

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

CEASE AND DESIST ORDER NO. R2-2019-0007

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. The San Francisco Bay Water Quality Control Plan's (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."
5. Permit Attachment V, Part 2, paragraph 1 states:

The Department shall demonstrate compliance with Discharge Prohibition 7, Table 4-1 of the 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.

The control measures the Permit requires to comply with Basin Plan Discharge Prohibition 7 are to install, operate, and maintain full trash capture systems, treatment controls, and/or enhanced maintenance controls for storm drains or catchments that service the high trash generating areas. The Permit allows the Department to coordinate with local entities to comply with Basin Plan Discharge Prohibition 7 by implementing a variety of control measures, so long as the control measures meet the full trash capture standard. The full capture standard refers to the performance standard set by the definition of “full capture system” in the Permit.

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. The term “full capture system equivalency,” as used in the Trash Amendments, is functionally the same as the Permit’s “full trash capture standard” and is also used in this Order.
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 20, 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 20, 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 Department's current assessment identifies approximately 8,820 acres of its total ROW as moderate (with or without vegetation) or greater trash generating. 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 demonstrated in studies to control the generated trash to less than significant levels. 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 eleven 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 eleven 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 Provision 7 of 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. 2,000 acres or more by June 30, 2020;
 - b. 4,000 acres or more by June 30, 2022;
 - c. 6,000 acres or more by June 30, 2024;
 - d. 8,800 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. To the extent possible, the Department will prioritize cooperative projects with disadvantaged communities.

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 or an equivalent Department-developed 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. A description of funding mechanisms for operations and maintenance of trash capture devices, including a description of how funding is shared for cooperative projects;
 - f. 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. Department shall also report on affirmative steps it will take to secure additional resources.
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 50 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;

- 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 systems the previous year and maintenance scheduled for the upcoming year.
 - j. Department shall also report on affirmative steps it has taken to secure additional resources.
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.**¹ 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 upon adoption.

¹ 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).

I, Thomas E. Mumley, Interim 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 February 13, 2019.

Thomas E. Mumley
Interim Executive Officer

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

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 50% 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.e: Control trash from all significant trash generating ROW	December 2, 2030