



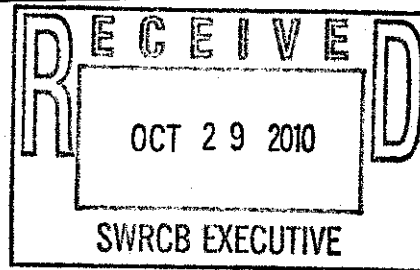
California Stormwater Quality Association

Dedicated to the Advancement of Stormwater Quality Management, Science and Regulation

CEQA Scoping Mtgs (10/7 & 14/10)
Policy for Controlling Trash
Deadline: 11/3/10 by 12 noon

October 29, 2010

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



Subject: CEQA Scoping for Proposed State Water Quality Control Policy for Controlling Trash in the Waters of the State

Dear Ms. Townsend:

On behalf of the California Stormwater Quality Association (CASQA), I am writing to provide comments regarding the scope and content of the environmental information that should be considered in developing a Statewide Policy for Controlling Trash in Waters of the State (Trash Policy). We have a number of comments and suggestions to help focus the policy and to ensure that it is technically feasible and economically reasonable, particularly in these difficult times. In addition our comments are offered to assist the State in addressing CEQA requirements and analysis.

Our comments are organized to parallel the September 2010 informational document.

Background

Recognize the multi-faceted nature of trash and trash control. In 2003-2006, the State Water Board provided significant funding (a Proposition 13 grant) to the Plastic Debris – Rivers to Sea project. The final report from this project - *Eliminating Land-based Discharges Of Marine Debris In California: A Plan of Action from The Plastic Debris Project*, June 2006 - concluded that controlling marine debris from land-based discharges would need a multi-faceted response including increased research, litter control, construction debris control, improved garbage management, achieving zero discharge of pre-production plastics, and reductions in product and packaging waste. The report also concluded that delivery of this response would necessarily require coordination between a number of state agencies including California Coastal Commission, California Department of Boating and Waterways, California Department of Conservation, California Department of Transportation (Caltrans), California Highway Patrol, California Integrated Waste Management Board, California State Parks, Ocean Protection Council, San Francisco Bay Conservation and Development Commission, and State Coastal Conservancy, in addition to the State Water Board. CASQA recommends that there is explicit and early recognition of the conclusions of this earlier work, including the key conclusion that achieving “zero trash” cannot and should not be expected to be achieved exclusively by the State and Regional Water Boards and the municipalities that they regulate.

Water Quality Policy Statement

Provide a statement to support true source control. The information document identifies the option to establish a policy for source control of trash (item #3). This option appears worthy of the State Water Board's consideration and our support, and should be included in a CEQA analysis, but we also believe the policy statement should be expanded to address "true" rather than only operational source control practices. The current scope is primarily focused on source control through education. We suggest that, the State Water Board provide a more forceful statement of its intent to coordinate with other state agencies, both legislatively and via regulation, to control trash at its source, for example, through state-mandated reductions in product packaging. Parallel to this statement would be an implementation element in which the Trash Policy identifies obligations not only by the regulated community, but also for the other agencies involved, including the State Water Board itself.

Clarify the scope of the policy. With respect to the definition of "trash", the proposed scope of the Trash Policy is unclear. In general, we support the concept of using existing code to define the term. However, as presented, it is unclear how these definitions would coalesce to provide a working definition of "trash." Trash is initially defined as including, or potentially including, all of the following:

- Litter as defined in Gov. Code, § 68055.1, subd. (g), (2) (all improperly discarded waste material, including, but not limited to, convenience food, beverage, and other product packages or containers constructed of steel, aluminum, glass, paper, plastic, and other natural and synthetic materials, thrown or deposited on the lands and waters of the state, but not including the properly discarded waste of the primary processing of agriculture, mining, logging, sawmilling, or manufacturing);
- "floating debris," "floatable waste," and "settleable waste"; and
- "Waste" as defined in Water Code, § 13050 ("...includes sewage and any and all other waste substances, liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or processing operation, including waste placed within containers of whatever nature prior to, and for purposes of, disposal.")

In the absence of additional detail, it is difficult to see how these definitions can be reconciled in a way that is not overly inclusive, potentially pulling unintended elements into the scope of the Trash Policy. CASQA recommends that a more specific and precise definition be proposed and distributed for review early in the development of the Trash Policy. This will help to provide a common understanding of its potential scope, as well as the potential implications of its implementation on the environment and on budgets of those affected. Likewise, we recommend that the adopted definition be as narrowly prescribed as possible to avoid potential overlap or conflict with other policies or regulatory initiatives. We see the broad-scale inclusion of "waste" within the definition as potentially diverting the scope of the Policy from its more obvious priority of addressing litter, i.e., improperly discarded materials that would normally be discarded in trash containers. Thus, we would suggest this definition specifically focus only on manmade sources of litter and clearly differentiate that other materials, including leaves or debris are not included as a component of the definition. A clearer definition along these lines would

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help to ensure that dischargers will be focused on addressing controllable pollutants entering MS4 facilities and not be expected to address other relatively uncontrollable conditions. (The Plastic Debris – Rivers to Sea project may again be an instructive reference in this regard.)

In a similar vein, the Trash Policy statement and CEQA analysis should recognize and analyze the implications of the non-point source nature of trash, even where discharged from MS4s. CASQA has consistently maintained that stormwater is a non-point discharge regulated under a point source regulatory framework. The ubiquitous nature of trash further underscores the need to recognize this distinction.

Avoid inconsistency in the interpretation of a MEP standard. Item #2 of the Trash Policy Statement suggests that the State Water Board might establish a definition of Maximum Extent Practicable (MEP) for trash that “would be determined in part by the land uses and the rate of trash generation within the MS4 permitted area.” We believe that any State Water Board action to explicitly define MEP would be unsupported in federal regulation and policy and would conflict with the definition of MEP currently utilized in Phase I permits and programs throughout the state. The following definition, taken from the San Diego County MS4 permit, is typical:

“...the definition of MEP is dynamic and will be defined by the following process over time: municipalities propose their definition of MEP by way of their urban runoff management programs. Their total collective and individual activities conducted pursuant to the urban runoff management programs becomes their proposal for MEP as it applies both to their overall effort, as well as to specific activities (e.g., MEP for street sweeping, or MEP for MS4 maintenance). In the absence of a proposal acceptable to the Regional Board, the Regional Board defines MEP.”

As has long been recognized, MEP is an iterative standard, the specifics of which are determined through the proposal, review, implementation, assessment, and modification of specific programs, activities, and BMPs by municipalities. Currently, the State Water Board or a Regional Water Board would impose its own interpretation of MEP for trash or any other constituent only as a last resort. To do otherwise would presuppose the absence of an effective process through existing MS4 permits, TMDLs, or other means, a conclusion that we believe is premature, and would also be inconsistent with longstanding State Water Board policy and practice. Moreover, the establishment of a “zero trash” water quality objective (see below for additional comments) could potentially over-ride the regionally established interpretation of MEP and adopted TMDLs. (In addition, a “zero trash” interpretation of this provision would be highly problematic for municipalities concerned about undue exposure to enforcement or citizen lawsuits.)

Establish a separate plastic pellet policy. We appreciate the State Water Board’s desire to streamline policy development. However, the inclusion of plastic pellets in the Trash Policy seems to be overreaching. Typical treatment controls cannot capture plastic pellets of a size smaller than 5 mm; hence, it is important to address this pollutant prior to entering the environment. At the same time it is recognized that many of the most problematic facilities receiving pellets are often transient and present particular regulatory and enforcement challenges and likewise challenges for the policy development and CEQA analysis. In short, the unique challenges associated with pellets should be recognized as being beyond the scope of a Trash

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Policy. The Water Board has other regulatory options to address pellets including the Industrial General Permit for stormwater discharges. State and Regional Water Boards that have conducted and are continuing to conduct compliance inspections of preproduction plastic manufacturing, handling, and transport facilities enrolled under the Industrial General Permit under the Preproduction Plastic Debris Program are currently taking such an approach.

Water Quality Objectives

Establish "Zero Trash" as a goal, not as a numeric objective. Pursuant to CWC §13241 the State Water Board in establishing a water quality objective must consider the following:

- a) Past, present, and probable future beneficial uses of water.
- b) Environmental characteristics of the hydrographic unit under consideration, including the quality of the water available thereto.
- c) Water quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area.
- d) Economic considerations.
- e) The need for development housing within the region.
- f) The need to develop and use recycled water.

While some of these factors may not apply, the State Water Board must consider technical feasibility and economics and reasonableness in establishing an objective for trash and then weigh these factors against the overall benefit to the State. While the Scoping Document does not include such an analysis, we would expect to see one for this aspect of a Trash Policy. We believe a more constructive approach would be to instead make "zero trash" a goal of the Trash Policy that would be implemented through narrative objectives; this would allow prioritization of resources (and therefore economics) and hot spots.

Establish a specific narrative objective for trash. The current approach taken by Regional Water Boards is to apply the broad narrative objective for floatables, settleable, and suspended materials to trash. This approach does not impose new demands under CEQA at this stage and seems to be successful in focusing actions on man-made litter and debris, which we believe should be the goal of the Trash Policy. Ultimately, the result of implementing a Trash Policy should be the protection of beneficial uses. The statewide establishment of a narrative objective for trash would better serve this purpose by allowing needed flexibility not otherwise provided through a zero trash objective.

Implementation

Establish a prioritized implementation alternative. The informational package acknowledges that implementation measures may ultimately be prioritized. CASQA would suggest that, at a minimum, the State Water Board identify an implementation alternative that more directly acknowledges the need for prioritization of sites and control measures and set forth how and when that will occur and on what basis. To make CEQA analysis/compliance easier at this point, we would suggest that an implementation alternative that includes establishing baseline

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information, identifying hot spots and optimizing source and treatment controls be included. Such an approach is currently in the Bay Area Municipal Regional Stormwater Permit.

Establish flexibility with implementation alternatives. Given the wide range of approaches that a community might take to address trash, it is important that the Trash Policy provides flexibility to accommodate local demographics and interests. The current list of implementation alternatives does not appear to provide such flexibility. Instead, it should be clear in the Trash Policy that the selection of a likely combination of implementation measures is prioritized by the regulated entity and not prescribed by the State for specified land use types; otherwise the CEQA burden will be the State Water Board's to meet at the time it adopts the Trash Policy itself – a daunting possibility. Along with flexibility, we also ask that the State Water Board more directly acknowledge the ongoing work in southern California and the Bay Area and make clear that the Trash Policy does not supersede ongoing permit programs and TMDL implementation plans.

In closing, we hope that our comments will assist you in clarifying the scope and content of the environmental information that should be considered in developing a State Trash Policy. Our members are facing significant challenges in implementing stormwater programs with the resources they have at hand. We want and support the need for clean water waterways but we must be able to have the flexibility to direct our resources to critical water quality problems – be it trash or other pollutants.

Our comments are provided in this context. Please feel free to contact me at (760) 603-6242 or Geoff Brosseau, our Executive Director at (650) 365-8620 if you have any questions or would like to discuss this further.

Sincerely,



Scott Taylor, Chair
California Stormwater Quality Association

cc: Charles Hoppin, Chair, State Water Board
Tom Howard, Executive Director, State Water Board
Jonathan Bishop, Chief Deputy Director, State Water Board
Bruce Fujimoto, Greg Gearheart, and Joanne Cox, State Water Board
CASQA Executive Program Committee
CASQA Board of Directors