diego Water Board through a written request. Track change will be deemed approved by the San Diego Water Board forty-five (45) days after submission unless otherwise directed in writing by the San Diego Water Board Executive Officer.*

#### **Issue #4 – Clarification of Controls (Finding 7)**

Under Track 2, the MS4 Permittee may use a combination of controls within its jurisdiction to achieve full capture system equivalency. The Tentative Order does not clarify that existing controls may be used and monitored to achieve full capture system equivalency. MS4 Permittees may have dedicated resources to address trash within their jurisdiction and should be able to receive credit for their current and on-going efforts.

Recommendation: Include a footnote in Finding 7 stating that controls implemented to achieve full capture system equivalency may include pre-existing implementation efforts. Suggested revision:

*The MS4 Permittee shall demonstrate that such combination achieves full capture system equivalency. The MS4 Permittee may determine which controls<sup>1</sup> to implement to achieve compliance with full capture system equivalency.*

<sup>1</sup>Controls to achieve full capture system equivalency may include full capture systems, multi-benefit projects, other treatment controls, and/or institutional controls already implemented by the MS4 Permittee.

#### **Issue #5 – Implementation Plans Format (Directive A.2)**

Directive A.2 requires each MS4 Permittee electing to comply with Track 2 to submit an Implementation Plan for each Watershed Management Area. Due to the uniqueness of jurisdictional land use combinations, trash rates, and Full Capture System Equivalency values, watershed-based implementation plans may not be the appropriate approach for compliance with the Trash Amendments. The MS4 Permittees should have the flexibility to determine the appropriate approach for compliance with the Trash Amendments and include the Implementation Plan in their respective JRMP or WQIP(s).

Recommendation: Revise language in Directive A.2 to eliminate the requirement for Implementation Plans to be developed for each Watershed Management Area. Suggested revision:

***Track 2 Implementation Plans.*** *Each MS4 permittee electing to comply with Track 2 must submit, **no later than eighteen (18) months from the date of this Order** [INSERT DATE], an implementation Pplan for each Watershed*

Management Area described in Table 1 in Finding 13 above that describes...

**Issue #6 – Monitoring and Assessment Components in the Implementation Plan (Directive A.2.d)**

The Trash Amendments require that the Implementation Plans describe “how full capture system equivalency will be demonstrated.” Under this requirement, MS4 Permittees are expected to describe their monitoring plan. The monitoring plan will outline efforts the MS4 Permittee plans to implement to measure efficacy of implemented controls in achieving full capture system equivalency. The language in Directive A.2.d is ambiguous and implies the monitoring and assessment of implementation plans is required rather than monitoring and assessment of efficacy of implementation controls in achieving full capture system equivalency.

Recommendation: Revise language to more accurately convey requirements in Trash Amendments. Suggested revision:

*How the implemented controls identified in the trash implementation plans will be monitored and assessed in ~~Water Quality Improvement Plan Annual Reports~~;*

Thank you for your time and consideration of these comments offered to clarify specific items in the Tentative Order and ensure consistency with the Trash Amendments. If you have questions, please contact Ron Borromeo at (858) 720-2487 or at [rborromeo@cosb.org](mailto:rborromeo@cosb.org).

Sincerely,



Mohammad Sammak  
City Engineer / Public Works Director  
City of Solana Beach