



**SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT**

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Public Comment  
Trash Amendments  
Deadline: 8/5/14 by 12:00 noon



2014

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VIA EMAIL: [COMMENTLETTERS@WATERBOARDS.CA.GOV](mailto:COMMENTLETTERS@WATERBOARDS.CA.GOV)

August 4, 2014

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Re: BART Comment Letter -- Proposed Trash Amendments

This letter contains the comments of the San Francisco Bay Area Rapid Transit District ("BART") to the State Water Resources Control Board ("State Board"), regarding its Proposed Amendments to the Statewide Water Quality Control Plans to Control Trash ("Proposed Trash Amendments"), including the associated Draft Staff Report and Draft Substitute Environmental Document ("SED"). We appreciate the opportunity to submit these comments to the State Board.

**Comment 1**

For reasons explained below, BART is concerned that the Proposed Trash Amendments would impose additional burdens on public transportation operators that are not supported by evidence in the record. BART is a Non-Traditional Permittee, newly subject to the State Board's most recent Phase II Small MS4 General Permit, which took effect in July 2014. As such, BART is in the process of developing programs to control and reduce trash discharges to waters through its storm drainage system. Under the Small MS4 General Permit, these requirements phase in over the permit term. Rather than imposing new burdens on public transportation agencies that are not justified by the record, we ask the State Board to allow time for its own General Permit program to be implemented by BART and other public transportation operators in the Non-Traditional Permittee category, before concluding that additional regulation is necessary.

## Comment 2

The Proposed Trash Amendments identify “public transportation stations” as a type of priority land use that would be subject to the new requirements.<sup>1</sup> Public transportation stations are defined as “facilities or sites where public transit agencies’ vehicles load or unload passengers or goods (e.g., bus stations and stops).”<sup>2</sup> Given the limited identification of “bus stations and stops” in the parenthetical, other types of public transportation stations are not explicitly addressed. In particular, the self-contained stations of heavy rail systems such as BART do not have the same propensity to generate trash as surface bus stations and stops in the public streets. The risk of uncontrolled trash disposal becoming a source of trash impairment in water bodies is greatly reduced in self-contained rail transit stations as compared to bus facilities. Bus stops are open, public spaces located directly on city streets. Trash generated at a bus stop immediately becomes roadway litter. By contrast, BART stations are underground, aboveground, in highway medians or otherwise isolated from city streets.

BART respectfully requests clarification from the State Board as to the scope of the term public transportation stations. To the extent that self-contained heavy rail transit stations are considered “public transportation stations” as defined, BART objects on the grounds that there is no evidence in the record to support the regulation of such stations as priority land uses generating significant amounts of trash (see Comment 3 below).

The State Board also indicates that the Proposed Trash Amendments will apply to “MS4 Phase I and Phase II NPDES permittees *with regulatory authority over land uses.*”<sup>3</sup> Although BART is a Non-Traditional Phase II Permittee, it does not have regulatory authority over land uses. The Draft Staff Report focuses on municipalities,<sup>4</sup> suggesting that Proposed Trash Amendments are intended to apply to municipal operators of bus services. We request that the State Board clarify whether the Proposed Trash Amendments to apply to rail transit agencies operating self-contained station facilities, such as BART.

## Comment 3

The Proposed Trash Amendments rely on a number of studies that analyze trash generation in different land use areas, including studies conducted in Los Angeles and in the San Francisco Bay Area. The Los Angeles studies found that land uses with the highest trash generation are high-density residential, commercial and industrial.<sup>5</sup> In the Bay Area, the land uses with the

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<sup>1</sup> Draft Staff Report at 12.

<sup>2</sup> Draft Staff Report at D-9.

<sup>3</sup> Draft Staff Report at 12 (emphasis added).

<sup>4</sup> Draft Staff Report at 12 (“*Municipalities are a source of trash generation, especially in areas with urban land uses and large population densities. MS4 Phase I and Phase II NPDES permits, which regulate discharges of storm water from MS4 systems throughout the state, have existing requirements for trash reduction in the form of institutional controls such as street sweeping and educational programs. Even with these existing provisions, municipalities, however, continue to be significant dischargers of trash to waters of the state.*”) (emphasis added).

<sup>5</sup> Draft Staff Report at 71.

highest trash generation rates are retail and wholesale, high-density residential, K-12 schools, and commercial / services and industrial.<sup>6</sup> The studies in the record also describe the most common types of trash, none of which are associated with self-contained rail transit stations.<sup>7</sup> These studies support the application of the Proposed Trash Amendments to the types of high generation areas identified in the studies. However, the inclusion of public transportation stations in the scope of priority land uses is not supported by anything in these studies. The Draft Staff Report indicates that the purpose of identifying priority land uses is to “allow MS4s to allocate trash-control resources to the developed areas that generate the highest sources of trash”<sup>8</sup> but provides no evidence that public transportation stations generate trash at rates comparable to residential, commercial or industrial land uses. In the absence of such evidence, there is no support in the record for a determination that public transportation stations should be included among trash priority land uses. Moreover, while there may be significant uncontrolled trash generation at other types of transportation facilities, BART already has institutional controls in place (see Comment 4, below) which distinguish it from uncontrolled facilities.

The Draft Staff Report cites the City of Los Angeles High Trash-Generation Areas and Control Measures (2002). As the Draft Staff Report notes, that study concluded that trash generation was most severe in commercial, industrial and residential areas.<sup>9</sup> The 2002 L.A. study does suggest adding additional receptacles at public transportation stations as a means of controlling trash, but only mentions buses and shuttles, not self-contained heavy rail transit stations.<sup>10</sup>

Another cited source, the Trash Total Maximum Daily Load for the Los Angeles River Watershed (2007), defines the land use category “transportation” broadly to include “airports, railroads, freeways and major roads, ... park and ride lots, bus terminals and yards, truck terminals, harbor facilities, mixed transportation and mixed transportation and utility.”<sup>11</sup> However, the document does not analyze the extent to which such facilities contribute to trash generation and, instead, concludes that commercial land use areas are the highest generators of trash.<sup>12</sup>

The Bay Area studies are most relevant to the question of whether BART should be regulated under the Proposed Trash Amendments. First, the Draft Staff Report relies on Santa Clara Valley Urban Runoff Pollution Prevention Program (2007). The entire discussion of public transit stations in that three-page document is as follows: “land areas where pedestrians litter typically include ... transition points (e.g. bus stops, train stations, entrance to public

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<sup>6</sup> Id.

<sup>7</sup> Common trash items are: cigarette butts; bags (paper and plastic); food wrappers and containers; caps and lids; cups, plates, forks, knives, and spoons; straws and stirrers; glass beverage bottles; plastic beverage bottles; beverage cans; and building materials. Draft Staff Report at 22, A-11.

<sup>8</sup> Draft Staff Report at 13.

<sup>9</sup> Draft Staff Report at 71.

<sup>10</sup> City of Los Angeles High Trash-Generation Areas and Control Measures (2002) at 19.

<sup>11</sup> Trash TMDL for the Los Angeles River Watershed (2007) at 22, n.35.

<sup>12</sup> Trash TMDL for the Los Angeles River Watershed (2007) at 21.

buildings).”<sup>13</sup> The Santa Clara document contains no data to support these assumptions, stating that its conclusions are based on “assessments” and “local agency staff knowledge of how trash is deposited and transported to local waterways.”<sup>14</sup> The Santa Clara study is a “conceptual” document that identifies “potential trash sources.”<sup>15</sup> It is not a comprehensive study that can support a conclusion that self-contained rail transit stations should be regulated under the Proposed Trash Amendments.

Another Bay Area-based study cited by the Draft Staff Report is Taking Out the Trash: A Source Reduction Pilot Project (2011). That study analyzed sources of trash in Oakland, Richmond, San Jose, and South San Francisco. It identified 200 “tickets” in its assessment, most of which could not be connected to a particular source.<sup>16</sup> Overall, transit-related trash amounted to only 3% of trash with a known source but did not specify the sources identified.<sup>17</sup> However, sources were identified in two assessments of trash in San Francisco. The Streets Litter Audit in San Francisco (2007) found only *two* BART tickets within all of the litter collected throughout the city.<sup>18</sup> This represented 3.4% of the total printed litter and 0.05% of all the litter observed.<sup>19</sup> In the San Francisco Streets Litter Re-Audit (2008), not one BART ticket was reported.<sup>20</sup> Two BART tickets reported in one study, and none in another, hardly provide support for a costly and burdensome regulatory program to control trash from BART stations. None of the other studies cited by the State Board in support of its identified priority land uses contain any mention at all of trash generation at public transportation stations.

The Draft Staff Report concludes that the cited studies show “that trash is generated at higher rates in highly populated and / or highly visited areas that attract high volumes of vehicular and pedestrian traffic.”<sup>21</sup> BART station platforms are highly visited areas, but (as discussed below) BART prohibits trash-generating food and drink in the platform areas, and requires vendors in the station concourse areas to control trash deposited by users of their facilities. BART also has significant pedestrian traffic entering and exiting its self-contained stations, but BART use is concentrated at weekday peak commuting hours, in contrast to the land uses identified as substantial trash generators in the studies, which have continuous high volumes of vehicular and pedestrian traffic throughout the day. Moreover, trash control on the streets at the entrances and exits outside self-contained BART stations is managed by the municipalities where the stations are located, not by BART.

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<sup>13</sup> Santa Clara Valley Urban Runoff Pollution Prevention Program (2007) at 2-3.

<sup>14</sup> Santa Clara Valley Urban Runoff Pollution Prevention Program (2007) at 1.

<sup>15</sup> Santa Clara Valley Urban Runoff Pollution Prevention Program (2007) at 1.

<sup>16</sup> Taking Out the Trash: A Source Reduction Pilot Project (2011) at 17.

<sup>17</sup> Taking Out the Trash: A Source Reduction Pilot Project (2011) at 20.

<sup>18</sup> City of San Francisco Streets Litter Audit (2007) at 80.

<sup>19</sup> City of San Francisco Streets Litter Audit (2007) at 80, 84.

<sup>20</sup> City of San Francisco Streets Litter Re-Audit (2008) at 44, 83-84.

<sup>21</sup> Draft Staff Report at 71.

In sum, the studies cited by the Draft Staff Report do not support the inclusion of self-contained rail stations among priority land uses for purposes of the Proposed Trash Amendments.

#### **Comment 4**

While high volumes of pedestrian traffic at public transportation stations might have the potential to generate problematic levels of trash in the absence of institutional trash controls, BART already has existing institutional control practices in place, as described below and in Attachment A.<sup>22</sup>

#### *Street Sweeping*

At BART stations with parking lots, it is BART's policy to conduct street sweeping once per week. Trash is raked out of landscaped areas in parking lots prior to sweeping to ensure that all parking lot trash is captured in the process.

#### *Pressure Washing*

BART regularly pressure washes its entry ways and paved plazas. This task is completed once per week at all stations except certain locations in San Francisco, where pressure washing is performed daily. BART employs independent contractors for this task and includes in its service agreements a provision that prohibits the disposal of waste water generated from pressure washing (including any associated trash) in storm drain inlets.

#### *No Food Trash Policy*

BART's longstanding policy is that no food or food containers may be brought on trains. As noted by the studies relied upon the Draft Staff Report, food containers are a significant source of trash. BART educates customers about this policy and BART Police and other BART employees enforce the policy.

#### *Trash Receptacles*

Trash receptacles are located at all of BART's outdoor stations, both immediately outside the station and on the train platforms. There are also trash receptacles immediately outside all underground stations. There are no trash receptacles on the platforms in underground stations because trash bins in underground areas create a security risk. However, trash bins are used by BART riders to dispose of trash, including food and food containers, before entering underground stations.

#### *Regular Train Cleaning*

At the end of each train trip (approximately once every hour) BART employees inspect all BART cars and remove any trash left behind by customers.

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<sup>22</sup> Attachment A to this letter contains a more detailed description of BART's existing trash control practices.

### *Public Education*

As noted above, BART currently alerts its customers as to its no-food policy. As part of its compliance with the Phase II Small MS4 General Permit, BART is currently developing signs and other public education materials related to the reduction of litter at BART stations.

### *Enforcement*

As noted above, BART enforces its no-food policy on trains and BART Police issue citations for littering on BART property. Since 2012, there have only been twenty-seven such citations, demonstrating that both the policy is enforced and that BART riders are not a significant source of trash generation.

### *Vendor Leases*

At some of its stations, BART leases space to various vendors including food sellers. As part of its standard lease terms, BART requires that all such vendors agree to implement certain trash control measures, including daily removal of all waste, water, trash, rubbish, and food and beverage spills within a fifty-foot radius of the vendor's location. The vendors are required to provide sufficient trash receptacles, beyond those that BART has already installed. As part of its compliance with the new Phase II Small MS4 General Permit, BART is revising its standard lease terms to require vendors to implement relevant Best Management Practices.

### *As-Needed Controls*

BART is continually re-evaluating its trash control practices and determining whether any additional policies or procedures are required on a station-specific basis. For example, in 2010, BART became aware that taxi cabs were lining up and idling alongside the parking lot at the Castro Valley station in an area that was directly over a storm drain inlet. As a result, trash and other pollution (i.e., leaked oil) was migrating into the storm drain. A local health authority asked BART to clean the storm drain. BART went beyond what was requested and amended its procedures to relocate the taxi cab stand to the other end of the parking area, away from the inlet. The space over the storm drain inlet was designated as a no-parking zone and BART posted new signs prohibiting overnight parking in the area adjacent to the storm drain, in order to facilitate regular street sweeping. This is an example of BART's ongoing commitment to ensuring that all sources of trash and other pollution are adequately contained.

### *Cleanliness Metrics*

BART conducts a biennial customer satisfaction survey. The results of the surveys confirm that BART's trash control strategies are effective. For example, in the most recent survey in 2012, BART received positive comments on station cleanliness, including "BART is amazingly clean" and "one of the cleanest forms of transportation in the country." In the 2010 survey there were only three comments (out of 6,700) relating to litter. BART also performs a cleanliness study once every quarter. For the period of Quarter 4 of 2012 to Quarter 4 of 2013, more than 65% of

riders rated walkways, entry plazas, landscaping, and parking lots as far exceeding BART's cleanliness goal.

In light of BART's existing, effective trash control practices, as well as the lack of support in the cited studies, there is no basis in the record for including BART stations in the priority land use category as posing a risk of trash impairment to water bodies.

#### **Comment 5**

The Proposed Trash Amendments include two alternative compliance tracks. Under Track 1, a permittee would install, operate and maintain full capture systems at storm drains. Track 2 requires a permittee to develop and implement a combination of other types of controls that would achieve the same performance results as a full capture system. However, the Proposed Trash Amendments and Draft Staff Report provide no indication of how permittees that choose Track 2 could demonstrate such equivalency. BART recommends that the State Board establish a set of presumptions and standards such that, if specified trash controls are implemented pursuant to Track 2, the State Board and Regional Water Quality Control Boards would conclude that the results are equivalent to Track 1.

Similarly, the Proposed Trash Amendments require permittees to conduct monitoring and submit reports that indicate the effectiveness of the controls. However, the Proposed Trash Amendments and Draft Staff Report provide no guidance as to how such monitoring and reporting should be conducted, including how Track 2 permittees would determine the efficacy of their controls and any associated decrease in discharged trash. The State Board indicates that the required monitoring and reporting should be tailored to the type of compliance.<sup>23</sup> BART agrees, and suggests that the State Board provide more specificity as to how Track 2 permittees should evaluate effectiveness. In particular, permittees choosing Track 2, which is inherently qualitative, should not be required to quantify the amount of trash discharged.

#### **Comment 6**

The SED for the Proposed Trash Amendments utilizes the South Coast Air Quality Management District's thresholds of significance for air quality impacts, disregarding differing thresholds applicable in other jurisdictions including the Bay Area. The SED asserts that the South Coast significance thresholds are "representative" because a significant population is located in Southern California and because the South Coast Air Basin has high concentrations of air pollutants,<sup>24</sup> but these facts do not make the thresholds themselves "representative" of significance thresholds throughout the state, nor support utilizing a South Coast-specific analysis for a statewide program. There are other air districts with more stringent<sup>25</sup> and less stringent<sup>26</sup> thresholds of significance compared to the South Coast district. Similarly, the SED assumes,

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<sup>23</sup> Draft Staff Report at 81.

<sup>24</sup> Draft Staff Report at 105, 109.

<sup>25</sup> See, e.g., [http://www.co.mendocino.ca.us/aqmd/pdf\\_files/MCAQMD\\_CEQA.pdf](http://www.co.mendocino.ca.us/aqmd/pdf_files/MCAQMD_CEQA.pdf).

<sup>26</sup> See, e.g., <http://www.tuolumnecounty.ca.gov/DocumentCenter/View/1072>.

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without any explanation, that traffic impacts will be highest in Los Angeles County and therefore incorporates the Los Angeles River Trash TMDL (2007) analysis as to traffic impacts.<sup>27</sup> The State Board may not incorporate analysis from another document without justification of its applicability.<sup>28</sup>

While an SED may be prepared in lieu of a CEQA document under the State Board's certified regulatory program, the State Board remains bound by the broad policy goals and substantive standards of CEQA.<sup>29</sup> The SED's primary purpose is to serve as an informational document, but the State Board has insufficiently explained why it relies so heavily on Southern California-specific analyses for statewide impacts. In addition, it is not clear that incorporation by reference is appropriate here. The CEQA Guidelines indicate that incorporation by reference should be used for general background information, not for actual impacts analysis.<sup>30</sup>

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Thank you for considering BART's comments. Please contact me if you have any questions or if you wish any further information regarding these comments.

Sincerely,



Gary C. Jensen  
Principal Engineer  
Environmental, Health, and Safety Division

Attachment

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<sup>27</sup> Draft Staff Report at 152.

<sup>28</sup> See CEQA Guidelines § 15150(c) ("Where an EIR or negative declaration uses incorporation by reference, the incorporated part of the referenced document shall be briefly summarized where possible or briefly described if the data or information cannot be summarized. *The relationship* between the incorporated part of the referenced document and the EIR *shall be described.*") (emphasis added).

<sup>29</sup> *City of Arcadia v. State Water Resources Control Board*, 135 Cal. App. 4th 1392, 1422 (2006).

<sup>30</sup> CEQA Guidelines § 15150(f) ("Incorporation by reference is most appropriate for including long, descriptive, or technical materials that *provide a general background but do not contribute directly to the analysis* of the problem at hand") (emphasis added).



## **ATTACHMENT A to BART Comments on Proposed Trash Amendments**

- I. Customer satisfaction studies and operations service surveys show that most riders find stations free of litter.

BART conducts customer satisfaction studies every other year, and distributes surveys to BART riders selected at random during all hours of operation on weekdays and weekends.

Corey, Canapary & Galanis Research, *2012 BART Customer Satisfaction Study 3*.

In 2010, the fifty-nine verbatim comments regarding station cleanliness were mostly related to the state of the bathrooms and station smells. Removing the twenty-two bathroom specific comments, there are only three comments relating to trash and litter among the 6,700 rider surveys. More riders commented on the cleanliness of BART stations, stating that floors are clean at stations.

In 2012, of all 112 station cleanliness verbatim comments, most comments were still related to the underground station smell. There are only three comments regarding trash and litter in and around the stations. For example, two of them requested more trash cans or noted occasional litter on escalators. However, more survey respondents commented on the lack of litter at stations and praised cleanliness in stations. For example, riders have commented that BART is amazingly clean and one of the cleanest forms of transportation in the country.

Every quarter, BART Operations conducts surveys asking riders to rate the environment of stations on a scale of 1 to 4. For the period of Quarter 4 of 2012 to Quarter 4 of 2013, averaged survey results for the cleanliness of station exteriors exceeded the District's goal of

2.8. More than 65% of riders rated walkways, entry plazas, landscaping, and parking lots as far exceeding that goal.

Accordingly, while occasional litter exists, trash and litter are not major or even noteworthy issues at BART stations for most riders.

II. The highest number of BART riders is during peak hours, which only constitutes a small fraction of time.

Average ridership on a weekday is more than 400,000 people. BART runs as a commuter train throughout the Bay Area and, as such, follows rush hour peaks and valleys. Weekday peak hours are from 7am to 10am, and 3pm to 7pm, where ridership can be as high as 30,000 people in one fifteen-minute window. However, during off-peak hours, ridership will only reach a high of 8,000 system-wide. Peak hours are roughly the same every weekday, every month, and only account for seven of the twenty service hours each weekday. With only a small window of time transporting the majority of our riders, the generation of trash is more limited than in other high priority areas with continuous high levels of pedestrian and vehicle traffic.

III. BART has practices in place for maintaining cleanliness at stations.

Stations are maintained by frequent train cleaning, weekly street sweeping of landscaping and parking lots, and regular pressure washing of station plazas. Trains are cleaned at the end of each line after every trip, which occurs roughly once an hour. Cleaners walk through all cars and pick up trash and litter before passengers are allowed into cars for the next trip. Parking lot street sweeping is done once a week, and includes raking all trash out of landscaping into the parking lot area before sweeping the lots.

Power washing at all station plazas is performed by a BART contractor, under a contract which requires the contractor to clean all exterior areas of stations and plaza areas including curbs, gutters, parking areas and sidewalks adjacent to stations, to remove all trash and litter

including food and drink waste and dispose of it away from BART property, to dispose of wastewater at a permitted off-site facility or discharge it under permit to the local publicly-owned treatment works, and to ensure that water used for cleaning does not enter any storm drain.

The frequency of these washings at each station varies from once per week to daily depending on the number of riders per station and state water conservation requirements. A failure to perform the services or other required acts within the Agreement provisions is considered in default; should a contractor be in default and fail to remedy the default within five days, BART may terminate the Agreement.

Trash receptacles are located throughout the BART system, both within and outside paid areas. Trash cans are outside every station, and inside above-ground stations; underground stations do not have trash cans for anti-terrorism security purposes. However, by having trash cans outside the paid areas of underground stations, patrons still have a place to throw away their trash on BART property.

BART Police Department citations do not show a high volume of littering at BART. For the period beginning 2012 and ending mid-2014, there have only been twenty-seven citations for littering on BART. Note, twenty-seven is a very small number, given the 400,000 trips per day over forty-four stations that BART serves.

IV. BART also requires strict cleanliness standards of all concessionaires at stations.

When a business sells goods at BART stations, it must sign a station retail permit. The contract provides, in relevant part, that the permittee must remove all waste resulting from conducting its business:

“Permittee shall, at Permittee’s own expense, be responsible for the daily removal of all waste, water, trash, rubbish, and food and beverage spills resulting from the

operation of or sales from Permittee's café, within a radius of fifty feet, and shall not use District refuse containers."

This waste removal must be done daily, be disposed of off-site and not in BART refuse containers, and at the permittee's expense. Additionally, the permittee must maintain the property in a "neat, clean and orderly condition at all times." A failure to comply with the provisions of the permit is considered a material default and breach of contract and could result in termination of the permit, if the permittee fails to promptly cure within 30 days.