

CITY OF BURBANK

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PUBLIC WORKS DEPARTMENT

August 5, 2014

Via Email: commentletters@waterboards.ca.gov

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

Comment Letter – Trash Amendments

Dear Ms. Townsend:

The City of Burbank (City) appreciates the opportunity to provide comments on the Proposed Amendments (Proposed 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).

The State Water Resources Control Board (SWRCB) developed the Proposed Trash Amendments as a means to provide consistency between trash regulations statewide. However, as currently drafted, the Proposed Trash Amendments will not apply to the Los Angeles River Trash Total Maximum Daily Load (LAR Trash TMDL). The City feels this directly contradicts the purpose of the Proposed Trash Amendments to provide statewide consistency and as a result, places extra compliance burdens on the jurisdictions subject to the LAR Trash TMDL. Specifically, there are two parts of the Proposed Trash Amendments that differ significantly from the requirements of the LAR Trash TMDL: (1) the use of a narrative water quality objective (WQO) in the Proposed Trash Amendments and (2) the requirement to only address priority land uses with trash best management practices (BMPs) within a jurisdiction's boundary. These differences and their ramifications are discussed in more detail below. In addition, **Attachment 1** provides additional comments regarding provisions within the Proposed Trash Amendments.

1. Narrative WQO Compared to Numeric WQO

The Proposed Trash Amendments contain narrative WQOs stating: *Trash shall not accumulate in ocean or surface waters, along shorelines or adjacent areas in amounts that adversely affect beneficial uses or cause nuisance.* Conversely, the LAR Trash TMDL contains a numeric WQO of *zero trash in the river*, which is the Los Angeles Regional Water Quality Control Board's

(LARWQCB) interpretation of the narrative WQO, including an implicit margin of safety.¹ During the development of the Proposed Trash Amendments, SWRCB staff considered using a numeric WQO of “zero trash”; however, staff determined “While zero trash is the desirable goal, it may not be a feasible numeric objective. On a feasible level, a single piece of trash found in a water body may or may not constitute impairment, and it may or may not be aesthetically displeasing. Therefore, this approach is not recommended”.² The City agrees with the SWRCB’s assessment that while zero trash may be desirable, it is not a feasible numeric objective and that a numeric target of zero trash is unachievable. The City feels the continued use of the zero numeric objective in the LAR Trash TMDL would suggest that additional trash controls would be necessary if trash is still present in the Los Angeles River after the final compliance date. No guidance has been provided regarding what the responsible parties will be subject to after the final compliance date of the LAR Trash TMDL. The City is concerned that the presence of trash at the end of the compliance schedule would provide an opportunity for the BMP-based compliance approach to be challenged as inconsistent with the assumptions of the waste-load allocations (i.e., implementation of full capture devices will result in attainment of the allocations) and no longer be allowed as a compliance mechanism, thereby negating the only viable compliance pathway for MS4 Permittees.

Requiring the reopening of the LAR Trash TMDL to utilize the narrative WQO in the Proposed Trash Amendments would minimize potential future impacts after the final compliance date of the LAR Trash TMDL. In addition, this would allow for the statewide consistency the Proposed Trash Amendments aim to provide while ensuring that responsible parties in the Los Angeles River watershed are held to the same standard as those in the remainder of the state.

2. Addressing Priority Land Uses Instead of All Urban Land Uses

The Proposed Trash Amendments require permittees to address priority land uses within their jurisdiction with trash BMPs (full capture devices or other BMPs) while the LAR Trash TMDL requires responsible parties to address all land urban uses within their jurisdiction in the same manner regardless of their potential to generate meaningful loadings of trash. The Draft Staff Report for the Proposed Trash Amendments considers the applicability to various land uses under Issue 5 (page 70) and found that addressing all land uses would require trash reduction measures in locations with low trash generation rates, which are presumed to have minimal negative impacts on water bodies and yet would be resource intensive when compared to the benefit derived. Therefore, this approach was not recommended. The SWRCB has effectively evaluated the LAR Trash TMDL approach and rejected it as an inappropriate approach for addressing trash in a cost effective manner in all parts of California except for portions of Los Angeles County.

Only addressing priority land uses, as outlined in the Proposed Trash Amendments, reduces the amount of the storm drain system and corresponding catch basins that must be addressed with full capture devices compared to the LAR Trash TMDL.

¹ See Section IV on Page 16 of the *Trash Total Maximum Daily Loads for the Los Angeles River Watershed. California Regional Water Quality Control Board Los Angeles Region. September 19, 2001.*

² See Section 4.2 on Pages 66-67 of the *Draft Staff Report Including the Draft Substitute Environmental Documentation for the Draft Amendments to Statewide Water Quality Control Plans to Control Trash. State Water Resources Control Board. June 2014.*

This difference has a significant impact on area regulated and the number of devices the City has to maintain each year and replace on a regular basis. For example, the area of the City is required to address under the LAR Trash TMDL is 13.5 square miles (the total urbanized area in the City) as opposed to 3.4 square miles of priority land uses under the Proposed Trash Amendments. The effect of this difference in land area results in greater than two and half times more catch basins that must be addressed (approximately 3,200 under the LAR Trash TMDL versus approximately 1,300 under the Proposed Trash Amendments). **Table 1** presents a comparison of the land uses and catch basins required to be addressed under the LAR Trash TMDL and what would be required under the Proposed Trash Amendments. Additionally, **Figure 1** provides a visual representation of the location of the priority land use areas in the City and the corresponding catch basins that would be addressed under the Proposed Trash Amendments. Additionally, the number of catch basins that need to be addressed affects the potential liability the City is subject to for full capture devices that clog and cause localized flooding. The accumulation of natural materials is often the reason full capture devices result in localized flooding. The majority of the debris found in catch basins, particularly in low trash generating areas such as low density residential, is comprised of natural materials such as leaves, twigs, soil, and other organic matter rather than anthropogenic materials including trash.

The City feels the responsible parties of the LAR Trash TMDL should be required to implement BMPs in priority land use areas consistent with the remainder of the state. Implementing BMPs in these areas would allow the City to focus resources to address areas generating trash rather than distributing resources throughout the City in areas that may not generate significant levels of trash. Implementing BMPs only in priority land use areas would also allow for the statewide consistency the Proposed Trash Amendments aim to provide. Further, it would allow the City to use scarce resources to meet other MS4 Permit and other TMDL obligations for constituents such as bacteria and metals.

In summary, there are two key areas where the Proposed Trash Amendments consider and explicitly reject applying aspects of the LAR Trash TMDL approach to the remainder of California. Maintaining the LAR Trash TMDL as is subjects the City and other responsible parties to a level of implementation that is acknowledged as unlikely to be beneficial and inconsistent with the remainder of the state. While great strides have been made in the Los Angeles River watershed to reduce trash, maintaining the LAR Trash TMDL as written is not necessary to ensure the gains are not lost. The keys to maintaining the gains are: (1) establishing a TMDL that will continue to be legally implementable in our NPDES permits and (2) focusing limited public resources on the land uses that pose a meaningful threat to water quality. This approach will ensure the City's overstretched general fund will go to meaningful water quality improvement projects. Specifically, these funds would be available for the City to implement the green streets identified in our Enhanced Watershed Management Program.

As such, the City feels it would be beneficial for the LAR Trash TMDL to be reconsidered to include certain provisions from the Proposed Trash Amendments. The City recommends the LARWQCB be required to convene a public meeting to reconsider the scope of the LAR Trash TMDL to include provisions from the Proposed Trash Amendments detailed above.

If you have any questions regarding the aforementioned comments or those contained in **Attachment 1**, please contact me at 818-238-3940 or drynn@burbankca.gov.

Respectfully submitted,



Daniel Rynn, P.E.
Assistant Public Works Director

Table 1. Priority Land Use Type Areas¹

Priority Land Use Type	Proposed Trash Amendments		Trash TMDL	
	Area (Sq Mi)	Catch Basins ²	Area (Sq Mi)	Catch Basins ²
Commercial	1.28	801	1.28	801
High Density Residential	1.17	289	1.17	289
Industrial	0.87	173	0.87	173
Mixed Urban	0.04	19	0.04	19
Public Transportation	0.01	2	0.01	2
Other Areas	0.0	0	10.12	1,907
Total	3.36	1,284	13.48	3,191

1. These approximate land uses are based on Southern California Association of Governments (SCAG) 2005 land use data. Non-MS4 land uses are not included in the breakdown.
2. The number of catch basins is provided as an estimate and is based only on GIS data from Los Angeles County.

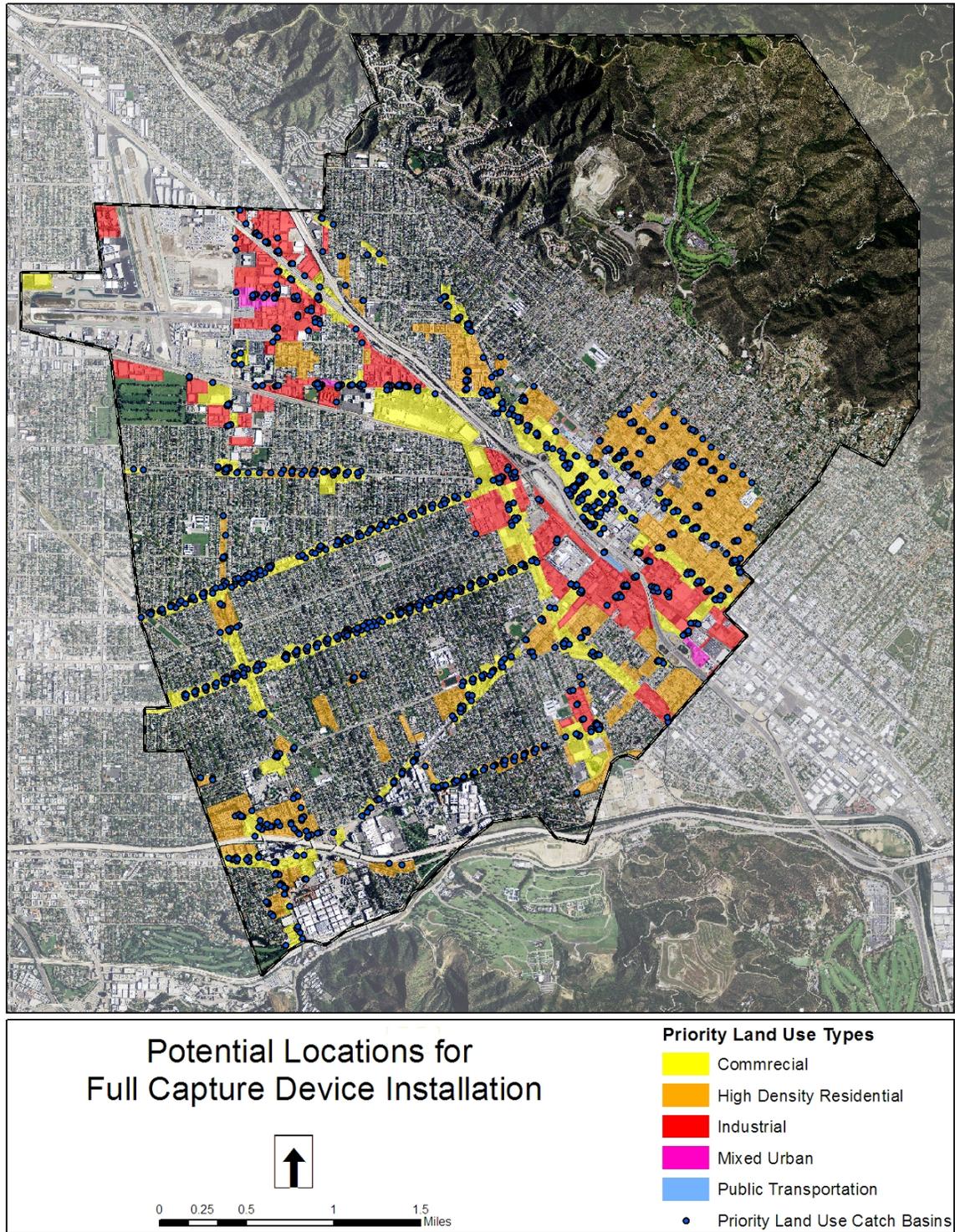


Figure 1. Priority Land Uses and Potential Locations for Full Capture Devices in the City of Burbank under the Proposed Trash Amendments

Note that under the LAR Trash TMDL, the City of Burbank is required to address all land uses and catch basins as opposed to only the highlighted areas of the City in the figure under the Proposed Trash Amendments.

Attachment 1

City of Burbank General Comments on the Proposed Amendments to the ISWEBE and Ocean Plans

1. Compliance with Water Quality Objective and Prohibition of Trash Discharge

The Proposed Trash Amendments provide a narrative water quality objective (WQO) in Chapter III.B and Chapter II.C of the ISWEBE Plan and Ocean Plan, respectively and a prohibition of trash discharge in Chapter IV.B.2 and Chapter III.I.6 of the ISWEBE Plan and Ocean Plan, respectively. The permittees would be considered in full compliance with the prohibition of trash discharge so long as the permittees were fully implementing Track 1 or Track 2 (Chapter IV.B.2.a and Chapter III.I.6.a, of the ISWEBE Plan and Ocean Plan, respectively). However, the Proposed Trash Amendments do not indicate that meeting the discharge prohibition requirements would also mean the permittees are in compliance with receiving water limitations (i.e., meeting the WQO).

Recommendation: The City of Burbank (City) recommends adding language to the Proposed Trash Amendments indicating the permittees are in compliance with the receiving water limitations so long as they are fully implementing Track 1 or Track 2.

2. Regional Board's Ability to Include Permit Provisions in Areas with Existing Trash TMDLs

The Proposed Trash Amendments require permitting authorities to re-open, re-issue or newly adopt NPDES permits to include requirements consistent with the Proposed Trash Amendments (Chapter IV.B.5 and Chapter III.L.4 of the ISWEBE Plan and the Ocean Plan, respectively). The Proposed Trash Amendments also include a requirement for the Los Angeles Regional Water Quality Control Board (LARWQCB) to convene a public meeting to reconsider the scope of the TMDLs³ to include provisions consistent with the Proposed Trash Amendments (Chapter IV.B.1.b.(2) and Chapter III.L.1.b.(2) of the ISWEBE Plan and the Ocean Plan, respectively). However, by the time the Proposed Trash Amendments become effective and the LARWQCB modifies the TMDL(s), it will likely be too late to meaningfully impact the implementation of compliance measures for point source-responsible permittees subject to the TMDL(s). As a result, having a mechanism to streamline incorporation of permit requirements consistent with the Proposed Trash Amendments in lieu of TMDL requirements, if requested by the permittees, should be included.

Recommendation: The City of Burbank recommends the LARWQCB should be allowed to include permit provisions consistent with the Proposed Trash Amendments in areas where TMDLs exist without needing to reconsider the applicable TMDL(s).

3. Addressing Priority Land Uses

The Proposed Trash Amendments appear to require implementation of Track 1 or Track 2 for *any* storm drain that captures *any* runoff from a priority land use [Chapter IV.B.3.a.(1)/IV.B.3.a.(2) and Chapter III.L.2.a.(1)/Chapter III.L.2.a.(2) of the ISWEBE Plan and Ocean Plan, respectively]. This would trigger compliance requirements for a storm drain even if only a very small portion of a priority land use drains to the storm drain.

Recommendation: The City recommends adding language to Chapter IV.B.3.a.(1)/IV.B.3.a.(2) and Chapter III.L.2.a.(1)/Chapter III.L.2.a.(2) of the ISWEBE Plan and Ocean Plan, respectively stating that permittees must address catchment areas where the priority land uses are greater than 25% of the total catchment area.

³ This is required for all Trash TMDLs within the jurisdiction of the Los Angeles Regional Water Quality Control Board except for the Los Angeles River Trash TMDL and the Ballona Creek Trash TMDL.

4. Permitting Authority's Discretion to Revise Priority Land Uses

The Proposed Trash Amendments provide flexibility to permitting authorities to revise the priority land uses as well as define new trash sources (Chapter IV.B.3.d of the ISWEBE Plan and Chapter III.L.2.d of the Ocean Plan). However, the Proposed Trash Amendments do not require the permitting authorities to provide significant justification of the changes. Allowing the permitting authorities to impose more stringent requirements without criteria to justify such requirements contradicts the establishment of consistent statewide trash requirements. A statewide plan that gives broad discretion to regional permitting authorities often results in uneven implementation of the plan.

Recommendation: The City recommends that the Proposed Trash Amendments should either eliminate the discretion or have very clear guidance on how the discretion should be used (e.g., the permitting authority must provide sufficient data to justify the addition of land uses).

5. Permitting Authority's Discretion to Revise Compliance Dates

Chapter IV.B.3.d of the ISWEBE Plan and Chapter III.L.2.d of the Ocean Plan allows permitting authorities to determine that other, specific land uses generate substantial amounts of trash and require permittees to implement Track 1 and Track 2 for those land uses. If a permitting authority adds new priority land uses during the duration of the compliance period, it could be difficult for a permittee to achieve compliance with the Proposed Trash Amendments if the areas they are required to address change while they are attempting to address those areas.

Recommendation: The City recommends adding language to the Proposed Trash Amendments requiring a permitting authority to consider revisions to the final compliance date of the Proposed Trash Amendments if new priority land uses are added during the duration of the compliance period.