



August 4, 2014



State Water Resources Control Board
1001 "I" Street, 24th Floor
Sacramento, CA 95814

Submitted via email: commentletters@waterboards.ca.gov

Subject: Comments on Statewide Water Quality Control Plans to Control Trash (June 2014 Draft)

Dear Board Members:

These comments are submitted on behalf of the Partnership for Sound Science in Environmental Policy ("PSSEP") on the proposed Statewide Water Quality Control Plans to Control Trash (June 2014 Draft). PSSEP is an association of municipal, industrial, and trade association entities in California whose members are regulated by the State and Regional Water Boards under their joint, Federal Clean Water Act and Porter-Cologne Water Quality Control Act authorities.

At the outset, we wish to acknowledge the work of your staff (as well as the Board Members) toward developing a statewide policy on addressing California's chronic trash/litter problems. PSSEP and its members support the State Water Board's goal of reducing trash throughout the state's waters, and we also appreciate the need to provide reasonable flexibility for local communities to comply with the new standards.

1. Monitoring to Confirm Trash Reductions.

Under the "two-track" approach proposed by staff, MS4 permittees must either install, operate and maintain full capture storm drain systems, or pursue a suite of "other treatment controls, institutional controls and/or multi-benefit projects" within a given MS4's jurisdiction. Notably, jurisdictions pursuing the "Track 2" approach must demonstrate that the suite of "institutional controls" would achieve the same performance results as installation of Track 1 structural controls. PSSEP supports this approach in concept, but we have two primary concerns.

First, the current monitoring requirements applied to jurisdictions which elect the Track 1 approach are currently **not** required to perform monthly or post-storm event or even annual monitoring of structural catch basements to demonstrate capture and removal rates. This is problematic on at least two fronts: (1) if MS4 permittees are not required to perform specified monitoring on the structural controls installed in catch basements, then these cities, the Regional and State Water Boards, and the **citizens** of

these communities will not be able to determine whether the measures are actually working; (2) since “Track 2” compliance is based specifically on being able to demonstrate commensurate trash removal in a jurisdiction that “Track 1” devices could achieve, it is vital to have actual trash removal efficacy data against which to compare the Track 2 “institutional controls.” The Water Boards’ permitting process is generally a self-reporting and self-enforcing one, which PSSEP certainly supports. But in order to demonstrate compliance with the underlying “zero trash” goal contained in the proposed policy, as well as maintain credibility of the program itself, it seems incongruous that Track 1 carries little or no substantive monitoring obligations to demonstrate a jurisdiction’s compliance with the standard.

Second, and as applied to both Track 1 and Track 2 permittees, the current draft policy fails to include accepted, standard methodologies for measuring trash. Without having a consistent, statewide approach for measuring trash, varied and disparate trash reduction results will likely be reported from different parts of the state. It seems axiomatic that a statewide trash control policy should also have single, plenary approach to counting trash in all of the Regions. To be sure, there are a number of different methods of “counting trash” and a close review of trash surveys from around the country demonstrate that “how” one measures trash can affect the results. This dynamic was encountered by the San Francisco Regional Water Board over the past few years as it has grappled with trying to establish “baselines” against which to measure trash reductions after implementation of BMPs and the like. Fundamentally, any new pollution control standard that the State Water Board seeks to impose should also be coupled with appropriate monitoring standards and methodologies so that the Water Boards – and the public – can gauge the effectiveness of either the Track 1 or Track 2 controls.

2. Standards for Trash Capture Device Maintenance.

One of the biggest problems encountered by many jurisdictions that long ago installed various types of trash capture devices is the need for consistent and ongoing clean-out and maintenance of the structural devices. Under the current Track 1 proposal, it is unclear what standards apply to “maintain” structural controls once they’ve been installed. Indeed, the current maintenance requirement applied to Track 1 structural controls is that the permittee provide an annual report “demonstrating installation, operation, [and] maintenance.” Yet it is left to either the MS4 permittee or the applicable Water Board to determine whether the maintenance reported is adequate.

We recognize there are many types of existing structural trash capture devices, and there will likely be new ones developed in the coming years. As such, it may prove challenging to develop a specific set of standards that apply to all of these devices, given that they work differently from one another. Nevertheless, the trash

capture device manufacturers could provide invaluable assistance in helping the State Board staff develop a set of minimum maintenance standards that should be applicable across the state.

3. Efficacy of “Institutional Controls” Such as Product Bans.

At the July 16 State Board workshop on the proposed policy, Board Member Doduc asked for specific comments on whether “institutional controls” such as product bans are effective and can be relied on to meet the State Board’s proposed “zero trash” standard. The short answer is, “no.”

Product bans are “feel-good” measures that provide a misplaced – if not false - sense of security for communities feeling the ever-growing pressure of reducing trash loading to California’s waterways. Communities in the San Francisco Bay Area even went so far recently to propose to the Regional Board that they be given “credit” toward achieving trash reduction goals if they adopted bans on plastic bags and polystyrene foam food containers. As such, many cities in the Bay Area passed these product bans, yet there has been no empirical data to show that the **volume** of trash reaching Bay Area waterways has been reduced. In fact, the only known trash survey performed by a city both *before* and *after* the adoption of such product bans demonstrated that people simply discarded **replacement** products at or about the same rate as they did the banned products. (See, *City of San Francisco Streets Litter Re-Audit, 2008*. Prepared by HDR, Born, Vence & Associates, Inc., and MGM Management. July 4, 2008.)

The reality is: product bans have **not** been shown to result in measurable reductions in litter surveys. People who are prone to senselessly throw a polystyrene foam cup on the ground are equally likely to throw the replacement paper cup on the ground, and the same can be said for nearly any other product targeted for local bans. As long as there is a replacement for the banned product, logic dictates that it, too, will find its way into the state’s storm drains. For a more thorough technical analysis of why product bans are ineffective at reducing overall trash loading *via* storm drain runoff, we commend the work of Dr. Steven Stein of Environmental Resources Planning LLC, detailed in the comments submitted by the American Chemistry Council on the proposed Trash Control Policy, and dated August 4, 2014.

While PSSEP takes no position on the appropriateness or advisability of individual cities and other jurisdictions adopting product bans on items such as plastic bags or polystyrene foam food containers, we do think it’s inappropriate for the State Board to provide regulatory incentives for MS4 permittees to adopt these types of “institutional controls” simply as a means of avoiding the costly installation and maintenance of the so-called Track 1 structural controls. If individual cities and other MS4 permittees wish to adopt plastic bag and polystyrene foam food container bans, that is certainly their prerogative. But the State Board’s Trash Control Policy should

neither suggest nor codify that these purely feel-good measures will achieve *real* reductions in trash found in our waterways.

4. Funding Structural Trash Capture Devices.

There is little doubt that pervasive installation and adequate maintenance of full capture structural devices throughout California's urban landscape is the only reliable way to achieve the State Board's goal of "zero discharge" of trash in our waterways. Anyone familiar with the background and history of the State and Regional Water Boards' efforts to address trash discharges to California's waterways understands that the major impediment to achieving the "zero discharge" goal is finding adequate financial resources to enable local communities to install, operate and maintain structural trash capture devices. As such, PSSEP believes now is the time to become more creative in finding ways to identify local funding sources for California's MS4 agencies to meet this challenge.

According to the economic analysis prepared for the Trash Control Policy by the Office of Research, Planning and Performance (Appendix C), the average incremental cost to install and maintain full capture devices throughout California is \$12.03 *per person, per year* – or about \$1 each month. (See, Appendix C, Table 13 at p. C-24.) The *range* of incremental costs, on a *per capita* basis, is \$6.50-\$14.60, and is based on the community size for a given MS4 agency.

Many local governments are understandably reluctant to impose new storm water fees on their citizens for a variety of reasons. Chief among them may be concern that any new fees or taxes imposed could be subject to Proposition 218/26 challenges from ratepayers. Perhaps it is time to view this dilemma from a different perspective, and recognize that new local storm water fees are not needed.

Most local governments are familiar with garbage franchise agreements as a means of contracting for services provided to a community that achieve a common good. Why not consider using the garbage franchise agreement as a means of efficiently installing full capture devices, as well as contracting with the franchisees to maintain and clean-out the full capture devices on a routine basis? While many private garbage franchise companies may not *currently* have the expertise to provide these services, logic dictates that if there is profit to be made by expanding the services they offer to local communities, private garbage franchise companies will quickly develop the expertise. Further, the list of California-based companies that manufacture and provide maintenance services for full capture devices is growing steadily. Promoting partnerships among these companies, the garbage franchisees, and the MS4 agencies to identify creative financing mechanisms for installing and maintaining full capture devices could break the log-jam of historical reluctance on the part of MS4 agencies of pursuing full capture devices.

The benefits of combining storm drain trash control services with the typical garbage franchise contract are several. First, what is storm drain trash control if not quintessentially “garbage handling and removal”? By definition, installing the infrastructure for storm drain trash control – as well as maintaining them – would appropriately be considered within a garbage franchise agreement. Second, by including these services within a garbage franchise, the capital costs of the full capture devices can be appropriately amortized over several years, thus reducing what would otherwise be large, up-front costs to local MS4 agencies. Third, including these services within a garbage franchise would avert the need for local MS4 agencies to take-on large numbers of new employees to install and maintain the full capture systems. Fourth, garbage franchise fees are *not* subject to voter approval under Proposition 218/26 because they are not “incident to property ownership” – the test of whether a local government fee is subject to voter approval. Because Proposition 218 imposes no limit on private fees charged for services provided to a municipal government, the only limitation on the MS4 agency would be in properly negotiating the garbage franchise agreement terms.

PSSEP believes that the State Water Board could and should provide the leadership in getting the MS4 agencies, garbage franchise companies, and trash capture device manufacturers together to further explore whether and how this approach can be effectively used to help local governments more quickly pursue so-called “Track 1” compliance. The State Water Board staff has successfully organized many stakeholder group approaches to solving thornier problems than this, and knowing his passion about the underlying issues, we believe Chief Deputy Director Jonathan Bishop would be uniquely suited to bringing all of the key parties together.

Thank you for the opportunity to provide these comments on the Trash Control Policy.

Sincerely,



Craig S.J. Johns
Program Manager