

August 5, 2014

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



Sent via electronic mail to: commentletters@waterboards.ca.gov

RE: Comment Letter – Trash Amendments

Dear Chair Marcus and Board Members:

On behalf of California Coastkeeper Alliance, which represents 12 California Waterkeeper groups spanning the coast from the Oregon border to San Diego, we appreciate the opportunity to provide comments on the State Water Resources Control Board's ("State Board") June 2014 draft Trash Amendments ("Amendments"). CCKA and our network of California Waterkeepers have been actively involved in ensuring the control of trash pollution for twenty years. Many of our groups conduct frequent beach cleanups and are actively working at the local level to curb plastic pollution at its source through plastic bag and polystyrene bans. Generally, we are supportive of the Trash Amendments and commend the State Water Board for its leadership on the issue.

In 1972, Congress enacted the federal Clean Water Act (CWA) with the goal to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters."¹ The CWA directs states the State Board to adopt water quality standards to protect the public health and welfare, enhance the quality of water, and serve the purposes of the CWA. We commend the State Board for taking action to address the growing threat of trash pollution and its degradation of the chemical, physical, and biological integrity of our waters. Trash impairs the health of both humans and aquatic life. According to California's 2008-2010 Section 303(d) list of impaired waters, there are 73 listings due to trash in California waters. California needs strong and comprehensive statewide regulations to control trash.

The State Board's efforts to reduce trash impairments are laudable, but substantial changes need to be made to the Amendments to attain true trash reductions. As described in detail below, we ask the State Board to make the following revisions to the Amendments and the Substitute Environmental Document (SED):

- Include more information on the impacts of trash;
- Revise the Water Quality Objective to be clear and enforceable;
- Provide clear monitoring guidance for Track 2 Permittees;
- Exempt Region 2's MRP program from the Amendments;
- Be explicit that the discharge of pre-production plastics are prohibited;
- Hold municipalities responsible for identifying trash hot spots and require a minimum number of non-point source discharges to be addressed;
- Limit the scope of the Los Angeles Trash TMDL re-opener;
- Require Track 2 Permittees to install full-capture devices to the maximum extent feasible;

¹ 33 US Code§ 1251(a).

- Mandate interim milestones of 10 percent annually;
- Require permittees to begin implementing the Amendments within 18 months of adoption;
- Retain source control incentives.

A. THE TRASH AMENDMENTS ARE A STRONG AND NECESSARY STEP TOWARDS REDUCING TRASH POLLUTION IN CALIFORNIA’S WATERS.

Trash is prevalent in all waters of the state. The majority of trash in our waterways comes from the land—and is plastic. The U.S. Department of Commerce estimates that 80 percent of marine debris comes from land-based sources.^{2 3} 60 percent to 80 percent of all marine debris is plastic.⁴ Plastic can take hundreds of years or more to break down, and some types never truly biodegrade at sea.⁵ In the environment, plastic eventually breaks down into smaller and smaller particles that attract toxic chemicals.⁶ In an average 72 hour period, 2.3 billion plastic fragments and 30 metric tons of plastic debris are found to flow through the Los Angeles and San Gabriel Rivers.

Trash is environmentally harmful. Plastic particles are ingested by wildlife on land and in the ocean—contaminating our food chain.⁷ Plastics can contain potentially harmful constituents such as phthalates, bisphenol A, styrene, vinyl chloride and flame retardants.⁸ Trash has reportedly harmed over 663 marine species through ingestion and entanglement, some of which are threatened or endangered species under California or federal law.^{9 10} Trash transports other pollutants (bacteria, toxins, invasive species), and can become sources of disease (including mosquito borne diseases).¹¹ Even when they are no longer obvious to the naked eye, plastic degrades into tiny particles that adsorb toxins and contaminate our food chain as well as water and soil.¹² Plastic bags especially hurt sea turtles because bags floating in water look like jellyfish, a primary food for turtles, and researchers have commonly found plastic bags in the digestive tracts of dead turtles.¹³

Trash is expensive to the California economy. The costs associated with trash pickup from city streets and waterways are substantial; a carefully designed and comprehensive Trash Amendments could help reduce these impacts. Local Public Works Departments currently must remove trash from storm drain systems to prevent both pollution and flooding. The California Department of Transportation (Caltrans) spends up to \$41 million a year on litter removal.¹⁴ The City of Oakland allocated approximately \$19

² California Ocean Protection Council, "Resolution on Reducing and Preventing Marine Debris," Adopted February 8, 2007 available at <http://www.opc.ca.gov/2007/02/resolution-of-the-california-ocean-protection-council-on-reducing-and-preventing-marine-debris/>; See also California Ocean Protection Council, "An Implementation Strategy for the California Ocean Protection Council Resolution to Reduce and Prevent Ocean Litter," Adopted November 20, 2008.

³ MICHELLE ALLSOPP ET AL., GREENPEACE INT’L, PLASTIC DEBRIS IN THE WORLD’S OCEANS 6 (2006), available at http://www.unep.org/regionalseas/marinelitter/publications/docs/plastic_ocean_report.pdf.

⁴ *Id.* at 9.

⁵ MIRIAM GORDON, CAL. COASTAL COMM’N, ELIMINATING LAND BASED DISCHARGES OF MARINE DEBRIS IN CALIFORNIA: A PLAN OF ACTION FROM THE PLASTIC DEBRIS PROJECT 18 (2006) at 2.

⁶ See Matthew Cole et al., Microplastics as Contaminants in the Marine Environment: A Review, 62 MARINE POLLUTION BULL. 2588, 2589 (2011) at 2589, 2595; Richard C. Thompson et al., Lost at Sea: Where Is All the Plastic?, 304 SCIENCE 838, 838 (2004) at 838.

⁷ EPA-909-R-11-006, Marine Debris in the North Pacific: A Summary of Existing Information and Identification of Data Gaps, EPA 8 (Nov. 2011), <http://www.epa.gov/region9/marine-debris/pdf/MarineDebris-NPacFinalAprvd.pdf>.

⁸ *Supra* note 2.

⁹ CBD Technical Series No. 67, Impacts of Marine Debris on Biodiversity: Current Status and Potential Solutions, SECRETARIAT OF THE CONVENTION ON BIOLOGICAL DIVERSITY 9 (2012), <http://www.cbd.int/doc/publications/cbd-ts-67-en.pdf>.

¹⁰ *Supra* note 2.

¹¹ See, e.g., California Coastal Commission and Algalita Marine Research Foundation, "Plastic Debris, Rivers to Sea: A Bibliography of Research Related to Debris and Trash in Urban Runoff" (2006) ("BMP Manual") <http://www.plasticdebris.org/bibliography.html>.

¹² See Matthew Cole et al., Microplastics as Contaminants in the Marine Environment: A Review, 62 MARINE POLLUTION BULL. 2588, 2589 (2011).

¹³ See N. Mrosovsky et al., Leatherback Turtles: The Menace of Plastic, 58 MARINE POLLUTION BULL. 287, 287-88 (2009).

¹⁴ <http://www.dontrashcalifornia.info/>.

million in its 2008-09 FY for litter cleanup and abatement, on top of the \$80 million annually that Waste Management expends for trash collection in the area.¹⁵ Some reports have estimated that the cleanup and abatement of litter is costing the California state government up to \$375 million dollars each year.¹⁶ Cities are overwhelmed by the enormous costs of cleaning up litter.¹⁷ 95 California cities, towns, and taxpayers (communities ranging in size from just over 700 residents to over 4 million) are shouldering nearly \$500 million per year in costs to stop litter from becoming pollution.¹⁸ The U.S. EPA Region 9 estimates that West Coast communities (California, Oregon, and Washington) are spending approximately \$13 per resident per year to combat and clean up trash that would otherwise end up as marine debris.¹⁹ The report conservatively suggested that West Coast coastal communities are spending more than \$520 million to combat trash and marine debris.²⁰

Plastic and other debris litters our beaches, and represents a threat to California's \$46 billion ocean-dependent, tourism-oriented economy and in certain circumstances may pose a public health threat.²¹ Litter also negatively impacts tourism at California beaches, whose market and non-market values may exceed \$5 billion annually.²² Conversely, studies have correlated a drop in crime with cleanup of neighborhood trash and blight.²³ Trash-free communities have been demonstrated in a number of studies to be demonstrably safer than polluted communities, reducing other costs to residents.

B. THE WATER QUALITY OBJECTIVE SHOULD BE CLEAR AND ENFORCEABLE.

1. The Water Quality Objective should be a Numeric Limit of Zero.

Water quality objectives must be set at a level that is technically and scientifically necessary to protect beneficial uses.²⁴ There is no acceptable level of trash that may be present in our state's waters without impairing a number of beneficial uses, including recreation, habitat, and municipal and domestic water supply uses. Current efforts in the state to address trash in our waterways support this conclusion,

¹⁵ OPC, "Staff Report: OPC Support for Extended Producer Responsibility Programs" (April 23, 2009), http://www.opc.ca.gov/webmaster/ftp/pdf/agenda_items/20090423/09_EPR%20Panel/0904COPC_09%20EPR%20resolution%20amended..pdf.

¹⁶ <http://www.earthresource.org/campaigns/capp/capp-economics.html>.

¹⁷ See Kier Assocs., *The Cost to West Coast Communities of Dealing with Trash, Reducing Marine Debris*, EPA (Sept. 2012), <http://www.epa.gov/region9/marine-debris/pdf/WestCoastCommsCost-MngMarineDebris.pdf> (finding that ninety West Coast communities are spending more than \$520,000,000—over half a billion dollars—each year to combat litter and curtail marine debris); Facts at a Glance, *DON'T TRASH CALIFORNIA*, CAL. DEP'T OF TRANSP., <http://www.dontrashcalifornia.info/pdf/Statistics.pdf> (last visited Feb. 20, 2014) (finding that state and local governments in California spend over \$375 million per year on litter prevention, cleanup, and disposal, \$72 million of which is spent on cleaning up cups and bags).

¹⁸ Kier Assocs., *Waste in Our Water: The Annual Cost to California Communities of Reducing Litter that Pollutes Our Waterways*, NATURAL RES. DEF. COUNCIL 1-2, app. B tbl.14 (Aug. 2013), http://docs.nrdc.org/oceans/files/oce_13082701a.pdf (finding that the top communities are L.A. at \$36.4 million, San Diego at \$14.1 million, Long Beach at \$13.0 million, San Jose at \$8.9 million, Oakland at \$8.4 million, and Sacramento at \$2.9 million). For this study, information about litter capable of becoming aquatic debris "was solicited from 221 communities randomly selected from a list of all California communities. . . . Cost data came from a variety of sources including MS4 [Municipal Separate Storm Sewer] permits; annual budgets and reports; and phone interviews and e-mail correspondence with city hall staff, public works field managers, and knowledgeable nongovernmental organizations." *Id.* Of the 250-plus cities, towns, and municipal agencies contacted, "95 (representing about 20 percent of all California communities and one-third of the state's total population) responded with data relating to some, if not all, of the six cost categories." *Id.*

¹⁹ State Water Resources Control Board, *Substitute Environmental Document: Draft Amendments to Statewide Water Quality Control Plans to Control Trash 38* (June 2014).

²⁰ *Id.*

²¹ *Supra* note 2.

²² Kildow, J. and Colgan, C.S., *National Ocean Economics Program, "California's Ocean Economy. A Report to the Resources Agency, State of California"* (2005).

²³ See, e.g., Suffolk University, "Research Boosts Broken Windows Theory" (Jan. 13, 2009), <http://www.suffolk.edu/34417.html> (documenting a 20% drop in calls to police in formerly trash-strewn area as compared with control); full study found at: Braga, Anthony A. and Brenda J. Bond, "Policing Crime and Disorder Hot Spots: A Randomized Controlled Trial," *Criminology*. Vol. 46, No. 3 (August 2008).

²⁴ *Mississippi Comm'n on Natural Resources v. Costle*, 625 F.2d 1269, 1277 (5th Cir. 1980); see also 65 Fed. Reg. 31682, 31708 (May 18, 2000).

including the “zero trash” numeric target for the Los Angeles River Watershed TMDL. Although a substantial number of comments were received in response to the March 17, 2000 Draft TMDL, no information was provided to justify any other number for the final TMDL target that would fully support the designated beneficial uses.”²⁵

It is instructive that the Los Angeles River Watershed TMDL demonstrates beneficial uses would not be supported in the presence of any amount of trash. As was found by the Los Angeles Regional Water Board, “since littering is unlawful, a target of zero trash” is the “only defensible position.”²⁶ Regional Water Board staff “found no study to document that there is an acceptable level of trash that will cause no harm to aquatic life”; absent such a study, staff is “compelled to adopt a zero target.”²⁷ Establishing a statewide numeric “zero trash” water quality objective would properly put into practice this finding. The Los Angeles Regional Water Board’s rationale that “even a single piece of trash can be detrimental, and no level of trash is acceptable”²⁸ can and should be applied to waters across the state.

The Trash Amendments’ SED acknowledges that a “numeric objective of ‘zero trash’ could be an efficient regulatory tool because the measurement of compliance is clearly defined.”²⁹ However, the State Board goes on to claim that 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.”³⁰ The “zero trash” goal has been specifically contested in court, with the Court of Appeals rejecting dischargers’ claim that the target of zero trash is unattainable and inordinately expensive.³¹ *City of Arcadia v. State Water Resources Control Board*³² held that a “zero limit on trash within the meaning of the Trash TMDL is attainable because there are methods deemed compliance with the limit.”³³ Similar to the facts in Arcadia, the Amendments also offer methods to be deemed in compliance. Implementation of this goal to date has shown that not only is “zero trash” attainable and desirable, it is attainable under the expected cost figure and ahead of schedule.³⁴ As a result, we strongly recommend that the State Board adopt an appropriate “zero trash” objective as the numeric objective for *all* Regional Water Boards throughout the state.

To ensure the Amendments are an effective regulatory tool, we request the following change to Chapter II.C.5.:

~~*Zero Trash* shall not accumulate be present in ocean waters, along shorelines or adjacent areas in amounts that adversely affect beneficial uses or cause nuisance.*~~

- If a Numeric Standard is rejected, the Most Stringent Existing Narrative Standard for Trash Should Be the Starting Point for Action Statewide.*

The most stringent and common water quality objective throughout the basin plans states that waterways shall not contain trash, which should be the starting point for any statewide water quality objective. The Porter-Cologne Act defines “water quality objectives” as the allowable “limits or levels of water quality constituents or characteristics which are established for the reasonable protection of beneficial uses of

²⁵ LA RWQCB, “Staff Report: Trash Total Maximum Daily Loads for the Los Angeles River Watershed,” p. 20 (August 9, 2007)

http://www.waterboards.ca.gov/losangeles/board_decisions/basin_plan_amendments/technical_documents/2007-012/09_0723/L.%20A.%20River%20Trash%20TMDL_Final%20%20Staff%20Report_August%209,%202007.pdf.

²⁶ *City of Arcadia et al. v. Los Angeles RWQCB et al.*, 135 Cal.App.4th 1392, 1410 (Jan. 26, 2006).

²⁷ *Id.*

²⁸ *Id.* at 1406.

²⁹ *Supra* note 19, at 67.

³⁰ *Id.*

³¹ *City of Arcadia et al. v. Los Angeles RWQCB et al.*, 135 Cal.App.4th at 1413, 1427-30.

³² *Id.*

³³ *Id.* at 1428.

³⁴ City of Los Angeles Stormwater Permit Program, “Los Angeles River Trash TMDL,” http://www.lastormwater.org/siteorg/program/TMDLs/tmdl_lariver_trash.htm.

water or the prevention of nuisance within a specific area.”³⁵ Thus, water quality objectives are intended to protect the public health and welfare, and to maintain or enhance water quality in relation to the existing or potential beneficial uses of the water.³⁶

Water quality objectives must be set at a level that is technically and scientifically sufficient to protect beneficial uses.³⁷ There is no acceptable level of trash that may be present in our state’s waters without impairing a number of beneficial uses, including recreation, habitat, and municipal and domestic water supply uses. Current efforts in the state to address trash in our waterways support this conclusion.

The Trash Amendments’ SED acknowledges that a “numeric objective of ‘zero trash’ could be an efficient regulatory tool because the measurement of compliance is clearly defined.”³⁸ However, the State Board goes on to claim that 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.”³⁹ We disagree with the State Board’s conclusion, and recommend a zero water quality objective be re-evaluated.

3. The Trash Amendments’ Water Quality Objective Should Be Consistent with Existing Basin Plans’ Water Quality Objectives.

The draft Amendments propose the following narrative water quality objective: “no trash shall accumulate in state waters (or in areas adjacent to state waters) in amounts that would either adversely affect beneficial uses, or cause nuisance.” The State Board contends it derived this water quality objective “[t]o provide consistency statewide” with existing water quality objectives. As the SED explains, each regional water board has adopted narrative objective(s) for pollutants in its basin plan. These narrative objectives refer to trash-related pollutants and prohibit the presence of floatable, solid, suspended, and settleable materials in amounts that adversely affect beneficial uses.⁴⁰ According to the SED, there are “currently 33 existing narrative objectives in the eleven different water quality control plans that apply to the discharge of trash to state waters.”⁴¹

We agree with the State Board that the Amendments’ water quality objectives should be consistent with existing basin plans’ water quality objectives. But as drafted, the Amendments’ water quality objective is not consistent with existing basin plans. According to the State Board’s SED, Table 15, there is not one water quality objective in California using the terms “shall accumulate”. Instead, almost every existing water quality objective uses the terms “shall not contain.”

For purposes of consistency, we recommend the State Board revise the Amendments’ water quality objective to state that “waterways shall not contain trash...” Or, if the Board wishes to keep the existing sentence structure, we recommend: “no trash shall be present...”

4. The Water Quality Objective Should Be Clear and Easily Enforceable.

We note that, *at a minimum*, the most stringent existing narrative standard for trash should be the starting point for action statewide, and no action should be taken that could detract from efforts already in effect under narrative criteria in this state to reduce trash (such as the Los Angeles River Watershed Trash TMDL).

The term “accumulate” is vague, and a vague water quality objective is difficult to enforce. The

³⁵ California Water Code § 13050(h).

³⁶ http://www.waterboards.ca.gov/lahontan/water_issues/programs/basin_plan/docs/ch3_wqobjectives.pdf

³⁷ *Mississippi Comm’n on Natural Resources v. Costle*, 625 F.2d 1269, 1277 (5th Cir. 1980); *see also* 65 Fed. Reg. 31682, 31708 (May 18, 2000).

³⁸ *Supra* note 19, at 67.

³⁹ *Id.*

⁴⁰ *Supra* note 19, at 7.

⁴¹ *Supra* note 19, at 65.

dictionary defines “accumulate” as: “to increase gradually as time passes.”⁴² Given the temporal component of the definition, the definition leaves more questions than answers. How much increase in trash needs to occur before it is considered a violation of the water quality objective? How much time needs to pass before a violation occurs? Or more importantly, how does trash accumulate in the receiving water itself?

In contrast to the term “accumulate,” the terms “contain” or “present” are clear and precise. The dictionary defines “present” as: “to exist now”⁴³, and “contain” as: “to have”.⁴⁴ These are clear and easily enforceable terms. Additionally, the SED does not find that the accumulation of trash adversely affects beneficial uses, but rather the “*presence* of trash in waterways adversely affects beneficial uses, including but not limited to threats to aquatic life, wildlife, and public health.”⁴⁵

In order for the Amendments’ water quality objective to be clear and enforceable, we request the following revision to Chapter II.C.5.:

Trash shall not ~~accumulate~~ be present in ocean waters, along shorelines or adjacent areas in amounts that adversely affect beneficial uses or cause nuisance.*

C. PROVIDE CLEAR MONITORING CRITERIA FOR TRACK 2 PERMITTEES TO ENSURE COMPLIANCE.

The State Water Board needs to provide a performance standard for Track 2 Permittees to achieve, explicit language in the Amendments requiring monitoring to be conducted for Track 2, and minimum monitoring criteria for Track 2 Permittees to follow.

The Amendments require Track 2 Permittees to achieve “the same performance results as compliance under Track 1 would achieve...” To prove they are achieving the same performance results, Track 2 Permittees will be required to conduct monitoring to demonstrate they are reducing trash equivalent to that of Track 1 Permittees, but the Amendments lack specificity as to what shall be required for receiving water monitoring for Track 2. Instead, the Amendments only provide minimum monitoring and reporting requirements.

1. Provide a Track 1 Performance Standard for Track 2 Permittees to Achieve.

The CWA requires all NPDES permits to contain monitoring provisions that allow for a determination of whether a discharger is in compliance with its permit.⁴⁶ The Amendments require Track 2 Permittees to demonstrate equivalent trash reductions as Track 1. Chapter III.L.6. states that “Track 2 Permittees shall develop and implement monitoring plans that demonstrate the mandated performance results...and compliance with the performance standard.” Yet, neither the Amendments nor the SED provide a performance standard for Track 2 Permittees to achieve. How are Track 2 Permittees expected to demonstrate compliance with an unknown performance standard? Since there is much less certainty in trash reduction volumes with implementation actions other than full capture devices, an established performance standard is critical.

We request the State Board *provide an explicit performance standard in both the Amendments and the SED to help Track 2 Permittees demonstrate compliance.*

Alternatively, the State Board may consider requiring Track 2 Permittees to conduct a baseline analysis of all trash discharged within priority use areas, and then demonstrate a 100 percent reduction of that

⁴² See Merriam-Webster’s Dictionary, available at <http://www.merriam-webster.com/dictionary/accumulate>.

⁴³ See Oxford Dictionary, available at http://www.oxforddictionaries.com/us/definition/american_english/present

⁴⁴ See Oxford Dictionary, available at http://www.oxforddictionaries.com/us/definition/american_english/contain.

⁴⁵ Supra note 19, at 1.

⁴⁶ See 33 U.S.C. §§ 1318(a)(A), 1342(a)(2), and 1342(b)(1); 40 C.F.R. §§ 122.44(i)(1), 122.41(j)(1), and 122.48(b); see also Cal. Water Code § 13383.5).

baseline assessment. If this is the State Board's intent, we strongly encourage the Board to provide sufficient monitoring guidance to ensure the baseline study and the annual monitoring is conducted appropriately.

2. *Explicitly State that Receiving Water Monitoring and Trash Baseline Monitoring are required for Track 2 Permittees.*

The Trash Amendments must provide certainty that Track 2 BMPs are achieving the desired performance. As currently drafted, the Amendments do not specifically state that receiving water monitoring is required for Permittees electing Track 2. Instead, the Amendments require Track 2 Permittees to assess their compliance through "monitoring reports," which may or may not include actual receiving water monitoring. The Amendments state that the monitoring reports shall address and answer the following questions:

- (1) What type of and how many treatment controls*, institutional controls*, and/or multi-benefit projects* have been used, and in what locations?
- (2) How many full capture systems* have been installed (if any), and in what locations have they been installed, and what is the individual and cumulative area served by them?
- (3) What is the effectiveness of the total combination of treatment controls*, institutional controls*, and multi-benefit projects* employed by the MS4* permittee?
- (4) Has the amount of Trash* discharged from the MS4* decreased from the previous year? If so, by how much? If not, explain why.
- (5) Has the amount of Trash* in the MS4's* receiving water(s) decreased from the previous year? If so, by how much? If not, explain why.

We agree these questions are appropriate to determine compliance, but it must be clear that these questions need to be answered specifically with receiving water monitoring.

Unlike the Amendments, the Staff Report is clearer that monitoring is required to answer the Amendments' reporting questions. The SED states definitively that Track 2 Permittees "would develop and implement annual monitoring that demonstrate the mandated performance results, effectiveness of the selected combination of treatment and institutional controls, and compliance with the equivalency to Track 1."⁴⁷ This is the type of explicit language that should be in the Amendments themselves.

As recently explained by the 9th Circuit Court of Appeals:

[T]he Clean Water Act requires every NPDES permittee to monitor its discharges into the navigable waters of the United States in a manner sufficient to determine whether it is in compliance with the relevant NPDES permit. 33 U.S.C. § 1342(a)(2); 40 C.F.R. § 122.44(i)(1) ("[E]ach NPDES permit shall include conditions meeting the following . . . monitoring requirements . . . to assure compliance with permit limitations."). That is, an NPDES permit is unlawful if a permittee is not required to effectively monitor its permit compliance.⁴⁸

The monitoring component of Track 2 is a critical piece to ensure that the Trash Amendments meet the goal of no trash present in our waterways. Without an explicit requirement for receiving water monitoring, the State Board is providing a compliance path that is not easily enforced. Moreover, it is important that all permittees understand their options under the Amendments. If the Amendments are not clear that Track 2 Permittees must perform receiving water monitoring, then it will lead to poor implementation.

⁴⁷ Supra note 19, at 16.

⁴⁸ *NRDC v. County of L.A.*, 2013 U.S. App. LEXIS 16416, 36 (9th Cir. 2013).

The Trash Amendments do not specifically require baseline monitoring. The SED clearly states that Track 2 Permittees are required to develop a baseline analysis of existing trash levels:

“MS4 permittees complying under Track 2 would develop and implement annual monitoring plans to demonstrate implementation, performance results, and effectiveness of the institutional controls. This requires that permittees collect monitoring data about existing trash levels prior to implementation of institutional controls to *set a baseline* for comparison to trash levels after implementation of controls.”⁴⁹

However, the Amendments – which outline the minimum monitoring requirements – do not mention the requirement for Track 2 Permittees to develop a baseline analysis of existing trash levels. A baseline analysis is an indispensable element of any monitoring plan intended to demonstrate a percent reduction in trash; and therefore, should be an explicit minimum monitoring requirement within the Amendments.

We recommend the State Board revise the Trash Amendments to *be explicit that Track 2 Permittees are required to conduct a baseline assessment and annual receiving water monitoring to demonstrate equivalent trash reductions as Track 1.*

3. Provide Minimum Baseline and Compliance Monitoring Criteria.

The Amendments provide too much discretion to permittees to develop a monitoring methodology, which will lead to ineffective and inconsistent compliance monitoring. The SED states that the “monitoring objectives are intended to provide flexibility to the permit writers to select the most relevant monitoring techniques and expectations for their respective permits.”⁵⁰ While we generally agree that some flexibility is warranted given variations for permittee compliance, we do not agree that Track 2 permittees should be given full discretion with conducting baseline and annual monitoring programs.

Minimum baseline monitoring criteria is a critical first step to assure Track 2 permittees are reducing trash discharges. Without an accurate baseline, permittees will be unable to determine whether they are actually reducing trash discharges as required by the Amendments. Region 2’s MRP is a good example – and a cautionary tale – of what can happen if monitoring criteria is not provided as guidance. The lack of guidance led to a deficient baseline study by Region 2 municipalities, and the study was rejected by the Regional Board for not appropriately assessing the accurate amount of trash being discharged.

Instead, the State Board should *review and consider this study and the Monitoring and Reporting Program for the Ventura River Estuary Trash TMDL*, which we are incorporating as Attachment 1.

In order to provide suitable monitoring guidance for Track 2 Permittees to demonstrate compliance, we offer the following revisions to Chapter III.L.6.b.:

MS4 permittees that elect to comply with Chapter III.J.2.b.2. (Track 2) shall develop and implement monitoring plans that demonstrate the mandated ~~performance results, effectiveness of the full capture systems*, other treatment controls*, institutional controls*, and/or multi-benefit projects*~~, and compliance with the performance standard of (xx??). Monitoring reports shall be provided to the applicable permitting authority* on an annual basis, and shall include a baseline monitoring report, minimum receiving water monitoring criteria as set forth in the Staff Report, GIS-mapped locations and drainage area served for each of the full capture systems*, other treatment controls*, institutional controls*, and/or multi-benefit projects installed or utilized by the MS4* permittee.*

⁴⁹ Supra note 19, at 81.

⁵⁰ Supra note 19, at 16.

D. EXEMPT THE SAN FRANCISCO BAY MUNICIPAL REGIONAL PERMIT’S TRASH PROGRAM FROM THE AMENDMENTS.

In 2009, the San Francisco Bay Water Board (Region 2) adopted provisions in its Municipal Regional Stormwater Permit (MRP) to address trash in the 27 303(d) listed water bodies in the Region (Order No. R2-2009-0074). The MRP applies to 76 large, medium and small municipalities and flood control agencies in the San Francisco Bay Region. The MRP prohibits the discharge of trash in surface waters and requires permittees to reduce trash from their storm sewer systems by 40 percent by July 1, 2014, 70 percent by 2017, and 100 percent by 2022.⁵¹

1. The Trash Amendments are not at least as protective of water quality as the MRP.

The Trash Amendments’ SED states that Region 2’s MRP requires a mandatory minimum level of trash capture; cleanup and abatement progress on a mandatory minimum number of trash hot spots; and implementation of other control measures and best management practices, such as trash reduction ordinances, to prevent or remove trash loads from MS4s to attain a 40% reduction in trash loads by July 1, 2014. The SED goes on to state “The required trash load reduction through the Short-Term Trash Load Reduction Plans does not conflict with the implementation provisions set forth in the proposed Trash Amendments. As such, the proposed Trash Amendments would not result in a degradation of water quality standards in waters regulated by the MRP, because the proposed Trash Amendments are at least as protective of water quality as the MRP.”

The Trash Amendments are not at least as protective of water quality as the MRP. The MRP has required interim compliance deadlines, and numeric load reductions throughout the impaired waterbodies, which will ultimately result in less trash discharging to Bay Area waters than would be with the Trash Amendments. The MRP states that permittees will demonstrate compliance with “trash-related Receiving Water Limitations through the timely implementation of control measures and other actions to reduce trash loads from municipal separate storm sewer systems (MS4s) by 40% by 2014, 70% by 2017, and 100% by 2022.”⁵² If the MRP was re-issued with the Amendments’ new compliance deadlines, Bay Area permittees would be given a free-pass on meeting their 2014 compliance deadline, thus constituting backsliding. This is inappropriate given Bay Area permittees’ poor attempt at implementing their trash program to-date. The State Board and Region 2 should not excuse poor implementation of a program aimed to reduce impairment to 303(d) Listed waterbodies.

The MRP has required numeric targets to be achieved that are greater than the Amendments’ targets. As stated above, the MRP requires a demonstration that a 40 percent, 70 percent, and 100 percent reduction in trash discharges have been achieved from the baseline. Alternatively, the Amendments only require Track 2 Permittees to achieve “the same performance results as compliance under Track 1 would achieve.”⁵³ This is not equivalent to reducing trash discharges to 100 percent of your baseline, and if Region 2 were to re-issue its MRP with the Amendments’ provisions it would constitute backsliding.

The MRP has required hot-spot cleanups. The MRP states “Trash Hot Spots in receiving waters shall be cleaned annually to achieve the multiple benefits of beginning abatement of these impacts as mitigation and to learn more about the sources and patterns of trash loading.”⁵⁴ The Amendments do not require any minimum requirements for permittees to address non-point sources of trash, and instead, leave it up to the discretion of the Regional Board. Bay Area Permittee’s requirement to address a minimum number of trash-hot spots is more protective of water quality than the Amendments.

⁵¹ Supra note 19, at 8.

⁵² MRP at 84.

⁵³ Chapter III.L.2.a.2.

⁵⁴ MRP at 85.

If Region 2 re-issues its MRP with the Amendments' provisions it will constitute backsliding. The Clean Water Act, Section 402(0) states:

“In the case of effluent limitations established on the basis of subsection (a)(1)(B) of this section, a permit may not be renewed, reissued, or modified on the basis of effluent guidelines promulgated under section 1314(b) of this title subsequent to the original issuance of such permit, to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit.”

As discussed above, the MRP's 2014 interim compliance deadline, the numeric target of 100 percent reduction in trash discharges, and the requirement for Permittees to address non-point source trash pollution all make the MRP more protective of water quality than the Amendments. If Region 2 re-issues its MRP with the Amendments' new standards it shall be less stringent than the previous permit – constituting backsliding. Region 2 must be exempted from the Amendments in order to be consistent with the SED's claim that the Amendments will cause “no degradation,” and are “at least as protective.”

2. *The Bay Area's Implementation of the MRP is an Enforcement Issue, Not a Policy Problem.*

We understand that Region 2's implementation of the MRP has been underwhelming, and agree that improvements need to be made. However, we don't agree that the Amendments will improve the status in the Bay Area. Implementation concerns with the MRP are just as likely under the Amendments new provisions. The problem is not with the MRP's provisions, but rather the lack of enforcement for poor implementation. The stringency of the effluent limits in the MRP in lieu of enforcement would be the worst kind of backsliding possible.

In order to hold Region 2 MRP Permittees responsible for their permit requirements to reduce trash discharges by 40 percent by 2014 and to reduce discharges to 100 percent by 2022, we offer the following revisions to Chapter III.L.1.b.:

These Trash Provisions apply to all surface waters of the State, with the exception of those waters within the jurisdictions of the Los Angeles Regional Water Quality Control Board (Los Angeles Water Board) and the San Francisco Regional Water Quality Control Board for which trash Total Maximum Daily Loads (TMDLs) or existing permit terms addressing 303(d) impaired waterways are in effect prior to the effective date of these Trash Provisions.*

At a minimum, the Amendments should be explicit that Region 2 shall retain its interim and final compliance deadlines – including the percent reduction targets – when it re-issues its MRP.

E. BE EXPLICIT THAT PRE-PRODUCTION PLASTIC DISCHARGES ARE OUTRIGHT PROHIBITED.

It is critical that the prohibition of discharge of preproduction plastics remain absolute and unwavering in order to address the problem of preproduction plastics in receiving waters, and in order to comply with existing state law. In Chapter III.L.6.d, the Amendments contain a prohibition of discharge for preproduction plastics, but this prohibition conflicts with Chapter III.L.2.c. These two sections must be reconciled and it must be clarified that the prohibition of pre-production plastic discharges is absolute, and cannot be undermined by any other section of the Amendments.

Sixty to 80 percent of all marine debris and 90 percent of floating debris is plastic.⁵⁵ The problem of plastic marine debris is increasing in California and the North Pacific Gyre, where densities of micro-

⁵⁵ Supra note 2; See also California Ocean Protection Council, “An Implementation Strategy for the California Ocean Protection Council Resolution to Reduce and Prevent Ocean Litter,” Adopted November 20, 2008.

plastics have tripled during the last decade.⁵⁶ Thermoplastic resin pellets (commonly called “nurdles”), plastic powders, and production scrap, all of which are mistaken as food by marine life, are a significant source of beach pollution. One survey conducted in the summer of 1998 estimated that over 100 million nurdles were polluting Orange County beaches alone – this represented over 98 percent of all of the pollution collected in terms of abundance and 17 percent in terms of weight.⁵⁷

Assembly Bill 258 (Krekorian) was signed into law in 2007 to address California’s growing problem with preproduction plastics. AB 258 requires the State and Regional Water Boards to implement a program for the prevention of preproduction plastics discharges from point and nonpoint sources. The law includes waste discharge, monitoring, and reporting requirements that, at a minimum, target plastic manufacturing, handling, and transportation facilities, and the implementation of specified minimum best management practices for the control of discharges of preproduction plastic.

The Amendments’ prohibition of discharge, Chapter III.L.6., states that the “discharge of trash to surface waters of the State, or the deposition of Trash where it may be discharged into surface waters of the State is prohibited. The prohibition, sub-section d, goes on to state:

“This prohibition of discharge applies to the discharge of preproduction plastic* by manufacturers of preproduction plastics*, transporters of preproduction plastics*, and manufacturers that use preproduction plastics* in the manufacture of other products to surface waters of the State, or the deposition of preproduction plastic* where it may be discharged into surface waters of the State.”

We applaud the State Board for Chapter III.L.6.d., but we are concerned that the Amendments may nonetheless provide a loophole for industrial permittees to escape the outright prohibition of preproduction plastics. Chapter III.L.6.d is in conflict with Chapter III.L.2.c of the Amendments. Chapter III.L.2.c of the Amendments’ state that “[i]f the discharger can satisfactorily demonstrate to the permitting authority its inability to comply with the outright prohibition of the discharge of Trash” then an Executive Officer can exempt the permittee from the prohibition and require Track 1 or Track 2.

As the SED outlines, preproduction plastics often fall well below the existing 5mm screening requirement of full capture devices. Allowing a permittee to be exempt from the outright prohibition of preproduction plastics and instead be required to install full-capture devices would do nothing to stop preproduction plastics from being discharged into waters of the state. Likewise, a Track 2 approach would have limited success at stopping any significant portion of preproduction plastic discharges. Thus, the State Board should *be explicit that Chapter III.L.2.c. does not apply to the prohibition of preproduction plastics.*

In order to clearly state that Executive Officers do not have the discretion to terminate the prohibition on pre-production plastic discharges, we offer the following revisions to Chapter III.L.2.c.:

...Termination of permit coverage the outright prohibition under Chapter III.L.6.a. for industrial and construction storm water dischargers shall be conditioned upon the proper operation and maintenance of all controls (e.g., full capture systems*, other treatment controls*, institutional controls*, and/or multi-benefit projects*) used at their facility(ies). Regardless of termination under Chapter III.L.6.a., all industrial storm water dischargers shall meet the outright prohibition for pre-production plastics under Chapter III.L.6.d.*

⁵⁶*Id.*

⁵⁷ *Id.*

F. HOLD MUNICIPALITIES RESPONSIBLE FOR IDENTIFYING TRASH HOT SPOTS AND REQUIRE A MINIMUM NUMBER OF NON-POINT SOURCES BE ADDRESSED.

Permittees should address a minimum number of un-permitted non-point sources. Trash generated from non-point sources has significant impact. As a result, recent trash TMDLs adopted in Region 4 and requirements in Region 2 all include load allocations for non-point sources. Thus the State Board should require Regional Boards to address a minimum number of non-point sources within its region. Instead, the Amendments give complete discretion to the permitting authority to determine specific land uses or locations that generate substantial amounts of trash.⁵⁸ Given limited resources, it is highly unlikely that Regional Boards will require additional measures beyond the existing Amendments' requirements.

1. Municipalities Should Conduct a Trash "Hot Spot" Survey to Determine Significant Sources of Non-Point Sources of Trash.

As currently drafted, a Regional Board would be responsible for determining specific locations where substantial amounts of trash are being generated. Or the Regional Board could ignore non-point sources altogether. Regional Boards do not have the resources to conduct a comprehensive determination, and if they did, those resources should be better spent on other programs—such as enforcement.

Instead of placing the burden on Regional Boards to determine non-point sources that are generating a substantial amount of trash, the State Board should require municipalities to conduct a hot spot survey every permit term to identify non-point sources of trash that contribute significant volumes of trash. Each survey should rank its non-point sources from the most egregious location to the lowest.

This type of hot spot survey is required in the Region 2 MRP where permittees are required to identify hot spots that discharge a substantial amount of trash. The MRP states that "Trash Hot Spots in receiving waters shall be cleaned annually to achieve the multiple benefits of beginning abatement of these impacts as mitigation and to learn more about the sources and patterns of trash loading."⁵⁹

We applaud Region 2 and Region 4's efforts to identify and address non-point sources of trash, and recommend the State Board look at these non-point source programs as a starting place for putting specific non-point source requirements into the Amendments.

2. Address a Minimum Number of Non-Point Source Hot Spots through Waste Discharge Requirements.

In addition to requiring municipalities to identify non-point sources of trash through trash hot spot surveys, the Water Boards should determine a minimum level of non-point sources to be addressed. Again, we suggest the State Board look at the MRP's non-point source program as a starting place. The MRP sets a minimum number of non-point sources to be addressed by permittees through a population analysis:

"Population-based Permittees shall identify high trash-impacted locations on State waters totaling at least one Trash Hot Spot per 30,000 population, or one per 100 acres of Retail/Wholesale Commercial Land Area, within their jurisdictions based on Association of Bay Area Governments (ABAG) 2005 data, whichever is greater."⁶⁰

By requiring this type of analysis in the Amendments, the State Board will set a clear and unambiguous methodology for calculating the minimum number of non-point sources to be addressed in each region. The MRP's calculation led to minimum of 349 non-point sources to be addressed in the Bay Area. Those

⁵⁸ Supra note 19, at 15.

⁵⁹ Supra note 52, at 89.

⁶⁰ *Id* at 85.

349 minimum non-points were then broken down into minimum requirements for each municipality. With each municipality responsible for addressing a certain quantity of trash hot spots, the municipality was then given the discretion to determine what non-point sources were priorities and needed to first be addressed.

The identification and eradication of trash "hot spots" can easily be accomplished through local, MS4 program. This has proven successful in the Russian River watershed and can be implemented in other MS4's without any great expense to the permittees. The Russian Riverkeeper has developed volunteer creek and watershed "stewardship" cleanups that are held annually. A similar volunteer approach can be implemented statewide to help permittees identify trash hot spots and help control trash from those non-point source discharges.

We recommend the State Board *require the permitting authority conduct a similar population analysis as Region 2's MRP in order to set a minimum number of non-point source discharges to be addressed.*

3. The Permitting Authority Should Retain Discretion Over Specific WDR-Criteria, but the Amendments Should Provide Minimum Criteria.

Addressing non-point source discharges for trash can be a very site-specific determination. As such, permitting authorities should retain the discretion to develop appropriate WDRs to address non-point sources of trash. However, the State Board should provide a minimum level of criteria to be required in each trash hot spot. Again, Region 2's non-point source program is a good starting point regarding what the Amendments should require as minimum criteria for non-point sources. The MRP states that "Permittees shall cleanup selected Trash Hot Spots to a level of 'no visual impact' at least one time per year for the term of the permit. Trash Hot Spots shall be at least 100 yards of creek length or 200 yards of shoreline length."⁶¹ This type of minimum criteria is critical to ensure the responsible party is properly addressing the non-point source discharge.

Second, it is important for the responsible party to quantify the amount of trash being discharged and its sources. The Region 2 non-point source program states that:

The Permittees shall quantify the volume of material removed from each Trash Hot Spot cleanup, and identify the dominant types of trash (e.g., glass, plastics, paper) removed and their sources to the extent possible. Documentation shall include the trash condition before and after cleanup of the entire hot spot using photo documentation with a minimum of one photo per 50 feet of hot spot length. Trash Hot Spots may also be assessed using either the Rapid Trash Assessment (RTA v.8) or the SCVURPPP Urban RTA variation of that method.

Minimum requirements are critical to obtaining the necessary information for both the permittee and the permitting authority to determine whether additional measures are required to address trash hot spots. As required in Region 2, we request the hot spot survey include a source identification component to assess the sources of trash pollution. This source identification evaluation should be conducted in conjunction with the survey for non-point sources in order to better assess the most appropriate types of BMPs and source controls to be implemented.

4. Homeless Encampments and High-Use Beaches Should Be Addressed Explicitly.

In addition to a minimum amount of non-point sources to be addressed, a permitting authority should be explicitly required to issue WDRs to address homeless encampments and high-use beaches.

Throughout the state, due to the unfortunate lack of attention to these areas, homeless encampments

⁶¹ *Id.*

constitute a significant source of non-source point trash pollution. This year, the State Department of Fish and Wildlife filed an environmental complaint against the City of San Jose, claiming violations of water quality laws for failing to clean up homeless encampments.⁶² The State has already determined that trash, human waste and other refuse from homeless encampments constitutes a nuisance.⁶³ Given the Amendments' water quality objective of "no trash that causes a nuisance," it is necessary for the State Board to explicitly require homeless encampments to be addressed through non-point source WDRs.

High-use beaches are another non-point source that contributes significant volumes of trash discharges to waters of the state, despite the efforts of many signatory organizations on this letter to conduct regular volunteer beach clean ups. In 2013, California Coastal Cleanup Day volunteers (including several State Board members) picked up almost 750,000 pounds of trash along the California coastline.⁶⁴ There is no dispute that high-use beaches are a significant source of non-source trash pollution. However, not every beach constitutes a significant source of trash pollution. Therefore, we suggest only high-use beaches – as defined by AB 411 – be explicitly addressed as a non-point source of trash.

In order to address non-point sources of trash, we recommend the following revisions be made to both Chapter III.L.2.d. and Chapter III.L.3.:

Chapter III.L.2.d. - A permitting authority ~~may~~ shall require a minimum amount of ~~determine that~~ specific land uses or locations (e.g., parks, stadia, schools, campuses, fast food restaurants, or roads leading to landfills) to be deemed trash hot spots and determined as trash hotspots generate substantial amounts of Trash*. ~~In the event that the permitting authority* makes that determination, the permitting authority* may require the MS4* to comply with Chapter III.L.2.a. or Chapter III.L.2.b. (as the case may be) with respect to such land uses or locations. In addition to the minimum amount of trash hot spots,~~ homeless camps and high-use beaches as defined in AB411 shall be deemed a "hot spot."*

Chapter III.L.3. - A permitting authority ~~may~~ shall require dischargers, that are not subject to Chapter III.L.2. herein, to implement Trash* controls in areas or facilities that may generate Trash*. Dischargers subject to Chapter III.L.2. shall conduct a trash "hot spot" survey to determine a minimum number of non-point sources that generate trash, such areas or facilities may include (but are not limited to) high usage campgrounds, picnic areas, beach recreation areas, parks not subject to an MS4* permit, fast food restaurants, or marinas. In addition to the minimum amount of trash hot spots, homeless camps and high-use beaches as defined in AB411 shall be deemed a "hot spot."*

G. THE LOS ANGELES TRASH TMDL RE-OPENER SHOULD BETTER EXPLAIN WHY THE TMDL MAY BE RECONSIDERED.

We strongly support the "grandfathering" of the existing requirements for the 15 trash TMDLs in Region 4. The Amendments "apply to all surface waters of the State, with the exception of those waters within the jurisdiction of the Los Angeles Regional Water Quality Control Board for which trash Total Maximum Daily Loads are in effect prior to the effective date of these Trash Provisions." Heal the Bay, Natural Resources Defense Council, and many others participated in the lengthy public processes employed by Region 4 for all of these TMDLs. There was much discussion and input provided by all stakeholders during the development of these TMDLs – the first trash TMDL came into effect in 2001. As a result, most dischargers appear to be on-track for interim and final compliance milestones.

⁶² Bruce Newman and Paul Rogers, "State files water pollution complaint against San Jose for failing to clean up homeless encampments," San Jose Mercury News (March 20, 2014); available at http://www.mercurynews.com/bay-area-news/ci_25388561/state-files-water-pollution-complaint-against-san-jose.

⁶³ *Id.*

⁶⁴ California Coastal Commission, Thousands Work to Make Trash Extinct on 29th Annual California Coastal Cleanup Day, (September 21, 2013); available at http://www.coastal.ca.gov/publiced/ccd/2013release_final%20results.pdf.

We have seen great success in trash reductions as a result of these TMDLs. However, we are concerned that, as proposed, the Amendments require Region 4 to re-open 13 of the 15 trash TMDLs and consider modifications. Specifically, the draft Amendments state that “within one year of the effective date of these Trash Provisions, the Los Angeles Water Board shall convene a public meeting to reconsider the scope of its trash TMDLs, with the exception of those for the Los Angeles River and Ballona Creek watersheds, and to particularly consider an approach that would focus MS4 Permittee’s trash-control efforts on high-trash generation areas within their jurisdictions.” A reopener of this scope and magnitude is inappropriate and unnecessary.

First, a mandatory re-opener of 13 TMDLs within a one-year period is a herculean task, especially given the workload Region 4 has undertaken in the next year with watershed management planning. Second, a mandatory reopener is not necessary because most trash TMDLs in Region 4 are nearing their compliance deadlines. The Santa Monica Bay Debris TMDL was the last-adopted trash TMDL and has a final compliance deadline of 2020. The City of Los Angeles reports that they plan to comply with this TMDL early in 2016⁶⁵ in some sub-watersheds.⁶⁶ Third, in the highly urbanized landscape of Region 4, most areas are in fact “high-trash generation,” and therefore, properly subject to a TMDL’s requirements. If the Regional Board finds a rare exception, or identifies another short-coming, the Regional Board can always re-open the TMDL. Lastly, including a mandatory re-opener is a disincentive for compliance with trash TMDLs and other TMDLs, as the regulation will be seen as a “moving target.”

Instead, we ask that the “grandfather” clause stand for all 15 Region 4 trash TMDLs and that the re-opener become discretionary, not mandatory. At a minimum, no reopener should occur for any TMDL below 80 percent compliance with full capture devices. If the State Board is concerned that the final one or two milestones (final 0-20 percent reduction) may be difficult to achieve with full-capture devices for some Los Angeles permittees, they can employ the Track 2 approaches if these actions result in an equivalent volume reduction. We specifically request the following modification:

Chapter III.L.1.b.2 - ~~Within one year of the effective date of these Trash Provisions, The Los Angeles Water Board shall may convene a public meeting to reconsider the ability to allow TMDL responsible parties, who are determined to be at least 80% in compliance through the implementation of full capture systems, to achieve full compliance through focusing additional trash-control efforts on high-trash generation areas scope of its trash TMDLs, with the exception of those for the Los Angeles River and Ballona Creek watersheds, and to particularly consider an approach that would focus MS4* permittees’ trash-control efforts on high-trash generation areas within their jurisdictions.~~*

Since the Region 4 trash TMDLs are projected to meet compliance soon, through permittee investment in full-capture, it would be best to let those TMDLs conclude without initiating an alternative compliance process. We do not advocate for allowing permittees to avail themselves of the source reduction alternatives unless and until the bulk of (e.g., 80% or more) compliance has been achieved through full-capture, as we have seen in the Los Angeles area that this is the single most effective way of reducing trash. There is no justification for the State Board to re-invent the wheel and stand in the way of progress in Region 4. As importantly, there is also no evidence that reopening the TMDLs will improve water quality – the ultimate goal here – more than the existing TMDL approach will.

⁶⁵ “Compliance with the Debris TMDL will be met through a phased retrofit of all 218 catch basins throughout the JG7 WMParea (182 City owned and 38 County owned) by 2016, ahead of the Regional Board implementation goals for 2020 completion date.”

⁶⁶ Draft Watershed Management Plan at 29.

H. TRACK 2 SHOULD BE DIS-INCENTIVIZED BECAUSE IT IS DIFFICULT TO ENFORCE.

1. *Track 2 Permittees Should Be Required to Install Full-Capture Devices to the Maximum Extent Feasible.*

Implementation of trash TMDLs in Region 4 has demonstrated that full capture devices are an effective way to reduce large volumes of trash from entering a receiving water. The City of Los Angeles reported that in 2013, over one million gallons of trash were captured prior to entering the Los Angeles River. In the Ballona Creek watershed during the same year, nearly 500,000 gallons were diverted from the stormdrain system. Thus, the State Board should maintain within the Trash Amendments that full-capture devices are a “preferred alternative” for controlling trash from being discharged into California’s waterways and require this preferred alternative be implemented to the maximum extent feasible. We understand there may be some limited instances where full-capture devices cannot be engineered on a catch basin; however, we believe full-capture devices should be prioritized under Track 2’s trash reduction program.

Track 2 is less enforceable compared to Track 1. In an increasing number of areas, trash pollution has accumulated in waters to the point that 303(d) listings are required. This is in large part due to the fact that permit requirements are less precise, and so less enforceable. If the State Board insists on a Track 2 approach to achieve a narrative water quality objective, then it is even more important that the implementing provisions are clear and unambiguous. The CalEPA Enforcement Initiative succinctly found that:

Currently, one of the greatest difficulties faced by enforcement staff is complicated, ambiguous and/or poorly written permits or multiple, conflicting and confusing regulatory requirements that are unenforceable. Permit requirements must be unambiguous. They should be written in such a way that they are clear, easy to understand, and determining compliance is simple. Similarly, the enforcement consequences for violation should be clear.⁶⁷

A lack of clarity and objectivity in stormwater permits impacts enforcement, which necessarily becomes extremely staff-intensive. Prioritizing full-capture devices in Track 2 will provide permittees a more straightforward and clear path to compliance and should lead to greater trash reductions.

In order to require Track 2 Permittees to install full-capture devices to the maximum extent feasible, we offer the following revisions to Chapter III.L.2.a.2:

Track 2: Install, operate, and maintain ~~any combination of~~ full capture systems to the maximum extent feasible. For storm drains determined to be infeasible for full capture system installation, include any combination of other treatment controls*, institutional controls*, and/or multi-benefit projects* within either the jurisdiction of the MS4* permittee or within the jurisdiction of the MS4* permittee and contiguous MS4s* permittees, so long as such combination achieves the same performance results as compliance under Track 1 would achieve for all storm drains that captures runoff from one or more of the priority land uses* within such jurisdiction(s).*

2. *Track 2 Should Be Given a Five Years Compliance Schedule.*

Track 2 should have a reduced compliance schedule given the above concerns with enforceability. To be enforceable, Track 2 would be required to conduct a baselines assessment, create a BMP program consisting of unmeasurable controls like education programs, and then develop an in-stream monitoring

⁶⁷ Memorandum from Terry Tamminen, Secretary, Cal/EPA to BDOs, p. 8 (November 30, 2004) (“CalEPA Enforcement Initiative”).

program to demonstrate compliance with a performance standard that does not exist in the Amendments or SED. Instead of ensuring each element is implemented properly, it would be more effective to simply disincentive Track 2.

Region 2's MRP is a prime example of why there should be disincentives for Track 2. Track 2 is very similar to the MRP by allowing permittees to develop their own trash reduction program and then monitor to demonstrate compliance. Likewise, the abundance of discretion provided in both the MRP and Track 2 of the Amendments is the deficiency in both programs. To avoid similar implementation issues that are occurring in Region 2, we recommend the State Board de-incentivize Track 2 by requiring a shorter compliance schedule of five years.

A shorter compliance schedule is justified for Track 2. Unlike Track 1 which requires full installation of full-capture devices, Track 2 allows for a suite of BMPs that can be implemented in a shorter time frame. It does not take 10 years to conduct more street sweeping, install new trash cans, develop an education program, or even pass a source control ordinance. Each of these BMPs can be implemented well under the current 10 year compliance schedule and is easily attainable within a five year window.

To ensure ease of implementation and enforcement, we suggest the following revisions to Chapter III.L.4.a.4:

For MS4 permittees that elect to comply with Chapter III.L.2.a.2. (Track 2), full compliance shall occur within ~~five ten~~ (105) years of the effective date of the first implementing permit (whether such permit is re-opened, re-issued or newly adopted), along with achievements of interim milestones such as average load reductions of ten percent (~~120~~) per year. In no case may the final compliance date be later than ~~ten fifteen~~ (105) years from the effective date of these Trash Provisions*.*

I. INTERIM MILESTONES OF A MINIMUM OF 10 PERCENT SHOULD BE MANDATORY.

The State Board should be explicit that each permittee is required to show a 10 percent reduction in trash discharges annually for the 10 year compliance schedule. Interim milestones are a critical component to ensure permittees meet the 10 year compliance deadline. Throughout the stakeholder process, the State Board had always considered interim milestones of 10 percent for 10 years to be the appropriate requirement:

“For MS4* permittees complying under section 4.a.(1), compliance shall occur within ten (10) years of the effective date of the first implementing permit (whether such permit is re-opened, re-issued or newly adopted), with an average of ten percent (10%) of the full (100%) capture systems* installed every year.”⁶⁸

However, the Amendments take a departure from the State Board staff's previous intent by only *suggesting* interim milestones of 10 percent. The Amendments state that Track 1 and 2 permittees shall achieve full compliance in ten years, “...along with achievements of interim milestones such as an average of ten percent...” The discretion to self-select interim milestones is unwarranted. Stated and clear interim milestones of 10 percent reductions over ten years creates statewide consistency and ensures everyone is reducing an acceptable portion of their trash discharges annually.

A set 10 percent reduction over 10 years has proven effective in California. One only needs to compare the Los Angeles region trash TMDLs' implementation success versus Region 2's MRP implementation to understand the superior value of fixed milestones of 10 percent. The municipalities in the Los Angeles region are consistently meeting or exceeding their 10 percent annual reduction targets. On the other hand, Region 2's MRP program has largely gone unimplemented; with the majority of permittees unable to

⁶⁸ State Water Resources Control Board, Public Advisory Group Strawman Amendments, Feb 2013.

show they have met the 2014 40 percent reduction milestone. Therefore, we request the State Board be explicit that each permittee be required to show a minimum 10 percent reduction in trash discharges annually for the 10 year compliance schedule.

Additionally, the SED creates further ambiguity regarding whether interim milestones are required at all:

“Within the ten-year compliance periods discussed above, the Water Board *can set* interim compliance milestones within a specific permit. These interim milestones could be set, for example, as a percent reduction or percent installation per year.”⁶⁹

The Amendments only provide discretion as to the selection of interim milestones, but is clear that some type of milestone is required under both Track 1 and Track 2. However, the SED language provides two discretionary clauses. First, the Water Board “can set interim compliance milestones”, and second, these interim milestones “could be set...as a percent reduction.” As discussed above, we believe the latter clause should include a fixed milestone of 10 percent for 10 years. However, it is even more critical that the State Board be clear within the SED that interim milestones are required—they are not discretionary.

We therefore request the following changes be made to the Amendments and the SED:

Chapter III.L.4.a.3. and 4. (For both Tracks) - For MS4* permittees that elect to comply with Chapter III.L.2.a.1. (Track 1), full compliance shall occur within ten (10) years of the effective date of the first implementing permit (whether such permit is re-opened, re-issued or newly adopted), along with achievements of interim milestones ~~such as an~~ average of a minimum ten percent (10%) of the full capture systems* installed every year. In no case may the final compliance date be later than fifteen (15) years from the effective date of these Trash Provisions*.

SED, Pg.15 - “Within the ten-year compliance periods discussed above, the Water Board ~~can~~ shall set interim compliance milestones within a specific permit. These interim milestones ~~could be set, for example, as~~ should be a minimum 10 percent reduction or 10 percent installation per year.”

J. ALL PERMITTEES SHOULD BE GIVEN EQUAL COMPLIANCE SCHEDULES REGARDLESS OF PERMIT’S RENEWAL DATES.

Regional Boards should be required to incorporate the Amendment’s permit terms into applicable permits within the first 18 months of adoption. We applaud the State Board for incorporating a compliance schedule “backstop” into the Amendments. However, compliance schedule timeframes should be equal for all Permittees.

Both Track 1 and 2 Permittees are required to comply with the Amendments within 10 years from when the requirements are incorporated into the applicable stormwater permits. In other words, the compliance schedule does not begin to toll until a permittees’ stormwater permit is re-opened, re-issued, or adopted. We acknowledge that there is no easy solution to ensure timely incorporation of the Amendments into permits, and are concerned that unless there is a definitive “start” time for compliance, there will be serious delays in trash reductions. This concern becomes even more pronounced considering that re-adoption of stormwater permits has taken up to 15 years in the past.⁷⁰ To address this concern, the State Board is requiring all permittees – regardless of their permit cycle – come into compliance with the Trash Amendments no later than 15 years after adoption of the Amendments.

We support this concept, but a preferred and more equitable solution exists: Chapter 4.a.1. allows

⁶⁹ Supra note 19, at 15.

⁷⁰ See State Water Resources Control Board, Statewide General Industrial Stormwater Permit (2014).

Regional Boards 18 months to either require Permittees to provide notice of what Track they will be using, or re-open a stormwater permit to implement the Amendments' provisions. Accordingly, the Amendments should be revised to require Regional Boards to provide notice of what Track they will be using, and re-open a stormwater permit within the first 18 months of the Amendments' adoption. There are several reasons to revise the Amendments as we suggest.

First, requiring all applicable stormwater permittees to begin implementing the Amendments after 18 months is equitable and provides statewide consistency. As currently proposed in the Amendments, the practical outcome is that certain municipalities will be given an extra four years before they would be required to comply with the Amendments. For example, San Diego just re-issued its MS4 Phase I stormwater permit and will not be incorporating the Trash Amendments for *at least* another 5 years. On the other end of the spectrum, Region 2's MRP is due to be re-opened and will likely incorporate the Trash Amendments in the near-term, thereby starting the compliance schedule countdown immediately. Why should one region be given at least four additional years to continue discharges of trash before complying with the Amendments?

Recently issued permits will likely have to re-open their permits regardless. Given the history of permits to take longer than the CWA-required five year re-adoption cycle, it is highly unlikely that stormwater permits recently re-issued will be adopted within the next five years. If that is the case, then those permits will be forced to be re-opened to comply with the Amendments' 15 year backstop. Again using the San Diego Phase I permit as an example, what is the likelihood that the Permit will be renewed in the next five years? Given history, it seems highly unlikely that the new San Diego's Phase I Permit will be re-issued in the next five years. Region 9 will be forced to re-open its Phase I Permit before the conclusion of its 5-year iteration cycle, in order to incorporate the Amendments' terms. If permitting agencies are already going to be required to go through the process of re-opening permits to comply with the 15-year backstop, then why not require all permits to be re-opened after the 18 months?.

Allowing Regional Boards the discretion to re-open permits and *requiring* the Los Angeles Regional Board to re-open its TMDL creates a double-standard. Of note, the draft Amendments currently requires Region 4 to reopen 13 TMDLs within 12 months of Amendment adoption. Although we oppose this requirement, it is not appropriate for one Regional Board to be required to re-open a TMDL and not require other Regional Boards to re-open permits to incorporate these Amendments.

Moreover, requiring all permittees to begin meeting compliance requirements within 18 months will reduce delays in implementation. Reducing the worst-case scenario of 15 years until compliance to only 11.5 years will get California quicker results without placing a burden on permittees.

Finally, incorporating the Amendments' requirements into all permits after 18 months puts the Water Boards on a stronger legal footing. As currently proposed, the Amendments may require permittees to begin planning to comply with the Trash Amendments before requirements are incorporated into permits. The Amendments allow Regional Boards to "issue an order pursuant to Water Code section 13267 or 13383 requiring..." for permittees to select which Track they will comply with and to develop an implementation plan. Rather than go through the trouble of issuing orders and complying with Section 13267 and 13383, it would be more efficient for Regional Boards to skip that intermediate step and begin incorporating the Amendments' provisions into permits.

Therefore, we request the State Board make the following revisions to Chapter III.L.4.a.1:

Within eighteen (18) months of the effective date of these Trash Provisions, each permitting authority* shall ~~either~~: (i) issue an order pursuant to Water Code section 13267 or 13383 requiring each MS4* permittee that will be complying under Chapter III.L.2.a.1. (Track 1) or Chapter III.L.2.b.2. (Track 2) to submit written notice to the permitting authority* stating whether such MS4* permittee will comply with the prohibition of discharge under Track 1 or Track 2, ~~or~~ and (ii) re-open, re-issue, or adopt*

an implementing permit that includes requirements consistent with these Trash Provisions, and that requires notice from each MS4* as to whether it has elected to comply under Track 1 or Track 2.*

K. SOURCE CONTROL INCENTIVES SHOULD REMAIN IN THE AMENDMENTS.

1. The Source Control Incentive and the Source Control BMPs in Track to Should Be Retained.

As a Public Advisory Group Member, CCKA was largely responsible Chapter III.L.5., which provides time extensions to permittees who adopt a source control ordinance in their local community. We also support Track 2's call for source reduction as a means of controlling litter. California existing source control ordinances have established that such ordinances can be an effective means of curbing litter, saving money, and changing consumer behavior. As a response to California policy as well as a growing need for municipalities to reduce litter in order to save costs, improve the environment, and meet regulatory mandates such as TMDLs, in recent years, plastic bag bans and foam bans in particular have proliferated. In opposition to comments made by the American Chemistry Council, and Dart Industries during public testimony at the July 16, 2014 workshop, we believe source reduction policies are effective and should be incentivized in the Policy.

Clearly, cities understand the need for source reduction, and they have been successful in upholding ban ordinances in court.⁷¹ As of the date of these comments 108 localities have banned plastic bags, including Sacramento, Long Beach, San Francisco, and Los Angeles City and County, and 78 have enacted foam ban ordinances,⁷² including San Francisco, San Jose, and many others.

Several plastic bag ordinances have been in effect for at least a couple of years, and reports showing significant decreases in plastic bag consumption as well as litter are now available. Large stores covered by L.A. County's 2010 10-cent single-use bag charge reduced single-use bag usage by 95% and paper bag usage by 30%.⁷³ L.A. County's EIR estimated that implementation of its bag ordinance could meet the objective of "[r]educ[ing] the County's, Cities', and Flood Control District's costs for prevention, cleanup, and enforcement efforts to reduce litter in the County by \$4 million."⁷⁴ Since 2012, the city of San Jose has reduced plastic bag litter by 89% in the storm drain system, 60% in the creeks and rivers, and 59% in city streets and neighborhoods with a 10-cent-per-bag charge (in addition, the average number of single use bags used per customer decreased from 3 bags to 0.3 bags per visit).⁷⁵

Foam bans are particularly important since small pieces of foam that can flow through the 5mm mesh in full capture devices and street sweepers fail to capture many foam pieces before wind carries them off city streets into the storm drain or away from the street. For these reasons, foam bans are best method for addressing foam litter. Foam bans have also been effective in reducing foam street litter. One year after implementation of the San Francisco ordinance that prohibits the use of expanded polystyrene foam foodware, San Francisco's litter audit showed a 36% decrease in foam litter.⁷⁶ Foam industry proponents

⁷¹ See Application for Leave to File *Amici Curiae* Brief in Support of Respondent County of Los Angeles, et al.; Proposed Brief of *Amici Curiae* Surfrider Foundation, Heal the Bay, The 5 Gyres Institute, Environment California Research and Policy Center, and Seventh Generation Advisors in *Schmeer et. al, v. Cty. of Los Angeles et al.* 153 Cal. Rptr. 3d 352 (Ct. App. 2013).

⁷² For maps, complete listings of ordinances, and links, see Clean Water Action's website: Ban the Plastic Bag!

<http://www.cleanwateraction.org/ca/rethinkdisposable/banthebag>, and

<http://www.cleanwateraction.org/ca/rethinkdisposable/phaseoutfoam>

⁷³ About the Bag: Announcements, L.A. CNTY. DEP'T OF PUB. WORKS, <http://dpw.lacounty.gov/epd/aboutthebag> (last visited _____, 2014).

⁷⁴ See Checkout Bag Charge: Economic Impact Report, S.F. CITY & CNTY. OFFICE OF THE CONTROLLER 6 (Nov. 30, 2011), <http://www.sfcontroller.org/Modules/ShowDocument.aspx?documentid=2721> (comparing bag charge amounts and reduction percentages).

⁷⁵ Memorandum from Kerrie Romanow, Dir. Env'tl. Serv., City of San Jose, to the San Jose Transp. and Env't Comm. (Nov. 21, 2012), available at http://www.cawrecycles.org/files/SanJose_updatememo_Nov2012.pdf.

⁷⁶ City of San Francisco Streets Litter Re-Audit 2008. Available at: http://sfenvironment.org/downloads/library/2008_litter_audit.pdf

argue that these foam products can be replaced by other single use packaging that gets littered. While this may be true, those products, usually made from paper or heavier weight plastics, can be more easily collected by street sweepers as well as full capture devices.

The Amendments' provisions regarding source control are an important feature of the trash policy to ensure California is effectively reducing trash pollution with every effective strategy available. We therefore request that all source control provisions be retained within the Amendments.

2. *The Source Control Incentive Should Only Provide a Time-Credit for Track 1.*

Only Track 1 Permittees should receive a time-credit extension for implementing source control ordinances. However, the Amendments currently allow both Track 1 and 2 to receive a time-extension for passing a source control ordinance. As a Public Advisory Group member, CCKA proposed adding the incentive provision with the intent of improving Track 1's success. While CCKA fully supports Track 1, we realize that full-capture devices are not the complete answer to California's trash problems. To be an effective strategy, structural controls need to be complemented with source control measures to reduce pollution at its source. This was the intent behind adding Section 5's time extensions into the Amendments.

Providing a time extension for Track 2 Permittees is inappropriate. Track 2 Permittees are already expected to adopt source control ordinances in their overall trash reduction program. Giving Track 2 Permittees extra time to do something they are already expected to do is will only further weaken the Track 2 approach.

To achieve the intent of Chapter III.L.5., we offer the following revision:

The permitting authority may give MS4* permittees that are complying under section Chapter III.L.2.a. 1 up to a three (3) year time extension for achieving full compliance in areas where regulatory source controls* are employed that take effect prior to or within three (3) years of the effective date of these Trash Provisions*. Each regulatory source control* employed by an MS4* will be eligible for up to a one (1) year time extension.*

CCKA and our 12 Waterkeepers are supportive of the Amendments, and applaud the State Board's laudable efforts to reduce trash discharges into California's waterways. We look forward to working with you to ensure clean, abundant water for California.

Sincerely,



Sean Bothwell
Staff Attorney
California Coastkeeper Alliance

ATTACHMENT 1

October 9, 2013

Mr. Samuel Unger, Executive Officer
Regional Water Quality Control Board, Los Angeles Region
320 West Fourth Street, Suite 200
Los Angeles, CA 90013

Watershed Protection District
Tully Clifford, Director

Transportation Department
David Fleisch, Director

Engineering Services Department
Herbert L. Schwind, Director

Water & Sanitation Department
R. Reddy Pakala, Director

Central Services Department
Janice Turner, Director

Subject: PROPOSED REVISION TO THE TRASH MONITORING AND REPORTING PROGRAM FOR THE VENTURA RIVER ESTUARY TRASH TMDL

Dear Mr. Unger:

On behalf of the Responsible Parties to the Ventura River Estuary Trash TMDL (Trash TMDL), County of Ventura is submitting this letter to propose a revision to the approved Trash Monitoring and Reporting Plan (TMRP) for the Trash TMDL. Per discussions with the Los Angeles Regional Water Quality Control Board (Regional Board) staff on July 16, 2013, all parties agreed that the findings from the current TMRP have demonstrated that a different monitoring approach was needed to effectively utilize resources and target high priority trash areas in the Estuary as defined in the TMDL (below Main Street).

As requested, this letter describes the approach discussed at the July 16, 2013 meeting in more detail and includes a proposal for an interim monitoring approach that will provide for a transition from the current TMRP to the updated TMRP monitoring approach. The Responsible Parties, in conjunction with the Ventura Hillside Conservancy, are proposing to begin the modified TMRP approach proposed in this letter for the next monitoring year that begins in October 2013. We are therefore requesting approval of the proposed transition process outlined below by October 18, 2013.

As discussed on July 16, 2013, most of the Responsible Parties are assigned both point and non-point source responsibilities in the TMDL. As a result, the TMRP was originally developed to cover both point and non-point sources of trash and included a proposal for both point and non-point sources to comply with the TMDL through a Minimum Frequency of Assessment and Collection/Best Management Practice Program (MFAC/BMP Program). Through the initial monitoring, the Responsible Parties identified that the primary source of trash to the Estuary was non-point sources (particularly homeless encampments), and as a result, the trash monitoring results were highly variable and decreasing trends in trash could not be observed.

Based on these findings, the point source Responsible Parties decided to shift from compliance with the TMDL through the MFAC/BMP Program to compliance through progressive implementation of full capture devices. The modified compliance approach was discussed in the Ventura Estuary Trash TMDL Annual Report submitted in January



2013. Given that the point sources are in compliance with the Trash TMDL through installation of full capture devices, the TMRP monitoring approach can be adjusted to focus specifically on non-point sources.

The proposed TMRP and MFAC/BMP revisions are designed to prioritize the use of resources to implement actions that have been determined to be effective in reducing trash and the homeless population in the Estuary while still providing a monitoring approach that will allow the evaluation of the effectiveness of the MFAC/BMP program and support identification of any needed adjustments to the program.

Proposed New TMRP Approach

The current TMRP approach assesses the amount of trash present in the Estuary, collecting and counting the number of pieces of trash and the weight of the trash found in representative locations throughout the Estuary. The current monitoring program only includes five sites in the Estuary. The Responsible Parties are proposing to modify this approach to conduct a streamlined visual assessment of trash levels on all parcels in the Estuary. The proposed approach is a visual assessment using a component of the Surface Water Ambient Monitoring Program Rapid Trash Assessment Protocol (SWAMP Protocol) and visual assessment approaches being utilized by the City of Ventura, the Santa Clara Valley Urban Runoff Pollution Prevention Program in the San Francisco Bay Area, and a number of cities and municipalities throughout the country.

"The visual assessments will utilize a four-point scoring system based on the "Level of Trash" scoring category discussed in the SWAMP protocol to estimate the presence of litter in a specific area. Training will be provided for individuals who will conduct visual trash assessments to ensure consistency in the assessments. The trained scorers will score each assessed area rating the amount of litter observed as follows:

- Category 1 represents the SWAMP Category "Optimal"
- Category 2 represents the SWAMP Category "Suboptimal"
- Category 3 represents the SWAMP Category "Marginal"
- Category 4 represents the SWAMP Category "Poor"

The definition of Category 1 is:

"On first glance, no trash visible. Little or no trash (<10 pieces) evident when streambed and stream banks are closely examined for litter and debris, for instance by looking under leaves."

The definition of Category 2 is:

"On first glance, little or no trash visible. After close inspection small levels of trash (10-50 pieces) evident in stream bank and streambed."

The definition of Category 3 is:

"Trash is evident in low to medium levels (51- 100 pieces) on first glance. Stream, bank surfaces, and riparian zone contain litter and debris. Evidence of site being used by people: scattered cans, bottles, food wrappers, blankets, clothing."

The definition of Category 4 is:

“Trash distracts the eye on first glance. Stream, bank surfaces, and immediate riparian zone contain substantial levels of litter and debris (>100 pieces). Evidence of site being used frequently by people: many cans, bottles, and food wrappers, blankets, clothing.”

The goal of the MFAC Program is to ensure the parcels of the Estuary are in Category 1 or 2.

Assessments will be conducted prior to each cleanup event for a given parcel in the Estuary. The assessments will be conducted for the entire parcel (consistent with the existing Health and Safety Plan) using pre-determined and consistent routes defined for the parcel. The assessment results will be used to evaluate the accumulation of trash between cleanups and to determine which areas to target during the cleanup events.

Proposed New MFAC/BMP Program for Non-Point Sources

The proposed TMRP approach is directly connected and supportive of the proposed new MFAC/BMP program that is designed to target the identified primary sources of trash in the Estuary. The proposed program was developed based on conversations with the Ventura Hillside Conservancy on actions that have been effective in reducing the presence and accumulation of trash on their Estuary parcel.

The proposed MFAC/BMP program is as follows:

- 1. Conduct quarterly cleanups of all parcels in the Estuary**

The cleanups will likely be conducted on a rotating schedule, with a different parcel(s) selected for cleaning each month to ensure that the entire Estuary (below Main Street) is covered on a quarterly basis.

- 2. Begin regular patrols of Estuary parcels to prevent homeless encampments**

Patrols will be conducted at a frequency necessary to prevent homeless encampments from occurring, with a minimum frequency of quarterly, prior to each cleanup. When such encampments are identified, appropriate steps will be taken to remove them. The routes developed to conduct the patrols will also be used as the routes for the visual assessments for the TMRP. This will ensure the monitoring is reflective of the areas that are likely to accumulate trash from this source.

- 3. Conduct regular cleanups or employ additional BMPs in Estuary-adjacent parcels**

These actions will be performed to reduce the amount of trash entering the Estuary from the areas adjacent to the Estuary.

The visual assessment results will be used to evaluate the effectiveness of the proposed MFAC/BMP program and modify the program as needed to reflect observed trash levels. As stated above, the goal of the MFAC/BMP program is for all areas of the Estuary to be maintained in Category 1 and 2. To achieve this, the MFAC/BMP

program will be continuously evaluated and modified using the following adaptive management approach:

1. Areas in Category 1 for the assessment conducted prior to a scheduled cleanup event will be noted, but cleanups will not occur in these areas (as no trash was observed).
2. Areas in Category 2 for at least three (3) consecutive assessments conducted prior to a scheduled cleanup event will be reduced to a semi-annual or less frequent cleanup frequency. If litter increases on these parcels to a level above Category 2 as a result of the reduced cleaning frequency, the cleanups will be restored to a quarterly frequency.
3. Areas in Category 3 will be evaluated to determine if additional BMPs are needed to reduce the accumulation of trash between monitoring events. The types of trash, sources, and observed trends in trash amounts will be considered in determining if modifications to the MFAC/BMP program are necessary to move the area to Category 1 or 2.
4. Areas in Category 4 for three (3) consecutive quarterly visual assessments will be targeted for more frequent patrols and/or more frequent cleanups depending on the identified primary sources of trash until the site reaches Category 1 or 2 for three consecutive visual assessment events.

Proposed Interim TMRP and MFAC/BMP Program

Conceptually, the Responsible Parties have identified the approach outlined above as the revised TMRP and MFAC/BMP program. However, additional time is needed to develop the details of the monitoring approach, particularly the most effective locations to implement the patrols and visual assessments. Given that all parties have agreed that the current monitoring approach requires modification, the Responsible Parties would like to propose an interim monitoring and MFAC/BMP program to begin in October 2013 while the details of the final approach are being developed, reviewed, and approved by the Regional Board staff. The interim monitoring and MFAC/BMP program is necessary to support development of some aspects of the final monitoring approach, facilitate transition to a more effective cleanup and trash prevention program, and avoid the necessity of continuing to count pieces of trash while the detailed TMRP is being developed. The proposed interim monitoring and MFAC/BMP program is as follows:

1. Conduct cleanup of all Estuary parcels below Main Street by mid-November 2013 as the initial quarterly event.
2. Begin initial patrols to determine the route(s) that will be used for visual assessments and identified the preferred routes by January 2014.
3. Conduct second quarterly event by March 2014 to test the assessment process and identify the protocol and schedule for the patrols and cleanups for each parcel.
4. Submit a revised TMRP in April 2014 that includes the specific details on the route(s) to be used for visual assessments, the schedule for cleanups, and the assessment process.

5. Conduct regular cleanups in accordance with the proposed approach during Regional Board staff's review of the revised TMRP and MFAC/BMP program.

We are requesting approval of this proposed interim monitoring plan and MFAC/BMP program by October 18, 2013 to avoid the need to continue with a current TMRP and MFAC/BMP program that is no longer consistent with the best available information for how to address trash in the Estuary. This update is necessary to improve the effectiveness of the program to more effectively assess trash levels in the Estuary, target actions towards reducing trash quantities in the Estuary, and better utilize available resources.

We look forward to your consideration of our proposal. Please contact me at (805) 645-1382 if you have any questions. We will contact you in October to discuss the proposed transition process.

Sincerely,



Ewelina Mutkowska
County Stormwater Program

cc: Jeff Pratt, Ventura County Public Works Agency
Gerhardt Hubner, Ventura County Watershed Protection District
Jason Burke, Ventura County Watershed Protection District
Ray Olson, City of Ventura
Joe Yahner, City of Ventura
Robert Wu, California Department of Transportation
Ron Murphy, Ventura County Fairgrounds
Nat Cox, State of California, Department of Parks and Recreation
John Krist, Farm Bureau of Ventura County
Dale Zurawski, Farm Bureau of Ventura County
Ashli Desai, Larry Walker Associates
Derek Poultney, Ventura Hillside Conservancy