

Construction Industry Coalition on Water Quality

August 5, 2014

Ms. Felicia Marcus, Chair
c/o: Jeanine Townsend, Clerk to the Board
California State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814



Via Email: commentletters@waterboards.ca.gov

RE: Comments on Draft Amendments to Statewide Water Quality Control Plans to Control Trash

Dear Ms. Marcus:

The Construction Industry Coalition on Water Quality (CICWQ) is submitting comments concerning the Draft Amendments to Statewide Water Quality Control Plans to Control Trash (Draft Trash Control Amendment). We are submitting this letter on behalf of the CICWQ membership, which is described below, as well as on behalf of the California Building Industry Association.

CICWQ is an advocacy, education, and research 501(c)(6) non-profit group of trade associations representing builders and trade contractors, home builders, labor unions, landowners, and project developers. CICWQ membership is comprised of members of four construction and building industry trade associations in southern California: The Associated General Contractors of California, Building Industry Association of Southern California, Engineering Contractors Association, and Southern California Contractors Association, as well as the United Contractors located in San Ramon. Collectively, members of these associations build a significant portion of the transportation, public and private infrastructure, and commercial and residential land development projects in California.

In preparing this comment letter, we conducted outreach with a cross-section of our membership who manage litter and trash control activities at construction job sites in California. Our comments are informed by our membership's collective experience and through CICWQ and CBIA's years of involvement in the development of regulatory requirements for construction site stormwater discharges. As you know, construction job sites are regulated currently through a general NPDES permit: ORDER NO. 2009-0009-DWQ [AS AMENDED BY ORDER NO. 2010-0014-DWQ]. The General Construction Permit (CGP) contains a prohibition on the discharge of trash in Section I. Findings. E. Prohibitions. No. 43 and reads:

“This General Permit prohibits the discharge of any debris¹ from construction sites. Plastic and other trash materials can cause negative impacts to receiving water beneficial uses. The State Water Board encourages the use of more environmentally safe, biodegradable materials on construction sites to minimize the potential risk to water quality.”

¹Litter, rubble, discarded refuse, and remains of destroyed inorganic anthropogenic waste.

The Draft Trash Control Amendment contains a recommendation to continue to require a prohibition of the discharge of trash from construction sites through implementation of the CGP. In addition, however, the Draft Trash Control Amendment contains language that would allow a permittee to comply by using two other options cited in the Staff Report:

“If the industrial or construction permittee, however, demonstrates to the Water Board that it is unable to comply with the outright prohibition, then the permittee, through the discretion of the Water Board, may comply with one of two options. Under the first option, the permittee would install, operate, and maintain full capture systems for storm drains that service the facility or site. As a second option, the permittee could develop and execute an implementation plan that committed to any combination of controls, such as full capture systems, other treatment controls (e.g. partial capture devices and green infrastructure and low impact development controls), institutional controls, and/or multi-benefit projects to achieve the same performance results as installation, operation and maintenance of full capture systems would achieve.”

While the Draft Trash Control Amendment Staff Report purports to provide flexibility, closer examination of the proposed requirements and additional narrative adds, if adopted, additional reporting of monitoring requirements for construction site dischargers, and most importantly, adds a significant burden of proof element to compliance that is unnecessary given CICWQ research into existing construction site trash control practices. In other words, it appears the State Water Board is proposing regulation that is unnecessary and unhelpful given current regulation and industry practice. And more generally, a review of available statistics on surface waters and impairments indicate that 98% of surface waters in California are not impaired for trash and those waters that are impaired are highly concentrated in three coastal areas: Los Angeles, San Diego, and San Francisco Bay Area. The problem of trash in receiving waters is localized and is being effectively addressed in that manner through the TMDL process and through implementation of other existing NPDES permits. We therefore question the need for any additional regulation at this time, in part because of the additional resources and time that will be required to comply with the Draft Trash Control Amendment when a problem with trash may never exist.

Based on discussions with our homebuilder members who are responsible for CGP implementation, trash control compliance is currently being achieved through

source control vis-a-vis physical removal of any trash on a daily basis, with trash collected placed in a covered container and periodically removed by trash collection and disposal service providers. In addition, compliance is achieved through street sweeping and other source control housekeeping measures that prevent the discharge of trash and organic debris from construction job sites. Individuals who were contacted indicated that enforcement of the prohibition on trash discharge was being done through inspections by local municipal officials and Regional Board staff.

According to our membership, the installation of full capture devices is technically infeasible in most instances because of the changing nature of a construction job site. The full capture option is known as Track 1. The alternative proposed, known as Track 2, is to implement some combination of full and partial capture along with using other, so-called institutional controls and other means to prevent trash from entering receiving waters. Track 2 would require some, undefined at this time, determination of the equivalency to Track 1 on the part of the discharger in order for a compliance demonstration under Track 2.

The determination of Track 1 and Track 2 equivalency is under development at this time according to the Draft Trash Control Amendment staff report and State Water Board staff (who provided clarification of intent at a workshop on 7/16/2014), and will be left to the discretion of the Regional Boards to develop at some future date. This kind of uncertainty in process is concerning, as is the fact the current prohibition of the discharge of trash appears to be working from the perspective of the construction industry, and additional regulation and so-called flexibility is unhelpful and may actually increase the cost to comply because of the difficulty of proving Track 2 equivalence with Track 1.

As an example, we have concerns about the monitoring and reporting program (described on page 17 of the Staff Report, Section 2.7), which strongly implies a level of effort required by builders and contractors, significantly above and beyond what is currently required to demonstrate compliance (handled in the SWPPP, implemented vis-à-vis daily physical collection and containment of trash using source control principles). And, the Draft Trash Control Amendment makes conflicting statements about the necessity of specific monitoring requirements for construction dischargers, and clarification of intent by the State Water Board is requested. Specifically, see conflicting information discussed on page 17, Section 2.7 and pages 81-82 of the Staff Report, 4.10 No. 3.

Finally, the State Water Board prepared a lengthy economic analysis of the impact of adopting the Draft Trash Control Amendment for Phase I and II MS4 dischargers, Caltrans, and Industrial General Permit holders. Most concerning is the fact the State Water Board did not estimate the financial impact of the Draft Trash Control Amendment on construction dischargers, and concluded the Draft Trash Control Amendment would not have any impact on the incremental cost of compliance. This is a faulty assumption considering that if the Draft Trash Control Amendment was adopted and construction dischargers chose to comply using Track 2, there will most certainly be

a cost for demonstrating equivalency with Track 1 and this cost would be borne by the individual discharger/permit holder as we currently understand how the Draft Trash Control Amendment Track 2 process would be implemented.

CICWQ's membership is in the forefront of water quality regulation, providing to water quality regulators practical ideas and solutions that are implementable and that have as their goal clean water outcomes. If you have any questions or want to discuss the content of our comment letter, please feel free to contact me at (951) 781-7310, ext. 210, (909) 525-0623, cell phone, or mgrey@biasc.org.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mark Grey", written over a horizontal line.

Mark Grey, Ph.D.

Technical Director

Construction Industry Coalition on Water Quality