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

Ms. Townsend:

Thank you for the opportunity to comment on the draft amendments to statewide water quality control plans to control trash.

I directed the San Francisco Estuary Partnership's Bay Area-wide Trash Capture Demonstration Project from 2009 through the conclusion of the project in 2013. The project, funded initially with \$5 million in principle-forgiveness federal stimulus funds (American Recovery and Reinvestment Act of 2009, or ARRA), was supported by the Division of Financial Assistance as funding was later transferred to Coastal Nonpoint Source and Urban Stormwater state bond funds (Propositions 13, 50, and 40).

My comments on the proposed amendments are based on the Partnership's extensive experience working with a dozen trash capture device vendors, and more than 60 Bay Area municipalities that benefited from the project as they developed local compliance strategies for the San Francisco Bay Water Board's Municipal Regional Stormwater NPDES permit (MRP) or incipient Phase II permit requirements. Our project was designed to demonstrate the effectiveness and cost-efficiency of a broad range of trash capture devices approved by Region 2 staff as "full capture." We purchased or installed more than 4,000 devices throughout the region. For your reference, the final project report is posted at <http://www.sfestuary.org/our-projects/water-quality-improvement/trashcapture/>.

I have three comments and associated recommendations:

1. The greatest barrier that California communities will face in complying with any trash control requirements is lack of funds to pay for structural controls, maintenance of full trash capture devices, development of institutional controls, and monitoring/reporting. Proposition 218 has created a disincentive for municipalities to even attempt to raise local funds to pay for storm drainage infrastructure and maintenance, resulting in a maintenance backlog and staff shortages in many communities.

Recommendation: With the adoption of statewide trash amendments, the Board should direct the Division of Financial Assistance to make grant funding available to municipalities to support compliance.

Recommendation: The Board should direct the Office of Chief Counsel to provide local agencies with an authoritative interpretation of A.B. 2403 that clarifies a municipality's ability to raise funds to pay for trash capture infrastructure and maintenance without a Proposition 218 election. Alternatively, the Board should undertake an urgent legislative campaign to further revise the Proposition 218 Omnibus Implementation Act (Government Code section 53750-

53756), to extend the exemption in A.B.2403 to storm drainage infrastructure improvements and maintenance.

2. I question the ability of Track 1 compliance to attain either the narrative objective selected by staff or a zero trash objective. As Geoff Brosseau noted in his oral comments at State Board's July 16 trash workshop, storm drains are just one of several pathways trash takes to reach our waters.

Recommendation: The Board should use the same load reduction-based compliance standard for Track 1 as for Track 2, and include interim milestones/reviews to determine whether Track 1 is locally effective in abating nuisance or reducing trash in receiving waters.

3. Because land use patterns, storm profiles, and the nature of constructed storm drainage infrastructure vary widely across California, centralized certification of trash capture devices at State Board is likely to become unworkable, causing significant additional work for staff and confusion for device vendors.

Recommendation: The Board should delegate certification of full capture devices to the regions, according to statewide criteria for functionality.

Some elaboration on these points:

1. **The greatest barrier that California communities will face in complying with any trash control requirements is lack of funds to pay for structural controls, maintenance of full trash capture devices, development of institutional controls, and monitoring/reporting. Proposition 218 has created a disincentive for municipalities to even attempt to raise local funds to pay for storm drainage infrastructure and maintenance, resulting in a maintenance backlog and staff shortages in many communities.**

It is gratifying to note that the Storm Water Strategy Initiative Paper prepared by State Board staff does recognize the Board's need to facilitate funding for stormwater management challenges and multi-benefit projects (1.1). The trash amendments should be fully consonant with the Storm Water Strategy.

The invisibility of storm drainage infrastructure to the taxpaying public, the current culture of bare-bones budgeting, and the effects of Proposition 218 conspire to make it practically impossible for most municipalities to pay for improvements to storm drain systems.

Los Angeles voters passed Proposition O, funding storm drainage and beach protection projects, in 2004 – when the economy was stronger and many local governments were able to spend more money than they are now.

Bay Area municipalities were fortunate in the coincidence of MRP adoption and the availability of grant funding through ARRA. Without principle forgiveness, most municipalities would not have been able to participate in our project, MRP compliance requirements notwithstanding.

The trash reduction amendments will hit all of the state's communities with significant new spending requirements.

As we know, "full capture" systems are only effective if they are regularly maintained. Large devices such as vortex separators are generally extremely costly to install and relatively cheap to maintain over the years; catch basin inserts and inlet screens have low capital cost and very high projected replacement and maintenance

cost over a 20-year timeframe. In either case any municipality with new trash reduction requirements will need significant new funding to support compliance.

Assembly Bill 2403, chaptered in 2014, amended the Proposition 218 implementation act to exempt storm drainage infrastructure projects that are related to both water quality and water supply. Perhaps it is possible to interpret this bill to exempt trash capture expenditures. If so, MS4s covered by the amendments must be assured that they can raise storm drainage fees or taxes, if necessary. If not, the Board must work with the legislature to make it possible for communities to fund compliance.

Recommendation: With the adoption of statewide trash amendments, the Board should direct the Division of Financial Assistance to make grant funding available to municipalities to support compliance.

Recommendation: The Board should direct the Office of Chief Counsel to provide local agencies with an authoritative interpretation of A.B. 2403 that clarifies a municipality's ability to raise funds to pay for trash capture infrastructure and maintenance without a Proposition 218 election. Alternatively, the Board should undertake an urgent legislative campaign to further revise the Proposition 218 Omnibus Implementation Act (Government Code section 53750-53756), to extend the exemption in A.B.2403 to storm drainage infrastructure improvements and maintenance.

- 2. I question the ability of Track 1 compliance to attain either the narrative objective selected by staff or a zero trash objective. As Geoff Brosseau noted in his oral comments at State Board's July 16 trash workshop, storm drains are just one of several pathways trash takes to reach our waters.**

The trash that ends up in the storm drain system is by no means all of the trash that creates a nuisance or public health hazard in our waters. Direct dumping into creeks, on-land dumping of large items, homeless encampments, windblown trash – all are sources of trash that will never see a catch basin. I fail to understand how Track 1 will actually reduce trash to non-nuisance levels.

Further, Track 1 does nothing to encourage or incentivize multi-benefit projects, which are likely to be prioritized in any future Stormwater Strategy Initiative.

But let's give it a chance – while including milestones and opportunities for adaptive management to correct the requirement if necessary.

To be fair, Track 1 compliance should have the same outcome-based compliance definition as Track 2.

- In the current draft amendments, Track 1 compliance is described as installation of 100 percent of full capture systems (outputs) within 10 years, at a rate of 10 percent of installations per year. No requirement for appropriate maintenance of these systems is included. (Ocean Plan L.4.a(3) and ISWEBE Plan B.5.a.(3))
- Yet Track 2 compliance will be evaluated based on trash load reduction (outcomes), also at a rate of 10 percent per year. (Ocean Plan L.4.a(4) and ISWEBE Plan B.5.a.(4))

Cynically, one could read the requirement that municipalities choosing Track 2 show how the selected "combination of controls is designed to achieve the same performance results as compliance under Track 1" (Ocean Plan L.4.a(2) and ISWEBE

Plan B.5.a.(2)) to mean that Track 2 communities need only capture the percentage of trash that catch basins collect.

Recommendation: The Board should use the same load reduction-based compliance standard for Track 1 as for Track 2, and include interim milestones/reviews to determine whether Track 1 is locally effective in abating nuisance or reducing trash in receiving waters.

3. Because land use patterns, storm profiles, and the nature of constructed storm drainage infrastructure vary widely across California, centralized certification of trash capture devices at State Board is likely to become unworkable, causing significant additional work for staff and confusion for device vendors.

Nearly all of the trash capture device vendors who participated in the Bay Area-wide Trash Capture Demonstration Project developed their designs in Los Angeles, in the wake of the Trash TMDLs. And nearly all of them – especially vendors of catch basin inserts and retractable curb inlet screens – found that they needed to revise their designs and specifications to accommodate the Bay Area’s much smaller catch basins, more frequent and less intense rain events, and the reduced runoff carrying capacity of our storm drainage infrastructure.

In several cases, Region 2 staff required design changes during the approval process. In others, municipal staff identified problems with either design or installation, and required modifications. Not coincidentally, device fabricators change their design specifications frequently as they work continually to innovate new designs adapted to local conditions. Each new design requires approval.

For these reasons I believe it is critical for vendors to be able to work through the certification process with Regional Board staff, who are familiar with local precipitation patterns and the idiosyncrasies of local infrastructure. State Board could provide functional criteria and post a master list of device manufacturers and device models, noting the regions that have approved different devices.

Please note that significant staff time will be involved for Regional Board staff, regardless of where certification occurs. Regional certification would reduce the burden on State Board staff, while helping to ensure appropriate functionality of devices installed locally.

Recommendation: The Board should delegate certification of full capture devices to the regions, according to statewide criteria for functionality.

Thank you for your attention to these comments. I am available to discuss them with staff at any time, on 415.902.1795 or at janet@jwcox.com.

Sincerely,



Janet Cox