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August 5, 2014

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



Transmitted Via Email: commentletters@waterboards.ca.gov

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

Dear Ms. Marcus:

The California Building Industry Association (CBIA) appreciates the opportunity to comment on the Draft Amendments to Statewide Water Quality Control Plans to Control Trash (Draft Trash Control Amendment). CBIA represents over 3,200 companies involved in all aspects of residential construction and community land development.

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 debris 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.”

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, the Draft Trash Control Amendment contains language that would allow a construction discharger 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 provides some flexibility, closer examination of the proposed requirement and additional narrative appears to add, if adopted, additional reporting of monitoring requirements for construction site dischargers and, importantly, adds a significant burden of proof element to compliance that appears to be unnecessary based on existing construction site trash control practices.

Trash control compliance at construction sites is currently being achieved through source control by physical removal of any trash on a daily basis, and with collected trash placed in a covered container and periodically removed by established trash collection and disposal service providers. Additionally, 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 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 that the current prohibition on the discharge of trash appears to be working from the perspective of our members, and additional regulation 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. Furthermore, 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 simply concluded that the Draft Trash Control Amendment would not have any impact on the incremental cost of compliance. We believe this to be a faulty assumption. Should the Draft Trash Control Amendment be adopted and construction dischargers chose to

comply using Track 2, there will most certainly be costs for demonstrating equivalency with Track 1 and these costs would be borne by the individual discharger/permit holder.

Thank you for the opportunity to provide these comments. Should you have any questions please contact our contracted expert on all matters before the Board, Cliff Moriyama at cm_consultine@comcast.net

Respectfully,

A handwritten signature in black ink, appearing to read "R. Lyon". The signature is fluid and cursive, with a large initial "R" and a long, sweeping underline.

Richard Lyon
Senior Vice President